

WTM/ AB /IVD-ID 19 /10/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11A, 11B (1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Sections 12A(1), 12A(2) and 23I of Securities Contracts (Regulations) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005.

Noticee No.	Name of Noticees	PAN
1.	Tatia Global Vennture Limited	AAACT1724B
2.	Mr. S. Pannalal Jain Tatia	AGMPP1055C
3.	Mr. S.P. Bharat Jain Tatia	AEQPB4533F
4.	Mr. Arun Kumar Bafna	AHQPB1468G
5.	Ms. D. Hemamalini	AEMPH4787D
6.	Mr. E. Subbarayan	BEBPS0342K
7.	Ms. S. Shobha	BMGPS1306C
8.	Ms. Namrata Parekh	ADJPJ0861C
9.	Mr. Chandrakantha Tatia	AABPT6513A

In the matter of Tatia Global Vennture Limited

(Aforesaid entities are hereinafter individually referred to as by their respective name or noticee number and collectively as “the Noticees”.)

1. The present proceeding emanates from a show cause notice dated August 21, 2020 (hereinafter referred to as “**SCN**”) issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees asking them to show cause as to why suitable directions be issued and/or penalty be not imposed, as deemed fit under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Section 15A(a), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), Section 12A(1) and 12A(2) read with Section 23E and 23H of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) against them. The SCN, *inter alia*, alleged that Tatia Global Vennture Limited (hereinafter also referred to as “**TGVL**” / “**the company**”) had failed to present true and fair financial statements and had executed transactions which are non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company. It was further alleged that Noticee no.1 had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors and are fraudulent in nature. It was also alleged that the directors and the Chief Financial Officer (Noticee nos. 2 to 9) of Noticee no.1 had failed to exercise duty of care, by misrepresenting the financials/misusing the funds. It was observed that the directors and the Chief Financial Officer of Noticee no.1 had failed to discharge their fiduciary responsibility. The SCN also alleged that Noticee no.1 and its directors and the Chief Financial Officer (Noticee nos. 2 to 9) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature as they induced the investors to trade in the

securities of the company and had the potential to mislead the investors. On the basis of the same, the SCN alleged that that the company has violated Section 12A (a) (b) & (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulation 3(b), (c) & (d) and Regulation 4(1) and 4(2) (f) & (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 “**PFUTP Regulation, 2003**”), Regulations 4(1) (a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3),(6) & (12), 16(1)(b)(iv), 17(1)(b), 18(1)(b), 19(1), 23(3), 24(3), 25(3), 33, Clause B(2) of Schedule III read with Regulations 30 and 48 of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “**LODR Regulations**”) read with Section 21 of SCRA, 1956. The SCN further alleged that the directors of the company i.e., (i) Mr. S. Pannalal Jain Tatia (Noticee no. 2), (ii) Mr. S.P. Bharat Jain Tatia (Noticee no. 3), (iii) Mr. Arun Kumar Bafna (Noticee no. 4), (iv) Ms. D. Hemamalini (Noticee no. 5), (v) Ms. S. Shobha (Noticee no. 7), (vi) Mr. Chandrakantha Tatia (Noticee no. 9) and the Chief Finacial Officer(s) (hereinafter referred to as “**CFO**”) of the company i.e. (vii) Mr. E. Subbarayan (Noticee no. 6) and (viii) Ms. Namrata Parekh (Noticee no. 8) have violated Sections 11(2)(i), 11(2)(ia), 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, Regulations 4(1) (a), (b), (c), (e) & (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1)(3),(6) & (12), 16(1)(b)(iv), 17(1)(b), 18(1)(b), 19(1), 23(3), 24(3), 25(3), 33, Clause B(2) of Schedule III read with Regulations 30 and 48, of LODR Regulations read with Section 27 of SEBI Act, 1992 and Section 21 of SCRA, 1956.

2. The brief facts of the case, as mentioned in the SCN are as follows:

2.1. SEBI passed an interim order on October 09, 2017 *inter-alia* directing that the promoters and the directors of the company would only be allowed to buy the securities of TGVV and that shares held by the promoters and directors in the

company shall not be allowed to be transferred for sale by depositories. Further, vide the said interim order, the stock exchange was directed to appoint an independent forensic auditor to, *inter-alia*, further verify:

- Misrepresentation including of financials and/or business of TGVV and consolidating subsidiaries, if any;
- Misuse of the funds/books of accounts of TGVV and consolidating subsidiaries, if any.

2.2. Pursuant to the interim order, SEBI received submissions dated October 31, 2017 from the company. Vide the said letter dated October 31, 2017, TGVV had also requested for personal hearing in the matter. An opportunity of hearing was provided to TGVV on January 03, 2018 but TGVV requested for an adjournment on the ground of certain unrest in Mumbai on January 3, 2018. Acceding to the request of TGVV, the hearing was adjourned to April 4, 2018 when its authorized representatives appeared and made submissions on its behalf. During the hearing, entity was granted three weeks' time to submit additional documents. Vide letter dated April 25, 2018, the entity had sought additional 2 weeks' time to submit additional documents, which was granted to the entity. The entity submitted the additional information vide letter dated May 07, 2018. Thereafter, SEBI passed a confirmatory order in the matter on December 28, 2018 confirming the directions contained in the interim order dated October 09, 2017.

2.3. The forensic audit report was submitted to SEBI and the findings of the forensic audit report for the period of April 2015 till March 31, 2018) (hereinafter referred to as "**Investigation period**") was examined by SEBI in the investigation.

2.4. The investigation by SEBI, *inter-alia*, revealed the following:

2.5. Violations of LODR Regulations:

- 2.5.1. TGVV has not taken Audit committee's yearly omnibus approval for entering into related party transactions.
 - 2.5.2. Minutes of meeting of unlisted subsidiaries have not been placed at the board meetings of TGVV.
 - 2.5.3. No member of management was present at any of the independent director's meetings that took place between April 2015 and March 2018.
 - 2.5.4. TGVV has not disclosed material deviation from the main activity of the company.
 - 2.5.5. Independent directors having pecuniary relationship with TGVV by owning equity shares of TGVV.
- 2.6. Misrepresentation including of financials and misuse of funds/books of accounts:
- 2.6.1. Misclassification of accounts and extension of credit to its subsidiaries without charging interest on delayed payments without agreements. Non writing off of receivables from Niharika Criterion as bad debts despite outstanding since April 2015.
 - 2.6.2. The terms and conditions of repayments on loans taken from Ashram Online, Make my innerwear and Opti Products, which are companies in which Mr. Pannalal Jain Tatia is a director, could not be verified. Further, TGVV has not taken yearly omnibus approval of audit committee for entering into related party transactions which involve taking credit from these entities.
 - 2.6.3. Contract with Mr. Jaswant Chand Bhandari and deviation from main activity of the company.
 - 2.6.4. No interest on receivable from subsidiary companies
 - 2.6.5. These irregularities tantamount to misrepresentation of financial /misuse of funds/ books of accounts of the company during the investigation period and has misled existing and prospective investors and induced them to trade in the securities of the Company.

2.7. Non furnishing of information/Non-cooperation by the company:

2.7.1. Exchange vide letter dated January 03, 2019 informed the company about the appointment of forensic auditor in line with SEBI order dated October 09, 2017 (i.e. date of interim order). In the same letter, the exchange requested the company to provide information to the forensic auditor.

2.7.2. However, the company did not furnish the required information/supporting documents as sought by the forensic auditor. Details of said information/supporting documents are provided in the Forensic Audit Report.

2.8. Based on the above, the SCN alleged that the Noticees had violated provisions of SEBI Act,1992, PFUTP Regulations, 2003, LODR Regulations and SCRA, 1956, as enlisted in para 1 above.

3. The following annexures were provided with the SCN:

Annexure no.	Particulars
Annexure 1	Interim Order
Annexure 2	Confirmatory Order
Annexure 3	Forensic Audit Report

4. The SCN was delivered to the Noticees. A common reply was received from the Noticees on September 15, 2020 wherein they sought extension of time for filing a reply. The Noticees, except for Noticee no.1, were advised to file reply within October 15, 2020 and the Noticee no. 1 was given time till November 02, 2020 to file its reply. Subsequently, vide email dated October 19, 2020 all the Noticees sought time till November 30, 2020 to file a reply to the SCN. A hearing was

granted to all the Noticees on December 10, 2020 and they were advised to file their reply before the date of hearing. The Noticees submitted their reply vide letter dated December 07, 2020.

5. Vide reply dated December 07, 2020 the Noticees submitted as follows:

- 5.1. Fraud requires elements of false representation of fact or concealment of what should have been disclosed which deceives and intend to deceive another, investors in securities in this context, so that they may act upon it to their legal injury. The SCN fails to produce any material to prove that the alleged breach has caused injury to the investors or to the securities market.
- 5.2. Noticee nos. 4, 5, 6, 7, and 9 are non- executive Directors who are not responsible for the day to day running of the Noticee no. 1. The Forensic Audit based on which the present SCN has been issued is for the financial years 2015-2016 to 2017-2018. The allegations made against Noticee nos. 4, 5, 7 and 9 in the SCN regarding violations pertain to land transactions which have taken place during the financial year 2008-2009 when they were not even associated with TGVV. Further, the investigation by the Forensic Auditor also pertain to the financial years 2015-2016 to 2017-2018. The Noticee nos. 4, 5, 7 and 9 are not in any manner involved in the running of the company and have nothing to do so as far the present case is concerned.
- 5.3. The Noticee no. 4 was appointed as a non-executive independent- additional director of TGVV with effect from January 20, 2003 and thereafter, his appointment as a non-executive independent director of TGVV was regularized with effect from September 30, 2003 at the Annual General Meeting of TGVV. The Noticee no. 4 was not involved into the day-to-day affairs of TGVV and did not attend the office of TGVV on a day-to-day basis.

- 5.4. The Noticee no. 5 was appointed as a non-executive independent director of TGVV with effect from July 31, 2014 and ceased to be a director of TGVV with effect from October 31, 2016.
- 5.5. The allegations made against Noticee no. 6 in the SCN regarding violations pertaining to land transactions during the financial year 2008-2009 and the forensic audit during the financial years 2015-2016 to 2017-2018 is nowhere connected to Noticee no. 6 because he was appointed as a Chief Financial Officer of TGVV with effect from August 22, 2014 and ceased to be a Chief Financial officer of TGVV with effect from October 31, 2016. Hence, he was not associated with TGVV during the alleged transaction investigation period mentioned in the SCN.
- 5.6. The Noticee no. 7 was appointed as a non-executive independent- additional director of TGVV with effect from October 31, 2016 and thereafter, her appointment as a non-executive independent director of TGVV was regularized with effect from September 27, 2017 at the Annual General Meeting of TGVV. As a non- executive director, she was not involved in the day to day functioning of the company.
- 5.7. Noticee no. 9 was appointed as executive non- independent director with effect from May 30, 2018 and ceased to be a director of TGVV with effect from February1, 2019.
- 5.8. The aforesaid Noticees were never involved in any manner whatsoever in the running of the company and have nothing to do so as far the present case is concerned. They are in the nature of- Non- Executive Independent Director with no involvement in day to day operations of the company. They also do not satisfy the conditions of 'officer in default' as prescribed.
- 5.9. The allegation that an independent forensic auditor was appointed to investigate and verify the alleged misrepresentation including of financials and/ or business of TGVV and consolidating subsidiaries and alleged misuse of funds/books of accounts of TGVV and consolidating subsidiaries if any is completely

misconceived and misguided. The forensic auditor appointed has submitted its report for the period between April 2015 to March 2018 based on which the present SCN has been issued. The forensic report has failed to present the true facts and circumstances of TGVV and has resorted to making false, baseless and bald allegations against the Noticees which is completely untenable and bad in law. The appointment of the said independent forensic auditor itself is questionable as there has been no disclosure whatsoever from the authorities regarding the qualifications/independent nature of the said forensic auditor or the scope of their work in the present investigation.

- 5.10. The Noticees submit that the SCN has provided no cogent reasons whatsoever to elucidate as to how any of the Noticees have violated the Regulations in any manner whatsoever. The SCN fails to provide specific instances to show the aforementioned Regulations have been violated and has only sought to make bald, vague and misguided allegations against the Noticees. Pertinently, Regulation 4(1) (a),(b),(c),(e) & (g) relate to the principles governing disclosures and obligations regarding a listed entity. These are only general underlying guiding principles that a listed entity is bound to follow and does not invite any penal consequences as such.
- 5.11. The SCN fails to demonstrate how the company failed to take into account the interest of all stakeholders while preparing the financial statements. No material/ document has been placed on record whatsoever to establish that the standard accounting principles has not been adhered to. It is submitted that the statutory auditors appointed by Noticees were independent, competent and qualified auditors who have ensured that there are no illegalities or non-compliance in the preparation of financial statements. The SCN does not disclose any complaints of misrepresentation to have been received from any investor or stakeholder of the Noticee no. 1 Company to allege that the said Regulation has been violated. There has been no failure or breach in any compliances or mandates prescribed under the law by the Noticees whatsoever.

- 5.12. The SCN has failed to establish any particular instance as to how the Board of Directors have failed to discharge their fiduciary duties towards the Noticee 1 Company, its investors and stakeholder and the market. It is further submitted that the integrity of the management has not been compromised and the all the necessary safeguards prescribed under the law have been put in place by the -management of Noticees.
- 5.13. The best interest of Noticees has always been the priority of the management and the members of the board have not failed to exercise due diligence and care. Material proof and evidence has been provided to the Forensic Auditor to reflect the same.
- 5.14. The SCN has failed to establish as to how any of the actions of the Noticees amount to 'fraud'. The Supreme Court of India in the case of Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753 has categorically held that the element of 'inducement' must exist and should be proved before holding that a person is guilty of fraud.
- 5.15. In the present case that there is no finding that the Noticees have indulged in any action that has induced or misled an investor or prospective investor in any manner whatsoever to trade in the securities of the Noticee no. 1 Company and has thereby played a fraud in the securities market. The SCN has failed to establish as to what action of the Noticees has alleged caused any inducement to result in an action of fraud. Assuming without admitting that the concept of preponderance of probabilities would also apply in the present case, still, it must be proved by cogent evidence that the Noticees are guilty of 'inducement'. In the absence, of any evidence, the charge of fraud stands disproved against all the Noticees.
- 5.16. SCN alleges that the Noticees have resorted to publishing or causing to publish or report or caused to report by a person 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 the securities in violation of Regulation 4(1)(f). The SCN also

alleges that the Noticees are in violation of Regulation 4(1)(r) as they have induced in planting false or misleading news which may induce sale or purchase of securities. The SCN has failed to establish or point out as to how any of the Noticees are in violation of the said Regulations in unequivocal term.

5.17. The Noticees also submitted detailed response to each allegation in the SCN which is discussed in subsequent paras.

6. On December 10, 2020, the Authorised Representative of the Noticees, along with Shri S.P. Bharat Jain Tatia appeared for hearing in person and made submissions.

Consideration of submissions and findings:

7. I have considered the SCN, replies received, and submissions made by the Noticees during the personal hearing granted to them. The SCN alleges the violation of the following provisions of law by the Noticees:

Relevant extract of the provisions of SEBI Act, 1992:

“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.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for:

.....

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in

the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

.....

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

12A. No person shall directly or indirectly-

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

.....

Offences by companies.

27. (1) Where an offence has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,- (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.....”

Relevant extract of provisions of SCRA, 1956:

“Conditions for listing.

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

Relevant extract of the provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a 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:-

.....

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

.....

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

.....”

Relevant extract of the provisions of LODR Regulations:

“Principles governing disclosures and obligations.

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d)

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) ...

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

.....

(f) Responsibilities of the board of directors:

The board of directors of the listed entity shall have the following responsibilities:

.....

(ii) Key functions of the board of directors-

.....

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

...

(iii) Other responsibilities:

....

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

....

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

.....

(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

.....

Definitions.

16.(1) For the purpose of this chapter , unless the context otherwise requires -

(b) 'independent director' means a non-executive director, other than a nominee director of the listed entity:

(i)

(ii)....

(iii)....

(iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or

their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

....

Board of Directors.

17.(1) The composition of board of directors of the listed entity shall be as follows:

....

- (b) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.-For the purpose of this clause, the expression "related to any promoter" shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;(ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

.....

Audit Committee.

18.(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

.....

- (b) Two-thirds of the members of audit committee shall be independent directors.

.....

Nomination and remuneration committee.

19.(1) The board of directors shall constitute the nomination and remuneration committee as follows:

- (a) the committee shall comprise of at least three directors ;
- (b) all directors of the committee shall be non-executive directors; and
- (c) at least fifty percent of the directors shall be independent directors.

.....

Related Party Transactions.

23(1).....

(2).....

- (3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-
- (a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
- (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- (c) the omnibus approval shall specify:
- (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,
- (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
- (iii) such other conditions as the audit committee may deem fit:
- Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.
- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:

.....

Corporate governance requirements with respect to subsidiary of listed entity.

24 (1).....

.....

- (3) The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.

.....

Obligations with respect to independent directors.

25(1).....

- (3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

.....
Disclosure of events or information.

30. (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.
- (2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.
- (3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

.....

Schedule III

-
- B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):...
2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).

.....
Financial results.

- 33.(1) While preparing financial results, the listed entity shall comply with the following:
- (a) The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.
- (b) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 –Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.
- (c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:

Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

- (d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.
- (e) The listed entity shall make the disclosures specified in Part A of Schedule IV.
- (2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
 - (a) The quarterly financial results submitted shall be approved by the board of directors:
Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.
 - (b) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.
 - (c) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).
 - (d) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified in clause (b) of sub-regulation (2).
- (3) The listed entity shall submit the financial results in the following manner:
 - (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.
 - (b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:
 - i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year. Provided

that this option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.

- (ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year."

- (c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

- (i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

- (ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

- (d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

- (e) The listed entity shall also submit the audited or limited reviewed financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

- (f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

- (g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.
- (h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.
 - (i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.
- (4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion) shall be in the manner as specified by the Board
- (5) For the purpose of this regulation, any reference to “quarterly/quarter” in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as “half yearly/half year” and the requirement of submitting ‘year-to-date’ financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.
- (6) The Statement on Impact of Audit Qualifications (for audit report with modified opinion) and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s).

.....

Accounting Standards.

- 48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.....”
-
- 8. Before proceeding on the merit of the matter, it will be relevant to discuss the background of the present proceedings.
 - 9. SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud

Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs. In respect of listed shell companies including TGVV, vide its letter dated August 7, 2017, SEBI placed trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. Thereafter, BSE vide notice dated August 7, 2017 issued to all its market participants-initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies, as identified by MCA and communicated by SEBI, with effect from August 8, 2017. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

10. Vide its letter dated August 9, 2017, TGVV made a representation to SEBI, *inter alia*, submitting as under:

“This is in reference to the SEBI Circular No. SEBI/HO/ISD/ISD/OW/P/2017/18183 dated August 7, 2017 to the concerned stock exchanges wherein 331 companies have been presumed to be shell companies. Our Company, Tatia Global Vennture Ltd. is also on the list and we would like to categorically state that our Company is not a shell company. The intent, the purpose, principle of our Company was never compromised. Appropriate notice was not given to the Company to justify whether our Company is actually a shell company and we further state that an appropriate opportunity should be given to us to convince your goodself about our integrity. Our Company's, co-compliance track record with the Bombay stock exchange Ltd and the Ministry of corporate affairs has been impeccable. We have been following all the rules and regulations of SEBI and the Listing agreement entered into with the Bombay Stock Exchange Ltd. as well as filing of all the required documents within the stipulated time to the Ministry of corporate affairs and all concerned authorities. The Company has duly filed all the tax returns up to date. Our Company,

Tatia Global Vennture Ltd. does not have any pending investor Complaints. We therefore find it very surprising that the Company has been placed under the surveillance list of the shell Companies. We are ready to provide all the necessary information and extend our wholehearted cooperation to the regulators to resolve this issue so that the name of the Company is excluded from the shell companies at the earliest on merit basis. We are requesting SEBI to recall its order against the Company. We request you to kindly take this on record in the interest of the Company and the shareholders.”

11. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, TGVV filed an appeal No. 216 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as “SAT”). Hon'ble SAT vide order dated September 11, 2017 directed the following:

“2. As the appellant has already made a representation to BSE against the said ex-parte order dated August 07, 2017, with a copy to SEBI, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit.”

12. Pursuant to above mentioned SEBI letter dated August 9, 2017, BSE had submitted its report on October 5, 2017 wherein it has *inter alia* observed the following:

“Company has submitted the auditor certificate from K. Subramanyam & Co, Chartered Accountants ... As per the Auditor Certificate, company has:

- a) filed income tax returns for the last 3 years and there are no dispute pending with income tax department.
- b) filed annual returns with MCA for the last 3 years
- c) company is a going concern

d) company has not borrowed any funds and there are no outstanding loans or borrowings from any banks or financial institutions.

e) company has complied with Listing Regulations filings for the last 3 years.”

Further, Exchange vide its email dated August 21, 2017 and October 04, 2017 offered an opportunity to the company if it wishes to have personal representation. The company vide its mail dated October 05, 2017 requested for personal hearing after October 09, 2017. Therefore, a meeting shall be arranged in second week of October 2017. Based on above, prima facie, the submissions made by the company appears to be in order.”

13. In compliance with the aforesaid order dated September 11, 2017 passed by Hon'ble SAT, after hearing TGV, SEBI passed an interim order dated October 09, 2017 (hereinafter referred to as “**interim order**”) wherein following directions were issued:

“.....

- i The trading in securities of TGV shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI
- ii Stock Exchange shall appoint an independent forensic auditor, *inter alia*, to further verify:
 - a) Misrepresentation including of financials and/or business of TGV and consolidating subsidiaries, if any;
 - b) Misuse of the funds/books of accounts of TGV and consolidating subsidiaries, if any.
- iii The promoters and directors in TGV are permitted only to buy the securities of TGV. The shares held by the promoters and directors in TGV shall not be allowed to be transferred for sale by depositories.
- iv The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against TGV.

.....”

The interim order also clarified that:

“24.The ‘directors’ for the purpose of directions above shall mean and include: a) the persons who are acting as directors on the date of this order, or

b) the persons who were acting as directors of this company as on August 07, 2017, who cease to be director by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017.”

14. A forensic auditor, Secmark Consultancy Private Limited, was appointed by BSE vide letter dated January 04, 2019 to conduct forensic audit of TGVL, as directed in the interim order. Vide order dated December 28, 2018 (hereinafter referred to as “**confirmatory order**”), SEBI confirmed the directions issued in the interim order and also directed that the audit shall continue. On July 04, 2019, forensic auditor appointed by BSE submitted a Forensic Audit Report (hereinafter referred to as “**FAR**”) to BSE. Thereafter, based on the FAR which was forwarded by BSE to SEBI on July 08, 2019, SEBI carried out an investigation in the matter. Based on the findings of investigation, SCN was issued and thereafter, the matter was placed before me on October 26, 2020 for giving an opportunity of hearing and passing a final order in the matter.
15. During the personal hearing on December 10, 2020, the Authorized Representative of the Noticees has submitted that the complete copy of the investigation report in the matter was not furnished to the Noticees. In this regard, I note that SCN states that SEBI conducted an investigation in the matter. However, it also states that the said investigation is based on the findings of FAR. I note that the copy of said FAR has been provided to the Noticees, as Annexure III to the SCN. Therefore, in my view, the Noticees have been provided with the relevant material based on which the allegations in the SCN have been leveled against them. I note that Noticees have filed a detailed reply in response to the SCN. Thus, I find that no prejudice have been caused to the Noticees in putting up an effective defense in the matter, in the absence of complete investigation report.
16. The main allegations against the Noticees as contained in the SCN, are discussed below:

I. General Violations of LODR Regulations:

17. The SCN makes the following allegations against the Noticees:

- a. TGVV has not taken Audit committee's yearly omnibus approval for entering into related party transactions.
- b. Minutes of meeting of unlisted subsidiaries have not been placed at the board meetings of TGVV.
- c. No member of management was present at any of the independent director's meetings that took place between April 2015 and March 2018.
- d. TGVV has not disclosed material deviation from the main activity of the company.
- e. Independent directors having peculiar relationship with TGVV by owning equity shares of TGVV.

18. The Noticees' reply in this regard is as below:

18.1. It is submitted that the Noticee no. 1 has a policy on related party transaction(s) (TGVV RPT Policy) as mandated under Regulation 23 of the LODR Regulations and an audit committee has been appointed under the LODR Regulations. Under the policy of Noticees, related party transactions are defined as follows:

"Related Party Transaction" have the meaning as defined under Regulation 2(1)(zc) of the Securities and Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015, as amended, transfer of resources, services or obligations between a listed entity and a related party, regardless of whether price is charged and a transaction with a related party shall be construed to include a single transaction or a group of transactions in a contract, including but not limited to the following -

- a. sale, purchase or supply of any goods or materials;
- b. selling or otherwise disposing of, or buying, property of any kind;
- c. leasing of property of any kind;
- d. availing or rendering of any services;
- e. appointment of any agent for purchase or sale of goods, materials, services or property;
- f. appointment to any office or place of profit in the company
- g. underwriting the subscription of any securities or derivatives thereof, of the company"

18.2. The transactions with Ashram Online.com Limited, Make My Innerwear India Private Limited and Opti Products Private Limited are in nature of inter-corporate deposits that are made to related parties and the same have been disclosed in the financial statements and annual reports of Noticees. Though the transactions were with "related parties", they would not be covered by Section 188 of the Companies Act and instead would be covered by Section 186 of the Companies Act which provided for inter corporate deposits. Since, the transactions pointed out by the forensic auditor are not in nature of related party transactions provided for under Section 188 and are completely outside the purview of the provision and also since, the inter-corporate deposits made to the related parties above named do not exceed the threshold limits provided under the Section 186, there was no need for satisfaction of any additional conditions by Noticees. Without prejudice to the above, as per Regulation 23 of the LODR Regulations, the requirement of taking an omnibus approval is not a mandatory one and is subject to the discretion of the listed entity. Under the TGVV RPT policy that is made under Regulation 23, there are certain transactions that will not be subject to the omnibus approval of the Audit

Committee. For the purpose of the SCN, as per clause 5 of the TGVV RPT policy, inter corporate deposits are not subject to the omnibus approval of the Audit Committee and hence, the aforesaid transactions do not require an omnibus approval.

- 18.3. In relation to the transactions made by the Noticees with the subsidiary companies, Noticees had only provided funds to the subsidiaries for acquiring land banks and they were neither in the form of advances or loans to subsidiaries. Noticees have classified the Land Banks Acquisition Costs paid to the subsidiaries as "trade receivables" even in its books of accounts.
- 18.4. Sub-regulation (2) of Regulation 23 provides that all related party transactions shall require prior approval of the audit committee. From a combined reading of the sub-regulation (2) and (5) of the Regulation 23 of the LODR Regulations, it is clear that the approval of the audit committee is not necessary in cases where the transaction is between the subsidiary companies and the holding company so long as the accounts of the subsidiary company are consolidated with that of the holding company. In the present case, the subsidiaries to whom the funds for acquiring land banks have been paid are all wholly owned subsidiaries with the board of directors being common in both. The transactions have been placed before the Board on a quarterly basis and have been duly approved by the Board of directors. Further the accounts of the subsidiaries are consolidated with that of the holding company, TGVV. Hence, the transactions are not in violation of the Companies Act or the LODR Regulations.
- 18.5. Regarding minutes of Board meetings of subsidiaries not being placed before the Board of TGVV, the mandate imposed under the regulation is to ensure that all the transactions of the subsidiary companies that are unlisted, do not escape the vigil of the holding company and consequently cause any detriment to the investors of the listed entity. In the present case, the Board of Directors in both the holding company and its subsidiaries are

common and hence, no action can be performed by the subsidiaries without the knowledge and approval of the board of TGVV. The financial statements of the subsidiaries are also placed before the directors of TGVV on a quarterly basis for their approval. The Board takes note of both the audited and unaudited results of the subsidiary companies as a matter of governance. Since there are no other items to be recorded in the minutes of the subsidiary companies, the said level of governance can be deemed to ensure compliance with the said provision. The same can be verified in the form of the minutes of the meetings recorded during the meeting of the Noticees. The nature of business of the wholly owned subsidiary companies of the Noticee no.1 is that they are wholly owned land bank companies which do not carry any other independent business of their own. This in addition to the fact that the Board in both the entities is the same makes it clear that the placing of the minutes of the subsidiary companies' minutes before its board is an empty formality. However, without prejudice to the above, the Noticees shall strive to ensure that the same is ensured and there are independent records recording the same are maintained from the next financial years.

- 18.6. As per Regulation 25(3) of the LODR Regulations, the independent directors of a company are required to hold at least one meeting in a year where the members of the management of the company and non-independent directors of the company are not present. From a reading of the regulations, it appears that at the minimum, one meeting be held by the independent directors in a year where the members of the management are not present. Therefore, if there are more than one meeting of the independent directors where the management is not present, it would appear to be in compliance with the requirements of Regulation 25(3) of the LODR. Pertinently, the independent directors of Noticee 1 have held meetings between 2015-2018 on the following dates- 12.10.2015,

12.10.2016 and 11.10.2017. The minutes of the said meetings will indicate that all the independent directors have participated in the same and no non-independent director has participated in the same.

- 18.7. The independent directors of the Noticees have no peculiar relationship with the Noticees. The term "independent directors" is defined under regulation 16 of the LODR Regulations that is similar to the definition in Section 149(6) of the Companies Act, 2013. Per the definition, the person appointed as the independent director, *"apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding subsidiary or associate company or their promoters} or directors} during the two immediately preceding financial years or during the current financial year"*. In the present case, the independent directors were holding 100 equity shares each in the Noticees company and the disclosure of the same was made prior to their appointment. It did not cross the threshold amount of 2 percent of the voting rights in Noticees and hence, the said observation of the forensic auditor is not tenable. The independent directors have filed their respective declarations as mandated under Section 149(6) and (7) of the Companies Act and the same is annexed hereto as Annexure AS. It is submitted that the Independent Directors have adhered to the norm prescribed under Section 149(6) and they have no material pecuniary relationship with the Noticee 1 Company as such. The SCN has failed to establish as to how the Independent Directors have a 'material pecuniary relationship' with the Noticee no. 1 Company.
- 18.8. Furthermore, it is trite to state that the Noticees are not in violation of Regulation 17(1) (b), 18(1) (b) and 19(1) of the LODR Regulations. The SCN has failed to provide any cogent reasons as to how the Noticees have violated the same. The said allegations are unsubstantiated, bald and malafide. The allegation is baseless and contrary to facts. The

constitution of TGVV's Board of Directors is consisted of S.P. Bharat Jain Tatia- Chairman and Managing Director, Chandrakantha Tatia - Director, Arun Kumar Bafna - Independent Director and S. Shobha- Independent Director. Mrs. Chandrakantha Tatia resigned on 01.02.2019 and Mr. S. Pannalal Jain Tatia is a member of the Board since 01.02.2019. Hence, 2 out of 4 members of the Board are independent directors and hence, the provision has been complied with. The composition of the Audit Committee consisted of S. Shobha- Chairman (Independent Director), Arun Kumar Bafna - Member, (Independent Director) and S.P. Bharat Jain Tatia- Member. It is clear from the above that majority of the audit committee are independent directors and also the chairman is an independent director as required by the Regulation. Hence, there is no violation of the provision as alleged.

- 18.9. The Noticees have followed accrual system of accounting for all its income and gross method of accounting for interests received by it. The Noticees do not have a materiality policy since at the first instance it does not have an active business. Consequently, there is no change in general character or nature of business that Noticee no. 1 has been the subject of. Secondly, the transactions that it undertakes does not cross the minimum threshold requirement to cause the transaction to take a colour of a related party transaction that requires disclosure as contemplated under law. It is reiterated that the Noticees are in compliance with all the rules and regulations as framed by the stock exchange, as contained in the listing agreement and SEBI and there is no non-compliance of aforesaid LODR Regulations. The allegations made in the answering paragraph of the SCN are devoid of merit.
19. With respect to the allegation regarding TGVV not taken approval from its audit committee for entering into related party transactions in FY 2015-16, 2016-17 &

2017-18, I note that the observations in the FAR related to this allegation are as under:

“.....Based on our verification of books of accounts and minutes of the audit committee for the period April 2015 to March 2018, following is observed:

1. Audit committee's yearly omnibus approval for entering into related party transactions has not been taken for short term/ Working capital loans taken in FY 2015-16, 2016-17 & 2017-18 from related parties as per AS-18, where Mr Pannalal Jain Tatia is a director. Outstanding payable amount to Ashram Online.Com is of Rs 1,23,89,862, to Make my inner wear India Pvt Ltd is of Rs 4,43,200 and to Opti Products Pvt Ltd is of Rs 26,41,494 on 31st March 2018. [Regulation 23(3) of LODR]
2. Audit committee's omnibus approval has not been taken for related party transactions with subsidiary companies which have created debtors/receivables of Rs 1,71,58,700 from Devarbetta lands pvt Ltd, Rs 1,51,34,000 from Kalyanang developers Pvt Ltd, Rs 6,85,600 from Pajjuvasami Developers Pvt Ltd, Rs 95,50,600 from Sagarvar Gambhira Developers Pvt Ltd, Rs 88,06, 400 from Sundervans Infrastructure & Developers Pvt Ltd and Rs 97,16,500 from Thali Estate Pvt Ltd.
3. Omnibus approval of audit committee has been taken only for Rent receipt from Kreon Financial Services Ltd and Rent payment to Mr Bharat Jain Tatia.....”

I note that TGVV has not denied that the three entities, i.e., Ashram Online, Make My Inner Wear India Pvt. Ltd. and Opti Products Pvt Ltd. were related parties. However, it has argued that since the nature of the transactions were inter-corporate deposits (hereinafter referred to as “ICDs”), it did not fall under the purview of Section 188 of the Companies Act, 2013. TGVV has submitted that these ICD transactions, which were under the purview of Section 186, of the Companies Act, 2013, had been duly disclosed in the financial statements and Annual Reports of the TGVV, as stipulated by Section 186 of the Companies Act, 2013. TGVV has also submitted that as per clause 5 of the TGVV RPT policy, inter corporate deposits are not subject to the omnibus approval of the Audit Committee and hence, the aforesaid transactions do not require an omnibus approval. In this regard, I note that the SCN does not make any allegations related to Section 188

of the Companies Act, 2013 which deals with the approval of Board of Directors for certain related party transactions for companies. In fact, the SCN alleges that by not obtaining the omnibus approval from the Audit Committee the Noticees have violated Regulation 23 (3) of the LODR Regulations which stipulates that all related party transactions of listed companies shall require prior approval of the audit committee. I also note that, Regulation 23(2) of LODR Regulations in clear terms provide that all related party transactions shall require prior approval of the audit committee. Regulation 23(2) does not provide exception for ICDs from such approval. Therefore, in my view, the issue as to whether Section 188 of the Companies Act, 2013 needed to be complied by TGVV may not be material for the purpose of the present proceedings. It may be that the nature of these related party transactions entered into by TGVV with these three entities was ICDs, however, since these transactions were with related parties they needed prior omnibus approval of the audit committee, in terms of Regulation 23(3) of LODR Regulations. In this case, such a prior approval has not been obtained. The Noticees have argued that TGVV RPT Policy did not mandate an approval of audit committee for these transactions. I note that the mandate of Regulation 23(2) is clear and a policy framed by any listed entity under Regulation 23(1) for obtaining approvals for related party transactions cannot be in derogation of specific requirements like Regulation 23(2), under the LODR Regulations. I note that the obligation on an issuer company under Regulation 23 (3) of LODR Regulations is a discretionary one. I also note that regarding not seeking approval of audit committee, as required under Regulation 23(2), SCN makes a reference to violation of Regulation 23(3) of LODR Regulations which provides that audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to certain conditions specified thereunder. I find that this is mere the case of mentioning of wrong provision. The factual allegation to the effect that TGVV did not take approval of audit committee squarely falls under the mandate of Regulation 23(2). Therefore, I find that by not

obtaining approval for its related party transactions with Ashram Online, Make My Inner Wear India Pvt. Ltd. and Opti Products Pvt. Ltd., TGVV has violated Regulation 23 (2) of LODR Regulations.

20. With respect to the related party transactions with the subsidiaries, the Noticees have submitted that TGVV had only provided funds to the subsidiaries for acquiring land banks and they were neither in the form of advances or loans to subsidiaries. Noticees have classified the Land Banks Acquisition Costs paid to the subsidiaries as "trade receivables" even in its books of accounts. The Noticees have also submitted that under sub- regulation (5) of the Regulation 23 of the LODR Regulations, it is clear that the approval of the audit committee is not necessary in cases where the transaction is between the subsidiary companies and the holding company so long as the accounts of the subsidiary company are consolidated with that of the holding company and in case of TGVV the accounts of the subsidiaries are consolidated with that of the holding company. In this regard, I note that the Noticees have not produced any material to show for which goods or services these receivables from the subsidiaries were recorded in the books of accounts of TGVV. In fact, the FAR categorically mentions that TGVV has not offered any explanation regarding the accounting standard under which the above view has been taken by TGVV with respect to classification of the extension of credit to its subsidiaries as trade receivables. I also note that Noticees have also contended that subsidiaries of TGVV were nothing but only wholly owned land bank companies who do not carry any other independent business of their own. I also note that sub-regulation (5) of Regulations 23 of LODR Regulations states that the provisions of sub-regulations (2), (3) and (4) of Regulation 23 shall not be applicable *inter alia* to transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. In the case of TGVV, the Noticees have submitted that the accounts of the

subsidiaries have been consolidated with that of the holding company. However, Noticees have not submitted any document to show that such transactions with subsidiaries were placed before the shareholders at the general meeting for approval. Thus, on this count also, I find that TGVV is in violation of Regulation 23(2) of LODR Regulations.

21. With respect to the allegation in the SCN related to minutes of meeting of board of directors of unlisted subsidiaries of TGVV not being placed at the meeting of the board of directors of the company, I note that the Noticees have accepted the default but contended that since the Board of Directors in both the holding company and its subsidiaries are common and hence, no action can be performed by the subsidiaries without the knowledge and approval of the board of TGVV. The Noticee have also submitted that since the subsidiaries of TGVV are wholly owned land bank companies which do not carry any other independent business of their own, the placing of the minutes of the subsidiary companies' board meetings before the board of TGVV is an empty formality. In this regard, I note that Regulation 24(3) of LODR Regulations requires that minutes of the board meeting of the unlisted subsidiaries of a listed company shall be placed before the board of the listed company. I find that, since TGVV and its subsidiaries are separate legal entities and since the requirement of the LODR Regulations mandates it so, the minutes of the board meetings of TGVV's (unlisted) subsidiaries had to be placed before the board of directors of TGVV. Admittedly, the same was not done and thus, I find that TGVV has failed to comply with Regulation 24 (3) of the LODR Regulations.
22. The SCN further alleges that no member of management was present at any of the independent director's meetings of TGVV that took place between April 2015 and March 2018 and thus, the Noticees are alleged to have violated Regulation 25(3) of the LODR Regulations. I note that as per Regulation 25(3) of the LODR

Regulations, the independent directors of a company are required to hold at least one meeting in a year where the members of the management of the company and non-independent directors of the company are not present. As submitted by the Noticees, the independent directors of TGVV held meetings on 12.10.2015, 12.10.2016 and 11.10.2017 wherein all the independent directors participated and no non-independent director and member of management was present in such meeting. Therefore, I find that holding of such meetings by the independent directors of TGVV wherein non-independent director and member of management were not present, was in compliance with the provisions of Regulation 25(3). On the contrary, attending of such meetings by the members of management and non-independent directors would not have been in compliance of Regulation 25(3). Therefore, I find that Noticees are not in violation of Regulation 25(3) of LODR Regulations, as alleged in the SCN.

23. The SCN further alleges that TGVV has not disclosed material deviation from the main activity of the company. In response to the same the Noticees have made submission, particularly, with respect to the transactions with Shri Jaswant Chand Bhandari, which is discussed in the subsequent paragraphs. With regard to deviation from its stated objectives in its Memorandum of Association (hereinafter referred to as “**MoA**”), the FAR mentions the following:

“2. REVIEW OF BOOKS OF ACCOUNT:

2.1 Cash flow analysis for financial year 2015-16 ,2016-17 & 2017-18:

Our Comments:

On scrutiny of Cash flow statement, we observed that the income earned from interest is being considered as an operating activity, however, while going through the Memorandum of Association the same is not forming part of the main object clause. Activity of giving advances or loans for projects with a fixed return percentage is not main activity of the company.

.....

2.5 Review of textile business operations:

The breakup of revenue earned during the last 3 financial years is given below:

Particulars	FY2015-16	FY2016-17	FY2017-18
Total revenue	1,63,70,361	1,44,01,313	1,95,49,455
FD Interest	4809	4465	4406
Interest receipts	1,63,65,552	1,39,73,415	1,94,74,263
Profit on sale of car	-	4,23,433	-
Rent receipt	-	-	32,142
Defered Tax	-	-	38,644

The main object clause as per MOA of the company is to undertake the business of manufacture, import and export, wholesale and retail of clothing and wearing apparel of every kind.

It is observed that "TGVV" has no purchases or sales during the audit period i.e. from April 2015 to March 2018. No machinery or equipment for manufacture of apparel exists in the books of account. The main object of the company is not being reflected in the financial statements neither in the form of income, expense or asset, liability."

24. The Noticees, while arguing particularly in case of the transaction with Shri Jaswant Chand Bhandari has stated that since the MoA of TGVV mentioned, to *"lend out, deposit, invest and deal with the monies of the company not immediately required ..."*, thus, Noticees was entitled to utilise its funds for any activities that are within the scope of its ancillary objects, even though the same is not exactly within the line of its main objects and consequently there has been no deviation by the Noticees. In this regard I note that the MoA of the Noticee company states as follows:

"B. The Objects incidental or ancillary to the attainment of the Main Objects are as follows:

.....

.....

To lend out, deposit, invest and deal with the monies of the company not immediately required in such manner and upon such terms as may from time to time be determined by the Directors...."

I note that TGVV was originally incorporated under the name style as "Tatia intimate exports" in the year 1994-95. It is involved in manufacturing of wearing apparel, except fur apparel. The company expanded its business model into infrastructure industry and currently is involved in main business as textiles and infrastructure development company. From the object clause in the MoA of TGVV, I find that lending, deposits, investments and deal with the monies not immediately required has to be incidental or ancillary to the attainment of the Main Objects of the company which is trading in apparel or infrastructure development. Thus, as an incidental activity to the achievement of main object, TGVV can lend, deposit, invest or deal with the monies not immediately required. However, I note that findings in the FAR is that TGVV, has shown the income earned from interest (earned out of such lending/deposit/investment of monies not immediately required), as an operating activity and thus, TGVV had materially deviated from its main activity as per its main object which TGVV failed to disclose. I note that the company can deploy its funds, not immediately required, as per its incidental/ancillary objects clause, as contended by the Noticees, however, the company can not disclose income earned by way interest because of such interim deployment, as income from its operating activity. If it does so, then it means there is change in the main business activity of the company which ought to have been disclosed in terms of Clause B(2) of Schedule III read with Regulation 30 of LODR Regulations. I note that FAR further points out that TGVV was not carrying out its main business activity at all and its only income was through receipt of interest which the company was showing as operational income. Regulation 30 of the LODR Regulations mandates every listed entity to make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material and Schedule III Part B of the LODR Regulations deal with events which

shall be disclosed upon application of the guidelines for materiality and 'change in the general character or nature of business...' is mentioned therein. Thus, I find that TGVV had deviated from its main activity as stated in its MoA and thus, being a listed company, was obligated to disclose the same in accordance with Clause B(2) of Schedule III read with Regulation 30 of LODR Regulations. Since no material has been produced to show that such a disclosure had been made by TGVV, I find that TGVV has failed to comply with Clause B(2) of Schedule III read with Regulation 30 of LODR Regulations.

25. Next, the SCN alleges that the independent directors of TGVV were holding shares of the company and were thus not 'independent' in the real sense of the term. The findings of the SEBI investigation in this regard observes as follows:

- Since the independent directors namely, Mr. Arun Kumar Bafna and Mrs. S. Shobha are holding shares of TGVV as per the annual report for FY 2015-16, it is concluded that the said independent director is having pecuniary relationship with the company and cannot be considered independent as per the definition provided under Regulation 16(1)(b)(iv) of LODR Regulations.
- Further, this shall be in non-compliance of Regulation 17(1)(b), 18(1)(b), 19(1)(c) and 25 (5) of LODR Regulations.

26. I note that aforesaid allegations of violation of provisions of LODR Regulations have emanated because of the fact that three independent directors of TGVV (i.e. Noticee nos. 4, 5 and 7) were found to be holding shares of TGVV during their respective tenures and were thus, alleged to be having pecuniary relationship with the company. In view of this, the SCN alleges that these directors were not independent directors, as not being in compliance with one of the conditions in the definition of "independent director" provided under Regulation 16(1)(b) of LODR

Regulations. As a consequence, the company has also been alleged to have violated Regulation 17(1)(b), 18(1)(b), 19(1)(c) and 25(5) of LODR Regulations. Therefore, all the violations alleged in the SCN, in this regard, are dependent on the determination whether these three Noticees were independent directors within the meaning of Regulation 16(1)(b) of LODR Regulations. In this regard, I note that Regulation 16(1)(b)(iv) provides that "independent director" means a non-executive director, other than a nominee director of the listed entity who, *inter alia*, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year. The word "pecuniary" means something which is related to money. Thus, holding of shares in a company may not be termed as having pecuniary relationship with the company. However, holding of shares in a company where a person is independent director may well impact the independence such independent director. Therefore, under Regulation 16(1)(b)(vi)(C), one of the conditions for becoming independent director is that he must be person who, neither himself, nor whose relatives holds together with his relatives two per cent or more of the total voting power of the listed entity. On a perusal of the Annual Report for FY 2015-16, it is observed that during the financial year 2015-16, independent directors of TGVV were Mr. Arun Kumar Bafna and Ms. D. Hemamalini who each held 440 shares of TGVV. For the financial years 2016-17 and 2017-18, the independent directors of TGVV were Mr. Arun Kumar Bafna and Mrs. S. Shobha who held 440 and 880 shares of TGVV, respectively. I note that the total equity shares of TGVV during the above-mentioned three financial years were 15,16,20,000. Thus, I find that Mr. Arun Kumar Bafna, Ms. D. Hemamalini, and Mrs. S. Shobha were each holding voting power much below 2%, i.e. the threshold prescribed under Regulation 16(1)(b)(vi)(C) during their tenure as independent directors of TGVV. Thus, I find that there is no violation of Regulation 16(1)(b)(iv) of LODR Regulations by TGVV with respect to appointment

/ holding office by Mr. Arun Kumar Bafna, Ms. D. Hemamalini, and Mrs. S. Shobha, as independent directors, as alleged in the SCN. Consequently, I find that there is no violation of Regulation 17(1)(b) which stipulates that at least half of the board of directors shall comprise of independent directors if the listed entity does not have regular non-executive chairman of the board, Regulation 18(1)(b) which stipulates that two-thirds of the members of audit committee shall be independent directors and Regulation 19(1)(c) which stipulates that at least fifty percent of the directors in the nomination and remuneration committee shall be independent directors, as alleged in the SCN. Regarding violation of Regulation 25 (5) of LODR Regulations, as alleged in the SCN, I find that said Regulations provides that for which acts of commission or omission of a listed entity, an independent director can be held liable. This regulation provides that how the liability of an independent directors for the acts and omissions of a listed entity is to be determined. This regulation does not create any duty or liability, to be complied with by any person. Therefore, there can not be any violation of Regulation 25(5) of LODR Regulations, as alleged in the SCN.

II. Misrepresentation including of financials and misuse of funds/books of accounts:

27. The SCN makes the following allegation with respect to misrepresentation of financials and misuse of funds/books of accounts:
- a. Misclassification of accounts and extension of credit to its subsidiaries without charging interest on delayed payments without agreements. Non writing off of receivables from Niharika Creation as bad debts despite outstanding since April 2015.
 - b. The terms and conditions of repayments on loans taken from Ashram Online, Make my innerwear and Opti Products, which are companies in which Mr. Pannalal Jain Tatia is a director, could not be verified. Further,

TGVL has not taken yearly omnibus approval of audit committee for entering into related party transactions which involve taking credit from these entities.

- c. Contract with Mr. Jaswant Chand Bhandari and deviation from main activity of the company.
- d. No interest on receivable from subsidiary companies.

28. In this regard, the Noticees in their reply have submitted as follows:

28.1. The payment of funds for acquisition of land to the subsidiary companies of the Noticee has been classified as 'trade receivables'. As aforementioned, the payment made was not in the nature of an advance or a loan and hence there was no interest that was chargeable towards them. Given that the nature of business of the Noticee primarily involved acquisition and possession of several acres of land, for furtherance and ease of its business, Noticee no. 1 through its wholly owned subsidiaries had effected the purchase of lands in the subsidiary companies to comply with land ceiling restrictions of the State Government. As is evident from the financial statements submitted by Noticees, the lands have been purchased by the subsidiary companies in their respective names, they have been included in the inventories of the said subsidiary companies and are very much reflected in the current accounts of the respective subsidiaries. The purpose for creation of the subsidiaries was to have wholly owned land banks to further Noticee no.1's business and admittedly, the subsidiaries are not involved in any other businesses or transactions. Given the purpose of having such wholly owned subsidiaries and the fact that the board of directors were common at the end of the day, there was no need for a separate arrangement or agreement with the subsidiaries to give effect to this object. The funds for acquisition of land banks represents the marketable cost of the

land banks acquired that was paid by Noticees. Given such circumstances, the payment made to the subsidiary was indirectly a transaction that Noticees had to undertake for furtherance of Noticee no.1's business and hence cannot be a loan or an advance made to them.

- 28.2. The Noticees have made sales of Rs. 2,85,894/- on 03.04.2012, 05.04.2012 and 06.04.2012 to Niharika Creation. As was observed by the forensic auditor, as on 01.04.2015, a sum of Rs. 2,85,894/- was due to be recovered from Niharika Creation. Since the Noticee 1 was confident of recovery of the said amount of money from Niharika Creation, the same was not written off as bad debts. Despite the fact that the amount to be recovered from Niharika Creation was on the lower end, it was reflected in the annual returns of the Noticee no. 1 as Trade Receivable from the entity so as to ensure that the shareholders and investors were fully kept informed. As was anticipated by the Noticees, the amount has been fully recovered from Niharika Creation and as on 20.04.2019, there are no dues recoverable from the said entity. A copy of the ledger statement to substantiate this recovery was submitted to the forensic auditor.
- 28.3. The transactions between the Noticee no. 1 and Make My Innerwear India Pvt Ltd. and Opti Products Pvt Ltd. though, being related parties, were in nature of inter-corporate deposits. Since, these inter-corporate deposits were on current account basis, there were no formal loan agreements made for the same. The deposits made in favour of Make My Innerwear India Pvt Ltd. and Opti Products Pvt Ltd. have been repaid in full as on date. The ledger statements to substantiate the said recovery has been already submitted to the forensic auditor.
- 28.4. The forensic auditor has referred to the transaction of the Noticee no. 1 with Mr. Jaswant Chand Bhandari, a film producer, as one that is a deviation from the main activity of the company. The said transaction does not deviate

from the main activity of the Noticees Company and is very much within the scope of the objects of the company. The following extracts from the MoA of the Noticee company are important to understand how the said transaction is not outside the scope of the company's main activities:

“B. The Objects incidental or ancillary to the attainment of the Main Objects are as follows:

To enter into partnership or into any agreements for sharing profits, union of interest co-operation, joint venture, reciprocal concession, licence or otherwise, with any person, firm, association, society, company or corporation carrying on or engaged in or about to carry on, or engage in any business or transaction which this company is authorized to carry on or engaged in, and to give any person, firm, or company, special rights, licenses and privileges in connection with the above.

.....

To lend out, deposit, invest and deal with the monies of the company not immediately required in such manner and upon such terms as may from time to time be determined by the Directors....”

- 28.5. The relevant phrase here is, *“lend out, deposit, invest and deal with the monies of the company not immediately required ...”*, which would mean any amount of money that the company, Noticees does not require at that point of time for its operations. Pursuant to the aforesaid clauses, Noticees was entitled to utilise its funds for any activities that are within the scope of its ancillary objects, even though the same is not exactly within the line of its main objects and consequently there has been no deviation by the Noticees in entering into the agreement with Mr. Jaswant Chand Bhandari, to invest in his business venture. The fact that in one of the recitals in the agreement gives it the nomenclature of an “Agreement for Finance”, does not tantamount the same to being a mere agreement for finance. The contents of the said Agreement have to be examined which will convey the

true nature of the understanding between the parties. The said agreement clearly stipulated for an investment by the Noticee no. 1 for which it was to receive both interest and a share in the profits. As pointed out above, the investment made was permitted under the MOA of the Noticee no. 1 and it was entitled to enter into the same. Further, the transaction of investment between the parties was fully disclosed in the annual returns filed by it and the profit/loss made by it was also reflected in the profit and loss account therein. The transaction with Mr. Jaswant Chand Bhandari has been disclosed. The Noticees has been in receipt of the interest as per the agreement between the parties and further, Mr. Jaswant Chand Bhandari has returned Rs. 2,00,00,000/- (Rupees two crores only) on 16.04.2019. The same has been disclosed in the financials and has also been pointed out to the forensic auditor during the investigation.

29. As discussed in earlier in para 20, the Noticees have not produces any material to show the justification as to why TGVV had categorized the amounts paid to its subsidiaries as 'trade receivables'. In fact, the FAR categorically mentions that TGVV has not offered any explanation regarding the accounting standard under which the above view has been taken by TGVV with respect to classification of the extension of credit to its subsidiaries as trade receivables. In light of this finding in FAR and in view of no further material being produced during the present proceedings, I agree with the FAR that the classification by TGVV, of the amounts paid to its subsidiaries as 'trade receivables', amounts to misclassification of accounts. Further, Regulation 33(1)(c) of the LODR Regulations provide that while preparing the financial results, the listed entity shall ensure that the standalone financial results and consolidated financial results are prepared as per Generally Accepted Accounting Principles in India. In view of the misclassification of credits extended to subsidiaries by TGVV, due to not being in compliance with any

accounting standard, TGVV is in violation of Regulation 33 (1) (c) and 48 of LODR Regulations.

30. I also note that the genuineness of these transfers themselves cannot be verified. In this regard, the FAR states as follows:

“None of these transactions (procurement of land from project development) have been recorded in books of account of “TGVV” for the audit period. We have found only debit balances of subsidiary companies which was for the purchase of some land, however, no supporting document has been given for this arrangement or agreement. Hence, it creates suspicion on genuineness such receivables.

.....

Agreement with respect to receivables/short term loans to wholly owned subsidiaries was sought vide email dated 24th April 2019 (Refer Annexure 11, 11A & 11B). However, the company has not provided supporting documents for verification.

It has been observed that TGVV has not made recovery of receivables which have been outstanding from 1st April 2015, last recovery being in April 2015 itself.

Details of balances and recovery made are as follows:

Sr no	Party name	Outstanding as on 1 st April 2015 (Rs.)	Outstanding as on 31 st March 2018 (Rs.)	Recovered in April 2015 (Rs.)
1	Devarbetta lands Pvt Ltd	1,66,50,000	1,71,58,700	300
2	Kalyanang Developers Pvt Ltd	1,59,00,000	1,51,34,000	7,70,000
3	Pajjuvasami Developers Pvt Ltd	14,50,000	6,85,600	7,65,000
4	Sagarvar Gambhira Developers Pvt Ltd	1,25,50,000	95,50,600	30,00,000
5	Shankar Durga	67,25,000	67,25,000	Nil
6	Sundervans Infrastructure and Developers Pvt Ltd	1,18,00,000	88,06,400	30,00,000

7	Thali Estate Pvt Ltd	1,12,50,000	97,16,500	15,36,500
8	Niharika Creation	2,85,894	2,85,894	Nil

- These debit balances of subsidiary companies have been classified as sundry debtors, however, their nature is in the form of working capital loans.
- No interest/late payment charges have been levied on these sums against which nominal recovery has been made in three financial years.
- Terms and conditions of repayment could not be verified as agreement with these parties has been provided to us.
- As per discussion with Mr Bharat Jain Tatia, credit has been extended to subsidiaries so that these sums can be invested in acquiring land.
- Observations were shared vide email 24th April 2019, with Mr Tatia where in agreement with subsidiaries for credit facility extended was sought, but nothing to this effect has been provided. (Refer Annexure 11, 11A & 11B)
- Thus, in absence of any supporting documents and considering there is no movement in the outstanding receivables, it creates suspicion on genuineness of these transactions."

31. The Noticees have stated that there were no formal agreements since the subsidiaries were formed for the sole purpose of buying land and had the same directors as TGVV. Even if the said argument is accepted, there is no explanation as to why the monies given to the said subsidiaries have been only marginally recovered in the three financial years which the FAR covered and why no interest was charged for late repayment. The Noticees have submitted that, TGVV through its wholly owned subsidiaries had affected the purchase of lands in the subsidiary companies to comply with land ceiling restrictions of the State Government. I observe that without any supporting documents or information regarding the same being produced by TGVV, it is not possible to determine the legitimacy of these land transactions. Be that as it may, TGVV and its subsidiaries being separate legal entities, such payment of money by TGVV to subsidiaries in order to purchase land had to be treated as a loan advanced to the subsidiaries and repayment of the amounts should have been pursued by TGVV, neither of

which was done. This further points to the conclusion that TGVV had misclassified the credits advanced to its subsidiaries in its books of accounts and failed to suitably record the same in its books of accounts and thus, TGVV is in violation of Regulation 33 (1) (c) and 48 of LODR Regulations.

32. With respect to the credit of Rs. 2,85,894/- extended to Niharika Creation (the Noticees have submitted that it was not classified as 'bad debt' even though there was no recovery for three financial years since TGVV was confident of its recovery. The Noticees have also submitted that the amount has been received on April 20, 2019. In this regard, I note that the Noticees have not submitted the bank account statement in support of its claim that Rs. 2,85,894/- was recovered on April 20, 2019 and only produced a copy of the company ledger which is an internal document of TGVV. I note that the allegation against the Noticees is related to TGVV misrepresenting its financials and books of accounts. In this background, I am unable to rely on TGVV's internal ledger statement. In the absence of bank statements, I am unable to accept this submission of the Noticees. As per the submission of the company, the sale was made in 2012 and thus, the amount was outstanding from a period prior to that covered by the FAR. I find that a loan not having been repaid through more than three successive financial years should have been classified as bad debt which TGVV failed to do. I find that this failure on the part of TGVV amounts to failure to abide by prescribed accounting standards in letter and spirit as well as misrepresentation and failure to disseminate accurate information. Thus, I find that TGVV has failed to comply with Regulations 33(1) (c) and 48 of LODR Regulations.
33. With respect to the allegation in the SCN that TGVV failed to provide details of terms and condition of loans taken from related parties (Ashram Online, Make my innerwear and Opti Products), I note that although a formal agreement is not necessary for creating ICDs, however, TGVV should have been able to specify to

the forensic auditor the terms at which the ICDs were received by it. I note that even during the present proceedings, the Noticees have not produced any details of these ICDs but claimed that they have been repaid. In support of their claim the Noticees have produced the ledger statement of TGVV. As discussed in the previous paragraph, I am unable to accept the internal ledger statement of TGVV as proof of repayment of amounts in absence of copy of bank statements. The failure on the part of the Noticees to produce any details of the purported ICDs received from the related parties of TGVV and the subsequent unsubstantiated claim that it has been repaid, points to the suspicious nature of these related party transactions. As discussed in para 19 above, TGVV failed to take approval of its audit committee before entering into such related party transactions. I find that TGVV neither received approvals of audit committee for these related party transactions nor were they able to produce any details of the transactions and therefore, the existence/ legality of these transactions cannot be verified. Thus, I find that the company has failed to disseminate information related to the loans that it took from its subsidiaries (Ashram Online, Make my innerwear and Opti Products) in an accurate manner in accordance with applicable accounting standards and thus, TGVV is in violation of Regulation 33(1) (c) and 48 of LODR Regulations.

34. Regarding the transaction with Mr. Jaswant Chand Bhandari the FAR notes as follows:

“Though company has advanced money to Jaswant Bhandari for film project, no such interest or principal is repaid. To this exception, though the party’s debit balance was Rs. 47,00,000 on 1st April 2015, and total outstanding is Rs 7,27,00,000 as on 31st March 2018. Interest of Rs 78,51,600 is received well before the end of financial year i.e on 23rd of March 2018 and provision for the same is made on 31st March 2018. This is unusual in general course of business where interest is being paid before the period for which it

pertains while at the same time provision is made for (interest is provided for uptill 31st March 2018) Thus, it raises suspicion about genuineness of such transactions.

....

No supporting document provided for receipt of Rs 2 crores from Mr Jaswant Chand Bhandari sought via telephonic conversation on 29th May 2019. As per agreement (Refer Annexure 12) TGVV shall receive a 12% return on funds invested and profits shall be mutually agreed upon on completion of project, and Mr Tatia stated that the project has been completed, but amount is still outstanding as on 31st March 2018. Hence, we are unable to comment on the genuineness of said transaction."

35. With regard to this particular transaction with Mr. Jaswant Chand Bhandari, I observe that, as discussed in para 24 above, as per the MoA of TGVV, lending, deposits, investments etc. by the company has to be incidental or ancillary to the attainment of the Main Objects of the company which is trading in apparel or infrastructure development. Investing in film production cannot be said to be incidental to the main business of TGVV and thus, it is a deviation from the main objectives of the company, which needed to be disclosed by the company. Since, no material has been produced to show that such a disclosure had been made by TGVV, I find that TGVV has failed to comply with Clause B(2) of Schedule III read with Regulation 30 of LODR Regulations.
36. It is also interesting to note that no interest has been recovered by TGVV for the purported loans which TGVV extended to its subsidiaries. I note that as per the books of accounts of TGVV, Rs. 6,78,04,280/- is receivable from subsidiary companies on which TGVV earns no interest. I note that the purpose for which such funds have been given are not explained with supporting evidence. Giving such loans and advances without proper agreement containing terms and conditions specifying the tenure, interest and purpose for which the advances are given is prejudicial to the interest of the company/shareholders. In my view, these loans for which no interest was being recovered, should have been classified as

bad debts in line with applicable accounting norms and this tantamount to violation of Regulation 33(1) (c) and 48 of LODR Regulations.

37. I note that, from the bank account details of TGVV, the FAR has observed that total payments from bank in the three financial years was Rs. 12,58,57,759.24 out of which Rs. 8,54,31,707 was paid to related parties (67.88% of total payments). Total receipts in these three financial years was Rs. 12,78,18,148.78 out of which Rs. 3,43,86,613 is received from related parties (26.90% of total receipts). TGVV was unable to explain the business rationale for these payment and receipts to and from related parties to the forensic auditor and nor did TGVV provide any supporting documents such as agreement/business contract with subsidiaries, loan agreement for loans taken from related parties, loans from directors, etc. With respect to transactions with related party companies, TGVV has submitted that they were ICDs which the company received from these related party companies and there was no formal agreement for the same. While that may be true, however, no further details of these ICDs have been submitted by TGVV- the terms of the ICDs, rate of interest etc. With respect to transactions with subsidiaries, TGVV has stated that there was no need for an agreement since the board of directors of TGVV and subsidiaries was the same. In my view, TGVV is a listed company and its shareholders as well as the market has been kept in the dark regarding its dealings with its related parties and subsidiaries. Thus, I find that TGVV did not follow applicable accounting standards related to disclosure of transactions with its related parties and did not classify them accurately in accordance with applicable accounting norms. Thus, in my view, TGVV is in violation of Regulation 33(1) (c) and 48 of LODR Regulations.
38. SCN, further, alleges that TGVV has violated Regulations 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations. From the discussions above, I find that TGVV, has already been found to be in violation of

Regulation 23(2), Regulation 24(3), Clause B(2) of Schedule III readwith Regulation 30, Regulation 33(1)(c) and Regulation 48 of the LODR Regulations. Regarding the violations of Regulation 4, I note that Regulation 4 of LODR Regulations, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provides that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

- (a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.
- (b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
- (c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
- (e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
- (g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

39. I find that since, TGVV has failed to comply with Regulation 23(2), Regulation 24(3), Clause B(2) of Schedule III readwith Regulation 30, Regulation 33(1)(c) and

Regulation 48 of the LODR Regulations, therefore, its disclosures were not in accordance with the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, TGVV is also in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations. Regarding the violations of Regulations 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is of the board of directors of the listed entity. Therefore, I find that TGVV can not be said to be in violations of Regulation 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

40. SCN further alleges that TGVV has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. I note that securities of TGVV are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as available on the website of BSE, is as under:

“.....1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.

2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:—

i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time.

ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.

iii. such other directions, requirements and conditions as may be imposed by SEBI/ Exchange from time to time.....”

41. Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the condition is compliance with LODR Regulations. In the present case, TGVV has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, TGVV is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

III. Violations of PFUTP Regulations, 2003:

42. During the personal hearing authorized representative of the Noticees submitted that a perusal of the SCN shows that it has been issued only on the basis of the FAR which is Annexure III to the SCN. Noticees in their reply have also submitted that the SCN fails to establish as to how any action of Noticees has allegedly induced the existing and prospective investors to trade in the securities of the company which according to the Noticees, is a *sine qua non* for holding a person guilty of fraud or other related offences. Noticees have contended that with respect to violations of PFUTP Regulations, 2003, no inspection of these stated findings of the investigation report has been given to the Noticees. The allegations made are very general and bereft of any material or finding with respect to PFUTP Regulations, 2003, so as to enable the Noticees to properly defend the allegations. Noticees have contended that charge of fraud should be made on the basis of cogent evidence pertaining to dealing in securities, inducement to deal in securities, impact on price or volume, etc.

43. In this regard, I note that the scope of work, as was assigned to the forensic auditor by BSE, as stated in the FAR, was as follows:

“The scope of Forensic Audit shall include examining the following: -

1. Possible misrepresentation including its financials and / or businesses and / or violation of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or
2. Possible misusing of Books of Account/funds of the Company including facilitation of accommodation entries and/ or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP)

For the aforesaid reasons, the audit inter alia should cover the following:

- a. Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company
- b. To examine the Books of Accounts and backup records of the company for the period of two years including the year of transactions referred in SEBI / Exchange Order to:
 - I. Cash flow analysis to trace source of funds and end use of funds on sample basis (as per Annual Report for last 2 years)
 - II. Assess genuineness of the debtors/ receivables and creditors / payables,
 - III. Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors)
 - IV. Analysis of Related party transactions
 - V. High value bank transactions to ascertain their relevance to the business of the company and to identify the potential round-tripping of funds or accommodation transactions
 - VI. Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers
 - VII. Investments made by the company in subsidiary companies along with the relevant fund flows, if any
 - VIII. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds
 - IX. Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act
 - X. Comment on the shareholding pattern

XI. Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds)

c. Verification / discussions:

- I. Independent and /or physical verification of the underlying transactions
- II. Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the company
- III. Discussions with key stakeholders like Promoters/ Senior Management Team / Departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the company, etc.
- IV. Business history, directorship searches and litigations
- V. Assessment of size and scope of business
- VI. Site visit as may be applicable for verifying existence of the company functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants / factories.”

44. From a reading of the scope of work of the FAR, I note that it was mainly limited to examination of possible violation of LODR Regulations by TGVV and the misuse of books of accounts/ funds by TGVV. The conclusion of the FAR was summarized therein as follows:

A. Possible misrepresentation of financial statements and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirement) Regulation 2015 as evident from the following observations :

The details of instances where noncompliance was found are hereunder:

- Receivables from wholly owned subsidiaries have been classified as current assets i.e sundry debtors even though there is no trade or business with such subsidiaries and recovery of only nominal amounts has been made in three financial years.
- Receivables from Niharika Criterion of Rs 285,894 should have been written off as bad debts as this amount has been outstanding since 1st April 2015.
- Terms and conditions of repayments on loans taken from Ashram Online, Make my inner wear and Opti Products, which are companies in which Mr Pannalal Jain Tatia is a director, could not be verified as agreement was not provided for verification.
- “TGVV” has extended credit to its subsidiaries without charging interest on delayed payments, and has not provided agreement executed with such parties.

- “TGVV” has entered into a business contract for making of a film with Mr Jaswant Chand Bhandari which has been shown as loans and advances given and as per the telephonic conversation with Mr Tatia such film has got released already, but the company could recover only nominal amounts in three financial years.
 - “TGVV” has no purchases or sales during the audit period and entire income is derived from interest receipts on loans given which is not main activity of the company. Financial statement and books of account are misrepresented as company is carrying activity not in line with the main object clause specified in the MOA of the company.
- B. Possible violation of SEBI LODR 2015 and other applicable law and regulation
- “TGVV” has not taken yearly omnibus approval of audit committee for entering into related party transactions which involve taking credit from Ashram Online, Make my innerwear and Opti Products, which are companies in which Mr Pannalal Jain Tatia is a director.
 - “TGVV” has not taken yearly omnibus approval of audit committee for related party transactions which involve extending credit to fully owned subsidiaries.
 - No member of management was present at any of the independent director’s meetings that took place between April 2015 and March 2018.
 - Minutes of meeting of unlisted subsidiaries have not been placed at the board meetings of Tatia Global.
- C. Possible misusing of Books of Account/funds of the Company including facilitation of accommodation entries and/ or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP)
- As on 31st March 2018, out of total assets of Rs 29,20,32,947.51, Rs 27,11,44,436 is blocked in sundry debtors and loans and advances given (92.85% of total assets). Only nominal amounts are recovered from Prince Foundation and Mr Jaswant Chand Bhandari in all three financial years.
 - TGVV has invested funds to the extent of Rs 7,27,00,000 in a joint venture with Mr Jaswant Chand Bhandari which pertains to the making of a film, which is not permitted as per the object clause of the company. Also, Rs 6,78,04,280 is receivable from subsidiary companies on which TGVV earns no interest. Purpose for which such funds have been given are not explained with supporting evidence.

45. It is observed that the Investigating Authority, after examining the FAR, incorporated the findings of FAR as part of investigation report, and consequently, the same was reproduced in the SCN. However, the SCN additionally states, *“These irregularities tantamount to misrepresentation of financial /misuse of funds/ books of accounts of the company during the investigation period and has misled existing and prospective investors and induced them to trade in the securities of the Company.”* Consequently, the SCN, *inter alia*, additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of (PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the FAR. It is observed that these Noticees have been charged with the violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) of PFUTP Regulations, 2003 which can be in relation to dealing in securities. However, no details of trading by these Noticees viz: name of the scrip traded, number of shares traded, price at which shares were traded, date of the trading, etc., have been provided. Nor is there any analysis as to how each of the finding of FAR such as non-compliance with provisions of LODR Regulations or related party transactions without approval or misrepresentation such as of loans as trade receivables, income from interest as operating income, attract each of the PFUTP Regulations, 2003 as alleged.
46. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003 deals with fraud/manipulation/ unfair trade practices while dealing in securities and in relation to securities market. Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course

of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or issue or subscription of securities by any of the Noticees.

47. It is further observed that Regulation 4(1) of PFUTP Regulations, 2003, at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. The common thread through these provisions is that the ingredients of fraud or manipulation or unfair trade practices must be satisfied. In this regard, I note that the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 clarifies as follows:

“Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”

Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market must directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price shares of TGVV such as from any issue of securities or siphoning off of assets or earnings of TGVV. I note that FAR does not allege any diversion/misutilisation of funds and nor any data/particulars of movement of price or volume of shares of

TGVL, during investigation period has been furnished or incorporated in FAR or the SCN which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the company. I note that while in the FAR the mandate was included related to examination of misuse of funds but the conclusion did not mention the same. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753, makes it clear that 'inducement' is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose 'to induce others to deal in securities'. The allegations made in the SCN does not bring out findings or any facts relating to trading in securities by Noticees or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc.

48. Therefore, I find that violations of PFUTP Regulations, 2003, as alleged in the SCN, are very general and vague in nature without making out any specific case containing necessary ingredients required to constitute these violations nor were the Noticees given opportunity to inspect or furnished any finding of examination relating to PFUTP Regulations 2003 violations which was additionally included while issuing the SCN. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, I find substantial merit in the submissions made by the Noticees that the allegations of violation of Section 12A(a), (b & (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable against the Noticees. However, SEBI is at liberty to issue fresh SCN to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/finding/ingredients under PFUTP Regulations, 2003.

IV. Non furnishing of information/Non-cooperation by the company:

49. The SCN has alleged that the company failed to co-operate with the forensic auditor during the course of the forensic audit. The details of the allegation are as follows:
- a. Exchange vide letter dated January 03, 2019 informed the company about the appointment of forensic auditor in line with SEBI order dated October 09, 2017 (i.e. date of interim order). In the same letter, the exchange requested the company to provide information to the forensic auditor.
 - b. However, the company did not furnish the required information/supporting documents as sought by the forensic auditor. Details of said information/supporting documents are provided in the Forensic Audit Report.
50. The Noticees, in response to the allegation has submitted that they have not ignored or abstained from sharing any of the details in its possession that was sought by the forensic auditor. In case of the documents that were either not in existence or related to a misconception on the part of the forensic auditor, the Noticees have clarified the same at the same instance.
51. In this regard I note that the FAR lists the following documents as not provided by TGVV to the forensic auditors:

Sr. No.	Date of seeking information	Information sought	Mode of seeking such information (email or through letter or any other please specify)
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1	10 th May 2019	Agreement with Prince foundation Ltd.	Telephonic
2	10 th May 2019	Supporting documents for general expenses incurred	Telephonic conversation
3	24 th April 2019 & 27 th May 2019	Agreement with ashram online, make my innerwear and opti products	Email
4	24 th April 2019	Agreement with subsidiaries	Email

The FAR has also noted that TGVV has failed to provide a copy of its bank statements but only provided details on the company letterhead.

52. I note that although in their reply the Noticees have submitted list of replies it provided to the forensic auditor, it has been unable to provide the document/ information mentioned in the FAR which is at the table mentioned in the previous para. The Noticees' reply with respect to non- production of copies of agreements with its related parties/ subsidiaries has been that no formal agreement is necessary for such transactions. Be that as it may, the Noticees have not been able to produce any further details regarding the nature, the terms, the repayment period etc. for these loans/ ICDs/ transactions. Further, TGVV instead of providing its bank statements to forensic auditor, only provided these statements on its letter head. Being a listed company, this must be viewed seriously. I note that BSE was directed to appoint a forensic auditor for carrying out forensic audit of TGVV vide SEBI order dated October 09, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. Being a listed entity, non-cooperation with such an audit is serious. I also note that Section 11(2) (i) and 11(2) (ia) of the SEBI Act, 1992 has been invoked against the Noticees. On a reading of these Sections, I observe that Section 11(1) of the SEBI Act, 1992 lays down the functions of SEBI, and in carrying out the said functions, SEBI is empowered, under 11(2) (i) and 11(2) (ia) of the SEBI Act, 1992, to call for records from intermediaries and other

entities. In the facts and circumstances of the present case, a forensic auditor appointed through an order of SEBI who seeks information from an entity must be treated with the same seriousness as if the information is being sought by SEBI. In view of the non-furnishing of the information sought by the forensic auditor, I find that TGVL has violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

53. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 9, who were the directors/CFOs of TGVL at the relevant time, are liable for the violations alleged to be committed by TGVL viz: Sections 11(2)(i), 11(2)(ia), 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, Regulations 4(1) (a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3),(6) & (12), 16(1)(b)(iv), 17(1)(b), 18(1)(b), 19(1), 23(3), 24(3), 25(3), 33, Clause B(2) of Schedule III read with Regulations 30 and 48, of LODR Regulations and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against TGVL, automatically, on the directors of TGVL, including independent directors. Additionally, allegation of violation of Regulation 4(2)(f)(i)(2) and 4(2)(f)(iii)(1) of LODR Regulations has been made against the Noticee no. 2 to Noticee no. 9. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors/CFOs qua these violations may also be examined by SEBI. In the previous paras, it has been found that TGVL was in violation of Sections 11(2)(i), 11(2)(ia) of SEBI Act, 1992, Regulations 4(1) (a), (b), (c), (e) & (g), 23(2), 24(3), 33, Clause B(2) of Schedule III read with Regulations 30 and 48, of LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to Noticee no. 9, it has to be determined whether these Noticees are liable for those violations for which TGVL has been found to be in violation and for the

violations of Regulation 4(2)(f)(i)(2) and 4(2)(f)(iii)(1) of LODR Regulations for which these Noticees have been additionally charged, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word “offence” with the word “contravention” in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by TGVV, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature. Now, the question remains whether these Noticees can be held independently liable for the violations without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that amongst the violations of regulations alleged against these Noticees, the Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12) and 33 create specific and direct liability of the board of directors. As discussed above, Clause (i) of Regulation 4(2)(f) deals with liability of board of directors for disclosure of information, Clause (ii) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Thus, board of directors is responsible for complying with these principles. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is fastened on the board of directors of the listed entity. In the previous paras, it has been found that TGVV was in violation of Sections 11(2)(i), 11(2)(ia)

of SEBI Act, 1992, Regulations 4(1) (a), (b), (c), (e) & (g), 23(2), 24(3), 33, Clause B(2) of Schedule III read with Regulations 30 and 48, of LODR Regulations and Section 21 of SCRA, 1956. In view of these violations by TGVV, the principles contained in Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(1), (3), (6) & (12) stood violated for which Noticee no. 2, 3, 4, 5, 7 and 9, being part of the board of directors of TGVV are liable. Similarly, in terms of Regulation 33(2)(d) of LODR Regulations, the annual audited financial results are to be approved by the board of directors of the listed entity. As the financial of TGVV were misrepresented, as discussed above, therefore, Noticee no. 2, 3, 4, 5, 7 and 9 who approved the financial results of TGVV for the financial years 2015-16, 2016-17 and 2017-18 are in violation of Regulation 33(2)(d) of LODR Regulations. SCN alleges that Noticee no. 6 who was CFO of TGVVPL during FY 2015-16 and 2016-17 (till October 31, 2016) and Noticee no. 8 who was the CFO of TGVV during FY 2016-17 (since October 31, 2016) and 2017-18, have also violated all those provisions which have been violated by the directors of TGVV. I note that out of the violations alleged against the Noticee no. 6 and 8, only the violation of Regulation 33 of LODR Regulations is attributable to CFOs, as amongst the alleged violated provisions only Regulation 33 of LODR Regulations creates a liability on CFOs. In this regard, I note that proviso to Regulation 33(1)(a) provides that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading. As already noted financial of TGVV contained misclassification of loans, etc., therefore, Noticee no. 6 and 8 who are certified the financial results for placing them before the board of directors of TGVV had given wrong certification and has therefore, violated proviso to Regulation 33(1)(a) of LODR Regulations.

54. It is observed that as per the Annual Reports of TGVV, the details of the Board of Directors and CFOs of TGVV during the investigation period are as follows:

FY 2015-16

Name	Designation
Mr. S. Pannalal Jain Tatia	Non - Executive Director
Mr. S.P. Bharat Jain Tatia	Managing Director
Mr. Arun Kumar Bafna	Independent Non-Executive Director
Ms. D. Hemamalini	Independent Non-Executive Director
Mr. E.Subbarayan	Chief Financial Officer

FY 2016-17

Name	Designation
Mr. S. Pannalal Jain Tatia	Chairman/Non - Executive Director
Mr. S.P. Bharat Jain Tatia	Managing Director
Mr. Arun Kumar Bafna	Independent Non-Executive Director
Ms. D. Hemamalini	Independent Non-Executive Director
Mrs. S. Shobha	Independent Non-Executive Director
Mr. E. Subbarayan	Chief Financial Officer (till October 31, 2016)
Mrs. Namrata Parekh	Chief Financial Officer (since October 31, 2016)

FY 2017-18

Name	Designation
Mr. S. Pannalal Jain Tatia	Chairman/Non - Executive Director
Mr. S. P. Bharat Jain Tatia	Managing Director
Mr. Arun Kumar Bafna	Independent Non-Executive Director
Mrs. S. Shobha	Independent Non-Executive Director
Mrs. Chandrakantha Tatia	Additional Director
Mrs. Namrata Parekh	Chief Financial Officer

55. Specifically, independent directors of TGVV (i.e. Noticee nos. 4, 5, and 7) and additional director (i.e. Noticee no. 9), have submitted that they were non-

executive Directors who were not responsible for the day to day running of the Noticee no. 1. The Noticees have submitted that the forensic audit based on which the present SCN has been issued is for the financial years 2015-2016 to 2017-2018 and the allegations made against Noticee 4, 5, 7 and 9 in the SCN regarding violations pertain to land transactions which have taken place during the financial year 2008-2009 when they were not even associated with TGVV.

56. In this regard, as discussed above, I note that Regulations 4(2)(f) and Regulation 33 creates specific duty on the board of directors without making any distinction with independent directors. The following are the details of independent directors who were members of Audit Committee and the meetings attended by them during the investigation period:

Name of the Director	Attendance Particulars			
	2015-16		2016-17	
	Held	Present	Held	Present
Ms. D. Hemamalini (Noticee no. 5)	4	4	6	5
Mr. Arun Kumar Bafna (Noticee no. 4)	4	4	6	6
Mrs. S. Shobha (Noticee no.7)	NA	NA	6	1

57. Regarding the liability of the independent directors for the acts of commission and omission of a company reference may be made to Regulation 25(5) of the LODR Regulations which provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations. As discussed in previous paragraphs, the financials of TGVV placed before the Audit Committee of TGVV during the investigation period were misclassified. With

respect to the related party transactions, I note that since, these related party transactions were not placed before the audit committee for approval, therefore, the liability for non-compliances with such related party transactions cannot be placed on the members of the audit committee. I note that the land transactions might have taken place in 2008-2009, as claimed by these noticees but the misclassifications of these transactions as trade receivables were made in the financials of the company pertaining to the investigating period. I note that the misclassifications in the financials of FAR such as showing interest as operating income, not classifying debt as bad though not recovered for more than three years, as found above, holds good for these Noticees, also. I note that Noticee nos. 4, 5 and 7, being the independent Directors of TGVV and being part of the audit committee of TGVV, approved the financials of TGVV, as part of the board of directors of TGVV. Failure to raise any concern regarding the financials of TGVV, as member of the audit committee as well as the board of directors of TGVV, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations. Therefore, the contention raised by these Noticees is not tenable. I also note that Noticee no. 9 was the additional director of TGVV from May 30, 2018 to February 01, 2019. Thus, I find that Noticee no. 9 became director in TGVV after the period of violations, alleged in the SCN. Therefore, I find that Noticee no. 9 cannot be held liable for the violations alleged in the SCN.

58. In view of the aforesaid violations committed by TGVV and its directors/CFOs, I find that directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued.
59. SCN in the matter, calls upon the Noticee no. 1 to explain as to why appropriate penalty be not imposed upon it under Sections 15A(a), 15HA and 15HB of SEBI Act, 1992 and Section 23E of SCRA, 1956, for the violations alleged in the SCN. Also, Noticee no. 2 to 9 have been called upon to explain as to why penalty should

not be imposed upon them under Sections 5HA and 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956, for the violations alleged in the SCN. Relevant extract of these penalty provisions, as existing at the time of violations, is reproduced, hereunder:

Relevant extract of Section 15A (a) and 15HB of SEBI Act, 1992:

“Penalty for failure to furnish information, return, etc.

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

(a) to furnish any document, return or report to the Board, fails to furnish the same he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”

Relevant extract of Sections 23E and 23H of SCRA, 1956:

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

60. From the analysis of the aforesaid penalty provisions, I find that penalty under Sections 15A(a) and 15HB of the SEBI Act, 1992, only, is attracted and not the penalties under Section 15HA of SEBI Act, 1992 and Sections 23E and 23H of SCRA, 1956. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 have not been made out, therefore, penalty under Section 15HA of SEBI Act, 1992 is not attracted against the Noticees (i.e. Noticee no. 1 to 8). I also note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that TGVV is in violation of listing conditions, however, TGVV is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA. I find that penalty under Section 23H of SCRA, 1956 is not attracted in the case of Noticee no. 2 to 8, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided. As the Noticee no. 2 to 8, being directors and CFOs of TGVV, have been found to be in violation of LODR Regulations, which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the “regulation” of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI

directions alleged against these Noticees, therefore, Section 23H is not attracted in the case of Noticee no. 2 to 9.

61. I find that for non-furnishing of information to forensic auditor, as found above, TGVL is liable for imposition of penalty under Section 15A(a) of the SEBI Act, 1992 which provides penalty for failure to furnish information, *inter alia*, sought by SEBI under the provisions of SEBI Act, 1992. For the violation of LODR Regulations, TGVL is liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided. Since, LODR Regulations are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HB) does not separately provide for any penalty for violation of LODR Regulations, therefore, for violation of LODR Regulations by TGVL, as found in this order, penalty under Section 15HB is attracted against TGVL. Similarly, Noticee no. 2 to 8 who are the directors and CFOs of TGVL are liable for imposition of penalty, for the violations of LODR Regulations which are found to be committed by them, under Section 15HB of the SEBI Act, 1992.
62. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

Explanation. — For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

63. I find that material available on record does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that the material available on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by the Noticees. However, I note that the violations have occurred over a period of three financial years. I also note that Noticee no. 4, 5 and 7 were the independent directors.

Directions:

64. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956 read with Section 19 and Section 11(2)(j) of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, direct as under:
- (i) The Noticee no. 1, 2, 3, 6 and 8, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;

- (ii) The Noticee no. 4, 5 and 7, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;
- (iii) The Noticee no. 1 to 8, are hereby imposed with, the following penalties as specified:

Notice e No.	Name of Noticees	Provisions under which penalty imposed	Penalties
1.	Tatia Global Vennture Limited	Section 15A(a) and Section 15HB of SEBI Act, 1992	Rs. 30,00,000/- (Rupees Thirty Lakh) and Rs. 10,00,000/- (Rupees Ten Lakh), respectively.
2.	Mr. S. Pannalal Jain Tatia	Section 15HB of SEBI Act, 1992	Rs. 15,00,000/- (Rupees Fifteen Lakh)
3.	Mr. S.P. Bharat Jain Tatia	Section 15HB of SEBI Act, 1992	Rs. 15,00,000/- (Rupees Fifteen Lakh)
4.	Mr. Arun Kumar Bafna	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)
5.	Ms. D. Hemamalini	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)
6.	Mr. E. Subbarayan	Section 15HB of SEBI Act, 1992	Rs. 6,00,000/- (Rupees Six Lakh)
7.	Ms. S. Shobha	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)
8.	Ms. Namrata Parekh	Section 15HB of SEBI Act, 1992	Rs. 6,00,000/- (Rupees Six Lakh)

- (iv) The Noticees are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW.
65. During the period of restraint, as directed in para 65 above, the existing holding of securities including the units of mutual funds, of the concerned Noticees, shall remain under freeze.
66. The obligation of the Noticees, restrained/prohibited by this Order, 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, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
67. The Demand Draft of penalties or details or confirmation of e-payment, as directed above, shall be sent to "The Division Chief, Investigation Department, ID-19, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051".
68. This Order comes into force with immediate effect.

69. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai

Date: May 28, 2021

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**