

WTM/AB/IVD/ID19/15232/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11A, 11B(1), 11B(2) read with Section 15A(a), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Sections 12A(1), 12A(2) read with Section 23E and 23H of Securities Contracts (Regulation) 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.	Hit Kit Global Solutions Ltd.	AAACR2929Q
2.	Mr. Amit Khandelwal	AGTPK7842F
3.	Mr. Arvind Sharma	CYIPS4924F
4.	Mr. Pavan Kale	BDFPK5818R
5.	Mrs. Kiran Nagpal	AJRPN9765H
6.	Ms. Kamal Agrawal	AABPA1245Q
7.	Mr. Rajesh Mawani	AHQPM0165R
8.	G.R. Modi & Co. Chartered Accountant	NA

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

In the matter of Hit Kit Global Solution Limited

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

- (i) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/0000013568/1 dated August 24, 2020 issued to Noticee nos. 1 to 7 (hereinafter referred to as “**SCN**”);
 - (ii) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/0000013569/1 dated August 24, 2020 issued to Noticee no. 8 (hereinafter referred to as “**SCN-II**”); and
2. SCN calls upon Noticee no. 1 to show cause as to why suitable directions should not be issued and/or penalty not be imposed, as deemed fit under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Section 15A(a) 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) and Sections 12A(1) & 12A(2) read with Sections 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA, 1956”) against them for violations of Sections 12A (a) (b) & (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (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)(1), (6) & (7), 4(2)(f)(iii)(1)(3),(6) & (12), 17(8) read with Part B of Schedule II, 30(4)(ii), 33(2)(a), 46(2)(k) and 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) read with Section 21 of SCRA, 1956.
3. SCN calls upon Noticee nos. 2 to 7 to show cause as to why suitable directions should not be issued and/or penalty not be imposed, as deemed fit under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Section 15A(a) 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) and Sections 12A(1) & 12A(2) read with Sections 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA, 1956”) against them for violations of Sections Section 11(2)(i) and 11(2)(ia), 12A (a), (b) and (c) of the SEBI Act, Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, 2003, Regulations 4(1) (a), (b), (c), (e) & (g), 4(2)(f)(ii)(1), (6) & (7), 4(2)(f)(iii),(3),(6) & (12), 17(8) read with

Part B of Schedule II, 30(4)(ii), 33(2)(a), 34(2)(b), 46(2)(k) and 48 of the LODR Regulations read with Section 27 of SEBI Act and Section 21 of SCRA.

4. SCN-II, calls upon Noticee no. 8, to show cause as to why suitable directions, as deemed fit under Sections 11, 11B and 11D of SEBI Act, 1992, should not be issued against it for violation of Section 12A (a) (b) (c) of the SEBI Act, 1992 and Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulation, 2003, as statutory auditor of Noticee no. 1 for the financial years 2015-16, 2016-17 and 2017-18.
5. 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:
 - 5.1 SEBI passed an interim order on September 07, 2017 (hereinafter referred to as "**interim order**") *inter-alia* directing the promoters and the directors (Noticee nos. 2 to 7) of the Hit Kit Global Solutions Limited. (hereinafter also referred to as "**the Company**" or "**HKG**") to only buy the securities of HKG 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. As noted in the interim order as well as letter from SEBI to the exchanges (dated December 15, 2017), the 'Scope of Work' included examination of:
 - 5.1.1 Possible misrepresentation by HKG including in its financials and/ or business and / or violation of LODR Regulations and/or;
 - 5.1.2 Possible misuse of the books of accounts/funds of the Company including facilitation of accommodation entries and/or entering into transactions to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP).

5.2 The forensic audit report was submitted to SEBI and the findings of the forensic audit report (for the period of April 1, 2015 till March 31, 2018) were examined by SEBI in the investigation.

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

I. Violations of LODR Regulations:

- a. HKG has not disclosed composition of Stakeholders Committee, Nomination and Remuneration Committee and Audit Committee on its website.
- b. HKG has not made available details regarding number of programmes attended, and hours spent on cumulative basis as required in familiarization program for independent director on its website.
- c. HKG management has not strictly followed any process and procedure for review of corporate strategies, major plans of action, risk policies, annual budgets and business plans, performance objectives; monitoring of implementation and corporate performance; overseeing major capital expenditures, acquisitions and divestments.
- d. HKG failed to disclose contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances on its website.
- e. HKG has not disclosed the policy of determination of materiality on its website.

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

- a. Execution of unenforceable agreements and no economic rationale or bonafide purpose for investment
- b. Inadequate supporting documents for providing advances for procurement of fixed asset
- c. No fructification of any income/ capital asset creation from the funds provided to the parties by the way of advances or investment in joint venture
- d. Adjustment of proceeds from sale of investment against purchase of land

e. Transaction and movement of funds with Hazoor Multi Projects Limited

f. Non genuine expenditure (capex as well as other goods and services)

In view of the above, SCN alleged that these irregularities tantamount to misrepresentation of financial /misuse of funds/ books of accounts of the Company during the investigation period and has misled existing and prospective investors and induced them to trade in the securities of the Company.

III. Non furnishing of information/Non-cooperation by the Company:

- a. Exchange vide letter dated December 15, 2017 informed the Company about the appointment of forensic auditor in line with SEBI order dated September 07, 2017 (i.e. date of interim order). In the same letter, the exchange requested the Company to provide information to the forensic auditor.
 - b. It is alleged in the SCN that the Company did not furnish the required information/supporting documents as sought by the Forensic auditor.
6. Noticee no. 6, Managing Director of the Company filed reply dated September 20, 2021 and January 25, 2021 denying all the allegations made against him in the SCN. Noticee no.6 in its reply dated January 25, 2021 also made submissions on behalf of Noticee no. 1 i.e. the Company.
7. The SCN was delivered to Noticee no. 2 through affixture and no reply has been filed by the Noticee.
8. Noticee No. 3 vide reply dated September 16, 2020 and July 03, 2021 submitted that he was appointed as Additional Independent Director of HKG on July 01, 2011 till August 31, 2020 and that he did not receive any sitting fees and was also not a signatory to the bank account of the Company. Noticee no. 3 also submitted that as an Independent Director he was not involved in day to day business affairs of the Company and that no specific violation has been attributed to him in the SCN.

9. Noticee No. 4 vide reply dated September 20, 2020 and July 02, 2021 submitted that he was appointed as an Additional Independent Non- Executive Director of the Company on March 21, 2014 and resigned from the Company on February 14, 2018. Noticee no. 4 also submitted and that as an Independent Director he was not involved in day to day business affairs of the Company and that no specific violation has been attributed to him in the SCN.
10. Noticee No. 5 vide reply dated September 18, 2020 and July 02, 2021 submitted that she was appointed as an Additional Independent Director Non-Executive Woman Director of HKG on March 28, 2014 and resigned from the Company on February 14, 2018. Noticee no. 5 also submitted that as an Independent Director she was not involved in day to day business affairs of the Company and that no specific violation has been attributed to her in the SCN.
11. Noticee no. 7 vide reply dated July 02, 2021 submitted that he was appointed as the Chief Financial Officer (CFO) of HKG on March 28, 2014 and continued in the said role till January 31, 2019. Noticee no. 7 also submitted and that no specific violation has been attributed to him in the SCN.
12. Noticee no. 8, statutory auditor of the Company vide reply dated March 26, 2021 submitted that the issues raised by the Forensic Auditor are in the nature of questioning the internal processes of the Company and raising the question on the management's decisions taken during the period under review. The response/replies which are being asked by the Forensic Auditor could be better answered by the Company since the scope of the statutory auditor does not include vouching for the daily working and management decisions of the Company.
13. The personal hearing in the matter was scheduled on April 20, 2021 for all the Noticees. On April 20, 2021, the authorized representative of Noticee nos. 1, 6 and 8 appeared made submissions. Noticee no. 2 also appeared in person and made submissions. Accordingly, personal hearing for Noticee nos. 1,2,6, and 8 was concluded. Noticee nos. 1, 6 and 8 sought time to file written submissions and one week's time was granted to them. Thereafter, Noticee no. 1 and 6 filed their written submissions on April 26, 2021. Noticee no. 6 did not file any written submissions for which time was sought by him during

the hearing. Noticee no. 4 sought an adjournment on grounds of difficulty due to lockdown. Noticee nos. 3, 5 and 7 neither filed a reply nor sought an adjournment. However, as it was the first opportunity of hearing for them and another opportunity of hearing was being granted to Noticee no. 4, as per his request, a final opportunity for personal hearing was granted to Noticee nos. 3, 4, 5, and 7 on August 31, 2021 on which day the authorized representative of Noticee nos. 3, 4, 5 and 7 appeared and made submissions. Hearing for these Noticees was concluded on August 31, 2021.

Consideration of submissions and findings:

14. I have considered the allegations in the SCNs, replies received, and submissions made by the Noticees during the personal hearing granted to them. The relevant extract of provisions of law violation of which has been alleged in the SCN are as follows:

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 as existed at the relevant time are provided as under :

“.....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-

- (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
.....
- (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:

- (1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

....

- (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.”

.....

Board of Directors.

17(1)

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

.....

SCHEDULE II - PART B: COMPLIANCE CERTIFICATE

[See **Regulation 17(8)**]

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
- (1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
- (2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of

which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

D. They have indicated to the auditors and the Audit committee

- (1) significant changes in internal control over financial reporting during the year;
- (2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
- (3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

.....

Disclosure of events or information.

30(4)

(ii) The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.

.....

Financial results.

33(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

.....

Annual Report.

34(2) The annual report shall contain the following:

.....

(b) consolidated financial statements audited by its statutory auditors;

.....

Accounting Standards.

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

Website

(2) The listed entity shall disseminate the following information on its website:

.....
(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;.....”

15. Before proceeding with 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 HKG vide its letter dated August 7, 2017, SEBI placed trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said letter dated August 7, 2017 also advised the 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.
16. On August 10, 2017, HKG made a representation to SEBI. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, HKG also filed an Appeal No. 192 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as “**SAT**”). Hon'ble SAT vide order dated August 17, 2017 directed the following:

“2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, 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 three 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 investing the matter and initiate appropriate proceedings if deemed fit.”

17. Pursuant to above mentioned order passed by Hon’ble SAT, SEBI had called for various information/ explanation from HKG and after granting an opportunity of personal hearing to HKG, an interim order dated September 07, 2017 came to be passed by SEBI, directing the following:

- “ i. The trading in securities of HKGSL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.*
- ii. Stock Exchange shall appoint an independent auditor to conduct forensic audit of the financials of HKGSL to establish their genuineness.*
- iii. The limitation on the transfer of shares held by the Promoters and Directors as mentioned in para 1(b) of SEBI’s letter dated August 07, 2017 is removed.*
- 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 HKGSL.”*

18. I note that in terms of the interim order, HKG was provided time of 21 days to file its reply/ objections to the interim order. HKG filed reply dated September 26, 2017. After granting an opportunity of personal hearing, and also after considering the written submissions dated January 08, 2018 of HKG, WTM, SEBI vide its order dated May 21, 2018, confirmed the directions issued in the interim order.
19. In accordance with direction given in the interim order, BSE appointed BDO India LLP as the Forensic Auditor and the Forensic Audit Report (hereinafter also referred to as “**FAR**”) was submitted to BSE by BDO India LLP. Thereafter, based on the FAR which was forwarded by BSE to SEBI vide letter dated July 03, 2019, SEBI carried out an investigation in the matter. Thereafter, the matter was placed before me on April 24, 2020 for approval of issuance of show cause notice and then was again placed before me on

February 01, 2021 for granting a date for opportunity of hearing to the Noticees and passing a final order in the matter.

20. 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 against HKG can be categorized as under:

- A. Violations of LODR Regulations due to misrepresentation including of financials and misuse of funds/books of accounts.
- B. Other violations of LODR Regulations.
- C. Violation of Section 11(2)(i) and 11(2)(ia) of SEBI Act, 1992 for non-furnishing of information/Non-cooperation by the Company.
- D. Violations of PFUTP Regulations, 2003.

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

A. Violations of LODR Regulations due to misrepresentation of financials of the Company:

22. Execution of unenforceable agreements and no economic rationale or bonafide purpose for investment.

22.1 I note that the present allegation in SCN has been made based on the following observations in the FAR:

QUERY 1

"The share purchase agreement dated March 10, 2014 submitted by HKGSL regarding purchase of 3,12,000 shares of Shree Gajratna Corporation Private Limited (SGCPL) from Mr. Anup Mittal worth INR 480 lakhs is not made on stamp paper and is also not a registered agreement which raises a doubt on its authenticity.

.....
OUR OBSERVATION/REMARKS

Section 56 of the Companies act 2013, mentions no company shall register for a transfer of shares unless a proper instrument of transfer, duly stamped and executed by or on behalf of the transferor and the transferee, has been delivered to the company. In such case, SGCPL cannot record for transfer of share in name of HKGSL since the instrument is not duly stamped due to a mistake of the corporate advisor. The amount of investment in SGCPL is almost 49% of total net worth of the company, which requires proper attention while executing such transaction.

The mistake of not getting the agreement registered on stamp paper by the company creates a suspicion on the genuineness of the said transaction and the same seems to be against the interest of shareholders of the company.

QUERY 2

OUR OBSERVATION / REMARKS

The company had purchased 3,12,000 shares of SGCPL for INR 480 lakhs i.e. INR 154.12 per share basis the purchase agreement entered as on 10 March 2014 and discharged the payment obligation by 20 March 2014. SGCPL had decided to issue 1:1 bonus share with a record date of 30 April 2014. Since the purchase agreement was entered before the record date hence, the Company paid the cum-bonus price of share to SGCPL. As the shares were registered in HKGSL's name after the record date, only 3,12,000 shares got delivered instead of 7,24,000 shares.

The Company's claim that shares were mutually agreed to be purchased at ex-bonus price is not tenable because the share purchase agreement and payment transactions all happened in FY 13-14 whereas the record date for bonus was in FY 14-15 i.e. 30 April 2014.

The fact that company had failed to register the shares before 30 April 2014 shows that the Company was not functioning in the best interest of the shareholders and is not diligent in utilizing shareholder's funds.

Also, on review it was noted that the Company had correctly disclosed the board meeting dated 10 Feb 2014 to the Exchange. Hence, the claim made by company above seems tenable.

Moreover, on review of financials of SGCPL available on MCA website, it was noted that the Company's revenue from operation from FY 2012-2013 to FY 2015-2016 was Nil. Company has purchased 3,12,000 shares at a valuation of INR 154.12 per share at the same duration. The book value per share of SGCPL as on 31 March 2014 was 155.48 per share.

Further, as per clause 5 of share purchase agreement dated 10 March 2014, "if the purchaser wants to dispose the investment within 18 months from the transaction date then seller shall arrange to repurchase the shares at the purchase price within 3 months of intimation to sell the said shares to the seller."

Existence of such repurchase clause is very unusual in private companies context and is rarely accepted by seller as the same is detrimental to seller's interest. The fact that such clause was inserted in the agreement, was agreed by SGCPL (seller) and got triggered exactly after 15 months, points to the direction that selling back shares was always the intention of the Company. The entire scheme of arrangement seems to be in the nature of circular movement of funds without adding any value to shareholders' wealth.

Hence, investing INR 480 lakhs in company which had NIL turnover and not registering the shares leading to missing the benefits of bonus shares, indicates that such transactions were mere book entry and were undertaken without diligently utilizing shareholder's fund and their interest.

- 22.2 The allegation in the SCN is based on the observations in the FAR that HKG purchased 3,12,000 shares of Shree Gajratna Corporation Private Limited (SGCPL) which is around 78% shareholding of SGCPL from an entity namely, Anup Mittal through share purchase agreement dated March 10, 2014 which was an unregistered agreement that was not executed on a stamp paper. The payment obligation was discharged by the Company by March 20, 2014. On September 24, 2014, SGCPL passed a resolution for issuing bonus shares in the ratio of 1:1 with a record date of April 30, 2014. The Company did not register the share purchase till April 30, 2014 and since the purchase agreement was entered before the record date, the Company paid the cum-bonus price of shares to SGCPL. As the shares were registered in HKG's name after the record date, only 3,12,000 shares got delivered instead of 7,24,000 shares. The

Company has submitted that the shares were mutually agreed to be purchased at ex-bonus price. HKG sold the shares in two tranches, one to Mr. Anup Mittal at a loss of Rs. 11 lakhs approx. and the other to Sunidhi Infrastructure Developers Pvt. Ltd. for the exact same profit of Rs. 11 lakhs within 15 months from the initial sale of shares. The revenue of SGCPL for F.Y. 2012-13 to F.Y. 2015-16 was NIL. FAR observes that the fact that HKG invested Rs. 480 lakhs in a company which had NIL turnover and did not register the shares leading to missing the benefits of bonus shares, indicates that such transactions were mere book entry.

- 22.3 I note that the Noticees have not replied specifically to the allegation of executing unenforceable agreements without bonafide purpose for investment. However, I note that FAR itself observes that shares of SGCPL were in fact transferred in the name of HKG. Therefore, I find that question of enforceability of the share purchase agreement entered into between SGCPL and HKG is *fait accompli*. Further, the documents provided by HKG during the forensic audit and the observation made in FAR, I note that even though the Company fulfilled its payment obligation for purchase of SGCPL shares by March 20, 2014, it failed to register the transfer of shares before the record date of the bonus issue i.e. April 30, 2014. Due to this the Company missed the benefit of receiving 3,12,000 bonus shares of SGCPL. I further note that the contention of the Noticees that the shares were mutually agreed to be purchased at ex-bonus price is not tenable as the resolution to issue bonus shares by SGCPL was passed on September 24, 2014 wherein record date of bonus shares was decided as April 30, 2014. Since, the purchase transaction of SGCPL was executed in the month of March, 2014, i.e. at the time when there was no decision regarding issue of bonus shares by SGCPL, therefore, it was not possible to factor in the bonus issue in the purchase consideration to be paid by HKG for the shares of SGCPL. Therefore, I am inclined to agree with the observations in the FAR that by failing to register the transfer of shares in Company's name before the record date for bonus shares, the Company did not act in the best interest of the shareholders and was not diligent in utilizing shareholder's funds.
23. Inadequate supporting documents for providing advances for procurement of fixed asset.

23.1 I note that the present allegation in SCN has been made based on the following observations in the FAR:

“.....HKGSL has submitted only the purchase order dated December 07, 2013 issued by HKGSL to Sunidhi Construction Co. for supply and installation of irrigation equipment. As per the purchase order, INR 100 lakhs were to be paid on identification of the equipment, and fixation of the procurement terms. Further, from the bank statements provided by company, it appears that HKGSL had given advance of INR 30 lakhs on December 07, 2013 which is the date of purchase order, and INR 70 lakhs were given in March – April 2014. This indicates that identification of the equipment, and fixation of the procurement terms has been complete since April 2014. However, no purchase invoice or documentary evidence as to the identification of the equipment, and fixation of the procurement terms has been provided by HKGSL for verification.

It is noted that the advance in 2013-14 was given for resort project in Pune and then the amount was shifted to Capital WIP in 2016-17 for a project in Lonavala. Hence it is prima facie incorrect to say that the advance of Rs. 100 lakhs have been fructified into Capital WIP for resort project within 2 years period, as the actual purchase of equipment has not yet taken place till date against the advance given in FY 2013-14. The transfer of advance to Capital WIP appears to be a mere book entry.

In light of the above, the suspicion regarding the authenticity of the above-mentioned transaction still remains.

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OUR OBSERVATION/REMARKS

As per the financial table submitted by the company, an advance of INR 95 Lakhs was paid to Sunnidhi Construction Company (SCC). The said amount was outstanding with SCC for more than 3 financial years. The company was requested to submit competitive bid / quotations / quote comparison statements and any other documents via mail dated 22 October 2018 which could support the decision of procuring the irrigation equipment from SCC. In response to that company informed that competitive bid was not warranted as the requirement was to purchase a second-hand irrigation equipment. Hence, no quotations or quote comparison statement was provided.

Moreover, various inconsistencies were observed in the purchase order provided by the management.

1. The Purchase order (PO) number was not mentioned on the Purchase Order (PO) document.
2. The date of PO was 7 December 2013 whereas the reference of quotation mentioned was that of August 2015 without mentioning the exact date of PO. Subsequently, the quotes were requested from the company, but management failed to provide the same despite giving multiple reminder vide mail dated 22 October 2018, 31 October 2018 & 2 November 2018.

3. PO which was initially submitted by the management, as on 13 July 2018, as response to SEBI queries was not acknowledged by the vendor (i.e. SCC), but PO copy was duly acknowledged by SCC as provided via reply mail dated 5 November 2018. The fact that earlier PO copy was not signed and later provided copy was signed raises concerns over the genuineness of the PO copy provided by the company.

Also, the end usage of the irrigation pump is questionable as evident from the divergent statement provided by the management of the company

As per statement provided on page 15 of confirmatory order by HKGSL

“Advance given for Irrigation equipment amounting to INR 95 lakhs in F.Y. 2013-14, to facilitate group farming for better cultivation of farm produce situated in Pune-Satara belt and to procure farm fresh vegetables, etc. directly from farmers for the retailing business activities of the company”

As per finance table submitted by HKGSL as reply to our queries

“Purpose – Irrigation equipment to be used in construction project at Pune”

Also, the company in its reply has claimed that they have made additional arrangements with SCC to develop monsoon lake resort. Further details of this arrangement were provided by HKGSL in its reply dated 5th Nov 2018. Wherein it was claimed that a new lease agreement has been entered with SCC for 10 years renewal upto 20 years. As per the agreement the development of monsoon lake will be completed on or before 30th June 2019, yielding a yearly

rent of INR 9 lakhs per annum to be deducted annually from the lease deposit of INR 1 crores paid via term sheet dated 31st March 2018.

.....
The Company is yet to reap benefit for investment made in FY 13-14. Instead, Company is entering into new agreements thereby adding extra layers without earning any tangible benefits for the shareholders. The fact that INR 1 crores been received as lease deposit and annual rent of INR 9 lakhs will be deducted from this deposit gives an impression of just circulation of funds as the money originally paid came back with no tangible benefit as on the date of report. Considering the above scenarios, it creates a suspicion on genuineness of transaction entered by the company as the investment made in FY 13-14 has not been fructified till FY 17-18.....”

23.2 The allegation in the SCN is based on the observations in the FAR that the advance of Rs 100 lakhs paid by the Company to an entity Sunidhi Construction Company in F.Y. 2013-14 for procurement of irrigation equipment had not fructified till F.Y 2017-18 and the documents provided by HKG in support of the aforesaid transaction are not adequate to prove that the said advance was a genuine transaction with Sunidhi Construction Company for procurement of irrigation equipment. I note that the Noticees have not replied specifically to the allegation of HKG providing advance of 100 lakhs for procurement and installment of irrigation equipment without adequate supporting documents in these proceedings. From the documents provided by HKG during the Forensic Audit, I note the following with respect to HKG's transaction for procurement and installation of the irrigation equipment:

- a. The date of Purchase Order is December 07, 2013 whereas the reference of quotation mentioned on the Purchase Order is that of August 2015.
- b. The company was requested to submit competitive bid / quotations / quote comparison statements and any other documents which could support the decision of procuring the irrigation equipment from Sunidhi Construction Company. In response to that company informed that competitive bid was not warranted as the requirement was to purchase a second-hand irrigation equipment. Hence, no quotations or quote comparison statement was provided.
- c. The Company provided divergent statements on the end usage of the irrigation pump. As per statement provided on page 15 of confirmatory order by HKGSL :

“Advance given for Irrigation equipment amounting to INR 95 lakhs in F.Y. 2013-14, to facilitate group farming for better cultivation of farm produce situated in Pune-Satara belt and to procure farm fresh vegetables, etc. directly from farmers for the retailing business activities of the company”

As per finance table submitted by HKG in response to the queries of Forensic Auditor, the purpose of providing Rs 95 Lakhs to Sunidhi Construction Co. is as follows:

“Purpose – Irrigation equipment to be used in construction project at Pune”

- d. The original arrangement between the Company and Sunidhi Construction Company made in the F.Y 2013-14 for procurement of irrigation equipment for a project in Pune did not materialise. The Company decided to shift the project to Lonavala in F.Y. 2015-16 and apprised Sunidhi Construction Company about its decision. In F.Y. 2017-18, Sunidhi Construction Company gave an alternate proposal to lease out the rights to use water of a monsoon lake in Lonavala for the project of the Company, and the advance of Rs 100 lakhs provided by the Company to Sunidhi Construction Company can be set-off against the lease deposit pursuant to the lease agreement to be executed with the land owners of the monsoon lake. HKG entered a new lease agreement dated October 27, 2018 with the land owners of the monsoon lake i.e. Aambey Valley Mountains Pvt. Ltd. As per the agreement the development of monsoon lake will be completed on or before 30th June 2019, yielding a yearly rent of INR 9 lakhs per annum to be deducted annually from the lease deposit of INR 100 lakhs. Further, as per the term sheet of for execution of the lease agreement, Sunidhi Construction Company will provide the Company interest @ 10% per annum on the lease deposit of Rs 100 lakhs till the monsoon lake becomes operational as scheduled. The Company has provided a copy of agreement for lease dated October 27, 2018.

- 23.3 I note that the Company has provided an undated receipt of Rs. 100 lakhs by Aambey Valley Mountains Ltd from Sunidhi Construction Company. In the same receipt, Aambey Valley Mountains Ltd. has also acknowledged receipt of Rs. 9.5 Lakhs on behalf of HKG from Sunidhi Construction Company as payment of interest on lease deposit till the completion of the monsoon lake as per the term sheet of the lease agreement. I further note that the date of payment of interest is displayed as June 03, 2017 in the receipt provided by the Company. I note that as per the lease agreement provided by the Company the payment of interest is

due with effect from April 01, 2018. Since the date of payment of interest in the receipt i.e. June 03, 2017 is prior to the date from which the interest was due i.e. April 01, 2018, I find that the said receipt is not genuine and hence the other transactions mentioned in the receipt i.e. receipt of 100 lakhs by Aambey Valley Mountains Ltd from Sunidhi Construction Company are also not genuine. I further note that the Company has not provided bank statements to prove that the advance of 100 lakhs paid to Sunidhi Construction Company was adjusted against the lease deposit to be paid to Aambey Valley Mountains Ltd. Moreover, in view of the fact that there is no purchase order number mentioned in the purchase order provided by the company and that the reference of quotation mentioned on the purchase order dated December 07, 2013 is that of August 2015, I find that the purchase order provided by the Company is also not genuine. In view of the same, I find that the advances paid by HKG to Sunidhi Construction Company in F.Y 2013-14 are not genuine. Thus, I find that the funds disclosed as advances by HKG in its audited financials for F.Y 2015-16, F.Y. 2016-17 and F.Y. 2017-18 were not genuine, and advances are misrepresented to that extent.

24. No fructification of any income/ capital asset creation from the funds provided to the parties by way of advances or investment in joint venture.

24.1 I note that the present allegation in SCN has been made based on the following observations in the FAR:

“.....QUERY 4

From the analysis of the documents and reply submitted by company dated September 26, 2017 and January 08, 2017, it appears that HKGSL had made an advance of INR. 399.74 lakhs to “Engineers India Associate (EIA)”, a sole proprietorship of one of the directors of SGCPL (Shri Shrikant Upadhyay). The advance was paid in 2012-13 as per MOU dated March 31, 2014 entered between HKGSL, EIA and Township Developers Corp, for the formation of JV for development in a certain project in Borivali, Mumbai. However, as per the finance table submitted by HKGSL the advance is for Real Estate project for Pune. Thus, there is an apparent discrepancy between the documents submitted by the company and its submissions.

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As per the page 8 of SEBI order dated 21 May 2018, it appears that the advance was paid for real estate project in Pune but as per finance table provided by the Company in its reply the said advance was paid for real estate project in Borivali, the fact that company has provided different documents raises question over genuineness of documents provided by the Company.

The company claims to have given advance to Engineers India Associates in FY 2012-2013. On searching with respect to credibility, experience and capacity of Joint venture

party's i.e. Engineers India Associates and Township Developers Corp., we could not find any past projects or any presence of the said parties in public domain. Being initial Investment in Joint Venture of INR. 387.95 lakhs (40% of Net worth of HKGSL) having no experience in handling such projects, gives an impression that HKGSL was not diligent in utilizing the shareholder money and had some ulterior motive for entering into an JV agreement with EIA & Township Developers Corp.

.....

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QUERY 5

As per the terms of MOU, "if the Joint venture is unable to acquire the said property for any reasons then HKGSL will be entitled to refund of the monies invested along with simple interest of 24% p.a. payable by third party ... (Township Developers Corp)". In the reply dated September 26, 2017, HKGSL has mentioned that since the project for which the advance was given to EIA could not be implemented in the time envisaged, the amount of INR. 387.95 Lakhs were transferred by EIA directly to SGCPCL in 2015-16 for another JV for development of land in Lonavala. However, HKGSL has not provided any information as to receipt of interest on refund nor the same appears to have been accounted for in the books of account. As regards the claimed transfer of funds from EIA to SGCPCL, no third-party verifiable proof was provided by the company to show the cash flow.

- a. It has been claimed by HKGSL that investment of Rs. 387.95 lakhs had fructified into JV within 2 years of investment. This claim does not appear to be justified because even if it is accepted that EIA transferred the advance amount directly to SGCPCL for another JV, the same was done because the earlier MOU did not yield any result for more than 2 years. Also, from the record provided by HKGSL, there is no information as to the receipt of interest on the advance paid to EIA by HKGSL as stipulated in the MOU. Further, it is noted from the reply of HKGSL that the claimed transfer of advance from EIA to SGCPCL took place in 2015-16 but since then also, the execution of work for the purpose of which the JV was entered, has not taken place. It is also noted that the MOU in respect of the above claimed transfer of advance amount from EIA to SGCPCL, was entered into only in September 2017. The above indicates that the amount of Rs. 387 lakhs approx. stated to be given to EIA in FY 2012-13 has not fructified till date.

In view of the above, there is still a lack of clarity regarding the genuineness of the above transaction and the same needs to be inquired.

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As per clause 10 of MOU dated 31 March 2014, entered between Engineers India Associates, HKGSL and Township Developers Corp., In any event if third party fails to comply or perform its obligation then other parties namely EIA and HKGSL shall have right to terminate the MOU and get monies refunded with simple interest of 24%. In the above case, the advance was blocked for 2 financial years, mere fact that the alternative arrangement was being made by EIA to switch over investment does not take away need to terminate the old MOU and enter into new agreement. Hence interest becomes due from third party (Township Developer). Also, as per company's response the advances were made to JV for real estate project in FY 2013-14, but as per financial table provided by the company, the said payment was done during FY 2012-13.

Further, as per the agreement, EIA was supposed to make payment of INR 500 Lakhs as a part of capital contribution, but same was not made by EIA on or before 30th September 2014, on asking for supporting documents for such payment by EIA, HKGSL replied vide mail dated 5th Nov 2018 that EIA has not made any contribution due to invariable delay in project implementation. The fact that EIA itself being a Project management consultant (having right to find arranger for investor) failed to make its contribution for such Joint Venture, creates a suspicion about the nature of transaction entered between JV parties.

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Also, Investment in Joint Venture for real estate project of INR 387.95 lakhs (40% of net worth) for 3 years without any real benefit. Even HKGSL did not earned any interest income although same has been provided in the MOU entered into by them. It seems that, shareholder's funds were not being utilized to their best interest.

Moreover, the rationale for selecting Shree Gajratna Corporation Private Limited (SGCPCL) as a new joint venture partner for development of project at Lonavala seems questionable. As while conducting verification of financials of SGCPCL filled with MCA, it was noted that

the sales from FY 2012-2013 to FY 2015-2016 was Nil. Also, no online information was available regarding the expertise of SGCPL in field of construction. Further management of HKGSL have failed to provide any reasonable explanation or documentary evidence such as tendering document, competitive bids, past expertise/ credentials for selecting SGCPL as a JV partner. Hence making SGCPL a new JV partner for developing project at Lonavala seems unreasonable.

Furthermore, the management of HKGSL failed to provide us any supporting regarding transfer of inventory/funds from EIA to SGCPL despite giving multiple reminder vide mail dated 22 October 2018, 31 October 2018 & 2 November 2018. It was also noted that, the HKGSL in its reply dated 5 November 2018, have mentioned that SGCPL have further sub-contracted the WIP (amounting INR 387 Lakhs) to Sunniddhi Infrastructure Devolvment Private Limited (SIDPL). SIDPL was having same address as that of HKGSL till August 2017 which was 55, Tirupati Plaza, 1st Floor, S.V. Road, Tirupati Shopping Centre Premises Co-op SOC Ltd. Santacruz (W), Mumbai 400054 as evident from the resolution passed as on 1st August 2017 at the meeting of board of directors of SIDPL.

Considering the above presented scenarios, it appears that the funds are just circulated among the parties, but no material benefit is accruing out of such transactions.....”

24.2 The allegation in the SCN is based on the observations in the FAR that the advance of Rs 395 lakhs paid by the Company to an entity Engineers India Associate (EIA) in F.Y.2012-13 for the formation of a Joint Venture for development of a project in Borivali, Mumbai is not genuine as the funds provided by the Company are circulated among entities without any material benefit for the Company. I note that the Noticees have not replied specifically to the allegation of HKG providing advance of Rs. 395 lakhs for the formation of a Joint Venture for development of a project in Borivali, Mumbai in these proceedings. From the documents provided by HKG during the Forensic Audit, I note the following:

- a. As per Memorandum of Understanding (MOU) dated March 31, 2014 entered between HKG, EIA and another entity Township Developers Corporation, HKG paid advance of Rs. 395 lakhs to EIA, for the formation of a Joint Venture for development of a project in Borivali, Mumbai.
- b. The purpose of the Joint Venture i.e. development of project at Borivali did not materialize within 12 months of MoU as contemplated in Clause 9 of the MoU. I note that as per the terms of the MoU, EIA was supposed to make capital contribution of 500 lakhs to the Joint Venture. However, the Company vide email dated November 05, 2018 submitted that EIA has not made any capital contribution due to delay in project implementation.

- c. HKG further submitted since the project was not implemented, EIA made an alternative arrangement to switch over Company's investment to another project in Lonavala, accordingly EIA transferred Rs. 387.95 lakhs to SGCPL for executing another Joint Venture between HKG and SGCPL for development of a property at Lonavala. HKG failed to provide bank statements or any third-party verifiable proof to prove that Rs. 387.95 lakhs were transferred by EIA to SGCPL. I further note that the Joint Venture Agreement dated September 15, 2017 executed between HKG and SGCPL does not provide that the EIA is switching over the advance of Rs. 395 lakhs provided by the Company in the new joint venture being created between HKG and SGCPL for development of property in Lonavala. I also note that the Company has not provided any document or acknowledgement from EIA which proves that EIA has transferred the funds received from HKG to SGCPL for the new joint venture. I further note that HKG failed to provide any supporting document regarding transfer of inventory/funds from EIA to SGCPL despite giving multiple reminders vide mail dated October 22, 2018, October 31, 2018 & November 02, 2018. In view of the same, I find that the contention of the Company that EIA has switched over the funds received from HKG to the new joint venture for development of property in Lonavala is not tenable.
- d. I further note that as per Clause 7(A), SGCPL was supposed to pay Rs.1.5 lakhs as capital contribution to the Joint Venture. I note that there is nothing available on record to prove that SGCPL made the capital contribution of Rs. 1.5 Lakhs to the Joint Venture. Moreover, the Company vide email dated November 05, 2018 has submitted that SGCPL has further sub-contracted the Work In Progress (amounting to Rs. 387 Lakhs) to Sunidhi Infrastructure Devolvment Private Limited (SIDPL) which is connected to HKG as it was having the same address as that of HKG till August 2017 i.e. 55, Tirupati Plaza, 1st Floor, S.V. Road, Tirupati Shopping Centre Premises Co-op SOC Ltd. Santacruz (W), Mumbai 400054. In view of the above, I note that the advance of Rs. 395 lakhs provided by HKG to EIA is not genuine as the entire chain of transactions submitted by the Company indicate mere circulation of funds from HKG to EIA, SGCPL and SIDPL an entity

connected to HKG in the final leg. The Company has not provided any evidence that the objective of the Joint Venture between HKG and SGCPL i.e development of Lonavala project has fructified or is progressing towards completion. I also note that neither EIA nor SGCPL has provided the capital contribution required by them in terms of the MoU dated March 31, 2014 and Joint Venture Agreement dated September 15, 2017, respectively. Therefore, I find that the advance of Rs. 395 lakhs provided by HKG to EIA for development of project at Borivali in terms of the MoU dated March 31, 2014 are not genuine.

Thus, I find that the funds disclosed as advances by HKG in its audited financials for F.Y 2015-16, F.Y. 2016-17 and F.Y. 2017-18 were not genuine, and advances are misrepresented to that extent, as observed in FAR.

25. Adjustment of proceeds from sale of investment against purchase of land

25.1 I note that the present allegation in SCN has been made based on the following observations in the FAR:

“QUERY 7 – REGARDING CONNECTED ENTITIES

.....
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As per the timeline provided by HKGSL, land in Lonavala was primarily owned by Rituraj Land Developers Pvt Ltd. (now known as HKGSL). With series of demergers and change in names, the same piece of land was passed down to Praveen Real Estate Pvt. Ltd. (now Hazoor Multi Projects Limited). Subsequently the said land was sold to Sunnidhi Infrastructure Development Private Limited (SIDPL) in the year 2008.

The same land was again purchased by HKGSL from SIDPL for INR 467 lakhs, partly by adjusting the amount due from SIDPL on sale of shares of SGCPL amounting to INR 290.05 lakhs and further paid INR 160 lakhs leaving a balance of INR 17 lakhs which becomes payable at the time deed of conveyance will be executed in favour of the HKGSL.

Through various transactions as mentioned above the said piece of land which was initially in possession of Rituraj Land Developer Pvt Ltd (now known as HKGSL) was again being purchased by HKGSL. Further, the development permission for the said land was still not received from the forest land clearance department showing no progress in resort development project in Lonavala.

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Moreover, while verifying the records and other financial statements of SIDPL on Ministry website we observed that the registered address of SIDPL was same as that of HKGSL's basis the MGT-7 (15-16). The same is also evident from the board resolution passed at the meeting of the board of directors held on 1 August 2017 where the registered address was changed from 55, Tirupati Plaza, 1st Floor, S.V. Road, Tirupati Shopping Centre Premises Co-op Ltd., Santacruz (W), Mumbai – 400 054 Maharashtra, To, Office No. 12, 4th Floor, Sai Sadan 68, Janma Bhoomi Marg, Hutatma Chowk, Fort, Mumbai – 400 001 Maharashtra with effect from 01 August 2017 or a date thereafter.

The article of agreement dated 30 January 2016 for purchase of land from SIDPL mentions the registered office address as 711, Tulsyani Chamber, Nariman Point, Mumbai – 400022. As on 30 January 2016 the registered address of SIDPL was 55, Tirupati Plaza and the same got changed post the board meeting held on 1 August 2017. Hence, in light of incorrect address of 711, Tulsyani Chamber as mentioned in the article of agreement dated 30 January 2016 seems to create a suspicion on the genuineness of the document and the reliability of the same appears to be questionable.

The sale of land, situated in Lonavala, from SIDPL to HKGSL occurred on 30 January 2016. SIDPL purchased this land from HMPL (Hazoori Multi Project Limited) in 2008. As per the financials of SIDPL available on MCA website in FY 14-15 SIDPL it had zero sales, inventory & fixed assets. However, they showed CWIP at INR 315.27 lakhs. In absence of any disclosure on CWIP it can be assumed that this amount is regarding the land purchased from HMPL in 2008. In FY 15-16, SIDPL sold this land to HKGSL for INR 467 lakhs. Since, the land was categorized as CWIP in previous year, sale of it at INR 467 lakhs should trigger reflection of profit on sale of land in the books of accounts. However, the same was not found in the financials of the Company for the year 15-16. Considering above-mentioned scenario, the sale and re-purchase of same land through a long channel and the fact that SIDPL and HKGSL were operating from the same registered office, creates suspicion on the genuineness of the transaction.

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- 25.2 The allegation in the SCN is based on the observations in the FAR that HKG purchased land in Lonavala from Sunnidhi Infrastructure Developers Private Ltd. (SIDPL) by selling shares of SGCPL worth INR. 480.85 lakhs. Out of which SGCPL's shares worth Rs 290.05 lakhs were sold to SIDPL and shares worth Rs. 190.80 Lakhs were sold to Mr. Anup Mittal. The sale proceeds receivable from SIDPL were adjusted against the purchase consideration for land at Lonavala as per the agreement dated January 30, 2016. I note that the Noticees have not replied specifically to the allegation of misrepresenting the financials of the Company by adjusting proceeds from sale of SGCPL shares to SIDPL against purchase of land from SIDPL. I note that the agreement dated January 30, 2016 does not provide that HKG has adjusted sale proceeds by selling SGCPL shares amounting to Rs. 290.05 lakhs receivable from SIDPL against a part of the purchase consideration for land in Lonavala. Further, the Company has also not provided any document to prove that the proceeds of sale received by HKG by selling SGCPL shares to SDIPL were adjusted against the purchase consideration of land in Lonavala to be paid to SIDPL. Moreover, I note that the Company has not provided any document to prove that it sold SGCPL shares worth Rs. 290.05 lakhs to SIDPL and received the sale proceeds from SIDPL. In view of the above, I find that the contention of the Company that it purchased land in Lonavala from SIDPL by selling shares of SGCPL worth INR. 480.85 lakhs is not tenable.

25.3 As regards the purchase of land in Lonavala by the Company, the FAR has observed that the land in Lonavala, was initially owned by HKG which was earlier known as Rituraj Land Developers Pvt Ltd. The same piece of land was passed down to an entity Praveen Real Estate Pvt. Ltd. (now Hazoor Multi Projects Limited) due to a demerger. Subsequently, the said land was sold to SIDPL in the year 2008. As per the sale agreement dated January 30, 2016 provided by the HKG, the Company has purchased the same piece of land from SIDPL in 2016 for Rs. 467 lakhs. I further note from the Annexures to the FAR that HKG's name is not recorded in the 7/12 extract of the revenue records pertaining to the land in Lonavala. I also note that as per the FAR, SIDPL and HKG shared the same address till August 2017 i.e. 55, Tirupati Plaza, 1st Floor, S.V. Road, Tirupati Shopping Centre Premises Co-op SOC Ltd. Santacruz (W), Mumbai 400054. In view of the above, I find that the entire transaction of HKG purchasing land in Lonavala from SIDPL by selling shares of SGCPL worth INR. 480.85 is not genuine. Thus, I find that the capital expenditure incurred by HKG for purchasing land in Lonavala is not genuine and the financials of the Company are misrepresented to that extent.

26. Transaction and movement of funds with Hazoor Multi Projects Limited

26.1 I note that the present allegation in SCN has been made based on the following observations in the FAR:

".....The companies Hazoor Multiprojects Pvt. Ltd and Parle Software Ltd. have common address and common directors as per MCA website and hence are connected to each other Also, Hazoor Multi Projects Ltd. is subscriber to MOA of SGCPL and hence promoter of SGCPL. Brook Multi Trade Ltd. and SGCPL are connected through common directors. Hence, the above companies appear to be indirectly connected to each other.

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On independent review it was observed that PSL and HMPL was having common director, common registered address and are having same promoter hence they appear to be related to each other.

HKGSL had provided advance of INR 174.09 Lakhs to Brook multi private limited (BMPL) in earlier years (prior to the FY 2015) which was adjusted against the consideration for purchase of shares from Anup Mittal (Nominee shareholder of BMPL). The fact that such adjustment was made, seems to be in nature of accommodation entries among the entities and possibility of any relationship among them.

Further, as per the information submitted by HKGSL vide mailed dated 13th July 2018 the name of HTDPL was changed to SGCPL effective from 24th March 2014, but as per share transaction agreement between Anup Mittal and HKGSL dated 10th March 2014, the name of the entity was mentioned was SGCPL and not HTDPL. The above fact raises question over genuineness of the share purchase agreement and on possible relationship between SGCPL and HKGSL.

26.2 The allegation in the SCN is based on the observations in the FAR that the companies Hazoor Multiprojects Ltd. and Parle Software Ltd. are connected as they have common address and common directors as per MCA website. Also, Hazoor Multi Projects Ltd. is subscriber to MOA of SGCPL and hence, promoter of SGCPL. Brook Multi Trade Ltd. and SGCPL are connected through common directors and therefore, these companies are connected indirectly. The FAR also observes that HKG has provided advance of INR 174.09 Lakhs to Brook Multi Private Limited (BMPL) prior to 2015 which was adjusted against the consideration for purchase of shares from Anup Mittal. I note that the Noticees have not specifically replied to the allegations relating to the Company's transactions and movement of funds with Hazoor Multi Projects Limited. Therefore, I find that the observations of the FAR in this regard are correct.

27. Non genuine expenditure (capex as well as other goods and services).

27.1 The said allegation in SCN is based on the following observation in the FAR:

“Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers.

- A. On the review of the expense ledger of HKGSL for FY 2015-16, FY 2016-17 and FY 2017-18, we shortlisted 32 samples amounting to INR 12.64 Lakhs which made up 9.8% of the total expenses of INR 128.93 Lakhs for the review period. The samples have been classified under the following heads.

(Amount in Lakhs)					
S N	EXPENSE HEAD	SAMPL E NO.	AMOU NT	INADEQUAT E SUPPORTIN G	NO SUPPORTING
1	Advertisement Expenses	02	0.28	-	-
2	AGM Expense	01	0.11	01	-
3	Commission to Related Parties (Managing Director)	01	0.05	01	-
4	Electricity Expenses	02	0.09	-	-
5	Employee benefit expenses (Salary and contractual labour)	07	3.50	05	-
6	Financial Cost	01	0.01	-	-
7	Legal and professional fees paid	06	2.02	04	02
8	Office expense	07	2.13	02	-

S N	EXPENSE HEAD	SAMPL E NO.	AMOU NT	INADEQUAT E SUPPORTIN G	NO SUPPORTING
9	Statutory Payment (Listing fees, Depository charges and Statutory audit fees)	05	4.49	02	-
	TOTAL	32	12.68	15	02

Basis the review of 32 transactions, we noted document inadequacy in 15 instances and in 2 instance no supporting was provided. The details are hereunder:

Inadequate supporting document

- i. AGM expenses: The invoice provided is not in a standard format. It seems that visiting card of the banquet hall in which AGM was conducted was posted on a paper, to give the impression of letter head, and afterwards details of events were written. Based on the above supporting, genuineness of transactions is questionable. *(Refer sr. no. 8.7.1 of Annexure 8.7 and Exhibit 7.3)*
- ii. Commission: In 01 sample related to commission paid to Mr. Kamal Agarwal (MD), no explanation/ reason for such commission was provided instead management only provided the payment voucher. *(Refer sr. no. 8.7.2 of Annexure 8.7)*
- iii. Employee benefit expense: Basis review of 7 samples pertaining to employee benefit expense such as salary to staff and contractual labour at site, it was noted that;
 1. Salary paid to telephone operator (Mrs. Deena Mavani) and salary paid to CFO (Mr. Rajesh Mavani) was same i.e. INR 12500 per month. It seems unlikely that salary for both the position would be same. Hence, raises concern over the genuineness of the transaction. *(Refer folder 'Expenses')*
 2. In 05 instances the management failed to provide basic employee details such as appointment letter, salary slip, ID proofs & payment voucher etc. *(For details refer sr. no. 8.7.3 to 8.7.7 of Annexure 8.7)*
- iv. Legal & Professional Fees: Out of 6 samples of professional fees, the management of HKGSL did not provide us the invoice copy in 2 instances while the agreement copy / engagement letter was not provided for all 6 samples. *(For details refer sr. no. 8.7.8 to 8.7.13 of Annexure 8.7)*
 - Office expenses: In 01 instance no supporting document except cash voucher was provided for expense amounting INR 0.10 Lakhs while in 1 instance of reimbursement of 0.86 Lakhs was made to promoter Webnet Infoways Ltd in cash, no supporting document with respect to any bill/invoice for such expense was available for review neither the purpose of reimbursement was explained. *(For details refer sr. no. 8.7.14 to 8.7.15 of Annexure 8.7)*
- v. Statutory Payment: Following discrepancies were observed
 1. In 1 instance of payment to statutory auditors, as per annual report for FY 15-16 & FY 16-17, M/s GR Modi was appointed as statutory auditor, but payment for audit fees 2015-16 was made to M/s Ajmera & Associate. The fact that payment was made to M/s Ajmera & Ajmera Associate raises concerns over genuineness of such payment made. *(For details refer sr. no. 8.7.16 of Annexure 8.7 and Exhibit 7.3)*
 2. Listing fee (BSE) - In 1 sample pertaining to payment of listing fees, the company provided a document signed by CFO which say payment was made via NEFT on 19th Nov 2016, however no such payment could be traced in bank statements. On further review it was noted that same was paid by Shree Gajratna Corporation (SGCPL) on behalf of HKGSL. The fact that SGCPL has made payments on HKGSL behalf shows that there seems to exist a relationship between the two entities. *(For details refer sr. no. 8.7.17 of Annexure 8.7)*
(For details pertaining to these samples, please refer Annexure 8.7, Exhibit 7.3, & Attachment 7 'Operating Expense')
- B. The company had incurred the following capital expense during the review period

SN	PARTICULAR	AMOUNT (in lakhs)
1	Purchase of land at Lonavala from SIDPL	467.00

SN	PARTICULAR	AMOUNT (in lakhs)
2	Project management charges to Sun Nidhi Construction	25.95
3	Payment to JV partner for developing land at Lonavala	13.00
TOTAL		505.95

1. Purchase of land at Lonavala

The land in Lonavala was primarily owned by Rituraj Land Developers Pvt Ltd. (now known as HKGSL). With series of demergers and change in names, the same piece of land was passed down to Praveen Real Estate Pvt. Ltd. (now Hazoor Multi Projects Limited). Subsequently the said land was sold to Sunnidhi Infrastructure Development Private Limited (SIDPL) in the year 2018.

The same land was again purchased by HKGSL from SIDPL for INR 467 lakhs, partly by adjusting the amount due from SIDPL on sale of shares of SGCPL amounting to INR 290.05 lakhs and further paid INR 160 lakhs leaving a balance of INR 17 lakhs which becomes payable at the time deed of conveyance will be executed in favour of the HKGSL.

Through various transactions as mentioned above the said piece of land which was initially in possession of Rituraj Land Developer Pvt Ltd (now known as HKGSL) was again being purchased by HKGSL.

Considering the above-mentioned scenario, the sale and re-purchase of same land through a long channel and the fact that SIDPL and HKGSL were operating from the same registered office (as already reported in queries above), creates suspicion on the genuineness of the said transaction.

3. Payment to JV partner for developing land at Lonavala

As per clause VIII (B) of JV agreement dated 15 September 2017, a sum of INR 13 Lakhs was to be paid by HKGSL on commencement of construction of resort project and upon receipt of development permission from the department. On asking of status of project it was informed that the relevant permission for development of resort was not received from Forest Land Clearance Department.

The fact that payment has been made to JV partner before obtaining requisite permission for such development and before commencement of resort project casts doubt on the genuineness of the relation between the parties.

REMARKS ON EXPENSES INCLUDING CAPITAL EXPENSES

From the above analysis, it indicates that the Company did not provide the adequate and relevant supporting documents of the above operating expenses which casts doubt on the genuineness of the expenses incurred by HKGSL.

27.2 The allegation in the SCN is based on the observations in the FAR that the Company did not provide adequate and relevant supporting documents for justifying operating and capital expenses of the Company. I note that the Noticees have not replied specifically to the said allegation against HKG. From the documents provided by HKG during the Forensic Audit, I note the following:

- a. As regards, Operating Expenses, I note that the Company failed to provide any explanation and supporting documents for the following transactions before the forensic auditor and in these proceedings:

- i. Commission of Rs. 5000 paid to Noticee no. 6, Mr. Kamal Agarwal (Managing Director).
- ii. Basic employee details such as appointment letter, salary slip and ID proofs for justifying the employee benefit expense at 5 instances.
- iii. Same salary of Rs. 12500/- paid to CFO of the Company and Telephone Operator of the Company.
- iv. Reimbursement of 0.86 lakhs to one of its promoter entity Webnet Infoways Ltd in cash, and the purpose of such reimbursement.
- v. Audit fees for F.Y 2015-16 was paid to M/s Ajmera & Associate although as per the annual report for F.Y. 2015-16 & F.Y. 2016-17, M/s GR Modi was appointed as statutory auditor.

In view of the above, I find that the abovementioned operating expenses incurred by the Company are not genuine and the financials of the Company are misrepresented to that extent.

- b. As regards capital expenditure on purchase of land in Lonavala by the Company, in view of the observations at paragraph 25 above, I find that the capital expenditure incurred by HKG for purchasing land in Lonavala is not genuine and the financials of the company are misrepresented to that extent.

28. From the discussion in paras 21 to 27 above, I find that HKG:

- a. HKG has not disclosed the policy of determination of materiality on its website.
- b. Misrepresented financials relating to advances provided for procurement of fixed asset in its audited financials for F.Y 2015-16, F.Y. 2016-17 and F.Y. 2017-18.
- c. Misrepresented financials on account of providing non-genuine advances to other companies for development of project.
- d. Misrepresented financials on account of incurring non-genuine capital expenditure for acquiring land.
- e. Misrepresentation in financials on account of transactions with Hazoor Multi Projects Limited.
- f. Misrepresented financials on account of incurring non-genuine operating expenses.

Thus, I find that HKG 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 IndAS1 and para 16 of AS1 and thereby violated provisions of Regulation 48 of LODR Regulations.

B. Other Violations of LODR Regulations:

29. Based on the FAR, the SCN has alleged the following:

- a. HKG has not disclosed composition of Stakeholders Committee, Nomination and Remuneration Committee and Audit Committee on its website.
- b. HKG has not made available details regarding number of programmes attended, and hours spent on cumulative basis as required in familiarization program for independent director on its website.
- c. HKG management has not strictly followed any process and procedure for review of corporate strategies, major plans of action, risk policies, annual budgets and business plans, performance objectives; monitoring of implementation and corporate performance; overseeing major capital expenditures, acquisitions and divestments.
- d. HKG failed to disclose contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances on its website.
- e. HKG has not disclosed the policy of determination of materiality on its website.

30. With respect to allegations at paragraph 29 (a), (b) and (d) above, Noticee No. 6 has mainly submitted as follows:

“It is respectfully submitted that allegation against Noticee No. 1, in relation to paragraphs 4.I.a, d and e of the SCN, is not maintainable against the Company in light of the submissions made above at paragraphs. Accordingly, the charge of violations of Regulations 4(2)(f)(ii)(I), (6) & (7), 4(2)(f)(iii)(1)(3), (6) & (12), and 17(8) read with Part B of Schedule II of the LODR Regulations cannot be sustained against both the Company as

well as the board of directors. Accordingly, the said charge ought to be discharged against the Company with immediate effect.

Without prejudice to the aforesaid, the allegations at paragraph 41a and 41b of the SCN are in any event not applicable to the Company. The compliance for the said requirements are exempted in terms of Regulation 15(2) of the WDR Regulations. Listed entities which have share capital not exceeding INR 10 crore as well as net worth of less than INR 25 crores are exempted from complying with the said requirements. It is respectfully submitted that the Company has share capital of INR 740 lacs and net worth of 9.68 Crores as at March 31, 2020. Hence compliance with the above provisions is not required for the Company on account of Regulation 15(2) of the LODR. Accordingly, the allegations in the said paragraph of the SCN are not sustainable. Hereto annexed and marked as Annexure D is a copy of the financial statement as on March 31, 2020 demonstrating that the Company's share capital and net worth is below INR 10 crore and INR 25 crore, respectively. The Noticee craves leave to refer to and rely upon the annual reports at the time of the hearing."

31. I note that the allegations mentioned at paragraph 29 (a), (b) and (d) are relating to violation of corporate governance provisions as specified in Regulation 46 of LODR Regulations. The disclosure of composition of Stakeholders committee, Nomination and Remuneration Committee and Audit Committee is covered under Regulation 46(2)(c) of LODR Regulations which mandates dissemination of information on composition of various committees of board of directors on the website of the Company. The disclosure of details regarding familiarization program for independent directors on Company's website is mandated under Regulation 46(2)(i) of LODR Regulations. Further, the disclosure of contact information of designated officials responsible for assisting and handling investor grievances on Company's website is mandated under Regulation 46(2)(k) of LODR Regulations. I note that in terms of Regulation 15(2)(a) of LODR Regulations, the corporate governance provisions as specified in clauses (b) to (i) and (t) of sub-regulation (2) of Regulation 46 do not apply in respect of a listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty-five crore as on the last date of the financial year. The allegation for violation of aforesaid corporate governance provisions are based on the findings in the FAR for the period F.Y. 2015-16, 2016-17 and 2017-18. However, for the first time in these proceedings the Noticee no.6 has submitted that Company's share capital and net worth is below INR 10 crore and INR 25 crore, respectively. In order to ascertain the applicability of corporate governance provisions on HKG in terms of Regulation 15(2)(a)

of LODR Regulations, I note that the paid up equity capital and net worth of HKG for the F.Y. 2014-15, 2015-16 and 2016-17 are relevant. As per the annual report of HKG, the paid up capital and net-worth of HKG is as follows:

Paid up equity capital and Net-worth of HKG

F.Y	Paid up equity capital (Rs.)	Net-worth as defined in Section 2(57) of Companies Act, 2013 (Rs.)
2014-15	7,40,00,000	7,88,46,731
2015-16	7,40,00,000	9,73,44,414
2016-17	7,40,00,000	9,74,22,959

From the above, I note that HKG's paid up equity share capital was not exceeding rupees ten crore and net worth was not exceeding rupees twenty-five crore as on the last date of the F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. In view of the same, I find that the corporate governance provisions as specified in clauses (b) to (i) and (t) of sub-regulation (2) of Regulation 46 do not apply in respect of HKG. Therefore, I find that the allegation of violation of Regulation 46(2)(c), 46(2)(i), 46(2)(k) of LODR Regulations against the Noticees is not sustainable.

32. As regards the allegation that the management of HKG i.e Noticee no. 2 to 7 did not strictly follow any process and procedure for review of corporate strategies, major plans of action, risk policies, annual budgets and business plans, performance objectives; monitoring of implementation and corporate performance; overseeing major capital expenditures, acquisitions and divestments, in terms of Regulation 4(2)(f)(ii)(1) of LODR Regulations, the relevant extract of the email reply of the Company as provided to the forensic auditor is reproduced below:

"Information No. 22 Supporting documents which show board have review the Annual Budget, business plan, Risk Policy, overseeing capital expenditure, and acquisitions and disinvestments.

Submission: The Company has not strictly followed about the business plan and risk policy statement. Meanwhile all the future plans being made by the Managing Director are disclosed and discussed verbally in the Board Meeting."

- 32.1 I note that the FAR does not bring out any facts or evidence that prove that the Board of Directors of HKG failed to review and guide corporate strategy, major

plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and during F.Y. 2015-16 to 2017-18 as required under Regulation 4(2)(f)(ii)(1) of LODR Regulations. In view of the same, it cannot be said that the Board of Directors of the Company have failed to review and guide corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions in violation of Regulation 4(2)(f)(ii)(1) of LODR Regulations. Thus, I find that the allegation of violation of Regulation 4(2)(f)(ii)(1) of LODR Regulations does not stand established against Noticee nos. 2 to 7.

32.2 As regards the allegation that HKG has failed to disclose the policy of determination of materiality on Company's website in terms of Regulation 30(4)(ii) of LODR Regulations, I note that the observations in the FAR in this regard are made on the basis of examining the website of HKG during the Forensic Audit and a screenshot of the "Notices" webpage of the Company's website taken during the Forensic Audit has been enclosed with the FAR.

32.3 I note that Noticee no. 1 has neither denied the said allegation nor provided any evidence to prove that the policy of determination of materiality was published on Company's website during F.Y. 2015-16 to 2017-18 in compliance with Regulation 30(4)(ii) of LODR Regulations. I further note that while going through the archives of the website of HKG <https://www.hitkitglobal.com> for the relevant period, no policy of determination of materiality was found on the website. In view of the same, I find that Noticee no.1 has violated the provisions of Regulation 30(4)(ii) of LODR Regulations, as observed in FAR.

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

33. The SCN has alleged the following:

"a. Exchange vide letter dated December 15, 2017 informed the company about the appointment of forensic auditor in line with SEBI order dated September 07, 2017 (i.e. date of interim order). In the same letter, the exchange requested the company to provide information to the forensic auditor.

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

33.1 The Replying Noticees have submitted the following:

“It so appears that SEBI has a grievance that Noticee No.1 did not furnish information/ supporting documents as sought by the forensic auditor. However, SCN does not mention what information/ document was not provided by Noticee No. 6 to the forensic auditor.

A broad statement without any basis renders this allegation ex facie illegal and in gross violation of principles of natural justice.

Without prejudice to the aforesaid, it is respectfully submitted that Noticee No. 1 has provided each and every document as sought by the forensic auditor during the audit. The same is enclosed herewith at Annexure E colly. Assuming some document was not provided during the forensic audit, there would be a perfectly valid reason for doing so.

In any event, SEBI is required to conduct an independent investigation and cannot piggyback on the Report to conclude a violation of SEBI laws. During its investigation, SEBI has not sought any documents from Noticee No. 6. In fact, through this entire proceeding i.e. from issuance of interim order to issuance of the SCN, at all times the Company has provided any and all information as sought by SEBI. Thus, there is no reason why Noticee No. 6 would not provide document to SEBI.

In view of the above, it is respectfully submitted that Noticee No. 1 has not violated any laws and, therefore, allegation at paragraph 4.III is completely unnecessary and out of place.”

34. I note that the Noticees have been alleged to have violated Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. On a reading of these Sections, I observe that Section 11(1) of the SEBI Act, 1992 lays down the functions of SEBI, and in carrying out the said functions, SEBI is empowered, under 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992, to call for records from intermediaries and other entities. I note that BSE was directed to appoint a forensic auditor for carrying out forensic audit of HKG vide SEBI order dated September 07, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. The FAR at page 16, 20 and 30 has mentioned that in spite of reminders sent vide emails dated vide emails dated October 22, 2018, October 31, 2018 & November 02, 2018 by the forensic auditor, HKG did not provide

documents/clarifications. Thus, I find that HKG failed to furnish information sought by the forensic auditor as well as by SEBI interim order dated September 07, 2017 and thereby violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

B. Violations of PFUTP Regulations, 2003:

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

- a) 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
- b) 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)
- c) For the aforesaid reasons, the audit inter alia should cover the following:
 - 1 Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company
 - 2 To examine the books of accounts and backup records of the Company for the period of two years including the year of transactions referred in SEBI / Exchange Order to: -
 - Cash flow analysis to trace source of funds and end use of funds on sample basis ((as per the annual report of last two years)
 - Assess genuineness of the debtors/ receivables and creditors / payables,
 - Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors).
 - Analysis of related party transactions.
 - 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.
 - Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers.
 - Investments made by the Company in subsidiary companies along with the relevant fund flows, if any.
 - Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds.
 - Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act.
 - Comment on the shareholding pattern.

- Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds).
- d) Verification / discussions:
 - i. Independent and /or physical verification of the underlying transactions.
 - ii. Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the Company.
 - iii. Discussions with key stakeholders like Promoters/ Senior Management Team / Departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the Company, etc.
 - iv. Business history, directorship searches and litigations.
 - v. Assessment of size and scope of business.
 - vi. Site visit as may be applicable for verifying existence of the Company functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants/ factories.

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

Based on the facts and our observations mentioned above, it can be concluded that during the period under audit, the Company has undertaken following transactions which are pre-judicial to the interest of minority shareholders / Company–

A. Misrepresentation of the accounts / Financial Statements as evident from the following findings:

- a) The Company has Accepted / extended Loans & Advances to various entities without specifying the terms of repayment and paying / charging any Interest*
- b) Non- Disclosure of facts and figures in the financial statements with regard to related parties.*
- c) Improper recording / grouping of assets / liabilities, negligible movements in Trade Payables / Receivables, non-provisioning of permanent diminution in value of investments*
- d) Recording of sales / purchase without providing any evidence of physical movement of goods*
- e) Improper disclosure of unquoted investments.*

B. Misuse of books of account/ funds of the Company

- a) Investment through Share Application Money*
 - *Invested in companies which is strike off /certain companies name not exist as per public domain (MCA portal)*

- *Invested in companies in which directors of these companies are having relationship in other companies which having direct/indirectly relationship with company.*
- *Use of bank account for round tripping off funds without having any underlying business transaction*
- b) *Trade Advances*
 - *Receipts / payment of funds by the Company without any legit business objective*
 - *Trade advances paid to companies which is strike off /certain companies does not exist as per public domain (MCA portal)*
 - *The directors of these companies are having relationship in other companies which having direct/indirectly relationship with company.*
 - *Trade advances given to different entities which are having same identical email id*
 - *Pending since long still no action under taken by company for recovery.*
- c) *Sale / Purchase*
 - *Use of bank account for round tripping off funds without having any underlying business transaction*
 - *Sales made to the single company in FY 2015-16 which also under the suspect and included in the list of shell companies*
 - *No supporting/evidence available along with invoice*
 - *Unusual transactions observed -Funds receiving from creditor & payment made to debtors*
 - *Major purchase made from the Company whose name is also included in the list of shell companies.*
 - *No Inflow of funds in banking is seen from the turnover made by the Company in FY 2016-17.*
- d) *Loan & advances*
 - *The Company has Accepted / extended Loans & Advances to various entities without specifying the terms of repayment and paying / charging any Interest*
 - *Receipts / payment of funds by the Company without any legit business objective*
- e) *No attendance register are provided to verify the staff expenses.*

37. 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 HKG 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, “.....8. *“it was observed that the Company (noticee no. 1) and its directors and the Chief Financial Officer (noticee no. 2 to 7) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the Company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the Company”*. Consequently, the SCN, *inter alia*, additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the FAR. It is observed that Noticee no. 1 to 7 have been charged with the violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) of PFUTP Regulations, 2003 which can be in relation to dealing in securities. However, no details of trading viz: volume of shares traded, price impact, % increase or decrease in price, etc. have been provided. Nor is there any analysis as to how each of the finding of FAR has impacted the persons dealing in securities.

38. 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.

39. 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.”

40. Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market should have directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price shares of HKG. I note that FAR does not allege any diversion/ misutilisation of funds which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the Company. I note that there is no bar on taking action by SEBI on the basis of a FAR, invoking provisions of PFUTP Regulations, 2003 and other similar provision of SEBI Act, 1992 related to fraud, if, after examination of the matter, including the FAR, SEBI finds that there was impact on the securities market or the price of the scrip, which are ingredients to prove violations of PFUTP Regulations, 2003. Therefore, 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.

41. I note that Noticee no. 8, being the statutory auditor of HKG during the period under Forensic Audit i.e. April 1, 2015 to March 31, 2018, have also been issued separate show cause notice i.e. SCN-II, alleging that the statutory auditor has been negligent in performance of their duties and have not carried out proper due diligence and have not reported non-compliance of accounting principles by the Company including instances of misuse/misrepresentation of funds and/or books of accounts by the Company in its audit report. SCN also alleged that the auditors issued an audit opinion with limited qualification, stating that *“the aforesaid (standalone) financial statements give the*

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

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

With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. Normally, an investor invests his money by considering the financial health of the Company and in order to find out the same, one will naturally bank upon the accounts and balance-sheets of

the Company. If it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts, in our view, there is no reason as to why to protect the interests of investors and regulate the securities market, such a person cannot be prevented from dealing with the auditing of such a public listed Company. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market.”

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

43. SCN, also alleges that HKG has violated Regulation 4(1)(a),(b),(c),(e) & (g), 4(2)(f)(ii)(1),(6) and (7), 4(2)(f)(iii)(1),(3),(6) & (12),17(8), 30(4)(ii), 33(2)(a), 46(2)(k) and 48 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:

- i. Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.
- ii. 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.
- iii. The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
- iv. 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.
- v. 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.

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

45. Regarding the violations of Regulations 4(2)(f)(ii)(1),(6) & (7) and 4(2)(f)(iii) (1),(3), (6) & (12) of the LODR Regulations by HKG, 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 HKG cannot be said to be in violations of Regulations 4(2)(f)(ii)(1),(6) & (7) and 4(2)(f)(iii) (1), (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

46. Regarding the violations of Regulation 17(8) read with Part B of Schedule II of LODR Regulations by Noticee no.1, as alleged in the SCN, I find that Regulation 17(8) mandates that the chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II. Since the said provisions pertain to chief executive officer and the chief financial officer of the Company, I find that Noticee no.1 cannot be said to be in violation of Regulation 17(8) of LODR Regulations.

47. SCN further alleges that HKG 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 HKG 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.....”

48. 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, HKG is a company whose securities are listed on BSE Ltd. which is a recognised stock exchange. HKG 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, HKG was bound to comply with

the conditions of the uniform listing agreement, as extracted above. HKG has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, HKG is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

49. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee nos. 2 to 7, who were the directors/CFO of HKG at the relevant time, are liable for the violations alleged to be committed by HKG 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, Regulations 4(1) (a), (b), (c), (e) & (g), Regulations 4(2)(f)(ii)(1)(6) & (7), 4(2)(f)(iii) (3), (6) & (12), 17(8) read with Part B of Schedule II, 30(4)(ii), 33(2)(a), 46(2)(k) and 48 of LODR Regulations and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against HKG, automatically, on the directors /CFO of HKG. Additionally, the SCN alleges violation of Regulation 34(2)(b) of LODR Regulations. 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 HKG was in violation Regulations 4(1) (a), (b), (c), (e) & (g), 30(4)(ii) and Reg. 48 of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to 7, it has to be determined whether these Noticees are liable for those violations for which HKG 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 HKG, 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)(1),(6) & (7), 4(2)(f)(iii)(1),(3),(6) & (12) and 48 of LODR Regulations, the violations of which have been alleged against Noticee no. 2 to 6, 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 HKG was in violation of Regulations 4(1) (a), (b), (c), (e) & (g), 30(4)(ii) and 48 of the LODR Regulations and Section 21 of SCRA, 1956. In view of these violations found to have been committed by HKG, the principles contained in Regulation 4(2)(f)(ii)(1),(6) & (7) and 4(2)(f)(iii)(1)(3), (6) & (12) are also violated for which Noticee nos. 2 to 6, being part of the board of directors of HKG 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 6 are liable for violation of Regulation 33(2)(a) of LODR Regulations also. Additionally, Noticee no. 7 having issued untrue certificates with respect to the financial statements of HKG, have also violated Regulation 17(8) read Part B of Schedule II of LODR Regulations.

50. Regarding the violation of Regulation 34(2)(b) by Noticee nos. 2 to 6, as alleged in the SCN, I find that Regulation 34(2)(b) mandates that the listed entity shall submit to the stock exchange consolidated financial statements audited by its statutory auditors. Since the said provision pertains to listed entity, I find that Noticee nos. 2 to 6 cannot be said to be in violation of Regulation 34(2)(b) of LODR Regulations.

51. I note that Noticee nos. 2 to 6 were the directors of the Company and Noticee no. 7 was serving as CFO of the Company, during the period of violations alleged in the SCN, i.e. April 01, 2015 to March 31, 2018. The management of the Company during 2015-16 and 2017-18 is as follows:

FY 2015-16

Noticee no.	Name	Designation
Noticee no. 2	Amit Khandelwal	Non-Executive Chairman, Independent Director
Noticee no. 3	Arvind Sharma	Independent Director
Noticee no. 4	Pavan Kale	Independent Director
Noticee no. 5	Kiran Nagpal	Additional Independent Director
Noticee no. 6	Kamal Agrawal	Chief Executive Officer
Noticee no. 7	Rajesh Mavani	Chief Financial Officer

FY 2016-17

Noticee no.	Name	Designation
Noticee no. 2	Amit Khandelwal	Non-Executive Chairman, Independent Director
Noticee no. 3	Arvind Sharma	Independent Director
Noticee no. 4	Pavan Kale	Independent Director
Noticee no. 5	Kiran Nagpal	Additional Independent Director
Noticee no. 6	Kamal Agrawal	Managing Director (w.e.f 11.11.16), Chief Executive Officer
Noticee no. 7	Rajesh Mavani	Chief Financial Officer

FY 2017-18

Noticee no.	Name	Designation
Noticee no. 2	Amit Khandelwal	Non-Executive Chairman, Independent Director
Noticee no. 3	Arvind Sharma	Independent Director
Noticee no. 4*	Pavan Kale	Independent Director
Noticee no. 5*	Kiran Nagpal	Additional Independent Director
Noticee no. 6	Kamal Agrawal	Managing Director
Noticee no. 7	Rajesh Mavani	Chief Financial Officer

*Mr. Pavan S. Kale and Mrs. Kiran Nagpal Resigned w.e.f. 14th February, 2018

52. As per Annual Reports of HKG, during the financial years 2015-16 to 2017-18, the details of audit committee members of HKG, number of audit committee meetings held and the meeting attended by the concerned directors, are as under:

Name of the Director	Attendance Particulars					
	2015-16		2016-17		2017-18	
	Held	Present	Held	Present	Held	Present
Amit Khandelwal (Noticee no. 2)	4	4	4	4	4	4

Arvind Sharma (Notivee no. 3)	4	4	4	4	4	4
Pavan Kale (Noticee no. 4)	4	4	4	4	4	4
Kiran Nagpal (Noticee no. 5)	4	Absent	4	Absent	4	Absent
Kamal Agrawal (Noticee no. 6)	4	Absent	4	Absent	4	Absent

53. 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 4(1) (a), (b), (c), (e) & (g), 30(4)(ii) and 48 of LODR Regulations and Section 21 of SCRA, 1956. In respect of the aforesaid violations by the Company, I note that Noticee no. 2 to 6 have already been found to have violated Regulation 4(2)(f)(ii)(1)(6) & (7) and 4(2)(f)(iii)(1),(3), (6) & (12) of LODR Regulations. I note that Noticee nos. 2, 3, 4 and 5 being the independent Directors of HKG and being part of the audit committee of HKG reviewed the financial statements of HKG, and approved the financials of HKG as part of the board of directors of HKG. I note that in terms of Regulation 33(2)(d) of LODR Regulations financial statements are placed before the board of directors of the listed entity and in terms of Regulation 18(3) read with Clause A(1) of Part C of Schedule II of LODR Regulations, the role of the audit committee is to ensure that the financial statements are correct. Omission to raise any concern regarding the financials of HKG, as member of the audit committee as well as the board of directors of HKG, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations.

54. In view of the aforesaid violations committed by HKG 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.

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

Extract of Section 15HA and 15HB of SEBI Act, 1992:

“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 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.....”

56. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15HB of the SEBI Act, 1992, is attracted and not the penalties under Section 15HA of SEBI Act, 1992 and Sections 23E of SCRA, 1956. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that violations of Section 12A (a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 have not been made out, therefore, penalty under Section 15HA of SEBI Act, 1992 is not attracted against the Noticees. I also note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions

by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that HKG is in violation of listing conditions, however, HKG 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 9, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided. As the Noticee no. 2 to 7, being directors/CFO of HKG, have been found to be in violation of LODR Regulations, which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the “regulation” of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI directions alleged against these Noticees, therefore, Section 23H is not attracted in the case of Noticee no. 2 to 7. HKG 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.

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

58. 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.”

59. 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 allegations made in the SCN do not indicate the amount of specific loss caused to investors or group of investors as a result of the default by Noticee no. 1 to 7. I note that some of the allegations in the SCN relating to misrepresentation in financials have been found to be correct in the case of Company. 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 HKG for FY 2015-16, 2016-17 and 2017-18.

Directions and monetary penalties:

60. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956 read with Section 19 and Section 11(2)(j) of SEBI Act, 1992, Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 5 of the SC(R) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, direct as under:

- (i) The Noticee no. 1, 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 one (1) year, from the date of coming into force of this order;

- (ii) The Noticee no. 2, 3, 4 and 5 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;
- (iii) The Noticee nos. 1 to 7, are hereby imposed with, the monetary penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
Noticee no. 1	Hit Kit Global Solution Limited	Section 23H of SCRA, Section 15HB and Section 15A(a) of SEBI Act, 1992	30 Lakhs and 10 Lakhs
Noticee no. 2	Amit Khandelwal	Section 15HB of SEBI Act, 1992	3 Lakhs
Noticee no. 3	Arvind Sharma	Section 15HB of SEBI Act, 1992	3 Lakhs
Noticee no. 4	Pavan Kale	Section 15HB of SEBI Act, 1992	3 Lakhs
Noticee no. 5	Kiran Nagpal	Section 15HB of SEBI Act, 1992	3 Lakhs
Noticee no. 6	Kamal Agrawal	Section 15HB of SEBI Act, 1992	30 Lakhs
Noticee no. 7	Rajesh Mavani	Section 15HB of SEBI Act, 1992	6 Lakhs

- (iv) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of receipt of this order. The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or

through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, CFID-2, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

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

(v) The proceedings against Noticee no. 8 are disposed of without any adverse directions, in terms of observations at paragraphs 41-42.

61. The obligation of the Noticees, restrained/ prohibited by paragraphs 60(i) and (ii) of this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

62. This Order comes into force with immediate effect.

63. 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.

64. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs, Reserve Bank of India and Institute of Chartered Accountants of India, along with a copy of the Forensic Audit Report for their information and necessary action, if any.

Sd-

ANANTA BARUA

Date: February 28, 2022

WHOLE TIME MEMBER

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA