

WTM/AB/IVD/ID19/14750/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

Noticee No.	Name of Noticees	PAN
1.	M/s. Landmarc Leisure Corporation Ltd.	AAACL5117A
2.	Mr. S.P Banerjee	AGKPB8062D
3.	Mr. Samsher Garud	AGZPG2591B
4.	Mr. Rudra Narain Jha	ACCPJ7011J
5.	Mr. Anand Palaye	AADPP2479D
6.	Mr. Swetambar Dhari Sinha	AAAPS2966F
7.	Ms Vidhi Vikas Kasliwal	ANWPK6663Q
8.	Mr. Mahadevan Ramanathan Kavassery	AAHPK2129D
9.	Mr. Ramesh Kumar Sidana	ATIPS1923R
10.	Mr Kapil Kotia	AIGPK3468A
11.	Mr. Deepak Rajendra Kumar Nangalia	ACMPN3605J

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

In the *matter of* Landmarc Leisure Corporation Ltd.

1. The present order deals with show cause notice bearing no. SEBI/HO/IVD/ID19/VA/OW/P/2020/5635 dated February 12, 2020 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to Noticee no. 1 to 11. The SCN calls upon Noticee no. 1 to 11 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 11(2)(i), 11(2)(ia), 15A(a), 15HA and 15HB of SEBI Act, 1992 and Section 12A(1) and 12A(2) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”), read with Sections 23E and 23H of SCRA, 1956, against them for violations of Section 12A(a), (b) & (c) 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**”), Regulations 4(1) (a), (b), (c), (e), (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), 17(8) read with Part B of Schedule II, 33(2)(a) and 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”), and Section 21 of SCRA, 1956.
2. The brief facts of the case, the brief findings of the investigation and the allegations levelled against the Noticees, as mentioned in the SCN are as follows:
 - 2.1. SEBI passed an interim order on October 06, 2017, inter-alia, directing the promoters and the directors (Noticee no. 2 to 9) of Landmarc Lesiure Corporation Limited (Noticee no.1, hereinafter referred to as “**the Company/ LLCL**”) to only buy the securities of LLCL and shares held by them in the Company shall not be allowed to be transferred for sale by depositories. Further, vide the said interim order, the stock exchange was directed to appoint an independent forensic auditor to, inter-alia, further verify:
 - 2.1.1. Misrepresentation including of financials and/or business of LLCL, if any;
 - 2.1.2. Misuse of the funds/books of accounts of LLCL, if any.

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

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

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

2.3.1. Interest free security deposits of Rs 15 crores made by LLCL to related party i.e. Shree Ram Urban Infrastructure Limited (hereinafter referred to as "**SRUIL**") wherein such interest free deposits were kept with the latter despite SRUIL kept postponing the handing over date of the Wellness Center in the property known as 'Palaise Royale'. LLCL also did not make any attempts to recover the money from SRUIL even when SRUIL was in the process of going into liquidation and the property to be handed over to LLCL came under the possession of India Bulls Housing Finance.

2.3.2. Interest free security deposit of Rs 25 crores made by LLCL to indirectly related party i.e. SKM Real Infra Limited (hereinafter referred to as "**SKMRIL**") as the Company was envisaging growth in the business of wellness segment as well as media/entertainment segment. However, there has hardly been any advancement in the said business and LLCL could only recover Rs 2.83 crores out of Rs 25 crores from SKMRIL, which is just 11% of the total amount advanced by LLCL. The Company had started to recover the said amount only after SEBI had ordered investigation into the affairs of the Company by way of forensic audit.

2.3.3. LLCL has incurred expenses amounting to Rs 40 lakhs, paid to Forever Young Wellness Pvt Ltd (hereinafter referred to as "**FYWPL**") relating to consultancy for designing/ development/ other ancillary activities of the wellness centre at Worli, without discussing the same with the board of

directors. Further, considering that Rs 40 lakhs paid by LLCL to FYWPL is 83% of total expenses incurred by LLCL in FY 2015-16, it is difficult to accept the submission made by the Company that the said expense was for the purpose of business as no tangible benefit was achieved by the Company by making such non-core expenditure, that too carried out without any business rationale.

2.3.4. When FYWPL is providing consultancy services to LLCL and the latter is the party who has to pay for such services, then there was no reason for FYWPL to transfer funds amounting to Rs 7.5 lakhs and Rs 4.66 lakhs on different occasions to LLCL. Further, transfer of Rs 4.66 lakhs by LLCL to a different party immediately on the next day (July 16, 2015) after the receipt (July 15, 2015) of said funds from FYWPL, also raises suspicion about the genuineness of transactions made by LLCL.

2.3.5. LLCL failed to apply IND-AS which became applicable to the Company from April 01, 2016 and was still preparing its books of accounts for financial year 2016-17 in accordance with the erstwhile accounting standards.

2.3.6. LLCL by capitalizing the expenses incurred on publicity and promotion including satellite rights, instead of charging them to profit & loss account, has violated the provisions of Ind AS 38-“Intangible assets”, as no economic benefits have been received by the Company out of the said expenditure. Further, the Company has also failed in adjusting the said expense in its opening Balance Sheet as required under Ind AS 8- “Accounting Policies, Changes in Accounting Estimates and Errors”. Thus, the Company has failed to comply with Ind-AS and therefore there is non-compliance under Section 134(5) of the Companies Act, 2013.

2.3.7. From the revenue sharing agreement entered into between LLCL and SKMRIL, effective from Jan 10, 2007, it is noted that SKMRIL owns and possesses the building known as “Raaj Chambers” situated at Andheri, Mumbai with a saleable area of approximately one lakh square feet. As per

the said revenue sharing arrangement, “LLCL shall give interest free deposit of Rs 5,000 lakhs, out of which Rs 1,500 lakhs shall be towards fixed deposit account and balance Rs 3,500 lakhs shall be towards current account deposit. SKMRIL has now offered LLCL use of the premises and the parties have agreed into business arrangement. Further, if LLCL does not foresee utilisation of any portion of premises made available, then LLCL shall within two months intimate SKM by a written notice of the non-use of the said portion of the premises”. LLCL has occupied a total space of 20,332 sq. ft. at Raaj Chambers but the Company has only 6 employees. Also, the Company has not shared any current plan of utilisation of such huge space with the forensic auditor. LLCL could have returned the unutilized office space to SKMRIL or could have leased it to another party and earned some money out of it. However it failed to do so thereby not conducting its business operations in efficient and orderly manner.

2.3.8. LLCL is making accommodation entries and is acting as a conduit for rotating funds, on the same day or within a span of few days of receipt of the funds, among a few entities that too related directly or indirectly with it viz. SKMRIL (indirectly related), Fervent Finance and Investment Private Limited, K.U Enterprises Private Limited (Directly related) and Yashaswini Investments Company Private Limited (directly related).

2.3.9. FYWPL is appearing as the creditor of the Company consecutively for three financial years since 2015-16 and the amount of dues outstanding to FYWPL for all the aforesaid years is Rs 41.66 lakhs. LLCL had already paid Rs 40 lakhs to FYWPL in FY 2015-16. However, there is no clarity as to whether Rs 40 lakhs paid by LLCL to FYWPL is out of Rs 41.66 lakhs shown as outstanding in the books of LLCL. With respect to FYWPL appearing as creditor in the books of LLCL, query was raised to the forensic auditor as to whether LLCL has entered into any other business transaction, apart from availing consultancy services, with FYWPL. However, the Company has not responded to the forensic auditor.

These irregularities tantamount to misrepresentation of financials/misuse of funds/ books of accounts of the company during the investigation period and has misled existing and prospective investors

II. Non-furnishing of information to the forensic auditor:

2.3.10. LLCL has failed to provide, to the forensic auditor, copy of business plans and the exact details of the board meetings where business plans with regards to the efforts to reduce losses has been discussed. The Company has not only failed to provide the sought information but the lack of interest on the part of the Company and its directors may also be construed to mean that the Company has no intention to prove otherwise the allegations charged against the Company.

2.3.11. The forensic auditor has given advance notice for the meetings (informed on May 18, 2019 for May 28, 2019 meeting). However, just few hours before the meeting, LLCL and its officials communicated their unavailability to have the meeting with the forensic auditor by sending an email to the latter. The said behavior on the part of LLCL and its officials indicate non co-operation with the forensic auditor in furnishing the information. It is difficult to believe that all officials of LLCL suddenly became unavailable on the date of the meeting. Further, no evidence is provided to otherwise prove that the Company has taken efforts to cooperate with the said investigation.

3. I note that Noticee no.1, 2, 4, 6, 7, 8, 9, 10 and 11 have filed their common merit based reply dated October 20, 2020. From the copy of the Death Certificate bearing no. MCDOLIR-0221-221406, as submitted by the advocate representing Noticee no. 2, issued by South Delhi Municipal Corporation, I find that Noticee no. 2 has expired on April 26, 2021. Thus, the proceedings *qua* Noticee no. 2 stands abated. Noticee no. 1, 4, 6, 7, 8, 9, 10 and 11 are hereinafter collectively referred to as '**the Replying Noticees**'. I note that Noticee no. 5 has filed his reply dated March 11, 2020. Noticee

no. 3 has filed his reply dated March 5, 2020 and additional reply dated December 1, 2020.

4. I note that an opportunity of personal hearing was afforded to all the Noticees on December 9, 2020 which was availed by them all. After hearing, the Replying Noticees have filed their common additional reply dated December 19, 2020. I note that the following Noticees had applied for settlement of the present enforcement proceedings under SEBI (Settlement Proceedings) Regulations, 2018 on different dates details of which are as under:

Noticee applying for Settlement	Date of application received by SEBI
Noticee no. 6	October 08, 2021
Noticee no. 10	October 08, 2021
Noticee no. 1	April 06, 2021
Noticee no. 9	October 08, 2021
Noticee no. 8	July 01, 2021
Noticee no. 7	August 12, 2021
Noticee no. 4	November 16, 2021
Noticee no. 11	June 02, 2021

5. In view of the aforesaid settlement applications filed by the respective Noticees, passing of final order in the instant matter was kept in abeyance, in terms of Regulation 8(1) of SEBI (Settlement Proceedings) Regulations, 2018. However, respective Noticees withdrew their application for settlement on November 30, 2021. After withdrawing their applications, as aforesaid, Noticee no. 4, 6, 7, 8, 9, 10 and 11, have also filed their supplementary reply dated December 01, 2021. Thereafter, vide an email dated December 22, 2021, the Advocate representing the Replying Noticees has requested for another opportunity of personal hearing without indicating the further issues on which Replying Noticee wish to address in the hearing. Having regard to the fact that the Replying sufficiently represented their case in these proceedings by filling a common reply dated October 20, 2020, common additional reply dated December 19, 2020, common supplementary reply dated December 01, 2021 and by making the

submissions during the hearing held on December 09, 2020, it was found that no meaningful purpose would be served by granting another opportunity of personal hearing to the Replying Noticees. Accordingly, the request for a second hearing in the matter was not acceded to.

6. Noticee no. 3, vide his reply dated March 5, 2020 and additional reply dated December 01, 2020, has raised the following key contentions to the allegations in the SCN:

- 6.1. I was independent director in LLCL from March 29, 2010 to October 10, 2016. I was not in-charge of day to day affairs or involved in the decision making process of the company. I was neither a promoter, insider, shareholder and/or a connected person or a beneficiary in LLCL.
- 6.2. With regards to the allegation of misrepresentation in financial statement, I state that from the auditor's report furnished to me, it can be seen that the deposits were all made prior to my joining as an independent director in 2010. I had no role whatsoever in the affairs of the Company. I was neither the key managerial personnel or the executive director or the whole time director of LLCL.

7. Noticee no. 5, vide his reply dated March 11, 2020, has raised the following key contentions to the allegations in the SCN:

- 7.1. I was appointed as independent director in LLCL from November 14, 2016. I was inducted in the board of LLCL to give my insights and expertise in architectural field. I had resigned as the director of LLCL from July 17, 2018.
- 7.2. My involvement in company board process and working was limited to my profession and working experience. I do not have sufficient knowledge of financial aspects and accounting.
- 7.3. The forensic audit conveys the period from April 2, 2015 to March 31, 2018, however, my tenure as independent director was from November 2016 to July 2018. The substantial alleged transaction between LLCL and SRUIL and between LLCL and SKMRIL, which were part of forensic audit were entered before the date of my appointment.

8. The contentions raised by the replying Noticees in their replies dated October 20, 2020 and December 19, 2020 have been referred to while dealing with the specific allegations made in the SCN, at appropriate places. Noticee no. 4, 6, 7, 8, 9, 10 and 11 have also raised the following key contentions vide their additional reply dated December 1, 2021:

- 8.1. The Investigating Authority has failed to provide any document about the involvement of the said Noticees by way of Signatures on any document nor has provided the minutes of all board meetings of the Company. The documents provided with the SCN do not suggest the said Noticee involvement in the affairs of the Company.
- 8.2. The said Noticees submit that as per MCA's Master Circular No. 1/2020 dated March 2, 2020, it has been clarified that no director shall be held liable for any violation by the company or by any other officer of the company, if the violation occurred without his or her knowledge and without his or her consent or connivance or where he or she has acted diligently.
- 8.3. The Noticee Directors have submitted that an ordinary director (independent, non-executive) of a company has to be deemed to be guilty of the contravention, if it is proved that he at the time of the contravention was in-charge of and responsible to the company for conduct of its business. The Noticee Directors further submit that it has to be alleged and proved by placing material on record that the person sought to be made liable were in-charge of and responsible to the company for the conduct of its business at the relevant time.
- 8.4. We further submit that the promoters of the Company and its directors have already undergone restraint from the securities market for more than 50 months from October 6, 2017, under SEBI's interim order dated October 6, 2017 and in the interest of justice and facts of the case, do not deserve to be penalized further.

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

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

Relevant extract of the provisions of SEBI Act, 1992:

“Functions of Board.

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

(2) Without prejudice to the generality of the foregoing provisions, the 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:-

.....

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

.....

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

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

.....

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

.....”

Relevant extract of the provisions of LODR Regulations:

“Principles governing disclosures and obligations.

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

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

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

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

- (d)
 - (e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
 - (f)
 - (g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.
- (2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.
-
- (f) Responsibilities of the board of directors:
The board of directors of the listed entity shall have the following responsibilities:
.....
 - (ii) Key functions of the board of directors-
.....
 - (6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
 - (7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
- ...
- (iii) Other responsibilities:
.....
 - (3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.
.....
 - (6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.
.....

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

.....

Financial results.

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

.....

- (2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
- (a) The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading

Accounting Standards.

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

10. Before proceeding on the merit of the matter, it will be relevant to discuss the background of the present proceedings. SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs. In respect of listed shell companies including LLCL vide its letter dated August 7, 2017, SEBI advised stock exchanges to place trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said letter dated August 7, 2017 also advised stock exchanges to place the scrip in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. Thereafter, BSE vide notice dated August 7, 2017 issued to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies, as

identified by MCA and communicated by SEBI, with effect from August 8, 2017. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

11. Vide its letter dated August 12, 2017, LLCL made a representation to SEBI, *inter alia*, submitting as under:

"We would like to categorically state that the Company has been following all the rules and regulations as stipulated by the Companies Act and the SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015 and other regulations of SEBI and the listing agreement entered into with the Stock Exchanges as well as filing all the required documents within the stipulated time to the concerned authorities.

The Company was incorporated in the year 1991 and currently is in the business of producing Feature Films along with Documentary and Short Films. Amongst other businesses Landmarc films (a division of Landmarc Leisure Corporation Limited) has released two Marathi Feature Films viz. "Vazandar and Ringan" in the last 12 months. The Management of the Company is making efforts to make it big and hopefully the outcome will be seen in the near future. The Company is in talks with big studios & production houses to collaborate with them which will take the Company in an even bigger league & better the position of the Company.

During the year, the Company has not received any notices from the Ministry of Corporate Affairs or BSE Limited and also the Company has not received any complaints or queries from the Shareholders of the Company. Our Company has a total number of 12.968 Shareholders out of which 12,962 are Public Shareholders as on 30th June 2017. The promoters as well as other shareholders have full faith in the Management of the Company and look forward for a positive outlook, of the Company,

We would also like to bring it to your kind attention that the Company has complied with the Service Tax related Rules, Income Tax Act ;961 and all other laws applicable. The Company has not borrowed any funds from any Bank or Financial institutions. Also, the Company has a turnover of Rs.1.12 crores in the financial year 2016-17.

We are surprised that our Company has been placed under the surveillance list of shell Companies (Sr. no. 240 bearing CIN: L65990NIH1991PLC060535 - Landmarc Leisure Corporation Limited). We are ready to provide all the necessary Information and extend all cooperation to the regulators to resolve the issue."

12. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, LLCL filed an appeal No. 217 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**SAT**"). Hon'ble SAT vide order dated September 11, 2017 directed as follows:

“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.”

13. Pursuant to above mentioned order passed by Hon'ble SAT, SEBI had called for various information/ explanation from LLCL and after granting an opportunity of personal hearing to LLCL, an interim order dated October 6, 2017 (hereinafter referred to as **'the interim order'**) came to be passed by the then Whole Time Member, SEBI, directing the following:

“24.....

- i. The trading in securities of LLCL 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 LLCL, if any;
 - b) Misuse of the funds/books of accounts of LLCL, if any.
- iii. The promoters and directors in LLCL are permitted only to buy the securities of LLCL. The shares held by the promoters and directors in LLCL (corrected via corrigendum) 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 LLCL.”

14. I note that in terms of the interim order, LLCL was provided time of 30 days to file its reply/ objections to the interim order, if any, failing which, preliminary findings of the interim order and ad-interim directions contained therein were stipulated to stand confirmed against LLCL automatically, without any further orders. LLCL had filed its reply/objections to the Interim order vide letter dated November 3, 2017. After considering the reply of LLCL and after granting an opportunity of personal hearing,

SEBI passed a confirmatory order dated June 5, 2018 (hereinafter referred to as '**the confirmatory order**'), with the following directions:

"15. In view of the facts and circumstances of the case as brought out in the interim order have not changed adequately, so as to justify the dis-continuation/ modification/ revocation of the directions passed in the interim order.

16. In view of the foregoing, I, in exercise of the power conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 hereby confirm the directions issued against LLCL vide interim order dated October 6, 2017."

15. Being aggrieved by the interim order and the confirmatory order, LLCL preferred an appeal no. 312 of 2018 before Hon'ble SAT. While disposing the Appeal No. 312 of 2018, Hon'ble SAT vide its order dated April 25, 2019, directed the following:

"2.....We are of the opinion, that the Stock Exchange should complete the Forensic Audit as early as possible. Without going into the merits of the appeal, we dispose of the matter directing the Stock Exchange to complete the Forensic Audit and submit the report to SEBI on or before June 15, 2019. The appeal is accordingly disposed off with the aforesaid observation."

16. BSE appointed M/s. Adukia & Associates. as the Forensic Auditor and the Forensic Audit Report (hereinafter also referred to as "**FAR**") was submitted to BSE by M/s. Adukia & Associates. Thereafter, based on the Forensic Audit Report which was forwarded by BSE to SEBI on June 13, 2019. SEBI carried out an investigation in the matter. Thereafter, the matter was placed before me on July 7, 2020 for approval of show cause notice to be issued in the matter which was approved. Thereafter, file in the matter was again placed before me on October 15, 2020 for granting a date for opportunity of hearing to the Noticees and passing a final order in the matter.
17. 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 LLCL;
- C. Violation of provisions of PFUTP Regulations, 2003.

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

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

18. **Re:** Interest free security deposit of Rs. 15 Crore to SRUIL.

18.1. In this regard, SCN alleges the following:

"Interest free security deposits of Rs 15 crores made by LLCL to related party i.e. Shree Ram Urban Infrastructure Limited (SRUIL) wherein such interest free deposits were kept with the latter despite SRUIL kept postponing the handing over date of the Wellness Center in the property known as Palaise Royale. LLCL also did not make any attempts to recover the money from SRUIL even when SRUIL was in the process of going into liquidation and the property to be handed over to LLCL came under the possession of India Bulls Housing Finance."

18.2. In this regard, the FAR has made the following observations:

- "LLCL had provided interest-free deposit of Rs. 20 crores on 31 December 2004 out of which Rs 5 crores were refunded as per First Addendum dated 30 March 2009 to the original MOU dated 27 October 2005. However, the company has not provided any documentary evidences with regards to the said amount been returned back to the company.
- Further the auditor in the annual report of the company has mentioned that the company would have earned an interest of Rs 36,34,40,000/- since the time the said security deposit has been given by the company (refer note 7 of the Annual Report on page 23 for FY 2017-18 enclosed as **Annexure XI**). Thus reducing the overall loss of LLCL.
- A copy of the MOU along with addendum is enclosed as **AnnexureXIA**.
- We have also enclosed the copy of MCA extract as **Annexure XIB**. Thus from the MCA extract it can be seen that there are common directors in LLCL and SRUL.
- We are of the opinion that no prudent business person will give such huge amount to any other entity without getting delivery of goods/services for more than a decade. Thus, it can be said that the transaction is not at arm's length.
- The Hon'ble Bombay High court vide order dated 19 October 2016 had initiated winding up proceedings against SRUIL and LLCL being a related party of SRUIL (i.e. company having common directors) did nothing to recover the said amount.

- It is pertinent to note that, SRUIL is already a loss making company and having known this by LLCL, the company made effort for recovery of the said deposit only after the SEBI ordered forensic audit into the affairs of the company. The same can be seen from the letter dated 23 October 2017 which is enclosed as **A1 of Annexure VI**. Further, company has not initiated any legal proceeding for recovery of said money.
- Based on aforesaid observations, we are of the opinion that, the interest free deposit was given to SRUIL are misuse of funds by the company.
- We had sent our queries to SRUIL and various reminders to the SRUIL, they have not responded to us. A copy of the email correspondences is enclosed as **A5 of Annexure VI**.
- Further based on our site visit on 14 May 2019, we have observed that the said property is now under the possession of Indiabulls Housing Finance Ltd. We have enclosed the pictures of the site visit as **Annexure VIIIA**.
- It is pertinent to note that the said interest free deposits given to SRUIL are questionable as the company is under provisional liquidation. Further we are of the opinion that recovery of the said interest free deposits is questionable.
- Further the company has not complied in providing impairment under Ind-AS 109 Financial Instruments as per section 133 of the Companies Act, 2013 and regulation 33 of the SEBI (LODR) Regulations, 2015
- Thus, from the above we are of the opinion that the said transaction appears to be misuse of company's fund and prejudicial to the interest of the minority shareholders."

18.3. In this regard, the Replying Noticees have submitted as follows:

"Landmarc Leisure Corporation Limited (LLCL) had entered into a MOU with Shree Ram Urban Infrastructure Limited (formerly known as Shree Ram Mills Limited - referred herein as SRUIL) for acquiring a commercial space of newly developed area not exceeding 20,000 sq. ft. at the premises developed at Lower Parel by SRUIL for a period of 30 years. For the above said commercial space LLCL was to pay a sum of Rs. 20 crores as interest free deposit. The said MOU was entered in July 2005, a copy of which is attached herewith and annexed as **Exhibit C**. The possession of said premises were to be given to LLCL within a period of seven years from the date of MOU. Thereafter an addendum to MOU was entered with SRUIL by LLCL in March 2009 as the development of project by SRUIL was getting delayed. A copy of Addendum dated 30 March 2009, is attached herewith and annexed as **Exhibit D**. SRUIL had agreed in this MOU to give possession of commercial space by 7th September 2013. SRUIL had also agreed to refund Rs 5 crore of the above said Rs 20 crores.

A further addendum was entered to MOU dated 30th March 2009, for delayed possession by SRUIL and date being modified to 20th March 2017, attached herewith and annexed as **Exhibit E**. Thereafter third addendum was entered for delayed possession to 31st December 2021, attached herewith and annexed as **Exhibit F**. In the meanwhile, provisional liquidator was appointed on SRUIL in December 2017.

LLCL had from time to time reviewed and decided that it is worthwhile to develop this business opportunity, even with the delays. Thus, LLCL has not terminated the agreement and made any attempts to recover the money from SRUIL.

The SEBI order dated October 6, 2017 was placed before the Board to consider the investments in the form of interest free security deposit given to group company of Rs. 15 crores to SRUIL and Rs. 25 crores to SKMRIL. The Board considered that Company should not insist on refund of the Interest free security deposit given to both the companies in view of the Commercial Interest of the company. The Board was of the opinion that let the Commercial wisdom of the Directors prevail over the Regulatory issues. It was of the informed opinion that it was in the larger interest of the shareholders of the company that Company continues with both the projects and ratifies the decisions taken by erstwhile Directors in the year 2005 and 2007, respectively.

In commercial terms 20,000 sq.ft. of Palais Royale, Worli at today's market rate of Rs 38,000 per sq.ft. (Source: Magicbricks) aggregate to Rs. 76 crores against which company paid only Rs 15 crores

The Company decided the matters on commercial expedient basis which is an accepted and wide spread prevailing practice in the business world.

The Noticees submit that the decision taken by the erstwhile board was prudent and righteous at the then prevailing market condition.

The Noticees submit that there was no misuse of investors fund, in fact, it was an informed and well thought decision of the then prevailing board to take properties on long term lease with the condition that the deposit amount will be returned back.

Hence, there is no misrepresentation of financials and misuse of funds/books of accounts."

18.4. I note that the FAR has raised suspicion on the transfer of funds amounting to Rs. 15 Crores as 'security deposit' to SRUIL from LLCL. From the material available on record, I note that the FAR has made a remark on the nature of such transaction as not being on 'arm's length' for the reason that according to the FAR no prudent business would enter into such a business transaction by giving such huge amount of security deposit without getting the delivery of goods/services for over a decade. In response, the Replying Noticees, have submitted that LLCL was continuously in negotiation with SRUIL for delivery of the property and they found it prudent to insist the delivery of the property, even if it were delayed, for the reason that LLCL would benefit from getting the property at old rates when compared to the current market prices which have increased. I do not find any merit in this contention of the Replying Noticees. I note that the FAR has highlighted the observations of the Statutory Auditor

of LLCL in the Qualified Audit Report of FY 2017-18 which mentions that “.....*the company would have earned an interest of Rs 36.34 Crores since the time the said security deposit has been given by the company*”. I note that the comparison with current market price that the board of LLCL seeks to draw is flawed and misleading as from the material available on record, I find that, even after passage of 13 years, no Wellness Centre has been delivered by SRUIL and SRUIL has gone into liquidation. In this regard, I agree with the observations of the FAR, and note that even if the negotiations with SRUIL were underway, this fact alone does not obviate the requirement to provide for provision for impairment of losses under IndAS 109, since over a decade has lapsed ever since the execution of the MoU and no delivery of the property was in sight and SRUIL was admitted for winding up in October 2016. I also note that the Statutory Auditors of LLCL for the FY 2015-16, 2016-17 and 2017-18, have expressed a ‘Qualified Opinion’ for the interest-free security deposit of Rs. 15 Crores and stated that because of non-provision for doubtful advances, the Loans and Advances have been overstated. In view of the above, I find that the ‘Long Term Loans and Advances’ forming part of the ‘Non-Current Assets’ in the financial statements of LLCL for FY 2015-16, 2016-17 and 2017-18 are overstated and the ‘Provision for doubtful advances’ for the corresponding period, have been understated.

19. **Re:** Interest free security deposit of Rs.25 crores made by LLCL to SKMRIL.

19.1. The SCN alleges the following:

“Interest free security deposit of Rs 25 crores made by LLCL to indirectly related party i.e. SKM Real Infra Limited (SKMRIL) as the company was envisaging growth in the business of wellness segment as well as media/entertainment segment. However, there has hardly been any advancement in the said business and LLCL could only recover Rs 2.83 crores out of Rs 25 crores from SKMRIL, which is just 11% of the total amount advanced by LLCL. The company had started to recover the said amount only after SEBI had ordered investigation into the affairs of the company by way of forensic audit.”

19.2. In this regard, the FAR has made the following observations:

Page no. 16 of the FAR:

“With regard to the refund of Rs. 25 crore from SKMRIL (plus interest) under the remedial plan proposed by the company, it provided the bank statement transaction (from 5.4.2018 to 9.4.2018) showing the credit of Rs 50 lacs vide its email dated April 12, 2018. The Company did not provide any backup documentation for the communication between LLCL and SKMRIL regarding SKMRIL’s commitment to pay the balance amount in instalments. It is noted that Rs 50 lacs is negligible as compared to Rs. 25 crores (+ SBI prevailing FD rates) given by LLCL to SKMRIL way back in the period 2007-2009. It is also noted that the transfer of funds to LLCL started only after SEBI sought for information regarding the remedial plan vide letter dated April 3, 2018.

It is observed that out of LLCL’s total assets of Rs. 45.55 crores for FY ending March 31, 2017, Rs. 25 crore have been given by it to SKMRIL [Rs. 15 crore (long-term advance given in 2007) and Rs. 10 crore (short term advance given during 2007-2009)]. Under the remedial proposal submitted by LLCL, it has shown proof of refund of only Rs. 50 lakh, which is a miniscule fraction of Rs, 25 crore plus interest since 2007-2009. “

Page no. 17-18 of the FAR:

Auditor Comments.

- “The company had entered into a revenue sharing agreement with SKMRIL. In our opinion profit sharing is done when there is a concrete business plan to run a company and efforts are made to generate profits. However in the current case the company has incurred huge losses (opportunity costs) by giving such huge interest free deposits.
- The company has started to recover the said amount only after SEBI had ordered investigation of the affairs of the company by way of forensic audit.
- In our opinion no party will give such huge amount of interest free deposit without any performance over the past decade.
- Further, the company has not taken any steps to ensure there is recovery of such advances made, when the SKMRIL failed to deliver.
- We had sent our queries to SKMRIL along with various reminders to them. However, we they have not responded to us. A copy of the email correspondences is enclosed as **A6 of Annexure VI**.
- It is pertinent to note that, SKMRIL is indirectly a related party of LLCL. It can be seen from the related party disclosure of SRUIL where it has been clearly mentioned that SKMRIL is one of the concerns over which the management of SRUIL has significant influence. Hence SKMRIL also becomes indirectly related to LLCL. An extract of the annual report of SRUIL for FY 2016-17 on page 87 is enclosed as **Annexure XII**.
- The definition of related party as per Ind-As 24- Related Party Disclosure is as under:-

A related party is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the ‘reporting entity’).

- (a) *A person or a close member of that person’s family is related to a reporting entity if that person:*

(i) has control or joint control over the reporting entity;

(ii) has significant influence over the reporting entity; or

(iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

(b) An entity is related to a reporting entity if any of the following conditions applies:

(i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).

(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).

(iii) Both entities are joint ventures of the same third party.

(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.

(v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.

(vi) The entity is controlled or jointly controlled by a person identified in (a).

(vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

- Thus from the above it is clear that the SKMRIL is indirectly a related party as per the provisions of Ind-AS 24 of LLCL, and we are of the opinion that since the both the companies are closely related, LLCL failed to act in the interest of the shareholders.
- Further based on the response received from SKMRIL, the company shall repay the said interest free deposit along with interest over 3 years. However, there are no concrete plans shared with us to recover the said amount which was to be mutually agreed between the parties.
- We have observed that the ledger account of SKMRIL is running as a current account. A copy of the same is enclosed as **Annexure XII A**.
- Further we have observed that over the past one year (i.e. during FY 2018-19), LLCL has been able to recover only Rs 2,82,25,000, which is approximately 10% of the outstanding amount. A copy of the ledger account is enclosed as **Annexure XIII**.
- The company has failed to provide any plans and whether interest shall be paid by SKMRIL on a compounding basis over the past 10 years or from 15 January 2018 (the date on which LLCL has written a letter to SKMRIL and response dated 18 January 2018 from SKMRIL to LLCL). A copy of the said letter is enclosed as **A2 of Annexure VI**.
- Thus, from the above we are of the opinion that the said transaction appears to be misuse of company's fund and prejudicial to the interest of the minority shareholders. "

19.3. In this regard, the Replying Noticees have submitted as under:

"Landmarc Leisure Corporation Limited (LLCL) had entered into an agreement dated 10th January, 2007 with SKM Real Infra Ltd. (Copy attached as **Exhibit G**) for occupying space upto 1 lakh sq ft

approx. as per the requirements of LLCL at the commercial building of SKM Real Infra Limited at Andheri East. In return LLCL was to pay an interest free deposit of Rs. 50 crores out of which Rs. 15 crores shall be fixed amount and Rs. 35 crores shall be variable. LLCL has occupied the space from time to time at SKM Real Infra Limited and has asked for a refund back for the area not occupied by LLCL. The outstanding balance of SKM Real Infra Limited at the time the investigation had started was Rs. 25 crores approx. [including the fixed and variable component] and the Company was in talks with SKM always for the balance to be paid back to LLCL. LLCL has received back a sum of Rs. 2.82 crores. It is unfair and false allegation on the Company that the Company has started to recover amount only after SEBI had ordered investigation into affairs of the Company by way of Forensic Audit.

This can be justified by the following:

Financial Year	Opening Balance	Closing Balance	Amount Recovered/(Paid)
2013-14	47.92 crores	47.88 crores	3.50 lakhs
2014-15	47.88 crores	34.69 crores	13.20 crores
2015-16	34.69 crores	23.75 crores	10.94 crores
2016-17	23.75 crores	25.13 crores	(1.38 crores)
2017-18	25.13 crores	25.13 crores	-
2018-19	25.13 crores	22.20 crores	2.82 crores

The SEBI order dated October 6, 2017 was placed before the Board in its Board Meeting held on 2 November 2017 to consider the investments in the form of interest free security deposit given to group company of Rs. 15 crores to SRUIL and Rs. 25 crores to SKMRIL. The Board considered that Company should not insist on refund of the Interest free security deposit given to both the companies in view of the Commercial Interest of the company. The Board was of the opinion that let the Commercial wisdom of the Directors prevail over the Regulatory issues. It was of the informed opinion that it was in the larger interest of the shareholders of the company that Company continues with both the projects and ratifies the decisions taken by erstwhile Directors in the year 2005 and 2007, respectively. A copy of the minutes of the said Board Meeting on 2 November 2017 are attached as **Exhibit H.**

The Noticees submit that the decision taken by the erstwhile board was prudent and righteous at the then prevailing market condition.

The Noticees submit that there was no misuse of investors fund, in fact, it was an informed and well thought decision of the then prevailing board to take properties on long term lease with the condition that the deposit amount will be returned back.

In the earlier years, the Company had entered into a Revenue Sharing Agreement for occupying commercial spaces of SKM Real Infra Limited (formerly SKM Fabrics (Andheri) Ltd.) (SKM). As per the Agreement, the Company had given an interest-free Security Deposit to SKM in relation to running business of Wellness Academy, other allied activities and Films, Media and TV Channel etc. The Company had acquired larger space in the past and thus on non-usage of such larger spaces, the same was returned to SKM and certain portion of deposit was received back from SKM. The closing balance of the said deposit as on 31st March 2020 is Rs. 2,218.28 lakhs which is higher than the space occupied by the Company. The Management has evaluated that the deposit for the space occupied by the Company should be approximately Rs. 1,000 lakhs. Hence, the Company

is in advanced discussion with SKM for proportionate refund i.e. Rs. 1218.28 lakhs and is hopeful for recovery in near future.

Hence, there is no misrepresentation of financials and misuse of funds/books of accounts.”

19.4. I note that the Replying Noticees have claimed that by virtue of the ‘Revenue Sharing Agreement’ dated January 10, 2007, LLCL agreed to acquire 1 Lakh sq. ft. of space at Raj Chambers (which was owned by SKMRIL), for the purpose of running business of Wellness Academy, other allied activities, films, media, and TV Channel, etc. For acquisition of this space, LLCL has agreed to give Rs. 50 Crores as interest free security deposit instead of paying any rent. I note that the FAR has rightly raised suspicion over this transaction by stating that Revenue Sharing Agreement is made when there is a concrete business plan (proof of which LLCL had failed to produce) whereas LLCL was making huge losses over the period. I note that FAR has also observed that no prudent business would ever keep such huge amount (Rs. 25.03 Crores) as interest-free security deposit for over a decade without making any efforts to recover the money. I concur with this observation of FAR. I note that while the Replying Noticees have baldly stated that the requirement for space usage by LLCL, changed over period of time and accordingly, the space which was not required was returned back to SKMRIL and the corresponding security deposit was sought as refund from SKMRIL, but there is no specific submission by them as to what space was used for how much time and how much corresponding amount was refunded by SKMRIL from time to time. I also note that LLCL has stated that 20,332 sq. ft. of space is being currently used by it for which Rs. 10 Crore is the appropriate security deposit. However, I note that this is just a bald statement without any supporting proof for proving ‘the current area under occupation by LLCL’ or the ‘appropriateness of its deposit’. I also note that the Replying Noticees have stated that ‘LLCL is in advanced stage of discussion with SKMRIL for return of Rs.12.18 Crore of Security Deposit’, a claim for which no corroborating proof has been furnished by the Replying Noticees.

In view of the above, I find that the ‘Long Term Loans and Advances’ forming part of the ‘Non-Current Assets’ and ‘Short Term Loans and Advances’ forming part of ‘Current Assets’ in the financial statements of LLCL for FY 2015-16, 2016-17 and

2017-18 are overstated and do not reflect a correct picture of the affairs of the Company, in respect of the aforesaid transactions.

20. **Re:** Expenses amounting to Rs. 40 Lakhs in favour of FYWPL.

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

“LLCL has incurred expenses amounting to Rs 40 lakhs, paid to Forever Young Wellness Pvt Ltd (hereinafter referred to as “FYWPL”) relating to consultancy for designing/ development/ other ancillary activities of the wellness centre at Worli, without discussing the same with the board of directors. Further, considering that Rs 40 lakhs paid by LLCL to FYWPL is 83% of total expenses incurred by LLCL in FY 2015-16, it is difficult to accept the submission made by the Company that the said expense was for the purpose of business as no tangible benefit was achieved by the Company by making such non-core expenditure, that too carried out without any business rationale.

When FYWPL is providing consultancy services to LLCL and the latter is the party who has to pay for such services, then there was no reason for FYWPL to transfer funds amounting to Rs 7.5 lakhs and Rs 4.66 lakhs on different occasions to LLCL. Further, transfer of Rs 4.66 lakhs by LLCL to a different party immediately on the next day (July 16, 2015) after the receipt (July 15, 2015) of said funds from FYWPL, also raises suspicion about the genuineness of transactions made by LLCL.

.....

FYWPL is appearing as the creditor of the Company consecutively for three financial years since 2015-16 and the amount of dues outstanding to FYWPL for all the aforesaid years is Rs 41.66 lakhs. LLCL had already paid Rs 40 lakhs to FYWPL in FY 2015-16. However, there is no clarity as to whether Rs 40 lakhs paid by LLCL to FYWPL is out of Rs 41.66 lakhs shown as outstanding in the books of LLCL. With respect to FYWPL appearing as creditor in the books of LLCL, query was raised to the forensic auditor as to whether LLCL has entered into any other business transaction, apart from availing consultancy services, with FYWPL. However, the Company has not responded to the forensic auditor.”

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

“It is pertinent to note that, the invoice copy does not have any contact details of the company nor does it have any email address or details of the company website. A copy of the invoice is enclosed as A4 of Annexure VI.

Further the address mentioned on the invoice, is also operating from the same building as that of LLCL which is to be fully utilized by LLCL.

We had visited the office of the said company on 14 May 2019, and enquired with the security, whether this company is situated at Raaj Chambers. We have been informed by the security personnel that no such company is operating from Raaj Chambers.

The company has not been able to substantiate the use of the expenditure done. Thus, the expenses of the company are overstated during FY 2014-15 by Rs. 40 lakhs.

Further the company has not provided any supporting evidences seeking approval of the board of directors to incur such expenses.

It is pertinent to note that the email address provided by the company appears to be personal email id.

It has been noticed from the bank account statement that the company has also received money from Forever Yooung Wellness Pvt Ltd. The same can be seen in the IDBI Bank Ltd (Account #: 45212010005016) on 15 July 2015 a sum of Rs 4,66,908 and on 20 November 2015 a sum of Rs 7,50,000 was credited to the said account. Further, exact same amount i.e. Rs.4,66,908 was given by LLCL to Mr. Dhanvinder Singh vide cheque no. 532131. A copy of the IDBI bank account extracts is enclosed as Annexure XIV.

We are of the opinion that the said transaction is not genuine and appears to be misuse of company's fund."

20.3. The Replying Noticees have submitted as follows:

"Landmarc Leisure Corporation Limited (LLCL) had taken consultancy services from Forever Yooung Wellness Private Limited in FY 2015-16 for designing/development/other ancillary activities of the wellness centre to be set up at Worli. The said services were availed on the basis that LLCL was hopeful to get the possession of Commercial Premises at Worli by 2017. Unfortunately, the possession got delayed. However, the said services were availed with an intention to get the business plan ready with a futuristic planning of the upcoming Spa at Worli. Considering the size of business activities to be carried out at Worli, the planning of same was initiated by LLCL. The said amount has been misrepresented as 83% of the total expenses incurred by LLCL by the Forensic Auditor. In fact, the said amount is just 10.15% of the expenses incurred by LLCL.

On tangible benefit to the business, it can be clearly seen that if the possession of Worli premises would have been received by LLCL then such expense would not have been questioned at all.

It may also be noted that Forever Young Wellness Private Limited is a well-established business and have their Spa services running at Prime location in Bandra for over 12 years. LLCL had taken this fact into consideration and then only the decision was taken to get consultancy from the said company.

Further, LLCL has not paid the said amount of Rs.40 Lakhs to Forever Young Wellness Private Limited and as such there is no question of misrepresentation of financials and misuse of funds/books of accounts. The conclusion of Forensic Auditor is false and baseless. We also draw attention of SEBI to page 33 of Forensic Audit Report dated 11.06.2019 where the details of top 5 creditors of the company for FY 2015-16, FY 2016-17 and FY 2017-18 are mentioned. This amount has been constant in all the three financial years which demonstrates that no payment was ever released to them but was accrued in the books of accounts as per accounting norms.

Hence, there is no misrepresentation of financials and misuse of funds/books of accounts."

20.4. I note that it is the case of the Replying Noticees that FYWPL was hired for offering consultancy services to LLCL in respect of the proposed Wellness Centre at Worli. However, from the copy of the purported invoice of FYWPL, I do not find any indication/ description, that the consultancy service was meant for the proposed

Welness Centre at Worli. I also note that the invoice copy by itself is an unreliable piece of evidence, because it is not supported by any third party independent verifiable proof like TDS Certificate, Service Tax Return, etc. I also note that the forensic auditor has made a remark in the FAR that he was unable to locate the office of FYWPL at the stated address. LLCL has failed to respond to this observation of the FAR. I also note that the FAR has made an adverse observation that instead of LLCL making payment to FYWPL, FYWPL has paid money to LLCL on two occasions i.e. on July 15, 2015 a sum of Rs 4,66,908/- and on November 20, 2015, a sum of Rs 7,50,000/-. LLCL has submitted that those payments were received as Royalty fees from FYWPL, however, I note that no proof has been produced by LLCL in support of this submission. In view of the above, I concur with the observations of the FAR that the claimed expenditure of Rs. 40 Lakhs as 'consultancy services', is non-genuine and the nature of funds transferred is not proved. Thus, I find that though there is transfer of funds between FYWPL and LLCL, but the purpose of the funds transfer as claimed by LLCL to be 'expenditure on consultancy services' is not established and consequently, the loss as stated in the Statement of Profit and Loss for the year ended March 31, 2016, is thus misrepresented.

21. Re: Failure to comply with IndAS.

21.1. With regards to the aforesaid allegation, the following has been mentioned in the SCN:

"LLCL failed to apply IND-AS which became applicable to the company from April 01, 2016 and was still preparing its books of accounts for financial year 2016-17 in accordance with the erstwhile accounting standards."

21.2. The FAR has made the following observation:

"However, the company failed to apply IND-AS and was still preparing books of accounts in FY 2016-17 with erstwhile accounting standards. As per MCA circular IND-AS was to be adopted in a phase manner. The company has adopted same during FY 2017-18, whether it was applicable during FY 2016-17?"

21.3. The Replying Noticees have submitted as follows:

“We refer to Companies (Indian Accounting Standards) Rules, 2015 as amended from time to time, a copy of which is attached herewith and marked as Exhibit I.

We invite reference to the point 4. (1) (iii) (a) which lays down that Ind AS was applicable to Companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having a net worth of less than rupees five hundred crore for the accounting periods beginning on or after 1st April, 2017, with the comparatives for the periods ending on 31st March, 2017 or thereafter.

The net worth of LLCL was Rs. 33.83 Crores (Equity Capital 80,00 Cr – Reserves and Surplus 46.17 Crores) for FY 2016-17 was less than rupees five hundred crores hence the company prepared its financials for FY 2017-18 in accordance with Ind AS w.e.f. 1st April 2017.

This is unfair, false and baseless allegation raised by the Forensic Auditor and SEBI.

Hence, there is no misrepresentation of financials and misuse of funds/books of accounts.”

21.4. I agree with the submissions of the Replying Noticees and note that the provisions of Rule 4(iii)(a) of the Companies (Indian Accounting Standards) Rules, 2015, amply state that IndAS would be applicable to listed companies with net worth less than 500 Crore, from April 1, 2017. LLCL had net worth less than 500 Crore, thus, IndAS became applicable to it only from April 1, 2017. Therefore, the charges levelled by the SCN in this regard, are unsustainable.

22. **Re:** Wrong Capitalization of expenses.

22.1. The SCN alleged the following:

“LLCL by capitalizing the expenses incurred on publicity and promotion including satellite rights, instead of charging them to profit & loss account, has violated the provisions of Ind AS 38- “Intangible assets”, as no economic benefits have been received by the company out of the said expenditure. Further, the company has also failed in adjusting the said expense in its opening Balance Sheet as required under Ind AS 8-“ Accounting Policies, Changes in Accounting Estimates and Errors”. Thus, the company has failed to comply with Ind-AS and therefore there is non-compliance under section 134(5) of the Companies Act, 2013.”

22.2. The FAR has made the following observation in this regard:

“We are of the opinion that the company is not following correct accounting standards as notified under section 133 of the Companies Act, 2013. The said expenditure should have been expensed in the profit and loss account in the year of incurring the said expenditure.

The company has not applied the correct accounting standards and has capitalised the said expenditure in terms of erstwhile accounting standard i.e. AS 26. It is pertinent to note that the concept of accounting standards (i.e. AS-26) ceased in the year FY 2015-16 and IND -AS was to be followed from 1 April 2016 for all listed companies.

However, the company failed to apply IND-AS and was still preparing books of accounts in FY 2016-17 with erstwhile accounting standards. As per MCA circular IND-AS was to be adopted in a phase manner. The company has adopted same during FY 2017-18, whether it was applicable during FY 2016-17?

The auditor in the annual report for FY 2016-17 on page 42 (Attached as **Annexure XV**) has qualified the methodology to capitalize the said expenditure. The same is reproduced as under:

“Capitalization under the fixed assets in respect of expenses incurred on Publicity and Promotion including satellite rights, instead of charging the same to revenue in earlier years, in departure from the recommendations of Accounting Standard- 26, Intangible Assets, on account of the which, fixed assets are overstated to an extent of Rs. 159.81 Lacs.”

Further the company has not followed the principles under Ind-AS 38- Intangible Assets. As per Ind-AS 38, the company can capitalize expenditure only when future economic benefits shall flow to the company.

For ease of reference we are reproducing the para 21 to 23 as under:

- 21 *An intangible asset shall be recognised if, and only if: (a) it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity; and (b) the cost of the asset can be measured reliably.*
- 22 *An entity shall assess the probability of expected future economic benefits using reasonable and supportable assumptions that represent management's best estimate of the set of economic conditions that will exist over the useful life of the asset.*
- 23 *An entity uses judgment to assess the degree of certainty attached to the flow of future economic benefits that are attributable to the use of the asset on the basis of the evidence available at the time of initial recognition, giving greater weight to external evidence.*

It can be seen that the said expenses were incurred in the FY 2010-11 and no economic benefits have been received by the company. The same can be confirmed from the financial statement issued for FY 2017- 18 wherein the company has expensed the same as exceptional items (**Refer Annexure VA**).

As the company has treated the said expenditure under exceptional items(**Refer Annexure XI C**), the company has failed in adjusting the said expense in the opening balance sheet as required under Ind-As 8- Accounting Policies, Changes in Accounting Estimates and Errors.

It is pertinent to note there is no mention of exceptional items under the Ind-AS. Under Ind-As 8 the same is to be adjusted in the opening balance of the balance sheet. The same is reproduced as under:

Prior period errors are omissions from, and misstatements in, the entity's financial statements for one or more prior periods arising from a failure to use, or misuse of, reliable

information that: (a) was available when financial statements for those periods were approved for issue; and (b) could reasonably be expected to have been obtained and taken into account in the preparation and presentation of those financial statements.

Such errors include the effects of mathematical mistakes, mistakes in applying accounting policies, oversights or misinterpretations of facts, and fraud. Retrospective application is applying a new accounting policy to transactions, other events and conditions as if that policy had always been applied. Retrospective restatement is correcting the recognition, measurement and disclosure of amounts of elements of financial statements as if a prior period error had never occurred.

In view of the above, we are of the opinion that the company has failed to comply with Ind-AS and therefore there is non compliance under section 134(5) of the Companies Act, 2013.”

22.3. The Replying Noticees have submitted as follows:

“During the previous years, the Company had incurred Publicity and Promotion expenses including Satellite rights, in respect of a feature film amounting to Rs. 740.28 Lakhs (in FY 2010-11), of which, the management was of the view that Rs. 400.00 Lakhs would represent the future economic benefit of the satellite rights and had accordingly capitalised the same under Intangible assets. Also, amortisation was done over the years since then. As per the Statutory Auditors the same was qualified in the financial statements. In FY 2017-18, as per IND AS 113, all the assets & liabilities were to be valued at Fair Value. On consideration of the future economic benefit, the said intangible asset was treated under Exceptional Items.

Hence, there is no misrepresentation of financials and misuse of funds/books of accounts.”

22.4. As discussed in the previous paragraphs, IndAS became applicable to LLCL only from FY 2017-18. Thus, the allegation in the SCN that LLCL has wrongly applied AS-26, is incorrect, since at the relevant time Accounting Standards were applicable to LLCL. However, the subsequent allegation in the SCN that after the application of IndAS, LLCL could not have treated the expenditure on satellite rights as ‘exceptional items’, stands good, since according to the FAR, there is no mention of ‘exceptional items’ in IndAS and according to IndAS-8 the same was supposed to be adjusted in opening balance of Balance Sheet. Thus, I find that LLCL has erred in treating the expenditure on Satellite Rights as ‘exceptional items’ in the financial statements for the FY 2017-18, rather than adjusting it in the opening balance of the balance sheet as on March 31, 2018 and thus, observations made in the FAR are correct to this extent.

23. From the discussions in para 18.6, 19.4, 20.4, 22.4, I find that the financial statements of LLCL for FY 2015-16, FY 2016-17 and FY 2017-18, failed to represent a true and fair view of the state of affairs of the Company, in compliance with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby, violated provisions of Regulation 33(1)(c) and Regulation 48 of LODR Regulations.

B. Non-furnishing of information/ non-cooperation by LLCL:

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

“LLCL has failed to provide, to the forensic auditor, copy of business plans and the exact details of the board meetings where business plans with regards to the efforts to reduce losses has been discussed. The company has not only failed to provide the sought information but the lack of interest on the part of the company and its directors may also be construed to mean that the company has no intention to prove otherwise the allegations charged against the company.

The forensic auditor has given advance notice for the meetings (informed on May 18, 2019 for May 28, 2019 meeting). However, just few hours before the meeting, LLCL and its officials communicated their unavailability to have the meeting with the forensic auditor by sending an email to the latter. The said behavior on the part of LLC and its officials indicate non co-operation with the forensic auditor in furnishing the information. It is difficult to believe that all officials of LLCL suddenly became unavailable on the date of the meeting. Further, no evidence is provided to otherwise prove that the company has taken efforts to cooperate with the said investigation. “

- 24.1 In this regard, FAR has observed the following:

Auditor Comments:

The company has failed to provide agenda, agenda notes, notice of the board meetings etc. even after repeated reminders. However, despite requesting the company for arranging the a meeting or sharing the same over the email or hard copy to our office, the company has still not provided the same despite reminding/ requesting them several times. (Refer Annexure II, V and VII).

The company has also not cooperated during the visit to their office by providing us no time to access the documents. (Refer Annexure IX)

Other Observations

Despite repeated requests for meeting with the key managerial person, Statutory auditors, Internal Auditors, Company Secretaries etc. the company has not arranged for any meetings and replied as follows :-

We had requested the company vide email dated 18 May 2019 for a meeting to be held on 28 May 2019 with the Key Managerial Personnel of the company (Refer Annexure VII to following and replies are as under:

S.No.	Name of Official & Designation	Replies
1.	Mr. S.D. Sinha	I will not be available due to my prior engagement.
2.	Mr. R. N. Jha	Unable to attend the meeting on 28 May 2019, due to prior engagement, please inform chairman and do needful.
3.	Mr. K. R. Mahadevan	I am not available till June end because of the shoot.
4.	Ms. Vidhi Kasliwal	It will not be possible for me to join in this meeting as I have to travel out of Mumbai on account of shoot.
5.	Mr. Ramesh Sidana	Not Available
6.	Ms. Rupal Motani, Internal Auditor	This is with reference meeting with forensic auditor on Tuesday i.e. 28 May 2019, i am not available as I have some prior commitments. Please take a note of that.
7.	SHKD & Associates, Statutory Auditor	We are in receipt of your mail and we would like to inform you that we are busy in Audit Committee meetings of listed companies and it will not be possible to attend this meeting which is scheduled at 28th May 2019. In case meeting them is necessary then request you to plan in first week of June 2019 which is convenient to us as well as your forensic auditor.
8.	Praful Gupta, Secretarial Auditor	It won't be possible for us to be there for the meeting due to the other engagements.

Further the company has provided the said reply by email on 28 May 2019 few hours prior to the meeting time and date which had been fixed which signifies non cooperation of the management. A copy of the email correspondence is enclosed as **Annexure XVII**.

It is pertinent to note that questions were sent to company which were to be answered by relevant directors/officers. Company has not provided responses to our questions till the 30 May 2019.

24.2 In this regard, the Replying Noticees have submitted as follows:

“The forensic auditors first visited us in Jan'2019 and treated us as if we were criminals. They started demanding all documents [without giving any specific information as to what documents they wish to verify] to be produced to them in no time. They started shouting at us with the intention to traumatize us. Their attitude was as if criminals had to be interrogated as done in the Police Station. In due course of the meeting, mails were sent asking for details and then we were asked to present them immediately which was not ethical. However, we had furnished all the documents demanded by them in due course of time. There was no non co-operation from our end. In mail communications, we have always asked them to let us know if anything is further required.

Hence, there was adequate co-operation from the management of the Company in giving relevant information to the Forensic Auditor and the allegation of non-cooperation is denied.”

24.3 From the documents available on record, I note that LLCL and its officials have arbitrarily avoided the meeting which was scheduled to be held with the forensic auditor on May 28, 2019. Further, from the FAR, I find that the forensic auditor has made a remark that

despite repeated reminders LLCL has failed to provide copies of agenda, agenda notes and notice of the board meetings. From Annexure II, V and VII to the FAR, I note that the forensic auditor has repeatedly sought copies of these documents from LLCL. I note that the Replying Noticees have not provided any proof showing that these documents have been provided to the forensic auditor. In view of the above, I find that the allegation in respect of not furnishing of information by LLCL to the forensic auditor is sustained.

BSE was directed to appoint a forensic auditor for carrying out forensic audit of LLCL vide SEBI interim order dated October 6, 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 LLCL has violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

C. Violations of PFUTP Regulations, 2003:

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

“The broad scope of work as per the terms of appointment is given hereunder –

- a) Examination of Suspicious transactions as mentioned in SEBI’s Order
- b) Examination of books of accounts and other records of the company from 1 April 2015 to 31 March 2018

- c) Site visit at the registered / functional office of the company and meeting with key personnel including KMPs, company auditor, company secretary, key vendors, key customers, other key officials.

The detailed scope of Forensic audit as per the assignment letter issued in our favour is as under:

- a) Scrutiny of the suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company.
- b) To examine the books of accounts and backup records of the company for the period 1 April 2015 to 31 March 2018.
- c) To analyze the Cash flow analysis to trace source of funds and end use of funds on sample basis
- d) Assess genuineness of the debtors/ receivables and creditors / payables,
- e) Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors).
- f) Analysis of related party transactions.
- g) High value bank transactions to ascertain their relevance to the business of the company and to identify the potential round-tripping of funds or accommodation transactions.
- h) Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers.
- i) Investments made by the company in subsidiary companies along with the relevant fund flows, if any.
- j) Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds.
- k) Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act.
- l) Comment on the shareholding pattern.
- m) Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds).

Verification / discussions:

- a) Independent and /or physical verification of the underlying transactions.
- b) Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the company.

- c) Discussions with key stakeholders like Promoters/ Senior Management Team / Departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the company, etc.
- d) Business history, directorship searches and litigations.
- e) Assessment of size and scope of business.
- f) Site visit as may be applicable for verifying existence of the company functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants/ factories.”

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

“As per the scope of forensic audit shared with you earlier, kindly provide the overall conclusion under following heads:

8.1.1. Possible misrepresentation including its financials and / or businesses and / or violation of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or

a. Interest free security deposit given to SRUIL and SKMRIL as is evident from:

- The company has failed to provide impairment of the interest free deposit given to SRUIL and SKMRIL as per Ind AS- 109.
- Most of the transactions which are under review have been undertaken with the related parties (i.e. having common directorships)
- The company is not in compliance of section 134(5)(e) of the Companies Act, 2013.
- Capitalization under the fixed assets of the expenses incurred on Publicity and Promotion including satellite rights etc.
- No consistent policy with regards to capitalization and expenses in the books of accounts.
- The company is not in compliance of section 134(5)(e) of the Companies Act, 2013 and Regulation 33(2)(a) and regulation 48 of the SEBI (LODR) Regulations, 2015.

8.1.2. Possible misusing of books of accounts/funds of the Company including facilitation of accommodation entries and/ or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP)

a. Interest free security deposit given to SRUIL and SKMRIL as is evident from:

- The company has extended advances without specifying any performance obligations, repayment of the said amount along with interest and penalty.

- Further in the commercial world we understand that no company shall lend such huge sums of money without any performance obligations.
- It is pertinent to note that even when SRUIL is under liquidation, the company has still not taken steps to recover the said deposit.
- In the case of SRUIL, even when Indiabulls Housing Finance Ltd has taken the company to the court, it has not tried to recover the money.
- There has been no significant effort taken to recover such huge deposits given to SRUIL and SKMRIL.
- As per the revenue sharing agreement entered between SKMRIL, there is no mention of any deposit to be paid. Further it can be seen that the deposit account is being operated like current account.
- Most of the transactions which are under review have been undertaken with the related parties (i.e. having common directorships)
- The monies have been utilized in a manner which is detrimental to the interest of the investors. The said interest free deposits which have been outstanding for more than 10 years could have been recovered and used to the benefit of the shareholders.

b. Consulting fees of Rs 40,00,000 paid to Forever Yooung Wellness Pvt Ltd.

- It is pertinent to note that, the invoice copy does not have any contact details of the company nor does it have any email address or details of the company website.
- Further the address mentioned on the invoice, is also operating from the same building as that of LLCL.
- We had visited the office of the said company on 14 May 2019, and enquired with the security, whether this company is situated at Raaj Chambers. We have been informed that no such company is operating from Raaj Chambers.
- Further the company was requested to provide contact details of Forever Yooung Wellness Pvt Ltd. but only an email id was provided. This raises the genuineness of the transaction.
- It is pertinent to note that before incurring such huge expenses the company has not discussed the same with the board of directors.
- We are of the opinion that the said expenditure was not required as it was for future business proposition, which has not materialized over the past several years.”

27. As can be noted from the above terms of reference of the auditor, scope of audit was to examine possible violations of LODR Regulations and not violations of PFUTP Regulations, 2003 and accordingly, the findings of the FAR are confined only to

misrepresentation in the books of accounts of LLCL and consequential and other violations of LODR Regulations. It is observed that the Investigating Authority, after examining the FAR, incorporated the findings of FAR as part of investigation report, and consequently, the same was reproduced in the SCN. However, the SCN additionally states, “.....5 .It was observed during investigation that the company (Noticee no. 1) had failed to present true and fair financial statements and had executed transactions which are non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company. It was further observed LLCL had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors”. Consequently, the SCN, *inter alia*, additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the FAR. It is observed that Noticee no. 1 to 11 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

28. 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.

29. 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.”

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 price of the scrip was maintained at artificial level, directly or indirectly.

30. 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 11. 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.

31. SCN, also alleges that LLCL 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, provides that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

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

32. As discussed above, LLCL has been found to be in violation of Regulation 33(1)(c) and Regulation 48 of the LODR Regulations, therefore, LLCL was not in compliance of the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, LLCL is in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations.

33. Regarding the violations of Regulations 4(2) (f) (ii) (6) & (7) and 4(2)(f)(iii)(3), (6) & (12) of the LODR Regulations by LLCL, 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 LLCL 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.

34. SCN further alleges that LLCL 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 LLCL are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

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

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

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

36. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 11, who were the directors/CFO of LLCL at the relevant time, are liable for the violations alleged to be committed by LLCL viz: Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, Reg. 4(1) (a), (b), (c), (e) & (g), Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), Regulation 17(8) read with Part B of Schedule II, Regulation 33(2)(a) and Regulation 48 of LODR Regulations and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against LLCL, automatically, on the directors /CFO of LLCL. 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 LLCL was in violation of Regulation 33(1)(c) and Regulation 48 of the LODR Regulations

and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to Noticee no. 11, it has to be determined whether these Noticees are liable for those violations for which LLCL 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 LLCL, 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 9, 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 LLCL was in violation of Regulations 33(1)(c) and 48 of the LODR Regulations and Section 21 of SCRA, 1956. In view of these violations found to have been committed by LLCL, 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 to 8, being part of the board of directors of LLCL are liable. Further, Regulation 33(2)(a) creates primary liability of board of directors and CEO/CFO, for certification and approval of financial results. Therefore, Noticee no. 2 to 8 and Noticee no. 10 and 11 are liable for violation of Regulation 33(2)(a) of LODR Regulations, also. Additionally, Noticee no. 8, 10 and 11, having issued untrue certificates with respect to the financial statements of LLCL, have also violated Regulations 17(8) read with Part B of Schedule II of LODR Regulations.

37. I note that Noticee no. 2 to 8 were the directors of the Company (varying period) and Noticee no. 10 and 11 were CFO of the Company (varying period), during the period of violations alleged in the SCN, i.e. April 01, 2015 to March 31, 2018. I note that Noticee no. 6 was the Chairman cum Non-executive director of the Company and Noticee no. 7 was non-executive director of LLCL, during the FY 2015-16 to FY 2017-18. Noticee no. 2 was the independent director of the Company during FY 2015-16. Noticee no. 3 was the independent director of LLCL during the FY 2015-16 and FY 2016-17 (upto November 16, 2016). Noticee no. 4 was the independent director of LLCL during the FY 2015-16 and FY 2016-17 and Noticee no. 5 was the independent director of LLCL during the FY 2016-17 (appointed on November 16, 2016) and FY 2017-18. Noticee no. 8 was the Whole Time Director/executive director of LLCL during the FY 2016-17 and FY 2017-18. Noticee no. 9 was appointed as the director of LLCL only on July 26, 2018 .i.e. after the period of alleged violations in the present SCN. Noticee no. 2, 3, 4 and 5 have contended that they were independent directors of the Company and did not have any day to day control over the affairs of the Company, therefore, they cannot be held liable for the violations alleged in the SCN. In this regard, I note that Regulation 4(2)(f) refers to board of directors of company, it does not make any distinction between independent director or other directors. I further note that during the financial years 2015-16 to 2017-18, the details of audit committee members of LLCL, 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. S. P. Banerjee (Noticee no. 2)	Chairman	5	5
Ms. Vidhi Kasliwal (Noticee no. 7)	Member	5	5
Mr. Samsher Garud (Noticee no. 3)	Member	5	5

Financial Year FY 2016-17

Name of the Members	Designation Category	Number of Meetings held during the year	Number of Meetings attended during the year
Mr. Samsher Garud (Noticee no. 3)	Chairman*	4	3
Mr. Rudra Narain Jha (Noticee no. 4)	Member/ Chairman**	4	4
Mr. Anand Palaye (Noticee no. 5)	Member***	4	1
Mr. Swetambar Dhari Sinha (Noticee no. 6)	Member	4	3

*Resigned as director of LLCL w.e.f. November 16, 2016.

**Appointed as Chairman of the Committee w.e.f. November 16, 2016.

***Appointed as member of Committee from November 14, 2016

Financial Year FY 2017-18

Name of the Members	Designation	Number of Meetings	Number of Meetings
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		held during the year	attended during the year
Mr. Rudra Narain Jha (Noticee no. 4)	Chairman	5	5
Mr. Anand Palaye (Noticee no. 5)	Member	5	5
Mr. Swetambar Dhari Sinha (Noticee no. 6)	Member	5	4

38. Regarding the liability of the independent directors for the acts of commission and omission of a company reference may be made to Regulation 25(5) of the LODR Regulations which provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations. As discussed in previous paragraphs, the Company has been found to be in violation of Regulations 33(1)(c), Regulation 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 8 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. 2, 3, 4 and 5, being the independent Directors of LLCL and being part of the audit committee of LLCL reviewed the financial statements of LLCL, and approved the financials of LLCL as part of the board of directors of LLCL. Failure to raise any concern regarding the financials of LLCL, as member of the audit committee as well as the board of directors of LLCL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations and thus, violated Regulation 33(2)(a) and (d) of LODR Regulations. Therefore, the contention raised by Noticee no. 2, 3, 4 and 5, is not tenable.

39. Noticee no. 3 and 5 have also contended that the 'Security Deposit' to SKMRIL and SRUIL were given to LLCL prior to their joining the board of LLCL and hence, they

ought not to be held responsible for the same. I note that the allegations in the SCN are relating to misrepresentation of the financials of LLCL for FY 2015-16, 2016-17 and 2017-18. I note that even if the 'Security Deposit' were given by LLCL prior to the tenure of directorship of these Noticees, the fact that the impugned 'Security Deposits' were continued to be shown as part of 'Long Term Loans and Advances' in Non-current assets and 'Short Term Loans and Advances' in 'Current Assets' of the Balance Sheet of LLCL without making any appropriate provision for 'Impairment of losses', in violation of the applicable Accounting Standards, has lead to the misrepresentation of the financial statement of LLCL. I note that in accordance with Reg. 33(2)(a) of LODR Regulations, it is the direct responsibility of the board of directors to approve the financial statements of the Company. I also note that, being part of the Audit Committee, it was the responsibility of Noticee no. 3 and 5 to review the annual/quarterly financial statements, in accordance with Clause A (4) & (5) of Schedule II (Part C) of LODR Regulations. Thus, the failure to raise any concern regarding the financials of LLCL, as member of the audit committee as well as the board of directors of LLCL, shows that these directors did not act diligently.

40. Noticee no. 4, 6, 7, 8, 10 and 11, have also contended that the Investigating Authority has failed to provide any document about the involvement of the said Noticees by way of Signatures on any document nor has provided the minutes of all board meetings of the Company. According to them the documents provided with the SCN do not suggest the said Noticee involvement in the affairs of the Company. I note that the entire details about the attendance of the said Noticees in the board meetings and the Audit Committee meetings (as applicable) is available in the Annual Report of LLCL which is a publicly available document. All the signed quarterly and financial statements are available in public domain on the website of BSE and LLCL. The said financial statements in accordance with the obligation in the Reg. 33(2)(a) and (d), were regularly approved by the board of directors, which is also stated in the quarterly and the financial statements itself. Thus, I note that ample evidence is available to show the involvement of the said Noticees for the violations for which they have been found guilty. Minutes of the board meetings, are not relied upon in the SCN, hence the question of providing the same to the Noticees, may not be relevant.

41. I note that Noticee no. 4, 6, 7 and 8, have relied upon MCA's Master Circular No. 1/2020 dated March 2, 2020, which provides that no director shall be held liable for any violation by the company or by any other officer of the company, if the violation occurred without his or her knowledge and without his/her consent/connivance or when he/she has acted diligently, to contend that the Noticees are not liable for the violations alleged in the SCN. I note that the directions contained in the said circular are applicable for launch of prosecution by RoC or Regional Directors for offences under the provisions of Companies Act, 2013. The said circular has no relevance to the facts and circumstances of the present case, since, the present proceedings are civil proceedings for determining violation of the provisions of securities laws, as alleged in the SCN. However, even on the parameters laid down in the said circular i.e. absence of knowledge attributable through board processes and absence of consent/ connivance/ failure to act diligently, the Noticees are liable because they were part of the board of directors meetings and the Audit Committee meetings (as applicable) and did not raise any objection/question to the business in these meetings, so as to show that they acted diligently.

42. Noticee no. 4, 6, 7, 8, 9, 10 and 11, have *inter alia* relied upon the order of the Hon'ble SAT in the matter of **Pritha Bag Vs. SEBI (order dated February 14, 2019 in SAT Appeal No. 291 of 2017)**, to contend that only the person who is "officer in default" is liable for the acts of company. In this regard, it is noted that "officer in default" is responsible for only those acts of company regarding which liability has been fastened on "officer in default" by the provisions of the Companies Act, 1956/2013. Thus, in the case of Pritha Bag, Hon'ble SAT held that liability under Section 73 under the Companies Act, 1956 is not on all the directors of company but is only on those directors of company who are "officer in default". In the present case, liability of the Noticees has to be determined in the context of violation of the provisions of the securities laws as alleged in the SCN. In such case, the concept of "officer in default" has no application and therefore, the reliance placed by the Noticees on the order passed by Hon'ble SAT in Pritha Bag case is misplaced.

43. In view of the aforesaid violations committed by LLCL 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. Here, I note that Noticee no. 4, 6, 7 and 8, have prayed for leniency in the issuance of directions under Section 11B (1) on the ground that a restraint has already been undergone by the promoters/directors of LLCL pursuant to the interim order. I note that the interim order, as an interim measure, had imposed a restraint only on the sale of shares of LLCL that were held by the directors of LLCL, and there was no restriction on purchase of shares of LLCL or purchase/sale of any other securities or no restraint was imposed on entering into any other transaction in the securities market. However, after the conclusion of the investigation and the culmination of these proceedings, I find that the violations committed by these Noticees, call for issuance of stringent directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956.

44. SCN in the matter, also calls upon the Noticee no. 1 to 11 to explain as to why appropriate penalty be not imposed upon it under Sections 15HA, 15A(a) 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 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 or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, 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.

45. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15HB and Section 15A(a) 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 since violation has been made out for Section 11(2)(ia) and

11(2)(i) of the SEBI Act, 1992 against LLCL, hence, penalty under Section 15A(a) of SEBI Act, 1992, is attracted in the present case. 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 LLCL is in violation of listing conditions, however, LLCL 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 11, 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 11, being directors/CFO of LLCL, 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 11. LLCL has been found to have violated provision of Section 21 of SCRA Act, 1956, therefore, provisions of Section 23H is attracted qua Noticee no. 1.

46. I find that for the violation of LODR Regulations, LLCL 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 LLCL, as found in this order, penalty under Section 15HB is attracted against LLCL. Similarly, Noticee no. 2 to 8, 10 and 11, who are the directors/CFO of LLCL 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.

47. 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.”

48. I find that material available on record does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that the material available on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by Noticee no. 1 to 8, 10 and 11. However, I note that the violations have occurred over a period of three financial years. I also note that Noticee no. 2, 3, 4 and 5 were the independent directors of LLCL and Noticee no. 6 and 7, were the non-executive directors of LLCL. I note that out of six counts of allegations in the SCN, violations have been found for four counts against the directors/CFO and five counts for the Company.

Directions and monetary penalties:

49. 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) and 12(A)(2) of SCRA, 1956 read with Section 19 and Section 11(2)(j) of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 5 of the Securities Contract Regulation (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, direct as under:

- (i) The Noticee no. 1, 8, 10 and 11, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;
- (ii) The Noticee no. 3, 4, 5, 6 and 7, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;
- (iii) The Noticee no. 1, 3, 4, 5, 6, 7, 8, 10 and 11, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
Noticee no. 1	M/s. Landmarc Leisure Corporation Ltd.	Section 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956.	25.50 Lakh (Twenty Five Lakh and Fifty Thousand),

		Section 15A(a) of the SEBI Act, 1992.	8.50 Lakh (Eight Lakh and Fifty Thousand)
Noticee no. 3	Mr. Samsher Garud	Section 15HB of SEBI Act, 1992	1,12,500/- (One Lakh Twelve Thousand Five Hundred)
Noticee no. 4	Mr. Rudra Narain Jha	Section 15HB of SEBI Act, 1992	1.50 Lakh (One Lakh Fifty Thousand)
Noticee no. 5	Mr. Anand Palaye	Section 15HB of SEBI Act, 1992	1.125 Lakh (One Lakh Twelve Thousand Five Hundred)
Noticee no. 6	Mr. Swetambar Dhari Sinha	Section 15HB of SEBI Act, 1992	2.25 Lakh (Two Lakh Twenty Five Thousand)
Noticee no. 7	Ms Vidhi Vikas Kasliwal	Section 15HB of SEBI Act, 1992	2.25 Lakh (Two Lakh Twenty Five Thousand)
Noticee no. 8	Mr. Mahadevan Ramanathan Kavassery	Section 15HB of SEBI Act, 1992	7.50 Lakh (Seven Lakh Fifty Thousand)
Noticee no. 10	Mr Kapil Kotia	Section 15HB of SEBI Act, 1992	1.50 Lakh (One Lakh Fifty Thousand)
Noticee no. 11	Mr. Deepak Rajendra Kumar Nangalia	Section 15HB of SEBI Act, 1992	3 Lakh (Three Lakh)

(iv) The said Noticees shall remit / pay the said amount of penalties within 45 days from the date of coming into force of this order. The said 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)	

(v) The proceedings against Noticee no. 9 are disposed of without any adverse directions;

(vi) The proceedings against Noticee no. 2, stand abated because of his demise.

50. 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 coming into force of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

51. This Order comes into force with immediate effect.

52. 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.

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

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: January 20, 2022

Place: Mumbai