

WTM/AB/IVD/ID19/14527/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11A, 11B (1), 11B (2) and 15A(a), 15HA and 15HB 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), 23E and 23H 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.	Nu Tek India Limited-Vineet Aggarwal	AAACN2270L
2.	Mr. Inder Sharma	AATPS0094D
3.	Mrs. Sumati Sharma	AIGPS2352B
4.	Mr. Ayub Yaeguang Younes	Not available
5.	Mr. Amar Sarin	ABLPS1470L
6.	Mr. Rajiv Kumar	ARFPK7130F
7.	Mr. Ashish Banker	AEZPB0868G
8.	M/s SumanJeet Agarwal & Co. Chartered Accountants	AAOFS3077M

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

In the matter of Nu Tek India Limited

1. The present order deals with two show cause notices (hereinafter collectively referred to as ‘**SCNs**’) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), the details of which are as follows.

- (i) Show Cause Notice No. SEBI/HO/IVD/ID19/VA/OW/P/2020/13565/1-7 dated August 20,2020 (hereinafter referred to as '**SCN**') issued to Noticee no. 1 to 7.
 - (ii) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/13567/1 dated August 20,2020 (hereinafter referred to as '**SCN-II**') issued to Noticee no. 8.
2. The SCN calls upon Noticee no. 1 to 7 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 Securities and Exchange Board of India Act,1992 (hereinafter referred to as "**SEBI Act ,1992**") and Sections 12A(1),12A(2) read with 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) and Section 11(2)(i) ,11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (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**"). Nu Tek India Limited. (hereinafter referred to as "**NTIL**")/ "**the Company**")/"**Noticee no. 1**") is also called upon to show cause as to why it should not be held liable for violation of Regulations 4(1) (a),(b) (c), (e) and (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii) (3), (6) & (12), Regulations 9,17(7),18(3) read with Clause (1) ,(3) ,(4) of paragraph B of Part C of Schedule II, 29(1)(a), 17(8) read with Part B of Schedule II, 33(2)(a) , 33(3)(d) ,33(4),34(3) and 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") read with Section 21 of SCRA Act, 1956. Noticee no. 2 to 7 are also called upon to show cause as to why they should not be held liable for violation of Regulations 4(1)(a), (b), (c), (e) and (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3),(6) & (12), 9, 17(7), 18(3) read with clause (1), (3) and (4) of paragraph B of Part C of Schedule II, 29(1)(a), 33(2)(a), 33(3)(d), 33(4), 34(3) read with Section 27 of SEBI Act, 1992, 17(8) read with Part B of schedule II, 33(2)(a) and 48 of LODR Regulations read with Section 21 of SCRA, 1956.

3. The SCN-II calls upon the Noticee no. 8, the statutory auditor of NTIL, as to why suitable directions under Sections 11,11B and 11D of SEBI Act,1992 be not issued against them for the alleged violations of Section 12A(a) (b) (c) of the SEBI Act,1992 and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2), (a), (e), (f) and (r) of the PFUTP Regulations,2003.
4. SCN was delivered to the Noticees. The following annexures were provided with the SCN.

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

5. The Noticees, vide their respective replies have submitted as follows:
 - a. One Sh. Vineet Aggarwal, in response to the SCN submitted that the Company/NTIL has been under liquidation vide Order dated 22nd June ,2020 passed by the Hon'ble National Company Law Tribunal (hereinafter referred to as "**NCLT**"), New Delhi under the provisions of Insolvency and Bankruptcy Code,2016 (hereinafter referred to as "**IBC**") and wherein he has been appointed to act as liquidator of the Company. In response to the hearing notice, the liquidator *inter alia* submitted that the entire amount of advances made by the Company amounting to Rs. 76 Crores as on 31st March, 2018 to the suppliers/contractors had been written off by the Company during FY2018-19 and there are advances of more than Rs. 11 crores provided to the employees of the Company. The liquidator submitted that he is facing problems in recovery from the suppliers because in most of the cases records of suppliers like details of works, agreement copies etc. are not available. The liquidator submitted that he has sent legal notices to the suppliers and debtors but none of them replied back even and some have denied their liabilities to pay. The management has also been failed to provide the details even after several remainder and letters. It is submitted that the liquidator has filed more than 20 civil recovery suits in different Civil Courts of Delhi against the so called

suppliers and has also filed 4 applications before Hon'ble NCLT, New Delhi under Section 35(1)(n) of the IBC against the debtor of the Company, seeking direction for payment of outstanding dues from the debtors. It is submitted that the liquidator has sent 200 demand notices to the ex-employees of the Company. Most of the notices have been returned undelivered owing to non-availability of the correct address of the employees. Some employees have also denied the liability of any outstanding in response to demand notices. The liquidator further submitted that he has appointed transaction auditor as per provisions of IBC to identify the avoidable transactions, report of which is awaited and the same would provide more insights into the transactions made by the Company

- b. Noticee No. 2 vide its letter dated September 06, 2021 and additional written submissions vide letter dated October 04, 2021 has *inter alia* submitted that in year December, 2016, son of the Noticee met with a grievous accident, due to which he needed continuous care and attention because of which the Noticee, though was the Chairman and Managing Director (CMD) of NTIL, lost his grip/control over the affairs/ business operations of the Company which worsen with Jio Infocomm Private Limited entering into the market and disrupting the market of Telecommunication and Information Technology. The Noticee has submitted that the complete information/ document/ material sought by him have not been provided by SEBI. Noticee submitted that FAR by KPMG is preliminary and interim in nature and cannot be conclusively be relied upon by SEBI. Noticee further submitted that after the initiation of CIRP and liquidation, all the information, records, documents, materials and office premises etc. were handed over to the liquidator and the liquidator has not provided the documents to the Noticee even after writing numerous times to him.
- c. Noticee No. 3 vide its letter dated September 01, 2021 has *inter alia* submitted that the Noticee was appointed on April 12, 2006 as the Non-Executive Director of the NTIL and was never involved in the day to day working of NTIL and cannot be deemed to have knowledge of the misdeeds of the management of

NTIL. The Noticee submitted that while the Noticee was a member of the Audit Committee, the financial information made available to the Audit Committee are thoroughly processed and hence no manipulation of books can reasonably be ascertained from perusal of the final financial statements of NTIL itself. Noticee rely on the stated correctness of the said documents by the Internal Auditors and in absence of any fact that might ignite the suspicion of the Noticee, she in good faith relied upon the financials prepared and scrutinized by the Internal Auditor. The Noticee has further submitted that she could not have known about the alleged non-disclosures and non-reporting and therefore cannot be held liable for the same.

- d. Noticee no. 4 has not replied to the SCN.
- e. Noticee no. 5 has *inter alia* submitted that the Noticee was appointed on March 31, 2011 as the Non-Executive Independent director of the NTIL and was never involved in the day to day working of NTIL and cannot be deemed to have knowledge of the misdeeds of the management of NTIL. The Noticee has submitted that he was involved at the Board level but considering the distinction between the management and the board, the Noticee was not involved in the day to day management and working of NTIL and would not have come to know about the alleged misdeeds of misrepresentation and misutilization of funds by the management of NTIL. The alleged misdeeds have taken place at the management level of NTIL. It is submitted that while the Noticee was the member of the Audit Committee, the financial information that was communicated by the management to the board of NTIL and the Audit Committee were overly-simplified yet sophisticated information which does not clearly show the manipulation in the books of accounts of NTIL. It is submitted that the alleged misdeeds have been carried out at the level of Journal and Ledgers of the books of the Company which could not effectively reflect in the financials presented for perusal and scrutiny of the Audit Committee of NTIL's board and hence, it cannot be said that the Noticee have failed to discharge their fiduciary duties and failed to present true and fair financial statements.

The Noticee relied on the stated correctness of the said documents by the Internal Auditor.

- f. Noticee no. 6 has vide its letter dated September 12, 2020 has *inter alia* submitted that he was independent director from August 14, 2013 to January 01, 2019 and is not concerned about the decision taken before his appointment related to suspicious transaction of FY 2010-11 to FY 2014-15. The Noticee has submitted that he was not involved in any transaction related to misrepresentation including of financials and misuse of funds/books of accounts. He did not know when forensic audit took place and if any investigation is going on against the Company. He was not involved in any day to day financial transactions/decision making.
 - g. Noticee No. 7 has vide its letter dated September 06, 2021 and additional written submissions dated October 05, 2021 has *inter alia* submitted that all the relied upon documents while issuing SCN has not been provided to him. The FAR by KPMG is preliminary and interim in nature and cannot be relied upon by SEBI while issuing the SCN to the Noticee. Further, it is submitted that pursuant to initiation of CIRP and liquidation, all the information, records, documents, materials and office premises etc. were handed over to the liquidator and the Noticee has written numerous times to the Liquidator of the Company to have access to the documents and materials but the same has not been provided to the Noticee.
 - h. The Noticees have also submitted detailed response to each allegation in the SCN which is discussed in subsequent paras.
6. An opportunity of personal hearing was granted to the Noticees on June 01, 2021 wherein Noticee No. 1 and 6 appeared. Since, Noticee no. 1 was represented by the official liquidator, he also sought adjournment to appear along with the directors of the Company who had sought adjournment for the hearing due to Covid restrictions in the place. Opportunity of hearing was granted again to all the Noticees on September 07, 2021. Advocates for Noticees no. 2,3,5 and 7 appeared through their respective

advocates via video conferencing and made submissions. Noticee No. 1 was represented by its official liquidator who appeared via video conferencing and made submissions. Noticee no. 6 appeared himself via video conferencing and made submissions. Noticee no. 8 also appeared via video conferencing and made submissions. Noticee No. 4 did not appear for the hearing or sought adjournment. Additional time was sought by Noticee no. 2 to file written submissions and accordingly 10 days' time had been granted to the Noticee. Noticee No. 2 and 7 filed additional written submissions vide their letters dated October 04, 2021 and October 05, 2021.

Consideration of submissions and findings:

7. I have considered the allegations made in the SCN, replies received, and submissions made by the Noticees in their replies and during the personal hearing granted to them. The SCN alleges the violation of the certain provisions of law by the Noticees, relevant extract whereof is reproduced hereunder:

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.
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- (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.

.....

“Preservation of documents”

9. The listed entity shall have a policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows-

(a) documents whose preservation shall be permanent in nature;

(b) documents with preservation period of not less than eight years after completion of the relevant transactions:

Provided that the listed entity may keep documents specified in clauses(a) and (b) in electronic mode.

“Board of Directors”

17(7) The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

17(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

Audit Committee

18(3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

Paragraph B of Part C of Schedule II

B. The audit committee shall mandatorily review the following information:

(1) management discussion and analysis of financial condition and results of operations;

(3) management letters / letters of internal control weaknesses issued by the statutory auditors;

(4) internal audit reports relating to internal control weaknesses;

Prior Intimations.

29(1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:

- (a) financial results viz. quarterly, half yearly, or annual, as the case may be;

Financial results.

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

-
- (d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.
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- (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

- (3) The listed entity shall submit the financial results in the following manner:

- (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

- (b) ..

- (c) ..

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

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

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

- (4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion) shall be in the manner as specified by the Board

Annual Report

- 34(3)** The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

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 merits 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 NTIL, SEBI vide its letter dated August 7, 2017, had advised BSE, NSE and MSEI to initiate various interim surveillance action/measures *inter alia* including placing of said companies under Stage VI of Graded Surveillance Measures(GSM), restrictions on share transfer by promoters and directors, initiation of process of verifying the credentials/fundamentals and appoint an independent auditor to conduct audit of such listed companies and if necessary even conduct forensic audit to verify its credentials/fundamentals etc. Thereafter, NSE, among others vide notice dated August 7, 2017, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies including NTIL, 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 September 7, 2017, NTIL made a representation, *inter alia*, submitting as under:

- (a) That SEBI passed the said order dated August 07, 2017 on the suspicion that the company is Shell Company but in fact the company is fully operational and doing its business. It is also complying the requirement of law applicable.
- (b) That the Company is regularly filing the required documents and disclosures to the stock exchanges and have also complied with the notices issued by NSE and BSE by which they had asked for certain information by the Company certified by the auditors vide letter NSE/LIST/15323 dated 9th August, 2017 and 20170807-31 dated 7th August, 2017.
- (c) That the company undertakes to provide all the required information in future upon hearing from any of the authorities.
- (d) That the company requested to withdraw the direction issued by the aforesaid order dated 07.08.2017.

10. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, NTIL filed an appeal No. 221 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "SAT"). Hon'ble SAT vide order dated October 16, 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"

11. Pursuant to above mentioned decision passed by Hon'ble SAT, an opportunity of personal hearing was granted to NTIL on September 20, 2017 when its authorized representative appeared and made submissions, subsequently an interim order dated October 09, 2017 (hereinafter referred to as '**the interim order**') came to be passed by Whole Time Member, SEBI, directing the following:

"22.....

- i. The trading in securities of NTIL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Stock Exchange shall appoint an independent forensic auditor, *inter alia*, to further verify:
 - a. Misrepresentation including of financials and/or business of NTIL and its subsidiaries, if any;

- b. Misuse of the books of accounts / funds (including GDR proceeds) including facilitation of accommodation entries, if any.
- iii. The promoters and directors in NTIL are permitted only to buy the securities of NTIL. The shares held by the promoters and directors in NTIL shall not be allowed to be transferred for sale by depositories.
- iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against NTIL."

12. I note that the said Interim Order dated October 09, 2017 was confirmed vide Confirmatory Order dated October 26, 2018 passed by Whole Time Member, SEBI which *inter alia* observed that *"in order to protect the interest of investors, based on the prima facie findings brought out in the interim order, which the company has chosen not to contest, I note that the entire extent of violations can be unearthed only by means of forensic audit. In view of the above, I find that the facts and circumstances of the case as brought out in the Interim Order have not changed, justifying the discontinuation or modification or revocation of the directions passed in the Interim Order."*

13. In pursuance of the directions given in the Interim Order of SEBI dated October 09, 2017, NSE had appointed KPMG for conducting the Forensic Audit of NTIL. The Forensic Audit Report (hereinafter also referred to as "**FAR**") was forwarded by NSE to SEBI vide letter dated on September 12, 2019. SEBI carried out an investigation in the matter. Based on the findings of investigation, the matter was placed before me on April 28, 2020 for approval of issuance of show cause notice and then was again placed before me on February 26, 2021 for granting a date for opportunity of hearing to the Noticees and passing a final order in the matter.

14. The liquidator, Sh. Vineet Aggarwal, representing NTIL submitted that Hon'ble NCLT, New Delhi vide its order dated August 23, 2019 had initiated Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against the Company and vide Order dated June 22, 2020 had initiated liquidation under the provisions of IBC. The proceeding in the present case has been initiated under Section 11B (1) and 11B (2) of the SEBI Act, 1992 against NTIL on August 07, 2017 and also on August 09, 2017 when SEBI advised the Stock Exchanges to take certain actions against listed Shell Companies including NTIL and consequently, an interim Order dated October 09, 2017

came to be passed which culminated into confirmatory Order dated October 26, 2018 which *inter alia* directed forensic audit of books and accounts of NTIL. I note that Section 33(5) of the IBC provides that subject to Section 52 of the IBC, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor. I note that as per the Section 33(5) of IBC, there is bar on institution of fresh suits or legal proceedings against the corporate debtor. However as contrast to Section 14 of the IBC, there is no bar on the continuation of already initiated proceedings. Section 14(4) also provides that the order of moratorium shall have effect from the date of such order till the completion of the CIRP. It further provides that that where the Adjudicating Authority passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such liquidation order.

15. I note that the proceedings in the matter were initiated subsequent to receipt of letter dated June 09, 2017 from MCA. In the interest of investors SEBI passed Interim Order dated October 09, 2017 against NTIL *inter alia* directing stock exchange(s) to appoint forensic auditor to further verify the misrepresentation including of financials and/or business of NTIL and its subsidiaries and misuse of the books of accounts. Pursuant to forensic audit of NTIL, SEBI issued SCN and SCN-II dated August 20, 2020. Accordingly, the present proceedings are continuation of proceedings already initiated in 2017 and are not barred under the Section 33(5) of IBC which bars only institution of proceedings. The penalty, if any, levied against the Noticee No. 1 would be lodged with the liquidator and it would enable the participation in liquidation estate of corporate debtor as per water fall prescribed for distribution of liquidation estate of corporate debtor. I observe that in the SCNs, the allegations against the Noticee no. 2 to 7 flows from the allegations against Noticee no. 1. Noticees no. 2 to 7 have been charged in their capacity as directors/CFO of Noticee no. 1 and Noticee no. 8 has been charged as the statutory auditor of Noticee no. 1. Therefore, in the following paras, various allegations made against Noticee no.1 in the SCN have been examined to find out as to whether the violations alleged in the SCN against Noticee no. 1 have

been made out so as to determine liabilities of Noticees no. 2 to 7 also, which is flowing from violations alleged against Noticee no.1.

16. 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. Non-furnishing of information/ non-cooperation by NTIL;
- C. Violations of PFUTP Regulations, 2003:

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

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

17. Misutilized the funds raised through Global Depository Receipts (GDR) proceeds

17.1. It is alleged in the SCN that out of the investment of USD 63.18 million from the proceeds raised by NTIL through issue of Global Depository Receipts (GDRs), Nu Tek (HK) Private Limited [herein after referred as “**Nu Tek (HK)**”], a Hongkong based subsidiary of NTIL, has utilized USD 45 million to acquire 45% stake i.e. 6760 shares in Gulf Power Corporation Limited (GPC) through a conditional share purchase agreement dated December 09, 2010 executed between Nu Tek (HK) and East Africa Distribution Limited (herein after referred to as “EADL”) by an individual named Rajesh Bothra on behalf of EADL. Acquisition of shares by Nu Tek (HK) through share purchase agreement raises concerns about the genuinity of share purchase transaction entered into between NTIL and East Africa Distribution Limited (EADL) as how can an entity enter into a sale agreement to sell something which is not in its possession. It is also alleged that NTIL had acquired a stake in GPC with an intention to foray into power sector, however, the objective of the MOA of the company to include business activities such as iron,

ore, minerals, chemicals, oils, metals etc. was changed only on March 05, 2011 i.e. three months after entering into the conditional share purchase agreement dated December 09, 2010. Such modification in MOA pursuant to the purchase transaction coupled with the fact that GPC was incorporated with the business objective of trading in information technology products such as laptops, desktops, servers and others and not actually “power sector” indicates that the company has misused the funds raised through GDR proceeds and has not acted in the interest of its shareholders. It is further alleged that NTIL was unaware that Nu Tek (HK) and EADL have disposed off their shareholding in GPC in the year 2017 indicates that NTIL was neither wholly involved in the business operations of its subsidiaries nor concerned about its indirect acquisition in GPC because a decision as crucial as disinvestment of shareholding in an overseas subsidiary, for which huge amount of money was invested, was not known to NTIL. The allegations are based on the following observations of FAR in this regard.

“

- “NTIL raised GDR’s worth USD 73.40 million (USD 29 million in 1st GDR on 05 August 2010 and USD 44.40 million in 2nd GDR on 14 December 2010). The utilization of funds based on information shared by NTIL and review of financial statements of NTIL for FY 2010-11 and FY 2011-12 is set out below:

Particulars	Amount in USD million	Amount in INR crore
Investment in Nu Tek (HK) Private Limited	63.18	287.45
Investment in Nu Tek Europe SRO	2.58	11.74
Other payments by NTIL	7.64	34.76
Total	73.40	333.95

Investment in Nu Tek (HK) Private Limited (‘NuTek HK’)

- NuTek HK is a limited liability company in Hong Kong. The principal business activity is provision of consultancy services. The company was incorporated in August 2008 as ‘Times Treasure Technology Limited’ and later in October 2008 adopted its current name. The directors of NuTek HK were Mr. Inder Sharma (resigned in June 2015) and Mr. Karthikeyan Murugaiyan (only existing director of NuTek HK).
- NuTek HK utilized USD 45 million to acquire a 45% stake in Gulf Power Corporation Limited (‘GPC’) from East Africa Distribution Limited (‘EADL’) vide a conditional share sale and purchase agreement dated 09 December 2010 (‘share purchase agreement’). KPMG was unable to comment on the utilization of balance funds due to non-availability of financial statements and books of accounts of NuTek HK for the period 01 April 2010 to 31 March 2015. KPMG reviewed the documents and information relating to the investment in GPC and the observations noted are set out in subsequent paragraphs.

Inadequate details in the proposal

- As a supporting to the investment in GPC, an investment proposal dated 09 September 2010 prepared by Chimera Arbitrage SA ('Chimera'), a Switzerland based entity, was provided for review. This proposal contained details of acquisition valuation, coal mines and feasibility analysis. A copy of the proposal has been set out in Exhibit 1.
- On detailed review, it appeared that the proposal did not contain complete details of the mines – location, concession agreement, rights to use (if any) among others.
- Limited information could be identified through background checks for Chimera. Chimera appeared to be in the business of commodities trading and advisory. It was further noted through public domain checks that an individual named Nayan Kumar Agarwal ('Nayan') was the managing director of Chimera. No further details were available for either Chimera or Nayan.

Purchase consideration and timelines not mentioned in the share purchase agreement:

- KPMG was made to understand that the shares were purchased at par value however, the purchase consideration and timelines for completion of transaction were not mentioned in the share purchase agreement. It is unusual that the amount of purchase consideration being not mentioned in a share purchase agreement

Discrepancies in the changes made in the 'object clause' of NTIL's MoA, post-acquisition of GPC

- It was stated in NTIL's annual report of FY 2010-11, that the company planned to foray into power sector and has acquired stake in a company 'GPC' having coal mines in Indonesia through its subsidiary NuTek HK.
- The object clause in the Memorandum of Association ('MoA') of NTIL was changed on 05 March 2011 after almost three months of the share purchase agreement to include "activities of export, import, buy, sale, trade and otherwise deal with goods, capital goods, raw materials, semi-finished goods, merchandise, iron, ore, minerals, chemicals, oils, metals and other goods and items another related activities".

Discrepancy in nature of business of GPC:

- A business report from the Dubai Chamber of Commerce & Industry (DCCI) stated that GPC was incorporated and registered on 12 January 2009 at Ras Al Khaimah, United Arab Emirates having business activity of trading in information technology products such as laptops, desktops, servers and others

Suspicion with respect to the role of Rajesh Bothra

- It was noted that the conditional share purchase agreement dated 9 December 2010 ('share purchase agreement') between NTIL and GPC was executed by an individual named Rajesh Bothra on behalf of EADL.
- The shares held by EADL were acquired from an individual named Rajesh Bothra⁴⁴ ('RB') on 28 December 2010. RB had acquired these shares from GPC's promoter Mr. Pramod Balkishan Agarwal ('PB') on 10 November 2010.
- EADL acquired these GPC's shares from RB post executing the share purchase agreement with NuTek HK

- Personal details of Rajesh Bothra such as date of birth, location, PAN, DIN, Passport number, among others were not available to verify whether if the same person is involved in both the transactions
- The role of the individual 'Rajesh Bothra' in EADL and GPC is unclear

Potential linkages between Mr. Pramod Balkishan Agarwal, Rajesh Buthra, EADL and other entities;

- The address of EADL and PB were noted to be the same and the address belonged to UAE office of an entity Kobian Pte. Ltd. ('Kobian').
- News media articles were noted wherein Kobian was alleged to be a suspect in a case⁴⁶ investigated by the Central Bureau of Investigation ('CBI') of India for diversion of bank loan funds. A director of Kobian named Pramod Agarwal (co-incidentally the same name as PB who is the promoter of GPC) has been named in the First Information Report ('FIR'). The news media article reveals that the loans were availed during the period 2010 to 2013.
- Further, the CEO of Kobian was noted to be an individual named 'Rajesh Bothra' (co-incidentally the same name as RB). Public domain checks revealed that this individual owns an entity 'RB Investments' in Singapore. This entity has invested into various start-ups like Swiggy, The Beer Café, Tapzo, Voonik, and Travel Triangle among others

Auditor's negative comments on the investment in GPC

- The comments in the audit report of Nu Tek (HK) regarding the investment in GPC for the three financial years 2015, 2016 and 2017 indicated lack of sufficient evidence to ascertain the value of investment in GPC. The auditor's remarks were:

"In the absence of sufficient documentary evidence, we were unable to ascertain the underlying value of the Group's Investment in an associate of HK\$349,000,000 approximately and to assess the amounts of provisions, if any, which might have been required."

Concerns over the prospects of recovery:

- The net-worth of GPC as per financial statements for the year ended 31 December 2016 was approximately USD 14.61 million⁴⁷ (~INR 96 crore). Based on this, the value of investment by NuTek HK in GPC (45%) works out to approximately USD 6.57 million (~INR 43 crore) as against the cost of investment in December 2010 of USD 45 million (~INR 286 crore)
- It was noted that the business report of DCCI indicated that NuTek HK and EADL ceased to be shareholders of GPC in 2017 and PB is now the sole shareholder. The management of NTIL cited unawareness about the disposal of shareholding in GPC and did not provide any details regarding this. "

17.2. Noticee no. 2 & 7 have made the following submissions against the allegation levelled against the Noticees in the SCN.

17.2.1. It is submitted that EADL at the time of entering into the Conditional Share Purchase Agreement had represented that EADL on the December 09, 2010 owned around 45% of the issued and paid up share capital of GPC. The transaction was legally and validly concluded and the shares were in fact

purchased by Nu Tek (HK) and therefore, there is no question of any concern being raised on the non-genuineness of the transaction. EADL at the said time was represented by one Mr. Rajesh Bothara who, admittedly through his entity “RB Investments”, regularly made investments in companies and hence, the NTIL entered into the share purchase arrangement with EADL without any suspicion of any wrongdoing. Agreements can be entered into so as to effect a sale/transfer of shares where an entity promises to transfer goods after arranging it from some other source in future and such agreements are accepted and are completely legal.

17.2.2. It is submitted that Mr. Pramod Balkishan Agarwal and Rajesh Bothra were very well known businessmen who were introduced as successful and ethical businessmen. Mr. Rajesh Bothara at the relevant time was a well-known businessman who had invested in number of businesses. The fact that there being proceedings in India against him has been brought forward by SEBI and no such allegation existed in the year 2010-2011

17.2.3. It is submitted that the decision to invest in GPC was based on the report of Chimera Arbitrage SA, which in its report had identified that GPC proposed to acquire coal mining rights/concessions in Sulawesi, Indonesia. Nutek HK Private Limited had entered into strategic alliance with GPC for a limited purpose of investing and tapping the other business opportunities, especially trading in commodities. The MoA of GPC expressly allows trading activity to be under taken as a business activity and hence there is no reason why the Noticees would have suspected any wrongdoing on the part of either Mr. Rajesh Bothara or Mr. Promod Agarwal. No funds were diverted from the GDR issue of NTIL. NTIL in the prospectus issued for the issuance and listing of the GDR had mentioned the end use of the proceeds raised by NTIL as follows:

“The Company intends to use all or substantially all of the proceeds from the issue of the GDRs towards setting up/acquisition of new manufacturing facilities, up-gradation/modernization of existing facilities, and investment in subsidiaries, augmenting long term working capital and any other use, as may be permitted under applicable law

or regulations, from time to time. Pending the use of the net proceeds from the offering for the purposes described above, the Company intends to place the net proceeds, to the extent permitted by applicable laws or regulations, in short term money market instruments and mutual funds.”

NTIL had pre-emptively and correctly informed the investors about the usage of the proceeds and hence there was apt utilization of funds which were disclosed to the investors prior to the listing of GDR itself.

17.2.4. It is submitted that while drawing the observation that the object's clause of MoA of NTIL was modified on March 05,2011, approximately 3 months after the Conditional Share Purchase Agreement dated December 09,2010 between Nutek (HK) and EADL, it is to be considered that while Nutek (HK) had entered into the CSPA, there was no need of altering the MoA of NTIL and hence the observation regarding the same is erroneous and has to be disregarded.

17.2.5. It is submitted by Noticee 7 that the he was appointed as CFO of NTIL only on 31st June, 2015 and hence the said allegation does not relate to the Noticee and hence no adverse inference regarding the same can be taken against the him.

17.2.6. It is submitted that NTIL was unaware of the disinvestment by Nutek HK Private Limited in GPC as the shares held by Nu Tek (HK) in GPC were misappropriated by the promoters of GPC. Nu Tek (HK) has initiated proceedings against the promoters of GPC and has taken appropriate steps for possible legal recourse against the misappropriation of the shares. Mr. Inder Sharma has filed a complaint against Mr. Pramod Balkishan Aggarwal, in whose favour the purported misappropriation of shares has been done. Neither Noticee nor Nu Tek (HK) or NTIL was ever been informed by Gulf Power Corporation Limited about it being ceased to be the shareholder in the GPC. Noticee No. 2 on receipt of the email from SEBI has decided to look into the matter and has appointed Advocate Kefah Alzaabi to represent Nu Tek (HK) in the matter. Noticee no. 2 has filed a complaint against Mr. Pramod

Balkishan Aggarwal, in whose favour the purported misappropriation of shares as been done.

17.3. After careful consideration of the allegations levied against the Noticees, submissions made by the Noticees and observations of FAR in this regard, I note that the investment in shares of GPC by NTIL through Nu Tek (HK) is suspicious and doubtful because of the following reasons.

17.3.1. It is noted from the conditional share purchase agreement dated December 9, 2010 provided with the FAR that the agreement between Nu Tek (HK) and EADL was executed by an individual named Rajesh Bothra on behalf of EADL and Noticee No.2 on behalf of Nu Tek (HK). The shares held by EADL were acquired from an individual named Rajesh Bothra ('RB') on December 28, 2010. RB had acquired these shares from GPC's promoter Mr. Pramod Balkishan Agarwal ('PBA') on November, 10 2010. Thus NuTek (HK) could not have acquired/purchased share of GPC from EADL on December 09, 2010 which itself were acquired by EADL on December 28, 2010. Therefore, Nu Tek (HK) Private Limited executed the share purchase agreement with EADL for the 45% shares of GPC which were not existent at the time of the agreement. Hence consideration was shown to be paid by Nu Tek (HK) for the shares of GPC which were not existent.

17.3.2. In this regard, I note that there are inconsistencies in the submissions of the Noticees as on one hand they are submitting that EADL at the time of share purchase agreement had owned around 45% of the issued and paid up share capital of GPC whereas on the other hand submitting that agreements can be entered for future goods also. The Noticees have relied on Section 6(2) of the Sales of Goods Act, 1930 to make a point that agreements can be entered into so as to effect a sale/transfer of shares where an entity promises to transfer goods after arranging it from some other source in future. In this regard, I note that Section 6(2) of the Sale of goods Acts provides that that there may be a contract for the sale of goods the acquisition of which by the

seller depends upon a contingency which may or may not happen. Section 6(3) of Sale of Goods Act provides that where by a contract of sale, the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods. Any contract for sale of any future goods operates only as agreement to sale only and they would not have actual sale in the transaction. Any agreement for sale of any future goods clearly specify as to when and how the actual sale would take place. In this regard I have perused the Share purchase agreement dated December 09,2010 between EADL and Nu Tek (HK) private limited and note that the agreement had clearly stated that the sale shares comprises 45% of GPC allotted and issued share capital which are fully paid or credited as fully paid and is free of all encumbrances and owned by EADL. It is also noted that the agreement was very generic in nature with no details of how and when the sale is to be affected, the timelines for completion of the sale and even the purchase consideration value. The Noticees have not provided any other documentary evidence which may prove that the agreement dated December 9, 2010 was in fact an agreement for sale of future goods as claimed by the noticees. FAR has also observed that the KPMG was made to understand that the shares were purchased at par value however, the purchase consideration and timelines for completion of transaction were not mentioned in the share purchase agreement. It is unusual that the amount of purchase consideration being not mentioned in a share purchase agreement and it raises doubt regarding genuineness of the said agreement.

17.3.3. I note that answering noticees in their replies have submitted that NTIL approached the management of EADL showing their interest in the purchase of stake held by EADL in GPC and responding to the same EADL agreed to sell its stake in GPC to NTIL for the consideration based on valuation by Chimera Arbitrage SA. In this regard, FAR has observed on detailed review of the investment proposal dated 09 September 2010 prepared by Chimera Arbitrage SA, which shows that the proposal did not

contain complete details of the mines – location, concession agreement, rights to use (if any) among others. Moreover, limited information could be identified through background checks for Chimera which appeared to be in the business of commodities trading and advisory. I observed that an investment proposal with incomplete details, prepared by an entity with limited information available in public domain raises serious doubts on the authenticity of the transaction. It is also noted that the amount proposed in the proposal dated 09 September 2010 and purported purchase value of shares as told to KPMG is exactly similar i.e. 45 million USD, suggesting lack of negotiations between the buyer and seller which is unusual for such high amount.

17.3.4. FAR has also made observations regarding role of Rajesh Bothra (RB) and potential linkages between PBA, RB, EADL and GPC. It is observed in FAR that the address of EADL and PBA were noted to be same and the public domain checks revealed that the address belonged to UAE office of an entity Kobian Pte. Ltd. (“Kobian”). Various news articles were noted wherein Kobian was alleged to be suspect in a case investigated by the Central Bureau of Investigation for diversion of bank loan funds availed during the period 2010 to 2013. A director of Kobian named Pramod Agarwal (co-incidentally the same name as PBA who was the promoter of GPC) has been named in the First Information Report. Further, the CEO of Kobian was noted to be an individual named ‘Rajesh Bothra’ (co-incidentally the same name as RB). Public domain checks revealed that this individual owns an entity ‘RB Investments’ in Singapore. I note that these various connections drawn by FAR raises doubts on the whole transaction. it can also be inferred that NTIL had failed to carry out the due diligence.

17.3.5. FAR has observed that the business report of DCCI indicated that Nu Tek (HK) and EADL ceased to be shareholders of GPC somewhere in 2017 and the management of NTIL cited unawareness about the disposal of

shareholding in GPC. Noticees have not denied the fact that they were unaware of the disinvestment by Nutek (HK) in GPC and have merely stated that shares held by Nutek (HK) in GPC were misappropriated by the promoters of GPC. Therefore, on one hand Nutek (HK) entered into an agreement for purchase of shares which were not existent and on the other hand the Noticees were not aware about the disinvestment of those shares, casting doubts on the genuineness of the transaction.

17.3.6. FAR has made observations about the Auditor's negative comments on the investment in GPC, it was observed that the comments in the audit report of Nu Tek (HK) regarding the investment in GPC for the three financial years 2015, 2016 and 2017 indicated lack of sufficient evidence to ascertain the value of investment in GPC. The auditor's remarks were:

"In the absence of sufficient documentary evidence, we were unable to ascertain the underlying value of the Group's Investment in an associate of HK\$349,000,000 approximately and to assess the amounts of provisions, if any, which might have been required."

17.3.7. SEBI interim Order dated October 9, 2017 has observed that 17.....*"as per Auditor Report, NTIL has neither provided any documentary support to substantiate the recoverability and to assess provision for the trade receivables of HK\$ 94,000,000 as on March 31, 2016 and as March 31, 2017 nor it has provided any documentary support to ascertain and to assess the amounts of provisions, if any, which might have been required for the underlying value of the group's investment in associate of HK\$ 349 million. Thus there is strong prima facie suspicion of misrepresentation of financials of the company. Further out of USD 73.4 million raised in 2 GDRS by NTIL, USD 62.96 million was invested in Nu Tek (HK) Private Limited who in turn invested to purchase of 45% stake in Gulf Power Corporation Limited. However, NTIL has not submitted any documentary evidence on the consideration paid for the purchase of 45% stake in Gulf Power Corporation*

Limited and has also failed to demonstrate the final use of GDR proceeds. Thus there appears to be prima facie suspicion of misuse of GDR proceeds. Further NTIL has invested major chunk of Rs. 336 crores out of the total assets of Rs. 536 crores as on March 31, 2016 in the mining business which is not even covered in the amended object clause of NTIL, which itself was amended 4 months after the aforesaid investment. Thus there appears to be prima facie evidence of misrepresentation of business by the company”.

17.3.8. I note that FAR has observed discrepancy in the changes made in the ‘object clause’ of NTIL’s Memorandum of Association (‘MoA’) post acquisition of GPC. It is observed that object clause in ‘MoA’ of NTIL was changed on March 05, 2011 after three months of the share purchase agreement dated December 09, 2010 to include “*activities of export, import, buy, sale, trade and otherwise deal with goods, capital goods, raw materials, semi-finished goods, merchandise, iron, ore, minerals, chemicals, oils, metals and other goods and items another related activities*” whereas in the NTIL’s annual report of FY 2010-11, it is stated that the company planned to foray into power sector and has acquired stake in a company ‘GPC’ having coal mines in Indonesia through its subsidiary NuTek HK. It is also observed in the FAR that GPC was incorporated for business activity of trading in information technology products such as laptops, desktops, servers and others. I note that the Noticees have not denied the fact that object clause in the MoA was changed pursuant to conditional share purchase agreement but has merely stated that while Nutek HK Private Limited had entered into the CSPA, there was no need of altering the MoA of NTIL. Regarding nature of business of GPC, it is submitted that MoA of GPCL expressly allows trading activity to be undertaken as a business activity and hence, there was no reason for the Noticees to have suspected any misdeeds and wrongdoing. In this regard SEBI’s Interim Order dated October 09, 2017 has observed as follows.

16.....

“Nu Tek India Limited invested in Gulf power Corporation Limited on December 09, 2010, which is into mining business through its Hongkong subsidiary when the principal activities of Nu Tek India Limited was telecommunication services. Nu Tek India Limited have replied that it has changed its object clause on March 05, 2011 (after 4 months of investment in mining business) and inserted the activities of export, import, buy, sale, trade and otherwise deal with goods, capital goods, raw materials, semi-finished goods, merchandise, iron, ore, minerals, chemicals, oils, metals and other goods and items another related activities. As per financial Statements of Nu Tek (HK) Private Limited for the F.Y. 2015-16 and 2016-17, the principal activities of Gulf Power Corporation limited is shown general trading. However still the amended object clause does not cover the mining business where Nu Tek India Limited has invested major chunk of Rs. 336 crores out of the total assets of Rs. 536 crores as on March 31, 2016. Thus there is prima facie evidence of misrepresentation of business by the company.”

17.4. In view of the aforesaid findings in the previous paras, I agree with the observations of FAR that NTIL has misrepresented its financials and misused the funds raised through GDR proceeds.

18. Misleading information about the delisting of GDRs

18.1. It is alleged in the SCN that NTIL had disclosed in its Annual Report for the FY 2015-16 and FY 2016-17 that GDRs were listed on the Luxembourg Stock Exchange. However, the GDRs had been delisted from the said exchange on April 03, 2014 which indicates that the NTIL has provided misleading information to its shareholders and general public about the listing of GDRs issued by it. The said allegation is based on the following observation in the FAR:

“.....

- As per the requirement of Section 34(3), NTIL in the annual reports for the year ended 31 March 2016 and 31 March 2017 disclosed that GDRs were listed on the Luxembourg Stock Exchange.

- However, as per information obtained from Luxembourg stock exchange the GDRs of NTIL were de-listed on 03 April 2014.

.....”

18.2. In this regard Noticee No. 2 & 7 have submitted that no intimation of such delisting was ever provided to the company or the Noticees at the relevant time by the lead manager i.e. Fundailis GMBH and depository of the shares i.e. Bank of New York Mellon. Before the year 2015-16, all the GDR's were already converted into equity shares by the GDR holder and hence the same did not caught the attention of the board of NTIL and even the Company Secretary of the company did not convey about the delisting of shares.

18.3. I note that the answering Noticees have not denied the allegations contained in the SCN about the delisting of the GDRs on Luxembourg Stock Exchange and have failed to provide any cogent reasons justifying the lapses on their part. In their defense, the Noticees have only made a statement that no intimation was provided by the lead manager or the depository of the shares which cannot be taken into consideration. I note that while it is serious lapse on the part of Noticees to conceal the information related to delisting of the GDRs, SCN and FAR has failed to establish any link which may suggest that non-disclosure of information relating to delisting of its GDRs has resulted into misrepresentation of financials and books of accounts. Therefore, I do not agree with the observations made in the FAR in this regard.

19. Unapproved transactions with the related parties

19.1. It is alleged in the SCN that NTIL had taken a long term loan from a related party i.e. Oriental Stitch Pvt. Ltd. without providing for or paying interest on such loan and the transaction not being approved by the shareholders or disclosed in the annual report of the company indicates that NTIL has entered into unauthorized transactions with its related party which were not carried out at arms's length. Also, obtaining of loans and advances by NTIL from other related parties such as Ketun Energy Pvt Ltd and Mr. Inder Sharma without providing or paying any interest on the same and non-approval of these transactions by the board of NTIL

or their non-disclosure in the Annual Report of the company indicates that NTIL has entered into unauthorized transactions with its related parties. The allegations are based on the following observations in the FAR.

“

- Transactions with related party were noted in the nature of short term loans obtained and/or repaid/advanced during the review period. Interest on these loans were neither paid nor provided for in the books. These transactions were neither approved by the board nor disclosed in the annual report in violation of Section 34(3) and the Policy on Related Party Transactions prepared in accordance with Section 23(1).
- The advance from Ketun and the loan from director Mr. Inder Sharma were in the nature of short term running loans obtained during the review period. Interest on these loans was neither paid nor provided for in the books.”

19.2. In this regard, Noticees no. 2 & 7 have submitted that NTIL had taken the loans from Oriental Stitch Pvt. Ltd and Ketun Energy Private Limited who are associate and subsidiary companies of NTIL and hence, the said transaction did not require any approval of the board or shareholder. NTIL had received money from Ketun Energy Private Limited and Noticee No. 2 and has not paid any interest on the same and therefore no loss was caused to NTIL or any of its shareholders. Infact the same shows that the Noticees were acting in the best interest of the Company as they were bringing in funds into the Company, whenever NTIL was in need of funds.

19.3. I note that that the answering Noticees have relied on Section 188 of the Companies Act, 2013 to submit that transactions with associates and subsidiary companies are not covered within the ambit of related party transactions. In this regard Section 188 of the Companies Act, 2013 *inter alia* provides as follows.

“

188. Related party transactions. — (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related part with respect to-

- (a) sale, purchase or supply of any goods or materials;*
- (b) selling or otherwise disposing of, or buying, property of any kind;*
- (c) leasing of property of any kind;*
- (d) availing or rendering of any services;*
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;*
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and*
- (g) underwriting the subscription of any securities or derivatives thereof, of the company:*

Section 2(76) of the Companies Act, 2013 defines “related party” as follows.

(76)” related party”, with reference to a company, means—

- (i) a director or his relative;*
- (ii) a key managerial personnel or his relative;*
- (iii) a firm, in which a director, manager or his relative is a partner;*
- (iv) a private company in which a director or manager is a member or director;*
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;*
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;*
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:*

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

- (A) a holding, subsidiary or an associate company of such company; or*
- (B) a subsidiary of a holding company to which it is also a subsidiary;*
- (ix) such other person as may be prescribed;*

19.3.1. It is clear from the definition of related party provided in Section 2(76) (viii) that in reference to a company, any company which is a holding company, subsidiary or an associate company of such company would be a related party and any transaction with such subsidiary or associate company would be related party transactions within the ambit of Section 188 of the Companies Act, 2013. Such related party transaction would require consent of the Board of Directors given by a resolution at a meeting of the Board. Therefore, the reliance of the Noticees that any transaction with associates and subsidiaries companies do not require any approval of board of directors is misplaced and cannot be taken into consideration.

19.3.2. I note that Regulation 23 of LODR Regulations as on during the investigation period *inter alia* provides as follows.

Related party transactions.

23.(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions

Explanation. –A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

.....

23(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

19.3.3. As per Regulation 23(1) every listed entity is required to formulate a policy on materiality of related party transactions and as per Regulation 23(4) every material related party transactions shall require approval of shareholders through resolution and *the related parties shall abstain from*

voting on such resolution. In this regard I note that FAR and SCN has not made any observation as to whether the transactions with related parties were material or not, as per the materiality policy prepared by NTIL, so as to require the approval of shareholders through resolution.

19.3.4. Accordingly, I partly agree with the observations of FAR to the extent that the transactions with related parties were not approved by the board of NTIL.

20. Waiver of outstanding trade payables of NTIL

20.1. It is alleged in the SCN that the waiver of outstanding trade payables of NTIL by its creditors, which is the prime reason for reduction in the value of its outstanding trade payables from Rs 21.89 crores in FY 2014-15 to Rs 4.17 crores in FY 2016-17, is quite unusual because no creditor having business acumen would waive off its outstanding dues. The write off of its liabilities by NTIL with a corresponding impact on advances made to suppliers and that too without any supporting documentation and reasons for such write offs/adjustments indicates that NTIL has not applied any prudent business rationale for such write off thereby misusing the funds of shareholders and not acting in the best of their interests. The allegation is based on the following observation of FAR in this regard.

- “We analyzed the list of trade payables, assessed the movements, genuineness and conducted public domain searches on some of the key creditors. The movement of outstanding trade payables have been set out below.

Particulars	As at 31 March 2015	As at 31 March 2016	As at 31 March 2017
Trade payables	21.89	4.79	4.17

- During ledger scrutiny, accounting entries were observed which were in the nature of liabilities written off i.e. trade payables due from NTIL waived off by creditors. These accounting entries were as below:

Income on account of liabilities written off – INR 5.70 crore

Adjusted with debit balances (debtors and/or advances to suppliers) – INR 18.23 crore.

- No explanation was provided for such write-offs, which was a primary reason for reduction in trade payables during the review period.”

20.2. In this regard, Noticee no. 2 & 7 have submitted that waiver of outstanding trade payables was done in order to give a fair and true picture of the financials of the NTIL to the shareholders of the company. It is submitted that on bare perusal of the documents relating to the creditors, it can be seen that the transactions between NTIL and respective creditor were bonafide and genuine. The balances of the creditors were written off only after the same was authorized by the Board of the Company and discussed in the Audit Meeting on May 30th 2016 due to project undertaken by NTIL turned unserviceable and hence the writing off was approved. The two projects which became unserviceable or which subsequently cancelled were that from Indian Oil Corporation Limited and ZTE Private Limited. The documents and materials with respect to the transaction are now available with the liquidator of the Company and hence the Noticees are unable to substantiate the said submission with all documents. There has been no litigation instituted by any of the creditors, whose balances have been written-off, in fact none of them has made any claim before the IRP/RP/Liquidator in the CIRP/Liquidation Process.

20.3. I note that the answering Noticees have provided copies of invoice from the creditors to substantiate the fact that all the transactions between NTIL and respective creditor were bonafide and genuine. I have perused the copies of invoices submitted by the Noticees and note that the documents are not verifiable by other independent sources like delivery challans, bank statements, tax statements etc. and without verifying the authenticity of the invoices, the same cannot be taken into consideration. I note that FAR at page 39 have observed that no explanation was provided for such write-offs, which was a primary reason for reduction in trade payables during the review period. I note that waiver of outstanding trade payables by NTIL without any cogent reasons and documentary proof casts doubts on the authenticity of the transactions. I note that the Noticees submissions that there has been no litigation instituted by any of the creditors,

whose balances have been written-off, and none of them has made any claim before the IRP/RP/liquidator in the CIRP/Liquidation process lends credit to the concerns that the transactions with the ostensible creditors were not genuine. Therefore, I am inclined to agree with the observations of FAR in this regard.

21. Unauthorized transaction for sale of agricultural land

21.1. It is alleged in the SCN that Noticee No. 2 was authorized, vide Board Resolution dated July 24, 2015, to execute the settlement agreement with Rajesh Kumar & Sons (HUF) for forfeiting the entire “Bayana amount” of Rs 5.56 crores paid to Rajesh Kumar & Sons (HUF) for purchase of agriculture land when no such board meeting was actually held on that day or any other day during the review period. It is alleged that the transaction was not bonafide in nature and Rs 5.56 crores initially paid by NTIL to Rajesh Kumar & Sons may be solely for the purpose of diversion of funds. The allegation is based in the following observations of FAR in this regard.

“

- An advance of INR 5.56 crore was made by NTIL to an entity ‘Rajesh Kumar and sons HUF’ (Rajesh). We were provided a settlement agreement dated 25 July 2015, as a supporting to the transaction, which mentions that the advance given to Rajesh was for purchase of land, which is now being forfeited.
- The settlement agreement stated that Mr. Inder Sharma was authorized vide board resolution dated 24 July 2015 to execute the agreement on behalf of NTIL. However, on review it was noted that NTIL did not have any board meeting on 24 July 2015 nor was this approval sought in any other board meeting during the review period.
- NTIL had provided INR 2.78 crore in FY 16-17 for doubtful debts. It was informed to us that this provision was made for the advance of INR 5.56 crore given to Rajesh, even though the settlement agreement was signed in the previous financial year. Based on terms of the settlement agreement, no amounts are receivable by NTIL from Rajesh Kumar and Sons HUF.

.....”

21.2. Noticee No. 2 & 7 have submitted that Noticee No. 2 was authorized to enter into the transaction vide Board Resolution dated 13th August, 2014 and hence the said transaction cannot be considered as a device through which the money was taken out of the Company. NTIL’s financial conditions had deteriorated and

therefore, it could not keep up with its commitment. Diversion of funds cannot be alleged since no benefit was being derived by Noticee No. 2 or any other person. Merely because a particular board resolution is not available in the minute book, the same cannot show that the transaction was for diversion of funds.

21.3. I note from the extracts of the minutes of the Board of Directors of NTIL meeting held on August 13, 2014 that the Noticee no. 2 was authorized by the Company to sign and execute the Sale Agreement between NTIL and Rajesh Kumar & Sons (HUF) and to do all such acts and deeds as may be deemed necessary for the purpose of giving effect to the above mentioned resolution, however Noticee No. 2 was not authorized to enter into settlement agreement with Rajesh Kumar & Sons (HUF) for forfeiting the amount of Rs. 5.56 Crores already paid for purchase of agriculture land. Noticees are relying on the settlement agreement dated July 25, 2015 to support their contentions which mention that Noticee No. 2 was authorized vide Board Resolution dated July 24, 2015 whereas as observed in the FAR at page 46, NTIL did not have any board meeting on July 24, 2015 nor was this approval sought in any other board meeting during the review which raises serious doubts on the authenticity and genuineness of the settlement agreement dated July 24, 2015. Noticee no. 2 in his defense has only made a statement that to the best of his knowledge the board resolution dated July 24, 2015 was passed and the Company Secretary may have omitted to record the same. In this regard, I note that Section 118 of the Companies Act, 2013, makes it mandatory for a company to prepare minutes of every meeting of its Board of Directors or of every committee of the Board and signed in such manner as may be prescribed and that the minutes of each meeting shall contain a fair and correct summary of the proceedings thereat. I note that Sub-section (7) states that "*The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein*". Further, under Sub-section (11) *If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees*. Accordingly, every company is required to prepare and

preserve the minutes of its board meetings. Accordingly, the contention raised by the Noticees that the minutes of board meeting are not available cannot be taken into consideration. Moreover, any listed entity is required to preserve its documents in accordance with policy of preservation of documents to be framed by them in accordance with LODR regulations which suggests violation of LODR Regulations also. The contentions of the Noticees that no flow of money has been traced back to the Noticee No. 2 or anyone else is irrelevant when the factum of entering into agreement for sale is itself not proved.

21.4. I note that FAR at page 46 has observed that *“NTIL had provided INR 2.78 crore in FY 16-17 for doubtful debts. It was informed to us that this provision was made for the advance of INR 5.56 crore given to Rajesh, even though the settlement agreement was signed in the previous financial year. Based on terms of the settlement agreement, no amounts are receivable by NTIL from Rajesh Kumar and Sons HUF”* ..., I note that on one hand Noticees are claiming that the settlement agreement is valid and as per the terms of settlement agreement no amounts were receivables from *Rajesh Kumar and Sons HUF* whereas on the other hand in their explanation to forensic auditor, NTIL is claiming that Rs. 2.78 Crores in Financial year 16-17 is for doubtful debts for the advance of Rs. 5.56 Crores has already been settled in the previous financial year 2015-16. Therefore, I agree with the observations of FAR in this regard.

22. Investments in other entities

Investment in Parker Builders Private Ltd (Parker)

22.1. It is alleged in the SCN that NTIL's investment in Parker Builders Private Ltd(Parker) was being reflected in the audited financial statements for the FY 2015-16 and FY 2016-17 even after the same was sold off in the financial year 2014-15. The allegation is based on the following observations of FAR in this regard.

“

- The annual returns of Parker Builders Private Limited ('PBPL') for FY 2014-15 revealed total shares (16,667 shares) held by NTIL were transferred to an individual named Mr. Manish Garg on 31 March 2015. No shareholding of NTIL was observed in PBPL thereafter. However, this investment is reflected in the audited financial statements of NTIL for the FY 2015-16 and FY 2016-17.
..."

22.2. Noticee No. 2 & 7 have submitted that NTIL had invested in the equity shares of Parker in the Financial Year 2011-2012 and had been allotted a total of 1,66,670 shares of face value of Rs. 10 each and Parker failed to give NTIL the delivery of the share certificates corresponding to the shares allotted to NTIL by them and hence, NTIL had in Financial Year 2015- 2016, filed an Investor Complaint. MCA had also issued a letter to Parker to show cause for such a lapse. While the Forensic Auditor relies on the Annual Return of Parker which shows Mr. Manish Garg as shareholder, the Noticee submits that while shares were allotted to NTIL, the said shares might have been fraudulently misappropriated by Mr. Manish Garg who happened to be the Managing Director of Parker at the time when shares were allotted to NTIL. NTIL had sold the shares of Parker to one Endless Services Private Limited in Financial Year 2018-2019 and the effect of the said transactions were given effect in the Financial Statements of the NTIL.

22.3. I have perused the list of shareholders of Parker, provided by the forensic auditor for the year 2015-2016 and 2016-2017 (Exhibit 8 of FAR) wherein name of NTIL is not appearing in the list of shareholders whereas for the same period NTIL had disclosed investment in Parker in its annual report at Rs. 100 Lakhs. In response to the allegation, Noticees have contended that NTIL had invested in the equity shares of Parker in the Financial Year 2011-2012 but Parker failed to give the delivery of the shares certificate allotted to NTIL and NTIL had also filed a complaint to MCA in year 2015-16. It is also contended that Mr. Manish Garg, the Managing Director of Parker at the time might have been fraudulently misappropriate the shares which were to be allotted to NTIL. In this regard I note that whereas NTIL is agreeing that investment was made in Parker in 2011-12 but

owing to non-receipt of share certificates, complaint was made to MCA in Year 2015-16, a long three-year gap after the investment which raises serious doubts on the authenticity of the transactions. I note that the answering Noticees have merely stated that MCA issued a Show cause letter to Parker for not issuing share certificate to NTIL, however ultimate outcome of the complaint has not been informed. Further, the noticees have only made a statement that Mr. Manish Garg might have fraudulently misappropriated the shares without producing any documentary evidence to show that NTIL took any legal actions against MD of Parker for misappropriation of shares of NTIL. Therefore, I agree with the observations of FAR in this regard.

Investment in Prakausali Investments (I) Pvt. Ltd (PIPL)

22.4. It is alleged in the SCN that investment amounting to Rs 5.85 crores done by NTIL in Prakausali Investments (I) Pvt. Ltd.(Prakausali) was not recorded in the books of Prakausali. The said allegation is based on the following observation of FAR in this regard.

“

- The financial statements of NTIL indicated investments worth INR 5.85 crore in FY 2012-13 in Prakausali Investments (I) Private Limited ('PIPL') Background checks indicated PIPL merged with an entity Mayfair Capital Private Limited ('Mayfair') in FY 2012-13. Mayfair Capital Private Limited was identified to be one of the promoter entities of the Unitech Group (a large real estate company in India). As per NTIL's financials, the investment of INR 5.85 crore in PIPL in FY 2014-15 was reduced to INR 0.70 crore in FY 2015-16. NTIL management informed that the reduction in investment amount was on account of sale of shares worth INR 5.15 crore of PIPL to Rapid Financial Services Limited ('RFSL') at cost in FY 2015-16. However, no documents pertaining to the purchase and subsequent sale of shares in PIPL was provided for our review. On review of the shareholding of PIPL and Mayfair in FY 2012-13 and thereafter, it was noted that the investment done by NTIL was not recorded in the books of PIPL or Mayfair.
.....”

22.5. It is submitted by Noticee no. 2 & 7 that NTIL had sold substantial part of its investment in PIPL to one Rapid Financial Services Private Limited in Financial Year 2015-2016 at break-even level, but since Rapid Financial Services Private Limited was unable to honor its obligation towards payment for sale of shares by NTIL, the shares were returned back to NTIL in year 2017-2018 and hence the investment in PIPL was reflected in the books of NTIL.

22.6. I note that Noticees have merely made a statement that since Rapid Financial Services Private Limited was unable to honor its obligation towards payment for sale of shares by NTIL, the shares were returned back to NTIL in year 2017-2018 without any documentary proof. I also note that Noticees have not provided any documentary proof pertaining to the purchase and subsequent sale of shares in PIPL. Therefore, I agree with the observations of FAR in this regard.

Investments in Sun Rose Trading Private Limited (Sun Rose)

22.7. It is alleged in the SCN that NTIL did not disclose its investments in Sun Rose Trading Pvt. Ltd. and the subsequent adjustment of the advances raise concerns. The allegation is based on the following observations of FAR in this regard.

“

- Sun Rose Trading Pvt. Ltd. - Investment value: INR 0.50 crore KPMG noted advances by NTIL to an entity named Sun Rose Trading Pvt. Ltd. (Sun Rose) aggregating to INR 0.50 crore. Subsequently, the amount was adjusted against purchases equivalent to the advanced amount. KPMG was unable to comment on the authenticity of these purchases as the supporting documents such as Invoice, Goods receipt note, transport documents among others to evidence actual receipt of goods or services were not made available for review.
- Analysis of the shareholding of Sun Rose revealed that NTIL is a shareholder in Sun Rose. The reasons for non-disclosure of investment in Sun Rose by NTIL is unknown.

.....”

22.8. Noticee no. 2 and 7 submitted that while NTIL had granted advance of Rs. 50 Lakhs to Sun Rose Trading Private Limited, the fact that NTIL was allotted shares corresponding the said amount is unknown to the Noticees. The said advance was adjusted against consumables and supplies in the Year 2015-2016 in the normal course of business and the necessary effect of the same was provided in the financials of NTIL. The documents for the relevant transactions are available with the liquidator.

22.9. I note that the noticees have not denied the allegation regarding investment in Sun Rose. In their defense they have merely stated that they were not aware that shares have been issued to them against the investment made in Sun Rose. In response to the allegation regarding adjustment of advances, the noticees have not provided any documentary proof such as Invoice, Goods receipt note,

transport documents among others which may suggest the authenticity of the transactions. Therefore, I agree with the observations made in the FAR in this regard.

Investment in Capital Trade Links Limited ('CTLL')

22.10. It is alleged in the SCN that NTIL had made investments of Rs 5.15 crores in Capital Trade Links Limited (CTLL) in FY 2015-16, immediately after receiving approximately the same amount of funds from six different entities (some of which are creditors of NTIL) with whom NTIL had entered into unusual receipts and payment transactions in terms of absence of purchase documents and mismatch in recording of transactions as per bank statement and books of account raises concern about the authenticity of the funds received by NTIL and its subsequent investment in CTLL. The said allegation is based on the following observations of FAR in this regard.

“

- An amount of INR 5.15 crore was invested by NTIL in Capital Trade Links Limited ('CTLL') in FY15-16. On analysis of the source of funds for this investment, it was noted that the funds were received immediately prior to the investment from six different entities which raised concern. The list of these entities, the amount potentially funded by them towards the investment in CTLL and other observations noted have been set out below:

Name of the entity	Amount as part of Investment in CTLL (In Crores)	Observations
P-Net Solutions Pvt. Ltd.	1.33	• Unusual receipt and payment transactions • No documentation available for purchases • Abnormal connections identified with various entities
Instant Hightech Solutions Pvt. Ltd.	1.35	• Unusual receipt and payment transactions • Mismatch in recording of transactions as per bank statements and books of account
Karvy Group of companies Karvy Stock Broking Limited and Karvy Data management Limited	1.77	• Unusual receipt and payment transactions • Mismatch in recording of transactions as per bank statements and books of account • Shareholder of NTIL

Trimax IT Infrastructure & Services Limited	0.40	• Mismatch in recording of transactions as per bank statements and books of account • High value unsupported write-off of assets and liabilities.
NAP Polymers Specialities Private Limited	0.05	• Connections identified with Instant Hightech Solutions Pvt. Ltd.
Tritonics India Private Limited	0.33	• Mismatch in recording of transactions as per bank statements and books of account • Unusual receipt and payment transactions

.....”

22.11. Regarding investments in CTLL, the Noticees no. 2 & 7 have submitted that NTIL had received monies from 7 entities namely P-Net Solutions Private Limited, Instant Hightech Solutions Private Limited, Karvy Stock Broking Limited, Karvy Data Management Limited, Trimax IT Infrastructure & Services Limited, NAP Polymers Specialities Private Limited and Tritonics India Private Limited. It is submitted that there is no link between the two transactions involving the receipt of funds from some unconnected entities and investment by NTIL in another company. All the transactions with the above mentioned entities were in ordinary course of business activity of NTIL and hence, cannot be connected to an altogether different transaction involving investment in the stock warrants of CTLL by NTIL. The monies received by NTIL from the abovementioned entities were in the nature of either consideration for the sales or as advances. Since the management didn't want the liquid resources of the Company to be kept idle, they invested them into the stock warrants of Capital Trade Links Limited and hence there is no basis of linking independent sets of transaction with each other, when the Noticee has established the bonafides of each set of transactions. Neither SEBI nor the Forensic Auditor has found out any connection between these parties inter se, or any other material to raise suspicion.

22.12. I note that the answering Noticees have not provided any documentary proof to support its transactions with these entities except Karvy group companies. I note that the Noticees have provided copy of invoices raised by two Karvy group

companies to support their contention that the transactions were in ordinary course of business activity and were bonafide. However, none of the invoices provided by Noticees can be verified by any independent third party sources like bank challans, delivery receipts, tax statements etc. and accordingly, cannot be taken into consideration. FAR has also observed at page 43 that unusual receipts and payment transactions were observed with Karvy Group of companies and there is mismatch in recording of transactions as per bank statements and book of accounts. It is also noted that Noticees have provided copy of invoices with "Product/Services description" as "Charges for supply of Man Power" from Karvy Stock Broking Ltd. I note that Karvy Stock Broking Ltd which was registered as a Stock Broker with SEBI, cannot be the supplier of "Man Power" thereby raising doubts on the authenticity of the transactions.

22.13. I note that answering Noticees have failed to provide adequate documentary proof to allay the concerns raised by FAR. The timings and the amount of investment by NTIL in CTLL and receipts of funds immediately prior to such investment from seven different entities whose bonafide have not been established also lends credit to the concerns raised in FAR. Therefore, I am inclined to agree with the observations of FAR in this regard.

23. Transactions with unrelated business activities:

23.1. It is alleged in the SCN that NTIL had advanced funds (outstanding value of which is Rs 46.92 crores as at March 31, 2017) to entities who are in businesses unrelated to that of NTIL and non-submission of documents underlying such transactions by NTIL to the forensic auditor, raises doubt as to whether the funds advanced by NTIL to these parties were indeed for genuine business activities or were mere fabricated entries, solely for the purpose of diversion of funds. The allegation is based on the following observations of FAR in this regard.

".....

- Some of the entities to whom advances were paid by NTIL appeared to be into businesses unrelated to the business activity of NTIL. KPMG was not provided with sufficient documentation to assess the underlying nature of transaction for these advances. 26 such

entities were identified to whom advances were paid by NTIL having an outstanding value of INR 46.92 crore as at 31 March 2017.

- NTIL's purchases primarily include materials, consumables and tools for its project sites. We noted certain anomalies which included the following:
 - 1) No supporting documents for the purchases made available for review
 - 2) Unusual receipt and payment transactions
 - 3) Entity named as a 'Shell Company' in the lists published by government agencies
 - 4) Connections identified with various entities transacting with NTIL
 - 5) Unsupported high value write off of assets and liabilities
- On review of the business objects as per MoA of select suppliers of NTIL, KPMG identified that the nature of business was not in line with NTIL's business. On review of purchases (INR 1.22 crore) from Pashupati Industries Private Limited ('Pashupati'), it was noted that the purchases were accounted in March 2016 in NTIL's books however, as per public domain checks, Pashupati was found to be incorporated in July 2016.

.....”

23.2. Noticees No. 2 & 7 have submitted that the said observation has been drawn merely on the basis of surmises and conjecture. It is submitted that the type of services that were provided by the Nutek India Limited i.e. telecommunication, Information Technology, construction and Infrastructure related work forms the base of many businesses whether engaged in telecommunication or IT services industry or not and hence any observation regarding the same has to be disregarded. It is also submitted that The names of companies, which were suppliers of NTIL, would many a times appear to be suggesting different line of business, however since the lines of business of NTIL were so diverse that these suppliers would be undertaking either some or other part of the services offered by NTIL or would be supplying various components, materials etc., which would be used by NTIL in completing its projects. The same would be evident from the documents, which are available with the Liquidator.

23.3. I note that the answering Noticees have not denied the fact that loans were advanced by NTIL to various entities. Forensic auditor at page 47 has observed that they were not provided with sufficient documentation to assess the

underlying nature of transaction for these advances. A list of 26 entities is also provided in the FAR which suggests that NTIL had advances loans to these 26 entities amounting to Rs. 46.92 Crores. I note that the Noticees have not provided any documentary proof to prove that these transactions were indeed genuine which were done in ordinary course of its business activities. Therefore, I agree with the observations of FAR in this regard.

24. Investments in other suspected shell companies

24.1. It is alleged in the SCN that investments of NTIL in other suspected shell companies, companies deregistered (strike off) or likely to be deregistered, potential non-operative entities etc. have been observed. The allegation is based on the following observations in the FAR

- Shell Companies

Background checks revealed that some of the entities to whom advances were paid by NTIL were suspected to be a 'shell company' as per list published by SEBI and/or other government agencies. The details of entities appearing in the shell company list and have been paid advances by NTIL is set out below:

No.	Particular	Name of entity	Amount receivable as on 31 March 2017
1	Advance to Supplier	Priya Vincom Private Limited	3.91
2	Advance to Supplier	Divine Spirit Infra Projects Private Limited	1.37
3	Advance to Supplier	Adinath Portfolio Private Limited	0.50
4	Advance to Supplier	Maharaja Tradex Private Limited	0.50
5	Advance to Supplier	Sunima Steel Marketing Private Limited	0.50
6	Supplier	Pacific Trade Links Limited ⁷¹	-
7	Debtor	Empower India Limited	4.19
8	Debtor	Allied Computers International (Asia) Limited	0.29
9	Debtor	Visesh Infotecnics Limited	0.80
Total		12.06	

- Companies' deregistered (strike-off) or likely to be deregistered

Background checks revealed that some of the entities to whom advances were paid by NTIL and balance totaling to INR 13.42 crore are outstanding as at 31 March 2017, appeared to have been deregistered (strike-off) or likely to be deregistered on account of non-filing of annual returns.

- Potential non-operative entities:

Background checks revealed that 8 entities to whom advances were paid by NTIL and balance totaling to INR 13.35 crore are outstanding as at 31 March 2017, appeared to be potentially non-operative.

- Registered offices of suppliers appear to not belong to the supplier or were residential apartments:

Desktop based street view searches revealed four suppliers having outstanding receivable balance of INR 10.53 crore as at 31 March 2017 may not be actually located at the address mentioned or the registered office appeared to be residential apartments.

24.2. Noticee No. 2 & 7 have submitted that while these entities are suspected to be shell companies or are tending towards being de-registered today, the same was not the case when NTIL had done investment or entered into transactions with them. Proper due-diligence was done in order to make investments and it was only subsequent to transactions that the said entities went bust. While it has been mentioned that said entities are suspected shell companies, no determination of SEBI or Ministry of Corporate Affairs is present as per the Noticees.

24.3. I note that the contention of answering Noticee regarding the suspected shell company may be true that when NTIL made investments or entered into transactions, the entities were not suspected as shell company. However, the Noticees have not provided any documentary proof which may suggest that all these transactions with these companies were genuine and in ordinary course of their business activities. The Noticees have not provided any documentary proof which justifies their transactions with strike off/non-operative companies. In absence of any contrary proof it can be inferred that NTIL had misrepresented its statements by investing in such companies. Therefore, I agree with the observations made by FAR in this regard.

25. Misrepresentation on account of unusual Transactions

25.1. It is alleged in the SCN that unusual transactions amounting to Rs 20.97 crores and Rs 5.83 crores forming around 39% and 13% of total receipts from third parties for FY 2015-16 and 2016-17 respectively raises concerns over genuineness of business transactions entered into by NTIL. Some of the high aggregate value/volume transactions and circular transactions carried out by NTIL indicate evidences of accommodation entries and round tripping of funds. The allegation is based on the following observations of FAR in this regard.

“

- 28 entities to whom advances were paid by NTIL were noted as part of unusual receipt and payment transaction analysis.
- On review of high value banking transactions certain transactions were identified which had one or more of the below indicators
 - High aggregate value/ volume transactions which appeared to be structured and/ or layered to match receipts and payments and Circular transactions – money possibly ends up with the person who transferred it.
- An amount of INR 1 crore received from Domus Green Private Limited ('Domus') which transferred in multiple tranches of less of INR 0.10 crore on the next day to Surya Medi-Tech Limited.
- An amount of INR 0.98 crore received by NTIL from HCL Infotech Limited was transferred to multiple entities on the same day in tranches of less than or equal to INR 10 lakhs. The recipients were namely Selection Overseas (INR 0.39 crore), Jankalyan Impex Private Limited (INR 0.20 crore) and Aggarwal Enterprises (INR 0.39 crore).
- An amount of INR 0.59 crore received from Karvy Stock Broking Limited ('Karvy') on 16 November 2015 was transferred to Jai Ambe Foils ('Jai Ambe') on 17 November 2015. Subsequently, another receipt of same amount (INR 0.59 crore) was received from Karvy on 27 November 2015 was transferred on the same day to Capital Trade Links Limited ('CTLL'). This transaction potentially indicates that amount transferred to Jai Ambe may have been routed back to Karvy and the same has been routed to NTIL for payment to CTLL.
- A summary of such unusual transactions identified across the review period have been set out below:

Financial year	Count of unusual transaction sets	Amount in INR crore	Percentage of total receipts from third parties
2015-16	16	20.97	39%
2016-17	12	5.83	13%
Total	28	26.81	27%

- Such transactions raise concern over the genuineness of these transactions. While these are not conclusive evidences of being accommodation entries, a detailed analysis would require supporting documentation from both, NTIL as well as the other entities with whom such transactions have been conducted.

.....”

- 25.2. Noticee No. 2 & 7 submitted that the observation is caused just due to mixing up of 2 completely independent transactions. It is submitted that NTIL had received Rs. 1 Crore against bonafide business transactions. It is further submitted that the money transferred to Surya Medi-Tech Limited was in nature of advances and hence no connection between the transactions entered between NTIL and Domus Green Private Limited and NTIL and Surya Medi-Tech Limited can be established and hence no adverse inference can be taken against the Noticees.
- 25.3. Regarding the observation that there were unusual transactions between HCL Infotech Limited, NTIL, Selection Overseas Private Limited, Jankalyan Impex Private Limited and Aggarwal Enterprises, Noticee No. 2 and 7 have submitted that the said observation is caused just due to mixing up of completely independent transactions. It is submitted that NTIL had received Rs. 98 Lakh from HCL Infotech Limited against bonafide business transactions. It is further submitted that the money transferred to Selection Overseas Private Limited Jankalyan Impex Private Limited and Aggarwal Enterprises Private Limited was in nature of advances to the suppliers and hence no connection between the transactions entered between NTIL and HCL Infotech Limited and NTIL Selection Overseas Private Limited, Jankalyan Impex Private Limited and Aggarwal Enterprises can be established and hence no adverse inference can be taken against the Noticee in the present case.
- 25.4. Regarding the observation related to unusual transactions between Karvy Stock Broking Limited, NTIL, Capital Trade Links Limited and Jai Ambe Foils Private Limited Private Limited, Noticee No. 2 and 7 have submitted that the said observation is caused just due to mixing up of completely independent transactions and all the transactions with the above mentioned entities were in

ordinary course of business activity of NTIL and hence cannot be connected to each other. The Noticees have submitted that the monies received and paid by NTIL from the abovementioned entities were in the nature of either consideration for the sales, as advances or as payment for services or goods and hence there is no basis of linking 2 independent set of transactions with each other, when the Noticee has established the bonafides of each set of transactions and when SEBI as well as Forensic Auditor has failed to find out any connection between these parties interse.

- 25.5. I note that the answering Noticees have provided copies of invoices with Domus Greens Pvt. Ltd., Surya Meditech Limited, HCL Infotech Limited, Aggarwal Enterprises, Selection Overseas and Jai Ambe Foils. However, I note that none of the invoice is substantiated by any independent verifiable document like delivery challan, bank statement, Tax statement etc. I also note that the answering Noticees have also provided various deed of agreement between NTIL and these entities. However, I note that the deeds of agreement are very generic in nature with no details mentioned trelated to consideration, timelines, description of material/services supply etc. which do not prove anything regarding the nature of transactions and if indeed the transactions were indeed genuine and bonafide. I note that SCN has alleged that such unusual transactions indicate evidences of accommodation entries and round tripping of funds. However, FAR has observed that *“such transactions raise concern over the genuineness of these transactions. While these are not conclusive evidences of being accommodation entries, a detailed analysis would require supporting documentation from both, NTIL as well as the other entities with whom such transactions have been conducted.”* I note that FAR has observed that these transactions are not the conclusive evidence of such transactions as accommodation entries. Therefore, the allegation as contained in the SCN regarding accommodation entries and round tripping of funds have not been made out.

26. Common Connections

26.1. It is alleged in the SCN that connections such as common past director, common current director, common shareholders, have been identified among various entities/individuals including customers, suppliers, shareholders and others transacting with NTIL. The allegations are based on the following observations of FAR in this regard.

- Sarthak Computers Private Limited ('Sarthak'):

NTIL's trade receivables from Sarthak was INR 2.48 crore as at 31 March 2017. Background checks indicated various suppliers and customers of NTIL were also reflected in the financial statements of Sarthak.

- Nobility Estates Pvt. Ltd. (Nobility):

NTIL's revenue during the review period includes INR 2.39 crore from Nobility. Background check indicated that the address of Nobility to be common with parties appearing under advances to suppliers or sundry debtors namely Vertex Drugs Private Limited ('Vertex'), Domus Greens Private Limited ('Domus') and ATS Realty Private Limited ('ATS').

Additionally, public domain checks indicated that Nobility, Domus and ATS belonged to the same group of companies controlled by ATS Infrastructure Limited.

26.2. In this regard Noticees No. 2 & 7 have submitted no fault can be found just because the customer or suppliers are connected to NTIL and hence no adverse inference is warranted against the Noticees. Further, on the observation that some suppliers and customers of NTIL relate themselves to the same group of companies or Business Group, it is submitted that no fault or irregularity can be found just from the fact that some of such entities have been suppliers and customers of NTIL. It is submitted that the said observation has been based on pure suspicion and conjectures and hence cannot warrant any adverse inference either against NTIL or the Noticee. It is submitted that there is no concrete observation/fact in the present SCN to indicate that NTIL had entered into transactions only for the purpose of diversion of funds.

- 26.3. It is submitted by Noticee No. 2 and 7 that neither the Noticees nor NTIL at the time of conducting business activities with the suppliers and clients was aware that such suppliers or clients were having business transactions with each other. It is most humbly submitted that if there are entities who are in the same line of business, it is well possible that those entities were transacting amongst themselves also. In respect of the same it is submitted that without cogent evidence or proof it is incorrect to say that the transaction amongst these entities.
- 26.4. I note that the answering Noticees have not denied the existent of common connections among various entities transacting with NTIL. It is submitted that just because the customer or suppliers are connected to NTIL, no adverse inference is warranted against the Noticees. I note that FAR is not calling these entities which are alleged to be having common connections with NTIL as 'Related Parties' of NTIL thereby requiring 'Related party disclosure'. SCN has failed to bring any connection which may leads to any adverse reference relating to misrepresentation of financial statements and books of accounts of NTIL. In view of the same, I do not agree with the observations made in FAR in this regard.

27. Advances to employees and employee benefit expenses

- 27.1. It is alleged in the SCN that non-recovery of the amounts disbursed by NTIL to its employees towards employee advances, liasoning and travel expenses and non-submission of supporting documentation to substantiate the said expenses to the forensic auditor, illustrates that funds have been misappropriated by NTIL in the garb of employee expenses. It is also alleged that though the company is earning only miniscule profit, it is spending a huge amount on employee benefit expenses wherein payments to employees accounted for approximately 50% of the total expenses of NTIL. Further the SCN alleges that NTIL had created fictitious and dummy employees on paper, solely for the purpose of diversion of funds which indicates that NTIL had misappropriated the funds of its

shareholders and had also misrepresented its financial statements. The allegations are based on the following observations in the FAR.

“

- The total amount of advances to employees outstanding as per the audited financial statements were INR 8.97 and INR 9.84 crore for the year ended 31 March 2016 and 31 March 2017 respectively and as per management, none of the amounts stated as employee advances are currently recoverable.
- We were not provided any supporting documentation for our review towards any advances outstanding, ageing data among others
- Payments to employees accounted for approximately 50% of the total expenses of NTIL. During review of the employee payroll data, certain anomalies were observed as below:
- 363 employee IDs were noted to have primary attributes (name, father's name and DOB) common with another employee ID
- 39 duplicate employee IDs having different employee names were observed. 8 cases of duplicate employee IDs and duplicate employee name were also observed
- 9 PAN numbers were noted to be recorded for more than one individual (different name or father's name or DOB).
- 26 of the 40 telephone numbers verified appeared to belong to an individual other than the one mentioned on the employee master.
- 3 of the 53 cases verified revealed mismatch in employee name and name as per Permanent Account Number (PAN) database. Two cases could not be verified as the PAN was invalid.
- 12 duplicate bank accounts were noted across 24 employee IDs. Although, the employee names were same or similar but had different employee IDs.

.....”

27.2. Noticees No. 2 & 7 have submitted that NTIL used to provide advances to its employees and used to mark an entry regarding the same in the books of accounts. The said advances to the employees were given for incurring petty expenses at the ground level where the projects were executed. Some examples of such expenses are purchasing of fuel for generators, purchasing wires or switches, fabricating small equipment etc. Once the employee used to provide bills / other details of the expenses, the same were booked in the books of accounts of the company as expenses. In the financial year ending 2016 and 2017, the financial standing of the NTIL was not good and hence the many of the

employees left the Company abruptly and for good and hence, no proper closure of their accounts was possible. When the employees of the Company left, the Company did not out rightly mark the said account of the said employee as bad, but had made efforts to recoup the monies and / get details of the expenses, only when the said monies could not be recouped or when the details of the expenses could not be obtained the said account was marked as bad and an adjustment was done in regards to the same in the financials of the Company.

- 27.3. It is submitted that employee expenses are necessary expenses and cannot reasonably be precluded from the amount of revenue the entity or company generates as employees of NTIL are the ones who perform for the company and generate the necessary revenue. In relation to the comparison of the profits and employee expenses, it is submitted that profit, mathematically is generated after deducting employee expenses from revenues and hence, employee expenses cannot rest on or be at mercy of the quantum of profits generated. NTIL was in the service sector and therefore, the employee expenses were supposed to be maximum.
- 27.4. Regarding the discrepancies in the employees' data, it is submitted that the discrepancy in the employee records have been caused due to contractual workforce being engaged at the Company. It is contended that whenever a person was engaged by the Company, he was given an employee identification number but then once the contract got matured, the said person would leave and then was recalled for joining after some time on contractual basis but on the next instance, was granted a new employee code, hence erroneously creating a double entry of a particular person in the records of the Company. Such inaccuracy in the records would have happened because of inadvertent errors of the officers of the Company to concile and update the data of the Company.
- 27.5. I note that the Noticees have not provided any documentary proof like employees list with their details, proof of advances paid, purposes of advances paid, payment challans, bank statements to substantiate their contention that the

advances were made to employees for incurring petty expenses. FAR at page 56 has observed forensic auditor was not provided any supporting documentation for their review towards any advances outstanding, ageing data among others and as per management, none of the amounts stated as employee advances are currently recoverable. It was also stated by the Noticee no. 7 (CFO of NTIL) to the forensic auditor that NTIL had failed to obtain supporting documentation for these expenses and its subsequent accounting. It is noted that the Noticees have failed to provide any documentary proof which may suggest that efforts were made to recover the advances made to employees. The liquidator in its reply has also stated that some employees have also denied the liability of any outstanding in response to demand notices issued by liquidator.

- 27.6. I note that FAR has raised doubts over the employee expenses which is stated to be approximately 50% of the total expenses incurred by NTIL, not only on the basis of its quantum but also due to authenticity of the employee records of NTIL. The answering Noticees have failed to provide any justified rationale for the mismatch in their employee records. Answering Noticees have tried to explain discrepancy in the employees' list, by asserting that contractual employees were recalled again after they left service on conclusion of their contract and were given new employee code which resulted into duplication of such employees in the list, and due to non-reconciliation by the officer of company. However, the explanation furnished falls short of explaining discrepancies like why 9 PAN numbers were recorded for more than one individual, or 12 duplicate bank accounts across 24 employee IDs, or mismatch in PAN details or mismatch in telephone numbers of employees verified from the ones mentioned in employee master. Accordingly, the contention by the Noticees that the mismatch might have happened due to contractual workforce employed by NTIL cannot be taken into consideration without any documentary proof.

27.7. In view of the above, I agree with the observations made in the FAR.

28. Regarding trade receivables

28.1. It is alleged in the SCN that the trade receivables of NTIL amounting to Rs 33.35 crores being outstanding for more than two years and no third party conformation of such balances to assess the possibility of recovery of such outstanding receivables, being made available to the forensic auditor, indicates that the company is unable to realize cash from its receivables, thereby adversely affecting the company's working capital cycle. Moreover, the fact that some of the customers/debtors of NTIL are suspected shell companies also casts doubts over the genuinity of such business transactions entered into by NTIL.

28.2. The allegation is based on the following observation of FAR in this regard.

“

- Trade receivables with balances outstanding for more than two years (as provided by NTIL) amounted to INR 33.35 crore. Third party confirmation of such balances were not made available for review to assess the possibility of recovery of outstanding receivables. In lieu of non-availability of this, the recovery of receivables outstanding for more than two years is a concern.
- Background checks revealed that some of the customers/debtors of NTIL were suspected to be shell companies as per list published by SEBI and/or other government agencies

.....”

28.3. Noticee No. 2 and 7 have submitted that NTIL had a regular practice of sending letters mentioning the outstanding balances as per the books of accounts of NTIL of which the debtors would send the confirmation directly to the Statutory Auditor of NTIL i.e. Suman Jeet Agarwal & Co. Further, on the basis of these confirmation the books were analyzed and hence it is asserted that NTIL took reasonable steps like balance conformations from debtors to keep an internal check of books as well as keep a check on the debtor and hence no adverse inference regarding the same is warranted against NTIL or the Noticee. Since the letter confirming the balances were directly delivered to the Statutory Auditor, the same could not be made available to the Forensic Auditor for verification

purpose and hence no adverse inference is warranted against NTIL or the Noticee.

- 28.4. I note that the answering Noticees have not specifically denied the allegations but merely made a statement that NTIL had regular practice of sending letters mentioning the outstanding balances as per the books of accounts of NTIL of which the debtors would send the confirmation directly to the Statutory Auditor. However, I note that the Noticees have not provided any documentary proof like copies of the letters indicating demand of trade receivables and outstanding balances by NTIL, which may suggest that serious efforts were made to recover their trade receivables. It is also observed by FAR that forensic auditor was not provided with any third party confirmation of such trade receivables. Therefore, I am inclined to agree with the observations of FAR in this regard.

29. Adjustment/write off of liabilities

- 29.1. It is alleged in the SCN that the adjustment/write off of liabilities amounting to Rs 3.86 crores by NTIL through a corresponding impact on debtors and non-submission of any supporting documentation, underlying such write off/adjustments, to the forensic auditor, indicates that NTIL has misused its funds as no prudent business entity would unnecessarily write off its trade receivables without proper rationale. Thus, NTIL not acted in the best interest of its shareholders. The allegation is based on the following observations of FAR in this regard.

“

- During ledger scrutiny, accounting entries were observed wherein liabilities were written off through a corresponding impact on debtors. The aggregate value of such adjustment/write offs were INR 3.86 crore
- No supporting documentation and reasons for such write-offs/adjustments were provided for review.

....”

- 29.2. Noticees No. 2 and 7 have submitted that the same was done in order to give a fair and true picture of the financials of the NTIL to the shareholders of the company. The balances of the debtors were written off only after the same was authorized by the Board of the Company and hence no adverse inference regarding the same can be taken against the Noticees.
- 29.3. It is submitted that the case at hand relates to matters where NTIL's debtors and creditors were related to each other and upon the instruction of each other, such balances were adjusted against each other. NTIL has not adjusted any debtor/ creditor against each other without any confirmation from each other in this regard. If debtors are adjusted with creditors, the same cannot lead to misuse of funds. Both were outstanding in the books no financial transactions were made. The transaction would have the same effect on the books of the company if money was received from one party and given to another. The said fact can also be ascertained from the fact there are no complaints or recoveries initiated by any of the creditors of the company, whose balance were written off against the balances of debtors.
- 29.4. I note that FAR has at page 57 also provided a list of entities and the value of adjustment transactions. It is also observed in the FAR that no supporting documentation and reasons for such write-offs/adjustments were provided for review to the forensic auditor. I note that Answering Noticees have not provided any documentary proof like any agreement or confirmation between/from their debtors and creditors which may suggest that such write-off of liabilities with corresponding impact on their debtors were indeed genuine and bonafide. Therefore, I am inclined to agree with the observation of FAR in this regard.

30. Mismatch in recording of transactions as per bank statements, books of account and discrepancies in bank statements

- 30.1. It is alleged in the SCN that major discrepancies in the bank statements and books of accounts have been observed, leading to conclusion that NTIL has siphoned off and misused the funds of its shareholders. The allegation is based on the following observations of FAR in this regard.

“

Mismatch in recording of transactions as per bank statements and books of account

- KPMG conducted sample testing of transactions to validate bank entries recorded in the books of accounts to the entries in bank statements provided. Additionally, KPMG verified sample transactions from the bank statements and verified to the books of accounts.
- Transactions were observed wherein the description mentioned on the bank statement and in the books indicated that an entity other than as mentioned in the books was the remitter/ beneficiary. Further, differences were also noted in the name on the receipt issued as per books and narration as per books. The details of such cases have been set out below:

Date	Amount	Data as per Books			Data as per bank statement
		Account name as per books	Name as per narration in the books	Receipt issued to as per the books	Name as per bank statement
Receipts					
29-Jul-15	0.98	HCL Infotech Limited	HCL	HCL Infotech Limited	HCL Infosystems Limited
05-Aug-15	0.49				
01-Mar-16	0.59	Karvy Stock Broking Limited	Capital Trade Links Ltd.	Trimax IT Infrastructure & Services Limited	Nu Tek India Limited
01-Mar-16	0.59				
02-Mar-16	0.75	Instant Hightech Solutions Pvt. Ltd.	Instant Hightech Solutions Pvt. Ltd.	Trimax IT Infrastructure & Services Limited	Instant Hightech Solutions Pvt. Ltd.
02-Mar-16	0.33	Tritonics India Pvt. Ltd.	Tritonics India Pvt. Ltd.	Trimax IT Infrastructure & Services Limited	Tritonics India Pvt. Ltd.
Payments					
13-Jun-16	0.25	Tehri Iron & Steel Casting Limited	Trikoot Iron & Steel Casting Limited	Not available	Bank statement not available
29-Jun-16	0.24				

Discrepancies in bank statements:

- Various discrepancies in the format/order of transactions/nomenclatures were observed in a bank account statement of Kenya branch. This raises concern over the authenticity of bank statements provided by NTIL and completeness of the transactions reflecting in the books.

.....”

30.2. Noticees No. 2 & 7 have submitted that the observations regarding alleged discrepancy in narration during recording of transactions, might be a result of an inadvertent error and there was no intention of the Noticee or NTIL to cause any confusion or such errors and hence no adverse inference regarding an error should be taken against the Noticee. The Noticees were not a day to day in-charge of the accounts of the Company, Mr. Vinay Jha was heading the accounting department of the Company, unfortunately, Mr. Jha succumbed to COVID and other illness, due to which the Noticee is not in a position to obtain a proper clarification on the issue.

30.3. I note that the answering Noticees have not specifically denied the allegations but merely stated that any mismatch might have happened inadvertently and unintentionally. I note that FAR has provided a detailed list of transactions wherein there is mismatch in the entries made in the bank statements and bank books of NTIL, such as transfer of funds made to one entity but recording the name of an entity different than the one to whom transfer is made, in three different columns viz. the bank statement, in the narration column of the bank book and account name as per bank books. Any inadvertent error may be justified in one or two instances but such blatant mismatch casts serious doubts on the authenticity of the transactions. Moreover, the fact that the Noticees were not in charge of the accounts of the Company and the person heading the accounting department has expired is immaterial as the obligation is upon the entity itself to properly maintain its books of accounts. Therefore, I am inclined to agree with the observations of FAR in this regard.

31. I note that Noticee no. 2 and 7 at various instances in their submissions have made bald assertions and failed to provide any documentary proof to substantiate their contentions. It is submitted by the answering Noticees that since the company is under

liquidation under the provisions of IBC and the liquidator is in charge of the Company, all the relevant documents are within the custody of liquidator and for this reasons they are unable to provide any documentary proof. It is also stated that noticees have written multiple times to the liquidator to have access to such documents but the liquidator has not provided them any response.

32. In this regard, it is noted that Hon'ble NCLT vide its Order dated August 23, 2019 had initiated CIRP against NTIL and vide Order dated June 22, 2020, liquidation order was passed by Hon'ble NCLT and liquidator was appointed. As has been observed above in para 15 also, present proceedings in the matter were initiated subsequent to receipt of letter dated June 09, 2017 from MCA. KPMG as forensic Auditor was appointed by NSE vide engagement letter December 11, 2017 which was pursuant to SEBI order dated October 09, 2017. Therefore, when the forensic auditor was appointed, the company was not under CIRP and management was vested in the hands of Noticees where Noticee no. 2 was the Chairman and Managing Director and Noticee No. 7 was the Chief Financial Officer.

33. I have observed that the documents which have been sought by the noticees from the liquidator are substantially the same or similar documents which NTIL had failed to provide to the forensic auditor. It is also pertinent to mention that the noticees have also been charged under Section 11(2)(i) and 11(2) (ia) of the SEBI Act, 1992 which is discussed below, for non-furnishing of information to the forensic auditor. On one hand the Noticee no. 2 and 7 are contending that the documents are in custody of liquidator and hence, they are unable to provide whereas on the other hand when the noticees were in charge of the management of the Company they did not provide the same documents to forensic auditors. Therefore, it is clear that the documents are either not available or the noticees or have willfully did not provide it to the forensic auditor. Accordingly, contention of the Noticees regarding non-availability of supporting documents is untenable.

34. From the discussion in paras 17 to 33 above, I find that NTIL:

- i. Misrepresented financials by misutilizing the funds raised through GDRs. (paras 17.1 to paras 17.4)
- ii. Misrepresented financials on account of unapproved transactions with related parties (paras 19.1 to 19.3)
- iii. Misrepresented financials by waiver of outstanding trade payable (paras 20.1 o 20.3)
- iv. Misrepresented financials on account of unauthorized transaction for sale of agriculture land (paras 21.1 to 21.4)
- v. Misrepresented its financials on account of investments in other entities (paras 22.1 to 22.13)
- vi. Misrepresented financials by transacting with unrelated business activities (paras 23.1 to 23.3)
- vii. Misrepresented financials by investing in other suspected shell companies (paras 24.1 to 24.3)
- viii. Misrepresented financials on account of advances to employees and employees benefit expenses (paras 27.1 to 27.7)
- ix. Misrepresented its financials on account of trade receivables (paras 28.1 to para 28.4)
- x. Misrepresented its financials by adjustment/write off of its liabilities (paras 29.1 to 29.4)
- xi. Misrepresented financials on account of mismatch of bank statements and books of accounts (paras 30.1 to 30.3)

Thus, I find that NTIL failed to represent a true and fair view of the state of affairs of the Company in in compliance with the mandate contained in para 15 of IndAS1 and para 16 of AS1 and thereby violated Regulation 48 of LODR Regulations.

General violations of LODR Regulations

35.Non-disclosure of Statement of redressal of investor grievances to Stock Exchanges

35.1. It is alleged in the SCN that NTIL has violated Regulation 13(4) of the LODR Regulations by not placing the statement of redressal of investor grievances, required to be filed with the stock exchanges, on quarterly basis before its board of directors for the quarter ended December 2015, March 2016 and September 2017. The allegation is based on the following observation of FAR in this regard.

“

- Minutes of Board Meeting of NTIL revealed that the statement of redressal of investor grievances required to be disclosed to the stock exchange every quarter under Section 13(4) of LODR was not placed before the Board for the quarters ended December 2015, March 2016 and September 2017.

.....”

36. Noticee No. 2 & 7 have submitted that it is due to inadvertent error on behalf of the Company Secretary of NTIL. It is submitted that it is not the case that there were any investor complaints, which remained un-redressed. It is submitted that since the default is attributable to the Company Secretary of NTIL no adverse inference is warranted against the Noticees.

36.1. I note that Regulation 13 of LODR Regulations provides as follows.

13. Grievance Redressal Mechanism.

- (3) The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within twenty-one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.*
- (4) The statement as specified in sub-regulation (3) shall be placed, on quarterly basis, before the board of directors of the listed entity.*

36.2. It is noted that the answering Noticees have not denied the allegation that statement of redressal of investor grievances was not placed, on quarterly basis before the board of directors. By merely stating that the default is attributable to the Company Secretary, the listed entity cannot escape their liabilities as the obligation is casted upon the listed entity to place the statement of redressal of

investor grievances before its board of directors. Therefore, I agree with the observations of FAR in this regard.

37. Information not placed before the Board

37.1. It is alleged in the SCN that by not placing before its Board of Directors, information such as annual operating plans, budgets, updates, capital budgets, material default in financial obligations to/by listed entity or substantial non-payment for goods sold by the listed entity, NTIL has violated Regulation 17(7) of LODR Regulations.

37.2. The allegation is based on the following observation in the FAR.

“

- On review of the information and documents submitted by Navig8 Chemicals Pool Inc. and its attorneys, it appeared that a warrant for Mr. Inder Sharma's arrest and imprisonment was issued on 12 July 2017 by the High Court of Hong Kong. However, on review minutes of Board Meeting of NITL it appeared that this information was not placed before the Board as per the requirements of Section 17(7).
- The following information was not placed before the Board of NTIL
 1. Annual operating plans and budgets and any updates
 2. Capital budgets and any other updates
 3. Material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by the listed entity before the Board of Directors
 4. A statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

.....”

38. Noticee No. 2 & 7 have submitted that the said information and/or material was placed before the Board of Directors. The said submission of the Noticees are strengthened by the certificate of the Secretarial Auditor which clearly states that while they have gone through all the relevant documents, they have not pointed out any non-compliance by the NTIL. The fact that the same were placed before the Board of NTIL can be verified from the documents of NTIL, which are not readily available with the Noticees since the Noticee has been excused from the Board of

Directors of the NTIL by the virtue of the liquidation order of the Hon'ble NCLT and hence all the documents and materials have now been possessed by the Liquidator.

38.1. I note that Regulation 17(7) of LODR provides as follows.

“

17(7) The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

SCHEDULE II: CORPORATE GOVERNANCE

PART A: MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS

A. Annual operating plans and budgets and any updates

B. Capital budgets and any updates.

C. ..

D. ..

E. ..

F. Show cause, demand, prosecution notices and penalty notices, which are materially important.

G. ..

H. Any material default in financial obligation to and by the listed entity, or substantial non-payment for goods sold by the listed entity.

38.2. In this regard, I note that the Noticees no. 2 and 7 have submitted that the said information and/or material was placed before the Board of Directors but failed to provide any supporting documents for the same. It is submitted that the supporting documents are available with the Liquidator. In this regard, it is already discussed at para 31-33 that the contention of the Noticees that the supporting documents are available with the liquidator is untenable. Therefore, in absence of any supporting documents, the allegation against the Noticees is sustained.

39. Information not placed before the Audit Committee

39.1. It is alleged in the SCN that by not placing information such as management discussion and analysis of financial condition and results of operations, management letters/letters of internal control weaknesses and internal audit reports before the audit committee, NTIL has violated Regulation 18(3) of LODR Regulations read with clause (1), (3) and (4) of paragraph B of Part C of Schedule II.

39.2. The allegation is based on the following observation in the FAR.

“

- The management discussion and analysis of financial condition and results of operations were not placed before the audit committee. Likewise, the management letters/letters of internal control weaknesses and the internal audit reports were not placed before the audit committee.

.....”

39.3. In this regard, Noticees No. 2 & 7 have submitted that all the said documents and material were placed before the Board of Directors and consequently was depicted in the Annual Reports too. Had the Noticee or NTIL wanted to hide these transactions from its shareholder, it would have not disclosed the same in the Annual Report. This is at best error on the part of Company Secretary that in spite of an item being discussed in the meeting and reported to the Board for being included in Annual Report was not erroneously included in the minutes of Audit Committee. The said submission of the Noticees is strengthened by the certificate of the Secretarial Auditor which clearly states that while they have gone through all the relevant documents, they have not pointed out any noncompliance by the NTIL.

39.4. I note that Regulation 18(3) provides as follows.

“

18(3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

B. The audit committee shall mandatorily review the following information:

(1) management discussion and analysis of financial condition and results of operations;

(2) statement of significant related party transactions (as defined by the audit committee), submitted by management;

(3) management letters / letters of internal control weaknesses issued by the statutory auditors;

(4) internal audit reports relating to internal control weaknesses.

.....”

39.4.1. I note that the answering Noticees have contended that all the said documents and material were placed before the Board of Directors and depicted in the annual reports. The Noticees have not provided any documentary proof to substantiate their claims. I have also perused the annual report of NTIL for the year 2015-16, 2016-17 and have noted that the relevant details which is mandatory required to be placed before the audit committee has also not been disclosed in the annual reports also. The contention of Noticees that at best the default is attributable to the company secretary is not tenable as in accordance with LODR Regulations, the obligation is casted upon the listed entity to place the information before the audit company. Any certificate issued by Secretarial Auditor to show compliance by NTIL is immaterial for the purpose. Therefore, I agree with the observations of FAR in this regard.

40. Inadequate notice of Board meeting:

40.1. It is alleged in the SCN that by giving only four days' prior intimation (excluding the date of intimation and the meeting) to the stock exchange for the board meetings held in the quarter ended June 2016 and December 2016, NTIL had Violated of Regulation 29(1)(a) of SEBI LODR Regulations.

40.2. The said allegation is based on the following observations in the FAR.

“

- As per section 29(1)(a) of LODR regulations, a listed entity is required to give five days (excluding the day of intimation and the meeting) of prior intimation to the stock exchange for a meeting of the Board of Directors wherein the financial statements are to be discussed and approved.

However, the notice of intimation was given to the stock exchanges only four days prior to the board meetings for the quarter ended June 2016 and December 2016 (excluding day of intimation and the meeting).

.....”

40.3. Noticees No. 2 & 7 have submitted that since at that time the finalization of the financial statements was delayed, only 5-day notice was granted to the directors so as to enable the approval, adoption and submission of the financial Statements of NTIL. 5-day notice was granted in an endeavor to stick to the timelines mandated by SEBI for fair and timely disclosures to the shareholders of the Company and hence, no adverse inference is warranted to be taken against the Noticees.

40.4. I note that Regulation 29 of LODR Regulations provides as follows.

“

Prior Intimations.

29.(1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:

(a) financial results viz. quarterly, half yearly, or annual, as the case may be;

....

.....

(2) The intimation required under sub-regulation (1), shall be given at least two working days in advance, excluding the date of the intimation and date of the meeting:

Provided that intimation regarding item specified in clause (a) of sub-regulation (1), to be discussed at the meeting of board of directors shall be given at least five days in advance (excluding the date of the intimation and date of the

meeting), and such intimation shall include the date of such meeting of board of directors.

.....”

40.4.1. It is noted that FAR at page 71 of has observed that the notice of intimation of financial results was given to the stock exchanges only four days prior to the board meetings for the quarter ended June 2016 and December 2016. In this FAR has relied on intimations dated August 09, 2016 and February 06, 2017 by NTIL to stock exchanges which are titled as “*Intimation for closure of trading window for dealing in securities of M/s Nu Tek India Limited*”. I note that the intimations which are being relied on by FAR are made in accordance with Company’s Code of Conduct for prohibition of Insider Trading Regulation framed pursuant to SEBI (PIT) Regulations, 2015 and not the intimations under LODR Regulations which is misplaced and incorrect. Therefore, I do not agree with the observations of FAR in this regard.

41. Discrepancies in publishing financial results

41.1. It is alleged in the SCN that NTIL has violated Regulation 33(3)(d), 33(4) read with SEBI circular dated Nov 30, 2015 on “Formats for publishing financial results” and July 05, 2016 on “Revised formats for financial results and implementation of Ind-AS by listed entities “of LODR Regulations, 2015 as the audit reports issued by the auditors of NTIL were not as per the format prescribed in circular dated November 30, 2015 for the period ended March 2016 and March 2017, respectively. The allegation is based on the following observations of FAR in this regard.

“

The half-yearly Statement of Assets and Liabilities were not as per the format specified in Annexure IX drawn from Schedule III of the Companies Act, 2013.

SEBI vide circular dated 5 July 2016 provided certain relaxations to companies adopting IND AS for the first time with respect to the timelines for submission of quarterly financial statements to the stock exchange. NTIL adopted Ind AS from the financial year 2017-2018 onwards. Accordingly, the last date for submission of financials to the stock exchange for the

quarter ended September 2017 was 14 December 2017. However, it was observed that the limited review report attached with the financials was dated 29 December 2017.

KPMG could not trace Form A (for audit report with unmodified opinion) which was to be filed by NTIL on the website of the stock exchange for the year ending 31 March 2016.

The audit reports issued by the auditors of NTIL were not as per the format prescribed in circular dated 30 November 2015 for the period ended March 2016 and March 2017 respectively.

.....”

- 41.2. Noticees No. 2 & 7 have submitted that describing or dictating the format of Audit Report to the Statutory Auditor is not the prerogative of the Noticee or NTIL and hence no adverse inference regarding the same is warranted against the Noticee or NTIL. The Noticees has for the first time from the SCN learnt that the format used by its statutory auditor is not in accordance with the latest policies and procedures, had it know at the time in question, he would have taken corrective steps on the same.
- 41.3. I Note that Regulation 33(3)(d) and 33(4) of LODR regulations castes obligation on the listing entity to submit audited financial results in the applicable formats which shall be specified by SEBI. SEBI has vide Circular dated November 30, 2015 and dated July 5, 2016 has specified the formats to present the financial results and audit reports. FAR has observed that the half-yearly Statement of Assets and Liabilities of NTIL were not as per the format specified in Annexure IX drawn from Schedule III of the Companies Act, 2013 and the audit report issued by the auditors of NTIL were not as per the format prescribed in circular dated November 30, 2015 for the period ended March 2016 and March 2017 respectively. I note that the Noticees have not denied the allegation and merely stated that describing the format of audit report is prerogative of the statutory auditor and the same cannot be held against NTIL. As observed above, since the obligation to furnish results in appropriate format is casted on the listed entity, I agree with the observations of FAR in this regard.

42. Non-disclosure of information in Annual report

42.1. It is alleged in the SCN that (a) NTIL failed to disclose related party transactions in its Annual Reports for FY 2015-16 and FY 2016-17 (b) Non-disclosure of RPT with Ketun Energy Pvt Ltd (subsidiary of NTIL), (c) undisclosed investment in Sun Rose trading Pvt Ltd (7% shares held by NTIL), (d) Non-disclosure of relationship between its directors Mr. Inder Sharma and Ms. Sumati Sharma (who are spouses), (e) Details of compliance with mandatory requirements, (f) Adoption of the non-mandatory requirements, (g) Place where the policy for determining material subsidiaries is disclosed, (h) Requirement of corporate governance report and the reasons for such non-compliance. Thus, NTIL had violated Regulation 34(3) of SEBI LODR Regulations, 2015.

42.2. The said allegation is based on the following observations in the FAR.

“

- NTIL procured services in the nature of non-technical manpower services from Ketun Energy Private Limited (subsidiary of NTIL) in the financial year 2016-17. The agreement for these services was approved by the Board of Directors (BoD) during their meeting held on 23 December 2016.
- As per NTIL's Policy on Related party transactions prepared in accordance with Section 23(1) of LODR, “The related party transaction entered into with the related party/ies shall be disclosed in the Director Report / Annual Report as per the disclosure requirement of the Act”.
- The transactions pursuant to this agreement and amounting to INR 0.86 crore were not disclosed in the annual report.
- As per the requirement of section 34(3), any relationships between the directors inter-se should be disclosed in the Annual report. Mr. Inder Sharma and Ms. Sumati Sharma are spouses and on the Board of Directors of NTIL. Their relationship was not disclosed in the annual report for FY 2015-16 and FY 2016-17.
- The other disclosures section of the annual report did not include the following:
 1. Details of compliance with mandatory requirements
 2. Adoption of the non-mandatory requirements
 3. Place where the policy for determining material subsidiaries is disclosed.
 4. Requirement of corporate governance report and the reasons for such non-compliance

- NTIL had invested in Sun Rose Trading Pvt. Ltd. ('Sun Rose'), a vendor of NTIL. On review of the shareholding pattern of Sun Rose, it was observed that 7% of the shares are held by NTIL as at 31 March 2017. This investment in Sun Rose was not disclosed in the audited financial statements of NTIL in violation of Section 34(3).

.....”

42.3. Noticees no.2 and 7 have submitted as follows.

42.3.1. The Noticees have submitted that the relationship between Mr. Inder Sharma and Ms. Sumati Sharma was disclosed in the Annual Report of NTIL for Financial Year 2015-16. Details of compliance of the mandatory requirements, adoption of non-mandatory Requirements, place where the policy for determining the material subsidiary and requirement of corporate governance report, are part of the Annual Reports of NTIL and therefore the information was adequately disclosed to the public.

42.3.2. NTIL had taken the loans from Oriental Stitch and Ketun Energy Private Limited who are associate and subsidiary companies of NTIL and hence the said transactions did not require any approval of the board or shareholder.

42.3.3. The Noticees truly believes that the Company has complied with all the regulatory requirements. The said statement is further strengthened by the statement of the Secretarial Auditor in the Annual Report where he vouched that all the regulatory requirement has been fulfilled by the Company and hence no adverse inference regarding any allegation of non-reporting or unapproved transactions can be taken against the Noticee.

42.3.4. From the section and regulation quoted herein before, it can be seen that the requirement for taking the approval from board or shareholder is necessary only when the company is giving the loans to related party. Since in the instant case NTIL has received loans, the alleged violations are non-est.

42.3.5. Details of compliance of the mandatory requirements, adoption of non-mandatory Requirements, place where the policy for determining the material subsidiary and requirement of corporate governance report, are part of the Annual Reports of NTIL and therefore the information was adequately disclosed to the public and hence no adverse inference regarding the same are warranted against the Noticee.

42.4. I note that Regulation 34(3) of the LODR Regulations provides as follows.
“.....

Annual Report.

34(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

Schedule V of LODR Regulations provides that the annual report shall contain the following additional disclosures:

A. Related Party Disclosure:

1.The listed entity shall make disclosures in compliance with the Accounting Standard on “Related Party Disclosures”.

2.The disclosure requirements shall be as follows:

Sr. No.	In the Accounts of	Disclosures of amounts at the year end and the maximum amount of loans/ advances/ Investments outstanding during the year.
1.	Holding Company	- Loans and advances in the nature of loans to subsidiaries by name and amount. - Loans and advances in the nature of loans to associates by name and amount.

		Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.
2.	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary
3.	Holding Company	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

A. Management Discussion and Analysis:

...

B. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.

(1) A brief statement on listed entity's philosophy on code of governance.

(2) Board of directors:

(a) ...

(b) ...

(c) ...

(d) ...

(e) disclosure of relationships between directors inter-se

...

(3) ...

(10) Other Disclosure

....

(d) details of compliance with mandatory requirements and adoption of the non-mandatory requirements;

(e) web link where policy for determining 'material' subsidiaries is disclosed;

(11) Non-compliance of any requirement of corporate governance report of sub-paras (2) to (10) above, with reasons thereof shall be disclosed.

.....”

42.4.1. Regarding the disclosure related to related party transaction, I note from the Annual report of 2015-16 and 2016-17 that the Company had disclosed that *“All Related Party Transactions are negotiated on arms-length basis and in ordinary course of business. Therefore, the provisions of Section 188 (1) of the Companies Act, 2013 are not applicable. However, suitable disclosure as required by the Accounting Standard (AS 18) has been made in the notes to the Financial Statements.*

The Policy on Related Party Transactions Policy as approved by the board is uploaded on the company’s website: www.nutek.in.”

42.4.2. In this regard, para 23 of Accounting Standard 18- Related Party Disclosures, states as follows:

“If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following: (i) the name of the transacting related party; (ii) a description of the relationship between the parties; (iii) a description of the nature of transactions; (iv) volume of the transactions either as an amount or as an appropriate proportion; (v) any other elements of the related party transactions necessary for an understanding of the financial statements; (vi) the amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and (vii) amounts written off or written back in the period in respect of debts due from or to related parties”.

42.4.3. It is also contended by the answering Noticees that NTIL only received loans from its unlisted subsidiary/associate company and as per Regulation 34(3) it is not required to be disclosed in the annual reports. I have perused Regulation 34(3) read with Schedule V which states that Loans and advances in the nature of loans to subsidiaries/associates by name and amount is required to be disclosed in the accounts of listed holding Company. I note from the Annual report of 2015-16 and 2016-17 that the Company has made disclosure in terms of Accounting Standard 18 related to transaction with related parties containing details of description of services, names of related parties and consolidated details of the related party transactions. FAR has not made any observation whether the related party transactions as

disclosed by NTIL is in accordance with the Accounting Standard 18 or not. Therefore, to this limited extent of disclosure of related parties transactions, I do not agree with the observations of FAR in this regard.

42.4.4. Regarding the other violations of Regulation 34(3), I have perused the annual report of NTIL for the Financial Year 2015-16 and 2016-17 and have noted that NTIL has not disclosed the relationship between Mr. Inder Sharma and Ms. Sumanti Sharma in the annual report of 2015-16 and 2016-17 as claimed by them in their submissions. I note that at page 34 of the annual report of 2015-16 and at page 34 of the annual report of 2016-17, it is disclosed that none of the Directors are related to each other within the meaning of the term “relative” as per section 2(77) of Companies Act, 2013. I also note that the Company has not disclosed the details of compliance with mandatory requirements and adoption of the non-mandatory requirements and the web link where policy for determining ‘material’ subsidiaries is disclosed. Therefore, I agree with the observations of FAR in this regard.

43. Non-preservation of documents

43.1. It is also alleged in the SCN that NTIL did not preserve its books of accounts for a period of 8 years in accordance with its on “Preservation of documents” as its books of accounts for the period April 01, 2009 to March 31, 2015 were not made available to the forensic auditor. The allegation is based on the following observations in the FAR.

“

- As per Section 9 of LODR, every listed entity shall have a policy for preservation of documents approved by its Board of Directors. As per NTIL’s policy on preservation of documents books of accounts are to be preserved for a period of 8 years. However, on request made to NTIL, KPMG was informed that the books of accounts for the period 1 April 2009 to 31 March 2015 were not available.

.....”

- 43.2. The Noticee no. 2 and 7 have submitted that NTIL had made every endeavor to preserve the same electronically but due to breakdown of the servers and drives, NTIL consequently lost the primary storage and the backup of the books of account and the supporting document and hence, no adverse inference regarding the same is warranted against the Noticee or NTIL.
- 43.3. I note that answering Noticees have merely stated that due to breakdown of the servers and drives, they lost the documents and could not preserve. As the Noticees have not denied the allegation, I agree with the observations in FAR regarding the violation of Regulation 9 of LODR Regulations.

B. Non-furnishing of information/ non-cooperation by NTIL

44. It is alleged in the SCN that NTIL failed to co-operate and furnish information/supporting documents to the forensic auditor.

- FAR has observed that the following critical information was not made available to KPMG for review

No.	Data not made available
1	Complete access to NTIL's books of account and all underlying supporting documents, Tally backup and financials from FY 2010-11 to FY 2014-15 for NTIL, its subsidiaries, branches, step-down subsidiaries and step-down branches.
2	Books of account, audited financial statements and bank statements of NTIL's Nepal Branch from FY 2010-11 to FY 2016-17.
3	Bank Statements for NTIL, its subsidiaries, branches, step-down subsidiaries and step-down branches from FY 2010-11 to FY 2014-15.
4	Bank statements and bank reconciliation statements of two subsidiaries and three branches of Nu Tek (HK) from FY 2010-11 to FY 2016-17
5	Complete bank statements for 25 out of 32 bank accounts of NTIL, its subsidiaries and branches and bank reconciliation statements for 14 out of 32 bank accounts of NTIL, its subsidiaries and branches for FY 2015-16 and FY 2016-17. (Refer Annexure 1 for detailed information of all bank accounts of NTIL, status of receipt of statements and reconciliations)
6	Information such as PAN for 138 out of 145 entities, VAT number for 132 out of 145 entities, Service Tax number for all 145 entities, address for 62 out of 172 entities and email address, contact number and contact person for all 172 entities
7	Third party confirmation from debtors, creditors and advances paid to suppliers of balances outstanding
8	Ageing analysis for the year ended 31 March 2017 for advances paid to suppliers, sundry debtors and sundry creditors
9	Underlying documents and details for delisting of GDR's
10	Documents and information regarding the rights in coal mines owned by GPC.
11	Register of share transfers of NTIL
12	Supporting documents for following areas:
i	Samples selected for advances paid to employees
ii	Sample Projects Work in Progress accruals such as certificate from customers evidencing the recoverability of Projects WIP

iii	Reasons of debit adjustments or confirmation from parties approving the adjustments
iv	Samples selected for purchases made by NTIL- All 10 Goods Receipt Notes (GRN), invoices, PO and contracts
v	Investment of Nu Tek (HK) Private Limited in Gulf Power Corporation Limited (GPC)
vi	Samples selected for advances paid to suppliers- 59 out of 63 contracts, 28 out of 63 Purchase Orders and all 63 invoices
vii	Samples selected for sundry creditors- 7 out of 14 invoices and 9 out of 14 Purchase Orders
viii	Samples selected for sundry debtors- 5 out of 16 invoices, work orders, contracts and details of service offered

- 44.1. Noticees No. 2 & 7 have submitted that the electronic storage facilities including the hard drives and storage drives got corrupt and hence, the Company was unable to provide the relevant documents and materials to the forensic auditor. NTIL's business operations had been seriously affected by the time forensic audit had started and NTIL was left with very few employees at the time of conduct of forensic audit. Nu Tek (HK) was already under liquidation by the time the forensic audit commenced and NTIL did not have the required information with it. No time was available to seek the details from the Liquidator of Nu Tek (HK). The Forensic Auditors were given mandate to conduct audit for the Financial Years 2015-16 and 2016-17, while the details which were being sought were beyond this period.
- 44.2. From the observation of FAR, I find that there were several instances when NTIL had failed to provide explanation, documents, comments and information to the forensic auditor. I also note that the answering Noticees have not specifically denied the observations of FAR that they were unable to provide the relevant documents and materials to the forensic auditor. In view of the above, I find that the allegation in respect of not furnishing of information by NTIL to the forensic auditor is sustained.
- 44.3. Stock Exchanges were directed to appoint a forensic auditor for carrying out forensic audit of NTIL vide SEBI interim order dated October 9, 2017. Subsequently NSE appointed KPMG to carry out a forensic review of NTIL vide engagement letter dated December 11, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. Being a listed entity, non-cooperation with such an audit is serious. I also note that Section 11(2)(i) and

11(2) (ia) of the SEBI Act, 1992 has been invoked against the Noticee no. 1. On a reading of these Sections, I observe that Section 11(1) of the SEBI Act, 1992 lays down the functions of SEBI, and in carrying out the said functions, SEBI is empowered, under Section 11(2)(i) and 11(2) (ia) of the SEBI Act, 1992, to call for records from intermediaries and other entities. In the facts and circumstances of the present case, a forensic auditor appointed through an order of SEBI who seeks information from an entity must be treated with the same seriousness as if the information is being sought by SEBI. In view of the non-furnishing of the information sought by the forensic auditor, I find that NTIL has violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

C. Violations of PFUTP Regulations, 2003:

45. Regarding the violations of PFUTP Regulations as alleged in SCN, I note that the engagement objective for conducting the forensic audit of NTIL, as was assigned to the forensic auditor by NSE, as stated in the FAR was as follows.

“

- Review and comment on the suspicious transactions as mentioned in the SEBI order.
- Identify misrepresentation of financials and/or its business and possible violations of LODR by the company.
- Identify misuse of the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders.

.....”

46. The scope of work as was agreed upon between NSE and forensic auditor, as stated in the FAR, was as follows.

Sr. No	Particulars
1	Possible misrepresentation including its financials and / or business and / or violation of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “LODR Regulation”)
2	Possible misuse of the books of accounts / funds of the company including facilitation of accommodation entries and / or entering into transactions to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP), including the following:
a)	Suspicious transactions/items as provided in the SEBI / Exchange Order: both in the “Queries” vide letters/emails and “Consideration”.
b)	To seek specific inputs as may be shared by SEBI, if any
c)	Wherever applicable, the cash flow analysis to trace source of funds and end use of funds.
d)	Independent and /or physical verification of the underlying transactions.
e)	In addition, 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)	Assess genuineness of Revenue, expenditure, assets / liabilities for the period of two years which shall also include the ageing analysis of loans and advances / borrowings / investments etc.
(ii)	Assess genuineness of the debtors/ receivables and creditors / payables, reconciliation of debtors / creditors as stated by the Company vis-a-vis the actual position and the prospects of recovery (focus on top debtors) /payment.
(iii)	Analysis of related party transactions.
(iv)	High value bank transactions to ascertain their relevance to the business of the company
(v)	Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers
(vi)	Analysis of the bank accounts of the company (and its subsidiaries if any) to identify the potential round tripping of funds or accommodation transactions.
(vii)	The nature of business along with the investments made by the company in its 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. If investments in listed companies, then reconciliation to be done with independently sourced statements from NSDL/CDSL.
(ix)	Assessment of share application money including the share premium amount received by the company including the reversals, if any. For share premium assessment of utilization of funds, if any, in terms of provisions of Companies Act.
(x)	Comment on the shareholding pattern for the period under consideration- promoter holding, public shareholding, no. of such shareholders and their relationship with promoter and promoter group, if any, whether the company is promoter driven / professionally managed.
f)	Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds).
3	Conduct background checks, site visits, assessment of company's business model and meetings with key stakeholders including company auditors and directors. Background checks may include:
a.	Background / reputation checks based on public domain information related to antecedents of promoters, nature/ line of business, genuineness of business activities of the company
b.	Discussions with key stakeholders like Promoters / Senior Management Team / Departmental heads, vendors, customers, company auditors, etc.
c.	Business history, directorship searches and litigations.
d.	Assessment of size and scope of business.
e.	Site visit for verifying existence of the company premises, assets, place of execution of services, etc.
f.	Interactions with the entities / persons involved in day to day affairs of the company.

47. From the scope of work of the FAR, I note that it was mainly limited to examination of potential misuse of books of accounts / funds of the Company, review of books of accounts and back up records for the period of two years and non-compliance of SEBI LODR Regulations by the Company.

48. As can be noted from the terms of engagement and scope of work 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 NTIL 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, “.....7. It was observed that the company (Noticee no.1), its directors and the Chief Financial Officer (Noticee no. 2 to 7) have failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the company.”. 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 7 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.

49. 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.

50. 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 NTIL. 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.

51. 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 7. 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.

52. SCN, also alleges that NTIL has violated Regulation 4(1)(a),(b),(c),(e) & (g), 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(3),(6) & (12) of the LODR Regulations. 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 recognized 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.
- (e) 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 recognized stock exchange(s) in this regard and as may be applicable.

53. As discussed above, NTIL has been found to be in violation of Regulation 9, 17(7), 18(3), 33(3)(d), 33(4), 34(3), and 48 of the LODR Regulations, therefore, NTIL was not in compliance of the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, NTIL is in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations.

54. Regarding the violations of Regulations 4(2) (f) (ii) (6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations by NTIL, 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 NTIL cannot be said to be in violations of Regulation 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

55. Regarding the violations of Regulation 17(8) read with Part B of Schedule II of LODR Regulations by Noticee no.1, as alleged in the SCN, I find that Regulation 17(8) mandates that the chief executive officer and the chief financial officer shall provide

the compliance certificate to the board of directors as specified in Part B of Schedule II. Since the said provisions pertain to chief executive officer and the chief financial officer of the Company, I find that Noticee no.1 cannot be said to be in violation of Regulation 17(8) of LODR Regulations.

56. SCN further alleges that NTIL 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 NTIL are listed on BSE and NSE. 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.....”

57. 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, NTIL is a company whose securities are listed on recognized stock exchange. NTIL being a company having its securities listed on recognized stock exchange was also required to sign the said uniform listing agreement with the exchanges and in view of the provisions of Section 21 of SCRA, 1956, NTIL was bound to comply with the conditions of the uniform listing agreement, as extracted above. NTIL has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, NTIL is in

violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

58. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 7, who were the directors/CFO of NTIL at the relevant time, are liable for the violations alleged to be committed by NTIL viz: Section 12A (a), (b) and (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992, and 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) (3), (6) & (12), Regulations 9, 17(7), 18(3) read with clause (1), (3) and (4) of paragraph B of Part C of Schedule II, 29(1)(a), 33(2)(a), 33(3)(d), 33(4), 34(3), 17(8) read with Part B of schedule II, and Regulation 48 of LODR Regulations read with Section 21 of SCRA, 1956.

59. Thus, SCN imputes all the allegations which are levelled against NTIL, automatically, on the directors /CFO of NTIL. 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 NTIL was in violation of Regulation 9, 17(7), 18(3), 33(3)(d), 33(4), 34(3), 48 of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to 7, it has to be determined whether these Noticees are liable for those violations for which NTIL 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 NTIL, 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) (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 NTIL was in violation of Regulation 9, 17(7), 18(3), 33(3)(d), 33(4), 34(3), 48 of the LODR Regulations and Section 21 of SCRA, 1956. In view of these violations found to have been committed by NTIL, the principles contained in Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii) (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 NTIL are liable. Further, Regulation 33(2)(a) creates primary liability of board of directors and CMD/CFO, for certification and approval of financial results. Therefore, Noticee no. 2 to 7 are liable for violation of Regulation 33(2)(a) of LODR Regulations, also. Additionally, Noticee no. 2 and 7, having issued wrong certificates with respect to the financial statements of NTIL, have also violated Regulation 17(8) read Part B of Schedule II of LODR Regulations.

60. I note that Noticee no. 2 to 6 were the directors of the Company, during the period of violations alleged in the SCN, i.e. April 01, 2015 to March 31, 2017. I note that Noticee no. 2 was the Chairman & Managing Director of NTIL for the FY 2015-16 and 2016-

17. I note that Noticee no. 3 and 4 were the Non-executive director of NTIL for FY 2015-16 and 2016-17. I note that Noticee no. 5 and 6 were the Non-Executive Independent Director of NTIL for 2015-16 and 2016-17. I also note that Noticee no. 7 was also the Chief Financial Officer of NTIL for FY 2015-16 and 2016-17. I note that the Certificate for compliance in accordance with Regulation 17(8) r/w. Part B of Schedule II of LODR Regulations was signed by Noticee no. 2 and 7 for FY 2015-16, and FY 2016-17. 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 2016-17, the details of audit committee members of NTIL, 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. Rajiv Kumar (Noticee no. 6)	Chairman	4	4
Mr. Amar Sarin (Noticee no. 5)	Member	4	4
Mrs. Sumanti Sharma (Noticee no. 3)	Member	4	4

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. Rajiv Kumar (Noticee no. 6)	Chairman	5	5
Mr. Amar Sarin (Noticee no. 5)	Member	5	5
Mrs. Sumanti Sharma (Noticee no. 3)	Member	5	5

61. 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 Regulation 9, 17(7), 18(3), 33(3)(d), 33(4), 34(3), 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)(3), (6) & (12) of LODR Regulations. I note that Noticee nos. 5 and 6, being the independent directors of NTIL and being part of the audit committee of NTIL reviewed the financial statements of NTIL, and approved the financials of NTIL as part of the board of directors of NTIL. Failure to raise any concern regarding the financials of NTIL, as member of the audit committee as well as the board of directors of NTIL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations.

62. In view of the aforesaid violations committed by NTIL and its directors/CFO, I find that directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued.

63. I note that Noticee no. 8, being the statutory auditors of NTIL during the period under Forensic Audit i.e. April 1, 2015 to March 31, 2017, have also been issued separate show cause notice i.e. SCN-II, alleging that the statutory auditors have been negligent in performance of their duties and have not carried out proper due diligence and have not reported non-compliance of accounting principles by the Company including instances of misuse/misrepresentation of funds and/or books of accounts by the Company in its audit report. SCN also alleged that the auditors issued an audit opinion

with limited qualification, stating “that financial statements give the information required by the Companies Act, 2013 in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India”. Such certification of annual reports by the auditors has resulted in not only the shareholders but also the public being misled about the financial health of the Company, thereby violating provisions of Section 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992 and Regulation 3(b), 3(c) and 3(d), Regulation 4(1), 4(2)(a), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003. In this regard, before dealing with the liability of the statutory auditors, it would be appropriate to refer to the judgment of Hon’ble Bombay High Court in Writ Petition No. 5249 of 2010 (filed by Price Waterhouse, Bangalore) and Writ Petition No. 5256 of 2010 (filed by 10 CA firms along with their partners), dated August 13, 2010, wherein Hon’ble Bombay High Court held as under:

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

have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company

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

64. From the above-mentioned judgment of Hon'ble Bombay High Court, it is observed that for SEBI to exercise jurisdiction over an auditor, it has to be shown that the case pertains to an auditor who in connivance and in collusion with the officers or directors of a company has concocted false accounts. I note that in the present matter SCN-II, as issued to Noticee no. 8, only allege that the statutory auditors were not diligent enough in the issuance of an audit opinion with limited qualification for the financial statements of NTIL. The SCN-II do not allege that the statutory auditors were in connivance with the promoters/ directors / management of NTIL to fudge the financial statements of NTIL. Moreover, as discussed in previous paras, I note that the charges of violation of provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, pertaining to fraud, have not been made out even against the Noticee nos. 1 to 7 and SEBI has been given liberty to issue fresh SCN to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/ingredients under PFUTP Regulations, 2003.

Therefore, in view of the judgment of the Hon'ble Bombay High Court in PWC matter (supra) and other facts and circumstances of the case, violations, as alleged in the SCN-II against Noticee no. 8, are not made out.

65. SCN in the matter, also calls upon the Noticee no. 1 to 7 to explain as to why appropriate penalty be not imposed upon them under Sections 15A(a), 15HA and 15HB of SEBI Act, 1992 and Section 23E and 23H of SCRA, 1956, for the violations alleged in the SCN. 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:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—
(a) to furnish any document, return or report to the Board, fails to furnish the same he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher

Penalty for contravention where no separate penalty has been provided.

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

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.

66. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15A(a) and 15HB of the SEBI Act, 1992, is attracted and not the penalties under Section 15HA 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 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 NTIL is in violation of listing conditions, however, NTIL 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 7, 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 7, being directors/CFO of NTIL, 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 7. NTIL has been found to have violated provision of Section 21 of SCRA Act, 1956, therefore, provisions of Section 23H are attracted qua Noticee no. 1.

67. I find that for non-furnishing of information to forensic auditor, as found above, NTIL is liable for imposition of penalty under Section 15A(a) of the SEBI Act, 1992 which provides penalty for failure to furnish information, inter alia, sought by SEBI under the provisions of SEBI Act, 1992. For the violation of LODR Regulations, NTIL 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 NTIL, as found in this order, penalty under Section 15HB is attracted against NTIL. Similarly, Noticee no. 2 to 7 who are the directors/CFO of NTIL 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.

68. 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.”

69. I find that SCN does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that SCN 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 7. However, I note that the violations have occurred over a period of two financial years. I also note that out of 22 observations made in the FAR ,18 have sustained in this order.

Directions and monetary penalties:

70. 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 is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of revival, if any, of the company, in case of failure of Liquidation proceedings or if it stands withdrawn.
- (ii) The Noticee no. 2 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 one (1) year, from the date of coming into force of this order;
- (iii) The Noticee no. 3,4,5 and 6 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;

(iv) The Noticee no. 1 to 7, 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*	Nu Tek India Limited	Section 15A(a) of SEBI Act, 1992	Rs. 10 ,00,000/- (Rupees Ten Lakh)
		Section 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956.	Rs. 16 ,00,000/- (Rupees Sixteen Lakh)
Noticee no. 2	Mr. Inder Sharma	Section 15HB of SEBI Act, 1992	Rs. 8,00,000/- (Rupees Eight Lakhs)
Noticee no. 3	Mrs. Sumati Sharma	Section 15HB of SEBI Act, 1992	Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand)
Noticee no. 4	Mr. Ayub Yaeguang Younes	Section 15HB of SEBI Act, 1992	Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand)
Noticee no. 5	Mr. Amar Sarin	Section 15HB of SEBI Act, 1992	Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand)
Noticee no. 6	Mr. Rajiv Kumar	Section 15HB of SEBI Act, 1992	Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand)
Noticee no. 7	Mr. Ashish Banker	Section 15HB of SEBI Act, 1992	Rs. 3,20,000/- (Rupees Three Lakhs Twenty Thousand)

* Penalty for the purpose of lodging as claim by SEBI with the liquidator

(v) 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)	

71. 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 recognized stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

72. This Order comes into force with immediate effect.

73. 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.

74. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs, Reserve Bank of India, along with a copy of the Forensic Audit Report for their information.

Date: December 21, 2021
Place: Mumbai

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