National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53672	Date: September 13, 2022,
Circular Ref. No: 126/2022	

To All NSE Members,

Sub: Final Order in the matter of Ms. Newever Trade Wings Limited

SEBI vide its Order No. WTM/AB/IVD/ID19/19360/2022-23 dated September 13, 2022, has hereby restrained below entities 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 mentioned below, from the date of coming into force of this order;

Sr no.	Name of Entity	PAN	Period
1	Newever Trade Wings Limited	AADCN9668B	1 year
2	Mr. Akash Kumar	AVVPK1025F	1 year
3	Mr. Vikrant Kayan	AFJPK8437M	1 year
4	Mr. Bhaskar Paul	AXTPP1047Q	6 months
5	Mr. Vikash Dubey	APCPD7488N	6 months
6	Ms. Girija Banerjee	AJWPB1941Q	6 months
7	Mr. Debjit Banerjee	AKJPB5444L	3 months

Further, all open positions, if any, of the entities, restrained/prohibited in the present Order, in the F&O segment of the recognized stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

The Order shall come into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

Mr. Akshit Sachdeva (Extension:23346), Mr. Anand Jangir (Extension:22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

Annexure: - Final Order in the matter of Ms. Newever Trade Wings Limited

WTM/AB/IVD/ID19/19360/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

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

Noticee No.	Name of Noticees	PAN
1.	M/s. Newever Trade Wings Limited	AADCN9668B
2.	Mr. Akash Kumar	AVVPK1025F
3.	Mr. Vikrant Kayan	AFJPK8437M
4.	Mr. Bhaskar Paul	AXTPP1047Q
5.	Mr. Vikash Dubey	APCPD7488N
6.	Ms. Girija Banerjee	AJWPB1941Q
7.	Mr. Debjit Banerjee	AKJPB5444L
8.	Mr. Kousik Brahma	BMRPB0437J
9.	M/s D K Chhajer & Co. Chartered Accountants	AADFD5743N

In the matter of Newever Trade Wings Limited.

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

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1. The present proceeding emanates from two show cause notices both dated August 24, 2020. The first show cause notice (hereinafter referred to as "**SCN1**") was issued to the Noticee nos. 1 to 8 by the Securities and Exchange Board of India (hereinafter

referred to as "**SEBI**") asking them to show cause as to why suitable directions be not issued and/or penalty be not imposed, as deemed fit under Sections 11(1), 11(4), 11(4A), 11A, 11B(1), 11B(2) read with Sections 15 A(a), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), Section 12A(1) and (2) read with Sections 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA, 1956**") against them. The SCN1, *inter alia,* alleged that **Newever Trade Wings Limited** (hereinafter also referred to as "**NTWL**" / "**the Company**") , its directors and the Chief Financial Officer (hereinafter referred to as "**CFO**") (Noticee nos. 2 to 8) of Noticee no. 1 had 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 and had the potential to mislead the investors. The second show cause notice (hereinafter referred to as "**SCN2**") was issued to the Noticee no. 9 by **SEBI** asking it to show cause as to why suitable directions as deemed fit under Section 11, 11B and 11D of SEBI Act, 1992 should not be issued against it. The SCN 2, *inter alia,* alleged that the books of accounts and financial statements of NTWL were incorrect, irregular and misleading and an unqualified audit opinion stating that financial statements give the information required by the Companies Act, 2013 in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India, had been given by the statutory auditor, i.e. Noticee no. 9 in the audit report of the Company. The SCN 2 alleged that such certification of financial statements by the statutory auditor has resulted in not only the shareholders but also the public being misled about the financial health of the Company.

2. The SCN1 alleged that the Company had violated Sections 12A(a),(b) and (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and Regulations 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, 2003**"), Regulation 4(1)(a),(b),(c),(e),(g),(h),(i), 4(2)(f)(ii)(6),(7), 4(2)(f)(iii)(3),(6) and (12), Regulation 33(2)(a) read with Regulation 33(5) and Regulation 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations, 2015**") read with Section 21 of SCRA, 1956. The SCN 1 further alleged that the Company's directors, (i) Ms. Akash Kumar (Noticee no. 2), (ii) Mr. Vikrant Kayan (Noticee no. 3), (iii) Mr. Bhaskar Paul (Noticee no.4), (iv) Mr. Vikash Dubey (Noticee no. 5), (v) Ms. Girija Banerjee (Noticee no. 6) , (vi) Mr. Debjit Banerjee (Noticee no. 7) and (vii) Chief Financial Officer, Mr. Kousik Brahma (Noticee no. 8) have violated Section 12A(a) (b) and (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and Regulations 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, 2003, Regulation 4(1)(a),(b),(c),(e),(g),(h),(i), 4(2)(f)(ii)(6),(7), 4(2)(f)(iii)(3),(6) and (12) of LODR Regulations,2015 read with Section 27 of SEBI Act, 1992, Regulations 33(2)(a) read with Regulation 33(5) and Regulation 48 of LODR Regulations, 2015 read with Section 21 of SCRA, 1956. The SCN 2 alleged that Noticee no. 9 M/s D K Chhajer & Co., Chartered Accountants, has violated Section 12A (a) (b) (c) of the SEBI Act, 1992 and Regulation 3(b) (c) and (d) and Regulations 4(1) and 4(2), (a), (e), (f) and (r) of the PFUTP Regulations, 2003.

3. The following annexures were provided with the SCN1 and SCN2:

Annexure no.	**Particulars**
Annexure 1	Interim Order
Annexure 2	Forensic Audit Report

4. In reply to the SCN, the Noticee no. 9 has filed detailed response to the allegations vide letter dated November 28, 2020. Noticee no. 8 has filed detailed response to the allegations vide letter dated September 09, 2020, which are discussed in the subsequent paras.

Consideration of submissions and findings:

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

Relevant extract of the provisions of SEBI Act, 1992:

"Functions of Board.

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

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

………………………….

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

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

………………………………………..

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

12A. No person shall directly or indirectly-

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

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

……………………………………………….."

Offences by companies.

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

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or

other officer of the Company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
Explanation: For the purposes of this section,- (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm……………….

Relevant extract of provisions of SCRA, 1956:

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

Relevant extract of the provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities
No person shall directly or indirectly—
(a) ……..;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities
(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-
…..
(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, 2015:

“………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.
(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.
(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

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

……

(f) Responsibilities of the board of directors:

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

…….

(ii) Key functions of the board of directors-

………………………………

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

…

(iii) Other responsibilities:

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."

…..

……………………………………………….

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

……………………………………….

33(5) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as "half yearly/half year" and the requirement of submitting 'year-to-date' financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange

Accounting Standards.

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

6. Before proceeding on the merits of the matter, it will be relevant to discuss the background of the present proceedings.

7. 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. SEBI, vide its letter dated August 07, 2017, had advised stock exchanges i.e. BSE, NSE and MSE to identify the companies listed on their respective exchanges from the said list and initiate the surveillance action/measures stated in the letter.

8. Pursuant to the same, BSE Limited (hereinafter referred to as "**BSE**") vide notice dated August 7, 2017, National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") vide notice dated August 7, 2017 and Metropolitan

Stock Exchange of India Limited (hereinafter referred to as "**MSE**") vide notice dated August 07, 2017, issued to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed shell 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 the company like company's compliance requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

9. NTWL vide its letter dated August 10, 2017 had made a representation to BSE with a copy marked to SEBI submitting that the Company has been put under surveillance grade -VI without giving any proper reason of the Company being involved in suspected manipulative activities, without any details of the Company distorting the market equilibrium or any allegation from any investor, without any pending investigation and opportunity of being heard in the matter. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, NTWL filed an appeal No. 206 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"). The Hon'ble SAT vide order dated August 24, 2017, directed the following:

> "..........2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.
> 3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investing the matter and initiate appropriate proceedings if deemed fit...."

10. Pursuant to the Hon'ble SAT's directions, the Company submitted representation before SEBI. Vide an interim order dated September 21, 2017 (hereinafter referred

to as "**interim order**"), SEBI disposed of the representations of NTWL and issued directions *inter alia* directing exchanges to appoint forensic auditor to verify:

a. Misrepresentation including of financials and/or business of NTWL, if any;

b. Misuse of the books of accounts / funds including facilitation of accommodation entries, if any.

11. NTWL did not file its reply/objections, 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 confirmed.

12. Based on the directions given in the interim order, a forensic auditor, BDO India LLP (hereinafter referred to as "**forensic auditor**"), was appointed by BSE to conduct forensic audit of NTWL for the period of April 01, 2015 till December 31, 2017 (hereinafter referred to as the "**investigation period**"). On August 02, 2019, forensic auditor appointed by BSE submitted a Forensic Audit Report (hereinafter referred to as "**FAR**") to BSE. Thereafter, based on the FAR which was forwarded by BSE to SEBI, SEBI carried out an investigation in the matter.

13. Based on the findings of investigation, SCN was issued and was delivered to all the Noticees by speed post. Vide email November 11, 2020, Noticee no. 3 acknowledged the receipt of the SCN. Noticee no. 8 submitted a reply dated September 09, 2020 and Noticee no. 9 submitted a reply dated November 28, 2020. None of the other Noticees filed reply to the SCN. In compliance with the principles of natural justice an opportunity of hearing was granted to all Noticees on January 04, 2021. Vide email dated December 29, 2020 Noticee no. 4 sought an adjournment to the hearing. Vide email dated December 31, 2020, Noticee no. 6 sought an adjournment to the hearing. Vide email dated January 04, 2021, Noticee no. 1 sought an adjournment to the hearing. Vide email dated January 06, 2021, Noticee no. 2 sought an adjournment to the hearing. On January 04, 2021, the Authorized Representatives (hereinafter

referred to as "**AR**"s) of Noticee nos. 8 and 9 appeared and made submissions. Based on the requests for adjournment, a fresh date of hearing was granted to all other Noticees on March 10, 2021. Vide email dated March 09, 2021, Noticee no. 1 and 3 sought an adjournment to the hearing. Vide email dated March 10, 2021 Noticee no. 2 sought an adjournment to the hearing. In view of the same, a final opportunity of hearing was granted to all Noticees except Noticee nos. 8 and 9 on June 14, 2021. Vide email dated June 01, 2021, Noticee no. 1 and 3 sought an adjournment to the hearing citing the pandemic. Vide email dated June 11, 2021 Noticee no. 2 sought an adjournment to the hearing citing the pandemic. In view of the same, a final opportunity of hearing was granted to all Noticees except Noticee nos. 8 and 9 on November 03, 2021. Vide email dated October 20, 2021, Noticee no. 1 and 3 sought an adjournment to the hearing citing the festival of Diwali. Vide email dated October 21, 2021, it was informed that the request of the Noticee had not been acceded to and the Noticees were advised to appear for hearing on the scheduled date and time through any of the modes provided. Vide email dated November 22, 2021, Noticee no. 1 and 3 again made a request for adjournment citing festival of Diwali/ Dhanteras etc. In view of the same, a final opportunity of hearing was granted to all Noticees except Noticee nos. 8 and 9 on February 25, 2022.Vide email dated February 22, 2022, Noticee no. 3 on behalf of himself and Noticee no. 1 submitted that their office had been taken possession of by ICICI Bank and the matter was pending before DRT, Kolkata. Based on the same, these Notices sought adjournment to the hearing. A legible copy of the attached documents/ photos were sought from these Noticees and upon perusal of the same, it was noted that ICICI Bank had taken possession of office premises of another company associated with Noticee no. 3 and not of NTWL. Therefore, the submission of Noticee nos. 1 and 3 were not accepted and the hearing in the matter was closed qua these Noticees.

14. I observe that in the SCN, the allegations against the Noticee no. 2 to 9 flows from the allegations against Noticee no.1. Noticees no. 2 to 8, have been charged in their

capacity as directors/ CFO of Noticee no.1 and Noticee no. 9 has been charged as the statutory auditor of Noticee no.1. Therefore, in the following paras, various allegations made against Noticee no. 1 in the SCN have been examined to find out as to whether the violations alleged in the SCN against Noticee no. 1 have been made out so as to determine liabilities of Noticees no. 2 to 9 also, which is flowing from violations alleged against Noticee no. 1.

15. At the outset, before dealing with the allegations in the SCN against the Company, it is relevant and appropriate to first deal with the submission of Noticee no. 8. He has submitted that he is not a qualified accountant, and has never appeared for or successfully completed any degree in Charted Accountancy/ Financial Analysis or otherwise of similar nature. As such he while being competent to perform basic office management and accountancy functions has never been qualified to perform detailed financial analysis such as audit of financial accounts etc. which are generally expected and required from any person who is likely to be appointed to position such as Chief Financial Officer (CFO) of a listed company. He was never appointed as CFO of NWTL or any other formal appointment at any position in the said NTWL. He only had a limited relationship with NTWL which is summarized as follows: Sometime in early 2014, he appeared for an interview to take up the position of "Assistant Accountant" with NTWL. Upon completion of the interview formalities, he was asked to join NTWL as "Assistant Accountant", and he attended the office of NTWL for the period of 4 months more or less starting from August 01, 2014 till December 11, 2014. NTWL, in spite of repeated reminders, failed to provide any written letter of appointment to him. He had also made multiple requests for payment of stipulated salary during the period but the same was never paid to him. Finally having grown suspicious of the motives of the various officers at NTWL and being convinced that NTWL had no intention to enter into any formal employment engagement with him, he finally stopped attending the offices of NTWL from December 12, 2014, onwards. Soon after, he underwent an interview process upon application for employment with

M/s. WS Retail Pvt. Ltd. as an Assistant Hub Finance Executive, where he has continued uninterrupted service and continues to be employed from December 22, 2014 till date.

16. In this regard, I note that the Noticee no. 8 has been alleged to be a CFO of the Company for the FY 2015-16 and FY 2016-17. However, the Noticee no. 8 has denied being the CFO of NTWL and he has submitted an appointment letter from WS Retail Ltd. dated December 10, 2014 for the post of Assistant Hub Finance Executive. I note that Noticee no. 8 has also submitted copies of his salary slips during the investigation period evidencing that he was employed by WS Retail Ltd. during the investigation period, and not by NTWL. I also note that the signature on the purported resignation letter of Noticee no. 8, dated May 30, 2019, as submitted by NTWL and available on the MCA 21 portal (which Noticee no. 8 has retrieved and submitted in the present proceedings) does not match with the signature of Noticee no. 8, as submitted in the present proceedings. In view of the employment of Noticee no. 8 elsewhere during the investigation period and in view of the suspicious nature of the purported resignation letter based on which it has been alleged that Noticee no. 8 was the CFO of NTWL till May 30, 2019, I am of the opinion that benefit of doubt may be given to Noticee no. 8 and therefore, I find that I do not agree with the observation in the SCN that Noticee no. 8 was the CFO of NTWL during the investigation period.

17. Coming to the merits of the matter, the allegations against the Noticees regarding misrepresentation including of financials and misuse of funds/books of accounts of NTWL from the period April 01, 2015 till December 31, 2017, as contained in the SCN and my findings thereon are discussed below:

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

18. Allegations related to the Company executing transactions which are non-genuine in nature and misrepresentation of the accounts/ financials statement and misuse of account/ funds of the Company.

18.1. In this regard, the SCN states as follows:

i. The following samples on the basis of high value transactions mentioned in table 1 were reviewed. It was noted that 96.59% of the inflows of NTWL were from sale of iron and steel, and 97.17% of the outflows pertain to purchase of iron and steel.

Table 1

Sn	Particulars	Population amount (Rs in lacs.)	Sample amount (Rs in lacs.)	% of sample selected
1	Bank receipts	6862.30	3850.37	56.00%
2	Bank payments	6862.90	3707.18	54.02%
3	Cash receipts	Nil	Nil	Nil
4	Cash payments	16.06	0.96	5.98%
	TOTAL	**13741.26**	**7558.51**	

ii. The forensic auditor reviewed 25 samples for 'sources of funds' amounting to Rs. 3,850.37 lacs consisting of bank receipts. He reviewed 28 samples for 'end use of funds' amounting to Rs. 3,708.14 lacs out of which 5 samples belonged to cash payments amounting to Rs. 0.96 lacs and 23 samples belonged to bank payments amounting to Rs. 3,707.18 lacs. The auditor observed that there were either no supporting documents or inadequate supporting documents, as mentioned in table 2 below:

Table 2

<table>
<tr><th colspan="4">Sources of Funds</th><th colspan="3">End use of Funds</th></tr>
<tr><th rowspan="2">Sl No</th><th rowspan="2">Nature of transaction</th><th colspan="2">Supporting Documents</th><th rowspan="2">Nature of transaction</th><th colspan="2">Supporting Documents</th></tr>
<tr><th>Inadequate</th><th>not provided</th><th>Inadequate</th><th>not provided</th></tr>
<tr><td>1.</td><td>Receipts from Iron and Steel</td><td>17</td><td>-</td><td>Payment towards purchase of iron and steel</td><td>18</td><td>-</td></tr>
</table>

2.	Receipts from refund of Loans and Advances	-	5	Payment towards loans and advances	-	5
3.				Payment towards expenses	5	-
	TOTAL	**17**	**5**	**TOTAL**	**23**	**5**

iii. It was observed that the sales and purchases were made on the basis of invoices and the Company did not provide supporting documents in the form of agreements, order copy, proof of delivery (lorry receipts, octroi receipts), purchase order copy, and proof of receipts (lorry receipts and octroi receipts) etc. despite various follow up. This creates suspicion on these sale and purchase transactions and physical movements of goods.

iv. On review of refund of loans and advances, the forensic auditor noted that in 4 transactions with related parties, agreements were not provided by the management despite various follow ups made. The same is discussed in detail in para 20. It was also noted that interest was not charged on such loans / advances. In a transaction with unrelated party, no supporting documents were provided by the management. Therefore, the absence of the requisite supporting documents raises suspicion on the genuineness of these receipts as well as grant of these loans / advances. Further, extending loans to related parties without charging interest is not in the interest of shareholders of NTWL.

v. The Company did not provide supporting documents for repayment of loans extended to suppliers, related party and employee.

vi. On review of salary and miscellaneous expenses, it was noted that:

1) Salary payments amounting to Rs. 0.82 lacs were made in cash. Additionally, supporting documents against such payments like appointment letters and ID proof of employees were not provided.

2) The Company did not provide supporting documents in the form of bills for staff welfare expenses amounting to Rs. 0.03 lacs and promotion expenses amounting to Rs. 0.34 lacs.

vii. On review of sample of receivables and payables the following was noted:

1) The Company did not provide supporting in the form of agreement copy and purchase order and proof of delivery (lorry receipts and octroi receipts), proof of receipts (delivery challan and lorry receipts) for purchase and sales transactions.
2) The forensic auditor was unable to validate debtor balance amounting to INR 7043.61 lacs, which constitutes 100% of the sample of debtor balance. Further, the forensic auditor was unable to validate creditor balance amounting to Rs. 4,601.49 lacs which constituted 69.18% of the sample of creditor balance confirmation of INR 6,626.08 lacs.
3) On review of ledger of EMC Limited, it was noted that there was a difference of INR 8.44 lacs which was due to one bill booked by EMC Limited while the same was not reflecting in the books of NTWL.
4) On site visit to the premises of debtors, it was noted that the premises of Alogoma Minerals Pvt. Ltd. was under construction and the forensic auditor was not able to locate the entity Kamaraj Traders at its address.
5) On site visit to the premises of creditors the forensic auditor observed the following:

Table 3

Name of the entity	Observation of forensic auditor
EMC Limited	The forensic auditor could locate the entity. However, they were informed by the staff working in their office that no transaction was undertaken between EMC limited and NTWL during FY 2016-17.
Lokesh Nutrients & Pulses Co	The forensic auditor could not locate the office in the name of the said party. During discreet enquiry from the security guard of that building, the forensic auditor noted that the guard was unable to recognise entity named “Lokesh Nutrient & Pulses Co.”.
Reyansh Re Roller Private Limited	An entity named “Buland Ply” was operating from the said location. During discreet enquiry, the forensic auditor was informed that there was no office in the name of “Reyansh Re Roller Private Limited” at the said location.
Anvil Cables Private Limited	The forensic auditor was able to locate the entity at its registered address. However, the management of the entity has not shared details of the transactions undertaken between anvil cables private limited and NTWL.

viii. There were knock off entries amounting to INR 6,448.15 lacs between Lokesh Nutrients & Pulses Co. (creditor of NTWL) and Kamaraj Traders (debtor of NTWL).

ix. Thus, these instances of supporting documents not provided for sales, purchases, grant and repayment of advances, no responses from debtors and creditors for their balance confirmation combined with nonexistence of debtors and creditors at their addresses corroborate that these were mere book entries and raises suspicion over the business transactions as well as the amount of sales, purchases, receivables and payables mentioned in the financials of the Company.

18.2. I note that the findings of investigation, based on the aforesaid observations in FAR, notes as follows:

1) Receipts against sale of iron and steel:

On the basis of review of supporting documents of 17 transactions, it was noted that:

- In all instances, the sales were made on the basis of invoices.
- Further, the auditor was not provided with supporting documents in the form of agreements, order copy, proof of delivery (lorry receipts, octroi receipts) etc.

Therefore, in the absence of the requisite supporting documents and despite of various follow ups made vide email dated January 18, 2018, February 02, 2018, February 06, 2018 and February 09, 2018, it creates suspicion on the transactions and physical movements of goods.

2) Receipts against refund of loans and advances:

On the basis of review of supporting documents of 5 receipts pertaining to refund of loans and advances, the forensic auditor noted that:

- One transaction undertaken with an unrelated party, no supporting documents were provided by the management of NTWL.

- In four transactions undertaken with related parties, agreements were not provided by the management and it was also noted that interest was not charged on such loan / advances.

Therefore, in the absence of the requisite supporting documents and despite of various follow ups made vide email dated January 18, 2018, February 02, 2018, February 06, 2018 and February 09, 2018, it creates suspicious on the genuineness of these receipts and loan / advances extended to related parties without charging interest was not in the interest of shareholders of NTWL.

3) Payments towards loans and advances:

On the basis of review of supporting documents of 5 transactions, the forensic auditor noted that:

- In two transactions pertaining to repayment of loans/advances extended to suppliers, no supporting documents were provided by the management of NTWL.
- In two transactions pertaining to loans/advances extended to related parties, and for one transaction pertaining to advance extended to employee, the forensic auditor was not provided with the supporting documents in form of loan agreement/advance agreement.

Hence, in the absence of the requisite supporting documents, despite of various follow ups made vide email dated January 18, 2018, February 02, 2018, February 06, 2018 and February 09, 2018, it creates suspicion on the genuineness of these payments.

4) Payments towards expenses:

On the basis of review of supporting documents for 5 transactions related to payments towards salaries and miscellaneous expenses, the forensic auditor noted that:

- In three instances pertaining to salary payments total amounting to INR 0.82 lacs, the forensic auditor identified that payment has been made in cash despite of bank mode. Additionally, supporting documents against such payments like appointment letters and ID proof of employees were not provided to us.

- In one instance pertaining to staff welfare expenses amounting to INR 0.03 lacs, no supporting documents in the form of bills, were provided by the management of NTWL.
- In one transaction related to sales promotion expenses amounting to INR 0.34 lacs, credit card statement was provided at the time of our visit to NWTL. However, the forensic auditor was not provided with the supporting documents in the form of card statement.

Hence, in the absence of the requested supporting documents and despite of various follow ups made vide email dated January 18, 2018, February 02, 2018, February 06, 2018 and February 09, 2018, it creates suspicious on the genuineness of these expenses booked by the Company.

The FAR further notes that on the basis of review of provided supporting documents for 11 samples of receivables amounting to INR 3,734.36 lacs and 13 samples of payables amounting to INR 2,714.52 lacs, the following was observed:

5) Review of Receivables:

i) The forensic auditor identified 11 samples of receivables pertaining to iron and steel amounting to INR 3,734.37 lacs. On the basis of review of supporting documents for these transactions, the forensic auditor noted certain inadequacy in supporting documents. The details are as mentioned below:

- In all transactions pertaining to sale of iron and steel, the forensic auditor was not provided with the agreement copy and purchase order.
- In nine samples out of 11, the forensic auditor was not provided with the proof of delivery (lorry receipts and octroi receipts).

Therefore, in the absence of required supporting documents and despite of various follow ups made vide email dated January 18, 2018, February 02, 2018, February 06, 2018 and February 09, 2018, it creates suspicion on the genuineness of transactions and physical movement of goods.

ii) On the basis of review of debtor balance outstanding as on March 31, 2017, the forensic auditor identified four debtors on the basis of high value transactions. The forensic auditor was unable to validate debtor balance amounting to INR 7043.61 lacs, which constitutes 100% of the sample of debtor balance confirmation. On seeking balance confirmations along with the ledgers from these four debtors, the forensic auditor noted as follows:

Table 4

SL. No	Debtor name	*Balance as per books of account (Amount in lacs)	*Balance as confirmed by debtor	Difference	Confirmation received	Address as per MCA/ invoice/ customer/ master data	Remarks on site visit conducted by the forensic auditor
1	Alogoma Minerals Pvt. Ltd	1,520.44	-	-	No	121, C.R Avenue, 4th Floor, Kolkata – 700 003, West Bengal	The premises was under construction. During discreet enquiry, the forensic auditor noted that no one could recognise the said entity.
2	Kamaraj Traders**	3,548.15			No	H-42, Masjid Moth, Greater Kailash Part II, New Delhi - 110 048	Unable to locate the said address during site visit for this entity. On conducting discreet enquiries in the neighborhood, the forensic auditor was informed that H-41 was last house in H-Block of the said locality. There was no house number. H-42 in H-block.
3	Priti Tubes Pvt. Ltd.	948.86	-	-	No	Site visit not conducted by forensic auditor.	
4	Samvijay Power & Allied Industries Ltd	1,026.16	-	-	No	Site visit not conducted by forensic auditor.	
TOTAL		7043.61	-	-			

*Balance as on 31 March 2017

**Entity is proprietorship firm, hence address could not be identified from MCA record. However, address obtain from customer master data/invoice.

6) Review of payables:

i) The forensic auditor identified 13 samples of receivables pertaining to iron and steel amounting to INR 2714.52 lacs.

ON the basis of review of supporting documents for these transactions, the forensic auditor noted certain inadequacy in supporting documents. The details are as mentioned below:

- In all instances, the forensic auditor was not provided with the supporting documents in the form of agreement copy, purchase order copy.
- Further, in five transactions out of 13 instances, the forensic auditor was not provided with the proof of receipts (delivery challan and lorry receipts).

Therefore, in the absence of the above supporting documents and despite of various follow ups made vide email dated 18 January 2018, 02 February 2018, 06 February 2018 and 09 February 2018. It creates suspicion on the genuineness of transactions undertaken by the company.

ii) From the review of ledger of EMC Limited, the forensic auditor noted that there was a difference of INR 8.44 lacs which was due to one bill booked by EMC Limited while the same was not reflecting in the books of NTWL.

iii) The forensic auditor was unable to validate creditor balance amounting to INR 4,601.49 lacs (INR 3,568.40 lacs + 1,033.09 lacs), which constitutes 69.18% of the sample of creditor balance confirmation of INR 6,626.08 lacs as mentioned in table 5.

iv) The forensic auditor conducted site visits for 5 creditors, which includes three creditors from whom balance confirmations were requested and two creditors from whom high value transaction undertaken by NTWL.

v) On the basis of review of creditor balance outstanding as on 31 March 2017, the forensic auditor noted balance amounting to INR 6,626.98 lacs outstanding as payables from four creditors. Due to response not received from 2 out of 4 creditors, the forensic auditor was unable to validate creditors balance amounting to INR 4601.49 lacs, which constitutes 69.43% of the sample of creditors balance confirmation as mentioned in Table 5.

Table 5

(Amount in lacs)

Sn	Creditor name	*Balance as per books of account	*Balance as confirmed by creditor	Difference	Remarks	Address as per MCA / invoice / vendor master	Remarks on site visit conducted by the forensic auditor
1	EMC Limited	1,325.83	1,334.27	8.44	Received	Constantia Office Complex, 8th Floor, South Block, 11, U.N. Bramachari Road, Kolkata – 700 017	The forensic auditor could locate the entity. However, they were informed by the staff working in their office that no transaction was undertaken between EMC limited and NTWL during FY 2016-17.
2	Lokesh Nutrients & Pulses Co.**	3,568.40	-	-	No Response	500, 5th Floor, Modi Tower 98, Nehru Palace, New Delhi – 110 019	The forensic auditor could not locate the office in the name of the said party. During discreet enquiry from the security guard of that building, the forensic auditor noted that the guard was unable to recognise entity named "Lokesh Nutrient & Pulses Co.".
3	Reyansh Re Roller Private Limited	1,033.09	-	-	No Response	7, Grant Lane, Room No. 318, Kolkata – 700 012, West Bengal	An entity named "Buland Ply" was operating from the said location. During discreet enquiry, the forensic auditor was informed that there was no office in the name of "Reyansh Re Roller Private Limited" at the said location.
4	Simplex Projects Limited	699.66	699.66	-	Received	Site visit not conducted by forensic auditor.	
5	Anvil Cables Private Limited	Sampling done on the basis of high value transactions, hence confirmations not taken by forensic auditor				102 Krishna, 224 AJC Bose Road, Kolkata - 700 017	The forensic auditor was able to locate the entity at its registered address. However, the management of the entity has not shared details of the transactions undertaken between anvil cables private limited and NTWL.
6	India Steel Corporation**	Sampling done on the basis of high value transactions, hence confirmations not taken by forensic auditor				5/1 Clive Row, 2nd Floor, Room No. 38, Kolkata – 700 001	The forensic auditor was able to locate the entity at the said address.
	TOTAL	**6,626.88**	**2,033.93**	**8.44**			

*Balance as on 31 March 2017

**Entity is proprietary firm, hence address could not be identified from MCA record. However, address obtain from vendor master data/invoice.

On the basis of the above analysis and documentation review, the forensic auditor noted inadequate supporting documents were provided by the management of NTWL. Further, during independent site visits, some of the above mentioned parties could not be found at their registered office address

/ address as provided by NTWL. Moreover, NTWL has made adjustment entries (knock offs) between its debtors and creditors. These facts create suspicion on the genuineness of the receivables and payables of NTWL.

18.3. I note that, as submitted by the forensic auditor, the sales/purchases of iron and steel were made on the basis of invoices and the Company did not provide supporting documents in the form of agreements, order copy, proof of delivery (lorry receipts, octroi receipts etc.) to confirm the veracity of the transactions. The details of the said transaction sand remarks by the forensic auditor is given above in Table 4 and 5. I also note that the Company has not submitted any reply or explanations to justify why copies of agreements or delivery proof of goods, etc. are not available with it. Regarding the allegation of payment to employees in cash, I note that in the case of NTWL salary payments total amounting to INR 0.82 lacs had been made in cash and no explanation for the same has been provided by the Company in these proceedings. Additionally, supporting documents against such payments like appointment letters and ID proof of employees were not provided to the forensic auditor. I also note that when the forensic auditor tried to verify the purported creditors and debtors of NTWL as shown in the Company's financials, they could not find the said entities. As a result, the auditor could not validate debtor balance amounting to INR 7043.61 lacs and creditor balance amounting to INR 6,626.98 lacs. For example, on conduct of site visit, the forensic auditor could not locate the debtors and creditors at their said addresses, as detailed in Table 4 and Table 5 above. In view of the above, I agree with the observation in the SCN that these instances of lack of supporting documentation combined with nonexistence of debtors and creditors at their addresses corroborate that these were mere book entries and raises suspicion over the business transactions as well as the amount of receivables and payables mentioned in the financials of the Company. I further note that 96.59% of sources of fund and 97.17% of end use of fund of NTWL was purportedly from sale and purchase of iron & steel, however, due to lack of documentation, it creates suspicious on the genuineness of transactions and physical movement of goods. In view of the above discussions, I agree with the observations of the FAR and the SCN mentioned at paras 18.1 and 18.2 above.

19. Allegations related to knock off adjustment entry:

19.1. In this regard the SCN states that on the review of the ledgers of Lokesh Nutrients & Pulses Co. (creditor of NTWL) and Kamaraj Traders (debtor of NTWL), the forensic auditor noted that there was no cash/bank movement (inflow/outflow) against sale and purchase from these parties. Further, the forensic auditor noted that there was a knock off entries amounting to INR 6,448.15 lacs were made between these parties in June 2017. Therefore, such inter-adjustment of debtor-creditor and non-existence of parties at their address creates suspicion regarding the genuineness of such receivables and payables.

19.2. I also note that the FAR observes that there were knock off entries amounting to INR 6,448.15 lacs which were made between Lokesh Nutrients & Pulses Co. (creditor of NTWL) and Kamaraj Traders (debtor of NTWL). Since, it has been done between two different entities which is improper and objectionable; it has led to understatement of debtors as well as creditors in the books of the Company by Rs. 6,448.15 lacs.

19.3. In this regard, I note that a receivable from a debtor can be knocked off against a payable from the same entity. However, in this case, knock off entries amounting to INR 6,448.15 lacs are observed between two different entities Lokesh Nutrients & Pulses Co. (stated to be creditor of NTWL) and Kamaraj Traders (stated to be debtor of NTWL), and no explanation for the same has been forthcoming from the Company and no proof of debt/ credit or movement of goods have been submitted by the Company either during the present proceedings or before the forensic auditor. I find that NTWL has knocked off credit and debit entries of two different entities and I agree with the observation in the FAR that this has led to understatement of debtors as well as creditors in the books of the Company by Rs. 6,448.15 lacs.

20. Allegation relating to loans/advances to related parties without charging interest and non-disclosure of the same in financial statement of NTWL.

20.1. In this regard, the SCN alleges that NTWL had given loans/advances to its related parties without charging interest, details of which were not disclosed in its financial statements and also the Company did not provide underlying agreements of such loans and advances to the forensic auditor. The SCN alleges that since proper disclosure in respect of not charging interest on these loans was not given in the financial statements, it has led to violation of Accounting Standard 18 and thus Regulation 4(1)(b) of LODR 2015. The SCN further states that, advancement of loan by NTWL without charging any interest or charging lesser rate of interest and non-disclosure of the same in its financial statements had led to misrepresentation of its financials and such transactions entered into by NTWL indicates that the company has not prudently utilized shareholders' funds. Also, approval for said related party transactions has been obtained after undertaking transaction with related parties which is a non-compliance of Rule 15 of the Companies (meeting of boards and its powers) Rules, 2014.

20.2. I note that the FAR states on the basis of review of the financial statements and books of account of NTWL for the investigation period that NTWL had extended loans and advances to its related parties (as disclosed by NTWL in its annual report for FY 2016-17) and was paying rent to one of these party, details of which are as mentioned below:

Table 6

Sl. No:	**Party name**	**Amount (in lacs)**	**Nature of transaction**	**Remarks**
1	Alfred Beverages Pvt. Ltd.	(127.00)	Short term loans/advances extended	Agreement not provided. Loans/ advances extended without interest.

2	Alfred Beverages Pvt. Ltd.	9.95	Repayment against short term loans/advances	Agreement not provided. Loans /advances extended without interest.
3	Dunhil Healthcare Pvt. Ltd.	(15.40)	Short term loans/advances extended	Agreement not provided.Loans/ advances given without interest.
4	Dunhil Healthcare Pvt. Ltd.	2.70	Repayment against short term loans/advances	Agreement not provided.Loans/ advances given without interest.
5	V.S. Hi-Rise Pvt. Ltd.	(0.60)	Rent expenses	Agreement provided.
	TOTAL	**(130.35)**		

On the basis of review of limited supporting documents for these transactions, which were made available to the forensic auditor by the Company, the forensic auditor noted the following anomalies:

i) Interest was not charged on the loan/advance provided to related party.

ii) Loans and advance agreements were not provided despite of various follow ups made vide email dated January 18, 2018, February 02, 2018, February 06, 2018 and February 09, 2018.

iii) From the above analysis and facts, it was noted that NTWL has given loans/advances to its related parties without charging interest, which was not in the interest of its shareholders. Further, proper disclosure in respect of not charging interest on these loans was not given in the Financial Statements of NTWL, which leads to misrepresentation of Financials statements.

iv) Hence, it was noted that, financial statements were not prepared in accordance with Accounting Standard 18 and these facts create suspicious on the genuineness of these transactions.

v) It was noted that the management of NTWL had obtained approval from the Board post undertaking transactions with Related parties, and did not charge interest on loans and advances given to related parties, which was not in the interest of its shareholders also approval for said related parties transaction has been obtained after undertaking transaction with related parties which is a non-compliance of Rule 15 of the Companies (meeting of boards and its powers) Rules, 2014.

20.3. I note that the forensic auditor has observed that, NTWL has given loans/advances to its related parties without charging interest and the fact that interest had not been charged was not disclosed in the financial statements of NTWL. I also note that the Company failed to provide underlying agreements of such loans and advances to the forensic auditor. I note that para 23 of Accounting Standard 18 states as follows:

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

Since NTWL had failed to disclose this important fact in its financial statements, I find that it had failed to comply with Accounting Standard 18 while preparing its financials for the investigation period. I also find that the said non-disclosure had led to misrepresentation of its financials of NTWL to that extent. I also agree with the observation in the SCN that approval for said related party transaction had been obtained post facto which is a non-compliance of Rule 15 of the Companies (meeting of boards and its powers) Rules, 2014. In view of the discussions above, I agree with the SCN and the FAR that NTWL had failed to make disclosure related loans/advances to related parties which had been advanced without charging interest in financial statement of NTWL pertaining to the investigation period.

21. Allegation relating to NTWL transferring funds received by it to other parties on the same date of receipt of said funds.

21.1. In this regard, the SCN has stated that NTWL has transferred 11 bank receipts from five different parties, total amounting to Rs. 2,700 lacs to nine parties, total amounting to Rs. 2,695 lacs, either on the same dates or within a gap of one-two days. The SCN has also stated that “Sanjeev Jain” and “Parmeshwar Sanganeria” were common Directors in two entities, namely, Reyansh Re Roller Private Limited and Mystic Dealtrade Private Limited, where fund was received from Mystic Dealtrade Private Limited and on the same day or within a gap of one-day fund was transferred to Reyash Re Roller Private Limited. The SCN has stated that, the management of NTWL has failed to provide the adequate supporting documents such as agreement copy / purchase order, and proof of delivery /receipts (lorry receipts and octroi receipts) and that the lack of supporting documentation creates suspicion over genuineness of these transaction as to whether they are in the normal course of business as the company has no intention to prove contrary.

21.2. In this regard, the FAR provides the details of the transactions as follows:

Table 7

SN	NATURE OF RECEIPTS	AMOUNT In Lacs	% OF SAMPLE		SN	NATURE OF PAYMENTS	AMOUNT In Lacs	% OF SAMPLE
1	Sale of iron and steel	2,700	70.12%		1	Purchase of iron and steel	2,695	72.70%
Total		**2,700**				**Total**	**2,695**	

The FAR states that due to lack of supporting documentation, the forensic auditor was unable to establish whether these receipts and payments were undertaken during the ordinary course of business or not. further it was noted that the above mentioned receipts were transferred to different parties within one-two days of time. This pattern of transfer of funds raises suspicion on genuineness of these transactions undertaken by the company. (refer attachment 26 for the bank statement highlighting the relevant transactions)

21.3. In this regard, I note that transferring amounts received on the same date for any commercial transaction is not a violation of securities laws or any other laws.

However, as discussed in para 18.1 and 18.2 above, the genuineness of the transaction and the genuineness of the entity Reyash Re Roller Private Limited could not be ascertained by the forensic auditor and the very nature of the tsrcations and existence of the said entity is doubtful. In view of the discussions above, I agree with the SCN and the FAR that these fund transfers raise suspicion on genuineness of these transactions undertaken by NTWL and I agree with the FAR that there was misrepresentation to the extent of these transactions in the financials of NTWL pertaining to the investigation period.

22. Allegation related to non availability of supporting documents and inadequate supporting documents for the expenses such as commission, business development expenses, travelling expenses and salary booked in NTWL's Books of Account.

22.1. In this regard, the SCN states that on review of expense ledger of NTWL the forensic auditor observed the following:

Table 8

Sr. No.	Nature of expense	Amount of expense (Rs. In lacs)	Supporting not provided/ inadequate supporting provided
1.	Sales promotion	0.33	Supporting documents were not provided.
2.	Commission	22.69	Agreement copy not provided for such services. Invoice did not contain basic details like CIN, PAN and tax number, purpose of commission/nature of transaction. Tax was not charged in the invoice.
3.	Business development expenses	9.86	Invoice did not contain basic details like CIN, PAN and tax number, purpose of commission/nature of transaction. Tax was not charged in the invoice.
4.	Traveling expenses	7.42	In one case bill copy of travel agent was provided at the time of visit to premises. Further, in one case only credit card statement was provided, invoice was not provided.
5.	Salary	0.75 lacs per month	Appointment letters were not provided
		0.24 lacs per month	The salary paid to Rashmi Singhal (employee) exceeded that mentioned in her appointment letter. However, the copy increment letter was not provided.

Based on the above, the SCN states that 61.01% of the total expenses could not be validated since supporting documents were either not provided or were inadequate. Hence, SCN alleges that it creates suspicion on the expenses booked in NTWL's books of accounts and creates doubt over the expenses stated in financial statements.

22.2. In this regard the FAR states that during review of supporting documents of 12 sample expense, the forensic auditor noted that in seven instances, inadequate supporting documents were provided and in one instance, no supporting documents were provided, despite various follow ups. The details are as mentioned below:

22.2.1. Supporting documents not provided:

In one instance pertaining to expenses towards sales promotion amounting to INR 0.33 lacs, no supporting documents were provided by the management of NTWL.

22.2.2. Inadequate supporting documents:

In seven instances, inadequate supporting documents were provided by the management of NTWL, such as:

- For commission: in one instance amounting to INR 22.69 lacs, no agreement was provided for such services and invoice was provided which did not contain basic details like CIN, PAN and tax number. Further, no details were mentioned on invoice which shows the purpose and nature of transaction against which such commission was paid. moreover, no tax was charged on the invoice.
- For business development expenses: In one instance - amounting to INR 9.86 lacs, invoice was provided which did not contain basic details like CIN, PAN and tax number. Further, no details for the nature and purpose of expense was mentioned on the invoice and no tax was charged on it.
- For Traveling expenses: In two instances total amounting to INR 7.42 lacs, in one case bill copy of travel agent was provided at the time

of visit to premises. Further, in one case no invoice copy was provided only credit card statement was provided

- For salary: In two instances total amounting to INR 0.75 per month, no appointment letters were provided and in one instance amounting to INR 0.24 lacs per month, the employee, Rashmi Singhal, was being paid more salary than was prescribed in her appointment letter. However, we were not provided with the increment letter.

Therefore, due to lack/absence of the requested supporting documents for such transactions, it creates suspicion on the genuineness of transactions and physical movement of goods.

22.3. I note that, as submitted by the forensic auditor 61.01% of the total expenses of NTWL during the investigation period could not be validated since supporting documents were either not provided or were inadequate as shown on para 22.1 such as Rs. 22.69 lakhs for commission and Rs. 9.86 lakhs for business development. I note that in some cases no supporting documents have been provided by the Company at all and in other cases purported invoices that have been produced by NTWL do not contain basic data like PAN and CIN. Another example is Rashmi Singhal being paid more salary than others without an increment letter. Hence, I agree with the FAR that it creates suspicion on the expenses booked by NTWL's Books of Account and there has been misstatement in the financials of NTWL pertaining to the investigation period to that extent.

23. Allegation relating to loans advanced to suppliers without charging any interest or any attempts of recovery.

23.1. The SCN alleges that NTWL had extended an amount of Rs. 2,333.52 lacs as advances as on 31 March 2017, which is 97% of the total net worth of NTWL. The SCN also noted that, out of total advances of Rs. 2,333.52 lacs, advance of Rs.

1,962.38 lacs pertained to advances to suppliers and these advances were extended before April 2015 and after that there was no delivery of goods or recovery measures undertaken by NTWL against these advances. The SCN alleges that interest was not charged on these advances and these loans and advances are entries made solely with the intention of diverting the funds. The SCN also alleges the Company had invested in shares of private companies at rate much higher than their face value in the following entities and the Company did not submit valuation reports regarding investments in these entities. Thus the SCN alleges that the company and its directors have not put into use the effective utilization of resources thus resulting in misutilisation of shareholders' funds.

23.2. In this regard, the FAR states as follows:

> "Basis review books of accounts, we noted that NTWL had extended an amount of INR 2,333.52 lacs as advances as on 31 March 2017, which is 97% of the total net worth of NTWL. It was also noted that, out of total advances of INR 2,333.52 lacs, advance of INR 1,962.38 lacs was pertains to advances to suppliers. The details of advances of INR 2,333.52 lacs are as mentioned below:

(Amount in lacs)

1	Private entities	1,983.50	85.00%
2	Individuals	234.01	10.03%
3	Related parties	115.01	4.93%
4	Seized by Income Tax Dept.	1.00	0.05%

> The management explained that these loan and advances were given against supply of goods and formal agreement was entered for same. However, it should be noted that these advances were extended before April 2015 and after that there was no delivery of goods or recovery measures were undertaken by NTWL

against these advances. It should also be noted that these advances were given without charging interest."

The FAR further states that the shares of the following companies were invested in by NTWL at rate much higher than their face value:

Table 9

Sn	Entity name	Face value per share (Amt in INR)	Purchase value per share (Amt in INR)
1	Rinam Dealmark Private Limited	1.00	100.00
2	Saffron Developers Private Limited	10.00	500.00

Thus the FAR states that the company has not followed prudence nor conducted proper due diligence before making investment decisions.

23.3. As observed by forensic auditor INR 1,962.38 lacs of advance made by NTWL to suppliers during the investigation period were extended before April 2015 and after that there was no delivery of goods or recovery measures were undertaken by NTWL against these advances. Therefore, I find that these advances should have been classified as bad debts and provisioned for as such in the financials of NTWL. Moreover, NTWL has invested in shares of private companies at rate much higher than their face value as detailed in Table 9 above and the Company has failed to submit valuation reports regarding investments in these entities. To that extend I agree with the FAR that NTWL misrepresented the status of the advances made to suppliers in its financial results pertaining to the investigation period and failed to submit valuation report substantiating the rationale for the investment in shares of certain private companies.

24. Allegation related to internal financial control over financial reporting

24.1. The SCN alleges that as per the Annual Report of NTWL for 2015-16, the Independent Auditor Report stated "*As stated in the Report on the Internal Financial Control, the Company has not established its internal financial control over financial reporting on criteria based on or considering the essential components of internal control stated in the Guidance Note on Audit of Internal Financial Controls over Financial Reporting issued by the Institute of Chartered Accountants of India."* The SCN further states that as per Companies Act, 2013, provision of Section 134(5)(e) is applicable to all listed entity irrespective of limit of borrowing and as per Section 134(5)(e) of Companies Act 2013 *"The Directors Responsibility Statement referred to in clause (c) of sub-section (3) shall state that : the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively."* The SCN alleges that the CFO of NTWL has given certification in Annual report of 2015-16 (pg 35) that *"We accept responsibility for establishing and maintaining internal controls for financial reporting and we have evaluated the effectiveness of internal control systems of the Company pertaining to financial reporting"* and hence the certification provided by the CFO appears to be incorrect given that NTWL has failed to implement internal control over financial reporting and has violated Section 134(5)(e) of Companies Act 2013.

24.2. In this regard I note it is a fact that the Company failed to establish its internal financial control over financial reporting on criteria based on or considering the essential components of internal control. I note that the Company has not submitted any explanation to the said allegation. Therefore, I agree with the observation of FAR to the extent that NTWL had not established internal financial control over financial reporting.

25. Allegation based on site visit conducted by forensic auditor

25.1. The SCN alleges that the forensic auditor conducted on site visit of the registered office of NTWL at 238B, A.J.C. Bose Road, Unit 4B, 4th Floor, Kolkata- 700 020, West Bengal, and it was observed that the rent of the property was paid to related party (V S Hi-Rise Private Limited) and other 9 entities were operating from the premises which were all related parties. It was also observed that the office was situated in a residential cum commercial space and at the entrance of the building, there was a letter box with names of four entities on it: 1) V S Hi-Rise Private Limited (Related party of NTWL), 2) Dunhil Traders Private Limited (Related party of NTWL), 3) NTWL written on paper and pasted which seemed relatively freshly placed and 4) Trinity Tradelink Limited (Related party of NTWL), which also forms part of the list of suspected shell companies provided by SEBI, whose corporate office is same as the registered office of NTWL. Further, at the entrance gate of the office, a paper with printed names of Trinity Tradelink Limited on one side of the door and NTWL on the other side of the door were placed. These too seemed to have been relatively freshly placed. Thus it raises concerns over the business operations of the company.

25.2. I note that there seems to be no express bar in the Companies Act, 2013 against companies sharing offices with similar addresses in the same premises with some demarcations for space. However, some regulated entities such as NBFCs have to fulfil requirement of certain minimum infrastructure as per the regulation governing NBFCs. The FAR has not brought out any details to show that there was a violation of provisions of securities law or provisions of the Companies Act, 2013 with respect to registered office of NTWL or that there was not adequate space at the premises. In fact, the FAR states as follows:

> "……On entering the office space located on the 4th floor of the premises, we observed that the office had decent space, wherein Managing Director, Vikrant Kayan had a separate room from the other staff working in the office. The employee strength was around 4-5 at the time of our visit……."

In view of the same, I do not agree with the observation in this regard in the FAR.

II. Allegation relating to non-furnishing of information by the company in response to forensic auditor and SEBI interim order queries.

26. The SCN states that the Company had not furnished the information sought by the forensic auditor in various instances viz. share transfer form, valuation reports, invoices, agreements, proof of delivery/receipts (lorry receipts and octroi copy) and not replied to SEBI interim order queries. I note that the SCN states that NTWL had failed to submit reply to queries raised in the SEBI interim order during the forensic audit and failed to reply to the forensic auditor in various instances viz. share transfer form, valuation reports, invoices, agreements, proof of delivery/receipts (lorry receipts and octroi copy). I note that BSE was directed to appoint a forensic auditor for carrying out forensic audit of NTWL vide SEBI order dated September 21, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. Being a listed entity, non-cooperation with such an audit cannot be accepted. In view of the same, I find that NTWL has failed to furnish information sought from it by SEBI as well as the forensic auditor. I also note that Section 11(2) (i) and 11(2) (ia) of the SEBI Act, 1992 has been invoked against the Noticees. 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. In the facts and circumstances of the present case, a forensic auditor appointed through an order of SEBI who seeks information from an entity must be treated with the same seriousness as if the information is being sought by SEBI. In view of the non-furnishing of the information sought by the forensic auditor, I find that NTWL has violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

27. From the discussion in para 18 to 28 above, I agree with the observation in the FAR that that there were misrepresentations in the financial statements of NTWL pertaining to the investigation period for the following:

i) With respect to suspicious transactions of sales/ purchase, salary, debtor creditor balance, loans and advances, payable and receivables

ii) Incorrect knock off adjustment entries which were inter adjustment between debtor an creditor

iii) Loans/advances extended to related parties without charging interest

iv) Suspicious transactions relating to NTWL transferring funds received by it to other parties on the same date of receipt of said funds.

v) Non availability of supporting documents and inadequate supporting documents for the expenses such as commission, business development expenses, travelling expenses and salary booked in NTWL's Books of Account

vi) Loans advanced to suppliers without charging any interest or any attempts of recovery.

Thus, I find that NTWL to that extent failed in presenting a true and fair view of the state of affairs of the Company in compliance with the mandate contained in Accounting Standards and thereby, violated provisions of Regulation 48 of LODR Regulations, 2015.

28. I note that the SCN *inter alia* alleges that NTWL has violated Regulations 4(1)(a),(b),(c),(e),(g), 4(2)(f)(ii)(1),(6)&(7), 4(2)(f)(iii)(3),(6)&(12), 33(2)(a) and 48 of the LODR Regulations, 2015. From the discussions above, I find that since the financial statements of NTWL 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, 2015 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, 2015, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations, 2015. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provides that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

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

29. As discussed in the paras above, I find that financials of the Company were misrepresented because of which disclosure of financials made by the Company in terms of Regulations 33 of LODR Regulations, 2015 were not in accordance with the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, NTWL is in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations. Regarding the

violations of Regulations 4(2)(f)(ii)(1),(6)&(7), 4(2)(f)(iii)(3),(6) & (12) of the LODR Regulations, 2015 by NTWL, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (i) of Regulation 4(2)(f) deals with disclosure of information, 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, 2015, is of the board of directors of the listed entity. Therefore, I find that NTWL cannot be said to be in violations of Regulation 4(2)(f)(ii)(1),(6)&(7) and 4(2)(f)(iii)(3),(6) & (12) of the LODR Regulations, 2015 which pertain to obligations of the board of directors. 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 misrepresented, NTWL has violated Regulation 33(2)(a) of the LODR Regulations, 2015.

30. SCN further alleges that NTWL has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. I note that securities of NTWL are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

> *"…………….1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.*

> *2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:—*
> *i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time.*
> *ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.*
> *iii. such other directions, requirements and conditions as may be imposed by SEBI/Exchange from time to time………..."*

Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the conditions is compliance with LODR Regulations, 2015. In the present case, NTWL is a company whose securities are listed on BSE, which is a recognised stock exchange. NTWL being a company having its securities listed on BSE was also required to sign the said uniform listing agreement with BSE and in view of the provisions of Section 21 of SCRA, 1956, NTWL was bound to comply with the conditions of the uniform listing agreement, as extracted above. NTWL has been found to be in violation of the provisions of the LODR Regulations, 2015, as discussed above, therefore, NTWL is in violation of the condition of the listing agreement and hence, is also in violation of Section 21 of SCRA, 1956.

III. Violations of PFUTP Regulations, 2003:

31. The SCN also alleges of violation of provisions of PFUTP Regulations, 2003 and Section 12A (a), (b) and (c) of the SEBI Act, 1992. In this regard, I note that the scope of work, as was assigned to the forensic auditor was as follows:

"The scope of Forensic Audit shall include examining the following: -

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

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

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

   a. Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company

   b. To examine the Books of Accounts and backup records of the company for the period of 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 made by the company in subsidiary companies along with the relevant fund flows, if any

      VIII. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds

      IX. Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act

      X. Comment on the shareholding pattern

      XI. Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds)

   c. Verification / discussions:

      I. Independent and/or physical verification of the underlying transactions

      II. Background / reputation checks based on public domain information related to promoters, nature/line of business, genuineness of business activities of the company

      III. Discussions with key stakeholders like promoters/senior management /departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the company, etc.

      IV. Business history, directorship searches and litigations

      V. Assessment of size and scope of business

      VI. Site visit as may be applicable for verifying existence of the Company's functional/registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants/factories

> The audit should cover the aforesaid points for the period April 2015 onwards and wherever required, analysis may be carried out on sample basis."

As can be noted from the above, the scope of audit did not include examination of possible violations of PFUTP Regulations, 2003 and accordingly, the findings of the FAR are confined only to alleged misrepresentation in the books of accounts of NTWL and consequential and other violations of Accounting Standards. It is observed that the Investigating Authority, after examining the FAR, incorporated the findings of FAR as part of investigation report, and consequently, the same was reproduced in the SCN. However, the SCN additionally states:

> "5. It was observed during investigation that the company (Noticee no.1) had failed to present true and fair financial statements and had executed transactions which are non-genuine in nature thereby tantamounting to misrepresentation of the accounts/ financial statements and misuse of account/ funds of the company. It was further observed that NTWL had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors and are fraudulent in nature."

Consequently, the SCNs *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. It is observed that Noticees no. 1 to 7 have been additionally 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 in the SCN. However, it has not been alleged or corresponding finding given in the SCN whether violation of the LODR Regulations, 2015 as found in the FAR has directly or indirectly resulted in the manipulation of the price of the scrip of the Company by the Noticees.

32. 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 such violation of LODR Regulations, 2015 etc. led to direct/ indirect manipulation of the price of the scrip. Therefore, SEBI is at liberty to issue fresh SCN, if so deemed fit, to pursue violations of PFUTP Regulations, 2003, against the Noticees.

33. The SCN also alleges that Noticee nos. 2 to 7 who were directors of NTWL during the investigation period have also violated all those provisions which have been alleged to be violated by NTWL, based on Section 27 of the SEBI Act, 1992. With regard to the directors of the Company, it is observed that as per the Annual Report 2015-16 and 2016-17 of NTWL, the details of the Board of Directors of NTWL during the investigation period are as follows:

FY 2015-16

Name	**Noticee No.**	**Designation**
Mr. Akash Kumar	2	Chairperson, Managing Director
Mr. Vikrant Kayan	3	Promoter, Non-Executive Director
Mr. Bhaskar Paul	4	Non-Executive, Independent Director
Mr. Vikash Dubey	5	Non-Executive, Independent Director
Mrs. Girija Banerjee	6	Additional, non-Executive Director
Mr. Kousik Brahma	8	Chief Financial Officer (CFO)

FY 2016-17

Name	**Noticee No.**	**Designation**
Mr. Vikrant Kayan	3	Promoter, Non-Executive Director
Mr. Bhaskar Paul	4	Non-Executive, Independent Director
Mr. Vikash Dubey	5	Non-Executive, Independent Director
Mrs. Girija Banerjee	6	Non-Executive, Independent Director
Mr. Debjit Banerjee	7	Additional, Executive Director
Mr. Kousik Brahma	8	Chief Financial Officer (CFO)

34. I note that Noticee nos. 2 to 7 have not filed replies to the SCN. In this regard, as discussed above, I note that Regulations 4(2)(f) and Regulation 33 of the LODR Regulations, 2015 creates a specific duty on the board of directors. I note that during

the investigation period, Noticees nos. 2 to 7 were directors of the Company. It is observed that as per the Annual Reports of TTL, the details of the meetings of Board of Directors during the investigation period are as follows:

Name of the Director	**Attendance Particulars**			
	FY 2015-16		FY 2016-17	
	Held	Present	Held	Present
Mr. Akash Kumar	6	6	9	8*
Mr. Vikrant Kayan	6	6	9	9
Mr. Bhaskar Paul	6	6	9	9
Mr. Vikash Dubey	6	6	9	9
Mrs. Girija Banerjee	NA	NA	9	5**
Mr. Debjit Banerjee	NA	NA	9	1

** Ms. Girija Banerjee was appointed w.e.f. August 10, 2017
* Resigned on January 17, 2017

35. I note that Noticee no. 2 was the Managing Director of the Company during the FY 2015-16 and 2016-17. I also note that Noticee no. 6 has been designated as non-executive director of the Company during FY 2015-16 but she did not attend any meetings of the Board in that year and attended 5 meetings in FY 2016-17. Noticee no. 7 attended one meeting in FY 2016-17. I note that Noticees no. 4 and 5 have been designated as Independent Directors of the Company during the investigation period and had attended all the Board meetings in FY 2015-16 and 2016-17. I also note that Noticee no. 3 has been designated as executive director in FY 2015-16 and non- executive director in FY 2016-17 and attended all the board meetings in these two years. In this regard, I note that Regulations 4(2)(f) and Regulation 33 of the LODR Regulations, 2015 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, I note that non-executive directors and independent directors 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 through board processes. In the present case, the main allegation is misrepresentation of financials. In terms of LODR Regulations, 2015, the financials

are approved by the board of directors. Further, 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 the Director	**Attendance Particulars**			
	2015-16		2016-17	
	Held	Present	Held	Present
Mr. Vikash Dubey	4	4	5	5
Mr. Vikrant Kayan	4	4	5	5
Mr. Bhaskar Paul	4	4	5	5

36. By being part of Audit Committee meetings, the independent directors namely Mr. Vikash Dubey (Noticee no. 4) and Mr. Bhaskar Paul (Noticee no. 6) along with the Managing Director Mr. Vikrant Kayan (Noticee no. 2) had considered and adopted the agenda being discussed in the meeting. In this regard, I note that 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) *…...*"

37. Thus, members of the audit committee are responsible to look into the aforesaid financial aspects of a company. 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, 2015, 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. In terms of Section 177 of the Companies Act, 2013 and Part C of Schedule II read with Regulation 18(3) of LODR Regulations, 2015, it was the duty of the Audit Committee of NTWL to examine the financials, scrutinize inter corporate loans and investments and related party transactions etc. For the instances of misrepresentation of the financials and misuse of funds of NTWL pertaining to the investigation period, the Audit Committee was required to act in accordance with its terms of reference, as enlisted in Section 177 of the Companies Act, 2013. I note that Noticee nos. 4 and 5, who were independent directors of NTWL and Noticee no. 3, were part of the audit committee of the Company. They reviewed and approved the financial statements of NTWL, 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 NTWL, as members of the audit committee as well as the board of directors of NTWL, shows that these directors had the knowledge and did not act diligently with respect to the provisions contained in the LODR Regulations, 2015.

38. As discussed in the aforesaid paras, the financials of NTWL were misrepresented during the investigation period. I note that Noticees no. 2 to 6, being directors of NTWL and Noticees no. 3, 4 and 5 being part of the audit committee of NTWL, approved the financials of NTWL, as part of the board of directors of NTWL. Failure to raise any concern regarding the financials of NTWL, as member of the audit committee and/or the board of directors of NTWL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations, 2015. I also find that Noticee no.7 was an additional director of NTWL for the FY 2016- 17 and attended one meeting of the Board of Directors of NTWL during the investigation period. The material available on record does not indicate that he was part of the Audit Committee or which particular portfolio was handled by him in the Company.

Accordingly, his case needs to be given a consideration compared to the one given to executive directors and independent directors who were part of the Audit Committee of NTWL.

39. In view of the same, I find that Noticees no. 2, 3, 4, 5, 6 and 7 have violated Regulations 4(2)(f)(ii)(1),(6) & (7) and 4(2)(f)(iii)(2), (3), (6), (12) and 33(2)(a) of the LODR Regulations, 2015.

40. I note that Noticee No. 9, being the statutory auditor of NTWL during investigation period, have also been issued SCN, 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 NTWL for the investigation period, thereby, violating provisions of Section 12A (a) (b) and (c) of the SEBI Act, 1992 and Regulations 3(b) (c), (d) and 4(1) and 4(2), (a), (e), (f) and (r) of the PFUTP Regulations, 2003. I observe that in the FAR there is no finding against Noticee no.8. 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. …..”

41. 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 NTWL. Failure to exercise due diligence amounts to violation of code of conduct regulations by audit professionals prescribed by the conduct regulator. Violation of

conduct regulations can be appropriately judged by the conduct regulator such as ICAI or NFRA. The SCN 2 does not allege that such failure to exercise due diligence by the statutory auditor was in connivance with the promoters/ directors / management of NTWL to fudge the financial statements of NTWL. 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 mentioned against Noticee no. 9 in the FAR. 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.

42. In view of the aforesaid violations committed by NTWL and its directors i.e. Noticees no. 2 to 7, 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.

43. SCN in the matter, also calls upon the Noticees no. 1 to 7 to explain as to why appropriate penalty be not imposed upon them under Sections 15A(a), 15HA and 15HB of SEBI Act, 1992, for the violations alleged in the SCN. Relevant extract of these penalty provisions, as existing at the time of violations, is reproduced, hereunder:

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

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

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

Relevant extract of Section 23E and 23H of SCRA, 1956:

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.
23E. If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment 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.

44. 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 Sections 15A(a) and 15HA of SEBI Act, 1992 and Sections 23E of the SCRA, 1956. I note that Section 15A(a) of the SEBI Act, 1992 provides for imposition of penalty for failure to furnish information, return, etc. I find that, penalty under Section 15A(a) of SEBI Act, 1992 is

only attracted against the Noticee no. 1. 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.e. Noticees no. 1 to 8). I also not 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 NTWL is in violation of listing conditions however, NTWL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. I find that penalty under Section 23H of SCRA, 1956 is also not attracted in the case of Noticee no. 2 to 7, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided. As the Noticee no. 2 to 7, being directors of NTWL, have been found to be in violation of LODR Regulations, 2015 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 23Hof SCRA, 1956 is not attracted in the case of Noticee no. 2 to 7. NTWL has been found to have violated provision of Section 21 of SCRA Act, 1956, therefore, provisions of Section 23H of the SCRA, 1956 is attracted *qua* Noticee no. 1, the Company.

45. I find that for the violation of LODR Regulations, 2015, NTWL 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 the Board thereunder for which no separate penalty has

been provided. Since, LODR Regulations, 2015 are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HB) does not separately provide for any penalty for violation of LODR Regulations, 2015, therefore, for violation of LODR Regulations, 2015 by NTWL, as found in this order, penalty under Section 15HB is attracted against NTWL. Similarly, Noticees no. 2 to 6 who are the directors of NTWL are liable for imposition of penalty, for the violations of LODR Regulations, 2015 which are found to be committed by them, under Section 15HB of the SEBI Act, 1992. As discussed in para 38 above, the case of Noticee no. 7 needs to be given a consideration compared to the one given to executive directors and independent directors who were part of the Audit Committee of NTWL and thus no monetary penalty is being imposed on Noticee no.7, except debarment as mentioned in para 42 above.

46. 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."

47. I find that the SCN does not alleged any amount of disproportionate gain or unfair advantage made as a result of the default. I find that the SCN does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by the Noticees. However, I note that the violations have occurred over a period of two financial years. I also note that Noticee nos. 4 and 5 were Independent Directors and Noticee no. 6 was a Non- executive director of NTWL and Noticee no. 7 was an additional director for FY 2016-17 and attended one meeting of the board of NTWL.

Directions:

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

(i) The Noticee no. 1 (Newever Trade Wings Limited), Noticee no. 2 (Mr. Akash Kumar) and Noticee no. 3 (Mr. Vikrant Kayan) are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;

(ii) The Noticee no. 4 (Mr. Bhaskar Paul), Noticee no. 5 (Mr. Vikash Dubey), Noticee no. 6 (Ms. Girija Banerjee) are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;

(iii) The Noticee no. 7 (Mr. Debjit Banerjee) is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of three (3) months, from the date of coming into force of this order;

(iv) The Noticees no. 1 to 6, are hereby imposed with, the following penalties as specified:

Noticee No.	**Name of Noticees**	**Provisions under which penalty imposed**	**Penalties**
1.	Newever Trade Wings Limited	Section 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956.	Rs. 20,00,000/- (Rupees Twenty Lakh).
2.	Mr. Akash Kumar	Section 15HB of SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh)
3.	Mr. Vikrant Kayan	Section 15HB of SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh)
4.	Mr. Bhaskar Paul	Section 15HB of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh)
5.	Mr. Vikash Dubey	Section 15HB of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh)
6.	Ms Girija Banerjee	Section 15HB of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh)

(v) The aforesaid Noticees are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order, 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 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, Investigation Department, ID-9, 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)	

(vi) The proceedings against Noticee no. 8 is disposed of without any directions for reasons provided in para 41.

49. During the period of restraint, as directed in para 48 above, the existing holding of securities including the units of mutual funds, of the concerned Noticees, shall remain under freeze.

50. The obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to

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

51. This Order comes into force with immediate effect.

52. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai **ANANTA BARUA**

Date: September 13, 2022 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA