

WTM/AB/IVD/ID18/13195/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 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.	Sun and Shine Worldwide Limited (presently known as Johnson Pharmacare Ltd.)	AABCR6814P
2.	Ramanlal Nagjibhai Trivedi	ACXPT8490J
3.	Binit Joshi	ACKPJ7454M
4.	Umeshbhai Purohit	ALDPP7911K
5.	Anil Mistry	AFFPM7009D
6.	Viral Gunvantbhai Kapadia	AIPPK1973R
7.	Sujata Dhan Kumar Kharga	AMZPK1508N
8.	Jimish Jitendrabhai Soni	ADRPS3416L
9.	Manishkumar Kacharalal Patel	AKEPP4132E
10.	Rakesh Puri	ABLPP1212F

In the matter of Sun and Shine Worldwide Limited

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

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1. The present proceeding emanates from a common show cause notice dated October 27, 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) 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 23H of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) against them. The SCN, *inter alia*, alleged that Sun and Shine Worldwide Limited (hereinafter also referred to as “**SSWL**” / “**the company**”) had published manipulated financial results for the FY 2012-13 and 2013-14, which were untrue and misleading and operated as deceit not only on the shareholders of SSWL but also on the public being misleading about the financial health of the company.

2. The brief facts of the case, as mentioned in the SCN are as follows:
 - 2.1. A preliminary examination was conducted by SEBI into the trading activities of certain entities in the scrip of SSWL (formerly ‘Robinson Worldwide Trade Limited’) for the allegation of accounting manipulation. It was seen that the company’s revenues rose from Rs. 159 cr. in FY 2012-13 to Rs. 1,791 cr. in FY 2013-14. It was also observed that there was no justification in the annual reports of the company.
 - 2.2. The quarterly sales and expenditure over FY 2010-11 to FY 2015-16 is as under:

	Net Sales (in Crores- Rs.)	Expenditure (in Crores- Rs.)
Jun-10	(0.03)	0.08
Sep-10	-	(0.01)
Dec-10	-	0.01
Mar-11	(0.03)	0.08
Jun-11	8.70	8.67
Sep-11	-	0.01
Dec-11	-	0.01
Mar-12	-	-
Jun-12	-	0.00
Sep-12	23.20	23.36
Dec-12	64.28	64.21
Mar-13	71.64	71.60
Jun-13	110.21	110.41
Sep-13	679.65	789.19
Dec-13	151.90	151.31
Mar-14	849.26	849.68

Jun-14	-	0.00
Sep-14	-	0.01
Dec-14	-	0.00
Mar-15	-	0.05
Jun-15	-	0.04
Sep-15	-	0.00
Dec-15	0.36	0.01
Mar-16	0.33	0.10

- 2.3. Thus, upon scrutinizing the quarterly financial results of the company, it was observed that the company experienced significant changes in the revenues and expenditure during the period June-12 to June-14. The company had negligible revenues before and after this period. It was further observed that the quarterly financial results submitted by SSWL to the stock exchange during FY 2012-13 to FY 2014-15 were unaudited and were not accompanied by any audit/ review report from the statutory auditors. Upon perusal of annual reports of the company for corresponding period, it was noted that no reasonable explanation has been provided to justify/ explain the wide fluctuations in revenues and expenditure.
- 2.4. An explanation was sought from the company with respect to the wide fluctuations in revenues and expenditure during the aforesaid period. The company, vide email dated April 8, 2019, submitted that “company had started dealings in Commodity Market Trading during the period under consideration. However, due to less profitability, company has stopped Commodity Market Dealings. Hence, there is considerable movement in Sales and Purchase of the company.” The company, vide replies dated April 8 & 9, 2019, provided quarter wise working of the Revenue / Expenditure, wherein following was also mentioned:
- 100% of sales shown in quarterly results during the period is from Commodity Market Transactions.
 - 100% of trading purchases shown in quarterly results during the period is from Commodity Market Transactions.
- 2.5. In order to ascertain the submissions of the company, trade details of SSWL were sought from Indo Thai Commodities Private Limited (sole broker of SSWL for the period – as informed by SSWL. Indo Thai Commodities Private Limited, vide email dated April 16, 2019, submitted the quarterly trade details of the

company. Upon perusal of the same, there appeared to be an overstatement of purchases to the extent of Rs. 145.82 cr. in FY 2012-13 and Rs. 1416.6 cr. in FY 2013-14. Similarly, there appeared to be an overstatement of Sales to the extent of Rs. 145.80 cr. in FY 2012-13 and Rs. 1307.1 cr. in FY 2013-14.

- 2.6. Considering the substantial differences in submissions of the company and the broker, information was sought from stock exchanges (ICEX, NCDEX & MCX – Stock Exchanges on which trading was claimed by the company vide email dated April 9, 2019). The stock exchanges submitted details of trading of SSWL vide emails dated April 23, 24 & 25, 2019. The details provided by the stock exchanges were in line with that provided by the stock broker and it was observed that there was an overstatement of purchases to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14. Similarly, there was an overstatement of Sales to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14 in the reported financial results of SSWL.
- 2.7. An explanation was again sought from the company vide email dated May 24, 2019 with respect to submissions of the broker and stock exchanges which are at variance with the company's reported financial statements. The company, vide email dated July 25, 2019, shared text file purportedly containing bills from Indo Thai Commodities Private Limited as an evidence of trading. The company failed to provide reasons on specific queries sought with respect to variance in the sales and purchase numbers. Further, the bills submitted by the company were in text format without any signature or stamp. Hence, the authenticity of the said bills could not be proven. In view of the same, the company was advised to provide relevant authenticated documentary evidences in support of its submissions vide email dated September 30, 2019 and reminder emails dated October 9, 2019, October 15, 2019 and November 4, 2019. The company again submitted unauthenticated bills without any signature or stamp vide email dated November 8, 2019. SSWL was again advised to provide appropriately authenticated bills/invoices vide email dated November 11, 2019 and reminder email dated November 18, 2019. Subsequently upon repeated failure of SSWL in satisfactorily furnishing the information sought, summons for furnishing of the aforesaid information were sent to SSWL and its whole time director Mr. Ramanlal Trivedi on November 22, 2019, December 16, 2019, January 8, 2020, January 20, 2020 and January 31, 2020 (only to Mr. Ramanlal Trivedi). However,

SSWL and its whole time director Mr. Ramanlal Trivedi failed to satisfactorily furnish the relevant information. Further, Mr. Ramanlal Trivedi acknowledged the receipt of summons but failed to make personal appearance in response to summons issued in his name.

2.8. Thus, the company has failed to provide justification for variance in the submissions of the broker and stock exchanges with its sales and purchases, which were reported by the company in its financial statements.

2.9. Subsequently, an email dated March 11, 2020 was received from Mr. Anil Mistry, ex-director of SSWL, providing following explanation for the business of the company and its accounting:

- The Company had started to deal in Commodity Future first time on 14/09/2012 wherein company bought 70 Lots of FUT COPPER 30-NOV-12. Further, at the end of the day of 14/09/2012 none of Lots were sold by the company and the open position was carried forward to the next day. Here company has treated buying of 70 Lots of FUT COPPER 30-NOV-12 as Purchase aggregating to Rs. 3,23,08,822.00 (Including Brokerage) and since it was not sold on the same day, the position was carried forward and the same was treated as sales aggregating to Rs. 3,20,35,500.00.
- Further, on the end of next day i.e. on 15/09/2012, company has got Daily MTM Bill/Ref no. DLYMTM/9-1509 from broker where in 70 Lots of FUT COPPER 30-NOV-12 which were carried forward from previous day was brought forward and the same was treated as Purchase in the books of the company i.e. Purchase aggregating to Rs. 32035500.00 and since it was not sold on that day also it was carried forward and treated in the books as sales aggregating to Rs. 31969000.00.
- Further, on the end of the next working day i.e. on 17/09/2012, company has got Daily MTM Bill/Ref no. DLYMTM/11-1709 from broker where in 70 Lots of FUT COPPER 30-NOV-12 which were carried forward from previous day was brought forward and the same was treated as Purchase in the books of the company i.e. Purchase aggregating to Rs. 3,19,69,000.00 and correspondingly since it was

not sold on that day the position was carried forward which was treated as sales aggregating to Rs. 3,17,20,500.00.

- The same process of accounting was going on till the date of actual settlement of open position of 70 Lots of FUT COPPER 30-NOV-12. That is how turnover of the company was built up and Purchase aggregating to Rs. 159.13 Crores and Sales aggregating to Rs. 159.07 Crores were recorded in the books of accounts of the company.
- The accountant of the company had recorded all the MTM Bills in the books of accounts of the company with assumptions that all the transactions are entered by the company are on day to day basis and those needed to be recorded in the books of accounts of the company.
- However on the floor of the commodity exchange the actual purchase and sales were reflected as Rs. 13.31 Cores and Rs. 13.27 Crores respectively for the financial year 2012-13. There is a deviation in the amount of purchase and sales on account of recording of carried forward and brought forward positions on day to day basis. The similar accounting entries were passed in the books of accounts of the company for the financial year 2013-14.
- There is no change in the profit / loss of the company by recording above accounting entries in the book of accounts the company. Further, there was no bogus transaction of sales / Purchase recorded by the company in their books. All the entries recorded in the books of the company are based on Daily MTM Bills of broker Indo Thai Commodities Private Limited.

2.10. From the above email, it is evident that the company has accounted for the purchase and sale of the commodity positions as if the position was closed every day and reopened the next day. However, as informed in the aforesaid email, the position was not actually closed everyday but instead was held to the next day without transacting. Thus, the company actually transacted only once but the accounting for the said transaction was recorded on every day till closing of the position, thereby artificially inflating the sales and purchase figures reported by the company.

2.11. Considering that the trading during the period was conducted on the stock exchange(s) through the broker and the trade details of SSWL provided by stock

exchange(s) and broker were at substantial difference with figures reported by the company and in view of the failure of the company in submitting authenticated documentary evidence in support of its submissions, it is alleged that the SSWL had fraudulently overstated purchases to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14 as well as fraudulently overstated Sales to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14. This led to publication of manipulated financial results for the FY 2012-13 and 2013-14, which were untrue and misleading and operated as deceit not only on the shareholders of SSWL but also on the public being misled about the financial health of the company.

- 2.12. Further, considering that the quarterly financial statements submitted by SSWL to the stock exchange were neither audited nor limited reviewed and were not accompanied with audit/ review report, it is observed that the requirement of submission of Clause 41(I)(C) of the Equity Listing Agreement read with Section 21 of SCRA was not complied with.
- 2.13. It is also observed that SSWL failed to promptly notify the stock exchange(s) about the material price sensitive information regarding change in the general character or nature of business when it started and stopped trading in commodities as the only business activity.
- 2.14. Further considering the important role played by the Board of Directors in the functioning of the company, all the directors who were part of the Board of the company during the investigation period were summoned for personal appearance vide summons dated January 8, 2020, January 20, 2020 and February 11, 2020 and their statements were recorded, which is discussed in detail in subsequent paras.
- 2.15. Certain entities, viz. Mr. Deep Rajendrakumar Soni, Mr. Dilip Chavan, Mr. Sachin Sunil Manchekar, Mr. Naresh Shinde and Mr. Prashant Pawar have provided relevant documents in support of their claim of not being associated with SSWL. Further, during statement recording, all the present directors of SSWL were asked to identify the directors who are known to them. In response to the same, none of the directors have indicated that they know any of Mr. Deep Rajendrakumar Soni, Mr. Dilip Chavan, Mr. Sachin Sunil Manchekar, Mr. Naresh Shinde and Mr. Prashant Pawar. In view of the same, no adverse findings are

being made against Mr. Deep Rajendrakumar Soni, Mr. Dilip Chavan, Mr. Sachin Sunil Manchekar, Mr. Naresh Shinde and Mr. Prashant Pawar.

- 2.16. While the company has indicated in its annual report dated August 31, 2013 that Mr. Hitesh Patel resigned with effect from May 10, 2013, upon checking corporate announcements made by SSWL on BSE during the period May 1, 2013 to August 31, 2013, it is observed that no announcement of resignation was made. Hence, the disassociation of Mr. Hitesh Patel from the directorship of SSWL was first informed to the shareholders by way of disclosure in annual report of SSWL dated August 31, 2013. The death records of Ahmedabad Municipal Corporation confirms the death of Mr. Hitesh Patel on May 22, 2013 with record number 2013-DW-0008-0000196 (Name, Father's Name and Surname matching). Thus, as per records available to a shareholder, Mr. Hitesh Patel was a director of the company as on date of his death. Hence, SSWL failed to promptly notify the stock exchange(s) about change in its directorate due to death of its director Mr. Hitesh Patel in May 2013.
- 2.17. It is observed that there was an overstatement of purchases to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14. Similarly, there was an overstatement of Sales to the extent of 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14, leading to publication of manipulated financial results for the FY 2012-13 and 2013-14, which were untrue and misleading and operated as deceit not only on the shareholders of SSWL but also on the public being misled about the financial health of the company. The annual reports for FY 2013-14 and FY 2014-15 also contained names of certain director(s), which were not associated with the company. The act of publishing fraudulently manipulated financial statements of SSWL operated as a device/ scheme/ artifice to deceit and defraud the investors/ shareholders dealing in the equity shares of SSWL, thereby resulting into violation of Regulation 3(c), 3(d) of the SEBI (PFUTP) Regulations, 2003 r/w Section 12A(a),(b),(c) of SEBI Act, 1992.
- 2.18. SSWL published fraudulently manipulated financial results and annual reports which were not true thereby resulting into violation of Regulations 4(2)(f) of the SEBI (PFUTP) Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992.
- 2.19. SSWL published false and misleading corporate announcements about the untrue financial statements, thereby resulting into violation of Regulations 4(2)(r)

of the SEBI (PFUTP) Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992.

- 2.20. SSWL failed to promptly notify the stock exchange(s) about change in its directorate due to death of Mr. Hitesh Patel, thereby resulting into violation of Clause 30(a) of the Listing Agreement read with Section 21 of SCRA, 1956.
 - 2.21. SSWL failed to promptly notify the stock exchange(s) about the material price sensitive information regarding change in the general character or nature of business when it started and stopped trading in commodities as the only business activity, thereby resulting into violation of Clause 36 of the Listing Agreement read with Section 21 of SCRA, 1956.
 - 2.22. SSWL prepared, submitted to the stock exchanges and published fraudulently manipulated financial results (quarterly, half-yearly as well as annual) which were not true and quarterly results which were neither audited nor limited reviewed, thereby resulting into violation of Clause 41 and 41(I)(C) of the Equity Listing Agreement read with Section 21 of SCRA, 1956.
 - 2.23. SSWL Audit Committee comprised less than 3 members (as 5 directors who were shown as members of audit committee have proven their disassociation with the company) on the dates of 6 audit committee meetings (May 30, 2013, August 8, 2013, May 26, 2014, August 4, 2014, November 14, 2014 and February 11, 2015) during the investigation period, thereby resulting into violation of Clause 49(III)(A)(1) of the Equity Listing Agreement read with Section 21 of SCRA, 1956.
3. Based on the above, the SCN has made the following allegations against the Noticees:

Sr. No.	Name of Noticee	Allegation	Provisions alleged to have been violated
i.	Sun and Shine Worldwide Limited	Publication of manipulated financial results for the FY 2012-13 and 2013-14, which were untrue and misleading and operated as deceit not only on the shareholders of SSWL but also on the public being misled about the financial health of the company.	Regulation 3(c), 3(d), 4(2)(f), 4(2)(r) of 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 ") read with Section 12A(a),(b),(c) of SEBI Act, 1992 and Clauses 36, 41 and 41(I)(C) of the Equity

			Listing Agreement read with Section 21 of SCRA, 1956
		SSWL published fraudulently manipulated financial results and annual reports which were not true	Regulations 4(2)(f) of the PFUTP Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992.
		SSWL published false and misleading corporate announcements about the untrue financial statements	Regulations 4(2)(r) of the PFUTP Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992.
		SSWL failed to promptly notify the stock exchange(s) about the material price sensitive information regarding change in the general character or nature of business when it started and stopped trading in commodities as the only business activity	Clause 36 of the Equity Listing Agreement read with Section 21 of SCRA, 1956
		Quarterly financial statements submitted by SSWL to the stock exchange were neither audited nor limited reviewed and were not accompanied with audit/ review report	Clause 41(I)(C) of the Equity Listing Agreement read with Section 21 of SCRA, 1956
		Publishing names of persons as directors who were not associated with the company	Regulation 4(2)(f) of PFUTP Regulations, 2003
		As per records available to a shareholder, Mr. Hitesh Patel was a director of the company as on date of his death. Hence, SSWL failed to promptly notify the stock exchange(s) about change in its directorate due to death of its director Mr. Hitesh Patel in May 2013.	Clause 30(a) of the Equity Listing Agreement read with Section 21 of SCRA, 1956

		The audit committee had fewer than 3 members (after discounting for fictitious directors who have proven their disassociation with the company) in the audit committee meetings dated May 30, 2013, August 8, 2013, May 26, 2014, August 4, 2014, November 14, 2014 and February 11, 2015.	Clause 49(II)(a) of the Equity Listing Agreement r/w Section 21 of SCRA, 1956
ii.	Ramanlal Nagjibhai Trivedi	The executive director of SSWL, was in-charge of the operations and decision making process.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992 as well as Clauses 30(a), 36, 41, 41(I)(C) and 49(III)(A)(1) of the Equity Listing Agreement read with Section 21 of SCRA, 1956
		Audit Committee of SSWL failed in its role. Mr. Ramanlal Nagjibhai Trivedi, the member of Audit Committee, is responsible for the non-compliance.	Clause 49(III)(D) of the Equity Listing Agreement read with Section 21 of SCRA
		Mr. Ramanlal Nagjibhai Trivedi was present in the audit committee meetings for which fictitious directors were shown as present. Thus, he was party to the fraud and facilitated the management of the company in reporting untrue business conducted by the audit committee.	Clause 49(III)(A)(1) of the Equity Listing Agreement r/w Section 21 of SCRA, 1956
		Falsely certifying 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	Clause 41(II)(a) of Equity Listing Agreement read with Section 21 of SCRA, 1956
		Failed to furnish information sought vide	

		summons dated November 22, 2019, December 16, 2019, January 8, 2020 and January 20, 2020	Sections 11C(2) read with 11C(3) and 11C(5) read with 11C(6) of SEBI Act, 1992
iii.	Binit Joshi	The executive director of SSWL, being in-charge of the operations and decision making process, is responsible for violations by SSWL.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992 as well as Clauses 30(a), 36, 41, 41(I)(C) and 49(III)(A)(1) of the Equity Listing Agreement read with Section 21 of SCRA, 1956
		Audit Committee of SSWL failed in its role. The Noticee, the member of Audit Committee, is responsible for the non-compliance.	Clause 49(III)(D) of the Equity Listing Agreement read with Section 21 of SCRA
		Failed to furnish information sought vide summons dated November 22, 2019, December 16, 2019, January 8, 2020 and January 20, 2020	Sections 11C(2) read with 11C(3) and 11C(5) read with 11C(6) of SEBI Act, 1992
iv.	Umeshbhai Purohit	The executive director of SSWL, being in-charge of the operations and decision making process, is responsible for violations by SSWL.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992 as well as Clauses 30(a), 36, 41, 41(I)(C) and 49(III)(A)(1) of the Equity Listing Agreement read with Section 21 of SCRA, 1956
		Audit Committee of SSWL failed in its role. This Noticee, the member of Audit Committee, is responsible for the non-compliance.	Clause 49(III)(D) of the Equity Listing Agreement read with Section 21 of SCRA
v.	Anil Mistry	The executive director of SSWL, being in-charge of the operations and decision making process, is responsible for violations by SSWL.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992 as well as Clauses 30(a), 36, 41, 41(I)(C) and 49(III)(A)(1) of the Equity Listing Agreement read with Section 21 of SCRA, 1956
vi.	Jimish Jitendrabhai Soni	Audit Committee of SSWL failed in its role. This	Clause 49(III)(D) of the Equity Listing Agreement

		Noticee, the member of Audit Committee, is responsible for the non-compliance. The audit committee had fewer than 3 members (after discounting for fictitious directors who have proven their disassociation with the company) in the audit committee meetings dated May 30, 2013, August 8, 2013, May 26, 2014, August 4, 2014, November 14, 2014 and February 11, 2015. Mr. Jimish Jitendrabhai Soni was present in audit committee meetings dated May 30, 2013 and August 8, 2013 wherein Mr. Soni Deep Rajendrakumar (who was not associated with SSWL) was disclosed as present. Further, during the statement recording, Mr. Jimish Soni was shown the list of board of directors during FY 2012-13 to FY 2014-15 and was asked to confirm if he knows any of the directors from the list. Mr. Jimish Soni did not identify names of any of the fictitious directors. Thus, he was party to the fraud and facilitated the management of the company in reporting untrue business conducted by the audit committee.	read with Section 21 of SCRA Clause 49(III)(A)(1) of the Equity Listing Agreement read with Section 21 of SCRA, 1956
vii.	Manishkumar Kacharalal Patel	Audit Committee of SSWL failed in its role. This Noticee, the member of Audit Committee, is responsible for the non-compliance.	Clause 49(III)(D) of the Equity Listing Agreement read with Section 21 of SCRA
viii.	Viral Gunvantbhai Kapadia	Audit Committee of SSWL failed in its role. This Noticee, the member of Audit Committee, is responsible for the non-compliance.	Clause 49(III)(D) of the Equity Listing Agreement read with Section 21 of SCRA

		The audit committee had fewer than 3 members (after discounting for fictitious directors who have proven their disassociation with the company) in the audit committee meetings dated May 30, 2013, August 8, 2013, May 26, 2014, August 4, 2014, November 14, 2014 and February 11, 2015. Mr. Viral Gunvantbhai Kapadia was present in audit committee meetings dated May 30, 2013 and August 8, 2013 wherein Mr. Soni Deep Rajendrakumar (who was not associated with SSWL) was disclosed as present. Further, during the statement recording, Mr. Viral Gunvantbhai Kapadia was shown the list of board of directors during FY 2012-13 to FY 2014-15 and was asked to confirm if he knows any of the directors from the list. Mr. Viral Gunvantbhai Kapadia did not identify names of any of the fictitious directors. Hence, it is alleged that Mr. Viral Gunvantbhai Kapadia was present in the audit committee meetings for which fictitious directors were shown as present. Thus, he was party to the fraud and facilitated the management of the company in reporting untrue business conducted by the audit committee.	Clause 49(III)(A)(1) of the Equity Listing Agreement Read with Section 21 of SCRA, 1956
		Annual report of SSWL for FY 2012-13 showing fraudulent financial statements has been signed by Mr. Viral Gunvantbhai Kapadia	Clause 41(II)(a) of Equity Listing Agreement read with Section 21 of SCRA, 1956
ix.		Audit Committee of SSWL	

	Sujata Dhan Kumar Kharga	failed in its role. This Noticee, the member of Audit Committee, is responsible for the non-compliance.	Clause 49(III)(D) of the Equity Listing Agreement read with Section 21 of SCRA
		The audit committee had fewer than 3 members (after discounting for fictitious directors who have proven their disassociation with the company) in the audit committee meetings dated May 30, 2013, August 8, 2013, May 26, 2014, August 4, 2014, November 14, 2014 and February 11, 2015. Ms. Sujata Dhan Kumar Kharga was present in audit committee meeting dated February 11, 2015 wherein Mr. Naresh Popotrao Shinde and Mr. Prashant Vijay Pawar (who were not associated with SSWL) were disclosed as present. Thus, she was party to the fraud and facilitated the management of the company in reporting untrue business conducted by the audit committee	Clause 49(III)(A)(1) of the Equity Listing Agreement read with Section 21 of SCRA, 1956
		Failed to furnish information sought and failed to appear in person when summoned and hence, has not complied with summons dated January 8, 2020, January 20, 2020 and February 11, 2020	Sections 11C(2) read with 11C(3) and 11C(5) read with 11C(6) of SEBI Act, 1992.
X.	Rakesh Puri	Statutory auditors of SSWL, Mr. Rakesh Puri, failed to adhere to applicable accounting/auditing standards. Mr. Rakesh Puri also failed to perform the most basic audit procedures such as sample selection, independent balance confirmation, document verification, discussion with management/ audit	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A(a),(b),(c) of SEBI Act, 1992 as well as clause 41 and 41(I)(C) of the Equity Listing Agreement read with Section 21 of SCRA, 1956

		committee etc. and his name was used to certify the books of accounts of SSWL, thereby becoming party to the fraud and facilitated the management of the company in reporting fraudulent financial statements to the shareholders and public. It is observed that the statutory auditors of SSWL were not diligent while certifying the financial results of SSWL thereby are party to the fraud. Such irresponsible certification by statutory auditors has resulted in not only the shareholders but also the public being misled about the financial health of the company.	
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4. The following annexures were provided with the SCN:

Annexure no.	Particulars
Annexure 1	Annual reports of the company
Annexure 2	Email correspondences exchanged with SSWL by SEBI
Annexure 3	Email dated April 16, 2019 from Indo Thai Commodities Pvt. Ltd. to SEBI
Annexure 4	The stock exchanges submitted details of trading of SSWL vide emails dated April 23, 24 & 25, 2019
Annexure 5	Copy of summons along with delivery confirmations
Annexure 6	Detailed statements of the directors

5. The SCN was delivered to all Noticees except Noticee nos. 3 and 7 by Registered Post Acknowledgement Due. In view of the prevailing pandemic situation, hand deliveries could not be attempted with respect to Noticee nos. 3 and 7 and the SCN was delivered through email to these Noticees. In response to the SCN, Noticee nos. 6, 8 and 9 requested for inspection of documents and an accordingly, opportunity of inspection of documents which had been relied upon in the SCN was provided to them on December 15, 2020 which was availed by their Authorized Representative (hereinafter referred to as “AR”). In response to the SCN, Noticee no. 2 requested for a physical hearing. A hearing was granted to all the Noticees on March 16, 2021 and the Noticees were directed to appear in person or through video conference. The AR of Noticee nos. 6, 8 and 9 appeared through video conference for the hearing and made submissions. Noticee nos. 1 and 2 sought an adjournment to the hearing citing non availability of counsel. Noticee no. 10 also sought an adjournment of hearing.
6. In view of the requests for adjournment of hearing received from Noticee nos. 1, 2 and 10, these Noticees were granted another opportunity of hearing on July 19, 2021. On the scheduled date the Authorized Representative of the said Noticees appeared through video conference facility and made submissions. Since, none of the other Noticees had replied to the SCN or made a request for adjournment, the hearing was concluded *qua* all the Noticees on that date.
7. Vide separate replies dated March 15, 2021 the Noticee nos. 6, 8 and 9 submitted on similar lines as follows:
 - 7.1. Vide letter dated November 26, 2020 they requested for inspection of the documents and data collected during the period of the investigation relevant to them and copy of the investigation report. They further asked for cross-examination of the present management of the Company so that it can be ascertained that they had not attended any of the Audit Committee Meeting. They further asked to provide them copy of the Attendance Register.
 - 7.2. The Noticees through their AR conducted inspection of the documents. During the course of inspection, they were given access of two Excel sheets claiming to be Attendance Record of the Board Meetings and Audit Committee Meetings

as provided by the Company vide email dated July 25, 2019 to SEBI. Apart from the said two purported Excel Sheets, no other details and documents have been shared with them. They specifically asked for the copy of the investigation report. However, their request for the same was not acceded. Further, they requested to allow cross examination with the Company's present management who claimed that they were part of the Audit Committee and were present in the meetings of the Audit Committee. They further requested to provide them inspection of attendance register maintained by the Company. However, the said requests have not been acceded till date. In this way principle of Natural Justice has not been followed in the present proceeding.

- 7.3. Furthermore, SCN is bad in law as the same has been issued after a period of 5 to 8 years from the date of alleged events were occurred. Issue of SCN after such an inordinate delay caused extreme mental agony to them. This highly prejudices their case as justice delayed is justice denied.
- 7.4. They refute each and every allegations / statements / averment /contention made in the SCN particularly against them unless it is specifically admitted by them in their reply to the SCN. They further deny that they were part of the Audit Committee. They further refute that they were present in any of the Audit Committee meeting. They further refute and deny that they were involved in the day to day affairs of the Company.
- 7.5. The allegations contained in SCN against them are farfetched and based on surmises, conjectures, assumption and presumptions.
- 7.6. They had never received agenda of the Audit Committee meeting i.e. compulsory to circulate 7 days before. Further, Company as well as SEBI failed to produce Attendance Register which shows that whether they were present or not in the Audit Committee Meeting. SEBI could have verified their signature from the Attendance Register. However, no such efforts have been made by the SEBI.
- 7.7. No reliance can be placed on the data and documents provided by the Company as in the SCN it is specifically mentioned that the Company had provided false and misleading data to SEBI during the course of investigation.
- 7.8. Attendance Register needs to be preserved by a Company for at least 8 years. Thus, the Company must have the Attendance Register.

- 7.9. Since they did not attend any meetings they had not received any remuneration for attendance
 - 7.10. They had never given their consent and acknowledgement whether oral or in written to the Company for joining any committee. No such documentary evidence has been placed by the Company.
 - 7.11. They had made honest statements before the Investigation Department, SEBI and categorically denied that they were present at the Audit Committee Meeting. Indeed, they never signed any document except their appointment and resignation forms and letters.
 - 7.12. They were introduced to the Company by Mr. Viral Kapadia. They had not interacted with any of the employee(s) or management of the Company. They only knew each other amongst the directors of the company. They were Professional Directors of the Company and never involved in the affairs of the Company.
8. Vide letter dated March 13, 2021, Noticee no. 10 submitted as follows:
- 8.1. The present SCN has been issued to Mr Rakesh Puri, (hereinafter called Noticee) who was Working Partner of M/s Y D & Co., Chartered Accountants. The said firm has been Statutory Auditor of SSWL since 2011 to 2015.
 - 8.2. There is no legal requirements/mandate that the Statutory Auditor must visit the office of the company or to meet the Board of Director or Audit Committee personally. All information, clarification, explanation, justification has been sought either through E-Mail, Scanned documents, through telephone or by Post. However, if it was absolutely necessary, other Chartered Accountant/Staff associated with the Firm, used to visit their office personally.
 - 8.3. The company has submitted un-audited quarterly financial results to the Stock Exchange during 2012-2013 to 2014-2015 from the time to time, of their own, and they have never called upon the statutory auditor to submit their Review Report. Stock Exchange has been accepting, without any objection, and the stock exchange never pointed out that the Quarterly Results are required to be audited and unaudited results are not in compliance with the provisions of law.
 - 8.4. Notwithstanding the above, in the alternative, it is submitted that there are absolutely no variation or minor variation in the Unaudited Quarterly Result,

which were incorporated in the Annual Audited Accounts for the relevant period and hence, there is no breach at all.

- 8.5. It is humanly impossible to carry out check of each and every invoice/ bill received by the company. The Audit Manual, as prescribed by the esteemed The Institute of Chartered Accountants of India, New Delhi, does not prescribe or require that each and every invoice/bill is required to be verified or checked before the Audit Report is given by the Statutory Auditor. Hence, test check has been carried out. Further, no discrepancy has been alleged in the SCN in the Invoice/Bills received by the company from time to time.
- 8.6. There is no legal requirement that the auditor must seek balance confirmation from each and every party. Therefore, the statutory auditor had given "Note" in Notes to the Account- Note 21 in both the year 2012-2013, 2013-2014 and Note No.22 in the year 2014-2015. Further, it is submitted that vide Note No.28 'Notes to the Accounts' for all these years, the Noticee no. 10 have clearly mentioned that: "We have verified the vouchers and documentary evidences wherever made available. Where no documentary evidences, were available, we relied on the authentication given by the Management." Also, in the Main Body of Auditors Report, it has been mentioned that: "We believe that Audit Evidence we have obtained is sufficient and appropriate to provide a basis for our Audit Opinion".
- 8.7. The fees to be charged for rendering any professional services including conducting audit depends upon the sole discretion of the individual. The quantum of turnover only cannot be the basis for charging the professional charges. At the first blush, the turn over may to be looked high but because of the reasons that each day carried over position was shown as sale and the next day, it was shown as purchase and hence, it looks that the turn-over is very high. If we take into consideration the net turnover, it would work out to only approx. Rs.470 crores, as is evident from Table as appearing on Page 3 and 4 of the SCN.
- 8.8. In relation to allegation of AAS4 is concerned, it is submitted that there was absolutely no adverse impact on the profitability of the company. It is submitted that the preparation and presentation of the Financial Statement and information showing true and fair view and are free from material mis-statement (whether due to fraud or error) is the responsibility of the management. The

responsibility also includes the maintenance of adequate accounting records, safeguarding the assets of the company, selection of appropriate accounting policies, making judgment and estimates and designs, implementation of adequate internal financial controls, were operating effectively for ensuring the accuracy and completeness. Otherwise, it is further submitted that there is no fraud involved in as much as there is no effect on the profitability of the company. Furthermore, there was no loss to the shareholders, no shareholder has lodged any complaint against the company. It is submitted that AAS operate in a different field altogether and is not at all relevant to the facts and circumstances of the present case.

- 8.9. From the above, it is manifestly clear it is not even a civil fraud - the SCN loosely uses the word "Fraud". It is well settled position of law that whenever "fraud" is alleged, all ingredient have been clearly spelt out and necessary evidence produced thereat. There is no allegation in the SCN, due to the above, there is wide variation in the market price of the share. In fact, the above point is buttressed from the fact that there is no complaint from any member of the investing public.
- 8.10. It is denied that Mr. Rakesh Puri has failed to fulfil his basic professional duties of an auditor by failing to comply with the principles governing the conduct of an independent audit, as laid down in the Auditing and Assurance Standards, as prescribed by ICAI, the statutory governing body for audit of companies falling within the purview of the Companies Act, 1956. It is further denied that the statutory auditors of SSWL were not diligent while certifying the financial results of SSWL thereby are party to the fraud. It is further denied that such irresponsible certification by statutory auditors has resulted in not only the shareholders but also the public being misled about the financial health of the company.

9. Vide letter dated March 23, 2021, Noticee nos. 1 and 2 submitted as follows:

- 9.1. Paragraph 2 of SCN tabulates the revenues of the company on a quarterly basis from quarter ended June 2010 to Quarter ended March 2016 and further states that there have been significant changes in revenue from the quarter ended June 2012 to June 2014. Noticee no.1 was a company which had been

investing in shares and units of Mutual Funds. However, from the quarter ended September 2012, it had commenced investment in commodities futures and due to an accounting methodology followed by it, its revenue from operations had increased from the quarter ended September 2012 to June 2014. Since it did not make any profits from this activity, it discontinued trading in commodity derivatives from the quarter ended June 2014. This explains the significant change in revenues.

- 9.2. Noticee no.1 had dealt with Indo Thai Commodities Private Limited as a sole broker. While there seems to be a difference in the accounting methodology, the Noticees deny that they had overstated the purchase figures and sales figures as alleged. The difference is only due to the accounting methodology and they have not overstated the purchase figures and sales figures.
- 9.3. Noticee no. 1 had transacted with Indo Thai Commodities Private Limited and had received bills from them for their services. Further since the broker and the stock exchange have confirmed that there have been transactions that have been done on its behalf, the allegation that the bills are not genuine is baseless.
- 9.4. For example, if the company had purchased 70 lots of FUT Copper on 14.09.2012 for a value of Rs.3.23 crores (including brokerage), a Mark to Market Margin bill for the reduction / decrease in the value of the contract was received from the broker in the evening. On receipt of such a bill from the broker, the accountant assumed that this amounted to a sale and recorded the same as Rs.3.20 crores sale on the same day. This position was carried forward as a purchase the next day and again based the Mark to Market Margin bill for the reduction / decrease in the value of the contract received from the Broker, the value of the sale was registered as Rs.3.196 crores. This procedure continued for all the lots purchased until the settlement of the open positions in the market. This led to the turnover being shown as Rs.159 crores for FY 2012-13 and Rs.1791 crores for FY 2013-14 and in variance with the figures provided by the Broker and the Stock Exchange,
- 9.5. Noticees would however like to draw attention to the column "Expenses" in the Annual Report for the FY 2012-13 and 2013-14 which is shown as Rs.159.23 crores and Rs. 1791.10 crores respectively. Hence the actual profit / loss incurred has been captured and there has been no inflation of the profit or loss incurred and it is the correct figure. The accounting has been done on the basis

of the Mark to Market Bills received and it is this accounting methodology which shows an increase in purchases / turnover. This information has also been provided in the quarterly results submitted to the stock exchange. The allegation has only considered the purchases and ignored the equivalent amount treated as expenses and is therefore baseless.

- 9.6. The Noticees deny the allegation that they had fraudulently overstated the purchase and sales. They further deny that they had manipulated the results to mislead the public about the financial health as the company still continued to give the correct losses incurred and did not have any Profit Before Taxes / Profit After Taxes. The paragraph further makes a general statement regarding the public being misled and does not corroborate this with any numbers and hence the allegations made in this paragraph are arbitrary and do not carry any basis.
- 9.7. The fact that the unaudited financial results were not accompanied by a limited review report was only due to ignorance. The promoters of the company sold out their entire shareholding during the quarter ended December 2011 and the company has been managed by the Board of Directors since that time with frequent changes to the Directorate. Since the quarterly results submitted up to December 2011 was submitted without a limited review report, the practice continued and hence it was only due to ignorance. We would like to submit that Noticee no. 1 is now compliant with this requirement.
- 9.8. The Noticees denied that they had changed the general character or nature of business as alleged. It had been an investment company investing in shares and units of mutual funds as evidenced by its annual reports (Schedule 8 and 11) for the year ended March 31, 2013 and March 31, 2014. The only additional activity was that it also began investing in commodities for a period of two years. Since there was no change in the general character or nature of business, it was not required to inform under Clause 36 of the erstwhile Equity Listing Agreement.
- 9.9. They had not violated any of the clauses as explained above, not violated Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of SEBI (PFUTP) Regulations, 2003 read with Section 12A(a),(b) and (c) of the SEBI Act, 1992 and Clause 36, 41, 41(1)(c) of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA Act, 1956.

- 9.10. Mr Deep Rajendra Soni became a director on May 06, 2013 and resigned on August 30, 2013. Mr Dilip Dhavan and Mr Sachin Manchekar became additional directors on 13.05.2014 and were appointed as independent directors in the AGM of the Company on September 29, 2014. Mr Naresh Shinde was appointed as an additional director on 01.07.2014 and appointed as an independent director in the AGM of the Company on September 29, 2014. The appointments of these directors were informed to the stock exchange on the conclusion of the Board Meeting to the stock exchange. Necessary consents were received from the directors to act as directors. Necessary Form DIR 12 was filed for their appointment with the ROC. Mr Prashant Pawar has been appointed on 04.02.2015 as an additional director and appointed Noticee no. 1 had appointed these directors in accordance with the requirements of the Companies Act, 2013. The present directors would not be able to identify the above directors as these directors had resigned before the present directors were appointed.
- 9.11. Regarding the allegation that Noticee no. 1 had not informed the Stock Exchange (BSE) regarding the demise of the director Mr Hitesh Patel, in the year 2013 was only an oversight and ignorance.
- 9.12. The audit committee was properly constituted at all times. Noticee no. 1's secretarial auditor has also confirmed this in their Secretarial Audit Report included in the Annual Report for the year ended March 31, 2015. In view of the submissions made in the earlier paragraph that the directors were available and properly appointed all the decisions taken in the Audit Committee Meeting were in order.

Consideration of submissions and findings:

10. 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:

Investigation

11C (1)...

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4)

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(6) If any person fails without reasonable cause or refuses-

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or (d) to sign the notes of any examination referred to in sub-section (7), he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

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)
- (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)
- (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 the Equity Listing Agreement:

Clause 30. The Company will promptly notify the Exchange –

- (a) of any change in the Company's directorate by death, resignation, removal or otherwise;
- (b)...

Clause 36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require.

The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

- (1) Change in the general character or nature of business: Without prejudice to the generality of Clause 29 of the Listing Agreement, the Company will promptly notify the Exchange of any material change in the general character or nature of its business where such change is brought about by the Company entering into or proposing to enter into any arrangement for technical, manufacturing, marketing or financial tie-up or by reason of the Company, selling or disposing of or agreeing to sell or dispose of any unit or division or by the Company, enlarging, restricting or closing the operations of any unit or division or proposing to enlarge, restrict or close the operations of any unit or division or otherwise.

....

Clause 41. The company agrees to comply with the following provisions:

(I) Preparation and Submission of Financial Results

a. The financial results filed and published in compliance with this clause shall be prepared on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods.

...

c. The company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of end of each quarter (other than the last quarter), subject to the following:

i In case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the issuer (or in case of public sector undertakings, by any practicing Chartered Accountant) and such limited reviewed results (financial results accompanied by the limited review report) shall be submitted within forty-five days from the end of the quarter.

ii In case the company opts to submit audited financial results, they shall be accompanied by the audit report.

....

h. The company shall ensure that the limited review/audit reports submitted to the stock exchanges on a quarterly/annual basis shall be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India (ICAI) and holds a valid certificate issued by the Peer Review Board of the ICAI.

II) Manner of approval and authentication of the financial results

a. The quarterly financial results submitted under sub-clause (I) shall be approved by the Board of Directors of the company or by a committee thereof, other than the audit committee.

Provided that when the quarterly financial results are approved by the Committee they shall be placed before the Board at its next meeting:

Provided further than while placing the financial results before the Board, the Chief Executive Officer and Chief Financial Officer of the company, by whatever name called, 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.

IV) Other requirements as to financial results

g) All items of income and expenditure arising out of transactions of exceptional nature shall be disclosed.

h) Extraordinary items, if any, shall be disclosed in accordance with Accounting Standard 5 (AS 5 – Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies) issued by ICAI / Company (Accounting Standards) Rules, 2006, whichever is applicable.

Clause 49. Corporate Governance

The company agrees to comply with the following provisions:

.....

II. Audit Committee

(A) Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

(i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.

.....

(B) Meeting of Audit Committee The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

.....

(D) Role of Audit Committee

The role of the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.

4. Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:

- a. Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (2AA) of section 217 of the Companies Act, 1956
- b. Changes, if any, in accounting policies and practices and reasons for the same
- c. Major accounting entries involving estimates based on the exercise of judgment by management
- d. Significant adjustments made in the financial statements arising out of audit findings
- e. Compliance with listing and other legal requirements relating to financial statements
- f. Disclosure of any related party transactions
- g. Qualifications in the draft audit report.

5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval

5A. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter.

6. Reviewing, with the management, performance of statutory and internal auditors, and adequacy of the internal control systems.

7. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.

8. Discussion with internal auditors any significant findings and follow up there on.

9. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.

10. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

11. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors. 1

2. To review the functioning of the Whistle Blower mechanism, in case the same is existing.

12A. Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience & background, etc. of the candidate.

13. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Explanation (i): The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, Related Party Transactions, issued by The Institute of Chartered Accountants of India.

Explanation (ii): If the company has set up an audit committee pursuant to provision of the Companies Act, the said audit committee shall have such additional functions / features as is contained in this clause

Relevant extracts of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Repeal and Savings

103.(1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded. (2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

11. Before discussing the main allegations against the Noticees as contained in the SCN, I observe that the Noticee nos. 6, 8 and 9 have raised two preliminary issue related to delay and non- furnishing of certain documents to them.
12. The Noticee no. 6, 8 and 9 have stated that vide letter dated November 26, 2020 they requested for inspection of the documents including i) data collected during the period of the investigation relevant to them ii) copy of the investigation report and iii) copy of the Attendance Register and have also sought cross-examination of the present management of the Company so that it can be ascertained that they had not attended any of the Audit Committee Meeting. According to the Noticees, during inspection of the documents, they were only given access of two Excel sheets claiming to be Attendance Record of the Board Meetings and Audit Committee Meetings as provided by the Company vide email dated July 25, 2019 to SEBI. Based on this, the Noticees have contended that natural justice has not been followed in the present proceeding.

13. With respect documents and cross examination sought by these Noticees, I observe as follows:

- a. Relevant extracts of the findings of investigation has been provided to the Noticees as part of the SCN and all materials based on which the allegations have been levelled against these Noticees have been provided as Annexure to the SCN. The additional documents sought by the Noticees do not form part of the record of the present proceedings.
- b. Noticee nos.6, 8 and 9 have availed an opportunity of inspection of documents through their AR on December 15, 2020 and filed a detailed reply to the SCN subsequently.
- c. As copies of all the documents relied upon by SEBI in the SCN has been already provided to Noticee nos. 6, 8 and 9, I find that no prejudice has been caused to these Noticees in defending their interest and contesting the allegation made against them in the SCNs.
- d. Although there is reference to statements of certain entities recorded during investigation, these statements are not being relied upon in the present order to arrive at the findings related to the allegations against Noticee nos. 6, 8 and 9. Thus, the request for cross examination by these Noticees is not tenable.
- e. Noticees have cited the cases of *Canara Bank and Ors vs Shri Debasis Das and Ors*, decided by the Hon'ble Supreme Court of India on March 12, 2003 and *S. L. Kapoor Vs Jagmohan & Ors* (1981 AIR 136). On a perusal of these decisions of the Hon'ble Supreme Court, I note that in the said decisions, the Hon'ble Supreme Court has held that it is essential that a party should be put on notice of the case before any adverse order is passed against him and that the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. On a perusal of the SCN, I find that the charges against Noticee nos. 6, 8 and 9 and proposed action is clear from the SCN and all the materials available on record based on which the charges have been levelled have been provided to them. Thus, I find that the principles laid down in the

abovementioned decisions have been adhered to in the present proceedings.

- f. Further, regarding furnishing the documents to the Noticees, reference may be made to the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") in Shruti Vora Vs. SEBI (Appeal No. 28 of 2020 decided on February 12, 2020), wherein it was observed as under:

"In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence."

- g. The aforesaid observations made in Shruti Vora's case has been reiterated with confirmation by Hon'ble SAT in its order dated July 17, 2020 passed in Anant R Sathe Vs. SEBI wherein it was observed as under:

".....8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence....."

In the present case also, I find that the Noticee nos. 6, 8 and 9 has been provided with all the relevant documents as mentioned in para 4 above, relied upon in the SCN which are sufficient for them to file an efficacious reply in the matter. Therefore, the contention of the Noticee no. 6, 8 and 9 in this regard is untenable.

14. I note that due to fluctuations in the price of the scrip of SSWL, a preliminary examination was conducted by SEBI into the trading activities in the scrip of SSWL for identifying price manipulation, if any and it was observed *inter alia* that there was possibility of misstatements in the financials of the company. On March 11, 2019, SEBI started to investigate the aspect of misstatements in the financials of SSWL and thus, further investigation was undertaken in the matter. During the investigation summons were issued to 14 entities and certain entities did not cooperate with the investigation and did not reply to summons. On

completion of investigation SCN was issued on October 27, 2020. In view of the same, I find that there is no delay in initiating action in the present matter.

15. Coming to the merits of the matter, the main allegations mentioned in the SCN are discussed below:

Allegation relating to overstatement of purchases to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14 as well as sales to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14 in the profit and loss statements by SSWL.

16. I note that the SCN alleges that SSWL had overstated its purchase figures in its financial statements to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14 as well as sales figures to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14 by SSWL which according to the company was owing to the sale/ purchase transaction undertaken by it in commodity futures. The said allegation in the SCN is based on the reply of the stock broker of SSWL, the reply of the stock exchanges on which SSWL traded, reply by SSWL and the statements of the entities who were shown as directors of SSWL during the said period. The SCN alleges that the company has failed to provide justification for variance in the submissions of the broker and stock exchanges with the sales and purchases figures reported by it in its financial statements for the period FY 2012-14. The SCN also alleges that the company has shown the purchase and sale of the commodity positions in its account for FY 2012-14 as if the position was closed every day and reopened next day. However, the position was not actually closed everyday but instead was held to the next day.
17. In response to the said allegation Noticee no.1 has stated that there seems to be a difference in the accounting methodology which has led to the difference in figures, but it denied that it had overstated the purchase figures and sales figures as alleged. Noticee no. 1 has submitted that it had transacted through the broker- Indo Thai Commodities Private Limited and had received bills from them for their services and that since the broker and the stock exchange have confirmed that there have been transactions that have been done on its behalf, the allegation

that the bills are not genuine is baseless. Noticee no.1 has explained its methodology as follows: For example, if the company had purchased 70 lots of FUT Copper on 14.09.2012 for a value of Rs.3.23 crores (including brokerage), a Mark to Market Margin bill for the reduction / decrease in the value of the contract was received from the broker in the evening. On receipt of such a bill from the broker, the accountant assumed that this amounted to a sale and recorded the same as Rs.3.20 crores sale on the same day. This position was carried forward as a purchase the next day and again based the Mark to Market Margin bill for the reduction / decrease in the value of the contract received from the Broker, the value of the sale was registered as Rs.3.196 crores. This procedure continued for all the lots purchased until the settlement of the open positions in the market. This led to the turnover being shown as Rs.159 crores for FY 2012-13 and Rs.1791 crores for FY 2013-14 and in variance with the figures provided by the Broker and the Stock Exchange. Noticee no. 1 has submitted that the actual profit / loss incurred has been captured and there is no inflation of the profit or loss incurred and it is the correct figure. Noticee no. 1 has denied that it had manipulated the results to mislead the public about the financial health of the company as the company still continued to give the correct losses incurred and did not have any Profit Before Taxes / Profit After Taxes.

18. With respect to this allegation, I observe as follows:

- a. I note that the quarterly revenue and expenditure of SSWL from FY 2010-11 to FY 2015-16, as reported by it to the stock exchanges, under the erstwhile Listing Agreement/ SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) was as under:

	Net Sales (in Rs. Crores)	Expenditure (in Rs. Crores)
Jun-10	(0.03)	0.08
Sep-10	-	(0.01)
Dec-10	-	0.01
Mar-11	(0.03)	0.08
Jun-11	8.70	8.67
Sep-11	-	0.01

Dec-11	-	0.01
Mar-12	-	-
Jun-12	-	0.00
Sep-12	23.20	23.36
Dec-12	64.28	64.21
Mar-13	71.64	71.60
Jun-13	110.21	110.41
Sep-13	679.65	789.19
Dec-13	151.90	151.31
Mar-14	849.26	849.68
Jun-14	-	0.00
Sep-14	-	0.01
Dec-14	-	0.00
Mar-15	-	0.05
Jun-15	-	0.04
Sep-15	-	0.00
Dec-15	0.36	0.01
Mar-16	0.33	0.34

As can be noted from the aforesaid table, there was a spurt in the sales and expenditure of SSWL during FY 2012-13 and 2013-14. The revenue of the company rose from almost nil in 2011-12 to Rs. 159 Crores in FY 2012-13 and Rs. 1791 Crores in FY 2013-14 and the company in its reply to the Investigating Authority has stated that the only source of revenue during this period was dealing in commodity futures in Copper and accordingly attributed this spurt in its revenue from September 2012 to March 2014 to the commodity market transactions undertaken by the company on the commodity derivative exchanges through the broker Indo Thai Commodities during the said period.

- b. I note that Indo Thai Commodities, who was the sole broker of the company has submitted the details of the transactions of the company in commodity derivative undertaken by the company through it, which is as under:

Period	Purchases			Sales		
	As per company	As per Broker	Difference	As per company	As per Broker	Difference
Jun-12	-	-	-	-	-	-
Sep-12	23.31	3.23	20.08	23.20	3.12	20.08

Dec-12	64.21	8.25	55.96	64.28	4.19	60.09
Mar-13	71.61	1.83	69.78	71.59	5.96	65.63
FY12-13			145.82			145.80
Jun-13	110.38	75.34	35.04	110.21	80.08	30.13
Sep-13	789.14	279.21	509.93	679.65	278.03	401.62
Dec-13	151.30	56.62	94.68	151.90	61.23	90.67
Mar-14	849.61	72.65	776.96	849.26	64.56	784.70
FY13-14			1,416.6			1,307.1

- c. The details of trading of SSWL as submitted by the stock exchanges (ICEX, NCDEX & MCX) on whose platform the commodity derivatives transactions of SSWL were carried out through the broker Indo Thai Commodities, are as under:

Period	Purchases			Sales		
	As per company	As per SEs	Difference	As per company	As per SEs	Difference
Jun-12	-	-	-	-	-	-
Sep-12	23.31	3.23	20.08	23.20	3.12	20.08
Dec-12	64.21	8.25	55.96	64.28	4.19	60.09
Mar-13	71.61	1.83	69.78	71.59	5.96	65.63
FY12-13			145.81			145.81
Jun-13	110.38	75.35	35.03	110.21	80.08	30.13
Sep-13	789.14	279.21	509.93	679.65	275.39	404.26
Dec-13	151.30	56.02	95.28	151.90	60.87	91.03
Mar-14	849.61	72.64	776.97	849.26	64.56	784.70
FY13-14			1,417.2			1,310.1

Thus, I note that the details of transactions of SSWL provided by the commodity derivative exchanges were in line with that provided by the stock broker as given in para 18 b. above.

- d. I note that the company has attributed the spurt in its sales / expenses during FY 2012-14, as detailed in para 18.a., solely to the derivatives transactions undertaken by it through its sole broker Indo Thai Commodities Pvt. Ltd. on the platform of ICEX, NCDEX and MCX and the fact that details of such trading as

provided by the broker / exchanges has not been disputed by the company. However, I observe that revenue as shown by SSWL as a listed company is at variance with its purchases and sales in commodity trading conducted through its sole broker and also furnished by the commodity derivatives exchanges on which SSWL traded. Therefore, the transaction figures as submitted by the stockbroker as given in para 18 b. above which matched with data given by the commodity derivative exchanges, given in para 18 c. above are to be taken as authentic since based on such transactions, pay-in and pay-out obligations are determined and settled in stock exchanges and clearing corporations, margins are collected, contract notes are issued showing brokerage charges, and those transactions are also part of the overall turnover of the exchanges which are disseminated daily to the public through their websites. Thus, I find that SSWL has failed to provide satisfactory explanation as to why the sales and purchase figures reported by it in its financial statements pertaining to the period FY 2012-14 as shown at para 18.a. was at variance with that reported by the exchanges as shown at para 18 c. as well as the stock broker of the company as shown at para 18.b .

- e. I also note that, as stated by the company in its reply as well as corroborated by Mr. Anil Mistry (Executive Director of SSWL and Noticee no. 5) in his statement, the company has accounted for the purchase and sale of the commodity positions as if the position was closed every day and reopened the next day whereas the position was not actually closed everyday but instead was held to the next day without transacting. With regard to the same, I agree with the observation in the SCN that as per the standard mechanism of futures trading, when the client takes a long or short futures position in any particular contract, then that particular contract remains with the client until the client either chooses to close it by delivery or by taking reverse position and the futures position in the contract comes to an end only if the client closes the contract or it is automatically closed on the last date of expiry. I find that the SSWL entered into certain futures contracts and accounted for it as being closed on daily basis and taking a new futures position on daily basis without actually doing so and the company actually transacted only once but the accounting for the said transaction was recorded on every day till closing of the position. Thus, the figures stated in para 18 a.

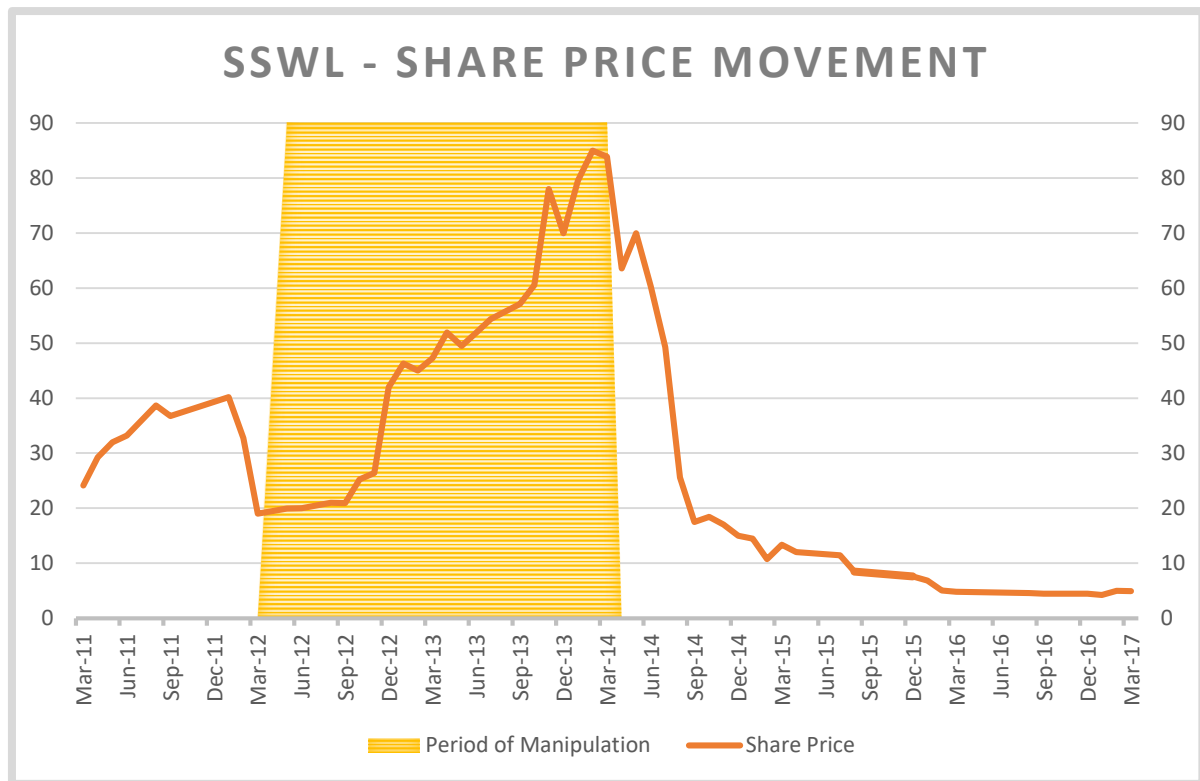
above is in variance and is hugely inflated as compared to the actual trading figures of the company as given in para 18 b. and 18 c .

- f. In view of this, I agree with the allegation in the SCN that SSWL overstated figures related to purchases to the extent of Rs. 145.82 cr. in FY 2012-13 and Rs. 1416.6 cr. in FY 2013-14 in its financials. Similarly, SSWL overstated figures related to Sales to the extent of Rs. 145.80 cr. in FY 2012-13 and Rs. 1307.1 cr. in FY 2013-14 in its financials which amounted to misstatements in the financials of the company. I further note that, such inflated purchase and sale figures were also included in the financial results of SSWL pertaining to the said period and thus, I find that SSWL has manipulated its financial results for the FY 2012-13 and 2013-14.
19. Coming to the impact of the publication of such manipulated financial figures by SSWL on the price of the scrip of SSWL, I find as follows:
- a. I find that the monthly average price of the scrip of SSWL on BSE during the period March 2011 to March 2015 was as follows:

Month	Share Price
Mar-11	24.15
Apr-11	29.25
May-11	31.95
Jun-11	33.2
Aug-11	38.65
Sep-11	36.75
Jan-12	40.2
Feb-12	32.75
Mar-12	19
May-12	19.95
Jun-12	20
Aug-12	21
Sep-12	20.9
Oct-12	25.25
Nov-12	26.4
Dec-12	42
Jan-13	46.3
Feb-13	45
Mar-13	47.3
Apr-13	51.95

May-13	49.5
Jun-13	51.9
Jul-13	54.4
Sep-13	57.1
Oct-13	60.55
Nov-13	78
Dec-13	70
Jan-14	79.5
Feb-14	85
Mar-14	83.9
Apr-14	63.6
May-14	70
Jun-14	60.25
Jul-14	49.25
Aug-14	25.55
Sep-14	17.5
Oct-14	18.45
Nov-14	17.05
Dec-14	15
Jan-15	14.45
Feb-15	10.75
Mar-15	13.33
Jun-21	2.21

- b. The graphical representation of the price movement of the scrip of SSWL during the period under FY 2011-15 is as follows:



- c. I note that between March 2011 and November 2012 the average monthly price of the SSWL shares was hovering around Rs. 20 to Rs. 38.65 (with exception of January 2012 when it reached Rs. 40.20 and March- May 2021 when it had reached around Rs. 19). However, from December 2012 onwards, around the same time that SSWL started reporting its inflated purchase and sales figures, the price of the SSWL scrip on BSE jumped to 42 and from then onwards the price kept on increasing, reaching around Rs. 85 in February 2014 and thereafter the price started declining, again falling to Rs. 25.55 in August 2014. It is noted that SSWL published its financial statements which contained manipulated sales and purchase figures till March 2014.
- d. From the discussion at para 19 a. to c. above, it is shown that the publication of the manipulated financial statements by SSWL had an impact on the market which showed an increase in the price and volume of the scrip of SSWL during December 2012 to February 2014.

20. With respect to the discussions in the previous paragraphs, it will be appropriate to refer to the observation by the Hon'ble Supreme Court of India in the matter of *N. Narayanan Vs. Adjudicating officer, SEBI* (2013) 12 SCC 152:

“38. The Companies Act casts an obligation on the company registered under the Companies Act to keep the Books of accounts to achieve transparency. Previously, it was thought that the production of the annual accounts and its preparation is that of the Accounting Professional engaged by the company where two groups who were vitally interested were the shareholders and the creditors. But the scenario has drastically changed, especially with regard to the company whose securities are traded in public market. Disclosure of information about the company is, therefore, crucial for the accurate pricing of the company's securities and for market integrity. Records maintained by the company should show and explain the company's transactions, it should disclose with reasonable accuracy the financial position, at any time, and to enable the Directors to ensure that the balance-sheet and profit and loss accounts will comply with the statutory expectations that accounts give a true and fair view. Companies (Amendment) Act, 2000 has added clause (a)(iii) under which SEBI has also been given the power of inspection of listed companies or companies intending to get listed through such officers, as may be authorized by it.”

21. From the discussions above, I find that SSWL has knowingly overstated its purchases to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14 as well as sales to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14 and published such inflated purchase and sales figures in its financial statements which were untrue and misled the public and lured them into investing in the shares of the company or to remain invested in the shares of the company. I further find that SSWL has published false and misleading corporate announcements about the untrue financial statements as mentioned above and made continuous disclosures of such manipulated financials in disclosures to stock exchanges and in the Annual Reports, and has perpetrated fraud on investors and the securities market and thus violated Section 12A(c) of SEBI Act, 1992 and Regulations 3(d), 4(2)(f), 4(2)(r) of PFUTP Regulation, 2003.
22. I further note that Clause 41(l) a. of the erstwhile Equity Listing Agreement stipulated that the financial results of the listed companies shall be prepared based on accrual accounting policy and in accordance with uniform accounting

practices adopted for all the periods. I find that since, SSWL has accounted for purchases and sales which did not actually occur which resulted in SSWL publishing inflated purchase and sales figures in its financial statements for the financial year 2012-13 and 2013-14 and has failed to provide any explanation as to what accounting standard or methodology it followed in doing so and SSWL failed to follow accrual accounting method and thus, is in violation of Clause 41(I) a. of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956. Further Clause 41 (IV) of the erstwhile Equity Listing Agreement also stated that all items of income and expenditure arising out of transactions of exceptional nature shall be disclosed and extraordinary items, if any, shall be disclosed in accordance with Accounting Standard 5 issued by ICAI / Company (Accounting Standards) Rules, 2006, whichever is applicable. I find that SSWL had failed to disclose that it had entered into certain futures contracts and accounted for it as being closed on daily basis recording a new futures position on daily basis without actually doing so and the company actually transacted only once but the accounting for the said transaction was recorded on every day till closing of the position. Thus, the company is also in violation of Clause 41(I) of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956.

Allegation relating to quarterly financial statements submitted by SSWL to the stock exchange for the period under consideration not being audited nor limited reviewed

23. I note that the SCN alleges that the quarterly financial statements submitted by SSWL to the stock exchange for FY 2012-13 and FY 2013-14 were neither audited nor limited reviewed and were not accompanied with audit/ review report. I note that the company has not denied the same and has stated that this was due to ignorance. It is observed that the requirement of Clause 41(I)(C) of the erstwhile Equity Listing Agreement is that the company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of end of each quarter (other than the last quarter) and in case the company opts to submit unaudited financial results, they shall be subjected to limited review by the statutory auditors of the issuer (or in case of public sector undertakings, by any practicing Chartered Accountant) and such limited reviewed results (financial results accompanied by the limited review

report) shall be submitted within forty-five days from the end of the quarter. The quarterly financial statements of SSWL pertaining to the period under consideration were not audited therefore, it shows the company had opted to file unaudited results and in terms of Clause 41 (I)(C) of the erstwhile Equity Listing Agreement such results should have been subject to limited review by the statutory auditors. However, the quarterly results for the company for all the quarters from quarter ending on April 2012 to quarter ending on March were not subject to limited review. Therefore, I find that SSWL is in violation of Clause 41(I)(C) of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956 to that extent.

Allegation relating to failure to inform stock exchange regarding death of director

24. The SCN states that while the company has indicated in its annual report dated August 31, 2013 that Mr. Hitesh Patel resigned with effect from May 10, 2013, upon checking corporate announcements made by SSWL on BSE during the period May 1, 2013 to August 31, 2013, it is observed that no announcement of resignation was made. Hence, the SCN alleges that the disassociation of Mr. Hitesh Patel from the directorship of SSWL was for the first time informed to the shareholders by way of disclosure in Annual Report of SSWL dated August 31, 2013. The SCN states that the death records of Ahmedabad Municipal Corporation confirm the death of Mr. Hitesh Patel on May 22, 2013 with record number 2013-DW-0008-0000196. In the said record with registration number 2013-DW-0008-0000196, the name, father's Name and surname of Mr. Hitesh Patel is matching with that furnished by SSWL. Therefore, SCN alleges that SSWL did not promptly notify the stock exchange of the change in its directorate due to resignation of Mr. Hitesh Patel.
25. I note that SSWL in its reply has not denied this allegation and stated that this was due to ignorance. I also note that as per Clause 30(a) of the erstwhile Equity Listing Agreement, a company was required to promptly notify the stock exchange(s) about change in its directorate. I note that the end of directorship of Mr. Hitesh Patel was informed to the shareholders of SSWL by way of disclosure in Annual Report of SSWL dated August 31, 2013 for the first time whereas he

resigned on May 10, 2013. Thus, I observe that SSWL made a delayed disclosure in the Annual Report dated August 31, 2013 regarding the change in its directorate which occurred in May, 2013. Hence, I find that SSWL failed to promptly notify the stock exchange(s) about change in its directorate due to resignation of its director Mr. Hitesh Patel in May 2013 and failed to comply with Clause 30(a) of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956 to that extent.

Allegation related to failure to notify stock exchanges about the change in the general character or nature of business

26. The SCN alleges that SSWL failed to promptly notify the stock exchange(s) about the material price sensitive information regarding change in the general character or nature of business when it started and stopped trading in commodities as the only business activity. The Noticee no.1 has denied that it had changed the general character or nature of business as alleged and stated that it had been an investment company investing in shares and units of mutual funds as evidenced by its Annual Reports (Schedule 8 and 11) for the year ended March 31, 2013 and March 31, 2014 and the only additional activity was that it also began investing in commodities for a period of two years. The company has submitted that since there was no change in the general character or nature of business, it was not required to inform under Clause 36 of the erstwhile Equity Listing Agreement.
27. In this regard, from the Memorandum of Association of the company I find that the "other objects" of the company includes: *"to carry on the business of investment company and to invest in and acquire and hold shares, stocks, debentures, debentures stocks, bonds, obligations and securities issued or guaranteed by any company or firm, person, government, local authority or institution whether in India or elsewhere and also carry on the business for to buy and invest in National Saving Certificate, Unit Trust of India, Public Provident Fund and other government schemes existing from time to time."* I find that the company had almost no revenue for the financial years 2010 to 2012 and its revenue sharply increased from 2012 onwards, admittedly because the company

commenced trading in commodities. I find that although this sharp rise was abnormal, however, the same cannot be attributed to a change in the nature of business, since the company was already investing in shares and mutual funds, etc., as evidenced by its Annual Reports for the years previous to 2012. I find that shares, mutual funds as well as commodity derivatives are included in the definition of 'securities' under the SCRA, 1956 and therefore, only investing in commodity derivatives does not amount to a change in the nature of the business of SSWL. In view of this, it cannot be said that SSWL is in violation of Clause 36 of the erstwhile Equity Listing Agreement.

Allegation relating to publishing names of persons as directors who were not associated with the company and resultant effect on constitution of Audit Committee

28. The SCN alleges that SSWL falsely published names of certain people who were not associated with the company, claiming that those persons were directors in the company. Resultantly the SCN alleges that the audit committee had fewer than 3 members (after discounting for fictitious directors who have proven their disassociation with the company) in the audit committee meetings dated May 30, 2013, August 8, 2013, May 26, 2014, August 4, 2014, November 14, 2014 and February 11, 2015. I note that this allegation is with relation to certain individuals whose names were published as directors in the Annual Report of SSWL for the FY 2012-15, namely:

- i) Mr. Deep Rajendra Soni (shown as director from May 06, 2013 to August 30, 2013)
- ii) Mr. Naresh Popatlal Shinde (shown as director from July 7, 2014 to March 13, 2015)
- iii) Mr. Mr Dilip Chavan (shown as director from May 13, 2014 to March 13, 2015)
- iv) Mr Sachin Sunil Manchekar (shown as director from May 13, 2014 to February 4, 2015)
- v) Mr Prashant Vijay Pawar (shown as director from February 4, 2015 to November 18, 2016)

29. In this regard, Clause 49 (II) of the erstwhile Equity Listing Agreement *inter alia* states as follows:

Clause 49. Corporate Governance

The company agrees to comply with the following provisions:

.....

II. Audit Committee

(A) Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

(i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.

.....

(B) Meeting of Audit Committee The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

30. I note that the company has produced the following documents in support of the claim that these five persons were legitimately appointed as directors of SSWL
- i) Copies of Form -32 filed by it with the RoC disclosing the appointment of the abovementioned 5 people as the directors of SSWL on the various dates
 - ii) Copy of Form DIR- 2 signed by Mr. Prashant Vijay Pawar
 - iii) Copies of Consent letters from Mr. Deep Rajendra Soni and Mr. Dilip Chavan giving their consent to be appointed as directors of SSWL
 - iv) Copy of the resignation letter of Mr. Prashant Manchekar.

I note that the statutory filings made by the company with the RoC regarding these directors as referred to above have to be taken to be correct in the facts and circumstances of the case.

31. It is noted that there is discrepancy in the data related to attendance during Audit Committee meetings between that disclosed by the company in its Annual Reports pertaining to FY 2013-15 and that submitted by the company to SEBI during the course of investigation vide email dated July 25, 2019. I find that in such a case, it would be prudent to follow the publicly available information in the Annual Report. I note that the company has stated in its Annual Report pertaining to FY 2013-14 that during the year the Audit Committee met 4 times on May 30,

2013, August 08, 2013, November 11, 2013 and February 14, 2014 and the following directors attended the said meeting:

Name of director	Type of director	Number of Audit Committee meetings held during tenure	Number of Audit Committee meetings attended during tenure
Soni Deep	Non-Executive & Independent Director	4	2
Jimish Soni	Non-Executive & Independent Director	4	3
Viral Kapadia	Non-Executive & Independent Director	4	3
Binit Joshi	Additional Director	4	-
Umeshbhai Purohit	Additional Director	4	-
Ramanlal Trivedi	Executive & Non-Independent Director	4	4
Dilip Chavan	Additional Director (Non-Executive)	4	-
Sachin Manchekar	Additional Director (Non-Executive)	4	-
Naresh Shinde	Additional Director	4	-

32. Similarly, I note that the company has stated in its Annual Report pertaining to FY 2014-15 that during the year the Audit Committee met 4 times on May 26, 2014, August 04, 2014, November 14, 2014 and February 11, 2015 and the following directors attended the said meeting:

Name of director	Type of director	Number of Audit Committee meetings held during tenure	Number of Audit Committee meetings attended during tenure
Ramanlal Trivedi	Executive & Non-Independent Director	4	4
Sachin Manchekar	Additional Director (Non-Executive)	4	3

Naresh Shinde	Additional Director	4	3
Sujata Dhan Kumar Kharga	Non-Executive & Independent Director	4	1
Prashant Vijay Pawar	Non-Executive & Independent Director	4	1

33. In view of the finding at para 30 above and the attendance in the Audit Committee meetings of SSWL as disclosed in the Annual Reports pertaining to FY 2013-15 stated above, the allegation against SSWL that the Audit Committee of SSWL during FY 2012-15 was not properly constituted, is not established.

Allegations against directors of SSWL

34. With respect to the liability of the directors of SSWL for the defaults of SSWL, I note that Noticee no. 2 has replied to the SCN on the same lines as the company. Noticee nos. 6, 8 and 9 have denied that they were part of the Audit Committee or had ever given their consent to being part of any such committee and have denied that they were present in any of the Audit Committee meetings of SSWL during FY 2012-14 and stated that that they were not involved in the day to day affairs of the company. These three Noticees have also stated that since the company as well as SEBI failed to produce Attendance Register which shows that whether they were present or not in the Audit Committee meetings, therefore there is no evidence to show that they were part of the Audit Committee of SSWL and no reliance can be placed on the data and documents provided by the company as in the SCN it is specifically mentioned that the Company had provided false and misleading data to SEBI during the course of investigation.
35. This argument of Noticee nos. 6,8 and 9 cannot be accepted because of the following reasons:
- The names of Noticee nos. 6, 8 and 9 are appearing as member of the Audit Committee of SSWL in the Annual Reports of the company pertaining to the period when the company was fraudulently disclosing inflated purchase and sales figures in its quarterly results, Annual

Reports and financial statements. Neither during investigation nor in their replies to the SCN have they denied being directors of SSWL during the same period. Therefore, being directors of a company, it is not acceptable that they were unaware that in the Annual Reports of the company they were being declared as members of the Audit Committee. It may be noted that as per Section 215 (3) of the Companies Act, 1956 as well as Section 134(1) of Companies Act, 2013 the annual accounts of a company along with Auditor's Report and Board Report are approved by the Board of Directors of the company and the Annual Report of the company is placed in the Annual General Meeting of the company and is a public document.

- ii) For arguments sake even if it is accepted that these Noticees were unaware that their names are appearing as members of Audit Committee of SSWL, when the Noticee nos. 6, 8 and 9 became aware that they had been declared as such, during the SEBI investigation, none of them took any action to rectify such a purportedly wrong public information thereafter, either by writing to the company or approaching any law enforcement agency, especially when the signature of Noticee no.6 appears in the Annual Report of SSWL for FY 2012-13 .

Based on the above, I am unable to accept the submission of Noticee no.6, 8 and 9 that they were not members of the Audit Committee of SSWL and I find the said submission to be an afterthought and that their request related to production of the Attendance Register for Audit Committee meetings of SSWL pertaining to period under consideration, is untenable.

36. I note that during the FY 2012-15, the list of directors of the company, as disclosed by SSWL to SEBI, is as under:

S. No.	Name of the Director	Designation	Appointment Date	Cessation Date
1	Hiteshbhai Manharbhai Patel	Executive & Non-Independent Director	30.08.2010	10.05.2013
2	Jimish Jitendrabhai Soni	Non-Executive & Independent Director	29.12.2011	01.01.2014
3	Manishkumar Kacharalal Patel	Non-Executive & Independent Director	29.12.2011	10.05.2013
4	Viral Gunvantbhai Kapadia	Non-Executive & Independent Director	06.05.2013	07.01.2014

5	Deep Rajendrakumar Soni	Non-Executive & Independent Director	06.05.2013	30.08.2013
6	Ramanlal Nagjibhai Trivedi	Executive & Non-Independent Director	30.08.2013	-
7	Binit Joshi	Additional Director	01.01.2014	13.05.2014
8	Umeshbhai Purohit	Additional Director	01.01.2014	17.02.2014
9	Anil Mistry	Additional Director	17.02.2014	07.07.2014
10	Dilip Chavan	Additional Director (Non-Executive)	13.05.2014	13.03.2015
11	Sachin Sunil Manchekar	Additional Director (Non-Executive)	13.05.2014	04.02.2015
12	Naresh Popotrao Shinde	Additional Director	07.07.2014	13.03.2015
13	Sujata Dhan Kumar Kharga	Non-Executive & Independent Director	04.02.2015	18.11.2016
14	Prashant Vijay Pawar	Non-Executive & Independent Director	04.02.2015	18.11.2016

I note from the findings of investigation that Noticee nos. 2 being Executive Director of SSWL during the period under consideration was in charge of the affairs of the company and responsible for the day to day functioning of the company. The findings of investigation also note that Noticee no. 2 was operating the email of the company and that he had certified the Annual Reports of the company including for FY 2012- 13 and 2013-14, i.e. the period when spurt in purchase and sales figures were observed. I further note that Noticee no. 5 was also the Executive Director of SSWL from February 17, 2014 to July 07, 2014, being a member of the Board of Directors SSWL which approved the financials of the company during FY 2012-14, coupled with being responsible for the day to day affairs of the company. I also note that during the course of investigations, Noticee no. 5 has acknowledged that SSWL was accounting for its futures contracts as being closed on daily basis and taking a new futures position on daily basis without actually doing so and thus it can be concluded that he was aware of the fraudulent accounting practices of SSWL during the period when he was the Executive Director of the company. I further note that Noticee no. 3 was also an Executive Director of the company from January 01, 2014 to May 13, 2014, being responsible for the day to day affairs of the company and he had also attended a Board meeting of SSWL during the said period, as mentioned in the Annual Report of SSWL pertaining to the FY 2013-14. I note that during the investigation Noticee no.4 has denied being a director of SSWL but the findings of investigation has recorded that he has failed to submit any documentary

evidence to substantiate his submissions. I note that Noticee no. 4 was an Executive Director of the company from January 01, 2014 to February 17, 2014, i.e. only for one and half months. However, as mentioned in the Annual Report of SSWL, Noticee no. 4 never attended any Board meeting of SSWL during the period when he was a director of SSWL, and thus based on the material available on record it cannot be concluded that he was in any way associated with the financials of the company which have been found to be manipulated. Further, Noticee nos. 2,3 and 7 have not responded to summon issued by SEBI seeking information from them and directing them to appear before SEBI and thus not cooperated with the SEBI investigation.

37. As discussed in the previous paras, SSWL had *inter alia* fraudulently overstated its purchases to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14 as well as sales to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14 and published such inflated purchase and sales figures in its financial statements and Annual Reports which were untrue and misled the public and lured them into investing in the shares of the company or to remain invested in the shares of the company in violation of Section 12A(c) of SEBI Act, 1992 and Regulations 3(d), 4(2)(f), 4(2)(r) of PFUTP Regulation, 2003. Further, SSWL has published false and misleading corporate announcements about the untrue financial statements as mentioned above. In view of the fact that Noticee nos. 2, 3 and 5 were Executive Directors of SSWL during the period when SSWL indulged in publishing fraudulent purchase and sales figures in its financial statements and various corporate announcements, etc., and thus were responsible for the affairs of SSWL, I find that Noticee nos. Noticee nos. 2, 3 and 5 have also violated Section 12A(c) of SEBI Act, 1992 and Regulations 3(d), 4(2)(f), 4(2)(r) of PFUTP Regulation, 2003.
38. I further note that under Clause 41 (II) (a) of the erstwhile Equity Listing Agreement provided that, while placing the financial results before the Board, the Chief Executive Officer and Chief Financial Officer of the company, by whatever name called, 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. In this regard,

I find that the Annual Report / quarterly results of SSWL which contained fraudulently inflated sales and purchase figures have been signed by various directors of SSWL as follows:

	Annual Report	Q1 Results	Q2 Results	Q3 Results	Q4 Results
FY 2012-13	Viral Kapadia & Ramanlal Trivedi	Director (not named)	Director (not named)	Director (not named)	Director (not named)
FY 2013-14	Dilip Chavan & Ramanlal Trivedi	Director (not named)	Director (Ramanlal Trivedi)	Director (Ramanlal Trivedi)	Director (Ramanlal Trivedi)
FY 2014-15	Prashant Vijay Pawar & Ramanlal Trivedi	Director (Ramanlal Trivedi)	Director (not named)	Director (Ramanlal Trivedi)	Director (Ramanlal Trivedi)

From the above, I find that Noticee nos. 2 and 6 had certified the financial statements of SSWL which were false and misleading. By falsely certifying 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 Noticee nos. 2 and 6 have violated clause 41(II)(a) of the erstwhile Equity Listing Agreement.

39. Noticee nos. 6, 8 and 9 have stated that since they were Independent Directors of SSWL they were not involved in the day to day functioning of the company. In this regard, I find that these three directors were part of the Audit Committee of the company during the period when SSWL had *inter alia* fraudulently overstated its purchases to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1417 cr. in FY 2013-14 as well as sales to the extent of Rs. 146 cr. in FY 2012-13 and Rs. 1310 cr. in FY 2013-14 and published such inflated purchase and sales figures in its financial statements and Annual Reports which were false and misleading. As per Clause 49(II)(D) of the erstwhile Equity Listing Agreement, the role of the Audit Committee of a listed company included the following:

- i) oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
- ii) Reviewing, with the management, the annual financial statements.
- iii) Reviewing, with the management, the quarterly financial statements before submission to the board for approval.

40. From the Annual Report of SSWL pertaining to FY 2012-13 and FY 2013-14, I note that the following directors of SSWL attended Audit Committee meetings of SSWL during the period FY 2012-14 when SSWL disclosed inflated purchase and sales figures in its financial statements which were untrue and misleading.

FY 2012-13

Name of director	Type of director	Number of Audit Committee meetings held during tenure	Number of Audit Committee meetings attended during tenure
Hiteshbhai Patel (deceased)	Executive & Non-Independent Director	4	2
Jimish Soni (Noticee no. 8)	Non-Executive & Independent Director	4	4
Manishkumar Kacharalal Patel (Noticee no. 9)	Non-Executive & Independent Director	4	4
Viral Kapadia (Noticee no. 6)	Non-Executive & Independent Director	4	-
Deep Soni	Non-Executive & Independent Director	4	-
Ramanlal Trivedi (Noticee no. 2)	Executive & Non-Independent Director	4	-

FY 2013-14

Name of director	Type of director	Number of Audit Committee meetings held during tenure	Number of Audit Committee meetings attended during tenure

Soni Deep	Non-Executive & Independent Director	4	2
Jimish Soni (Noticee no. 8)	Non-Executive & Independent Director	4	3
Viral Kapadia (Noticee no. 6)	Non-Executive & Independent Director	4	3
Binit Joshi (Noticee no. 3)	Additional Director	4	-
Umeshbhai Purohit (Noticee no. 4)	Additional Director	4	-
Ramanlal Trivedi (Noticee no. 2)	Executive & Non-Independent Director	4	4
Dilip Chavan	Additional Director (Non-Executive)	4	-
Sachin Manchekar	Additional Director (Non-Executive)	4	-
Naresh Shinde	Additional Director	4	-

41. I note that during FY 2012-13, Noticee no. 2 did not attend any meeting of the Audit Committee of SSWL, however, during FY 2013-14 Noticee no. 2 attended 4 out of 4 meetings of the Audit Committee held. During FY 2012-13, Noticee no.6 did not attend any meeting of the Audit Committee but during FY 2013-14 he attended 3 out of 4 meetings of the Audit Committee. Noticee no. 8 during FY 2012-13 attended all 4 meetings of the Audit Committee while in FY 2013-14 he attended 3 out of 4 meetings of the Audit Committee. Noticee no. 9 attended all 4 meetings of the Audit Committee held in FY 2012-13 and he was not a member of the Audit Committee for FY 2013-14. It was the duty of the members of the Audit Committee of SSWL to *inter alia* oversee the company's financial reporting process which Noticee nos. 2, 6, 8 and 9, being members of the Audit Committee failed to perform. I find that failure to raise any concern regarding the financials of SSWL in spite of the huge spurt in purchase and sales figures pertaining to FY 2012-14, as member of the Audit Committee as well as the board of directors of SSWL, shows that these directors did not act diligently and thus, failed to comply with the provisions contained in Clause 49(II)(D) of the erstwhile Equity Listing Agreement. I also note that Noticee no.7 was not a member of the Audit Committee of SSWL during FY 2012-14.

42. Finally, it may be noted that the erstwhile Equity Listing Agreement is not in force at present. However, Regulation 103 of the LODR Regulations provides that:

“103. (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

I note that the provisions of the erstwhile Equity Listing Agreement were stipulated and modified by SEBI through circulars from time to time. For example, the relevant Clause 49 of the erstwhile Listing Agreement was amended vide circular dated October 29, 2004 and relevant Clause 41 of the erstwhile Equity Listing Agreement was amended by circular dated July 10, 2007 and thereafter by circulars dated February 03, 2009, and April 05, 2010. Therefore, in view of Regulation 103(2) the present SCN which is in respect of the erstwhile Equity Listing Agreement, is saved as being deemed to have been done or taken under the corresponding provisions of the LODR Regulations.

43. The SCN alleges that the following Noticees have failed to reply to summons issued by SEBI during the investigation in the following manner:

Noticee no.	Name of the Director	Status of appearance	Details of communication from SEBI
2	Ramanlal Nagjibhai Trivedi	Did not appear	Summons dated January 8, 2020 and January 30, 2020 for seeking information and personal appearance were successfully delivered to Mr. Ramanlal Nagjibhai Trivedi. Further, the relevant summons were also sent by various emails to his personal email address ramanlaltrivedi1950@gmail.com as well as to SSWL correspondence email address sunandshineworldwidetd@gmail.com. It is observed that a reply email dated January 9, 2020 was received from the email address sunandshineworldwidetd@gmail.com acknowledging the receipt of summons dated January 8, 2020 with words “received with thanks”. Additionally, Mr. Ramanlal Trivedi replied vide email dated January 31, 2020 from the email address

			sunandshineworldwidetd@gmail.com which implies that all the correspondences (including summons) sent to the said email address were accessible to Mr. Ramanlal Trivedi. Further, Mr. Ramanlal Trivedi, <i>vide</i> email dated February 24, 2020 from his personal email address ramanlaltrivedi1950@gmail.com, had requested for time of 15-20 days for appearing. While the said request was not acceded to, it further implies that all the correspondences (including summons) sent to his personal email address were also accessible to Mr. Ramanlal Trivedi. Thus, considering the successful delivery of various summons to Mr. Ramanlal Trivedi, it is established that Mr. Ramanlal Trivedi willingly failed to avail multiple opportunities offered to him to present his case and has no further submissions to make.
3	Binit Joshi	Did not appear	While the physical summons could not be delivered to Mr. Binit Joshi at the address available in records as well as provided by the banks, scanned copy of the three summons sent to him were successfully delivered to email address 'ums9999@gmail.com' provided by SSWL & banks. While the summons were delivered to the said email address (no bouncing of email was observed), no response disclaiming to be director or being not associated with the company has been received from the said email address. Thus, based on the above email trail, it is alleged that summons were delivered to Mr. Binit Joshi and he failed to comply with the directions in the summons.
7	Sujata Dhan Kumar Kharga	Did not appear	While the physical summons could not be delivered to Ms. Sujata Dhan Kumar Kharga at the address available in records as well as provided by the banks, the scanned copy of the three summons was successfully delivered to email address 'sukharga@gmail.com' which was provided by SSWL (also by banks). Further, the scanned copy of the summons dated February 11, 2020 were also delivered to additional email addresses 'rajeshwarexports@gmail.com' and 'rajeshwarexports@gmail.com' provided by the banks. While the summons were delivered to the said email addresses and no bouncing of email was observed, no response disclaiming to be director or being not associated with the company has been received from the said email addresses. Thus, based on the above email trail it is alleged that summons were delivered to Ms. Sujata Kharga and she failed to comply with the directions in the summons.

44. In this regard in the matter of *Naimish K. Shah Vs. SEBI* (Appeal No. 44 of 2011 decided on July 29, 2011) the Hon'ble Securities Appellate Tribunal has held as follows:

"5.
.....

It needs to be appreciated that the Board, as a market regulator, cannot perform its duties in accordance with law if the market players do not cooperate with it. Non furnishing of information and documents in response to the summons issued by the Board is indeed a serious wrong and cannot be taken lightly. ...”

I note that Noticee nos. 3 and 7 have neither filed any reply nor has attended any hearing opportunity provided to them and these proceedings are *ex parte qua* these Noticees. Noticee no.2 has not provided any reasons as to why he had not complied with the summons issued to him. In view of the above-mentioned observations of the Hon’ble SAT and in view of the failure of Noticee nos. 2, 3 and 7 to comply with the summons issued to them by SEBI, I find that Noticee nos. 2, 3 and 7 have violated Sections 11C(2) read with 11C(3) and 11C(5) of SEBI Act, 1992.

Allegations against statutory Auditor

45. I note that Noticee no. 10, being the statutory auditors of SSWL during investigation period, have also been issued the SCN, alleging that the statutory auditors failed to adhere to applicable accounting/ auditing standards and also failed to perform the most basic audit procedures such as sample selection, independent balance confirmation, document verification, discussion with management/ audit committee etc. and allowed his name to be used to certify the books of accounts of SSWL, thereby becoming party to the fraud and facilitated the management of the company in reporting fraudulent financial statements to the shareholders and public. The SCN also alleges that the statutory auditors of SSWL were not diligent while certifying the financial results of SSWL and are thereby party to the fraud thereby, violating Section 12A(a),(b),(c) of SEBI Act, 1992 and Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 as well as Clauses 41 and 41(I)(C) of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956. In this regard, before dealing with the liability of the statutory auditors, it would be appropriate to refer to the judgment of Hon’ble Bombay High Court in Writ Petition No. 5249 of 2010 (filed by Price Waterhouse, Bangalore) and Writ Petition No. 5256 of 2010 (filed by 10 CA firms alongwith their partners), dated

August 13, 2010, wherein Hon'ble Bombay High Court, with respect to SEBI's jurisdiction over auditors has held as follows:

"25.

.... In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market. So far as the role of Auditors is concerned, it is a very important role under the Companies Act. As posited in Section 227 of the Companies Act, every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the Company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the Company such information and explanations as the auditor may think necessary for the performance of his duties. The auditors in the Company are functioning as statutory auditors. They have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company.

.....

With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. Normally, an investor invests his money by considering the financial health of the Company and in order to find out the same, one will naturally bank upon the accounts and balance-sheets of the Company. If it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts, in our view, there is no reason as to why to protect the interests of investors and regulate the securities market, such a person cannot be prevented from dealing with the auditing of such a public listed Company. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market."

From the above-mentioned judgment of Hon'ble Bombay High Court, it is observed that for SEBI to exercise jurisdiction over an auditor, it has to be shown that the case pertains to an auditor who in connivance and in collusion with the officers or directors of a company has concocted false accounts. I note that in the present matter the SCN, as issued to Noticee no. 10, only allege that the statutory auditor was not diligent enough and did not follow basic audit procedure while auditing SSWL for the FY 2012-14 when the company had fraudulently recorded a sharp increase in purchase and sales and made untrue statements to that extent in its financial statements and allowed his name for

certification of such financial statements. The SCN does not allege that the statutory auditor was in connivance with the promoters/ directors / management of SSWL to fudge the financial statements of SSWL. Therefore, in view of the judgment of the Hon'ble Bombay High Court in PWC matter (supra) and allegation made in the SCN against Noticee no. 10, the charge of violation of Section 12A(a),(b),(c) of SEBI Act, 1992 and Regulations 3(c), 3(d), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 are not made out. Further, provisions of Clause 41 and 41(l) a. of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956 cannot be invoked against Noticee no. 10 since he is not a listed entity. I also note that the findings of the investigation has already been forwarded to the National Financial Reporting Authority for taking necessary action against Noticee no.10, as deemed fit.

46. Noticee no. 1 to 10 have also been called upon to explain as to why penalty should not be imposed upon them under Sections 15A(a), 15HA and 15HB of SEBI Act, 1992 and Section 23E and 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), 15HA 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 fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, 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 or three times the amount of profits made out of such practices, whichever is higher.

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.

47. From the analysis of the aforesaid penalty provisions, I find that penalty under Sections 15A(a), 15 HA and 15HB of the SEBI Act, 1992, and 23H of SCRA, 1956 only, is attracted and not the penalties under Sections 23E of SCRA, 1956. I 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 SSWL is in violation of listing conditions, however, SSWL was not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA. In my view a penalty under Section 23H of SCRA, 1956 is attracted in the case of Noticee no. 1 for violation of clauses of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956, 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 recognized

stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided and no separate penalty has been provided for cases where provisions of the Equity Listing Agreement read with Section 21 of SCRA, 1956 is violated by the listed entity, as in the present case. I note that in the SCN Section 23H has not been invoked against SSWL but only Section 23E has been invoked. In this regard, reference may be made to the decision of the Hon'ble Bombay High Court in *SEBI Vs. Sageeta Jayesh Valia* (Appeal No. 2/2004 and SEBI Appeal No. 17/200 decided on December 05, 2003) wherein it has been held as follows:

“32. It is well settled that if the power to act in the authority exists in a fact situation, such exercise of power is not vitiated by the reference to wrong provision of law. Mention of wrong provision of law shall not render the exercise of power by the authority bad in law if the source of power can be traced in some other provision.”

In view of the said decision of the Hon'ble High Court, I find that the SCN wrongly invoked Section 23E against Noticee no.1 instead of Section 23H and penalty is attracted on SSWL under Section 23H of SCRA, 1956 for violation of provisions of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956.

48. 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 Noticee nos. 1, 2, 3 and 5 have violated Section 12A(a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against these Noticees. I find that for failure to reply to summons, as found above, Noticee nos. 2, 3 and 7 are 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. As discussed in paras above, Noticee nos. 2 and 6 have *inter alia* violated clause 41(II)(a) of the erstwhile Equity Listing Agreement and Noticee nos. 2, 6, 8 and 9, being members of the Audit Committee, failed to comply with the provisions contained in Clause 49(II)(D) of the erstwhile Equity Listing Agreement. For the violation of these provisions of the erstwhile Equity Listing Agreement, Noticee nos. 2, 6, 8 and 9 are 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.

49. I find that, for reasons stated in para 45, no penalty is attracted with respect to Noticee no. 10, the auditor, in the present proceedings. I also find that, for reasons stated in para 36, no penalty is attracted with respect to Noticee no. 4.
50. 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.”

Section 23 J of the SCRA, 1956 is also similarly worded.

51. 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 specific investor 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 two financial years and Noticee nos. 2 was executive director of SSWL during that period, while Noticee nos. 3 and 5 were executive directors of SSWL only in FY 2013-14. I also note that Noticee no. 6, 8 and 9 were the independent directors

who attended Audit Committee meetings of SSWL during the FY2012-14 and Noticee no. 2 and 6 were the Executive Director and Independent Director respectively of SSWL who certified financial statements of SSWL pertaining to FY 2012-15.

Directions:

52. 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 Sections 11(1), 11(4), 11(4A), 11A(b) and 11B(1), 11B(2) and Section 12A(1) and 12A(2) of SCRA, 1956 read with Section 19 and 11(2)(j) of the SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, direct as under:
- (i) Noticee no. 1 is 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 this order;
 - (ii) The Noticee no. 2, 3 and 5, 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;
 - (iii) The Noticee no. 6, 8 and 9, 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;

- (iv) The Noticee no. 1 to 9, are hereby imposed with, the following penalties as specified hereunder:

Noticee No.	Name of Noticee	Provisions under which penalty imposed	Penalties
1	Sun and Shine Worldwide Limited	Section 15HA of SEBI Act, 1992 and Section 23H of SCRA, 1956	Rs. 20,00,000/- (Rupees Twenty Lakh) and Rs. 10,00,000/- (Rupees Ten Lakh)
2	Ramanlal Nagjibhai Trivedi	Section 15HA, 15HB and 15 A(a) of SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh) and Rs. 2,00,000/- (Rupees Two Lakh) and Rs. 5,00,000/- (Rupees Five Lakh)
3	Binit Joshi	Section 15HA and 15 A(a) of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh) and Rs. 5,00,000/- (Rupees Five Lakh)
5	Anil Mistry	Section 15HA of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh)
6	Viral Gunvantbhai Kapadia	Section 15HB of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh)
7	Sujata Dhan Kumar Kharga	15 A(a) of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh)
8	Jimish Jitendrabhai Soni	Section 15HB of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh)
9	Manishkumar Kacharalal Patel	Section 15HB of SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh)

- (v) 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. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, CFID, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7,

“G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

- (vi) The proceedings against Noticee no. 4 is disposed of for reasons stated in para 36.
- (vii) The proceedings against Noticee no. 10 is disposed of for reasons stated in para 45.
53. During the period of restraint, as directed in para 52 above, the existing holding of securities including the units of mutual funds, of the concerned Noticees, shall remain under freeze.
54. 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.
55. This Order comes into force with immediate effect.

56. 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.

-Sd-

Place: Mumbai

Date: September 14, 2021

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