

WTM/AB/IVD/ID19/14250/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

Noticee No.	Name of Noticees	PAN
1.	M/s. Jai Mata Glass Limited	AAACJ3873F
2.	Mr. Chander Mohan Marwah	AEVPM6898R
3.	Mr. Sajeve Bhushan Deora	ABBPD0803C
4.	Mr. Samir Katyal	ADDPK0100D
5.	Mr. Ambarish Chatterjee	AAAPC3232E
6.	Ms. Anu Marwah	AEPPM3218P
7.	Mr. Sanjay Kumar Sareen	AAPPS0724E
8.	Mr. Lalit Anand	AAAPA1053B

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

In the *matter of* Jai Mata Glass Limited.

1. The present order deals with show cause notice bearing no. SEBI/HO/IVD/ID19/OW/P/2020/0000013708 dated August 24, 2020 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to Noticee no. 1 to 8. The SCN calls upon Noticee no. 1 to 8 to show cause as to why suitable directions should not be

issued and/or penalty not be imposed, as deemed fit under Sections 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Sections 15A(a), 15HA and 15HB of SEBI Act, 1992 and Sections 12A(1), 12A(2), 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”), against them for violations of Sections 12A(a), (b) & (c), 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992, Regulations 3(b), (c) & (d), 4(1), 4(2) (f) & (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulation, 2003**”), Regulations 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(e), 4(1)(g), 4(1)(h) & 4(1)(i), 4(2)(f)(ii)(6) & 4(2)(f)(ii)(7), 4(2)(f)(iii)(2), 4(2)(f)(iii)(3), 4(2)(f)(iii)(6) and 4(2)(f)(iii)(12), 16(1)(b)(vi), 33(2)(a) and 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”), and Section 21 of SCRA Act, 1956.

2. The brief facts of the case, the brief findings of the investigation and the allegations levelled against the Noticees, as mentioned in the SCN are as follows:

2.1. SEBI passed an interim order on September 26, 2017 *inter-alia* directing the promoters and the directors (Noticee no. 2 to 8) of Jai Mata Glass Ltd. (hereinafter referred to as “**JMGL**”/ “**the Company**”), to only buy the securities of JMGL and shares held by them in the Company shall not be allowed to be transferred for sale by depositories. Further, vide the said interim order, the stock exchange was directed to appoint an independent forensic auditor to, *inter-alia*, further verify:

2.1.1. Misrepresentation including of financials and/or business of JMGL, if any;

2.1.2. Misuse of the funds/books of accounts of JMGL, if any.

2.2. The forensic audit report (hereinafter referred to as '**FAR**') was submitted to SEBI by the stock exchange and the findings of the FAR from the period April 01, 2015 till January 31, 2018 were examined.

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

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

2.3.1. Sales consideration is lesser vis-a-vis Circle Rate. The company has entered into agreement with Micro Seamless and TDS has been paid on behalf of Micro Turners, which raises doubts on the genuineness of transactions.

2.3.1.1. The Company entered into an agreement for sale of land at Himachal Pradesh as on 21.11.2014 with Micro Seamless and the sale deed was executed on 01.07.2016 for consideration of Rs. 1225 lacs. As per the circle rate the valuation of the property as on March 2014 is Rs. 1459.45 lacs.(approx.). Hence, JMGL has entered into agreement at a lesser rate (difference of Rs. 234.45 lacs approx.).

2.3.1.2. The sale deed was executed on 01.07.2016 when the value of the property as per circle rate was Rs.2200.27 lacs whereas consideration amount is Rs 1225.00 lacs i.e. sales consideration is lesser by Rs.897.40 lacs vis-a-vis Circle Rate.

2.3.1.3. Considering the fact that, for registration purposes circle rates have been used and for the consideration was lesser by Rs.897.40 lacs vis-a-vis Circle Rate; and the general rule that the circle rates are always less than / equal to the market rate directs that the Company has misutilised the funds of the shareholders.

2.3.1.4. TDS @1% of sale considerations has been deducted by the buyer of the property viz. M/s Micro Seamless. It has been observed from Form 26 AS appearing on site of Income Tax Department that name

of the deductor is appearing as Micro Turners whereas the buyer of the property is Micro Seamless. On verification of PAN, it is observed that Micro Seamless and Micro Turners are separate entities with different PAN. The Company has entered into agreement with Micro Seamless and TDS has been paid on behalf of Micro Turners, which raises doubts on the genuineness of transactions.

2.3.1.5. The forensic auditor also submitted that the stamp duty has been paid on Rs.2200.07 lacs whereas for the purpose of Income Tax return sales consideration of the property has been taken as Rs 1225.00 lacs (i.e. sales consideration value). Thus the directors of the Company should have been diligent and should have ensured that the Company does proper reporting of income in the income tax return so that it shall set a right corporate culture and ensure compliance of law of land.

2.3.2. Payment of advances to builders without verifying the credentials and non efforts for recovery on default by builder leading to mis-utilisation of funds.

2.3.2.1. The Company had paid Rs 40 lacs to M/s Connoisseur Developers Pvt. Ltd and Rs. 25 lakhs to M/s M-Tech developers Pvt. Ltd for purchase of residential flats to be constructed in Bhiwadi, Rajasthan. Later these amounts were written off by the Company and there is no evidence to support that efforts have been taken by the Company for recovery of the amount. It is to be noted that the advances given constituted substantial amount of the total cost of the flats (86% and 98% respectively).

2.3.2.2. Despite the default, the Company paid Rs. 40 lakhs to the same builder M/s M-Tech Developers on 11.08.2017 for the booking of flat no. 109 Tower C1 in Beach Village, Goa.

2.3.2.3. The Company has written off these amounts without making a provision for it even though nonperformance clause was included in

agreement wherein it was stated that the builder has to refund the money with 6% p.a. interest. (pt. 25(g) on page 297 of FAR).

2.3.2.4. Thus the company has made payment to the builder without verifying his credentials and despite prior default of the builder and thus was not diligent in utilizing the funds of the Company. Also, there are no evidence submitted to prove that the Company had taken sufficient efforts for recovery. Hence, payment to the extent of 80-85%, no refund of money even without interest clubbed with lack of efforts on the part of the Company adds suspicion to the transactions.

2.3.3. Liability for interest and compensation has been provided in books of account of JMGL on its settlement in the financial year 2016-17, i.e. cash basis instead of accrual basis.

2.3.3.1. A MOU was executed between JMGL and Integrated Capital Services Ltd.('ICSL') on 14.01.2014 for the sale of 69 bigha 15 biswa out of total land area 159 bigha and 19 biswa situated at Khasra no.434 and 439 in Baddi Himachal Pradesh for Rs.495.00 lakhs. ICSL had paid Rs 165.00 lakhs as earnest money vide cheque no. 416408 dated 14.02.2014.

2.3.3.2. The terms of the MOU were as follows:

- 1) Out of balance consideration amounting to Rs. 330.00 lakhs Rs. 165.00 lakhs was payable upon JMGL obtaining the approval/permission required for sale of the property from Baddi, Barotiwala Nalagarh Development authority, NOC from Sales Tax Department and deregistration of the JMGL in the record of the industrial department and permission for sale of land under section 118 of the HP Tenancy and Land Reform Act.
- 2) All the above approvals were to be obtained within 100 days from the date of execution of NOC.

- 3) Balance Rs.165.00 lakhs were to be paid within 45 days at the time of execution of sale deed in favour of ICSL.
- 4) Further as per terms of MOU in the event ICSL is not able to pay the consideration as per terms of the agreement then JMGL shall have the right to terminate the MOU and forfeit the earnest money amount paid by ICSL and in the event JMGL is not able to obtain all approval and permission for the sale of property within the agreed period of 100 days from the date of MOU the ICSL shall have the right either to terminate the MOU or to extend it for further reasonable period.
- 5) Further in case of termination of MOU JMGL shall refund twice the amount of earnest money paid by ICSL.

2.3.3.3. As per record & explanation provided to the forensic auditor JMGL was unable to obtain the appropriate permission/approvals from the authorities therefore the MOU was terminated by ICSL.

2.3.3.4. Liability for interest amounting to Rs 55.01 lakhs and compensation amounting to Rs.40.00 lakhs has been provided in books of account of JMGL on its settlement in the financial year 2016-17, i.e. cash basis instead of accrual basis. Thus the company has not followed basic accounting principle of recording expenses on accrual basis.

2.3.4. Expenses paid towards salary, printing stationery not commensurate with the business operations of the Company.

2.3.4.1. JMGL had paid Rs. 42 lakhs towards listing fees, employees, salary, communication, printing, stationery, travelling expenses, bank charges, penalties, repair and maintenance, legal and professional charges, advertisements and other miscellaneous expenses.

2.3.4.2. However, it is to be noted that the Company has 3 employees on Company payroll and 1-part time consultant and no proper attendance register is maintained by the Company.

- 2.3.4.3. Also, the Company had shut down its units and there were no operations since 2012. Hence the expenses paid by the Company are not commensurate with the business operations of the Company.
 - 2.3.4.4. It was further noted that Rs. 8.83 lakhs was payable to M/s Kauntam Papers Ltd. and Rs. 1.20 lakhs was receivable from ABC papers Ltd. (a connected account) which was adjusted with the account of Kauntam Papers Ltd. Further interest and penalty amounting to Rs. 9.37 lakhs payable is settled by the parties. Documents/basis showing settlements of interest and penalty amounting to Rs.9.37 lakhs was not provided for verification.
 - 2.3.4.5. Knock off entry between two different entities which are related parties is not prudent accounting practice and has thus led to misrepresentation of books of accounts. This non furnishing of information has limited the audit to indicate the extent of misrepresentation and 'creative accounting' on the part of Company.
- 2.3.5. Independency of independent director affected as he is appearing as KMP in annual report.
- 2.3.5.1. JMGL has reported Mr. Sanjay Kumar Sareen and Mr. Ambarish Chaterjee as Key Managerial Persons (in related party disclosures) as well as Independent directors in its annual report of FY 2017-18
 - 2.3.5.2. It was further observed that Shri Sanjay Kumar Sareen and Shri Samir Katyal are connected through common directorship in two other private companies Grow more Properties private Limited and SKA Promoters and Builders Private Limited.
 - 2.3.5.3. Since both the independent directors Sanjay Kumar Sareen and Ambarish Chaterjee have been mentioned as KMP in the annual reports for FY 2017-18 it is concluded that the said independent directors cannot be considered independent as per the definition provided under Regulation 16(1)(b)(vi) of LODR Regulations Hence

JMGL has not complied with the provisions of Regulations 16(1)(b)(vi) of LODR Regulations.

2.3.6. Receivables written off without creating provision for doubtful debt thus not following accrual basis of accounting.

2.3.6.1. JMGL had written off the following amounts in its books of accounts:

S. No.	Name	Amount(Rs lacs)
a.	B.S. Hydrocarbons Pvt Ltd	106.79
b.	Reliance Industries Ltd.	6.74
c.	Engineers Rendezvous	0.40
d.	TATA Chemicals Ltd	0.55
e.	ABC paper Ltd	1.20

i. B.S HydroCarbon Pvt Ltd- Rs 106.79 lacs

2.3.6.2. An amount of Rs. 106.79 lacs was receivable from B.S HydroCarbon Pvt Ltd (BSHPL) by JMGL as refund money for non installation of plant by (BSHPL).

2.3.6.3. A cheque of Rs. 150.00 lakhs was issued by M/s BSHPL to M/s JMGL which was returned unpaid with the reason that “Drawer’s signature differs from the specimen on record”. A complaint against M/S BSHPL and its director under the provisions of section 138 of the Negotiable Instrument Act was filed before the CMM – Patiala House New Delhi. Later jurisdiction of the case u/s 138 of Negotiable Instrument Act was transferred to Mumbai and again shifted back to Delhi. It is also pertinent to mention that during the course of shifting of jurisdiction of the case from Delhi to Mumbai, company has paid requisite stamp duty at Mumbai Court.

2.3.6.4. The company did not provide reason to write-off the entire amount outstanding as on 31.03.2017 when the suit under sec 138 of the Negotiable Instrument Act was still in progress.

2.3.6.5. As per audited balance sheet as on 31.03.2016 the amount recoverable from BSHPL was netted with the amount of Sundry Creditors (contrary to the accounting principles) and none of the

amount was shown as considered doubtful for recovery. Further JMGL had written off the amount by debiting sundry balances write-off (by charging to Profit & Loss account) and crediting the amount to Sundry creditors (as the amount was appearing as debit balance under the head Sundry Creditors) as on 31.03.2017.

- 2.3.6.6. The company should have created provision for doubtful debt for FY 2015-16 and then written off the amounts against the provision. This has led to misstatement of amount of sundry creditors and hence misstatement of financials for FY 2015-16 and FY 2016-17.

ii. Reliance Industries Ltd (RIL) - Rs 6.74 lacs.

- 2.3.6.7. As per books of accounts balance outstanding as on 31.03.2016 was Rs 6.74 lacs since one of the consignment against which the amount Rs. 6.74 lacs were paid in advance were not supplied by the RIL as per order specification.
- 2.3.6.8. However documentary evidence/correspondence take place between Company and M/s RIL stating that “material received M/s JMGL is not according to the specification” and corresponding efforts taken from recovery against the advance payment made was not available for verification.

iii. Engineers Rendezvous – Rs 0.40 lacs

- 2.3.6.9. As per record information provided company was availing services from M/s Engineers Rendezvous when it was in operation. Rs.0.40 lacs was paid as advance to M/s Engineers Rendezvous to provide certain services, due to closure of plant during August 2012, neither services are availed nor amount of advance was received back.

iv. TATA Chemicals Ltd – Rs 0.55 lacs

2.3.6.10. As per books of accounts balance recoverable outstanding as 31.03.2016 was Rs. 0.55 lacs which was paid to the TATA Chemicals Ltd against which the material was not received. As on 31.03.2017 the amount was written-off by the Company.

2.3.6.11. Thus for all the amounts written off as mentioned above, the company has not created provision for doubtful debt for the advances given before writing off the amounts.

2.3.6.12. As per accrual basis accounting, a provision is made so that an expense is recognized for probable bad debts as soon as invoices are issued to customers, rather than waiting several months to find out exactly which invoices turned out to be uncollectible. Thus, the net impact of the provision for doubtful debts is to accelerate the recognition of bad debts into earlier reporting periods.

2.3.6.13. Thus the company has not booked the expenses to the period to which they relate by not creating provision and hence not followed accrual basis of accounting.

2.3.7. Non deposit of statutory dues by Company.

2.3.7.1. As per the Auditors Report on the Balance Sheet of the Company as at March 31, 2017, the following dues aggregates to Rs. 19.51 lacs were unpaid by the Company:

(a)	Barrier Tax	Rs. 10.36 Lacs
(b)	Sales tax	Rs. 7.28 Lacs
(c)	Mandi Tax	Rs. 1.87 Lacs

2.3.7.2. Further it is also mentioned in the audit report that “Company has not been regular in depositing undisputed Statutory dues including Provident Fund, Investors Education and Protection Fund, Employees State Insurance, Income Tax, Sales Tax, Service Tax, Custom duty, Cess and Other Statutory dues applicable”.

- 2.3.7.3. As per Regulation 4(2)(f)(iii)(2) of LODR Regulations, “The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.”
- 2.3.7.4. As per Regulation 4(2)(f)(ii)(7) of LODR regulations, “Ensuring the integrity of the listed entity’s accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.”
- 2.3.7.5. Thus the directors of the Company should have been diligent and should have ensured that the Company deposits its income tax dues in time so that it shall set a right corporate culture and ensure compliance of law of land.
- 2.3.8. The Company had closed its operations in 2012 and had only income from sale of land, plant and machinery etc. However, on perusal of Annual returns filed with MCA (MGT9), the Company has classified itself under code 231 (manufacturing of glass and glass products) and turnover is shown as 100% which is factually incorrect. However, on conduct of site visit the forensic auditor observed that Company is operating from a residential building and the strength of the staff is 3 on Company payroll and 1 as part time consultant. It was also noted that proper attendance register was not maintained but attendance is being recorded on an excel sheet. All these facts raise concern about the business operations of the Company. Thus although the directors have mentioned in the annual report that “The Board of the Company is exploring and evaluating various business opportunities, and accordingly, the accounts of the Company have been prepared on a going concern basis”, the contention of the directors do not seem tenable in light of the observations pointed out by the forensic auditor on conduct of site visit clubbed with the fact

that there is a change in MGT9 and in certain years, the Company had transactions only with respect to sale of land and property.

2.3.9. Non-furnishing of information to the forensic auditor.

2.3.9.1. The Company has not furnished information to forensic auditor such as: documents showing settlement of interest, documents stating the recovery efforts made by the Company, supporting for list of 17 trade receivables, documents showing settlement of interest and penalty. The fact that the Company has failed to provide documents sought during the interim order is a violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. Also, non-submission of documents to confirm the trade receivables of 17 parties amounting to Rs. 29.88 lakhs clubbed with the fact that there have been no efforts on the part of Company for recovery raise doubt on the genuinity of transactions and amounts to misrepresentation of accounts.

3. Noticee no. 1 has filed his merit based reply dated September 25, 2020. I note that the said reply records the following: *"This reply to the SCN may be considered to be the reply of all Noticees whose consents thereto are attached alongwith."* I note that no consents were attached as annexures to the said reply. However, in their combined written submissions dated May 4, 2021, Noticee no. 2, 6 and 8 and in his additional reply dated April 15, 2021, Noticee no. 3, have referred to and relied upon the reply of JMGL dated September 25, 2020. Thus, Noticee no. 2, 3, 6 and 8 have been considered to have adopted the reply of JMGL dated September 25, 2020, alongwith their separate submissions made herein. Noticee no. 1, 2, 3, 6 and 8, are hereinafter collectively referred to as the **'Replying Noticees'**. I also note that Noticee no. 4 has filed his reply dated April 26, 2021, Noticee no. 5 has filed his reply dated April 14, 2021 and Noticee no. 7 has filed his reply dated April 14, 2021. The first opportunity of personal hearing in the matter was granted to all the Noticees on April 15, 2021. However, on the scheduled date, only Noticee no. 5 and 7 were heard. The remaining Noticees sought for an adjournment on various

grounds. The second hearing in the matter was held on April 27, 2021, on which date the remaining Noticees were heard.

4. Noticee no. 5 and 7 have made similar submissions. Their key contentions are as follows:

- 4.1. The allegations in Para 3.I.e. of the SCN are self-contradictory. The SCN on one hand, alleges our failure as an independent director and on the other hand and on the other hand also alleges us to be not as 'independent directors'. In view of the same the SCN is self-contradictory.
- 4.2. Our role in JMGL was restricted to that of non-executive independent director. We were never involved in the day to day operations, functioning or business operations of the Company. During our tenure, or association was limited to discussion during the board meetings.
- 4.3. We have never received any professional fees or remuneration from the Company.
- 4.4. The forensic auditor never approached us for any information or documents.

5. Noticee no. 3 has raised the following key contentions to the allegations in the SCN:

- 5.1. I am a Chartered Accountant by profession and my only association with JMGL was in the capacity of being an independent and non-executive director on the board of JMGL from July 7, 2006 to July 5, 2016. I state that I was also part of the Audit Committee and the Shareholder Relationship Committee of the Company, during my tenure.
- 5.2. Majority of the allegations in the SCN, for which I am also held responsible, are in relation to the acts and events which have transpired after the cessation of my directorship in the Company.
- 5.3. All allegations pertaining to payment of advance by the Company to M/s. Connaisseur Developers Pvt. Ltd. and M/s. M-Tech Developers Pvt. Ltd. As

admitted in the FAR, the Company made such payments post the cessation of my directorship.

- 5.4. The Company purportedly not following basic accounting principles for recording the Company's liability in relation to interest payable to Integrated Capital Services in its books of accounts for FY 2016-17. Such accounting would have been made by the Company in FY 2016-17 (which is relevant for AY 2017-18) after cessation of my directorship.
 - 5.5. The purportedly incorrect writing-off of amounts which were receivable from B. S. Hydrocarbons, Reliance Industries, Tata Chemicals and Engineers Rendezvous in FY 2016-17. Such writing-off would have been carried off by the Company in FY 2016-17, i.e. after cessation of my directorship in the Company.
 - 5.6. The present proceedings ought to be withdrawn against me, as the SCN has been issued after a delay of more than 2 years.
 - 5.7. The SCN contains no reference and/or specific allegation against me in respect of the alleged violation set out thereunder, purportedly committed by me, in relation to the affairs of the Company.
6. I note that the submissions of Noticee no. 4 are similar to the submissions of the Replying Notices in respect of the transactions mentioned in the SCN, hence for the sake of brevity they have not been reproduced herewith. Apart from these Noticee no. 4 has raised the following key contentions to the allegations in the SCN:
- 6.1. SEBI has failed to conduct independent investigation into the matter and instead has solely relied on a third party inconclusive report. On the other hand even while doing so SEBI has failed to grant the basic opportunity of cross-examining such Forensic Auditor to the Noticee before levelling such serious allegations.
 - 6.2. The Noticee was involved with JMGL since July 31, 2007 as a Director. During the Noticee's tenure in JMGL, the Noticee was engaged in marketing division of JMGL and was concerned with customer relations. The Noticee

resigned from JMGL effective from December 21, 2020, due to other personal engagements.

Consideration of submissions and findings:

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

Relevant extract of the provisions of SEBI Act, 1992:

"Functions of Board.

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

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

.....

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

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

.....

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

12A. No person shall directly or indirectly-

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

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

.....

Offences by companies.

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

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

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

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

Relevant extract of provisions of SCRA, 1956:

"Conditions for listing.

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

Relevant extract of the provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

.....

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

.....

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

.....”

Relevant extract of the provisions of LODR Regulations:

“Principles governing disclosures and obligations.

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

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

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

.....

- (f) Responsibilities of the board of directors:

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

.....

- (ii) Key functions of the board of directors-

.....

- (6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
- (7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

...

- (iii) Other responsibilities:

....

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

.....

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

.....

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

.....

16.

Definitions.

1. For the purpose of this chapter , unless the context otherwise requires –

.....

- (vi) who, neither himself, nor whose relative(s) —

A. holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Financial results.

- 33.(1) While preparing financial results, the listed entity shall comply with the following:

.....

.....

- (c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:

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

.....

- (2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
- (a) The quarterly financial results submitted shall be approved by the board of directors:

Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading

Accounting Standards.

48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.....”

8. Before proceeding on the merit of the matter, it will be relevant to discuss the background of the present proceedings. SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs. In respect of listed shell companies including JMGL vide its letter dated August 7, 2017, SEBI advised the stock exchanges to place trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said letter dated August 7, 2017 also advised the stock exchanges to place the scrip of such companies in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. Thereafter, BSE vide notice dated August 7, 2017, issued to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies, as identified by MCA and communicated by SEBI, with effect from August 8, 2017. On August 09, 2017, SEBI further advised the Stock Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

9. Vide its letter dated August 17, 2017, JMGL made a representation to SEBI inter alia submitting that the action taken by SEBI is against the principle of natural justice since it has been initiated without giving an opportunity of hearing to JMGL. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, JMGL filed an appeal No. 209 of 2017 also before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**SAT**"). Hon'ble SAT vide order dated August 29, 2017 directed the following:

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

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

10. Pursuant to above mentioned order passed by Hon'ble SAT, SEBI had granted an opportunity of personal hearing to JMGL, and subsequently an interim order dated September 14, 2017 (hereinafter referred to as '**the interim order**') came to be passed by Whole Time Member, SEBI, directing the following:

- i. "The trading in securities of JMGL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Stock Exchange shall appoint an independent auditor to conduct forensic audit of JMGL for verification, including the credentials /financials of JMGL and to trace the end-use of proceeds of sale of land by JMGL.
- iii. The limitation on the transfer of shares held by the promoters and directors of JMGL as mentioned in para1(b) of SEBI's letter dated August 07,2017 is removed.
- iv. The other actions envisaged in SEBI's letter dated August07,2017 in para1(d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against JMGL."

11. I note that in terms of the interim order, JMGL was provided time of 30 days to file its reply/ objections to the interim order, if any, failing which, preliminary findings of the interim order and ad-interim directions contained therein were stipulated to stand confirmed against JMGL automatically, without any further orders.

Contesting the findings of the interim order, JMGL filed reply dated October 26, 2017. After granting an opportunity of personal hearing, and also after considering the reply filed by JMGL, WTM, SEBI vide its order dated November 14, 2018, confirmed the directions issued in the interim order.

12. BSE had appointed M/s. M. Verma & Associates, Chartered Accountants, as the Forensic Auditor and the Forensic Audit Report (hereinafter also referred to as “**FAR**”) was submitted to BSE by M/s. M. Verma & Associates, Chartered Accountants on July 12, 2019. Thereafter, based on the FAR which was forwarded by BSE to SEBI on January 8, 2019, SEBI carried out an investigation in the matter. Based on the findings of investigation, the matter was placed before me on May 4, 2020 for approval of issuance of show cause notice and then was again placed before me on January 28, 2021 for granting a date for opportunity of hearing to the Noticees and passing a final order in the matter.

13. I shall now proceed to examine the allegations in the SCN and the contentions raised by the Noticees thereon. I note that allegations made in the SCN can be categorized as under:

- A. Violations of provisions of LODR Regulations due to misrepresentation including of financials and misuse of funds/books of accounts;
- B. Violation of Section 11(2)(i) and 11(2)(ia) of SEBI Act, 1992 for Non-furnishing of information to the forensic auditor.
- C. Violation of provisions of PFUTP Regulations, 2003.

In the following paras, all these have been dealt with my findings thereon.

A. Violations of provisions of LODR Regulations due to misrepresentation including financials and misuse of funds/books of accounts:

14. Re: Independency of independent director affected as he is appearing as KMP in annual report.

14.1. The SCN has alleged the following:

“JMGL has reported Mr. Sanjay Kumar Sareen and Mr. Ambarish Chatterjee as Key Managerial Persons(in related party disclosures) as well as Independent directors in its annual report of FY 2017-18

It was further observed that Shri Sanjay Kumar Sareen and Shri Samir Katyal are connected through common directorship in two other private companies Grow more Properties private Limited and SKA Promoters and Builders Private Limited.

The above said observation is in violation of provisions of companies Act, 2013 including as under:

a. Section 149(6)(e) of the Companies Act, 2013 where in its states independent director“ *who, neither himself nor any of his relatives—holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed*”.

b. Section 149(12) of Companies Act, 2013 states that “Notwithstanding anything contained in this Act,

(i) *an independent director;*

(ii) *a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.”*

.....
Hence, the fact that the independent directors are not “independent” contravenes the provisions of Companies Act, 2013 and they become ineligible to be the independent directors.

Further, Regulation 16(1)(b)(vi) of the LODR Regulations states that “*who, neither himself, nor whose relative(s) — (A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.*”

As per Section 2(51) of Companies Act 2013 “*key managerial personnel, in relation to a company, means*

(i) *the Chief Executive Officer or the managing director or the manager;*

(ii) *the company secretary;*

(iii) *the whole-time director;*

(iv) *the Chief Financial Officer; and*

(v) *such other officer as may be prescribed”*

Since both the independent directors Sanjay Kumar Sareen and Ambarish Chatterjee have been mentioned as KMP in the annual reports for FY 2017-18 it is concluded that the said independent directors cannot be considered independent as per the definition provided under Regulation 16(1)(b)(vi) of

LODR Regulations Hence JMGL has not complied with the provisions of Regulations 16(1)(b)(vi) of LODR Regulations 2015. “

14.2. The Replying Noticees have submitted as under:

“The disclosure requirements applicable to financial statements in the matter of Related Party Transactions, requires that transactions between the Company and persons identified as Key Managerial Personnel, are disclosed therein. The Company’s understanding had been that all Directors, including the persons holding office as Independent Directors, are its Key Managerial Personnel, and accordingly the names of all Directors were disclosed in Note No. 36 titled “Related Party Disclosures” forming part of Financial Statements. There are however, no transactions between the Company and Independent Directors, stated to be Key Managerial Personnel. The Company had since been advised that its interpretation that Independent Directors should not be considered as Key Managerial Personnel, the Company made changes to the disclosures following the corrected interpretation of the matter.

The fact that Mr. Sanjay Kumar Sareen and Mr. Samir Katyal are connected through common directorship in two other companies does not affect the independence of Mr. Sanjay Kumar Sareen as the two other such companies are not the holding, subsidiary or associate company of the Company in any of the three immediately preceding financial years preceding the financial year in which Mr. Sanjay Kumar Sarin was appointed as an independent director of the Company. The above is as per the provision of section 149(6)(e) of the Companies Act, 2013.”

14.3. I note that the SCN has treated the ‘key management personnel’ as defined in Accounting Standard 18 / Ind AS 24, as analogous to ‘key management personnel’ as defined in Section 2(51) of Companies Act, 2013. The definition of ‘key management personnel’ under Section 2(51) of Companies Act, 2013 is restricted and limited to the persons identified therein (which does not include the independent director), however, the definition of key management personnel’ as contained in AS 18/ IndAS 24 is wide and includes any person who has the authority and responsibility for planning, directing and controlling the activities of the company. In this regard, the following extract of the relevant provisions may be perused:

Accounting Standard 18:

Definitions

10. For the purpose of this Standard, the following terms are used with the meanings specified:

.....
10.8 **Key management personnel** - those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise.

Ind AS 24:

Definitions

9 The following terms are used in this Standard with the meanings specified:

.....
Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

14.4. In accordance with Reg. 2(2) of LODR Regulations, *“All other words and expressions used but not defined in these regulations, but defined in the Act or the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and/or the rules and regulations made thereunder shall have the same meaning as respectively assigned to them in such Acts or rules or regulations or any statutory modification or re-enactment thereto”*. I note that since ‘Key management personnel’ is not defined in LODR Regulations, hence, in terms of Reg. 2(2) of LODR Regulations, the definition as stipulated in Section 2(51) of Companies Act, 2013 shall be applicable. I note that for the purpose of disclosure of related party transactions in notes to accounts, the definition as contained in Accounting Standard 18 / Ind AS 24, would be referred to. I note that though JMGL might have disclosed Noticee no. 5 and 7 as key management personnel in the notes to accounts section of the financial statements of FY 2017-18 while disclosing related party transactions, but the same was limited to disclosure in compliance with mandate of IndAS 24 / AS 18. Thus, no adverse inference about violation of Reg. 16(1)(b)(vi) of LODR Regulations, can be attributed upon JMGL in relation to the appointment of Noticee no. 5 and 7 as independent directors because the said Noticees though may be ‘key management personnel’ in terms of IndAS 24/ AS18, but they may not be ‘key managerial personnel’ as per Section 2(51) of the Companies Act, 2013 and therefore, they are not disqualified from being appointed as independent directors. In view of the above, I do not find any merit in the allegations made in the SCN in this regard.

15. Re: Sales consideration is lesser vis-a-vis Circle Rate in respect of sale of Land.

15.1. The SCN has made the following allegations in this regard:

- “
- i. The company entered into an agreement for sale of land at Himachal Pradesh as on 21.11.2014 with Micro Seamless and the sale deed was executed on 01.07.2016 for consideration of Rs. 1225 lacs. As per the circle rate the valuation of the property as on March 2014 is Rs. 1459.45 lacs.(approx.).Hence the company has entered into agreement at a lesser rate (difference of Rs. 234.45 lacs approx.).
 - ii. The sale deed was executed on 01.07.2016 when the value of the property as per circle rate was Rs.2200.27 lacs whereas consideration amount is Rs 1225.00 lacs i.e. sales consideration is lesser by Rs.897.40 lacs vis-a-vis Circle Rate.
 - iii. Considering the fact that, for registration purposes circle rates have been used and for the consideration was lesser by Rs.897.40 lacs vis-a-vis Circle Rate; and the general rule that the circle rates are always less than / equal to the market rate directs that the company has misutilised the funds of the shareholders.
 - iv. TDS @1% of sale considerations has been deducted by the buyer of the property viz. M/s Micro Seamless. It has been observed from Form 26 AS appearing on site of Income Tax Department that name of the deductor is appearing as Micro Turners whereas the buyer of the property is Micro Seamless. On verification of PAN, it is observed that Micro Seamless and Micro Turners are separate entities with different PAN. The company has entered into agreement with Micro Seamless and TDS has been paid on behalf of Micro Turners, which raises doubts on the genuinity of transactions.
 - v. The forensic auditor also submitted that the stamp duty has been paid on Rs.2200.07 lacs whereas for the purpose of Income Tax return sales consideration of the property has been taken as Rs 1225.00 lacs (i.e. sales consideration value). Thus the directors of the company should have been diligent and should have ensured that the company does proper reporting of income in the income tax return so that it shall set a right corporate culture and ensure compliance of law of land.”

15.2. The FAR has made the following observations in this regard:

“It has been observed from the sale deed executed on 01.07.2016, the value of the property as per circle rate is Rs.2200.27 lacs whereas consideration amount is Rs 1225.00 lacs i.e. Sales consideration is lesser by Rs.897.40 lacs vis-a-vis Circle Rate.

Rs 250.00 Lacs were paid by the buyer M/s Micro Seamless on 05.05.2016 through RTGS. It has been observed that while making the above payment of Rs 250.00 lacs and Rs200.00 lacs on 21.11.2014 (advance) at the time of execution of the agreement to sell TDS @ 1% was not deducted by the buyer M/s Micro Seamless however TDS amounting to Rs 12.25 lacs is deducted collectively on 01.07.2016 at the time of making the balance payment i.e. at the time of execution of sale deed.

-It has been observed that the stamp duty has been paid on Rs.2200.07 lacs whereas for the purpose of Income Tax Return sales consideration of the property has been taken as Rs 1225.00 lacs (i.e. sales consideration value).”

15.3. The Replying Noticees have submitted as follows in this regard:

"An agreement for sale of land was entered into with Micro Seamless ("Buyer") on November 21, 2014 and the sale deed was executed on July 01, 2016 for a sale consideration of Rs. 1225 Lakh. As mentioned at page 13 of the FAR, the delay in execution of the sale deed was due to time taken to obtain the requisite permission from authorities.

The sale consideration of Rs. 1225 Lakh was lesser than the valuation of the property arrived at on the basis of the Circle Rates, which, as per the Tehsildar Baddi, was coming up to Rs. 2200.07 Lakh.

The fair value of the property was actually lesser than the circle rate as adopted by the Tehsildar. The reasons for the difference in valuation was that the Rates of land as uploaded on the Computer Systems of Revenue Authorities were not updated and were higher than what they should have been, and that the downward adjustment in the Rate of land on the basis of distance from road and similar adjustment in respect of area of land at the rear not being useable for it is a slope that merges into a drain, were not given effect to. Accordingly, the circle rate of the land as available in the computer systems of Revenue Authorities could not have been applied, and much less to the entire piece of land without making due allowances and downward adjustments. The Revenue Authorities also failed to consider that the Circle I Guideline Rates of Land sold by the Company fixed as per provisions of Notification dated January 12, 2016, notified on January 15, 2016, were applicable for the transaction, and the anomaly, in the calculation of the stamp duty, was because the Revenue Authorities applied incorrect Circle I Guideline Rates of Land when assessing stamp duty payable for transfer of the property. A copy of the valuation report of the land and building is marked and annexed hereto as Exhibit A.

Since computer systems in the office of the Sub- Registrar were non-functional, the value of land was not being determined in a timely manner, the Buyer paid the stamp duty on a valuation of Rs. 2200.07 Lakh under protest, while reserving his right to seek refund of the excess amounts *i.e.*, the stamp duty paid over and above the actual consideration amount.

To this effect, the Buyer vide its letter dated May 02, 2016 to the Deputy Commissioner, Solan, and multiple subsequent representations, (annexed as Annexure 1-3 to the Reply) requested that the sale consideration amount or alternatively, the amount of Rs. 1514.38 Lakh (basis notification dated January 15, 2016, issued by the Revenue Department of Himachal Pradesh) be considered for calculation of stamp duty.

Since the Buyer's representations were not being adjudicated upon, the Buyer also filed a writ petition (CWP No. 3069 of 2018) before the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court vide its order dated January 08, 2019 (annexed as Annexure 4 to the Reply) directed the Deputy Commissioner, Solan, to pass a reasoned and speaking order on the representations filed by the buyer.

The Deputy Commissioner, Solan vide his order dated June 20, 2019 (annexed as Annexure 5 to the Reply) held that no excess amount on account of stamp duty had been charged from the Buyer.

Subsequently, the Buyer has challenged this decision of the Deputy Commissioner, Solan before the High Court of Himachal Pradesh in CWP No.

2379 of 2019. The latest order as available on the website of the High Court of Himachal Pradesh and the case status of the matter has been marked and annexed hereto as Exhibit B.

In this background, it is evident that the agreement entered into between the Company and the Buyer was a bonafide transaction, at a consideration which was the fair market value of the property. Accordingly, it cannot be alleged that the said transaction amounts to mis-utilization of funds of the shareholders of the Company.

It is relevant to note that the sale of the property was in fact beneficial to the Company and in turn to its shareholders. By selling the property, the Company was able to secure income, as well as avoid maintenance and other related costs for the upkeep of the property, not being used by the Company. It is also relevant to remember that the Company had to shut down its business operations due to high operational costs. In terms of the applicable laws in Himachal Pradesh, had the Company not diligently sought for requisite permissions to sell the land, the ownership and possession of the land would have reverted to the state, and the Company would have lost out on the sale consideration of Rs. 1225 Lakh. Accordingly, the sale of land was in fact beneficial to the shareholders of the Company and no negative inference can be drawn on the basis of the sale consideration vis- a-vis the stamp duty paid on the land.

Furthermore, the cost of the higher stamp duty paid for the sale of the property has been borne completely by the Buyer and the Company has not been burdened with any additional financial liability. Similarly, the costs of the litigations filed by the Buyer are also solely borne by the Buyer. The Company has also sought itself to be impleaded itself as a party to the proceedings before the Himachal Pradesh High Court.

Accordingly, no negative inference can be drawn from the fact that the stamp duty paid was on an amount higher than the sale consideration of the property and it cannot be alleged that the Company has mis-utilized the funds of the shareholders.

The Buyer is a group/ associate of Micro Turners. Accordingly, a part of the TDS amount has been deposited by the group/ associate entity of the Buyer. It is submitted that no adverse inference can be drawn from the same

The Company cannot comment on the business decision/ commercial understanding on the basis of which the TDS was paid by Micro Turners, as associate/ group entity of the Buyer. It is important to note that the Company has ensured that it gets full credit in respect of the TDS deducted by the Buyer and had availed the full benefit of the amount in its income tax returns, which was allowed by the Income tax Department in completing the subject assessment proceedings. Accordingly, there has been no loss of funds to the Company on account of TDS having been deposited by a group/ associate entity of the Buyer. The allegation that TDS having been deposited by a group company of the buyer raises questions on the genuineness of the transaction is completely unfounded and nothing but conjecture.

The Company had considered the actual consideration amount of Rs.1225 Lakhs (subsequently revised to Rs. 1514 Lakh due to the buyer agreeing to pay the stamp duty at such amount) for computation of capital gains income tax for filing its income tax returns for assessment year 2017-18.

However, the same was not accepted by the Assessing Officer and the Company was directed to revise its returns and consider the amount on which stamp duty was paid for the purposes of its income tax assessment for the assessment year 2017-18. A copy of the Assessment Order dated December 18, 2019 has been annexed as Annexure 7 to the Reply. The Company being aggrieved by such orders of the Assessing Officer has filed an appeal before the Commissioner of Income Tax and the same is currently pending (annexed as Annexure 8 to the Reply). Accordingly, there is no ground to allege that the Directors of the Company have not ensured proper reporting of income in the income tax returns of the Company.”

15.4. I note that the SCN has alleged that the price at which the impugned parcel of land was sold by JMGL was much less as compared to the Circle Rate prevailing for the same parcel of land. Thus, the SCN has alleged misuse of shareholders funds by JMGL. I find that the Buyer of the impugned land parcel has contested the value of the Circle Rate prevailing in that area and also sought refund of the excess stamp duty paid, by filling Writ before the Hon'ble High Court of Himachal Pradesh in CWP No. 2379 of 2019. Thus, I note that while the subject matter of valuation of the impugned land parcel is sub-judice, it may not be appropriate to draw any adverse inference on this count. Furthermore, with respect to the deduction of TDS by the group entity/ associate of the Buyer, instead of the Buyer itself, I find that the Company has ensured that it gets full credit in respect of the TDS deducted and had availed the full benefit of the amount in its income tax returns. Thus, I do not wish to draw any adverse inference on this count as well. Furthermore, I note that JMGL has considered the actual consideration amount of Rs. 1225 Lakhs (subsequently revised to Rs. 1514 Lakh) for computation of capital gains tax for filing its income tax returns for assessment year 2017-18. In this regard, I note that the Assessment Order dated December 18, 2019, has directed JMGL to consider the Circle Rate of the impugned land parcel for the purpose of computation of Capital Gains. From the submissions of the Replying Noticees, I gather that JMGL has challenged this Assessment Order by filling an appeal before the Commissioner of Income Tax (Appeals) and the same is currently pending. Thus, I find that when the matter is contested by JMGL before the appellate forum, no adverse inference can be drawn against the directors of JMGL for purportedly not being diligent in

ensuring proper reporting of income in the income tax returns of the Company.

16. Re: Payment of advances to builders without verifying the credentials and no efforts for recovery on default by builder.

16.1. The SCN has made the following allegations in this regard:

“

- vi. The company had paid Rs 40 lacs to M/s Connoisseur Developers Pvt. Ltd and Rs. 25 lakhs to M/s M-Tech developers Pvt. Ltd for purchase of residential flats to be constructed in Bhiwadi, Rajasthan. Later these amounts were written off by the company and there is no evidence to support that efforts have been taken by the company for recovery of the amount. It is to be noted that the advances given constituted substantial amount of the total cost of the flats (86% and 98% respectively).
- vii. Despite the default, the company paid Rs. 40 lakhs to the same builder M/s M-Tech Developers on 11.08.2017 for the booking of flat no. 109 Tower C1 in Beach Village, Goa.
- viii. The company has written off these amounts without making a provision for it even though nonperformance clause was included in agreement wherein it was stated that the builder has to refund the money with 6% p.a. interest. (pt. 25(g) on page 297 of FAR).
- ix. Thus the company has made payment to the builder without verifying his credentials and despite prior default of the builder and thus was not diligent in utilizing the funds of the company. Also, there are no evidence submitted to prove that the company had taken sufficient efforts for recovery. Hence, payment to the extent of 80-85%, no refund of money even without interest clubbed with lack of efforts on the part of the company adds suspicion to the transactions.....”

16.2. The FAR has made the following observations in this regard:

As per record and information provided to us to invest the surplus fund available with the Company i.e. to deploy the funds immediately not required ,it was decided by the Company that Investment be made for purchase of residential flats to be constructed in Bhiwadi, Rajasthan , as Management consider Bhiwadi a developing area, close to capital city of Delhi, and Company need residential accommodation to house its employees once the Company commence implementation of any project or any activity in or around the National Capital Territory region of Delhi.

Following payments were made by the Company:

Date	Amount
26.7.2016	40.00 lacs
26.7.2016	25.00 lacs
11.8.2017	40.00 lacs

Following documents/ records are verified by us:

-Books of accounts

- Bank statements to verify the payment

-Agreement to sell executed between M/s Connoisseur Developers Ltd and JMGL dated 26.07.2016 for purchase of flat no. 901 & 904 Bhiwadi-advance amount paid Rs.40 lakhs. [Refer Index Sheet-S.No. 46; Page No. 260-261]

- Buyer-Seller agreement executed between M/s M-Tech Developers Pvt. Ltd. and JMGL dated 26.07.2016 for purchase of flat no. 906 Bhiwadi-advance paid Rs.25 lakhs. [Refer Index Sheet-S.No. 47; Page No. 262-277]

-Photocopy of Buyer-Seller agreement executed between M-Tech Developers Pvt. Ltd. and JMGL dated 11.08.2017 for purchase of flat no. 109 in the Beach Village Goa-advance paid Rs.40 lakhs. [Refer Index Sheet-S.No. 48; Page No. 278-288]

-Buyer Seller Agreement executed between M Tech Developers Pvt Ltd & M/s JMGL dtd 11.08.2017 for flat no 702 Tower Sigma II, Camellia Garden, Bhiwadi. [Refer Index Sheet- S.No. 49; Page No. 289-305]

Observations

1. Rs. 40 lakhs which was paid on 26.7.2016 to M/s Connoisseur Developers Pvt. Ltd. as booking amount was write-off by the Company on 31.3.2017.
2. Rs.25 lakhs which was paid on 26.7.2016 to M/s M-Tech developers Pvt. Ltd as booking amount is write-off by the Company on 31.3.2017.
3. As per copy of Board resolution of the meeting held on 09.02.2017 it has been stated that "the board noted that the period of about 10 months has expired from the date of booking and advance had been given by the Company but no progress had been observed in the projects. The board noted with concern the recent development concerning M-Tech which has come to knowledge that there are several unsatisfied customers who have not been given possession of residential flats that had been booked by them. The amount is considered to be not recoverable as even after several attempts made to cancel the booking and refund of the booking advance have been refused by M-Tech and for reason that the reputation of M-Tech is suspect with a significant number of unsatisfied customers threatening to go to Court of Law on account of non-fulfilment of contract and failure to repay the amount and deposit which had been taken by M-Tech from them. [Refer Index Sheet-S.No. 50; Page No. 306-309]
4. Substantial amount of the total cost of the flats i.e. basic cost plus other cost were already paid by the Company at the time of write off of amount as per details given below:

Flat/Property description	Basic cost of the flat as per flat buyer agreement	Other cost such as PLC,PAC, power backup, IMFS, electricity and water substation charges	Total cost	Amount paid	% of amount paid of total cost
1	2	3	4(3+4)	5	6(5/4*100)
901 & 904, Tower No Alfa 1 Camellia Garden Bhiwadi			46.88 (23.44 each)	40.00	85.33
906, Bhiwadi	19.80	5.74	25.54	25.00	97.89

It can be viewed from above that in the case of flat number 906 Bhiwadi the amount paid was almost 98% of the total cost and in the case of flats number 901 & 904 Alfa Tower the amount paid was almost 86%, justification to write off the amount within the short span of 8-9 months is not available. Further documentary evidence showing Company's efforts to recover the amount were also not available.

It has been further observed that on 11.08.2017 Rs. 40 lakhs was paid again to the same builders M/s M-Tech Developers for the booking of flat no. 109 Tower C1 in Beach Village, Goa. As per Board Resolution provided to us it has been stated that "M/s M-Tech Developers Pvt Ltd has proposed that if the Company makes a booking of a residential flat in the project being developed by M-Tech in Goa, present selling price of which is about Rs 55.00 lacs is offering the flat @ Rs 43.00 lacs i.e. offering discount of Rs 12.00 lacs provided an amount of Rs 40.00 lacs is paid on booking before August 15 2017. As explained to us the proposal of M/s M Tech Developers Pvt Ltd is considered favourably by the Company and Rs 40.00 lacs paid as booking amount for Goa Flat.

It has been observed that out of write off amount Rs 40.00 lacs paid to M/s Connoisseur Developers Pvt Ltd. Rs. 27 lakhs received back by the Company (Rs.10 lakhs on 31.10.2017, Rs. 15 lakhs on 01.11.2017 and Rs. 2 lakhs on 01.11.2017) from M/s Connoisseur Developers Pvt. Ltd.(as per explanations and records provided to us M/s M-Tech Developers and M/s Connoisseurs Developers Pvt. Ltd. are group companies belongs to the same owner and are same entity.)It is informed to us that Company is hopeful to receive the balance amount from M/s Connoisseur Developers Pvt. Ltd in near future.

As per information provided to us although the amount paid Rs 25.00 lacs to M/s M Tech Developers Pvt Ltd for Bhiwadi flat is write off, however the efforts for recovery of amount from M/s M-Tech Developers Limited is also in process. As per Company's record on Company's demand to refund the amount paid for booking of flat at Alfa Tower Bhiwadi, Builder expressed grave liquidity problem and inability to immediately refund the booking deposit. As against above M/s M Tech Developers Pvt. Ltd has offered residential flat in another project viz. Tower Sigma II Bhiwadi. Buyer Seller Agreement executed between M Tech Developers Pvt Ltd & M/s JMGL dtd 21.8.2017 for flat no 702 Tower Sigma II, Camellia Garden, Bhiwadi in support of above is provided for our verification.

Observations

Reasons for the following issues are not adequately available/explained:

- Why the amount has been write-off within short span of 8-9 months of the payment made? Particularly when the efforts to recover the amount were on.
- Why the provision has not been made and instead of that the amounts have been straight away write-off?
- Why the enquiries about the credibility of the builder have not been initiated before paying the amount?
- What are the steps taken by the Company for the recovery of amount?
- Why an additional amount Rs. 40 lakhs for the booking of another flat was paid when the credibility of the Builder was doubtful and Company has already write-off the amount recoverable from the builder?
- Why the amount including Government dues at the time of booking of flat was paid when the amount relating to Government dues was actually payable at the time of registration of flat?"

16.3. The Replying Noticees have submitted as follows in this regard:

"The Company had booked 2 properties to be purchased as investment, and given advances out of its own funds to the Developers. The advance was given for near full amount as the Company was offered the properties for an attractive price.

It came to be discovered later that one of the Developer companies was unable to deliver the developed properties, and that several of its customers had filed complaints against the Developer Company and that the Developer company was not issuing refunds to its customers.

At this stage, it was assessed by the Company that it should follow up in person at the office of the Developer Companies, and while it was assured by such Developer Company that its properties would be delivered, the assurances and the accompanying circumstances did not appear to be very convincing to the Company.

It was in this situation that the Company considered that the chances of the Company obtaining the properties then appeared to be bleak, and that it was also seemingly difficult for the Company to obtain refund of amounts paid.

In view of the aforementioned developments, the Company decided that it should follow a conservative approach in the matter of recognition of its assets for purposes of drawing up its financial statements, and that the advances made by it to Developer Companies should be written off in its books of account and not carried as assets of the Company as at the year end.

The amounts paid by the Company to Developer Companies were written off by the Company in its books of account during the year ended March 31, 2017, and accordingly reflected in its financial statements as at and for the year ended March 31, 2017.

The Company, while accounting the write off in its books of account, as mentioned above, also clearly took note of the fact that the Company will continue its efforts to recover the amounts or their worth in properties from the Developer Companies, and that receipt of money or moneys worth on account of above will be accounted as part of income of the Company at the time of receipt in either of the forms.

The Company was advised during personal meetings with the representatives of the Developer Companies that they are suffering from short term mismatch of cash flows, and they will honour all their commitments, which continued to provide assurance to the Company that the Developer Companies are not having an ill-intent. As a result of efforts made by the Company to recover money's and / or money's worth in properties from the Developer Companies, the Company was successful in recovering Rs. 27 Lakhs from one of the Developer Companies, Connoisseur Developers Pvt. Ltd., in the financial year 2017-18, which finds mention in the Forensic Audit Report.

The balance amount of Rs. 13 lacs has also since been received from Connoisseur Developers Private Limited and there is no amount recoverable by the Company from the forenamed Developer Company on this account or which has otherwise remained unrecoverable.

The amounts to the extent received by the Company have been accounted as income of the Company at the time of receipt.

It is pertinent to mention that in order to recover its full amount from M-Tech Developers Pvt. Ltd., one of the Developer Companies, against its advance of Rs. 25 lacs, which had been written off in books of account of the Company during the financial year ended 31.03.2017, the Company had since accepted allotment of an alternate residential flat in the development being carried out by the Developer Company in Bhiwadi, Rajasthan, of a value of Rs. 25 Lacs. The construction at the Project Site is in finishing stages now and registration of conveyance deed in favour of the Company shall be effected by the Developer Company in the next few months. The Company will account for write back of the amount of Rs. 25 Lacs at the time of registration of conveyance deed of the Flat by the Developer Company in its favour.

It is mentioned that after the Company having been allotted an alternate residential flat in Bhiwadi, Rajasthan, gained trust in the Developer Companies, and the Company accepted an offer from M-Tech Developers Pvt. Ltd. (the other Developer Company) that it purchases a Flat in Goa, which Flat was offered to the

Company at a discounted price. The offer for Goa Flat was made at Rs. 43 Lacs while the market price, as assessed by the Company from enquiries, was being quoted at between Rs. 47 Lacs to Rs. 55 Lacs. The Company did find this offer from M-Tech Developers Pvt. Ltd. to be lucrative, and the Goa Flat was registered in the name of the Company and possession thereof was also delivered to the Company.

The Company decided to sell the Goa Flat as the market was expected to remain uncertain due to setting in of the pandemic of Covid-19. This Goa Flat was sold by the Company, vide Sale Deed executed on 02.03.2020 for consideration of Rs. 48.00 Lacs.

The profit on sale of the Goa Flat has been accounted for as income in the financial statements of the Company as at/ for the year ended 31.03.2020.”

16.4. I note that the FAR has observed that M/s. M-Tech Developers Ltd. and M/s. Connoisseurs Developers Pvt. Ltd. are group companies belonging to the same owner. The Replying Noticees have not disputed this fact. I also note that initially JMGL has claimed to have made investment in the following two properties:

1. Purchase of flat no. 901 & 904 in Camilia Garden, Bhiwadi, Rajasthan:

JMGL has purportedly executed an ‘Agreement to sell’ with M/s Connoisseur Developers Ltd. on July 26, 2016. From the copy of the aforesaid Agreement, I note that it is not duly stamped. I note that in accordance with the Explanation to Article 21 of The Schedule to the Rajasthan Stamp Act, 1998, the purported ‘Agreement to sell’ with M/s Connoisseur Developers Ltd., dated July 26, 2016, is ‘deemed to be a conveyance’ and is subject to the same stamp duty as applicable to ‘Conveyance – relating to immovable property’ i.e. 11% stamp duty. From the copy of the aforesaid agreement which was annexed to the FAR, I find that no such stamp duty has been paid by the executants therein. Thus, in accordance with Section 39 of the Rajasthan Stamp Act, 1998, the copy of the purported ‘Agreement to sell’ executed between JMGL and M/s Connoisseur Developers Ltd. is inadmissible as evidence for any purpose, before any person, having authority to receive evidence, which includes SEBI. I note that the Replying Noticees have not furnished any other proof in respect of the purported investment of Rs. 40 Lakhs. As observed in the FAR, around 85.33% cost of the flat was paid in advance by JMGL which in itself is atypical

business practice. I also note that within a span of six months of making this investment, the board of JMGL decided to write-off the same from the books of the Company. While JMGL has provided a copy of the relevant board resolution to the forensic auditor, which purports to have been passed in the board meeting held on February 9, 2017, elaborating the circumstances that prompted the board of JMGL to write-off, but there is no corroborating evidence furnished by JMGL (like copy of correspondence with the builder) to show that the purported investments in the properties of M/s. Connoisseur Developers Ltd. were indeed turning bad and worse to such an extent that it could not be recovered. I also note that the copy of the board resolution reads as 'certified true copy', but there is no seal of the Company or signature of any director/ company secretary or officer of the Company to certify the same. Thus, the authenticity of the passing of such a board resolution is doubtful. I also note that in the impugned board meeting, a purported decision to write-off the advance of Rs. 40 Lakhs was taken, but from the financial statements of JMGL for FY 2016-17, I do not find any 'Extraordinary items' that show the 'capital advances written off' by JMGL. I note that 'write off' of capital advance was not a regular business activity for JMGL and hence, as per para 8 of Accounting Standard 5, JMGL was required to disclose *"the nature and the amount of each extraordinary item separately in the statement of profit and loss in a manner that its impact on current profit or loss could have be perceived"*. However, I do not find any such disclosure being made by JMGL in the Annual Report of FY 2016-17. Thus, the fact that Rs.40 lakhs written off by JMGL also is not borne out of the facts of the case. This further raises doubts about the authenticity of passing of such purported board resolution. I also note that the copy of the purported board resolution was furnished for the first time before the forensic auditor and it was never furnished before SEBI in its proceedings at the interim order stage or the confirmatory order stage.

I also note that the Replying Noticees have claimed that the advance paid to M/s. Connoisseur Developers Ltd. of Rs. 40 Lakhs, has been returned back

by the builder (Rs. 27 Lakhs in FY 2017-18 and Rs. 13 Lakhs in FY 2020-21) without any interest. I also note that the forensic auditor has also attested the fact that Rs. 27 Lakhs were received from M/s. Connoisseur Developers Ltd. in FY 2017-18 (Rs.10 lakhs on 31 /10 / 2017, Rs. 15 lakhs on 01/ 11/ 2017 and Rs. 2 lakhs on 01/11/ 2017). However, what is pertinent to note is that even though JMGL in its purported board resolution dated February 9, 2017 has claimed that the booking advance paid to M/s. Connoisseur Developers Ltd. has been transferred to M/s. M-Tech Developers Ltd. but yet the return of advance is received by JMGL from M/s. Connoisseur Developers Ltd. and not from M/s. M-Tech Developers Ltd. Further, it is also pertinent to note the time of return of the advance of Rs. 40 Lakhs i.e. after the passing of the interim order dated September 26, 2017. I note that the Replying Noticees have furnished a copy of the extract of the Annual Return containing the Profit and Loss Statement for FY 2017-18 and 2020-21 to elaborate the fact that the amount received back from M/s. Connoisseur Developers Ltd. has been suitably accounted and recorded as 'Written Back' in the Profit and Loss Statement of the respective years. However, I note that the 'Amount written back' as reflected in the Notes to Accounts in the Financial Statement of FY 2017-18 and 2020-21 is a consolidated figure and does not disclose the bifurcation from each party, thus the extract of the profit and loss statement does not help the case of the Replying Noticees. In view of the above, I find that the return of Rs. 40 Lakhs from M/s. Connoisseur Developers Ltd. was merely an after thought. This fact alone does not establish the genuineness of the claimed nature of transactions with M/s. Connoisseur Developers Ltd. / M/s. M-Tech Developers Ltd.

In view of the above, I note that though there were fund transfers between JMGL and M/s. Connoisseur Developers Ltd, but the following claims of the Replying Noticees remain unestablished: (i) the nature of the said fund transfers to be 'advance against purchase of property', (ii) the claim that the 'advance became irrecoverable by end of March 2017' and (iii) the claim that

JMGL had written off the advance given. Therefore, I find that the financial statements of FY 2016-17, do not reflect a correct picture of the affairs of the Company, in respect of the aforesaid transactions.

2. Purchase of flat no. 906 in Camilia Garden, Bhiwadi, Rajasthan:

JMGL has purportedly executed a 'Buyer Seller Agreement (with Allotment Letter)' with M/s M-Tech Developers Pvt. Ltd. on July 26, 2016. From the copy of the aforesaid Agreement, I note that it is not duly stamped. I note that in accordance with the Article 21 of The Schedule to the Rajasthan Stamp Act, 1998, the purported 'Buyer Seller Agreement (with Allotment Letter)' with M/s M-Tech Developers Pvt. Ltd., dated July 26, 2016, is subject to stamp duty as applicable to 'Conveyance – relating to immovable property' i.e. 11% stamp duty. From the copy of the aforesaid agreement which was annexed to the FAR, I find that no such stamp duty has been paid by the executants therein. Thus, in accordance with Section 39 of the Rajasthan Stamp Act, 1998, the purported 'Buyer Seller Agreement (with Allotment Letter)' is inadmissible as evidence. I also note that the aforesaid agreement has been furnished for the first time before the forensic auditor and that it was not furnished in the proceedings before SEBI at the stage of the interim order or the confirmatory order. I note that the Replying Noticees have not furnished any other proof in respect of the purported investment of Rs. 25 Lakhs. As observed in the FAR, around 97.89% cost of the flat was paid in advance by JMGL which in itself is atypical business practice. I also note that within a span of six months of making this investment, the board of JMGL decided to write-off the same from the books of the Company. While JMGL has provided a copy of the relevant board resolution to the forensic auditor, which purports to have been passed in the board meeting held on February 9, 2017, elaborating the circumstances that prompted the board of JMGL to write-off, but there is no corroborating evidence furnished by JMGL (like copy of correspondence with the builder.) to show that the purported investments in

the properties of M/s M-Tech Developers Pvt. Ltd. were indeed turning bad and worse to such an extent that it could not be recovered. I also note that the copy of the board resolution reads as 'certified true copy', but there is no seal of the Company or signature of any director/ company secretary or officer of the Company to certify the same. Thus, the authenticity of the passing of such a board resolution is doubtful. I also note that the copy of the purported board resolution was furnished for the first time before the forensic auditor and it was never furnished before SEBI in its proceedings at the interim order stage or the confirmatory order stage. I also note that in the impugned board meeting, a purported decision to write-off the advance of Rs. 25 Lakhs was taken, but from the financial statements of JMGL for FY 2016-17, I do not find any 'Extraordinary items' that show the 'capital advances written off' by JMGL. I note that 'write off' of capital advance was not a regular business activity for JMGL and hence I note that as per para 8 of Accounting Standard 5, JMGL was required to disclose "*the nature and the amount of each extraordinary item separately in the statement of profit and loss in a manner that its impact on current profit or loss could have be perceived*". However, I do not find any such disclosure being made by JMGL in the Annual Report of FY 2016-17. Thus, the fact that Rs. 25 lakhs written off by JMGL is not borne out of the facts of the present case. This further raises doubts about the authenticity of passing of such purported board resolution. In view of the above, I note that though there were fund transfers by JMGL to M/s. M-Tech Developers Ltd. but the following claims of the Replying Noticees remain unestablished: (i) the nature of the said fund transfers to be 'advance against purchase of property', (ii) the claim that the 'advance became irrecoverable by end of March 2017' and (iii) the claim that JMGL had written off the advance given. Therefore, I find that the financial statements of FY 2016-17, do not reflect a correct picture of the affairs of the Company, in respect of the aforesaid transactions.

I note that the Replying Noticees have claimed that in July 2017, M-Tech Developers Pvt. Ltd., offered to re-allocate the advance which was paid for purchase of flat no. 906 in Camilia Garden, towards the payment for another property, only if they agreed to buy another property in Goa. In this regard, the Replying Noticees have furnished a copy of a letter dated July 28, 2017 which purportedly was written by M/s. M-Tech Developers Pvt. Ltd. to JMGL. I find that the copy of this letter has been furnished by JMGL for the first time in these proceedings and it was never produced in the earlier proceedings before SEBI at the interim order stage or the confirmatory order stage and also never produced before the forensic auditor during the forensic audit. Thus, the authenticity of this document is suspicious. Further, I have perused the copy of the purported 'Buyer Seller Agreement (with Allotment Letter)' executed by JMGL with M/s M-Tech Developers Pvt. Ltd. on August 11, 2017 for the purchase of Flat no. 702, in Tower Sigma -11, in Camilia Garden, Bhiwadi, Rajasthan, for consideration of Rs. 25 Lakhs. From the copy of the aforesaid Agreement, I note that it is not duly stamped. I note that in accordance with the Article 21 of The Schedule to the Rajasthan Stamp Act, 1998, the purported 'Buyer Seller Agreement (with Allotment Letter)' with M/s M-Tech Developers Pvt. Ltd., dated August 11, 2017, is subject to stamp duty as applicable to 'Conveyance – relating to immovable property' i.e. 11% stamp duty. However, from the copy of the aforesaid agreement which was annexed to the FAR, I find that no such stamp duty have been paid by the executants therein. Thus, in accordance with Section 39 of the Rajasthan Stamp Act, 1998, the purported copy of the 'Buyer Seller Agreement (with Allotment Letter)' is inadmissible as evidence. They have further submitted that the construction of the said project is in the finishing stages and the Company will soon have possession of the property. I note that the Noticees have not submitted any proof in respect of this claim. In view of the above, I find that the claim of the Replying Noticees that the builder re-allocated the flat in another project is not established and the claim that the flat is on the verge of completion and due for possession is also not established.

Therefore, I find that the financial statements of FY 2017-18, did not reflect a correct picture, in respect of the aforesaid transactions.

17. Re: Liability for interest and compensation has been provided in books of account of JMGL on its settlement in the financial year 2016-17, i.e., cash basis instead of accrual basis.

17.1. The SCN has alleged the following in this regard:

“A MOU was executed between JMGL and Integrated Capital Services Ltd.(ICSL) on 14.01.2014 for the sale of 69 bigha 15 biswa out of total land area 159 bigha and 19 biswa situated at Khasra no.434 and 439 in Baddi Himachal Pradesh for Rs.495.00 lakhs.ICSL had paid Rs 165.00 lakhs as earnest money vide cheque no. 416408 dated 14.02.2014.

The terms of the MOU were as follows:

- 6) Out of balance consideration amounting to Rs. 330.00 lakhs Rs. 165.00 lakhs was payable upon JMGL obtaining the approval/permission required for sale of the property from Baddi, Barotiwala Nalagarh Development authority, NOC from Sales Tax Department and deregistration of the JMGL in the record of the industrial department and permission for sale of land under section 118 of the HP Tenancy and Land Reform Act.
- 7) All the above approvals were to be obtained within 100 days from the date of execution of NOC.
- 8) Balance Rs.165.00 lakhs were to be paid within 45 days at the time of execution of sale deed in favour of ICSL.
- 9) Further as per terms of MOU in the event ICSL is not able to pay the consideration as per terms of the agreement then JMGL shall have the right to terminate the MOU and forfeit the earnest money amount paid by ICSL and in the event JMGL is not able to obtain all approval and permission for the sale of property within the agreed period of 100 days from the date of MOU the ICSL shall have the right either to terminate the MOU or to extend it for further reasonable period.
- 10) Further in case of termination of MOU JMGL shall refund twice the amount of earnest money paid by ICSL.

As per record & explanation provided to the forensic auditor JMGL was unable to obtain the appropriate permission/approvals from the authorities therefore the MOU was terminated by ICSL.

Liability for interest amounting to Rs 55.01 lakhs and compensation amounting to Rs.40.00 lakhs has been provided in books of account of JMGL on its settlement in the financial year 2016-17, i.e. cash basis instead of accrual basis. Thus the company has not followed basic accounting principle of recording expenses on accrual basis.”

17.2. The FAR has made the following observations:

“As per record and explanation provided to us Company was not able to obtain the necessary permission for sale from authorities therefore the earnest money amount received against sale of part of land was refunded to ICSL. Above amount Rs. 15.00 lacs was paid vide Ch. No. 444362 for RTGS issued from SBI Inderpuri Branch (Account no. 00000010886404240) on 16.05.2016 is part of earnest money deposit received from ICSL.”

17.3. The Replying Notices have submitted as follows:

“The Company had been unable to fulfill its commitment of obtaining all approvals and permissions for sale of the Land in favour of the earlier buyer for part of the Land within the agreed period of 100 days, and, as per the terms of the MOU executed with the proposed Buyer, the proposed Buyer had the right to either terminate the MOU or to extend it for further reasonable period. Further, in case of termination for a default of the Company, it was agreed that the Company will refund twice the amount of earnest money paid by the proposed Buyer.

As the Company was unable to obtain the requisite approvals within the period of 100 days, the proposed Buyer expressed that it did not wish to extend the MOU and sought refund of the entire EMD paid to the Company. This made the Company liable to repay twice the amount of EMD to the proposed Buyer.

The EMD of Rs. 165 Lacs was refunded by the Company to the proposed Buyer by March 2017. The Company in order to renegotiate the claim of the proposed Buyer for compensation equal to the amount of EMD, settled with the proposed Buyer that the Company will pay interest on EMD received by it earlier for the period that the funds of the proposed Buyer were utilised by the Company and that the Company will pay some amount to the proposed Buyer to compensate the latter for not having been able to fulfil the transaction for sale of Land.

The amount of interest calculated to Rs. 55.01 Lacs and the compensation was settled at Rs. 40 lacs. The Company thus saved an amount of about Rs. 70 lacs. As the amount of compensation claimed by the proposed Buyer was under renegotiation between the Company and the proposed Buyer, no expense or liability on account of compensation was accounted by the Company in its books of account during the relevant year/s, and the expense was accounted in the year of settlement payment.

The applicable accounting standards in matters of accounting of uncertain amounts provide that the liability and underlying expense is accounted on settlement, which translates into cash basis of accounting, and not on accrual basis of accounting. This is for the reason that the liability of the payer is completely uncertain until settled, and matters under renegotiation can only be accounted on cash basis as final outcomes are known only on completion of underlying transactions after they are renegotiated.

Kind attention is invited to relevant extracts from Accounting Standard-29 titled 'Provisions, Contingent Liabilities & Contingent Assets'.

Para 10.1: Provisions: A provision is a liability which can be measured only by using a substantial degree of estimation.

Para 10.2: Liability: A liability is a present obligation of the enterprise arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits.

Para 10.3: Obligation event: A obligation event is an event that creates an obligation that results in an enterprise having no realistic alternative to settling the obligation.

14. Recognition of Provisions

A provision should be recognised when:

- (a) An enterprise has a present obligation as a result of a past event;*
- (b) It is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and*
- (c) A reliable estimate can be made of the amount of obligation.*

If these conditions are not met, no provision should be recognised.

The Company had on its part, prepared the financial statements as per applicable Accounting Standard for recognition of expenditure and liabilities.

Clearly, there being in existence no amount for payment by the Company in settlement of its liability towards the proposed Buyer of the Land, and the amount payable by the Company being uncertain as the amount was under renegotiation, for reasons that there could not exist substantial degree of estimation in measurement of the amount payable by the Company, the latter could not have recognised the expenditure of compensation as the Company may settle in future to pay to the proposed Buyer as its liability on this account.

Accordingly, the Company was correct in accounting the settlement amount as its expenditure in the year of settlement payments.....”

17.4. It is the case of the SCN that despite being conscious of the fact that a liability of Rs.165 Lakhs (over and above the liability of return of earnest money deposit of Rs.165 Lakhs) has arisen upon JMGL, because of non-fulfillment of the terms of the MoU dated January 14, 2014, JMGL has failed to create

any provision for the same in the FY 2014-15 and FY 2015-16. By not adhering to the appropriate provisioning norms, the SCN has alleged that JMGL has failed to follow the accrual basis of accounting. I agree with the allegations of the SCN. I note that para 14 of '*Accounting Standard 29-Provisions, Contingent Liabilities and Contingent Assets*', lays down three criteria for recognition of a Provision in the books of accounts, which are as follows:

"14. Recognition of Provisions

A provision should be recognised when:

- (a) An enterprise has a present obligation as a result of a past event;*
- (b) It is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and*
- (c) A reliable estimate can be made of the amount of obligation.*

If these conditions are not met, no provision should be recognised."

17.5. From a reading of the above, I find that the liability arising out of the failure of JMGL to meet the commitments as stipulated in the MoU within 100 days of execution of the MoU, had satisfied all the three criteria's that are stipulated above such as a reliable estimate of probable loss was available with JMGL as the MoU was executed, the obligation was present because of a past event and by virtue of the terms of the MoU, it was probable that an outflow of benefits would have been required to settle the obligation. The contention by the Replying Noticees that the negotiations were underway may be true, but AS-29, stipulates that until the time the matter is finally settled, a provision is required to be made, which JMGL in the FY 2014-15 and FY 2015-16, failed to make. Thus, I find that by not making the appropriate provision, JMGL had understated its loss for the FY 2014-15 and FY 2015-16 to that extent. Thus, I find that the financial statement of JMGL for the FY 2014-15 and 2015-16 were misrepresented to that extent.

18. **Re:** Non deposit of statutory dues by Company.

18.1. The SCN alleges the following in this regard:

“As per the Auditors Report on the Balance Sheet of the Company as at March 31, 2017, the following dues aggregates to Rs. 19.51 lacs were unpaid by the company :

(d) Barrier Tax	Rs. 10.36 Lacs
(e) Sales tax	Rs. 7.28 Lacs
(f) Mandi Tax	Rs. 1.87 Lacs

Further it is also mentioned in the audit report that “Company has not been regular in depositing undisputed Statutory dues including Provident Fund, Investors Education and Protection Fund, Employees State Insurance, Income Tax, Sales Tax, Service Tax, Custom duty, Cess and Other Statutory dues applicable”.

As per Regulation 4(2)(f)(iii)(2) of LODR regulations 2015, “The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.”

As per Regulation 4(2)(f)(ii)(7) of LODR regulations 2015, “Ensuring the integrity of the listed entity’s accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.”

Thus the directors of the company should have been diligent and should have ensured that the company deposits its income tax dues in time so that it shall set a right corporate culture and ensure compliance of law of land. “

18.2. The FAR has made the following observations:

“As per Audited Balance Sheet as on 31.03.2017 as per Auditors’ Report “Company has not been regular in depositing undisputed Statutory dues including Provident Fund, Investors Education and Protection Fund, Employees State Insurance, Income Tax, Sales Tax, Service Tax, Custom duty, Cess and Other Statutory dues applicable with the appropriate authorities and there were following undisputed amount payable by the Company in respect of Statutory dues, outstanding as at 31.03.2017, for a period of more than 6 months from the date they became payable.

Nature of Dues	Amount (Rs.)
Barrier Tax	10,36,036
Sales Tax	7,27,687
Mandi Tax	1,87,606
Total	19,51,329

From the Books of Accounts and other records verified by us it has been observed that the all above stated Statutory Dues i.e. Barrier Tax amounting to Rs. 10,36,036, Sales Tax amounting to Rs. 7,27,687 (CST Rs. 3,09,587, VAT

Rs. 2,97,300 and VAT of Unit III Rs. 1,20,800) and Mandi Tax amounting to Rs. 1,87,606 were not paid till the date of our Audit i.e. statutory dues amounting to Rs. 19,51,329 were payable till the date of our Audit.”

18.3. The Replying Noticees have submitted as follows:

“The tax liability as disclosed in the auditor's report is for the period that the Company was operating its manufacturing unit. However, since shutting down its manufacturing operations in 2012, the outstanding tax liabilities have been reconciled by the Company with the sales tax department and the sales tax department has also issued a no dues certificate in this regard (*annexed as Annexure 17 to the Reply*). The liability shall now be written back by the Company in its books of account.

Further, the remaining amounts of Rs. 10.36 Lakh as Barrier Tax and Rs. 1.87 Lakh as Mandi Tax, it is the Company's understanding that there is no claim pending against the Company and the liability shall now be written back by the Company in its books of account. Also, there has been no claim raised by any of the aforementioned Authorities against the Company and the liability as appearing in books of account of the Company is an excessive provision not found due for payment, and therefore, warranting a write back in books of account of the Company.

It is pertinent to note that the Company has always endeavoured to pay its statutory liability in a timely manner and if there has been any delay, the same has been on account of cash flow issues. It is submitted that delay in payment of statutory liability does not amount to violation of PFUTP Regulations.

It is also pertinent to note that at the time of sale of the Company's property in Solan, Himachal Pradesh, as the Company surrendered operating licenses to the State Authorities, no demand was raised by any of the authorities, and on the basis of the no-due certificate issued by the Sales Tax Department (*Annexure 17 to the Reply*), the Company could consummate the sale of its property.”

18.4. I note that the SCN has alleged that JMGL has not paid undisputed government dues worth Rs.19.51 Lakhs and thereby violated provisions of Regulation 4(2)(f)(ii)(7) and Regulation 4(2)(f)(ii)(7) of LODR Regulations. I note that Regulation 4(2)(f)(ii)(7) mandates the board of a listed company to ensure the integrity of the entity's accounting and financial reporting systems, which is not the allegation in this charge. Further, Regulation 4(2)(f)(iii)(2) stipulates that the board of directors shall be instrumental in setting up a set of corporate culture and values that would inspire the executives in the organization. I find that none of the aforesaid provisions are attracted for the

non-deposit of undisputed govt. dues by JMGL. Thus, I find that no violations are made out by the SCN on this front.

19. Re: Receivables written off without creating provision for doubtful debt thus, not following accrual basis of accounting.

1. B.S HydroCarbon Pvt. Ltd.- Rs 106.79 Lakhs.

19.1. The SCN has alleged the following:

“An amount of Rs. 106.79 lacs was receivable from B.S HydroCarbon Pvt Ltd (BSHPL) by JMGL as refund money for non installation of plant by (BSHPL).

A cheque of Rs. 150.00 lakhs was issued by M/s BSHPL to M/s JMGL which was returned unpaid with the reason that “Drawer’s signature differs from the specimen on record”. A complaint against M/S BSHPL and its director under the provisions of section 138 of the Negotiable Instrument Act was filed before the CMM – Patiala House New Delhi. Later jurisdiction of the case u/s 138 of Negotiable Instrument Act was transferred to Mumbai and again shifted back to Delhi. It is also pertinent to mention that during the course of shifting of jurisdiction of the case from Delhi to Mumbai, company has paid requisite stamp duty at Mumbai Court.

The company did not provide reason to write-off the entire amount outstanding as on 31.03.2017 when the suit under sec 138 of the Negotiable Instrument Act was still in progress.

As per audited balance sheet as on 31.03.2016 the amount recoverable from BSHPL was netted with the amount of Sundry Creditors (contrary to the accounting principles) and none of the amount was shown as considered doubtful for recovery. Further JMGL had written off the amount by debiting sundry balances write-off (by charging to Profit & Loss account) and crediting the amount to Sundry creditors (as the amount was appearing as debit balance under the head Sundry Creditors) as on 31.03.2017.

The company should have created provision for doubtful debt for FY 2015-16 and then written off the amounts against the provision. This has led to misstatement of amount of sundry creditors and hence misstatement of financials for FY 2015-16 and FY 2016-17.”

19.2. The FAR has observed as under:

“As per record available suit under sec 138 of the Negotiable Instrument Act is still in progress, reason to write-off the entire amount outstanding as on 31.03.2017 is not explained/available.

It is also pertinent to mention that during the course of shifting of jurisdiction of the case from Delhi to Mumbai, Company has paid requisite stamp duty at Mumbai Court.

We have further observed that as per Audited Balance Sheet as on 31.03.2016 the amount recoverable from BSHPL was netted with the amount of Sundry Creditors (contrary to the accounting principles) and none of the amount was shown as considered doubtful for recovery.

As per Audited Balance Sheet as on 31.03.2017 amount write-off is not presented as per the guidelines of the disclosures requirement of schedule VI of the Companies Act.”

19.3. The Replying Noticees have submitted as follows:

“The Company had entered into an agreement with BSHPL for supply of furnace oil to the Company, for which it was agreed that BSHPL will install its own Plant and Machinery at the factory site of the Company. BSHPL had developed technology for extracting furnace oil from waste rubber, and as the Company was assured of supply of furnace oil at a rate significantly lower than the market prices, the Company considered it to be a viable option to come out of losses. The Company extended advances of Rs.100 Lakh to BSHPL upon signing of the MOU and thereafter. These payments were made by the Company to BSHPL when the Company's manufacturing operations were continuing. However, BSHPL failed to perform its part as the plant and equipment installed at the Company's factory premises did not produce the required oil. The amount advanced by the Company to BSHPL was adjustable against bills as would have been raised by BSHPL for supply of furnace oil. A cheque of Rs. 150 Lakh was issued by BSHPL, which was subsequently dishonoured. Since BSHPL was going to be a supplier of the Company, the amounts advanced by the Company to BSHPL and pending adjustment against supplies of consumables, were accounted as an advance in creditors ledger, which has the effect of being reflected as a debit balance in creditors ledger or as negative balance in creditors list.

The Company filed a complaint under Section 138 of the NI Act before Patiala House Court, New Delhi on April 07, 2012 and was able to recover an amount of Rs. 40 Lakh (on September 23, 2012) during the proceedings. In terms of the directions passed by the Hon'ble Supreme Court in *Dashrath Rupsingh Rathod v. State of Maharashtra*, all Section 138 cases were transferred to states where accused persons were maintaining a bank account. Accordingly, the matter was transferred to 43rd Court Borivali, Mumbai and registered as Complaint No. 4107/S/2014. Subsequently, the Negotiable Instruments (Amendment) Bill, 2015 came to be passed on the basis of which courts having jurisdiction where the bank branch of the payee is situated or where the cheque is presented for payment, would try Section 138 matters. Accordingly, the matter was once again transferred to New Delhi and numbered as Criminal Case CC No. 15377 of 2016. Since then, numerous summons have been issued against the accused, however, the accused has failed to appear before the Hon'ble Court.

The Company also filed a complaint with the Economic Offences Wing ("EOW") and one of the Directors of BSHPL was arrested and put behind bars for 2 months and then released on bail.

The matters are currently pending before the EOW and the Metropolitan Magistrate, Patiala House. Copies of complaints filed by the Company are annexed as Annexure 16 to the Reply.

Subsequently, the status of the company i.e., BSHPL was showing as 'strike off' on the MCA website (annexed as Annexure 15 to the Reply). In these facts and circumstances, while the matters against BSHPL are being pursued diligently, the Company was of the view that chances of complete recovery of the said amounts are very limited and accordingly, the amount of Rs. 106.79

Lakh recoverable from BSHPL was written off by the Company. This view was taken by the Company based on the facts and events that transpired and basis the advice given to the Company by professionals such as lawyers and accountants.

The Company failed not consider it necessary to make a provision as chances for recovery of the amounts had depleted substantially and the directors of BSHPL were not even appearing in court proceedings. Had the Company made a provision and not written off the amount, the same would have depicted an incorrect picture of a hope of recovery, not matching with the ground reality.”

19.4. I note that BSHPL has incorrectly adjusted the amount of Rs. 150 Lakhs with Sundry Creditors, as the nature of money that was given to BSHPL was capital advance for installation of Plant and Machinery, and not in the nature of advance to a supplier having a running account. Thus, I find that JMGL has not followed the GAAP while accounting for this transaction. Further, I note that JMGL was required to have created a provision for losses due to impairment of receivable's in FY 2012-13 itself when the cheque was dishonoured and when the Company decided to lodge a complaint under Section 138 of the Negotiable Instruments Act, 1881. Thus, by not creating a provision for impairment of losses on receivable's and continuing to adjust the amount of advance paid with Sundry Creditors A/c., I find that the Sundry Creditors were misrepresented in the financial statements for FY 2015-16 and 2016-17. Thus, I find that the financial statement of JMGL for the FY 2015-16 and 2016-17 were misrepresented to that extent.

2. **Reliance Industries Ltd (RIL) - Rs 6.74 lacs & TATA Chemicals Ltd – Rs 0.55 lacs.**

19.5. The SCN has alleged the following:

“As per books of accounts balance outstanding as on 31.03.2016 was Rs 6.74 lacs since one of the consignment against which the amount Rs. 6.74 lacs were paid in advance were not supplied by the RIL as per order specification.

However documentary evidence/correspondence take place between Company and M/s RIL stating that “material received M/s JMGL is not according to the specification” and corresponding efforts taken from recovery against the advance payment made was not available for verification.

.....

As per books of accounts balance recoverable outstanding as 31.03.2016 was Rs. 0.55 lacs which was paid to the TATA Chemicals Ltd against which the material was not received. As on 31.03.2017 the amount was written-off by the Company.

Thus for all the amounts written off as mentioned above, the company has not created provision for doubtful debt for the advances given before writing off the amounts.

As per accrual basis accounting, a provision is made so that an expense is recognized for probable bad debts as soon as invoices are issued to customers, rather than waiting several months to find out exactly which invoices turned out to be uncollectible. Thus, the net impact of the provision for doubtful debts is to accelerate the recognition of bad debts into earlier reporting periods.

Thus the company has not booked the expenses to the period to which they relate by not creating provision and hence not followed accrual basis of accounting.”

19.6. The FAR has observed as under:

“As per books of accounts balance outstanding as on 31.03.2016 was Rs 6.74 lacs. As per record and explanation provided to us Company during its operational period, was purchasing furnace oil from M/s Reliance Industries Ltd for the manufacturing of glass .As per RIL’s business model M/s RIL were usually supplying the material against advance payment. One of the consignment against which the amount Rs. 6.74 lacs were paid in advance were not supplied by the RIL as per order specification.

As we stated above (vide point no.) as on 31.03.2017 amount receivable from M/s RIL was write-off by the Company.

Observations

“Documentary evidence/correspondence take place between Company and M/s RIL stating that material received M/s JMGL is not according to the specification against the advance payment made is not available for our verification.

Documentary evidence/ correspondence/efforts taken place for the recovery of amount are not available. Further as we stated above that none of the amount has been shown as doubtful for recovery as per Audited balance Sheet as on 31.03.2016. We further observed that as per Audited Balance Sheet as on 31.03.2017 amount write-off is not presented as per the guidelines of the disclosures requirement of schedule 6 of the Companies Act.

.....
.....
As per books of accounts provided for our verification balance recoverable outstanding as 31.03.2016 was Rs. 0.55 lacs as per explanation provided to us Company was purchasing Soda Ash from M/s TATA Chemical Ltd. Rs 0.55 lacs was paid to the TATA Chemicals Ltd against which the material was not received. As on 31.03.2017 the amount was write-off by the Company. Our observations are similar as in the case of M/s Reliance Industries Ltd.”

19.7. The Replying Noticees have submitted as under:

“The Company decided to write off the amount appearing as a debit balance in the account of Reliance Industries Limited for the reason that the amount was discovered to be a reconciliation difference.

The Company was purchasing furnace oil from Reliance Industries Limited, which on an aggregate exceeded Rs. 2000 Lacs in each year and the purchases were made over a period of about 2 to 3 years.

The Company's efforts to recover the above amount by personal follow-up did not succeed and the reconciliation of accounts also did not lead to an identifiable transaction/s.

The Company after evaluating the fact that the cost of recovering the amount by filing a law suit within jurisdiction of Jamnagar, Gujarat, wherefrom supplies had been made to the Company, would be quite high, it was considered appropriate to write-off the amount.

The aforementioned write-off of amount has been allowed as a deduction in the income tax assessment of the Company.

.....
The amount of money recoverable from Tata Chemicals Ltd. was a miniscule part of the amount of business that the Company had transacted with Tata Chemicals Limited during the period it was continuing its manufacturing operations.

The Company was not able to recover the amount even after pursuing recovery over phone calls and personal messages, and the Company's efforts to contact the persons from the side of Tata Chemicals too did not yield results as the Company was no longer transacting with Tata Chemicals.

The Company after evaluating the fact that the cost of recovering the amount by filing a law suit within jurisdiction of Jamnagar, Gujarat, wherefrom supplies had been made to the Company, would be quite high, it was considered appropriate to write-off the amount.

The aforementioned write-off of amount has been allowed as a deduction in the income tax assessment of the Company.”

19.8. I note that while on one hand the Replying Noticees have stated that the JMGL decided to write-off the debit balance in the account of RIL due to reconciliation difference, while on the other hand, they have also stated that JMGL took every effort to recover the amounts due. I find that, both the submissions are contradictory to each other. If the amount is due to reconciliation difference then why take efforts for its recovery?

19.9. I also note that the Replying Noticees have stated that they have made several efforts to recover the amount due from RIL and TATA Chemicals Ltd., however I agree with the observations of the FAR that no proof has been submitted by JMGL to substantiate this claim. I also agree with the observations by the FAR, that no provision for losses as stipulated in AS-29/ IndAS 37 was made by JMGL in the FY 2015-16, for the amount due from RIL and TATA Chemicals. Thus, I find that the financial statement of JMGL

for the FY 2015-16 were misrepresented to that extent. I also note that in the audited balance sheet as on March 31, 2017, amount write-off by JMGL is not presented as per the guidelines of the disclosures requirement of Schedule VI of the Companies Act, 2013.

3. Engineers Rendezvous – Rs 0.40 lacs

19.10. The FAR has observed the following:

“As per record information provided company was availing services from M/s Engineers Rendezvous when it was in operation. Rs.0.40 lacs was paid as advance to M/s Engineers Rendezvous to provide certain services, due to closure of plant during August 2012, neither services are availed nor amount of advance was received back.”

19.11. The Replying Noticees have submitted as under:

“Engineers Rendezvous had to refund a small amount to the Company and the cost of recovering the same by legal means would have been much more than the amount. The Company after evaluating the fact that the cost of recovering the amount by filing a law suit would be higher than the amount to be recovered, it was considered appropriate to write-off the amount.”

19.12. I note that JMGL was availing services from M/s Engineers Rendezvous when it was in operation. The FAR notes that due to closure of plant in August 2012, there was no question of availing the said services and M/s Engineers Rendezvous has not returned the amount. From the submissions of the Replying Noticees, I find that it is not the case of JMGL that it continued to avail the services from M/s Engineers Rendezvous even after the closure of the plant. Thus, I find that a provision for loss on account of non-return of advance should have been made by JMGL in 2012-13 itself. However, JMGL continued to include M/s Engineers Rendezvous in balance of Advance Receivable until 2015-16. Therefore, I find that the ‘Advances’ as shown in the Financial Statements of JMGL for FY 2015-16 are misrepresented to that extent.

20. **Re:** Expenses paid towards salary, printing stationery not commensurate with the business operations of the Company.

20.1. The SCN alleges the following in this regard:

“JMGL had paid Rs. 42 lakhs towards listing fees, employees, salary, communication, printing, stationery, travelling expenses, bank charges, penalties, repair and maintenance, legal and professional charges, advertisements and other miscellaneous expenses.

However, it is to be noted that the company has 3 employees on company payroll and 1-part time consultant and no proper attendance register is maintained by the company.

Also, the company had shut down its units and there were no operations since 2012. Hence the expenses paid by the company are not commensurate with the business operations of the company.

It was further noted that Rs. 8.83 lakhs was payable to M/s Kauntam Papers Ltd. and Rs. 1.20 lakhs was receivable from ABC papers Ltd. (a connected account) which was adjusted with the account of Kauntam Papers Ltd. Further interest and penalty amounting to Rs. 9.37 lakhs payable is settled by the parties. Documents/basis showing settlements of interest and penalty amounting to Rs.9.37 lakhs was not provided for verification.

Knock off entry between two different entities which are related parties is not prudent accounting practice and has thus led to misrepresentation of books of accounts. This non furnishing of information has limited the audit to indicate the extent of misrepresentation and ‘creative accounting’ on the part of company.”

20.2. The FAR has made the following observations:

“Other expenses paid during the years 2014-15, 2015-16, and 2016-17 such as listing fees, employees salary, communication, printing, stationery, travelling expenses, bank charges, penalties, repair and maintenance, legal and professional charges, advertisements and other miscellaneous expenses.”

.....
.....
“As per records and information available to us Rs. 8.83 lakhs were payable to M/s Kauntam Papers Ltd. and Rs. 1.20 lakhs was receivable from ABC papers Ltd. (a connected account) which was adjusted with the account of Kauntam Papers Ltd. Further interest and penalty amounting to Rs. 9.37 lakhs payable is settled by the parties. Rs. 17.00 lakhs(i.e. principal amount and interest and penalty) is paid.

Documents/basis showing settlements of interest and penalty amounting to Rs.9.37 lakhs is not provided for our verification.”

20.3. The Replying Noticees have submitted as under:

“It may be appreciated that total expenditure of Rs. 42 lacs incurred by the Company are not on account of expenses which are variable with the business operations of the Company. The amount includes expenses incurred on account of listing fees paid to stock exchange whereat Company’s shares are listed for trading, bank charges, penalties, payments made to lawyers and

consultants for handling legal matters, and that all these expenses are either of a fixed nature or are required to be incurred depending on the volume of quantum of activity, which are always irrespective of size of business operations of the Company.

That aggregate of expenses on account of salaries, printing & stationery and the like, which are fixed to the extent of minimum number of persons in employment of the Company, like a Company Secretary, Accounting staff, Office assistant, etc., and similarly these expenses are semi-variable after a threshold level, the expenses on other overheads are fixed to the extent of minimal volume of works and are semi-variable beyond a certain level. The entire expenditure during the period of 3 years from 01.04.2015 to 31.03.2018 amounts to Rs. 20.43 Lacs, which by all estimates is very reasonable for the size and nature of operations of the Company.

In addition to the above expenditure incurred by the Company, there are certain other expenses aggregating to about Rs. 20.46 Lacs during the period of 3 (three) years from 01.04.2015 to 31.03.2016 which includes listing fees paid to stock exchange whereat shares of the Company are listed for trading, payments to lawyers and professionals engaged by the Company from time to time for various services availed by the Company, cost of advertisements published by the Company including to meet compliances with Listing Obligations, etc. All the foregoing expenditure is not linked to the quantum of business operations of the Company,

The above expenditure generated a revenue of Rs. 40.49 Lacs for the Company during the aforesaid period of 3 (three) years, from 01.04.2015 to 31.03.2018.

The Company, upon having ceased manufacturing activities, and at a stage where it was exploring new business opportunities, did not have the requirement of employing more people, and was thus able to operate profitably and balance its revenues within the limited expenditure obligations undertaken by the Company.

The Company, with 3 employees who were required to report to the office everyday and whose nature of work required them to be in office throughout the day, did not particularly feel the requirement of maintaining an attendance register to record their attendance.

The amount receivable from ABC Papers Ltd. was adjusted in the account titled Kuantum Papers Ltd. after the Company entered into a settlement with Kuantum Papers Ltd. in terms whereof the Company also paid interest and penalty amounting to Rs. 9.37 Lacs.

It is submitted that the name of ABC Papers Limited was changed to Kuantum Papers Limited with effect from 30.03.2012 and upon settlement made by the Company, the balances as appearing in both accounts, i.e., Kuantum Papers Limited and ABC Papers Limited, were adjusted in books of account of the Company.

A copy of Certificate of Incorporation of ABC Papers Limited, dated 30.03.2012, issued by the Registrar of Companies, Punjab & Chandigarh, confirming the change of name of ABC Papers Limited to Kuantum Papers Limited is attached as **Annexure 13**.

The copy of Order passed by the Court taking the aforesaid settlement on record, alongwith the statement given by representative of Kuantum Papers Limited and copy of the letter issued by the Managing Director of Kuantum Papers Ltd. accepting amount towards complete clearance of outstanding is attached hereto as **Annexure 14.** “

20.4. I note that the allegation of “*expenses not commensurate with the nature of business*”, does not invite action under any of the provisions of LODR Regulations. I note that ‘extent of expenses to be incurred’ is purely a commercial call to be taken by JMGL and that decision per se is not amenable for action under any provisions of LODR Regulations. As far as the allegation of ‘knock-off entry between M/s Kauntam Papers Ltd. and ABC Papers Ltd. are concerned, from the copy of the Certificate from RoC Punjab and Chandigarh, I find that the name of ABC Papers Ltd. was changed to Kauntam Papers Ltd. Thus, the adjustment of entry between the two entities as done by JMGL may not call for any adverse inference. From the copy of the letter dated August 23, 2016, written by Kuantum Papers Ltd. to JMGL, I find that the former has settled the disputes of unpaid dues with the latter for a final payment Rs.17 Lakhs, thus, the observation by the FAR that no proof has been furnished by JMGL evidencing the aforesaid settlement, does not hold good.

21. **Re:** Accounts being prepared on ‘Going Concern Basis’.

21.1. The SCN has alleged the following:

“The Company had closed its operations in 2012 and had only income from sale of land, plant and machinery etc. However, on perusal of Annual returns filed with MCA (MGT9), the Company has classified itself under code 231 (manufacturing of glass and glass products) and turnover is shown as 100% which is factually incorrect. However, on conduct of site visit the forensic auditor observed that Company is operating from a residential building and the strength of the staff is 3 on Company payroll and 1 as part time consultant. It was also noted that proper attendance register was not maintained but attendance is being recorded on an excel sheet. All these facts raise concern about the business operations of the Company. Thus although the directors have mentioned in the annual report that “The Board of the Company is exploring and evaluating various business opportunities, and accordingly, the accounts of the Company have been prepared on a going concern basis”, the contention of the directors do not seem tenable in light of the observations pointed out by the forensic auditor on conduct of site visit clubbed with the fact that there is a

change in MGT9 and in certain years, the Company had transactions only with respect to sale of land and property.”

21.2. The FAR has made the following observations:

“During the year 2012-13 Company had disposed off its sole manufacturing unit along with land, Building and plant & Machinery and there was no manufacturing activity subsequent to that. It has been observed that the annual accounts of the company for the year 2012-13 onwards has been prepared on going Concern basis. As per Audited Balance sheet for the year 2012-13,2013-14 it has been stated that “ Company’s management is making efforts to explore other business activities and therefore has prepared the annual account on a going concern basis.

Further as per audited Balance sheet for the year 2014-15 & 2015-16 it has been stated that “The Directors have prepared the annual accounts of the Company on a going concern basis “ without quoting any reason. It is pertinent to mention that there was no manufacturing or other activity after the closure of unit at Baddi. As per Accounting Standard issued by ICAI and generally accepting accounting principles the preparation of the annual accounts on going concern basis should be followed when continuing in operation is foreseeable in future.

As per record and explanation available to us after the closure of manufacturing unit at village Tipra, Pargana- Doon, Barotiwala, Tehsil–Baddi, Company was in the process to explore the new area of activities. Consequently company entered into an agreement on 18.08.2016 with M/s Sumangal Glass Pvt Ltd (SGPL) having it registered office at 122,mittal court, C wing, 224, Nariman point, Mumbai-400021 as their sales agent for North and East zone of India. In terms of selling agreement executed between M/s JMGL and SGPL, M/s JMGL shall work as selling agent and M/s JMGL shall procure order from wholesaler and retailer of eastern and northern zones of the country. M/s JMGL is entitled to commission @ 3% of net sales value of order procure by M/s JMGL further M/S JMGL is liable to pay interest bearing security deposit of Rs 300.00 lacs, bearing interest rate @ 1% per month. It has been observed that there was no business as sales agent of Sumangal Glass Pvt. Limited till 30.06.2017 and the activity as sales agent of Sumangal Glass Private Limited was started from July 2017.

It has been further observed that bills for the months of July, August, September and October were raised on 30.11.2017 and GST returns collectively submitted in the month of December 2017. As per records available to us commission earned from Sumangal Glass Private Limited on the procurement of orders on behalf of them during the months of July to December 2017 are as follows:

Amount in lakhs		
Month	Amount of commission earned	Amount of Interest earned from SGPL on Deposit amount

September 16		4.50
March 17		18.00
June 17		9.00
July 2017	0.86	
August 2017	1.81	
September 2017	2.06	9.00
October 2017	1.82	
November 2017	2.83	
December 2017	4.57	9.00

In view of above we are of the opinion although at the time of finalization of annual accounts for the years 2013-14 to 2015-16 continuing of operation was not foreseeable in future and going concern concept was not certain, after entering in to business agreement with Sumangal Glass Pvt Ltd for eastern & Northern Zone, Company is now in the business of selling glass for 3rd party and establishing the criterion of going concern.”

21.3. The Replying Noticees have submitted as under:

“The Company after closure of its manufacturing operations, started exploring and evaluating new business opportunities in the field of glass manufacturing and/ or glass processing. However, with several factors delaying decision making in this regard and considering the experience of management of the Company in sale and distribution of glass and the sales network of dealers that the Company had all over the country, the Company commenced business of marketing and sale of glass.

During the years ended 31.03.2018 and 31.03.2019 the Company earned income of Rs. 24.06 Lacs (for period of about 9 months from July 2017 to March 2018) and Rs. 16.43 Lacs (for a period of about 5 months from April 2018 to August 2018) on account of sales commission from transactions in sales of glass.

Hence, the Company has continued to engage itself in activities connected with and related to glass manufacturing, glass processing and dealing in glass though not having been directly engaged into production of glass.”

21.4. I note that during FY 2012-13, the Company has discontinued its business operations, and according to JMGL it continued to prepare its books of accounts on going concern basis since it was searching for new

opportunities. Consequently, JMGL entered into an agreement on August 18, 2016 with M/s Sumangal Glass Pvt Ltd., as their sales agent for North and East zone of India. According to the opinion of the FAR, although at the time of finalization of annual accounts for the years 2013-14 to 2015-16 continuing of operation was not foreseeable in future and going concern concept was not certain, however, after entering in to business agreement with Sumangal Glass Pvt Ltd, Company is now in the business of selling glass for third party and establishing the criterion of going concern. In view of the aforesaid observations of the FAR, I find that no adverse inference can be drawn against the Noticees on this allegation of the SCN.

22. From the discussions in para 19.12, 19.9, 19.4, 17.5, 16.4 (1) and 16.4 (2), I find that the financial statements of JMGL for FY 2015-16, FY 2016-17 and FY 2017-18, failed to represent a true and fair view of the state of affairs of the Company in compliance with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Regulation 33(1)(c) and Regulation 48 of LODR Regulations.

B. Violation of Section 11(2)(i) and 11(2)(ia) of SEBI Act, 1992 for Non-furnishing of information to the forensic auditor.

23. Re: Non-furnishing of information to the forensic auditor.

23.1. The SCN has alleged the following:

“The company has not furnished information to forensic auditor such as: documents showing settlement of interest, documents stating the recovery efforts made by the company, supporting for list of 17 trade receivables, documents showing settlement of interest and penalty. The fact that the company has failed to provide documents sought during the interim order is a violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act. Also, non-submission of documents to confirm the trade receivables of 17 parties amounting to Rs. 29.88 lakhs clubbed with the fact that there have been no efforts on the part of company for recovery raise doubt on the genuinity of transactions and amounts to misrepresentation of accounts.”

23.2. The Replying Noticees have submitted the following:

“The Company had provided fullest access to the Forensic Auditor to its books of account and accounting software, and had provided all information and documents required by the Forensic Auditor. For the reasons that certain information sought by the Forensic Auditor

may not have been readily available with the Company or the Company was unable to arrange the same in a timely manner from its legal advisors or professionals or consultants whose services had been engaged by the Company for specific assignments, there may have been an instance of such information not being made available to the forensic auditor. The Company apologises for the instance of not having provided the fullest information as required by the Forensic Auditor, which it is assured was for reasons beyond the control of the Company and for no malafide reasons.

It is submitted that the Company has provided responses to all observations contained in the Notice under reply now, and the information and documents now provided or attached hereto, also contains the information and documents as had been requested by the Forensic Auditor.”

23.3. I note that while discussing the topic ‘Work Performed during the forensic audit’, the FAR at Page 9 categorically mentions that there were ‘NIL’ occasions on which in spite of reminders by the forensic auditor, JMGL did not provide documents/ clarifications. Thus, I find that the FAR has not drawn any adverse inference about the cooperation by JMGL to provide information or documents. Thus, I find that the charge of ‘non-furnishing of information to the forensic auditor’ do not stand established.

C. Violations of PFUTP Regulations, 2003:

24. I note that the scope of work, as was assigned to the forensic auditor by BSE, as stated in the Forensic Audit Report, was as follows:

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

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

- a. Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company
- b. To examine the Books of Accounts and backup records of the company for the period of two years including the year of transactions referred in SEBI / Exchange Order to:
 - I. Cash flow analysis to trace source of funds and end use of funds on sample basis (as per Annual Report for last 2 years)
 - II. Assess genuineness of the debtors/ receivables and creditors / payables,
 - III. Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors)
 - IV. Analysis of Related party transactions

- V. High value bank transactions to ascertain their relevance to the business of the company and to identify the potential round-tripping of funds or accommodation transactions
 - VI. Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers
 - VII. Investments made by the company in subsidiary companies along with the relevant fund flows, if any
 - VIII. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds
 - IX. Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act
 - X. Comment on the shareholding pattern
 - XI. Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds).
- c. Verification / discussions:
- I. Independent and /or physical verification of the underlying transactions
 - II. Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the company
 - III. Discussions with key stakeholders like Promoters/ Senior Management Team / Departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the company, etc.
 - IV. Business history, directorship searches and litigations
 - V. Assessment of size and scope of business
 - VI. Site visit as may be applicable for verifying existence of the company functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants / factories."

25. I note that conclusion of the forensic audit, as mentioned in the FAR, is as under:

"

Based on the facts, information, documents & explanation provided, and our observations mentioned above, it can be concluded that during the period under review, company has undertaken below-mentioned transactions, prima facie those transaction seems to be detrimental to the interest of minority shareholders and/ or of the Company.

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

- a) The company failed to provide the adequate supporting documents to ascertain the genuineness of below mentioned transactions. Considering the explanation and facts of non-availability of documents, there could be possible misrepresentation in the financials and business of the company. The details of instances are hereunder:

NIL

- b) Possible violation of SEBI LODR 2015 and other applicable law and regulation:

As per Listing Obligations and Disclosure Requirements Regulations (LODR), 2015, all related party transactions shall require prior approval of the audit committee. It has been observed that the approval of the audit committee for the

repayment of unsecured loan of J P Overseas Private Limited has not been obtained. Above is violation of SEBI LODR 2015. (Refer point no. 5.2.1 for detail)

II. Possible misuse of books of accounts / funds of the company including facilitation of accommodation entries and / or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP) as evident from the following findings:

- a) Loan/advance given to different parties, without charging any interest and agreeing terms of repayment etc.

NIL

- b) On review of high value bank transaction, it is observed that certain transactions executed are in the nature round tripping of fund without any adequate supporting documents

NIL

Other Observations

Rs. 200 lakhs was received by the Company on 21.11.2014 as advance against the sale of factory land and building but the deal was completed on 01.07.2016 after a considerable delay i.e. after a gap of 1 year and 7 months. On scrutiny of various documents, correspondence between seller and Authorities, buyer and Authorities, documents conveying the permission and other relevant documents, we are of the opinion that the delay was mainly due to time taken to obtain the requisite permission from Authorities and inaccurate assessment of time required for obtention of permission by the parties of the contract at the time of execution of agreement to sale.

There is a difference of Rs. 897.40 lakhs between value of property as per circle rate (on which the stamp duty has been paid) and sales consideration, sales consideration is lesser by Rs. 897.40 lakhs.

Advances recoverable Rs. 116 lakhs as on 31.03.2016 was consist of amount recoverable Rs. 106.79 lakhs from B.S Hydrocarbon Private Limited which was paid by the Company in the year 2010 for the supply and installation of a plant which ensure continuous and uninterrupted supply of furnace oil extracted from waste rubber. M/s BSHPL was unable to install the plant and amount paid by M/s JMGL was demanded back. It has been observed that matter is under litigation and the Company has also lodged a complaint with EOW. During the course of legal proceeding Rs. 40 lakhs was paid by M/s BSHPL as part payment towards its dues. Rs. 106.80 lakhs was outstanding as recoverable as on 31.03.2016 which has been write off by the Company as on 31.03.2017. We have observed that as on 31.03.2017 company has netted off the amount recoverable from BSHPL with the amount of creditors which is contrary with the accounting principles. Write off the entire amount Rs. 106.79 lakhs as on 31.03.2017 is not justifiable when the court proceedings/ Company's efforts to recover the dues are on and Company has recovered Rs 40.00 lacs during the court proceeding. It is pertinent to mention that during the shifting of jurisdiction of case from Delhi to Mumbai Company has paid stamp duty/court fees. Why the amount was spent on the court fee when the company considered the entire amount fit for write off. We are of the opinion that instead of writing off the amount company should have made the provision for doubtful debt. Further we have also observed that as per audited Balance Sheet as on 31.03.2016 the company has considered this amount as good for recovery.

With regard to utilization of amount of sale proceed of factory land & building, the amount is mainly used by the Company for the payment of (i) Dealership deposit, (ii) unsecured loans, (iii) advance for booking of property, (iv) repayment of advance received from customers received by the Company during its operational period, (v) creditors, (vi) expenses & other liabilities (vii) Statutory dues. Provisions of Listing

Obligation and Disclosure Requirement (LODR) has not been followed for the repayment of Unsecured loans of related party, as per the provision of LODR all related Party Transactions require approval of the Audit Committee, however the requisite approval has not been obtained. Further the justification for write off the amount paid for the booking of property within a short span of 7-8 months with insignificant efforts to recover the dues, paying further amount as booking advance to the same group for another property, when the earlier paid amount considered by the Company as doubtful and was already write off are not explained / available. Although out of write off amount Rs. 40 lacs paid to M/s Connoisseure Developers Private Limited, Rs. 27 lacs are received back during the month of October and November 2017 by the Company but it reflects that the decision of the Company to invest the amount and to write off the amount was with inadequate business acumen.”

26. As can be noted from the above terms of reference of the auditor, scope of audit was to examine possible violations of LODR Regulations and not violations of PFUTP Regulations, 2003 and accordingly, the findings of the FAR are confined only to misrepresentation in the books of accounts of JMGL and consequential and other violations of LODR Regulations. It is observed that the Investigating Authority, after examining the FAR, incorporated the findings of FAR as part of investigation report, and consequently, the same was reproduced in the SCN. However, the SCN additionally states, “.....5.It was observed during investigation that the company (Noticee no. 1) had failed to present true and fair financial statements and had executed transactions which are non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company. It was further observed that JMGL had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors”. Consequently, the SCN, *inter alia*, additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the FAR. It is observed that Noticee no. 1 to 8 have been charged with the violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) of PFUTP Regulations, 2003 which can be in relation to dealing in securities. However, no details of trading viz: volume of shares

traded, price impact, % increase or decrease in price, etc. have been provided. Nor is there any analysis as to how each of the finding of FAR has impacted the persons dealing in securities.

27. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 deals with fraud related to securities market and the provisions of Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003 are also related to securities market fraud/manipulation/ unfair trade practices. Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or price impact analysis that would impact the investors.
28. It is further observed that Regulation 4(1) of PFUTP Regulations, 2003, at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. The common thread through these provisions is that the ingredients of fraud/ manipulation/ unfair trade practices must be satisfied. In this regard, I note that the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 clarifies as follows:

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

Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market should have directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price shares of JMGL. I note that FAR does not allege any diversion/ mis-utilisation of funds which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the Company. I note that there is no bar on taking action by SEBI on the basis of a FAR, invoking provisions of PFUTP Regulations, 2003 and other similar provision of SEBI Act, 1992 related to fraud, if, after examination of the matter, including the FAR, SEBI finds that there was impact on the securities market or the price of the scrip, which are ingredients to prove violations of PFUTP Regulations, 2003. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753, makes it clear that 'inducement' is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose 'to induce others to deal in securities'. The allegations made in the SCN does not bring out findings or any facts relating to impact on trading in securities or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc.

29. Therefore, I find that violations of PFUTP Regulations, 2003, as alleged in the SCN, are very general and vague in nature without making out any specific case containing necessary ingredients required to constitute these violations. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, I find that the allegations of violation of Section 12A(a), (b & (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable

against Noticee no. 1 to 8. However, SEBI is at liberty to issue fresh SCN to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/ingredients under PFUTP Regulations, 2003.

30. SCN, also alleges that JMGL has violated Regulation 4(1)(a),(b),(c),(e) & (g), 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(2),(3),(6) & (12) of the LODR Regulations. In this regard, I note that Regulation 4 of LODR Regulations, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provide that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

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

31. As discussed above, JMGL has been found to be in violation of Reg. 33(1)(c) and Reg. 48 of the LODR Regulations, therefore, JMGL was not in compliance of the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, JMGL is in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations.
32. Regarding the violations of Regulations 4(2) (f) (ii) (6) & (7) and 4(2)(f)(iii) (2), (3), (6) & (12) of the LODR Regulations by JMGL, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is of the board of directors of the listed entity. Therefore, I find that JMGL cannot be said to be in violations of Regulation 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (2), (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.
33. SCN further alleges that JMGL has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. I note that securities of JMGL are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

“.....1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.
2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:—
i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/ circulars as may be issued by SEBI from time to time.

- ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.
- iii. such other directions, requirements and conditions as may be imposed by SEBI/Exchange from time to time.....”

34. Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the condition is compliance with LODR Regulations. In the present case, JMGL is a company whose securities are listed on BSE Ltd. which is a recognised stock exchange. JMGL being a company having its securities listed on BSE was also required to sign the said uniform listing agreement with BSE and in view of the provisions of Section 21 of SCRA, 1956, JMGL was bound to comply with the conditions of the uniform listing agreement, as extracted above. JMGL has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, JMGL is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

35. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 8, who were the directors/CFO of JMGL at the relevant time, are liable for the violations alleged to be committed by JMGL viz: Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, 4(1) (a), (b), (c), (e) & (g), Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(2), (3), (6) & (12), Regulation 16(1)(b)(vi), Regulation 33(2)(a) and Regulation 48 of LODR Regulations and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against JMGL, automatically, on the directors /CFO of JMGL. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors *qua* these violations may also be examined by SEBI. In the previous paras, it has been found that JMGL was in violation Regulations

33(1)(c) and Regulation 48 of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to 8, it has to be determined whether these Noticees are liable for those violations for which JMGL has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word “offence” with the word “contravention” in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by JMGL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature. Now, the question remains whether these Noticees can be held independently liable for the violations alleged against them without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii) (2), (3), (6) & (12) and 33(2)(a) of LODR Regulations, the violations of which have been alleged against Noticee no. 2 to 7, create specific and direct liability of the board of directors. As discussed above, Clause (ii) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Thus, board of directors is responsible for complying with these principles. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations or otherwise, is fastened on the board of directors of the listed entity. In the previous paras, it has been found that JMGL was in violation of Regulations 33(1)(c) and 48 of the

LODR Regulations and Section 21 of SCRA, 1956. In view of these violations found to have been committed by JMGL, the principles contained in Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(2),(3), (6) & (12) are also violated for which Noticee no. 2, 3, 4, 5, 6 and 7, being part of the board of directors of JMGL are liable. Further, Regulation 33(2)(a) creates primary liability of board of directors and CEO/CFO, for certification and approval of financial results. Therefore, Noticee no. 2 to 8 are liable for violation of Regulation 33(2)(a) of LODR Regulations, also. Additionally, Noticee no. 2 and 4, having issued untrue certificates with respect to the financial statements of JMGL, have also violated Regulation 17(8) read Part B of Schedule II of LODR Regulations.

36. I note that Noticee no. 2 to 7 were the directors of the Company, during the period of violations alleged in the SCN, i.e. April 01, 2015 to January 31, 2018. I note that Noticee no. 2 was the Managing Director of JMGL during the FY 2015-16, 2016-17 and 2017-18. I also note that Noticee no. 3 was the Non-executive Independent Director of JMGL during FY 2015-16. I note that Noticee no. 4 was the non-executive director of JMGL during FY 2015-16, 2016-17 and 2017-18. I note that Noticee no. 5 was the non-executive independent director of JMGL during FY 2015-16, 2016-17 and 2017-18. I note that Noticee no. 6 was the non-executive director of JMGL during FY 2015-16, 2016-17 and 2017-18. I note that Noticee no. 7 was the non-executive independent director during FY 2015-16, 2016-17 and 2017-18. I note that Noticee no. 8 was the Chief Financial Officer of JMGL during the FY 2016-17 (from May 28, 2016) and 2017-18. I note that Regulation 4(2)(f) refers to board of directors of company, it does not make any distinction between independent director or other directors. I further note that during the financial years 2015-16 to 2017-18, the details of audit committee members of JMGL, number of audit committee meetings held and the meeting attended by the concerned directors, are as under:

Financial Year FY 2015-16

Name of the Director	Designation	Number of Meetings held during the year	Number of Meetings attended during the year
Mr. Sajeve Bhushan Deora	Chairman	5	5
Mr. Chander Mohan Marwah	Member	5	5
Mr. Ambarish Chatterjee	Member	5	5

Financial Year FY 2016-17

Name of the Members	Designation Category	Number of Meetings held during the year	Number of Meetings attended during the year
Mr. Sanjay Kumar Sareen	Chairman	5	5
Mr. Chander Mohan Marwah	Member	5	5
Mr. Ambarish Chatterjee	Member	5	5

Financial Year FY 2017-18

Name of the Members	Designation	Number of Meetings held during the year	Number of Meetings attended during the year
Mr. Sanjay Kumar Sareen	Chairman	4	4
Mr. Chander Mohan Marwah	Member	4	3
Mr. Ambarish Chatterjee	Member	4	4

37. Regarding the liability of the independent directors for the acts of commission and omission of a company reference may be made to Regulation 25(5) of the

LODR Regulations which provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations. As discussed in previous paragraphs, the Company has been found to be in violation of Regulations 33(1)(c) and 48 of LODR Regulations and Section 21 of SCRA, 1956. In respect of the aforesaid violations by the Company, I note that Noticee no. 2 to 7 have already been found to have violated Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(2), (3), (6) & (12) of LODR Regulations. I note that Noticee nos. 3, 5 and 7, being the independent Directors of JMGL and being part of the audit committee of JMGL reviewed the financial statements of JMGL, and approved the financials of JMGL as part of the board of directors of JMGL. Failure to raise any concern regarding the financials of JMGL, as member of the audit committee as well as the board of directors of JMGL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations. I also note that, alongwith other directors, Noticee no. 8 has executed and signed the financial statements of JMGL for FY 2016-17 and FY 2017-18.

38. I note that, in case of listed companies, the continuous compliance of LODR Regulations is important, to enable the investors to take timely investment and disinvestment decisions. In view of the aforesaid violations committed by JMGL (which includes violations of misrepresentation in the financials), and its directors/CFO, I find that direction under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued. I note that vide its order dated March 17, 2020 in the matter of **Oasis Securities Limited & Ors vs. SEBI** in Appeal no. 316 of 2018, Hon'ble SAT has upheld the jurisdiction of SEBI in ensuring that Accounting Standards are complied with by the listed entities, in compliance with their listing obligations.

39. SCN in the matter, also calls upon the Noticee no. 1 to 8 to explain as to why appropriate penalty be not imposed upon it under Sections 15A(a), 15HA and 15HB of SEBI Act, 1992 and Section 23E and 23H of SCRA, 1956, for the violations alleged in the SCN. Extract of these penalty provisions, as existing at the relevant time is as under:

Extract of Section 15A(a), 15HA and 15HB of SEBI Act, 1992:

15A. Penalty for failure to furnish information, return, etc.

(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.

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.

40. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15HB of the SEBI Act, 1992, is attracted and not the penalties under Section 15HA or 15A(a) of SEBI Act, 1992 and Sections 23E of SCRA, 1956. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 have not been made out, therefore, penalty under Section 15HA of SEBI Act, 1992 is not attracted against the Noticees. I also note that no violation of Section 11(2)(i) and 11(2)(ia) of SEBI Act, 1992 is made out and hence penalty under Section 15A(a) is also not attracted. I also note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that JMGL is in violation of listing conditions, however, JMGL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. I find that penalty under Section 23H of SCRA, 1956 is also not attracted in the case of Noticee no. 2 to 8, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided. As the Noticee no. 2 to 8, being directors/CFO of JMGL, have been found to be in violation of LODR Regulations, which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the “regulation” of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI directions alleged against these Noticees, therefore, Section 23H is not

attracted in the case of Noticee no. 2 to 8. JMGL has been found to have violated provision of Section 21 of SCRA Act, 1956, therefore, provisions of Section 23H is attracted qua Noticee no. 1.

41. I find that for the violation of LODR Regulations, JMGL is liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, the rules or the regulations made or directions issued by SEBI for which no separate penalty has been provided. Since, LODR Regulations are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HA) does not separately provide for any penalty for violation of LODR Regulations, therefore, for violation of LODR Regulations by JMGL, as found in this order, penalty under Section 15HB is attracted against JMGL. Similarly, Noticee no. 2 to 8 who are the directors/CFO of JMGL are liable for imposition of penalty, for the violations of LODR Regulations which are found to be committed by them, under Section 15HB of the SEBI Act, 1992.
42. 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.”

43. I find that the SCN does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that the SCN on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by Noticee no. 1 to 8, since the same is not quantifiable. I find that only half of the observations made in the FAR could be sustained in the present proceedings. However, I note that the violations found have occurred over a period of three financial years.

Directions and monetary penalties:

44. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956 read with Section 19 of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, direct as under:

- (i) The Noticee no. 1, 2 and 8, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;
- (ii) The Noticee no. 3, 4, 5, 6 and 7, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;

(iii) The Noticee no. 1 to 8, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
Noticee no. 1	M/s. Jai Mata Glass Limited	Section 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956.	Rs. 15,00,000/- (Fifteen Lakh Only)
Noticee no. 2	Mr. Chander Mohan Marwah	Section 15HB of SEBI Act, 1992	Rs. 7,50,000/- (Seven Lakh Fifty Thousand only)
Noticee no. 3	Mr. Sajeve Bhushan Deora	Section 15HB of SEBI Act, 1992	Rs.1,00,000/- (One Lakh only)
Noticee no. 4	Mr. Samir Katyal	Section 15HB of SEBI Act, 1992	Rs. 1,50,000/- (One Lakh Fifty Thousand only)
Noticee no. 5	Mr. Ambarish Chatterjee	Section 15HB of SEBI Act, 1992	Rs. 1,50,000/- (One Lakh Fifty Thousand only)
Noticee no. 6	Ms. Anu Marwah	Section 15HB of SEBI Act, 1992	Rs. 1,50,000/- (One Lakh Fifty Thousand only)
Noticee no. 7	Mr. Sanjay Kumar Sareen	Section 15HB of SEBI Act, 1992	Rs. 1,50,000/- (One Lakh Fifty Thousand only)
Noticee no. 8	Mr. Lalit Anand	Section 15HB of SEBI Act, 1992	Rs. 2,00,000/- (Two Lakh only)

(iv) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of receipt of this order. The Noticees shall remit / pay the said amount of penalties through either 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-2, 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)	

45. 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.

46. This Order comes into force with immediate effect.

47. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of mutual funds to ensure necessary compliance.
48. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs, along with a copy of the Forensic Audit Report for their information.

Date: November 23, 2021
Place: Mumbai

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