

WTM/AB/IVD/ID19/15432/2021-22

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

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

Noticee No.	Name of Noticees	PAN
1.	Quest Financial Services Limited	AAACQ0461C
2.	Mr. Prakash Kumar Jajodia	ACOPJ3493L
3.	Mr. Kishan Kumar Jajodia	ACUPJ9687L
4.	Mr. Amit Jajodia	ACXPJ4921E
5.	Mr. Rabindra Kumar Hisaria	AASPH1680H
6.	Mr Bijay Kumar Agarwal	ACMPA7224N
7.	Mrs Jyoti Lohia	ABPPL4948Q
8.	M/s. Arun Jain & Associates Chartered Accountants CA. Arun Kumar Jain	NA

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

In the matter of Quest Financial Services Limited

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

- (i) Show Cause Notice No. SEBI/HO/IVD/ID19/VA/OW/P/2020/0000013228 dated August 14, 2020 issued to Noticee nos. 1 to 7 (hereinafter referred to as “**SCN**”);
- (ii) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/0000013245 dated August 14, 2020 issued to Noticee No. 8 (hereinafter referred to as “**SCN-II**”); and

2. The 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 Sections 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Sections 15A(a) 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and Section 12A(1) and 12A(2) read with Sections 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) against it 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 Regulations**”), Regulations 4(1)(a),(b), (c), (e) &(g), 4(2)(f)(ii)(1),(6) &(7), 4(2)(f)(iii) (3),(6) & (12), 4(2)(c)(iv), 9 ,17(8) read with Part B of Schedule II, 33(2)(a) and 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) read with Section 21 of SCRA, 1956.
3. The SCN also calls upon directors of Noticee No. 1, Mr. Prakash Kumar Jajodia (Noticee No. 2), Mr. Kishan Kumar Jajodia (Noticee No. 3), Mr. Amit Jajodia (Noticee No.4), Mr. Bijay Kumar Agarwal (Noticee No. 6) , Mrs Jyoti Lohia (Noticee No.7) and chief financial officer of Noticee No. 1, Mr. Rabindra Kumar Hisaria (Noticee No.5) to show cause as to why suitable directions should not be issued and/or penalty not be imposed, as deemed fit under Sections 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Sections 15A(a) 15HA and 15HB of the SEBI Act, 1992 and Section 12A(1) & 12A(2) read with Sections 23E and 23H of SCRA, 1956 against them, for violations of Section 12A(a) (b) and (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act and Regulations 3(b), (c), (d) 4(1), 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1)(a),(b),(c),(e),(g), 4(2)(f)(ii)(1),(6)&(7), 4(2)(f)(iii)(3),(6)and (12), 4(2)(c)(iv), 9 of LODR Regulations read

with Section 27 of SEBI Act, Regulation 17(8) read with Part B of Schedule II, Regulations 33(2)(a) and Regulation 48 of LODR Regulations read with Section 21 of SCRA, 1956.

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 Regulations, 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 October 11, 2017 (hereinafter referred to as “**interim order**”) *inter-alia* directing the promoters and the directors (Noticee Nos. 2 to 7) of Quest Financial Services Limited (Noticee No.1, hereinafter also referred to as “**the Company**” or “**QFSL**”) to only buy the securities of QFSL and further directing that 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. The ‘Scope of Work’ included examination of:
 - a) Misrepresentation including of financials and/or business of QFSL, if any;
 - b) Misuse of the funds/books of accounts of QFSL, if any.
 - 5.2. The forensic audit report was submitted to SEBI and the findings of the forensic audit report (for the period of April 01, 2015 till December 31, 2017) were examined by SEBI in the investigation.
 - 5.3. The investigation by SEBI, *inter-alia*, revealed the following:
 - I. Misrepresentation including of financials and misuse of funds/books of accounts in violation of LODR Regulations;
 - II. Non furnishing of information/Non-cooperation by the Company;
 - III. Other violations of LODR Regulations.
6. The SCNs were served on Noticee Nos. 1, 2, 3, 4, 5, 7 and 8. With respect to Noticee No. 6, the SCN sent via Speed Post Acknowledgment Due (SPAD) was returned

undelivered with the remark “not known”. Accordingly, the SCN was attempted to be pasted at the last known address of Noticee No. 6. However, since no witnesses were available, details of the SCN were thereafter also published in the Times of India, (Kolkata Edition), Sanmarg and Bartaman on January 18, 2021. Thereafter, the file was placed before me on February 10, 2021, for granting a date of hearing in the matter. Accordingly, an opportunity for personal hearing was scheduled on May 7, 2021. As per records, the hearing notice issued to Noticee No.7 (Jyoti Lohia) was also published, but newspaper cuttings for the same are not available. It is noted that the hearing notice was forwarded to the DAVP agency for publication on August 25, 2021 in The Times of India, (Kolkata Edition), Sanmarg and Bartaman, vide a letter dated August 23, 2021. I note that as per Section 35 of the Indian Evidence Act, 1872, an entry made in a record by a public servant in discharge of his duty it itself a relevant fact, and hence the publication of the hearing notice is evidenced by the aforesaid letter dated August 23, 2021. Noticee No. 5, vide an email dated May 5, 2021 requested for an adjournment stating that he had contracted Covid-19. On the scheduled date, the Authorized Representative (AR) appearing for Noticee Nos. 1, 2, 3, 4 and 6 also sought an adjournment in the matter on the ground that the Noticees had taken ill with Covid-19 and that they did were not able to obtain instructions to proceed in the matter. The requests for adjournment were granted. Noticee Nos. 7 and 8 neither appeared for the hearing nor sought any adjournment. Thus, the hearing qua Noticee No. 7 and 8 was closed. Thereafter, on September 3, 2021 another hearing was granted to Noticees nos. 1-6 before me. The ARs for Noticee Nos. 1-4 appeared for the same and made submissions. Noticee No. 5 appeared for the hearing in person and made submissions before me. However, the AR for Noticee No. 6 requested for another adjournment stating that she had obtained the final mandate from the said Noticee only that morning and hence needed more time to finalize the reply. The request for adjournment was once again granted. The hearing was rescheduled for October 7, 2021 and thereafter to October 11, 2021 at the behest of Noticee No.6, since the Advocate representing Noticee No.6 had some personal difficulty. Finally, on October 11, 2021 the Advocate of Noticee No. 6 made submissions before me, and the hearing for Noticee No.6 was also concluded. Noticee Nos. 1, 2, 3, 4, 5 and 6 also filed written replies/ submissions in the matter on the following dates:

Noticee No.	Name of Noticees	Date of reply
1.	Quest Financial Services Limited	September 2, 2021
2.	Mr. Prakash Kumar Jajodia	September 2, 2021
3.	Mr. Kishan Kumar Jajodia	September 2, 2021
4.	Mr. Amit Jajodia	September 2, 2021
5.	Mr. Rabindra Kumar Hisaria	September 13, 2021
6.	Mr Bijay Kumar Agarwal	October 8, 2021

Consideration of submissions and findings:

7. I have considered the allegations in the SCNs, replies received, submissions made by the Noticees during the personal hearing granted to them and in the written submissions filed by them. The relevant extract of provisions of law violation of which have 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 com
ply 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.

(c) Equitable treatment: The listed entity shall ensure equitable
treatment of all shareholders, including minority and foreign shareholders,
in the following manner:

...

- (iv) The listed entity shall devise a framework to avoid insider trading and
abusive self-dealing.

.....

- (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."

.....

Preservation of documents.

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

- (a) documents whose preservation shall be permanent in nature;
- (b) documents with preservation period of not less than eight years after completion of the relevant transactions:

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

Board of Directors.

17(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.

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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.

.....

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

.....

Accounting Standards.

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

8. 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 QFSL, vide its letter dated August 7, 2017, SEBI advised stock exchanges to place trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said letter dated August 7, 2017 also advised 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.

9. Aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, the Company filed an appeal bearing no. 236 of 2017 before the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as “**SAT**”). QFSL also made a representation to SEBI, vide letter dated September 7, 2017, submitting that the it did not fall into any criteria of being a shell company. The Hon'ble SAT vide its order dated September 13, 2017 directed SEBI to dispose of the representations made by the appellant as expeditiously as possible and in any event within a period of four weeks from September 13, 2017. Accordingly, SEBI granted hearing to the Company on September 25, 2017. SEBI passed an interim order in the matter on October 11, 2017, wherein following directions were issued:-

- i. “The trading in securities of QFSL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.*
- ii. Stock Exchange shall appoint an independent forensic auditor, inter-alia, to further verify:*

- a. *Misrepresentation including of financials and/or business of QFSL, if any;*
- b. *Misuse of the funds/books of accounts of QFSL, if any.*
- iii. *The promoters and directors in QFSL are permitted only to buy the securities of QFSL. The shares held by the promoters and directors in QFSL shall not be allowed to be transferred for sale by depositories.*
- iv. *The other actions envisaged in SEBI's letter dated August 07, 2017 as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against QFSL."*

10. QFSL did not file any reply/objections to the interim order of SEBI within 30 days from the date of the interim order. Accordingly, the preliminary findings of the interim order and ad-interim directions of the interim order stood auto confirmed.
11. Based on the direction given by the SEBI, vide interim order dated October 11, 2017, BSE appointed BDO India LLP for conducting forensic audit of QFSL. The Forensic Audit Report (**FAR**) was forwarded to SEBI vide BSE's letter dated September 24, 2019. On receipt of the forensic audit report, SEBI carried out an investigation in the matter.
12. I observe that, in the SCNs, the allegations against the Noticee No. 2 to 8 flows from the allegations against Noticee No.1. Noticee Nos. 2 to 7 have been charged in their capacity as directors/ CFO of Noticee No.1 and Noticee Nos. 8 has been charged as the statutory auditor of Noticee No.1. The SCN 1 alleges that the Noticee Nos. 1 to 7 have failed to present true and fair financial statements of the Company, executed transactions which are non-genuine in nature thereby resulting in misrepresentation of the accounts/financial statements and misuse of account/funds of the Company during the investigation period and that such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the Company and had the potential to mislead the investors. The SCN 1 also alleged that the directors/ CFO of the Company (Noticee Nos. 2 to 7) have failed to exercise duty of care by misrepresenting the financial statements /misusing the funds of the Company. The SCN 2 alleges that Noticee No. 8 who was the statutory auditor of the Company for the relevant period, has been negligent in performance of its duties as it had not carried out proper due diligence in its audit report.

13. At the outset, I note that Noticee No. 5 (Rabindra Hisaria) has stated that he had signed certain documents relating to directorship of QFSL in 2012. He was a salaried employee and did not hold any place of benefit in the organization. He has stated that his signatures were falsified for QFSL and he was only looking after the embroidery unit of QFSL. In respect of the same, I note that Noticee No. 5 (Rabindra Hisaria) has been named as the CFO of QFSL for the entire investigation period in the matter, which spans over 3 financial years. I note from the Annual Reports of FY 2015-16, 2017-18 and 2017-18 that he has signed the CEO/ CFO certificate also. Hence, I do not find the submission of the Noticee that he only signed some documents relating to directorship in 2012 as inspiring any confidence. If his signatures have been falsified, the Noticee ought to have taken some action against QFSL upon finding out the same. However, the Noticee has neither claimed to have taken any such action (like police complaint) nor has he submitted any documentary evidence in this regard before me. On the other hand, in his reply, the Noticee has stated that he had considerable experience in the field of textile and was looking after the operations of the embroidery unit of QFSL. It is unlikely that despite being an experienced person in the employment of the Company and heading a unit, the Noticee was not aware that he was being named as the CFO of the Company in its Annual Reports (which are public documents), for several years. Moreover, the Noticee has admitted that he had signed some documents relating to directorship in 2012. In such a scenario, I am of the view that the submissions of the Noticee are not tenable.
14. Moving on, I note that Noticee Nos. 1,2, 3, 4 and 6 have stated that the SCN issued to them is vague and makes blanket statements without providing any reasons or factual data. In support of their submissions, these answering Noticees have cited the order of the Hon'ble Supreme Court in *Central Excise, Bangalore v. Brindavan Beverages Pvt. Ltd. and Ors.* [(2007) 5 SCC 388], and orders of the Hon'ble SAT in the matter of *Vikas Bengani v. SEBI* (Order dated March 8, 2010) and *Dhanalakshmi Bank Ltd. v. SEBI* (Order dated April 20, 1999). I note the SCN issued to the Noticee clearly indicates the specific nature of violations that have been alleged in terms of different provisions of the SEBI Act, SCRA, PFUTP Regulations as well as LODR Regulations. All documents in support of the allegations made were provided as annexures to the SCN. These include copy of FAR and its annexures. In view of the same, I find that the SCN provides all necessary documents in support of the allegations made therein. I also note that the answering Noticees have filed detailed replies which deal with each allegation in the SCN.

Further, the Noticees have not pointed out any particular paragraph of the SCN, contents of which could not be understood by them due to vagueness, rendering them incapable to reply. In view of the same, I do not agree that the SCN is vague. The Noticee has also cited the orders of the Hon'ble *Supreme Court in Gorkha Security Services v. Government of NCT of Delhi & Ors* [(2014) 9 SCC 105] and *Oryx Fisheries Pvt. Ltd. v. UOI & Ors* [(2010) 13 SCC 427], and submitted that it is incumbent for SEBI to state the specific measures that are contemplated against Noticees. I note that the SCN has also clearly spelt out the provisions under which the directions, if found necessary, would be issued. These sections of the SEBI Act and SCRA themselves provide for the nature of directions which can be issued. The provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market. The directions to be issued, if any, would be arrived at, after consideration of the material on record, including the replies and submissions of the Noticees. Thus, the judgments cited by the Noticee would not apply to the extant matter, as the SCN clearly lays out the allegations and provides details thereof, including supporting documents. Hence, I am unable to accept the contention of the Noticee.

15. 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 QFSL 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.

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:

16. The invoices provided by QFSL to the forensic auditor, in support of receipts by the Company from sale of shares, do not contain basic details such as invoice number, tax registration number of customers.

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

Receipts from disposal of investments (sale of shares)

Basis review of supporting documents of five transactions related to receipts from disposal of investment (sale of shares), we noted:

- In one instance no supporting document was provided and the management explained that said receipts was refund of advance and (Refer serial number 5 of annexure 7.2)*
- In rest four instances, the invoice does not contain basic details such as invoice number, tax registration number of customers. (Refer serial number 1 to 4 of annexure 7.2)*

For these transactions, except invoices, no other supporting documents in the form of sale agreement, share certificate, share transfer form, valuation report / CA certificate etc. was provided, despite of various follow ups made vide email dated 10 February 2018, 03 March 2018, 07 March 2018, 09 March 2018 and 12 March 2018. Therefore, in the absence of the requisite supporting documents, it creates suspicious on genuineness of these receipts.

16.2. In this regard, Noticee Nos.1, 2, 3, 4, and 6 have stated that the invoices issued contained the registered address as well as the CIN of the Company. The Noticees have further stated that service tax registration is not required for sale of shares.

16.3. From the relevant annexures to the FAR, I note that the shares sold were those of private limited companies. I note that the right to transfer shares is restricted in private companies and the number of members of such companies is restricted to two hundred excluding past and present employees. Amongst other procedures, the transferor is required to give a notice in writing to the respective company of its intention to transfer shares. A transfer deed is also required signed by both buyer and seller. Thus, there are a number of documents that could evidence a sale of shares of a private company.

In this regard, I observe that the FAR notes that with respect to '*receipts from disposal of shares*' no supporting evidence like sale agreement, share transfer form, and so on was provided by the Company despite repeated requests and follow up. Even the invoices that were provided did not contain basic details like invoice number. Given the fact that QFSL has failed to provide any documents in support of the purported sale of shares apart from the invoices, I am inclined to agree with the observations in the FAR that the receipts from disposal of investments (sale of shares) are not genuine.

17. With respect to receipts by the Company from sale of garments, there is no provisioning for expenses such as transportation expenses/ loading or unloading expenses in the books of accounts of the Company. Though the sale of garments were made by the Company in FY 2013-14 and FY 2015-16 but payment was received by it only in FY 2016-17 showing that the Company did not make any efforts to realize funds from its debtors as these receivables were outstanding for more than a year.

17.1. The above allegation in the SCN is based on the observation of the FAR that with respect to receipts from sale of garments, based on review of supporting documents of two instances related to receipts from debtors against sale of garments (sarees), it was noted:

- *Agreements, order copy, proof of delivery (lorry receipts, octroi receipts) were not provided. Therefore, we were unable to verify whether there was any actual movement of goods taking place in the company. Further, it was also noted that no transportation expenses / loading or unloading expenses was booked by the QFSL in their books of account against the delivery of said goods.*
- *It was also noted that sales were made in FY 2013-14, & FY 2015-16 while payments were received in FY 2016-17.*
- *Further in one instance, sale was made in cash to unknown party, despite, the fact that company does not have any retail outlet.*
- *Hence, in the absence of the requisite supporting documents, despite of various follow ups made vide email dated 10 February 2018, 03 March 2018, 07 March 2018, 09 March 2018 and 12 March 2018 it creates suspicion on the genuineness of these receipts.*

17.2. In this regard, Noticee Nos.1, 2, 3, 4, and 6 have stated that the buyer of garments took delivery of the goods from the Company premises. Therefore, there was no requirement for provisioning for transportation expenses, etc. These Noticees have stated that they communicated with the debtors on a regular basis and hence the outstanding was realised thereafter, which indicate that the Company made full efforts for the realization.

17.3. I note that the Noticees have submitted that the buyers themselves took delivery of goods from the Company. There is no requirement that the goods have to be delivered by seller and cannot be picked up by the buyer. I also note that the FAR does not bring out any further details regarding this observation. However, I note that the outstanding amount pertaining to FY 2013-14 and FY 2015-16 were received by QFSL only in FY 2016-17. While the Noticees have stated that they were communicating with the debtors on a continuous basis, they have not produced any documentary evidence in this regard. In view of the same, I am of the view that the Company did not make adequate efforts to realize funds from its debtors.

18. Loan agreements, for the loans advanced by QFSL, were executed on a plain paper and were advanced at a lower rate of interest than the market rate of interest without any collateral/security/guarantee. Further, QFSL has not undertaken any due diligence with respect to the parties to whom the loans have been advanced (due to absence of documents such as CIBIL report, credit assessment memo, absence of any collateral). Though the loans were extended by the Company in Financial Year (FY) 2010-11 and FY 2014-15 but the customers had not paid any interest on such loans till March 31, 2017 and neither did QFSL charge any penal interest for delayed payment on such loans.

18.1. The aforesaid allegation in the SCN is based on the following observation in the FAR:

The Management of QFSL have provided the details along with loan agreement of loans and advances as on March 31, 2017, which contain 25 parties amounting to INR 5.17 cores. However, QFSL failed to provide the documents pertains to sanction letter, disbursement memo, collateral/security etc., despite of information requested vide email dated 21 February 2018 (Refer attachment 7 for copy of email dated 21 February 2018 and serial number 2 of attachment-1 for information requested from QFSL)

Basis review of 25 agreement, it was noted that these were executed on a plain paper and the interest rate charged was less than the market rate of interest. Also there was no collateral/ security/ guarantee taken before disbursement of loan/advances to these parties. (Refer attachment -6 for copy agreement submitted by QFSL)

It was also noted that in five instances amounting to INR 0.99 crores, customers had not paid any interest as till 31 March 2017 though the loans were extended in FY 2010-11 and 2014-15, additionally as per the loan terms QFSL have to charge penal interest at 24% on delayed payment, while the same was not charged in any of these five cases.

All of the above fact indicate that loan/advance were given without taking proper necessary guarantee/collateral/security, which is not in the interest of shareholders of QFSL.

18.2. In this regard, Noticee Nos.1-6 have stated that there is no prohibition in law in the manner of which documentation has to be entered into for giving advances. The giving of loan is a business decision based on market research.

18.3. I note that while the Noticees have stated that there is no legal requirement for the manner of documentation and the giving of loan was a market decision, as a listed company QFSL and its directors owed a duty of care to its shareholders and other stakeholders. The enforceability of loan agreements amounting to RS. 5.17 cores which have been executed on plain paper would be suspect and may lead to unnecessary losses to the Company, and in turn to its stakeholders. Coupled with the fact that the Company was charging low rates of interest, failing to charge penal interest even when provided for in the loan agreements, and giving loan without adequate security or collateral, I am inclined to agree with the observations in the FAR that the Company did not act in the best interest of the shareholders and was not diligent in utilizing shareholder's funds.

19. QFSL carried out business transactions with companies, namely, Original Fashion Traders Limited (OFTL) and Shree Nidhi Trading Company (SNTC), which are a part of the list of 331 suspected shell companies forwarded by Ministry of Corporate Affairs to SEBI, thereby raising concerns over whether these transactions were genuine.

19.1. The aforesaid allegation was based on the following observations in the FAR regarding payment towards purchase of garments:

- *The purchases were made on the basis of invoice and the invoice number of Original Fashion Traders Limited dated 25 April 2014 and Shree Nidhi Trading Company Limited dated 30 June 2014 was same i.e. Invoice number 1. Despite of the fact both invoices were raised by two different parties and with the gap of approximately more than two months. Which indicate that these two parties have raised their first invoice to QFSL and QFSL was the customer of these two entities*
- *It is pertinent to mention that the Original Fashion Traders Limited and Shree Nidhi Trading Company was a part of list of 331 suspected shell companies issued by the SEBI.*
- *Further, we did not find any agreements, purchase order copy, proof of receipts (lorry receipts, octroi receipts) against such purchases.*
- *Therefore, we cannot validate and ascertain the actual movement of goods in the Company.*
- *Hence, in the absence of the requisite supporting documents, despite of various follow ups made vide email dated 10 February 2018, 03 March 2018, 07 March 2018, 09 March 2018 and 12 March 2018 it creates suspicious on the genuineness of these payments in terms of whether they were towards purchase of sarees or not.*

19.2. With respect to the Company's dealings with companies which are a part of the list of 331 suspected shell companies, Noticee Nos.1,2, 3,4 and 6 have submitted that QFSL was not aware about the status of the said companies. They have further submitted that the genuineness of these dealings cannot be questioned merely because the counterparties are 'suspected shell companies'.

19.3. I note from the observations of the FAR that the dealings of QFSL with OFTL and SNTC have not been called into question *merely* because the counterparties were 'suspected shell companies'. As is evident from the extract of the FAR provided above, QFSL could not provide any purchase order, proof of receipt or agreements against these purchases despite repeated follow up and requests. These documents were not submitted even

before me. In addition, to the same, these companies were part of the list of 331 suspected shell companies. In view of the same, I agree with the finding in the FAR that these payments do not appear to be genuine.

20. QFSL had made sale of car and sale of machines, in cash to unknown party, without taking any quotation or evaluation before sale of these fixed assets. This coupled with non-submission of documents, such as sale invoice, details of buyer, to the forensic auditor, raises concern over the genuineness of sale transactions entered into by the Company and indicates that the Company may have sold these fixed assets at a lower price.

20.1. The aforesaid allegation in the SCN is based on the observation of the FAR on receipts against sale of fixed assets, which are as follows:

- *In one instance related to sale of car and three instances related to sale of machine, sales were made in cash to unknown party. (Refer serial number 1 of Annexure 7.4)*
- *Further, it was also noted QFSL have not taken any quotation or evaluation before sale of these fixed asset, hence there could be a possibility that the assets having more value were sold at cheaper rate to unknown party (Refer serial number 2 to 4 of Annexure 7.4) In the absence of the necessary supporting documents, such as quotation, proper sale invoice along with details of buyer, despite of various follow ups made vide email dated 10 February 2018, 03 March 2018, 07 March 2018, 09 March 2018 and 12 March 2018. It creates suspicion on the genuineness of theses transaction. (Refer attachment -12 13, 14, 15 and 16 for the copy of email dated 10 February 2018)*

20.2. In this regard, Noticee Nos. 1, 2, 3, 4 and 6 have stated that in relation to sale of car/ machines to allegedly unknown party, the said sales were at best available price.

20.3. From the observations in the FAR and the relevant annexures thereto, viz. invoices for the sale of car (I-20) and embroidery machines I note that that there is no name of purchaser mentioned. I note that the FAR brings out the fact that there are no other supporting documents either, like quotations, evaluations and details of the buyers. The

Noticees have only stated that the sales were made at the best available price, but have not provided any supporting document to show how such *best available price* was arrived at. Moreover, with respect to sale of car, normally a prudent seller of a vehicle obtains receipt etc. so that he is not responsible for any accident if the buyer does not register the vehicle in his name, or if there is a delay in such registration. However, in this case the invoice does not even mention the name of the buyer. In view of the same, I agree with the observation of the FAR that these transactions do not appear to be genuine.

21. With respect to receipts amounting to Rs 14.50 lakhs against margin money from stock brokers by the Company, the contract notes were not signed by parties to the contract and there was no rubber stamp on these documents. Further, QFSL failed to disclose in its annual report that all the directors of its stock broker i.e. Concord Vinimay (P) Ltd, are also directors of QFSL and operate from the same premises, thereby leading to contravention of Accounting Standard-18. Non-submission of documents such as QFSL's ledger account with the stock broker/demat account statement etc. to the forensic auditor, despite repeated reminders by forensic auditor, illustrates that the Company has not carried out any genuine transactions thereby consequently leading to non-maintenance of relevant records and documents.

21.1. The above allegation in the SCN is based on the observations of the FAR regarding the receipts against margin money from stock brokers, which are as follows:

- *The said contract notes weren't signed by either party also there was no rubber stamp on these documents.*
- *All the directors of Concord Vinimay (P) Ltd. (Stock Broker) are directors of QFSL however QFSL hasn't disclosed the same in its annual return or report in the list of related parties, which was in contravention to Accounting Standard-18*
- *The address of Concord Vinimay (P) Ltd. is also the same as that of QFSL.(Refer attachment-30 for the Concord Vinimay Private Limited on MCA master data)*
- *In the absence of the necessary supporting documents, such as QFSL's ledger account with the stock broker / Demat account statement where this receipt could be traced, despite of various follow ups made*

vide email dated 10 February 2018, 03 March 2018, 07 March 2018, 09 March 2018 and 12 March 2018 it creates suspicion on the genuineness of these transactions.

21.2. In their replies, Noticee Nos.1, 2, 3,4 and 6 have stated that:

- *With respect to receipts amounting to INR 14.50 lakhs, against margin money from stock brokers by the Company, it is respectfully submitted that the said amount was immediately refunded. Thus, the issue of discrepancies in the contract notes does not arise.*
- *In relation to having common directors with its stock broker i.e. Concord Vinimay (P) Ltd., it is respectfully submitted that both entities function on an arm's length basis and therefore no disclosure was required. There is no violation of Accounting Standard ("AS") 18 as alleged.*
- *Non-submission of documents such as the Company's ledger with the stock broker, etc.: It is respectfully submitted that all such documents were provided to the forensic auditor as demanded at the time of audit.*

21.3. In respect of the above, I note that Accounting Standard (AS) 18 defines related party as:

10.1 Related party - parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

21.4. From the observation of the FAR, I note that *all* the directors of Concord Vinimay (P) Ltd. are also the directors of QFSL. In addition to the same, they shared a common address. Hence, the submission of the Noticees that both the entities function on an arm's length basis is not tenable. Hence, I agree with the observation of the FAR that the fact that Concord Vinimay (P) Ltd. was a related party ought to have been disclosed.

21.5. With respect to the contract notes that were not stamped or signed, the answering Noticees have submitted that they had immediately refunded the amount. However, they have not provided any supporting document like bank statements, copies of cheques, etc, regarding the same. They have also stated that the ledgers were provided

by them to the forensic auditor, but again have not submitted any documentary evidence regarding the same. Hence, I am unable to accept the submission of the Noticee and agree with the observation of the FAR that these transactions do not appear to be genuine.

22. QFSL has violated Section 40A(3)(a) of the Income Tax Act, 1961 by paying professional charges amounting to Rs 63,000 in cash to A.K Tiwari & Co. in a single day. Further, Non-submission of documents, such as appointment letters of employee and ID proof of blue collared employees, to the forensic auditor, indicates that the Company created fake/dummy employees only to show payments in the name of salary thereby leading to diversion of funds.

22.1. The above allegation in the SCN is based on the following observations in the FAR regarding payment against cash expenses (6 transactions related to payments towards salaries and professional charges):

- *As per provision of section 40A(3)(a) income tax act, cash expenses for more than 0.10 lac per day to single person is disallowed as an expense while in this case QFSL has paid professional charges of INR 0.63 lac in cash to A.K. Tiwari & Co. in single day. (Refer serial number 6 of Annexure - 7.10)*
- *In two instances appointment letters were not provided and in two instances ID proof of blue collared employees were not provided. (Refer serial number 1 to 5 of Annexure-7.10)*
- *In the absence of the requested supporting documents, despite of various follow ups made vide email dated 10 February 2018, 03 March 2018, 07 March 2018, 09 March 2018 and 12 March 2018 and violation of provision of section 40A(3)(a) of income tax act, it creates suspicious on the genuineness expenses booked by the Company.*

22.2. In this regard, Noticee Nos. 1,2,3,4 and 6 have submitted that

- *In relation to violation of Income Tax Act, 1961, it is respectfully submitted that the same does not fall within the purview of SEBI and therefore cannot be adjudicated in the present proceedings.*

- *Non-submission of documents, such as appointment letters of employee and ID proof of blue collared employees to the forensic auditor: It is respectfully submitted that the said documents were not sought by the forensic auditor at the relevant time. The forensic auditor is put to strict proof thereof. In any event, no adverse inference should be drawn unless an opportunity is granted to the Company to cross examine the forensic auditor.*

22.3. With respect to the submission of the Noticees that the forensic auditor had not sought as appointment letters of employees and ID proof of blue collared employees, I note that the forensic auditor had sent several emails requesting for appointment letters, and so the submission of the Noticee is not tenable. However, I note from the FAR that out of six instances, in 2 instances both ID and appointment letter were provided and in the others, either ID proof or appointment letters were provided by QFSL. In view of the same, the observations in the FAR are not established.

22.4. With respect to the payment of professional charges of INR 0.63 lac in cash to A.K. Tiwari & Co. in single day, which breaches the limit prescribed by Section 40A(3)(a) Income-tax Act, I am of the view that the same does not necessarily indicate that the payment was not genuine.

23. Debtors amounting to Rs 117.04 lakhs, constituting around 57.25% of sample debtors amounting to Rs 204.44 lakhs outstanding as on March 31, 2016 and debtors amounting to Rs 121.53 lakhs, constituting around 100% of the sample debtors, outstanding as on March 31, 2017, could not be validated, thereby raising concerns of whether such transactions were genuine and indicating that QFSL has created fake debtor accounts/receivables thereby inflating the asset side of its Balance Sheet.

23.1. The above allegation in the SCN is based on the observation of the FAR regarding balance confirmation from receivables, which notes that balance confirmation amounting to Rs. 238.57 lacs from five debtors were not received.

23.2. In this regard, I note that Noticee Nos 1, 2, 3, 4 and 6 have stated that the said allegation is baseless and that the aforesaid debtors are not fake debtors. The Noticees have stated that the Company has not inflated the asset side of its balance sheet.

23.3. I note that while the Noticees have denied that the debtors were fake, they have not provided any evidence in these proceedings that the debtors did, in fact exist. Given the fact that 100% of the sample debtors outstanding as on March 31, 2017 57.25% of sample debtors outstanding as on March 31, 2016, could not be validated, I am inclined to agree with the observation of the FAR that the same indicates that QFSL has created fake debtor accounts/receivables thereby inflating the asset side of its Balance Sheet by showing excess debtors amounting to Rs.2.38 crores.

24. Non-existence of certain debtors viz. Bishnoi Infrastructure Pvt. Ltd, Cozy Infotech Pvt. Ltd and Original Fashion Traders Pvt. Ltd at their given addresses (as provided by QFSL and information available in public domain) along with non-recognition of the said companies by people, in area where the said companies were located, illustrates that QFSL has entered into sham sale transactions, thereby misrepresenting its financials and misusing the funds of its shareholders.

24.1. The aforesaid allegation is based on the observation of the FAR that the forensic auditors were unable to validate the existence of three debtors (Bishnoi Infrastructure Pvt. Ltd., Cozy Infotech Pvt. Ltd. and Original Fashion Traders Private Limited) on site visit of the parties.

24.2. In their replies, Noticee Nos. 1, 2, 3, 4 and 6 have stated that submitted that the Company has not entered into sham transaction with the aforesaid companies. The Noticees have submitted that the said companies have valid registered offices as under:

- Bishnoi Infrastructure Private Limited- 23B, Netaji Subhash Road, 2ND Floor, Room No-223, Kolkata -700 001
- Cozy Infotech Private Limited- 23B, Netaji Subhash Road, 2ND Floor, Room No-223, Kolkata -700 001
- Original Fashion Traders Limited-262, Panchanantala Road, Howrah-711 101

24.3. From the FAR, I note that the addresses where site visits were conducted are as under:

- Bishnoi Infrastructure Pvt. Ltd.-2B Grant Lane, Room No. – 18, Kolkata - 700012
- Cozy Infotech Pvt. Ltd.-2B Grant Lane, Room No. -18, Kolkata - 700012
- Original Fashion Traders Pvt. Ltd.-262, Panchanantala Road, Howrah, WB 711101

24.4. In this regard, I note that the forensic auditors conducted site visit for a total of 5 debtors companies. For two companies (Swal Ltd. and Zigma Fashion Pvt. Ltd.) offices were found at the mentioned address. With respect to the other three, (Bishnoi Infrastructure Pvt. Ltd., Cozy Infotech Pvt. Ltd. and Original Fashion Traders Private Limited), the forensic auditors could not validate the existence of the companies. With respect to Original Fashion Traders Pvt. Ltd., the site visit was made at the registered office of the said company, but the forensic auditors could not identify any sign of business operation in the name of Original Fashion Traders Private Limited. However, I note that the registered office address for Bishnoi infrastructure Pvt. Ltd. changed in 2018/2019 as per the MCA website. The address of and Cozy Infotech Pvt. Ltd. has also changed. I note that the FAR does not mention the date of site visit. Hence, it is possible that an office existed at these addresses, which no longer is operational. In view of the same, I do not agree with the observation in the FAR regarding Bishnoi infrastructure Pvt. Ltd and Cozy Infotech Pvt. Ltd.

25. The fact that one of the creditors of QFSL viz. Wonderland Paper Suppliers Pvt. Ltd, with whom QFSL had carried out high value transactions during the review period, could not be found at the given address (address provided by QFSL and public domain search) and conformation of the security guard regarding non-existence of any such company at the given address, indicates that QFSL had not entered into any genuine business transaction and had only created bogus purchases transactions/creditors.

25.1. In this regard, I note that the aforesaid allegation is based on the observation of the FAR that the address of Wonderland Paper Suppliers Pvt. Ltd. could not be verified on site visit.

- 25.2. In their replies, Noticee Nos. 1, 2, 3, 4 and 6 have stated that the transaction was genuine and the Company had also confirmed the same at the end of the financial year.
- 25.3. In relation to the same, I note that the registered office address Wonderland Paper Suppliers Pvt. Ltd changed in 2018/ 2019 as per the MCA website. I note that the FAR does not mention the date of site visit. Hence, it is possible that an office existed at these addresses, which no longer are operational. In view of the same, the observation in the FAR is not established.
26. QFSL has sold its investments amounting to Rs 9.8 lakhs, in its subsidiaries, without earning any profit margin on the same. The sale was made to some individuals who have been declared as dummy directors, of various companies being controlled and managed by Shri Prakash Kumar Jajodia, in the statement given by him to the Income Tax Department.
- 26.1. In this regard, the Noticee Nos. 1, 2, 3, 4 and 6 have denied the statement of Shri. Prakash Kumar Jajodia, and have stated that they believe that the statement was taken from Shri Prakash Kumar Jajodia by the Income Tax Department with pressure, force and coercion.
- 26.2. I note that the FAR observes that the that purchase was made in FY 2013-14 and sale were made in FY 2014-15 without earning margin. In this regard, I note that the investments seem to have been sold in the space of one financial year. However, the answering Noticees have not provided any explanation for such investment and divestments in one year. In view of the same, even by ignoring the observation that the sale was made to dummy directors, the observation in the FAR that QFSL has sold the investments amounting to Rs 9.8 lakhs in its subsidiaries without earning any profit seems to be reasonable.
27. QFSL failed to submit supporting documents to the forensic auditor, underlying receipt of repayment of funds in cash, advanced by the Company to its subsidiaries, for meeting preliminary expenses by these subsidiaries, raises concern whether the funds so advanced were genuinely utilized by the subsidiary companies for the said purpose. Also, the Company has not disclosed the said receipts in its annual report for the FY 2014-15

27.1. The above allegation is based on the observation in the FAR that QFSL had received cash from 8 companies amounting to INR 1.91 lacs (0.239 lacs from each) on December 16, 2015. The management of QFSL had explained that these were against the advance refund from subsidiaries as amount was paid to them for incorporation of the company i.e. preliminary expenses. However, QFSL did not provided any supporting document to establish that such receipts were against the reimbursement pre-incorporation charges from subsidiaries. Further, these payment was not disclosed in the annual report for FY 2014-15 of QFSL.

27.2. In their replies, the Noticees have reiterated that the funds were utilised by the Company for incorporating its subsidiary companies, and therefore, no misuse of fund has taken place.

27.3. As noted in the FAR, I observe that as per AS-18, related party transactions ought to have been disclosed in the Annual Report. Being subsidiaries of QFSL, these companies were related parties. When coupled with the fact that the Noticees were not able to provide any documents in support of their claim that the funds were in relation to pre-incorporation charges, I agree with the observation misrepresented their financials.

28. The Company has transferred funds amounting to Rs 769.59 lakhs to 7 different parties, within a span of 1-2 days of receipt of funds amounting to Rs 790.66 lakhs to entities, the directors of which were declared as dummy directors by Shri Prakash Kumar Jajodia in his statement to the Income Tax Department. Thus, QFSL is acting as a conduit for facilitation of multiple transactions between entities/individuals including accommodation entries.

28.1. I note that the above allegation in the SCN is based on the observation in the FAR in respect of 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. From a review of 17 samples for receipts amounting to INR 1122.57 lacs and 16 sample for payment amounting to INR 1157.80 lacs it was noted that that 12 bank receipts from seven different parties, amounting to INR 790.66 lacs were

transferred to seven parties, amounting to INR 769.59 lacs, either on the same date or within a gap of one-two days.

28.2. Additionally, it was noted that Directors of these entities with whom such transactions were undertaken were those individuals whose name were declared as Dummy Directors by Prakash Kumar Jajodia in his statement to the Income Tax Department.

28.3. I note that the Noticees have not made any specific submission with regard to this allegation. However, I note from the FAR that despite repeated requests, the Noticees did not provide supporting documents regarding these transactions. In the absence of submissions from the Noticees I am inclined to agree with the observations in the FAR that the aforesaid transactions, i.e., transfer of funds amounting to Rs 769.59 lakhs and receipt of funds amounting to Rs 790.66 lakhs, appear to be accommodation entries.

29. Execution of rent agreement, for utilization of office space by QFSL, between Mrs. Anita Jajodia (wife of Mr. Kishan Kumar Jajodia, non-executive-non-independent director), Mrs. Sabita Jajodia (wife of Mr. Prakash Jajodia, managing director of company) and QFSL on a plain paper and without any rubber stamp indicates that no valid rental agreement was entered into between these parties, thereby raising concerns over the genuineness of office rental expense of Rs 18,000 p.a incurred by the Company for FY 2015-16 and FY 2016-17.

29.1. The above allegation in the SCN is based on the observation in the FAR that the expenditures shown in the ledger of QFSL for FY 2015-16 and FY 2016-17 were not genuine. In this regard, the Noticee Nos. 1, 2, 3, 4 and 6 have simply stated that the Rental Agreement was genuine.

30. I note from the observations made in the FAR that the rent agreement was made between the Company and Mrs. Anita Jajodia (wife of Mr. Kishan Kumar Jajodia, non-executive-non-independent director) along with Mrs. Sabita Jajodia (wife of Mr. Prakash Jajodia, managing director of company). The Noticee has not submitted any other documents before me to show that the rent agreement was genuine (like bank statements showing rent payment). The agreement does not even stipulate the term for which the premises were rented. The agreement is not registered, even though the Agreement is

dated February 26, 2016 and the company was occupying the same premises during the forensic audit which was conducted in September 2019. Normally, agreements for lease of immovable property for a term exceeding one year have to be registered as per the Registration Act, 1908. Even under Section 107 of the Transfer of Property Act, 1882 a lease of immovable property for any term exceeding one year can be made only by a registered instrument. Hence I agree with the finding of the FAR regarding the genuineness of office rental expense.

31. Non-incurrence of expenses by QFSL towards water, staff welfare, and conveyance expenses, during the forensic audit period, indicates that the Company was not carrying out any business transaction and was merely a shell company because any business organization, during its course of business would incur basic expenses such as water charges, staff welfare and conveyance expenses.

31.1. In this regard, the Noticee Nos. 1, 2, 3, 4 and 6 have submitted that the Company has incurred transportation expenses which is shown under the head of travelling and conveyance. The Company has not incurred any water expenses as it is freely available in the building.

31.2. I note that, the SCN has failed to make out a case as to how not incurring certain expenses like water, staff welfare and transportation, leads to misrepresentation in the books of accounts or violation of LODR Regulations. Thus, I do not find any merit in the aforesaid allegation of the SCN.

32. Payment of salary expenses, amounting to Rs 2.8 lakhs, in cash by the company to its employees for the FY 2016-17, raises concerns over the genuineness of such payments. The fact that QFSL has not incurred any capital expenditure during the forensic audit raises concerns over its claim that it is engaged into other business activities of asset management, projects and embroidery.

32.1. With regard to payments of salary in cash, I note that the Noticee Nos. 1, 2, 3, 4 and 6 have stated that certain employees had requested to pay salary in cash only, as the amount was not huge. However, it is noted in the FAR that during the discussion of the forensic auditors with Prakash Kumar Jajodia and Kishan Kumar Jajodia, it was stated

that all salary payments were made by cheque except for the payments to office assistant. I note that as per the FAR the total salary expenses were 5.52 lacs out of which payment of INR 2.80 lacs were made in cash. It has also been stated that the Company had 3-5 employees. In view of the same, it is unlikely that more than half of the total salary paid, was paid to an office attendant. In view of the same, the submissions of the Noticees before me seem to be an afterthought. In view of the same, I agree with the observation in the FAR that these cash salary payments do not appear to be genuine.

32.2. With respect to the fact that capital expenditure was not incurred by the Company during the forensic audit, the aforementioned Noticees have stated that the fact that the Company has not incurred any capital expenditure during the forensic audit period does not mean that it is not engaged into other business activities of asset management, projects and embroidery. I am inclined to agree with the submission of the Noticees. Non- incurrence of capital expenditure during the audit period would not lead to any adverse inference as such.

33. No supporting documents, were provided by QFSL to the forensic auditor, with respect to business promotion expense, travelling expense and interest amount written off amounting to Rs 12.15 lakhs and losses on sale of assets, car and investments amounting to Rs 11.45 lakhs, Rs 0.77 lakhs and Rs 14.85 lakhs, respectively. This indicates that QFSL has misused funds of its shareholders by diverting funds in the name of expenses/losses incurred in the course of its business activities.

33.1. The above allegation is based on the finding of the FAR that adequate supporting documents were not provided by QFSL for various expenses as mentioned above, despite repeated requests and follow up.

33.2. In this regard, the Noticee Nos. 1, 2, 3, 4 and 6 have submitted that for travelling expenses, the amount was paid through vouchers. The Interest amount was written off by the decision of the Directors. No fund was misused. All the transactions were genuine transactions.

33.3. I note that while the aforementioned Noticees have stated that these expenses were genuine, they have not submitted any documents supporting their claim, either before me or to the forensic auditors. Being a listed company, QFSL ought to have maintained proper documents regarding its expenses. Since it has not done the same, I am of the view that QFSL misrepresented its financials regarding business promotion expense, travelling expense, interest amount written off and losses on sale of assets, car and investments amounts.

34. QFSL has sold its existing 10 subsidiaries named "Campbell group" at purchase price on March 31, 2017. Out of these 10 subsidiaries, 9 subsidiaries were sold to 2 entities (Bishnoi Infrastructure Private Limited and Cozy Infotech Private Limited) which are non-existent. Further, the sale proceeds for the said transaction was not received by QFSL till December 31, 2017. One of those ten entities of Campbell group, named Campbell Homes Ltd, was sold to Kamal Kumar Agarwal HUF for a consideration of Rs 5 lakhs, of which only Rs 1.5 lakhs was realised by QFSL till December 31, 2017. However, no efforts were made by QFSL for recovery of balance dues of Rs 3.5 lakhs.

34.1. In this regard, the Noticee Nos. 1, 2, 3, 4 and 6 have stated that Bishnoi Infrastructure Private Limited and Cozy Infotech Private Limited (the buyer companies), are existent as per the Master Data available on the website of the Ministry of Corporate Affairs.

34.2. From the FAR, I note that the forensic auditors could not validate the existence of Bishnoi infrastructure Pvt. Ltd. and Cozy Infotech Pvt. Ltd. on site visit. However, as noted above in para 24, the registered office address for Bishnoi infrastructure Pvt. Ltd. and Cozy Infotech Pvt. Ltd. changed in 2019 as per the MCA website. Hence, it is possible that an office existed at these addresses, which no longer are operational. Therefore, I do not agree with the observations of the FAR on this count. However, no explanation has been furnished by the answering Noticees regarding the observations in the FAR that only an amount of Rs. 1.5 lakh was received by QFSL till December 31, 2017 out of the total proceeds of Rs. 50 lakhs. Therefore, I agree with the observations made in the FAR in this regard.

34.3. It is noted from the FAR that the entire sale proceeds were not received till December 2017. While the Noticees have stated before me that the accounts were settled, once

again they have not provided any documents to show that payments were received. In view of the same, the submission of the answering Noticees cannot be accepted.

35. Sale of its four subsidiaries (QFSL Gem & Jewelleries Ltd, QFSL Paper Ltd, QFSL Properties Ltd and QFSL Textile Ltd) by QFSL having investment value of Rs.20 lakhs, at a nominal profit of just Rs.40,000 and the transfer of the sale proceeds on the same day of receipt of such funds to another entity i.e. Ashirwad Suppliers Pvt Ltd, indicates that QFSL did not employ due diligence while disposing of its investments in its various subsidiaries as the shares were sold either at cost or at very less profit thereby not generating any wealth to its shareholders.

35.1. In this regard, the Noticee Nos. 1, 2, 3, 4 and 6 have stated that the said subsidiaries had to be sold given that there were no profits. I note that the FAR does not bring out any further details on whether these subsidiaries were profit-making or not. I also note that the selling of these subsidiaries may be a commercial decision. In view of the same, hence the observation in the FAR is not established.

36. QFSL has diverted funds in the name of investments and not acted in the best interest of its shareholders:

- QFSL has shown investments amounting to Rs 1,740.89 lakhs (comprising 85% of total investments made by QFSL) as on March 31, 2017, in unlisted companies including Risorgimento Industrial co Ltd, Fastner Machinery Dealers Pvt Ltd and Jaguar Infra Developers Pvt Ltd.
- QFSL's name is not reflected as a shareholder/investor in the MGT-7 list filed by the above-mentioned companies.

36.1. The above mentioned allegations in the SCN are based on the observations of the FAR that QFSL had made investments, *inter alia*, in the following companies

SN	Name of Company in which investment made by QFSL	Value of Investment (In Lacs)
1	Risorgimento Industrial co Ltd	1,372.74
2	Fastner Machinery Dealers Pvt Ltd	191.10
3	Jaguar Infra Developers Pvt Ltd	177.05

36.2. The FAR notes that on extracting the MCA records (MGT-7 list of shareholders) on sample basis filled by investee entities (Risorgimento Industrial co Ltd, Fastner Machinery Dealers Pvt Ltd and Jaguar Infra Developers Pvt Ltd), it was observed that QFSL's name did not appear in the shareholder list filled by Risorgimento Industrial co Ltd and Jaguar Infra Developers Pvt Ltd.

36.3. Further, there was a difference of 2970 shares in number of shares shown by QFSL in their books of accounts and the number of shares filed by Fastner Machinery Dealers Pvt Ltd., amounting to a difference of Rs. 14,85,000.

36.4. Noticee Nos.1, 2, 3, 4 and 6 have not made any specific submissions regarding the above allegation. I note that the absence of the name of QFSL in the list of shareholders of Risorgimento Industrial co Ltd and Jaguar Infra Developers Pvt Ltd., alongwith the overstatement of investment in Fastner Machinery Dealers Pvt Ltd as noted above, shows that the financials of QFSL were misrepresented by Rs.17.4 crores.

37. QFSL, by not reporting its inventories, (investment in shares amounting to Rs 4,283.56 lakhs as on March 31, 2017) at lower of cost price or net realisable value, in its financial statements, has overstated its inventories by Rs 1,381.35 lakhs, thereby inflating and window dressing its balance sheet.

37.1. In this regard, the answering Noticees have stated that the inventories were taken at cost, as the management felt that it will realise the amount of investment at the time of disposing.

37.2. The above allegation in the SCN is based on the following observations in the FAR:

- *Basis review of books of account as on 31 March 2017, we noted QFSL have made investment in 19 entities shares amounting to INR 4283.56 lakh and these shares were shown by QFSL in their financials statement as inventories.*
- *On the review of inventories details, we noted that QFSL have shown all shares at cost price, however the market value or net realisable per share is less than the book value, due to which inventories value was overstated by INR 1381.35 lacs. The details are as mentioned in the table below.*

- *Further, as per Accounting Standard - 2, a company have to value their inventories at cost or net realisable value, whichever is lower. However, QFSL have not made provision against the reduction in value of shares.*

...

- *Furthermore, based on public domain search, we noted:*
 - *Companies viz. Appu Marketing & Manufacturing Ltd and Dwitiya Trading Ltd, Kwaliti Credit & Leasing Ltd Tuni Textile Mills Ltd form a part of the list of 331 suspected shell company.*
 - *Trading in securities of Blueprint Securities Ltd was suspended from Calcutta stock exchange (Refer Exhibits-8.5 for screenshot of Calcutta Stock Exchange) Trading in securities of Associated Ceramics Ltd is suspended from stock exchange (BSE Limited) due to penal reasons as on date. Trading in securities of Unno Industries Limited is suspended from stock exchange (BSE Limited) due to surveillance and penal reasons as on date*
 - *Further, share of Midland Polymers Limited, Rajlaxmi Industries Ltd and Shree Shaleen Textiles Limited are suspended due to surveillance measure as on date.*
 - *Furthermore, we did not find Autumn Builders Ltd listed on any stock exchange.*

37.3. I note that Accounting Standard 2 (AS-2), which deals with the valuation of inventories, defines 'inventories' as:

3.1 Inventories are assets: (a) held for sale in the ordinary course of business; (b) in the process of production for such sale; or (c) in the form of materials or supplies to be consumed in the production process or in the rendering of services.

AS-2 further defines 'net realisable value' as:

3.2 Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

AS-2 also states that *Inventories should be valued at the lower of cost and net realisable value.*

37.4. I note that the FAR has observed QFSL had made investment in shares of 19 entities and these shares were shown by QFSL in their financials statement as inventories. While some companies had been suspended on exchanges, some others were part of the list of 331 suspected shell companies. The value of such shares had reduced significantly. However, instead of being valued in accordance with AS-2, the inventory

was shown at cost price, even though the value of such shares had fallen. As noted above, the net realisable value is the estimated selling price minus costs. Hence, the fact that the price of these shares had fallen meant that the net realisable value had fallen. In view of the same, QFSL should have accounted for these shares at the lower value. Since this was not done, I agree that its balance sheet was inflated by Rs 1,381.35 lakhs on this account. I also agree that the fact that QFSL invested in several such companies shows that it had not exercised adequate due diligence.

38. 41 other companies including companies that are related to QFSL and one company i.e. Jaisukh Dealers Limited (one of the suspected shell companies) also operating from the same registered office address as that of QFSL raises concerns on whether the operations of the Company were genuine.

38.1. I note that the Noticees have not made any specific submission regarding the aforesaid allegation. However, there seems to be no express bar on companies having a similar address. However, some regulated entities have to fulfil requirement of certain minimum infrastructure. The FAR has not brought out any details to show that there was a breach of any such requirements or that there was not adequate space at the premises. The FAR also does not make any further observations regarding the same. In view of the same the observation in this regard in the FAR is not established.

39. From the discussion in paras 16 to 38 above, I find that QFSL:

- Misrepresented financials on account of receipts from disposal of investments (sale of shares)
- Failed to take adequate efforts to realize funds from its debtors.
- Failed to exercise diligence in utilizing shareholder's funds
- Misrepresented financials on account of payments for purchases from OFTL and SNTC
- Misrepresented financials on account of sale of assets
- Failed to disclose related parties
- Misrepresented financials by inflating their balance sheet
- Sold investments in subsidiaries without any profit

- Misrepresented financials an account of advances made to subsidiaries for pre-incorporation charges.
- Misrepresented financials by making accommodation entries.
- Misrepresented financials by showing office rental expenses that were not genuine.
- Did not incur basic expenses which indicates that it was a shell company
- Misrepresented financials by showing cash payment of salaries.
- Misrepresented financials by showing incorrect expenses.
- Misrepresented financials by showing inflated investments and inventories.

40. I note that the SCN *inter alia* alleges that QFSL has violated Regulation 4(1)(a),(b),(c),(e),(g), 4(2)(f)(ii)(1),(6)(7), 4(2)(f)(iii)(3),(6)(12), Regulation 33(2)(a), Regulation 48 and Regulation 17(8) read with Part B of Schedule II of the LODR Regulations. From the discussions above, I find that since the financial statements of QFSL pertaining to the investigation period were not as per the Accounting Standard as discussed in the previous paras, therefore the Company has violated Regulation 48 of LODR Regulations, which mandates that the listed entity shall comply with all the applicable and notified Accounting Standards from time to time. Regarding the violations of Regulation 4, I note that Regulation 4 of LODR Regulations, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provides that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

- (a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.
- (b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
- (c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

- (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.
- (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.

41. As discussed in para above, I find that the Company has failed to comply with Regulation 48 of the LODR Regulations. Further, its disclosures were not in accordance with the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, QFSL is also in violation of Regulation 4(1)(a), (b), (c), (e) and (g) of the LODR Regulations. Regarding the violations of Regulation 4(2)(f)(ii) (1), (6) and (7) and 4(2)(f)(iii) (3), (6) and (12) of the LODR Regulations, 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 QFSL cannot be said to be in violations of Regulation 4(2)(f)(ii) (1), (6) and (7) and 4(2)(f)(iii) (3), (6) and (12) of the LODR Regulations which pertain to obligations of the board of directors. 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 be in violation of Regulation 17(8) of LODR Regulations. I also note that Regulation 33(2)(a) provides that a listed company shall authenticate its financial results by approval of the Board of Directors. While placing the financial results before the board of directors, the CFO and CEO of the listed entity have to 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. However, since the financial results were not accurate, QFSL has violated Regulation 33(2)(a). Further, since one of the condition which every

issuer company, whose securities are listed on a recognised stock exchange, is required to comply with is compliance with LODR Regulations, and in the present case, QFSL has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, the Company is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

B. Non furnishing of information/Non-cooperation by the Company

42.The SCN alleges that QFSL failed to co-operate and furnish following information/supporting documents to the forensic auditor:

- i. Facility agreement, sanction letter, disbursement memo, collateral/security etc. with regard to the loans and advances made by the Company;
- ii. Share certificate, share transfer form, valuation report, due diligence report, etc. with regard to purchase/sale of shares made by the Company;
- iii. Agreements, order copy, proof of delivery such as lorry receipts, octroi receipts with respect to receipts from the garments sold by it;
- iv. QFSL's ledger account with the stock broker/demat account statement;
- v. Appointment letters of employee and ID proof of blue collared employees
- vi. Explaining discrepancies between the list of inventory of shares held by the Company and the one provided by depository;
- vii. Underlying receipt of repayment of funds in cash, advanced by the Company to its subsidiaries for meeting preliminary expenses by these subsidiaries;
- viii. Non-submission of adequate supporting documents underlying receivables and payables of the Company.
- ix. Business promotion expense, travelling expense, interest written off, losses on sale of assets, car and investments; and
- x. Documents with respect to repayment of loans advanced by QFSL.
- xi. Prakash Kumar Jajodia was asked to submit fresh affidavit to SEBI but he failed to provide the same.

42.1. I note that the Noticees have stated that they have cooperated in the forensic audit and have provided all the documents sought. However, I note from the FAR that several documents sought by the forensic auditor were not provided to him, which

has hindered the audit process. Even before me the Noticees have reiterated that they maintained proper records, but did not produce documents including IDs/ appointment letters of employees, details of account settlement in case of receivables, travel vouchers and so on. Further, the Company failed to provide any explanation regarding discrepancies the number of shares held by QFSL of other companies. I am of the view that the Company did not provide information sought from it.

42.2. 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 QFSL vide SEBI order dated November 21, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. I note that QFSL failed to furnish information sought by the forensic auditor and thereby violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

C. Other Violations of LODR Regulations:

43. The Company failed to provide to the forensic auditor its policy pertaining to framework for insider trading as per Regulation 4(2)(c)(iv) of LODR Regulations.

43.1. In this regard, it is noted that Regulation 4(2) of LODR Regulations requires a listed entity to comply with the corporate governance provisions. As per sub-regulation (c)(iv) of the same, the listed entity has to devise a framework to avoid insider trading and abusive self-dealing etc.

43.2. From the FAR, I note that management of QFSL failed to provide forensic auditor policy pertaining to framework for insider trading as per Regulation 4(2)(c)(iv). In its reply, the Noticee Nos.1, 2, 3, 4 and 6 have stated that the Company has not violated any norms of Insider Trading. I note that the allegation in the SCN is not that the Company has violated any norms pertaining to insider trading rather the allegation is that the Company

did not provide the policy pertaining to framework of insider trading as per Regulation 4(2)(c)(iv) of the LODR Regulations. I find that the answering Noticees have not responded to this allegation. In view of the same, I find that the allegation made in the FAR is correct.

44. The Company failed to provide to the forensic auditor documents with respect to process and procedure pertaining to the 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 as per Regulation 4(2)(f)(ii)(1) of the LODR Regulations.

44.1. I note that Regulation 4(2)(f)(ii)(1) of the LODR Regulations states that the directors of a listed company shall have the responsibility to review and guide 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. I note that QFSL was unable to provide any documents to the forensic auditor to show that such reviews were undertaken or guidance was provided by the board of directors. QFSL has also not submitted such documents in the proceedings before me. In view of the same, I agree with the observations of the FAR that QFSL failed to provide documents.

45. The Company failed to comply with policy for preservation of documents, as per Regulation 9 of LODR Regulations.

45.1. I note that as per Regulation 9 of LODR Regulations, a listed entity has to have a policy for preservation of documents. However, I observe from the FAR that QFSL did not have any policy for preservation of documents, as identified by the forensic auditor from the management discussions. I note that the Noticee has not denied the same even before me. In view of the same, I find that the Noticee violated Regulation 9 of LODR Regulations.

D. Violations of PFUTP Regulations, 2003:

46. The SCN also alleges of violation of provisions of PFUTP Regulations, 2003 and Section 12A(a), (b) and (c) of the SEBI Act, 1992.

46.1. In this regard, I note that the scope of work, as was assigned to the forensic auditor by BSE, as stated in the FAR, was as follows:

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

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

- a. Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company*
- b. To examine the books of accounts and backup records of the Company for the period of 2 years including the year of transactions referred in SEBI / Exchange Order to:*
 - i. Cash flow analysis to trace source of funds and end use of funds on sample basis (as per annual report for last 2 years).*
 - ii. Assess genuineness of the debtors/ receivables and creditors / payables.*
 - iii. Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors).*
 - iv. Analysis of related party transactions.*
 - v. High value bank transactions to ascertain their relevance to the business of the company and to identify the potential round-tripping of funds or accommodation transactions.*

- vi. Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers.*
 - vii. Investments, if any, made by the company in subsidiary companies along with the relevant fund flows.*
 - viii. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds.*
 - ix. Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act.*
 - x. Comment on the shareholding pattern.*
 - xi. Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds).*
- c. Verification / discussions:*
- I. Independent and /or physical verification of the underlying transactions.*
 - II. Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the Company.*
 - III. Discussions with key stakeholders like promoters/ senior management/ HODs, 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's functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants / factories*

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

46.3. 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) and (d), 4(1) and 4(2)(f) and (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.

46.4. 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.

46.5. 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.”

46.6. 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 the Company. 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.

47. I find that, based on the defaults by QFSL as discussed in the previous paras, the SCN has *inter alia* alleged that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee No. 2 to 7, who were the directors/ CFO of the Company at the relevant time, including independent directors are also liable for the violations alleged to be committed by QFSL viz: Sections 12A(a),(b) and (c) , 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of the PFUTP Regulation, 2003, Regulations 4(1)(a), (b), (c), (e), (g), 4(2) (f)(ii)(1),(6),(7), 4(2)(f)(iii)(3), (6) and (12), 4(2)(c)(iv), 9, 33(2)(a) and 48 of LODR Regulations read with Section 21 of SCRA, 1956. Thus, the SCN imputes all the allegations which are levelled against QFSL, automatically, on the directors/ CFO of QFSL.
48. In this regard, I note that during the relevant period (i.e. investigation period), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the Company where the 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 does not create any vicarious liability of Noticee Nos. 2-7 for the alleged violations committed by QFSL during the investigation period, with reference to PFUTP Regulation, 2003 or LODR Regulations for which proceedings under Sections 11, 11(4), 11A, 11B(1) and Section 12A(1) of SCRA, 1956 or monetary penalty proposed, which are civil in nature.
49. Now, the question remains whether Noticee Nos. 2- 7 can be held independently liable for the violations as alleged in SCN without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that, with reference to the allegations of violation of fraud provisions, i.e. Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c), (d) Regulations 4(1) and 4(2) (f) and (r) of PFUTP Regulations, 2003 against these Noticees, as already discussed in the forgoing paras, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors/ CFO *qua* these violations may also be examined by SEBI. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, the allegations of

violation of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable against the Noticee Nos. 2 to 7.

50. SCN also alleges violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 by the Noticee No. 2 to 7. The said violations have been alleged in view of the non-furnishing of information by QFSL to the forensic auditor. In this regard, I note that information was sought by the forensic auditor from QFSL and not from these directors or CFO in their capacity of the director/CFO of QFSL. In view of the inapplicability of Section 27 of SEBI Act, 1992, Noticee No. 2 to 7, being directors and Noticee No. 5 also being CFO, cannot be held liable for violation of Section 11(2)(i) and 11(2) (ia) of SEBI Act, 1992, as alleged in the SCN. Further, Section 21 of SCRA and 4(1)(a),(b),(c),(e),(g), 4(2)(c)(iv), 9 and 48 of LODR Regulations, which deal with non-compliance with listing conditions is applicable to a listed entity and thus, cannot be invoked against the Noticee Nos. 2 to 7.
51. With respect to violation of the other provisions of LODR Regulations invoked against Noticee Nos. 2 to 7 in the SCN 1, I note that Regulations 4(2)(f)(ii) (1),(6), (7) and 4(2)(f)(iii) (3), (6) and (12) and 33 of LODR Regulations create specific and direct liability of the board of directors of a listed entity. 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. 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, is fastened on the board of directors of the listed entity. As the Company has been found to be in violation of Regulation 4(1)(a), (b), (c), (e) and (g) of LODR Regulations, therefore, board of directors of QFSL, i.e, Noticee nos. 2 to 7 are in violation of 4(2)(f)(ii) (1),(6), (7) and 4(2)(f)(iii) (3), (6) and (12) and 33(2)(a) of LODR Regulations, as alleged in the SCN.
52. I note that during the investigation period, Noticee nos. 2, 3, 4, 6 and 7 were directors of the Company and Noticee no.5 was its Chief Financial Officer (CFO) as well as a director. It is observed that as per the Annual Reports of QFSL, the details of the Board of Directors during the investigation period are as follows:

FY 2015-16

Name	Designation
Prakash Kumar Jajodia	Managing Director
Kishan Kumar Jajodia	Non-Executive-Non-Independent
Amit Jajodia	Non-Executive-Non- Independent
Rabindra Kumar Hisaria (CFO)	Non-Executive-Non-Independent
Bijay Kumar Agarwal	Non-Executive-Independent-Chairperson
Jyoti Lohia	Non-Executive-Independent

FY 2016-17

Name	Designation
Prakash Kumar Jajodia	Managing Director
Kishan Kumar Jajodia	Non-Executive-Non-Independent
Amit Jajodia	Non-Executive-Non- Independent
Rabindra Kumar Hisaria (CFO)	Executive-Non-Independent
Bijay Kumar Agarwal	Non-Executive-Independent-Chairperson
Jyoti Lohia	Non-Executive-Independent

FY 2017-18

Name	Designation
Prakash Kumar Jajodia	Managing Director
Kishan Kumar Jajodia	Non-Executive-Non-Independent
Amit Jajodia	Non-Executive-Non- Independent
Rabindra Kumar Hisaria (CFO)	Non-Executive-Non-Independent
Bijay Kumar Agarwal	Non-Executive-Independent-Chairperson
Jyoti Lohia	Non-Executive-Independent

53. The Noticees nos. 3 (Kishan Kumar Jajodia), 4 (Amit Jajodia) and 6 (Bijay Kumar Agarwal) have stated that they were not in charge of the day to day affairs of the Company and were additional/ independent/ non-executive directors. I note that Regulations 4(2)(f) and Regulation 33 creates specific duty on the whole board of directors without making any distinction on the basis of designation of the directors, viz: independent/ non-executive/ additional directors. Further, it is true that non-executive directors (NED) and independent

directors (ID) cannot be held liable for those acts that form part of day to day activities. However, these directors can be held liable for those acts which come to their knowledge. In the present case, the main allegation is misrepresentation of financials. In terms of LODR, the financials are approved by the board of directors. Therefore the contention of NED and ID to the effect that they cannot be held liable as they were not involved in the day to day functions, is not tenable. Moreover, the following are the details of noticee directors who were members of Audit Committee and the meetings attended by them during the investigation period:

Name of directors	Category	2017-18		2016-17		2015-16	
		Held	Attended	Held	Attended	Held	Attended
Mr. Bijay Kumar Agarwal	Chairperson-Non-Executive-Independent	4	4	5	5	5	5
Mr. Rabindra Kumar Hisaria	Non-Executive-Non Independent	4	4	5	5	5	5
Mrs. Jyoti Lohia	Non-Executive-Independent	4	4	5	5	5	5

54. In this regard Section 177 (4) of the Companies Act, 2013 lays down as follows:

“Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include, -

- (i)
- (ii) examination of the financial statement and the auditors’ report thereon;
- (iii) approval or any subsequent modification of transactions of the company with related parties;
- (iv) scrutiny of inter-corporate loans and investments;
- (v) valuation of undertakings or assets of the company, wherever it is necessary;
- (vi) evaluation of internal financial controls and risk management systems;
- (vii)

55. 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 financials of QFSL were placed before the Audit Committee of QFSL during the investigation period were inaccurate and inadequate. In terms of Section 177 of the Companies Act, 2013 and Part C of Schedule II read with Regulation 18(3) of LODR Regulations, it was the duty of the Audit Committee of QFSL to examine the financials, scrutinize inter corporate loans and investments and related party transactions etc. For the instances of misstatement and noncompliance with accounting standards in the financials of QFSL pertaining to the investigation period, the Audit Committee was required to act in accordance with its terms of reference, as enlisted in Section 176 of the Companies Act, 2013. I note that Noticee nos. 6 and 7, who were independent directors of QFSL, were part of the audit committee of the Company. They reviewed and approved the financial statements of QFSL, as part of the board of directors of the Company. In view of the same, I find that failure to raise any concern regarding the financials of QFSL, as members of the audit committee as well as the board of directors of QFSL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations.

56. I observe that in the previous paras, it has been found that the financial statements of QFSL for the investigation period contained misstatements and the same were not in line with the applicable accounting standards. I note that in terms of Regulation 33(2)(a) of LODR Regulations, the annual audited financial results are to be approved by the board of directors of the listed entity. As the financial of QFSL were misrepresented, as discussed above, therefore, Noticee No. 2 (Prakash Kumar Jajodia, MD) along with Noticee No.5 (Rabindra Kumar Hisaria) as the CFO, who certified the financial results of QFSL for the financial years 2015-16, 2016-17 and 2017-18 are in violation of Regulation 33(2)(a) of LODR Regulations. Further, the directors of QFSL, did not exercise due diligence in approving the financials of QFSL. I also note from the Annual reports that

Noticee No. 3 (Kishan Kumar Jajodia), Noticee No. 2 (Prakash Kumar Jajodia) and Noticee No. 4 (Amit Jajodia), Directors of the Company are related to each other. Noticee No. 3 (Kishan Kumar Jajodia) and Noticee No. 6 (Bijay Kumar Agarwal- Chairperson) have also signed the Annual Reports.

57. Pritha Bag Vs. SEBI (order dated February 14, 2019 in SAT Appeal No. 291 of 2017) has been cited by the answering Noticees to contend that only the person who is "officer in default" is liable for the acts of company. In this regard, it is noted that "officer in default" is responsible for only those acts of company regarding which liability has been fastened on "officer in default" by the provisions of the Companies Act, 1956/2013. Thus, in the case of Pritha Bag, Hon'ble SAT held that liability under Section 73 under the Companies Act, 1956 is not on all the directors of company but is only on those directors of company who are "officer in default". In the present case, liability of the Noticees has to be determined in the context of violation of the provisions of the securities laws as alleged in the SCN. In such case, the concept of "officer in default" has no application and therefore, the reliance placed by the Noticees on the order passed by Hon'ble SAT in Pritha Bag case is misplaced. Similarly, the Noticee has also relied on certain other orders of the Hon'ble SAT, like *Souman Chatterjee. v. SEBI* (Order dated 07.01.2021 in Appeal No. 27 of 2020), *Pravin N. Gala v. SEBI* (Order dated 10.10.2019 in Appeal No. 363 of 2018), *P.G. Electroplast Ltd. v. SEBI* (Order dated 02.08.2019 in Appeal No. 281 of 2017) and *Dr. Venkadasamy Venkataramanujan Vs SEBI* (Order dated 07.02.2020 in Appeal No. 254 of 2019), however, these matters do not pertain to violations of the LODR. As noted above, I note that Regulations 4(2)(f) and Regulation 33(2)(a) creates specific duty on the board of directors without making any distinction with independent/ additional/ non-executive directors.
58. In view of the same, I am of the view that the Noticee Nos.2-7 cannot deny responsibility in the matter, and hence I find that they have violated Regulations 4(2)(f)(ii) (1),(6),(7), 4(2)(f)(iii) (3), (6) and (12) of LODR Regulations.
59. With respect to the violation of Regulation 17(8), the answering Noticees have stated that QFSL was listed on the SME Exchange, and hence was exempted from compliance of the said requirements in terms of Regulation 15(2) of the LODR Regulations. In light of the submission of the answering Noticees, BSE was requested to clarify whether QFSL

was listed on the SME segment of the exchange, during the period April 01, 2015 to December 31, 2017 (*i.e.* the investigation period). In its reply, BSE stated that QFSL was not listed on SME segment of the exchange, during the said period. I note that Regulation 17(8) of the LODR Regulations provides that the CEO and CFO of a listed company shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II of the said Regulations. As per the Annual Reports of the Company for the investigation period, the Company does not have a Chief Executive Officer, and the MD and CFO of the Company gave annual certification in terms of Part B of Schedule II of the LODR Regulations. Having issued untrue certificates with respect to the financial statements of the Company, Noticee No. 2 (Prakash Jajodia- MD) and Noticee no. 5 (Rabindra Kumar Hisaria- CFO) have also violated Regulation 17(8) read with Part B of Schedule II of LODR Regulations.

60. I note that Noticee No. 8, being the statutory auditor of QFSL during investigation period, have also been issued a separate show cause notice *i.e.* SCN 2, alleging that the statutory auditor has been negligent in performance of its duties and has not been diligent in issuance of unqualified audit opinion for QFSL for the FY 2015-16, 2016-17 and 2017-18, thereby, violating provisions of Section 12A (a) (b) and (c), 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b) (c), (d) and 4(1) and 4(2), (a), (e), (f) and (r) of the SEBI (PFUTP) Regulations, 2003. In this regard, before dealing with the liability of the statutory auditor, it would be appropriate to refer to the judgment of Hon'ble Bombay High Court in Writ Petition No. 5249 of 2010 (filed by Price Waterhouse, Bangalore) and Writ Petition No. 5256 of 2010 (filed by 10 CA firms alongwith their partners), dated August 13, 2010, wherein Hon'ble Bombay High Court, with respect to SEBI's jurisdiction over auditors has held as follows:

“25.

.... In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if

any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market. So far as the role of Auditors is concerned, it is a very important role under the Companies Act. As posited in Section 227 of the Companies Act, every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the Company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the Company such information and explanations as the auditor may think necessary for the performance of his duties. The auditors in the Company are functioning as statutory auditors. They have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company.

.....

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

such a public listed Company. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market.”

61. 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 2, as issued to Noticee No. 8 only alleges that the statutory auditor was not diligent enough in the issuance of an unqualified audit opinion for the financial statements of QFSL. The SCN 2 does not allege that the statutory auditor was in connivance with the promoters/ directors / management of QFSL to fudge the financial statements of QFSL. 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 No. 1 to 7. Therefore, in view of the judgment of the Hon’ble Bombay High Court in PWC matter (supra) and allegation made in SCN 2 against Noticee No. 8, are not made out.
62. In view of the aforesaid violations committed by QFSL and its directors/CFO, I find that directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued.
63. 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.....”

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

64. 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 QFSL is in violation of listing conditions, however, QFSL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. I find that penalty under Section 23H of SCRA, 1956 is also not attracted in the case of Noticee No. 2 to 8, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognized 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 QFSL, 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. QFSL 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.

65. I find that for non-furnishing of information to forensic auditor, as found above, QFSL 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, QFSL 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 QFSL, as found in this order, penalty under Section 15HB is attracted against QFSL. Similarly, Noticee No. 2 to 7 who are the directors/CFO of QFSL 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.

66. 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.”

67. I find that allegations made in the SCN 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 the Company. However, I note that the violations have occurred over a period of three financial years. I also note that Noticee No. 6 and 7 were the independent directors of QFSL for FY 2015-16, 2016-17 and 2017-18, and Noticee No. 5 was the Chief Financial Officer of the Company.

Directions and monetary penalties:

68. 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 Nos.1 (QFSL), 2 (Prakash Jajodia) and 5 (Rabindra Kumar Hisaria), 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 Nos. 3 (Kishan Kumar Jajodia), 4 (Amit Jajodia), 6 (Bijay Kumar Agarwal) and 7 (Jyoti Lohia) 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
Noticee No. 1	Quest Financial Services Limited	Section 23H of SCRA, Section 15HB and Section 15A(a) of SEBI Act, 1992	Rs. 30,00,000/- (Rupees Thirty Lakh) and Rs.10,00,000/- (Rupees Ten Lakh)
Noticee No. 2	Mr. Prakash Kumar Jajodia	Section 15HB of SEBI Act, 1992	Rs. 15,00,000/- (Rupees Fifteen Lakh)
Noticee No. 3	Mr. Kishan Kumar Jajodia	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)

Noticee No. 4	Mr. Amit Jajodia	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)
Noticee No. 5	Mr. Rabindra Kumar Hisaria	Section 15HB of SEBI Act, 1992	Rs. 9,00,000/- (Rupees Nine Lakh)
Noticee No. 6	Mr Bijay Kumar Agarwal	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)
Noticee No. 7	Mrs Jyoti Lohia	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)

(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 60-61.

69. The obligation of the Noticees, restrained/ prohibited by paragraphs 68(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.

70. This Order comes into force with immediate effect.

71. 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.

72. 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.

Date: March 21, 2022

Place: Mumbai

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