National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/54898	Date: December 19, 2022
Circular Ref. No: 203/2022	

To All NSE Members,

Sub: **SEBI Order in the matter of Geodesic Limited**

This is with reference to NSE Circular No. NSE/INVG/48028 dated April 19, 2021, in respect of SEBI Order No. WTM/SM/IVD/ID2/11373/2021-22 dated April 19, 2021.

SEBI now vide its Order No. WTM/SM/IVD/ID3/22230/2022-23 dated December 19, 2022, has hereby restrained the following entities from accessing the securities market and has further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of one (01) year from the date of the SEBI order.

Sr. no.	Name of Entity	PAN
1.	Pankaj Kumar	AAHPS2438K
2.	Prashant Mulekar	AACPM1058Q
3.	Kiran Kulkarni	AAKPK6962F

Further, all open positions, if any, of the entities debarred in the Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by the Order.

The order comes 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.

In case of any further queries, members are requested to contact the following officials:

Mr. Souradeep Ghosh (Extension: 23345), 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: SEBI Order in the matter of Geodesic Limited

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF GEODESIC LIMITED

In respect of:

Sr. No./ Noticee No.	Name of the Noticee	PAN
1.	Pankaj Kumar	AAHPS2438K
2.	Prashant Mulekar	AACPM1058Q
3.	Kiran Kulkarni	AAKPK6962F
4.	Vinod Sethi	BESPS5774Q
5.	Nitin Potdar	ACJPP2824Q

(*The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees"*)

1. Securities and Exchange Board of India ("**SEBI**") received a letter dated January 01, 2016 from the Company Registrar of the Hon'ble Bombay High Court, forwarding therewith a copy of the order dated December 22, 2015, passed by the Hon'ble Bombay High Court in the matter of HDFC Bank Limited Vs. Geodesic Limited (Company Petition no. 514 of 2013) and other connected matter. In the said order, it was directed *inter alia* as:

   "…SEBI as well as the Enforcement Directorate are directed to forthwith take action against the Directors of the Respondent Company as well as Shri Dinesh Jajodia under the appropriate provisions of law, including attachment of their properties as permissible in law. The Company Registrar of this Court shall forward a copy of the Affidavit of Shri Dhananjay Kamalakar dated 22nd December, 2015, to SEBI as well as the Enforcement Directorate along with a copy of this Order. E.O.W. shall render all assistance required by SEBI and the Enforcement Directorate for effective compliance of this Order."

2. In this matter, based on certain complaints received from various stakeholders, SEBI had already initiated an investigation so as to ascertain the possible violations of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act, 1992**") and regulations made thereunder into the books of accounts of the Geodesic Limited (hereinafter referred to as **the "*Company/Geodesic/ GL*"**) to find out the veracity of the alleged irregularities in the books and accounts of the *Company*. The said investigation was conducted for the period of April 01, 2011 to March 31, 2012 (hereinafter referred to as **"Investigation Period / IP"**).

3. Further, in pursuance of the said investigation, SEBI had vide its letter dated October 17, 2014, appointed M/s Sarath and Associates (hereinafter referred to as "**Auditor/Forensic Auditor/Sarath**") for conducting Forensic Audit and examination of the books of accounts of the *Company*, and in pursuance of the said appointment, a Forensic Audit Report had been filed by Sarath.

4. The investigation including the forensic examination and audit, as aforesaid, revealed the following facts:

   (a) The *Company* was incorporated in the year 1982 and earlier it was known as Geodesic Information Systems Limited. The *Company* was in the business of providing products and solutions for Content, Communication, Collaboration and Electronic Computing etc.

   (b) The equity shares of the *Company* got listed on BSE Limited (hereinafter referred to as "**BSE**") in the year 2001 and on National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") in the year 2004.

   (c) At the time of investigation, the *Company* was under liquidation and w.e.f May 13, 2014, an Official Liquidator attached to Hon'ble Bombay High Court had taken the possession of all the books of accounts of the *Company*.

   (d) The *Company* had the following subsidiaries:

      i. Chandamama India Limited (Mumbai)
      ii. Filmorbit.com India Pvt. Ltd. (Mumbai).
      iii. Geodesic Gridpoint Energy Private Limited (Mumbai)
      iv. Geodesic Holdings Limited (GHL) (Mauritius)
      v. Geodesic Technology Solutions Limited (GTS) (Hong Kong)

   (e) The following persons formed the Board of Director of the *Company* at the relevant times:

Table no. 1

S. No	Full Name	Designation	Date of Resignation (if any)

1	Kiran Kulkarni (Noticee no.3)	Managing Director	NA
2	Pankaj Kumar (Noticee no. 1)	Chairman/Director	NA
3	Prashant Mulekar (Noticee no. 2)	Director & Compliance Officer	NA
4	Vinod Sethi (Noticee no. 4)	Independent Non-Executive Director	16.05.2013
5	Nitin Potdar (Noticee no. 5)	Independent Non-Executive Director	04.12.2012

(f) The Forensic Auditor appointed by SEBI observed that the revenues booked and the profits purported to have been generated by the *Company* were false and non-existent and thus the *Company* was misleading and misrepresenting the facts about its actual status of the affairs. The key observations of the Forensic Auditor are summarised as under:

A. The company had raised funds from overseas investors during January 2008 by issuing FCCB bonds for USD 125 Million. The redemption due date for the FCCBs was 18.01.2013. Subsequently the company had failed to redeem the bonds to investors on the due date. The company was ordered for liquidation by Bombay High court and also one of the main overseas company, GTSL and official liquidators were appointed for liquidation process.

B. Since the time of initial issue of the FCCB bonds which were to be used only for overseas acquisitions and investments in joint ventures/wholly owned subsidiaries and or for any other purpose as may be permitted by RBI, WERE DIVERTED by giving loan to Eland Crawn, Lasdun Ventures, Sharp Long Consultants through Emiloto & Zomo, the subsidiary company Geodesic Holding Limited. The parent company had violated the RBI norms by relending which were supposed to be invested in the overseas companies, and joint ventures to earn business income.

C. During the liquidation process, the assets which were in form of investments as per the audited balance sheets were probed and based on the information and documents, confirmed investments were available as reported in the balance sheets based on the bank statements submitted by the company. Further probe into the investments statements, mail communications of directors Mr. Prashant Mulekar, Mr. Kiran Kulkarni, Mr. Pankaj Kumar, and beneficiary owner Mr. Dinesh Jajodia (the purported tax consultant of the Company) and banker were indicating that the investments are diluted and diverted into other investments.

D. *On further probing the investments and the background of the companies in which the monies were transferred were indicating that the monies were invested or given as loan to companies in which Mr. Dinesh Jajodia is personally interested as director.*

E. *The investigative audit of the books of accounts for the availability of the reserves created by the company, debtors and creditors for realisation had revealed that they are non-realisable as they all are shell companies and outstanding amounts against these companies are generated by bogus entries.*

F. *Regarding the Audited Balance Sheets of the company, it was revealed that the forensic audit of the books of accounts for the years 2010-11, 2011-12 and 2012-13 were examined in detail, and the status of sales, purchases, returns, reserves and surpluses were non-existent. The details of the same areas under:*

   a. *The sales returns booked over the two years are only adjustment entries-based on the ledger copies*
   b. *Recoveries shown from GTSL debtors in June 2012, are not actually realised and are only cheques in hand which were never processed and cleared in the bank - based on the ledgers, sundry written back statements given by auditors.*
   c. *The sales as claimed in the books are, except few to certain Indian companies, for overseas clients are non-existent- based on the findings of certain samples.*
   d. *The GTSL fixed assets are non-existent as per the company's statutory auditor.*
   e. *The huge Inter corporate Deposits given are written off.*
   f. *The list of companies of sundry debtors are shell companies*
   g. *The renunciation of the recoveries in huge amounts by these shell companies.*
   h. *Huge software expenses booked against the shell companies*
   i. *The non-existence of reserves and surpluses created due to reversals of the sales booked over previous years.*

G. *Regarding the modus operandi adopted by the Company the report submitted by Sarath revealed as under:*

   a. *On the availability of the investments in the subsidiaries:-.*

   The company had raised funds for USD 125 Million through redeemable FCCB from overseas investors in 2008 for the purpose of investing in companies including wholly owned subsidiaries. These funds were invested primarily through the subsidiaries GTSL, Hong Kong and Geodesic Holding Limited Mauritius.

Subsequent investments were observed to be as under:-
GHL invested in Emiloto- USD 29 M ➔ HSBC Bank ➔Loan to Audrain Commercial Corp➔ Clariden Leu Bank ➔ Further details not known
Zomo Technologies- USD 87 M ➔Absolute Diversified Growth Funds ➔ Eland Crown➔Lasdun Ventures.
GTSL- USD 82 M ➔ BSI Bank ➔ Enterprise Emerging Marketing Fund➔ Yvette Investments Limited➔ Mr. Dinesh Jajodia –sole director
GHL- USD 20.10 M➔ Spokn Communications Pte Ltd➔Prashant Mulekar-director
GHL- USD 17.1 M ➔ Sharp Long Consultants➔ Mr. Dinesh Jajodia –sole director
GHL- USD 3 M ➔ Alpha Holding Limited.

As per the Audited Balance Sheet of GHL and GTSL, they had incurred huge losses and there was diminution of investments made through these companies. GTSL is under liquidation and no assets are available as per the receiver, Axis Bank, hence investments shown in audited balance sheets for USD 87 Million are not available. GHL invested in Zomo for USD 87 Million were reinvested in Absolute Diversified Growth Funds which in turn invested in Eland, Lasdun are lost as both the companies are under liquidation. GHL also invested in the Spokn Communications, Sharp Long Consultants, Alpha Holdings Limited in which Mr. Prashant Mulekar and Mr. Dinesh Jajodia were directors respectively in first two companies.

b. *Diversion of funds*

GL, on 17.01.2008, issued US $ 125 million Zero Coupon Convertible Bonds due 2013, which will bear no interest, except in certain circumstances and the bonds matures on 18.01.2013. As on the date, the nominal value of outstanding FCCB were USD 113.5 Million. The company had obtained RBI's approval to use the proceeds from the offering for overseas acquisitions and investments in the joint ventures or wholly owned subsidiaries. These funds however was to be parked overseas and not to be remitted to India.
Subsequently, GL had invested in GTSL, GHL its wholly owned subsidiary companies and further in its step down subsidiaries Emiloto, Zomo Technologies, Spokn Communications Ltd during the period from 2008-2010 for the purpose of acquisition.
On the date of redemption, the parent company GL, failed to redeem the monies to the overseas investors. In this regard Sarath revealed the following:-

i. *Monies lent to Lasdun, Eland, Sharp Consultants, Yvette Investments for loan purpose through the Standard Chartered Bank account, which were not for the purpose of acquisitions or investments in joint ventures but for re-lending activity, which is prohibited by RBI.*

ii. *The diversion of funds took place during the very first year of the collection of the funds i.e., 2008 in which the company paid to Sharp Long consultants, Yvette investments, GTSL as loan without prior permission of RBI.*

iii. *Booked huge bogus sales, purchase and software development expenses, non-existent fixed assets and utilised funds for paying the no-existent creditors and diverted the monies in paying the liabilities, writing off of the debtors, creditors and inter corporate deposits in the parent company in India.*

iv. *Part of the diverted funds were invested into other companies in which GL directors are common.*

Furthermore, directors of the Geodesic Mr. Pankaj Kumar, Mr. Prashant Mulekar, Mr. Kiran Kulkarni along with Mr. Dinesh Jajodia of the company and its subsidiary companies had fraudulently and intentionally siphoned off funds with a strategic planning, layering techniques of the funds raised through FCCB issue from overseas investors and further found part of the funds utilised for acquiring the assets in the names of the companies in which they were directors.

The company had further raised loans and other facilities from Indian bank and failed to repay in time and facing the liquidation and legal charges in various matters in the Bombay High Court.

It was also revealed that Geodesic had diverted FCCB funds and also booked bogus entries for creditors, software development expenses and manipulated the figures in the audited balance sheets. Directors of the company had committed fraud intentionally by diverting the funds and failing to redeem bonds and failed to repay loans to banks and also misrepresented the facts about the sundry debtors, fixed assets, investments, creditors and software development expenses. The Audited Balance sheet fails to provide a true and fair view of the status of affairs of the company on existence of its investments, profits and reserves.

5. Pursuant to the aforesaid investigation, a common Show Cause Notice (hereinafter referred to as **"SCN"**) dated November 17, 2016 was issued to the *Noticees* calling upon them to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 should not be issued against them for the alleged violations of provisions of Section 12A (a) (b) (c) of the SEBI Act, 1992 and Regulations 3 (b), (c) & (d) and 4(1), 4(2) (f), (k) 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**"). The SCN was issued to the *Noticees* alleging, *inter alia*, that:

   (a) The Audited Balance Sheet of the *Company* for the Financial Year 2011-12 fails to provide a true and fair view of the status of the affairs of the *Company* on existence of its investments, profits and reserves.

(b) *Noticee no. 3* (Managing Director of the *Company*) and *Noticee no. 1* (Chairman of the *Company*) being signatories to the Annual Report of the *Company* containing manipulated financials, have mislead the investors by not providing a true and fair picture of its quarterly and yearly financials.

(c) *Noticee no. 2* (Director and Compliance Officer of the *Company*) and *Noticee nos. 4* and *5* (both Independent Directors of the *Company*), who were the members of the Audit Committee of the *Company* have failed to oversee the correctness of the financial statements, which were false and misleading, and by accepting the same they have failed to discharge their duties as members of the Audit Committee.

(d) The *Noticees* engaged in manipulation of the books of accounts for the Financial Year 2011-12 by publishing the same in the Annual Report of the *Company* which was not true, have planted false/misleading news about its financials and misled the investors by not providing a true and fair view of its quarterly and yearly financials.

6. The SCN was served upon the *Noticees* by way of registered post and thereafter, a personal hearing of the *Noticees* was scheduled on August 08, 2017 and the hearing notices dated June 28, 2017 were sent to all the *Noticees*. In response to the hearing notices issued for the aforesaid hearing, emails dated August 02, 2017 and August 03, 2017 were received from the Authorized Representatives of *Noticee nos. 1* and *3* seeking adjournment of the personal hearing and accordingly, the personal hearing was rescheduled to October 04, 2017. The intimation about the personal hearing scheduled on October 04, 2017 was sent to the *Noticees* vide hearing notice dated August 10, 2017. The said hearing notice was served on all the *Noticees* except for *Noticee no. 2* as he had requested SEBI to keep his personal hearing separately after he is released from the judicial custody. For the said date also, request seeking an adjournment was received on behalf of *Noticee nos. 3* and *5*. Acceding to the said request, the personal hearing in the matter got rescheduled to February 13, 2018 which was again subsequently rescheduled to April 10, 2019. The said hearing date of April 10, 2019 had to be again, rescheduled to July 17, 2019 and yet again for the said date, the *Noticee nos. 1, 3* and *5*, requested for an adjournment of the hearing, whereas the *Noticee no. 4* while referring to his application under SEBI (Settlement Proceedings) Regulations, 2018, also sought an adjournment of the personal hearing. Accordingly, another opportunity of personal hearing was granted to all the *Noticees* on September 17, 2019. This time, vide email dated September 16, 2019, the authorized representatives of *Noticee nos. 1* and *3* apart from filing replies to the SCN, also requested for an adjournment of the said hearing on the ground that the counsel appearing for the said *Noticees* is required to appear before the Hon'ble Securities Appellate Tribunal and the Hon'ble Bombay High Court on the same date. Whereas, the *Noticee no. 2* vide his letter dated September 09, 2019, requested for adjournment of his personal hearing on the ground that he

is still in judicial custody and is in the process of getting a bail, and would be able to present his case once he is discharged on bail. Only the *Noticee no. 4* was represented during the said hearing by his Authorised Representative who made oral arguments countering the allegations made in the SCN.

7. The matter was once again posted for personal hearing on February 04, 2020, in response to which, the *Noticee no. 2*, vide his letter dated January 20, 2020 requested for adjournment of the said hearing by submitting that his bail application is still pending before the Hon'ble Bombay High Court. The Authorized Representative of *Noticee no. 1* and *3* vide their email dated February 03, 2020, once again requested for adjournment citing the same reason that their Counsel has to appear before the Hon'ble SAT and the Hon'ble High Court on the same date fixed for hearing in the present proceedings. The Authorised Representative for the *Noticee no. 5* appeared for the hearing and submitted that the copy of minutes of Audit Committee Meetings of the *Company* needs to be furnished, so as to enable the said *Noticee* to file an appropriate reply to the SCN. An opportunity for inspection of documents was scheduled on February 26, 2020, based on the request of the *Noticee no. 5* as referred to above. However, as the documents like copy of minutes of the Audit Committee Meetings of the *Company* were not available in the records of SEBI, inspection of same could not be provided.

8. The personal hearing in the matter was finally re-scheduled to July 01, 2020 and this time again, the Authorised Representative of *Noticee nos. 1* and *3*, vide his email dated June 26, 2020 expressed their inability to appear even through Video Conferencing, citing the reason of ongoing Pandemic Covid-19. However, it was pointed out to the Authorised Representative that there can be no possible hardship pertaining to Covid- 19 for attending the personal hearing through Video Conferencing. Accordingly, the *Noticee nos. 1* and *3* along with their common Authorised Representative finally appeared before me on the said date through VC and made their oral submissions. Further, the *Noticee no. 5* was also represented by his Authorised Representative who made oral submissions on his behalf. Based on the oral submissions so advanced during the personal hearing certain queries emanating from the arguments so made by them were posed to the said *Noticees* seeking their replies subsequently through post-hearing submissions.

9. The Authorised Representative for *Noticee no. 5* vide letter dated July 27, 2020, filed certain additional submissions and also provided responses to the queries posed during the personal hearing. Further, the Authorised Representative of *Noticee nos. 1* and *3* vide his email dated July 25, 2020, filed response to a few of such queries that were posed during personal hearing but has cited various reasons for not furnishing their explanations to the other queries for which, he sought more time. The reasons so cited in the said communication mentioned that the records pertaining to the *Company* are available at its (*Company's*) Registered office which are in the custody of the Official Liquidator attached to the Hon'ble Bombay High Court. It has

further been stated that the Hon'ble Bombay High Court has prohibited the *Noticee nos. 1* and *3* from entering into the said premises. Further, vide another email dated September 22, 2020, the *Noticee no. 1* had requested for more time to respond to those queries due to difficulties caused by Covid-19 and again vide his email dated October 24, 2020, the *Noticee no. 1* sought further time to submit the details by stating that he has addressed a letter dated October 12, 2020 to the Official Liquidator attached to Hon'ble Bombay High Court seeking copies of the relevant records. However, I find that till date, no further information/response has been received from the said *Noticees* nor have they intimated to me any further development in this regard till date.

10. It is noted from the records that during another investigation conducted by SEBI in the year 2020, statement of two persons namely Mr. Mangiram Sharma and Mr. Manoj Sharma have been recorded. The investigation conducted in the said proceedings also brought to fore certain facts which appeared to be crucial and central to the present proceedings. Accordingly, a Supplementary Show Cause Notice dated April 06, 2021 (hereinafter referred to as the **"Supplementary SCN"**) was issued to the *Noticees.*

11. The Supplementary SCN records the following facts to support the allegations made in the first SCN:

    I. The expenses in the name of software purchase by GL were incurred by showing fictitious/mule companies as suppliers/vendors and the funds transferred under such head of expenditure were transferred through various round tripping/layered transactions to other companies where Mr. Dinesh Jajodia or his family members were having interest.

    II. The bogus / fictitious companies in whose names bills were issued to GL, had cross-holding with the companies connected to/in control of Dinesh Jajodia.

    III. The sundry debtors and creditors were written off by GL in its Annual Report as on June 30, 2013. In the Notes forming part of the Standalone Financial Statements for 2012-13, it has been stated that against aggregate write off of sundry debtors of one of its products amounting to of INR 45,340.87 Lakh (both the financial years ended 30th June, 2012 and 30th June, 2013), the *Company* has also written back to the creditors for the supply of software used in manufacture of the aforesaid product, amounting to INR 43,700.54 Lakh in the next financial year ended on June 30th, 2013. The Statutory Auditor of the *Company* had given a qualified opinion stating that they were unable to verify the correctness of the write off of the amounts so reversed in respect of the said software.

IV. It was also noticed that there were fund transfers between GL and its Group companies with the companies connected to Dinesh Jajodia, through other such companies which were the debtors and creditors of GL.

V. The Forensic Auditor has observed that the fund transfers by GL to companies connected to Mr. Dinesh Jajodia directly or through fictitious /mule companies, were not pertaining to any commercial transactions and details of such transactions were neither observed in the Books of accounts nor mentioned in the Statutory Auditor's report.

VI. The sundry creditors of GL were also found to be fictitious /mule companies with no actual business. A deed of settlement was executed by GL with such creditors to write off the amount due to them. Such creditor companies were connected with each other due to common addressed etc. Further, these mule companies had engaged in numerous funds transfers amongst themselves.

VII. Statements of two persons, viz., Mr. Mangiram Sharma and Mr. Manoj Sharma, were recorded during the investigation conducted by SEBI. In the said statement, Mr. Mangiram Sharma has *inter alia* stated that:

(a) He was introduced to Mr. Prashant Mulekar (*Noticee no. 2 herein*) by Mr. Dinesh Jajodia with an offer to earn some money as commission by issuing fake bills to the *Company* i.e. GL.

(b) Six name lending companies namely HPL Mutlitrade Ltd, Anikesh Trading Pvt. Ltd., Divya Infotech Pvt. Ltd., Algorithmic Software Systems Pvt. Ltd., Idor Systems & Solutions Pvt. Ltd. and Netformx Information Technology Pvt. Ltd. were incorporated by him in the year 2007-08 on the instructions of Mr. Dinesh Jajodia.

(c) The *Company*/*Geodesic* used to transfer funds in the accounts of the aforesaid 6 companies against which fake bills were issued by these 6 companies. The amounts so received were transferred from these companies to other parties on the instructions of Mr. Dinesh. Against such an activity, commission was received into the accounts of such companies.

(d) The cheques were issued by Mr. Manoj Sharma who was taking care of accounts of all these 6 companies.

VIII. Further, in his statement, Mr. Manoj Sharma has *inter alia* stated that:

(a) He was a Director in these name lending /mule companies namely, HPL Multitrade Pvt. Ltd, Netformx Information Technology Pvt. Ltd., TFC Engineering Pvt. Ltd.

(b) These companies were not carrying on any business and were being managed by Mr. Mangiram Sharma on the instructions of Mr. Jajodia for issuance of fake bills.

(c) The instructions to carry out transactions with GL during 2008-2013 were given by Mr. Mangiram Sharma and Mr. Jajodia and he was supplying fake bills to the *Company/Geodesic* at the instructions and supervision of Mr. Mangiram.

(d) The bills issued to Geodesic had no actual sale or purchase of goods/software associated with them.

(e) The funds received in the accounts of the aforesaid 6 companies were transferred to various entities on the instructions of Mr. Mangiram and Mr. Jajodia.

IX. The statements of Mr. Dinesh Jajodia and Mr. Mangiram Sharma were got recorded in another proceeding before the Enforcement Directorate, wherein also they also admitted that fake bills were issued by the six companies to Geodesic for which commission was being received by them.

12. After service of the Supplementary SCN upon *Noticee nos. 1, 3, 4* and *5 (*the Supplementary SCN issued to the *Noticee no. 2* returned undelivered), inspection of documents was provided to the aforesaid *Noticees* to ensure grant of fair and sufficient opportunity to them to defend the allegations. Further, in view of issuance of the supplementary SCN, another opportunity of personal hearing was granted to all the *Noticees* on December 08, 2021 but the hearing notice issued to the *Noticee no. 2* returned undelivered. Accordingly, the hearing notice was served upon him through substituted mode of newspaper publication. On the said date of hearing, the Authorised Representatives for *Noticee nos. 1, 3, 4* and *5* appeared and made oral submissions.

13. The Supplementary SCN relies upon various documents, including the statements made by two persons viz., Mr. Mangiram Sharma and Mr. Manoj Sharma. In pursuance of the said Supplementary SCN, a request was made on behalf of the *Noticee nos. 1* and *3*, to provide opportunity for cross-examination of the two persons viz., Mr. Mangiram Sharma and Mr. Manoj Sharma. Since, the statements of these two persons recorded on oath have been relied upon to allege and establish the allegations in the SCN, the said request of the *Noticees* was accepted and the date for cross-examination was fixed for February 17, 2022, which got adjourned to March 23, 2022 on the request made of the *Noticee no. 3*. On March 23, 2022, Mr. Manoj Sharma joined through Video Conferencing, whereas Mr. Mangiram Sharma did not attend the said proceedings hence, a request was made by the Counsels for *Noticee nos. 1* and *3* that the cross-examination proceedings should be allowed to be conducted in person.

Acceding to the said request, the cross-examination was not proceeded with on the said day and the matter was further posted to May 12, 2022. On the said date, the cross-examination of Mr. Manoj Sharma got concluded, however, that of Mr. Mangiram Sharma was deferred for another date. Further, during the said proceedings of the cross-examination, the Counsels for the aforesaid *Noticees* submitted that they have not received the copy of the bills raised by the six companies to Geodesic, as were furnished to SEBI by Mr. Mangiram Sharma under cover of his letter dated December 11, 2019. It was contended by the *Noticees* that another opportunity of cross-examination of Mr. Mangiram Sharma is necessitated after the said documents are furnished to the *Noticee.* Additionally, copy of the Income Tax Returns of the aforesaid two persons were also requested to be furnished.

14. Acceding to the request of the *Noticees,* the copies of invoices as received from Mr. Mangiram Sharma were furnished to the counsels of the *Noticees* and the cross-examination was re-scheduled to August 11, 2022. However, a request was received on behalf of *Noticee no. 3,* seeking adjournment of the said date fixed for cross-examination on the ground that the documents are voluminous and the *Noticee* needs time to examine them. The said request was also acceded to by rescheduling the cross-examination on August 29, 2022. However, on August 25, 2022, again a request for adjournment was received from the Counsel *of Noticee no. 1* on the ground that he has received the documents only 2 days before and thus needs time to enable him to prepare for conducting the cross-examination. However, as the documents were already furnished well in advance to the Advocate representing both the *Noticees*, the said request for further adjournment was not acceded to and *Noticees* were asked to ensure their presence on the day scheduled for cross –examination in the matter. Accordingly, the Counsels for both the *Noticee nos. 1* and *3* appeared on August 29, 2022 and completed the cross-examination of Mr. Mangiram Sharma.

15. Before I proceed to appropriately deal with the replies/submissions of the *Noticees,* I find it worthwhile to recall here the charges that have been levelled against the *Noticees.* It has been alleged in the SCN that the *Noticees* have violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 and Regulations 3 (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of the PFUTP Regulations, 2003. In order to appreciate the charges levelled against the *Noticees*, it would be apposite to refer to the above-stated relevant provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 which have a bearing on the allegations made against the *Noticees*. These relevant provisions are reproduced hereunder for facility of reference:

SEBI Act, 1992

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

Section 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.

PFUTP Regulations, 2003

Regulation 3. Prohibition of certain dealings in securities

"No person shall directly or indirectly –

(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."

Regulation 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 which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

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

16. It is noted from the records that the *Noticee no. 2* has not participated in the present proceedings and has only addressed certain communications from time to time making requests to adjourn the proceedings till the time he is discharged on bail. In this connection, I note that the present matter is very old and the alleged violations pertain to the period of 2012-2013. The SCN in the matter was originally issued in the year 2016, however, based on the repeated requests received from the *Noticees*, including the *Noticee no. 2* regarding his inability to present his case, the personal hearing in the matter was adjourned on numerous occasions to enable the *Noticees* including the *Noticee no. 2* to defend the allegations. It is well recognized that any situation of a delinquent being restrained from presenting his case due to certain physical restrictions like being in judicial custody deserves a lenient view. However, when the matter is examined holistically, it is observed that adequate number of opportunities have already been granted to the *Noticees* to present their case and in absence of any fixed time frame being indicated for removal of physical restrictions on the *Noticee no. 2*, it would not be in the fitness of things to keep the matter pending infinitely. In any event, when the *Noticee* is able to approach for bail, he has all the means at his disposal to get himself represented through a counsel in the instant proceedings as well. Therefore, after having accommodated on so many occasions, I see no reason to accord any further accommodation. Therefore, vide letter dated July 06, 2020, the *Noticee no. 2* was provided with a last opportunity to file his response to the SCN. The said letter returned undelivered from the last known residential address of the *Noticee no. 2*. However, the letter has been served on Central Jail, Mumbai (where the *Noticee no. 2* was confined as per his last communication) through post. It is noted from the records that vide an email dated August 04, 2020, the Jail Authorities were requested to confirm whether the *Noticee no. 2* is still confined there, however, no response has been elicited on the said email. I, therefore find that adequate opportunities have been given to the *Noticee no. 2* and in absence of any response on his behalf or about his present status, it is not known as to when the *Noticee no. 2* will be available to attend the personal hearing before me. It is also of relevance to mention here that the *Noticee no. 2* was at liberty to engage an Authorised Representative/Counsel to present his case in his defence but he has not taken any step in this regard either. Under the circumstances, I have no other option but to proceed to deal with the matter on merit based on the materials available on records.

17. The *Noticee nos. 1* and *3,* in response to the SCN, have filed a common reply dated September 13, 2019. Further, a post hearing written submission has also been filed on their behalf vide email dated July 25, 2020. The submissions made in the aforesaid replies are summarized hereunder:

   i. Copy of investigation reports have not been provided.
   ii. The Official Liquidator of the Hon'ble Bombay High Court has taken over the charge of assets and properties of the *Company* w.e.f May 13, 2014 and therefore the said *Noticees* do

not have access to the records pertaining to the *Company*. As the said *Noticees* are not permitted to access the record of the *Company*, the present reply has been filed based on the limited records/information available with the said *Noticees*.

iii. The *Noticees* were not informed about the appointment of M/s Sarath & Associates by SEBI for conducting forensic audit of books of accounts of the *Company*. The scope and terms of such Audit came to their knowledge in the year 2017, during inspection of documents conducted during the present proceedings.

iv. The report of Forensic Auditor is not credible as the report is admitting that the Auditors have been unable to determine certain significant details; the records of companies outside India have not been examined by them; the report reflects an erroneous understanding of the business of the *Company*; and the report does not mention any violation of SEBI Act, 1992. The Forensic Auditor has exceeded the mandate given to it.

v. The Forensic Audit does not disclose the details of documents alleged to have been seized at the office of Mr. Dinesh Jajodia, the tax consultant of the *Company*.

vi. The *Company* was engaged in the business of hardware and software development and was having a well-diversified portfolio of products and long list of clients. Both the *Noticees* are well qualified and experienced.

vii. The *Company* had raised USD 125 million (INR 492 Crore) by issuance of FCCBs in January, 2008. The said funds were to be used for overseas acquisitions and investment in joint ventures/wholly owned subsidiaries and other purposes as permitted by RBI. The FCCBs were listed on Singapore Stock Exchange.

viii. In terms of the FCCB Offering Circular, the proceeds of the FCCBs were invested along with internal accruals in overseas subsidiary companies set up by the *Company* or for acquisition of foreign companies directly or indirectly through the foreign subsidiaries. The *Company* or its subsidiaries have not given any loan to Eland Crown, Lasdun Ventures, or Sharp Long Consultants, as has been mentioned in the Forensic Audit Report.

ix. There were a total of 11 such subsidiaries/step down subsidiaries which included GTSL, Hong Kong, Zomo Technologies and Emiloto Associated Inc (British Virgin Islands). The 100% shareholding of GTSL was with the *Company* and shareholding of rest of the aforesaid two companies was with Geodesic Holding Limited, Mauritius (a subsidiary of Geodesic Limited).

x. The aforesaid three subsidiaries/step down subsidiaries had invested part of the money raised through FCCB issue in various funds outside India through certain foreign banks and details of such investment are tabulated herein below:

Table no. 2

Sr. No	Name of subsidiary	Name of fund	Amount in USD	Through/Managed by	NAV (million USD) On Date
1.	GTSL, Hong Kong	Enterprise Emerging Market Fund	82 Million	BSI Bank Singapore	82.02 22.02.2013
2.	Zomo Technologies Limited	Absolute Diversified Growth Fund	87 Million	Credit Suisse Bank, Zurich	94.18 31.01.2013
3.	Emiloto Associated Inc	Various liquid assets including Government securities and bonds#	29 Million	HSBC, Zurich	29.05 23.01.2013
Total			198 Million		205.25

A sum of USD 29.03 Million was invested by Emiloto in Audrain Commercial Corp., Belize ("Audrain") in the form of a loan. As per agreement dated July 31, 2012 executed between Emiloto and Audrain, this loan was to be used by Audrain to search out for companies with innovative products and acquire them. If Emiloto was convinced about the validity of the product/technologies, they would acquire the companies in lieu of the loan/part thereof. Copy of agreement has also been filed in support.

xi. The said *Noticees* are not able to obtain copies of bank account statement to show the fund flows for the aforesaid transactions, copy of statements issued by aforesaid banks to show the Net Asset Value of aforesaid investment, as USD 205 Million which have been filed. Besides, the *Company* also estimated to collect revenue of USD 28 Million from GTSL's business as on September 30, 2012 and as on September 30, 2012, the NAV of the investments made with HSBC was USD 29 Million.

xii. Since the *Company* and its subsidiaries were not able to liquidate their investments, the *Company* could not comply with the directions of the Hon'ble Bombay High Court, which led to appointment of Provisional Liquidator for the *Company*. Due to the said fact, the business of the *Company* got terminated abruptly causing loss of revenue to the *Company*.

xiii. As expressed in its Annual General Meeting of shareholders of the *Company* held on February 11, 2013, the shareholders including Foreign Funds had expressed confidence in the management of the *Company*. However, the impulsive and avoidable action by the Trustees for the FCCB Holders led to appointment of Provisional Liquidator and consequently, the business of the *Company* got shut and the interest of the shareholders were prejudiced.

xiv. The *Company* never misled the stock exchanges or the FCCBs holders. The proceeds of FCCBs were invested in subsidiaries and well recognized funds in Singapore/Zurich. The investment of USD 176 Million in BIS Singapore and Credit Suisse was open ended and thus liquid. Only 20% of such proceeds were invested to explore and invest in new innovations.

xv. However, due to the actions taken by various banks like ICICI Bank, Axis Bank etc., for recovery of loans, and action of demand initiated by Citibank NA, it resulted in a situation where the subsidiaries of the *Company* could not act to liquidate the assets and repay bondholders. Further, due to appointment of Official Liquidator, the Directors lost control of the *Company* due to which the business of *Company* completely stopped.

xvi. The Forensic Audit Report erroneously mentions that norms stipulated by RBI were violated by the *Company*. RBI, in its letter addressed to EOW Mumbai had intimated that there was no contravention of FEMA guidelines in respect of the FCCBs issued by the *Company*.

xvii. The Forensic Audit Report does not specify the details of investment statements, emails etc., which led to the observation that the investments were diluted or diverted.

xviii. The *Noticees* were not involved in the usage of funds by the companies in which subsidiaries of Geodesic Limited had made investments.

xix. The findings of the Forensic Audit Report that the revenues booked and profit generated were misleading can only be treated as an 'opinion' as such no such comment was made by the statutory auditor of the *Company*. No such finding has been given by SEBI as SCN is silent on any confirmation taken by SEBI from the statutory auditor.

xx. The losses suffered by the subsidiaries of the *Company* were disclosed in the balance sheets of the *Company*. The loss was suffered by the *Company* due to reasons beyond its control.

xxi. The Annual Return for the year 2012-13 and revised Annual Return for the year 2011-12 were finalized in the AGM held on May 10, 2014 but not filed with MCA as Provisional Liquidator had seized the records on May 13, 2014. From the said fact, it is not clear from where the Forensic Auditor has taken the records.

xxii. The *Company* had raised USD 125 million (INR 492 Crore) by issuance of FCCBs in January, 2008. The said funds were to be used for overseas acquisitions and investment in joint ventures/wholly owned subsidiaries and other purposes as permitted by RBI. The FCCBs were listed on Singapore Stock Exchange.

xxiii. The proceeds of FCCBs were immediately used in making investments in overseas subsidiaries and by such subsidiaries for acquiring other companies. The said investments etc., have been duly shown in the financial statements of the *Company* and its subsidiaries.

xxiv. The subsidiaries/step down subsidiaries invested in the amount raised through FCCBs and other internal accruals in various funds outside India through HSBC Bank etc. A total of USD 198 Million was invested. The valuation of said investment as on January/February, 2013 was USD 205 million.

xxv. The winding up proceedings of the *Company* have been initiated on the applications filed by the trustees of the FCCBs and some of the creditor banks of the *Company*. Due to appointment of Provisional Liquidator, the business of *Company* has stopped.

xxvi. There was no fraudulent intention behind default in redemption of FCCBs. The same happened due to wrong advice by Investment Managers.

xxvii. The *Noticee nos. 1* and *3* were not member of Audit Committee of the *Company*.

18. In addition to the above submissions, *Noticee no. 1* and *Noticee no. 3* vide their separate letters dated December 07, 2021, have made the following identical submissions in response to the Supplementary SCN:

I. Copy of the investigation reports have not been furnished and in absence of the same, the *Noticees* are unable to file a comprehensive reply.

II. The allegations in the present proceedings pertain to a period of 2011-12. The SCN was issued in the year 2016 and the Supplementary SCN has been issued in 2021. The proceedings should therefore be dropped due to delay.

III. No details/clarifications were sought from the *Noticees* on the complaints filed by OIM LLC and Beck & Partner VVW (entities who had made complaints to SEBI) or the Forensic Audit Report.

IV. As per the Supplementary SCN, Mr. Dinesh Jajodia and Mr. Mangiram Sharma acted together with Mr. Prashant Mulekar (*Noticee no.2*). However, the records do not indicate any statement of *Noticee no. 2* despite the fact that he being the Chief Financial Officer, was in-charge of preparing the Financial Statements of the *Company* and its subsidiaries. The same shows that the investigation is incomplete.

V. The Supplementary SCN also relies on the statements of Mr. Dinesh Jajodia and Mr. Mangiram Sharma made before the Enforcement Directorate The said proceedings have resulted in an Enforcement Case Information Report (ECIR) no. ECIR/MBZO/02/2016, based on which PMLA Special Case no. 07 of 2018 has been filed before the Designated Court under Prevention of Money Laundering Act, 2002. The statements of aforesaid persons are part of the said case which is sub-judice, and therefore, SEBI should not have relied upon such statements.

VI. An opportunity to cross-examine the aforesaid two persons should be accorded to the *Noticees*.

VII. In connected matters, an order dated April 19, 2021 under Section 11B of SEBI Act, 1992 as well as an Adjudication Order July 27, 2021 were passed by SEBI. The allegations underlying in the said orders have also been included in the Supplementary SCN. The aforesaid orders were challenged before the Hon'ble Securities Appellate Tribunal, and the Hon'ble SAT, vide its orders dated September 29, 2021 and October 05, 2021 has upheld the said orders passed by SEBI. However, *Noticee no. 3* has assailed the said orders before the Hon'ble Supreme Court vide Civil Appeal [Diary no. 30325/2021]. Therefore, the present proceedings should be kept in abeyance till the said Appeal is decided by the Hon'ble Supreme Court of India.

VIII. The bills raised by various entities are alleged to be bogus on the basis that such entities did not have any business and also based on the statement of Mr. Mangiram Sharma. However, the said statement relates only to 6 companies mentioned by Mr. Sharma. There are other companies also which had raised bills to Geodesic and which were not bogus companies. Such companies had in fact provided software and software related services to the *Company*, for example, Simmtronics Infotech Limited, based in Noida, which had provided contract manufacturing services to the *Company* and raised bills for the same. Such bills raised by Simmtronics Infotech Limited cannot be termed as bogus bills. Further, the bills raised by the *Company* Geodesic for various softwares and software services were not fake.

IX. The *Company* had faced sudden loss in December 2011 due to the failure of one of their products. In order to contain and manage the consequences of said product failure, the *Company* had retuned the cheques that were collected towards subscription of the said product. The said act led to reversal of the entries in respect of amounts owed by GTSL, the subsidiary of the *Company* and write off of the expenses pertaining to the said product. Further, the said fact also led to write off of debts from Sundry Debtors which included many renowned entities like HDFC Bank etc.

X. The Forensic Auditors have not examined the bills and have merely relied upon the documents furnished by the complainants.

XI. *Noticees* were not aware of the transactions between the companies and to entities owned by Mr. Dinesh Jajodia which had allegedly issued bogus bills.

XII. To the best of the *Noticees'* recollection, some of the companies owned by Mr. Dinesh Jajodia to which the *Company* had transferred funds were stock brokers/commodities brokers/portfolio managers registered with SEBI. The alleged fund transfers were part of the investments made by the *Company*, which can be demonstrated if cross-examination of the Mr. Dinesh Jajodia is provided.

XIII. All the revenues earned from the overseas business were genuine and its erroneous to presume that funds transferred from the overseas subsidiaries to the *Company* were diverted funds.

XIV. The *Company* was not concerned with the usage of funds by entities to whom such payments were made and any such usage would not be the basis to allege that the underlying bills were bogus.

XV. *Noticees* were not aware of the ownership pattern of the companies that had raised bills to the *Company* nor were they aware about the inter-se connection existing between them.

XVI. As per the best of recollection and also based on the bank account statement provided by Enforcement Directorate, the amount involved was not INR 584.54 Crore, as erroneously stated in the Supplementary SCN but was only INR 250 Crore.

XVII. The audited balance sheet for the Financial Year 2011-12 was restated by the *Company* in Financial Year 2012-13. The said restated balance sheet has recorded the fact about the product failure and consequent reversal of debt entries and write off of costs, however, SEBI and the Forensic Auditors have ignored the said Balance Sheet and the Management Discussion contained therein.

19. It is noted that pursuant to the cross-examination of Mr. Mangiram Sharma and Mr. Manoj Sharma, *Noticee no. 1* (Mr. Pankaj Kumar*)* vide his letter dated October 07, 2022 and the *Noticee no. 3* (Mr. Kiran Kulkarni) vide his letter dated October 03, 2022, have filed additional written submissions. The said submissions being almost identical are being summarized hereunder:

I. Despite repeated requests, the *Noticee* has not been furnished the copies of the investigation reports and all relevant documents relied upon by SEBI. Pursuant to the cross-examination proceedings, the *Noticee* has requested for copies of Balance Sheets, Sales Tax Returns and Income Tax Returns of companies viz., Divya Infotech Pvt. Ltd., HPL Multi Trade Private Limited, etc., as it was confirmed by Mr. Mangiram Sharma that he had submitted them to SEBI. The said companies had allegedly issued bogus and fake bills to Geodesic Limited from 2007-08 onwards. By not furnishing the said documents, the *Noticee* has been prejudiced to submit a comprehensive reply. Reliance has been placed on the judgment of the Hon'ble Supreme Court passed in the matter of *T. Takano Vs. SEBI (Civil Appeal no. 487-488 of 2022)*; and *Reliance Industries Limited Vs. SEBI (Civil Appeal no. 1167 of 2022)*

II. The balance sheet and Income tax returns would have shown that the said companies have paid taxes including Sales Tax on the invoices raised by them on Geodesic Limited, thus showing that the said invoices were not bogus.

III. Mr. Mangiram Sharma had admitted during the cross-examination that the bills were genuine and not bogus/fake, as alleged in the SCN. He has also stated that there was sale of goods, i.e. sales related to computer software.

IV. The records of the present matter do not include statement of Mr. Prashant Mulekar (CFO of Geodesic Limited), who allegedly acted together with Mr. Dinesh Jajodia and Mr. Mangiram Sharma.

V. The finding of the investigation to the effect that the invoices raised by the 6 companies were bogus, is solely based on the statement of Mr. Mangiram Sharma and Mr. Manoj Sharma. However, the invoices have not been examined by SEBI. Further, during his cross-examination, Mr. Mangiram Sharma has admitted that invoices were genuine, therefore, the allegation of transfer of funds and manipulation of books of accounts are rendered erroneous and the findings of the Forensic Audit Report cannot be relied upon.

VI. Mr. Mangiram Sharma is not conversant with English language, however, his statement recorded before SEBI on April 05, 2016 was not explained to him in Hindi. Further, in verification clause of the statement of both Mr. Mangiram Sharma and Mr. Manoj Sharma, name of one Mr. Rajesh Pathak has been mentioned. Both of the said witnesses have confirmed that they do not know said Mr. Rajesh Pathak.

VII. SEBI has not recorded the statement of Mr. Dinesh Jajodia and has in fact relied upon a statement recorded before Enforcement Directorate. The veracity of the said statement is being contested before the Designated Court for PMLA proceedings and therefore the said statement cannot be relied upon. Further, the opportunity to cross-examine Mr. Dinesh has not been provided by SEBI.

VIII. As the statements of Mr. Dinesh and Mr. Mangiram Sharma recorded before Enforcement Directorate are part of a pending proceeding, SEBI cannot rely upon such statements.

IX. An appeal arising out of a connected matter (Order dated April 19, 2021 of SEBI and order dated September 29, 2021 of Hon'ble SAT) is pending before the Hon'ble Supreme Court, the present proceedings should be kept in abeyance till disposal of the same.

X. The *Noticee* did not have any interaction with Mr. Mangiram Sharma.

XI. The *Noticees* were not a member of the Audit Committee during the relevant times and allegations have been levelled against him merely because he was a signatory to the Annual Reports and Financial Statements of the *Company*. Reliance has been placed on the judgment of Hon'ble Supreme Court passed in the matter of *Shiv Kumar Jatia Vs. State of NCT of Delhi (2020) 3 SCC (Cri) 281*, wherein it was held that a Director or Managing Director of a company can be made an accused along with the company only if there is sufficient material to prove his active role coupled with the criminal intent.

20. I note that there are certain technical objections raised by and on behalf of the *Noticees*, including a demand to provide them with documents like the copy of the investigation reports as has been made by the *Noticee nos. 1* and *3*. In this connection, I observe that all the major findings of the investigation forming the basis of the present proceedings have already been incorporated in the SCNs and all the documents relied in the SCNs upon viz., the Forensic Audit Report and other documents like statement of Mr. Mangiram Sharma, Mr. Manoj Sharma, and other relevant documents, have also been annexed to the SCNs. It is also noted from the records that inspection of all documents relied upon in the SCNs have also been

carried out on behalf of the *Noticee nos. 1* and *3*. Further, the other documents like copy of invoices generated by the 6 companies have also been furnished to the *Noticees* so as to grant them an opportunity to conduct an effective cross-examination of Mr. Mangiram Sharma and Mr. Manoj Sharma.

21. In this respect, it is further observed that the *Noticees* have relied upon the judgment of the Hon'ble Supreme Court passed in the matter of *T. Takano (supra)*, which no doubt confers a right on the delinquent to seek copy of such documents. However, at the same time, I cannot ignore the fact that the above judgment was passed on February 18, 2022 and the Advocates representing the *Noticee nos. 1* and *3* were constantly communicating with SEBI after the said judgment in case of *T. Takano (supra)* was passed by the Hon'ble Supreme Court. In none of such communications, however, the *Noticees* have asked for a copy of the investigation report nor did refer to the aforesaid judgment of the Hon'ble Supreme Court during the course of cross examination to press their request for a copy of Investigation report, while seeking additional time to file written submissions, if any, which they wished to file in defence of the allegations made in the SCN. After completion of the cross-examination proceedings, the additional submissions filed by them should have been ideally restricted to the depositions made by the witnesses during the cross-examination. Instead, a request to provide certain documents that were not part of cross –examination proceedings have been made and shelter has now been taken under the above mentioned judgment of the Hon'ble Supreme Court stating that a full copy of Investigation report has not been provided to them knowing very well that all the findings of the Investigations reports and the allegation based on such findings along with all documents relied upon to make such allegation have been duly incorporated in /enclosed to the SCN served on them since long. Thus, in totality of the circumstances, I observe that considering the series of opportunities granted to the *Noticees* to defend the allegations and considering the challenges and repeated requests for adjournment with which the case was heard after a long passage of time of 4 years almost, the above submission of the *Noticee* seeking a copy of the investigation report at the very last stage of the present proceedings with a demand for another personal hearing is nothing but a ploy to further delay the proceedings. Therefore, in the absence of any prejudice being caused and *Noticees* having failed to show their helplessness if any in defending the allegations or to explain as to how non-receipt of the copy of IR is going to prejudice their interest, it is observed that the said request at this stage is not a *bonafide* request and rather has been made with *malafide* interest hence deserve to be rejected. At this stage, I deem fit to refer to the another judgment of the Hon'ble Supreme Court of India, passed in SLP (Civil) No. 15149 of 2021 in the matter of *Kavi Arora vs. SEBI*, wherein the Hon'ble Court has *inter alia* observed as:

"35. As held by this Court in T. Takano (supra), it would be fundamentally contrary to the principles of natural justice if the relevant material were not disclosed to the noticee.

36. In T. Takano (supra), this Court approved and followed the law laid down in Natwar Singh(supra) and reiterated that the Adjudicating Authority had the duty to disclose the materials that had been relied upon during the stage of adjudication. It is also true that the Adjudicating Authority cannot exercise unfettered discretion to redact documents necessary for the noticee to defend his case."

22. Similarly, the request for another personal hearing post the cross-examination is also found to be devoid of any merit, more so when *Noticees* have been given multiple opportunities to represent themselves for defending the allegations. It has been noted above as to how the hearings in the matter got delayed due to adjournments sought by the *Noticees* on one pretext or the other and yet, requests of *Noticees* have been accommodated on several occasions Further, considering the fact that *Noticees* have already been heard personally and thereafter post cross examination of Mr. Mangiram Sharma and Mr. Manoj Sharma, were given sufficient time to file there additional detailed response on each aspect of the SCN with supporting documents for my consideration while disposing of the SCN and SSCN on merit, I am of the view that the principles of natural justice have been duly complied with. Since the *Noticees* have been given ample time and opportunity to present their case which they have availed and presented their case in detail before me there does not seem to be any requirement for granting any additional personal hearing in the matter. Furthermore, I find that their demand to provide various other documents viz., copy of balance sheets of Divya Infotech Pvt. Ltd., HPL Multi Trade Private Limited etc., so that the *Noticees* would have been able to prove that the said companies have paid taxes including Sales Tax so as to show that the invoices raised by the companies were not bogus. I find it appropriate to deal with this issue and demand of the *Noticees* in the later part of the present order.

23. Another preliminary contention that has been taken by the *Noticees* is that the allegations in the present proceedings pertain to the year 2011-12, the SCN was issued in the year 2016 and the Supplementary SCN was issued in the year 2021 and due to the said passage of time, the present proceedings deserve to be dropped. I have carefully considered the said submissions made on account of the purported delay in the proceedings. In order to answer the same, I note that as part of the investigation initiated by SEBI into the affairs of the *Company*, Forensic Auditor viz., M/s Sarath & associates were appointed on October 17, 2014 for examination of the books of accounts and to conduct a Forensic Audit into the financial affairs of the *Company*. However, the Hon'ble Bombay High Court has vide its order dated April 07, 2014 (passed in Company Petition no. 471 of 2013) had appointed a Provisional Liquidator for winding up the *Company* and accordingly, the records of the *Company* were taken in possession by such Provisional Liquidator. In view of the said substantive development, SEBI had requested the Hon'ble High Court and sought permission to access to the records, books of accounts etc., and the said request made by SEBI was acceded to by the Hon'ble High Court on March 30,

2015. Subsequent thereto, the Forensic Auditors submitted its Report under a cover of letter dated January 19, 2016 and further vide its letter dated February 16, 2016, provided clarifications on certain issues highlighted by SEBI. After taking into account the Forensic Audit Report, the investigation of SEBI was concluded and in pursuance thereof, the present SCN dated November 17, 2016 was issued against the *Noticees*.

24. Admittedly, in the present proceedings, numerous requests for adjournment of the personal hearings have been made by the *Noticees* including those made by *Noticee no. 2* on account of him being in judicial custody. It is noted from the records that after taking cognizance of certain additional incriminating evidence which SEBI was able to gather during another investigation conducted in the matter, a Supplementary SCN had to be issued to the *Noticees* and in compliance with the principles of natural justice, another opportunity of personal hearing had also to be granted to the *Noticees* on December 08, 2021. Furthermore, acceding to the request of the Counsel for the *Noticee nos. 1* and *3,* an opportunity to cross examine the persons whose statements were relied upon to issue the Supplementary SCN (Mr. Mangiram Sharma and Mr. Manoj Sharma) was granted on February 17, 2022. However, as a request seeking adjournment was made on behalf of *Noticee no. 3* citing illness in family, the cross-examination was rescheduled to March 23, 2022. It is noted that *Noticee no. 1* vide his email dated March 18, 2022, sought an adjournment citing the reason that the documents involved are voluminous and the Counsel needs time to prepare for the cross-examination. However, it was informed vide email of even date that the *Noticee nos. 1* and *3* have themselves requested for cross-examination during the personal hearing held on December 08, 2021 and the matter being old, the request for any more adjournment cannot be entertained. On the date of scheduled cross-examination, the witnesses did not appear at first and both of them were contacted telephonically advising them to join the proceedings through Video Conferencing Mode. In response to the calls, Mr. Mangiram Sharma expressed that he cannot join the proceedings as he is currently in a rural location with limited access to internet facility, whereas Mr. Manoj Sharma joined the proceeding, *albeit* through a mobile phone as he was travelling as a passenger in the rear seat of a car. The Ld. Counsels representing the *Noticee nos. 1* and *3* made a submission that they should be granted an opportunity to cross-examine both the witnesses "physically", and also that one witness should not be present during the cross-examination of the other witness. In the light of the said submission, and due to the fact that only one witness had joined the proceedings that too not in a state, appropriate for proceedings like cross-examination, it was deemed fit to grant an opportunity to conduct the cross-examination in physical mode and thus the cross-examinations had to be scheduled on May 12, 2022 and August 29, 2022. In addition to the above, it is not in dispute that the SCN in the matter got issued in the year 2016 and the *Noticees* have very well been cognizant of the said facts and were at liberty to gather all information and documents they wished to collect, to

defend their case. It is the disposal of the proceedings that have got deferred on one count or the other mostly attributable to the *Noticees* only, hence, the contention of the *Noticees* that the SCN should be dropped owing to long passage of time is without any merit since the delay as contended by them has not caused any prejudice to them so as to render them incapable from defending the allegations. The *Noticees* were very much aware of the issues in dispute under the instant proceedings and about the reasons for the delay as well. They knew the manner in which the proceedings have been conducted in the matter despite many attempts on their part to delay the hearings as have been highlighted above. Under the circumstances, considering in totality of the aforesaid facts and circumstances as discussed above, there does not appear to be any delay in the present proceedings which can be stated to have caused any prejudice to the *Noticees*, mitigating enough to drop the present proceedings itself. Whatever delay has happened, has happened due to *bonafide* reasons & compulsions at the end of SEBI, like pending of forensic audit, provisional attachment by Liquidator, petitions before Hon'ble High Court etc., and such *bonafide* delay was further accentuated by unreasonable requests from the *Noticees* to adjourn the hearing on one pretext or the other which were nevertheless accommodated by me to the extent possible. The said contention of delay raised by the *Noticees* is thus rejected, as such, having no merit for further discussion.

25. I also note that the *Noticee no. 3* has requested to keep the instant proceedings in abeyance till an appeal preferred before the Hon'ble Supreme Court of India is disposed of. In this respect, it has been argued that SEBI had issued another show cause alleging that the misleading announcements of buy-back as well as declaration of dividend by the *Company* is violative of provisions of SEBI Act, r/w PFUTP Regulations. In this context, it is noted that the said show cause notice has been disposed of vide an order dated April 19, 2021 of SEBI, holding the *Noticees* therein liable for the alleged violations, and consequently restraining them from buying, selling or otherwise dealing with securities including mutual funds, in any manner, for a period of two years. Appeals No. 609-10 of 2021 preferred before the Hon'ble SAT against the above order of SEBI got dismissed vide an order dated September 29, 2021 and against the above order of the Hon'ble Tribunal, a Civil Appeal vide Diary no. 30325/2021 has been filed before the Hon'ble Supreme Court of India. It has been submitted that since some of the facts and allegations made in the said show cause notice that resulted in passing of the aforesaid order dated April 19, 2021 and the facts and allegations made in the SCNs issued in the instant proceedings are overlapping, the present proceedings should be kept in abeyance till the issues raised by the *Noticees* in their appeal before the Hon'ble Supreme Court of India are decided. I find no merit in the above submission and observe that the present proceedings are distinguishably separate from the proceedings which culminated in passing of the earlier order dated April 19, 2021, and mere reference of certain common facts/allegations in the Supplementary SCN would not confer a right on the *Noticee* to get the present proceedings

stalled due to the pendency of a statutory appeal. I find the above submission has no merit and has been made merely as a ploy to further delay the present proceedings. The *Noticees* on the one hand have vehemently argued for disposal of the instant proceedings without any order citing long delay as a major count, on the other hand have made every possible effort to further delay and drag the proceeding. The intent behind the aforesaid submission is further exposed upon looking at the conduct of the *Noticees* in pursuing its appeal filed before the Hon'ble Supreme Court of India. The *Noticees*, though have pretended to be innocent, have not produced any document in the form of any order from the Hon'ble Supreme Court staying the present proceedings. On the contrary it is noticed that the appeal made by them before the Hon'ble SAT was dismissed by the Hon'ble Tribunal on September 29, 2021 and it is now more than a year since an appeal was preferred by them before the Hon'ble Supreme Court of India, but the said appeal remain pending under the category "***Defective matters not re-filed after 90 days***" till recently and on November 04, 2022 only the same was registered as Civil Appeal No 8112 of 2022. Under the circumstances, the argument of the *Noticees* and request to keep the present proceedings in abeyance does not deserve any favourable consideration as such an irrelevant request can be construed as nothing but a desperate attempt to drag the present proceedings for many more years without any basis.

26. After dealing with all the preliminary contention raised by the *Noticees,* I now move on to adjudge the merits of the present case. The central charge in the SCN is that the books of accounts of the *Company* and its Annual Report for the Financial Year 2011-12 did not carry true and actual figures and due to such manipulations carried out in the said documents by the *Company* through its Directors viz., *Noticee nos. 1, 2* and *3,* wrong and misleading information was planted amongst the investors at large. It has been alleged in the SCN that the Directors of the *Company (Noticee nos. 1* to *3)* along with one Mr. Dinesh Jajodia (purported Tax Consultant of the *Company*) have engaged in manipulating the books of account of the *Company* and in the process have fraudulently siphoned of the funds (raised by the *Company* by way of issuance of Foreign Currency Convertible Bonds/FCCB) and part of such funds have been mis-utilised to create assets in the names of the companies where Dinesh Jajodia or entities connected/related to the *Noticees* were interested. Further, the *Noticee nos. 4* and *5,* who being the Independent Directors during the relevant times, were members of the Audit Committee (along with the *Noticee no. 2*), have allegedly failed to oversee the correctness of such financial statements and thus have allegedly failed to discharge their duties as Audit Committee Members. Supplementary SCN furthers the charge of such manipulation in the books of accounts and based on the confessional statements of Mr. Mangiram Sharma and Mr. Manoj Sharma, it (Supplementary SCN) reveals as to how the *Noticee no. 2* has procured fake software purchase bills in the name of the *Company (*as a buyer) from fictitious/shell companies created by the above mentioned two persons (as selling/supplying companies). The funds so received

in the bank account of the said fictitious/shell companies against the purported sale of software to the company, were allegedly transferred to *Noticee no. 2* and certain other companies on the instructions issued by the *Noticee no. 2* and Mr. Dinesh Jajodia. It has also come out in the Supplementary SCN that a few of the sundry creditors of the *Company* were also fictitious /shell companies having no actual business but were connected with each other. The *Company* had purportedly entered into settlement with such creditors through which the amount due from the *Company* to them was written off.

27. Based on the aforesaid summary of the charges, the issue that arises for my consideration is whether the books of accounts and Annual Report of the *Company* for the relevant period contained fudged and misleading figures and if the answer to the said issue is in the affirmative, what complicity or negligence, as the case may be, the *Noticees* have committed in presenting such false and fabricated figures to the investors.

28. *Noticee nos. 1* and *3* have raised objections on the Forensic Audit Report stating that it suffers from several deficiencies. The said deficiencies range from not informing the said *Noticees* about appointment of M/s Sarath & Associates as forensic auditors of their *Company*, to the assertion that the Forensic Audit Report was never shared with the said *Noticees,* when it was submitted to SEBI . I have considered the said submissions and observe at the outset that a feeble attempt to diminish the sanctity and credibility of whole Forensic Audit Report has been made by making arguments which are largely peripheral in nature and do not carry any persuasive value. I observe that it is incumbent on the said *Noticees* to counter the factual findings of the said Forensic Audit Report so as to vindicate themselves from the charges of fudging the books of accounts as alleged in the SCN instead of raising fingers at procedural points as raised above. By raising technical objections like the aforesaid, would not absolve the *Noticees* from the liability of answering the factual findings of such report which reflected acts and omissions in conduct of the business of the *Company* Geodesic, which was under the active control of *Noticee nos. 1, 2* and *3* being its Directors. In view thereof, the said arguments being *ex-facie* devoid of merits are rejected *in limine*.

29. It is also noted that the *Noticee nos. 1* and *3* have relied upon a letter dated November 06, 2015 addressed by RBI to Economic Offences Wing, Mumbai Police, wherein it has been stated that there has not been any contravention of FEMA guidelines in respect of the issuance of FCCBs by the *Company*. In this connection, I observe that the present proceedings are for adjudging the allegations of violations of securities laws as have been made in the SCN against the *Noticees*, therefore, the *Noticee nos. 1* and *3* have to make out a clear cut case in their favour with supporting evidences and the letter of RBI on a standalone basis may not be sufficient enough to drop the charges, and the *Noticees* ought to dispel the charges made against them by making concrete submissions to rebut the charges made in the SCN. As stated above, the allegations in the SCN mainly revolve around fudging and manipulating the books of account

through wrong, false and fake transactions and consequently, by making wrong, misleading and distorted disclosure in the Annual Report to the investors at large. In view of the above, the submission that Economic Offences Wing has not found any contravention of FEMA guidelines, is not intractably linked and associated with the instant proceedings, so as to grant exoneration any of from the allegations.

30. Moving on further, it is noted that the *Noticee nos. 1* and *3* have submitted that by issuing FCCBs, the *Company* was able to gather USD 123.894 Million in its bank account (after deducting expenses etc.). The said amount was utilised by the *Company* to make acquisitions through subsidiaries and step down subsidiaries, details of which are tabulated herein below:

Table no. 3

Sr. No.	Name of the Company	Amount
1.	Geodesic Holdings Limited (**GHL**), Mauritius (wholly owned subsidiary of the Geodesic Limited)	USD 93.19 Million
2.	Geodesic Technology Services Limited, Hong Kong (**GSTL**)(wholly owned subsidiary of the Geodesic Limited)	USD 26.80 Million
3.	Expenses towards the FCCB	USD 3.529 Million

31. GHL in total invested/lent an amount of USD 115.977 Million (approx.). Out of the said amount, an amount of USD 46.893 Million was invested in various companies, and loans of USD 69.085 Million was lent to a few entities. The details of such onward investments/lending by GHL and the submissions made in this regard by the *Noticees* are being tabulated herein below:

Table no. 4

Sr. No.	Details of investment	Amount	Submissions of *Noticees* pertaining to this investment
1.	Acquisition of 100% shares of **Spokn Communications Pte Limited, Singapore**, from	USD 20.10 Million	The value of the investment worked out to be USD 20 per user as the said company was having a user base of 1 Million. Spokn was also having an internet telephony license issued by the Singapore Government.

	Sharp Long Consultant and Alpha Holdings Pty Limited		The said company (Spokn) was offering IT based solutions like Voice Over Internet Protocol, which improved the products of Geodesic. Further, other products that were being made by Geodesic, could also be sold to the customers of Spokn. Similar such acquisitions like acquisition of Skype done by Microsoft etc., were done at far higher valuation. The Forensic Auditor's Report has given a finding that no share capital/share premium has been received by Spokn in terms of Balance Sheet of Spokn. The said findings are erroneous as the shares of Spokn were purchased from existing shareholders and were not subscribed afresh.
2.	Emiloto Associated Inc. Panama ("**Emiloto**")	USD 15 Million	The Company Emiloto, was acquired by GHL earlier. The said amount of USD 15 Million was further invested by Emiloto into Government Treasury Bonds through HSBC Zurich. In November, 2009, the investment Manager of HSBC introduced Emiloto/GHL/Geodesic to a company namely Audrain Commercial Corp, which was in the business of providing consultancy regarding acquisition and sharing of technology. An agreement was entered into between Emiloto and Audrain whereby Audrain agreed to obtain appropriate technologies for Geodesic Limited and Emiloto would guarantee a loan given to Audrain by HSBC Zurich for such acquisition. In pursuance of the same, HSBC advanced a loan to Audrain and as it was unable to repay the same, the maturity proceeds of the investments in Government Securities were appropriated in the loan outstanding of Audrain. As per the agreement

			between Emiloto and Audrain, the loan amount (with interest) was then payable to Emiloto. As per the information available at the time of Takeover of the *Company* by the Official Liquidator, Audrain had agreed to repay the said loan amount (against payment of which the investment of Emiloto had been appropriated by HSBC), to Emiloto in instalments within a period of 6-12 months.
3.	Interactive Networks Inc. ("**INI**")	USD 8.135 Million	INI was a company providing instant messaging services to several telecom companies in South America and it had an annual revenue of USD 1.35 Million. The IT solutions offered could be offered to the clients of INI. GHL acquired INI for the said sum which comes at a valuation of USD 6 per subscriber which was relatively low when compared to other acquisitions. By acquisition of INI, the *Company* was able to establish a foothold in South America and after such acquisition, the value of INI increased by around 15% as of 2013.
4.	Geodesic Information System Inc. USA	USD 2.247 Million	
5.	Geodesic Technology FZE	USD 0.10 Million	
6.	Geodesic (Hong Kong) Limited	USD 0.808 Million	

7.	Zomo Technologies Limited, BVI	USD 1000	
8.	Arrow Point Technologies Ltd.	USD 0.502 Million	
Loans by GHL to various companies (USD 69.085 Million)			
9.	Interactive Networks Inc.	USD 3.50 Million	
10.	Zomo Technologies Ltd. ("**Zomo**")	USD 64.805 Million	Zomo invested the said amount in Absolute Diversified Growth (**ADG**) Fund managed by Credit Suisse, Zurich. As of December 31, 2014, the said amount was available for redemption.
11.	Geodesic (Hong Kong) Limited	USD 0.78 Million	

32. Apart from the above, the *Company* had borrowed a sum of USD 9.555 Million from Emiloto Associates Inc., and after netting off the said loan amount, the total investment of the *Company* comes to USD 106.422 Million (USD 115.977- USD 9.555 Million) (in the reply this amount is mentioned as 103.435 Million). It has been contended that not all the investments made by GHL were made from the FCCB proceeds.

33. I note that the *Noticees* have contended that the funds were invested by GHL into Emiloto and Zomo, the step down subsidiaries of Geodesic Limited. When their contention is perused carefully, it is noted that there is a substantial lack of cohesiveness and clarity in the submissions of the *Noticee nos. 1* and *3*. At one place, it has been submitted that Emiloto had invested in Government Securities (through HSBC), maturity amount of which has been appropriated against the loan given to Audrain Commercial Corp., as the said loan was Guaranteed for by Emiloto. (Ref. column no. 2 in the table above). Strangely, after stating about the aforesaid transaction and stating that Zomo (another company) had made investments in ADG Fund; a common submission has been made that both Emiloto and Zomo had made investments in ADG Fund. However, no details whatsoever pertaining to the purported investments made by Emiloto in ADG funds have been furnished and only the details of the investment claimed to have been made by Zomo in ADG Funds have been

provided (indicated at Serial no. 10 in the Table above). Nevertheless, it has been submitted on behalf of the said *Noticees* that funds invested in 'ADG Fund' are reflected in the Portfolio Statement provided by Credit Suisse Bank as on December 31, 2014 and it was the discretion of ADG Fund to invest such funds as per its investment policies. It has also been contended that such an activity is not disallowed by RBI and also that it is beyond the purview of RBI to monitor Foreign subsidiaries' investments.

34. I have carefully considered the aforesaid explanations furnished by the *Noticee nos. 1* and *3* and in my considerate view, the said explanations are swarmed with superfluous claims, evasiveness, contradictions and do not have strength to counter the allegations that have been levelled in the SCN for the following reasons:

I. It has been stated that after deducting the expenses for the FCCB issue, an amount of USD 123.894 Million were credited to the account of the *Company*, out of which USD **93.19 Million** came to be invested in GHL and **USD 26.80 Million** came to be invested in GTSL (Ref. Serial no. 1 and 2 in Table no. 3 above). In its submissions, the said *Noticees* have furnished broad details of onward investments of USD 93.19 million made by GHL, however, the details of end use of the investments made in GTSL amounting to USD 26.80 Million and what GTSL did with this money from its end are conspicuously absent in the said submissions. Thus, on the face of it, there is an unexplained gap of USD 26.80 Million which were admittedly transferred to GTSL out of the FCCB proceeds. Under the circumstances, I am constrained to observe that such a silence (with respect to around 25% of the total amount of FCCB issue) on the part of *Noticee nos. 1* and *3,* who were the Executive Directors of Geodesic Limited at the relevant times, does not speak well about their conduct while they were at the helm of the affairs of the Geodesic Limited.

II. The next explanation given by the *Noticee nos. 1* and *3* pertain to the investment of USD 20.10 Million made by GHL for acquiring the 100% shares of Spokn Communications Pte Limited from Sharp Long Consultant and Alpha Holdings Pte Ltd. In this respect, the Forensic Auditor has observed that there is no introduction of capital/share premium into Spokn, as per the Balance sheet of Spokn. The *Noticees* have tried to demolish the above observation of the Forensic Auditor by stating that the shares of Spokn were acquired from its existing shareholders viz., Alpha Holdings and Sharp Long via a share purchase agreement, therefore, no additional capital was issued by Spokn. The defence advanced in this regard, appear to be impressive on its face, however, on further perusal the same is found be a hollow claim , having no support to inspire confidence, that as no details of the number of shares held by each of the sellers viz., Alpha Holdings and Sharp Long held in Spokn and the date/details of share purchase agreement have been furnished to support their claim of purchasing shares of Spokn from existing shareholders nor any documentary evidence suggesting that Geodesic Holding Limited (subsidiary of Geodesic Limited) was the sole shareholder of Spokn, (after it acquired those shares from the existing shareholders) has been furnished. The above submission is also not backed by any independently verifiable evidence either in the form of a Share Purchase Agreement, with corresponding disclosure in the books of the *Company* or a consequent and disclosure to the shareholders through Stock Exchanges. Hence, in the absence of any such details/documents to support such a claim, I find it very difficult to accept the said submission of the *Noticees* more so when the Forensic Audit has clearly revealed that Sharp Long Consultant (one of the purported seller of shares of Spokn) had only one Director namely Mr. Dinesh Jajodia, the CA of the company who allegedly was hand in glove with the Directors of the company especially the *Noticee no. 2* in manipulation of the Books of accounts of the *Company*. Since Mr. Dinesh as the Tax consultant of the *Company* is himself allegedly found to have acted in collusion with the *Noticee nos. 1, 2* and *3* so as to be a part of the entire scheme and assisted them in generating false and frivolous bills against the purchases of the *Company,* the aforesaid claim of the *Noticees* that GHL purchased shares of Spokn from Sharp Long Consultant all the more becomes a dubious claim which is sans any corroborative evidence. Based on the investigation, SCNs have alleged that the *Company* in its drive to manipulate the books of account has shown false and inflated books through false, frivolous and fabricated purchases and on majority of occasions, such purchases were made from mule entities connected directly or indirectly to the *Noticees* in one way or the other. In this instance also, the entity Sharp Long Consultant is found to be connected to the Tax Consultant of the *Company* who allegedly helped the *Noticees* to book the aforesaid bogus purchases to inflate expeditiously in the books. Under the above circumstances, I see no reason for the *Noticees* not being able to support their contention with a credible piece of evidence alongwith proper justification explaining therein the circumstances that led to GHL acquiring the 100 % stake in Spokn. However, not to my surprise, I find that nothing has been brought on record to furnish the justification of utilisation of money in the hands of GHL, that was raised from the investors in the form of FCCB. As regards the investment in Spokn is concerned, it is noticed that the *Noticee nos. 1* and *3* have only narrated as to how the funds were invested in the said company Spokn and have also attempted to justify as to how valuable the said investment was, however, the said submissions besides not being supported by any concrete evidence do not explain if any profit at all was accrued to Geodesic Holding Limited/Geodesic Limited, out of the so called promising investment made out of the proceeds of those FCCBs through GHL. I can't close my eyes to the fact that the *Company* ultimately defaulted in repaying to FCCB bond holders. Under the circumstances, the aforesaid explanation from the *Noticee nos. 1* and *3* about their promising investment of the FCCB proceeds clearly falls short as an answer to the allegation about the books of accounts of Geodesic Limited being cooked up at least, to the extent of such unexplained investment amount of USD 20.10 Million made through GHL, the end use of which remains a mystery till date.

III. The next in line is the investment of USD 15 Million made in Emiloto Associated Inc. Panama ("Emiloto") which is stated to have been further invested by Emiloto in Government Treasury Bonds through HSBC, Zurich. The explanation that has been furnished for this investment by the *Noticee nos. 1* and *3* to begin with falls short of USD 14 Million (a the SCN records that USD 29 Million were transferred to Emiloto) as the explanation furnished pertaining to only an amount USD 15 Million. Notwithstanding the same, the explanation of *Noticees* that the "said investment in Government Treasury Bonds has appropriated in value against the loan taken by Audrian". It may be noted that Audrain was supposed to provide consultancy services to Emiloto/Geodesic Holdings Limited/Geodesic Limited, a claim which is also not credible, due to multiple reasons viz., limited information regarding the purported consultancy services have been provided; details of any such consultancy services actually rendered by Audrain or any acquisition made for Emiloto (Step down Subsidiary of Geodesic Limited)/Geodesic Holding Limited (Subsidiary of Geodesic Limited) have not been furnished; instead of paying consideration to Audrain, strange way of arranging loan for Audrain from HSBC Zurich making the client/vendee company (Geodesic Holdings Limited) as the Guarantor of such loan has been used. Apart from the aforesaid glaring discrepancies which are inferred from the reply of the said *Noticees*, the page 13 of the Forensic Audit Report records that both the vendor and vendee companies viz., Audrain and Emiloto had common Directors namely Francessco Castellazzi, Tamara Schelapfer and Rene Sigrist, which shows a common thread running through both the companies, thereby further weakening the claim of the said *Noticees*.

IV. In order to further assess the claims of the *Noticee nos. 1* and *3,* I deem it relevant to refer to the proceedings before the Hon'ble Bombay High Court, in the petition filed by the Trustees of FCCB holders (Company Petition no. 471 of 2013, Citibank N.A. London Branch Vs. Geodesic Limited). In the said proceedings, a similar claim of investment with Audrain were made by the *Company* has been, which mentioned in the orders dated April 03, 2014 and April 07, 2014 passed by the Hon'ble High Court. The order dated April 03, 2014 records a statement made on behalf of Mr. Prashant Mulekar (*Noticee no. 2* herein) and Mr. Kiran Kulkarni (*Noticee no. 3* herein), stating therein that:

"a) In the account of Emiloto Associated Inc, with HSBC Zurich, there is an amount of US $ 29.056 million;

b) In the account of Zomo Technologies Limited with Credit Suisse Zurich, there is an amount of US $ 92.597 million; and

c) In the account of Geodesic Technology Solutions Limited, with Clariden Leu Zurich, there is an amount of US $ 82.01 million."

V. It is noted that the Hon'ble Bombay High Court had directed to explain these investments by way of an affidavit along with other relevant details like whether such investments are realizable or not.

VI. From the order passed by the Hon'ble High Court during the hearing held on April 07, 2014, following is noted:

2. Pursuant to that order, an affidavit has been filed today. That affidavit makes for the most unfortunate reading. In paragraph 3 of the affidavit, there is a tabulation. This reveals that the amount of US$ 29.06 million earlier stated on instructions to be in an investment account with HSBC Zurich, was actually given on a loan to one Audrain Commercial Corp, Belize. This was also not recent. This loan was, it seems, given in July 2012. There is absolutely no possibility that the gentleman who was present in Court giving instructions on 3rd April 2014, and who is also present today, could have been unaware of this fact.

3. Paragraph 6 of the affidavit now filed only makes matter worse. It says that this loan was placed at a interest rate of 4.75% per annum, to mature in July 2014. Given the dire financial straits in which this respondent-company seems now to flounder, the affidavit raises distressing questions. Who is this Audrain Commercial Corp of Belize? Why was it thought to be worthy of such a loan and at this rate of interest in 2012? The second sentence of paragraph 6 only exacerbates matters:

> *"6. … Say that the said loan was given in respect of certain projects which may generate business worth approximately 50-60 million US$ and this was purely by way of a strategic investment made by Emiloto". (underline supplied)*

VII. From the aforesaid two orders (dated April 03, 2014 and April 07, 2014) passed by the Hon'ble Bombay High Court, one thing becomes clear that the amount of money involved in loan to Audrain was indeed USD 29 Million, as against of USD 15 Million as mentioned by the *Noticee nos. 1* and *3* in their submissions before me. Further, it is also noted that the stand of the *Noticee nos. 1* and *3* herein taken in the present proceedings that the transfer of funds to Audrain emanated from some purported strategic alliance with Audrain, is clearly contradicted by the details recorded in the affidavit filed before the Hon'ble Bombay High Court, as extracted & reproduced in the previous paragraphs. Thus, on the one hand the *Noticees* have attempted to classify the amount as investment in Audrian whereas on the other hand, the same was explained as a loan in the affidavit filed before the Hon'ble High Court of Bombay. Thus, the aforesaid observations of the Hon'ble Bombay High Court and the inferences with respect to common Directors between Emiloto and Audrain recorded in the previous paras, belie the *alibi* taken by the *Noticee nos. 1* and *3* to defend the funds transferred to Audrain and therefore, the explanation given in this regard deserves rejection. From the above, it also becomes evident that the *Company* and its Executive Directors were knowingly and consciously making misleading statements and in the process, they have not even spared the Hon'ble High Court. Under the circumstances, I see no reason to believe the claim of the *Noticees* that the funds raised by the *Company* have been utilised properly and their utilisations were truly and correctly recorded in the books of account of the *Company* which on the contrary was a misleading portrayal of the utilisation of the money raised through issuance of FCCBs thereby misleading the investors at large and preventing them from taking an informed decision, while dealing in the shares of the *Company*.

VIII. The *Noticee nos. 1* and *3* have also submitted that USD 8.135 Million were invested for acquiring Interactive Networks Inc. ("**INI**") and have also tried to explain the reasons for making such investment. However, even after considering the reasoning offered by them like synergy created out of the acquisition of INI and consequent increase in the value of INI, I wonder what ultimately happened to the said investment made by the *Company* through its foreign based subsidiary. It is further noted that with respect to the rest of the investments/loans, the *Noticee nos. 1* and *3* have provided limited information about the amount of such investment/loan and the name of the entity to which such an amount was extended. No details whatsoever pertaining to the rationale behind making such investments and details of any development that took place post making of such investment have been furnished by the said *Noticees*. Thus, the explanations that have been furnished by the *Noticee nos. 1* and *3* are found to be wanting and grossly deficient and do no call for any benefit from the allegations made in the SCN.

IX. I note that the next explanation relevant for the present proceedings pertain to the amount of USD 64.805 given as loan by Geodesic Holding Limited (a subsidiary of Geodesic Limited) to Zomo Technologies Limited (Zomo). The *Noticee nos. 1* and *3* have stated in their representations that the aforesaid loan of USD 64.805 Million received by Zomo was further invested by it in Absolute Diversified Fund (ADF) which was managed by Credit Suisse, Zurich and the said amount was available for redemption as on December 31, 2014. In this regard, it is noted from the observation of the Forensic Auditor as reproduced in the SCN, that the funds so invested in

Absolute Diversified Funds were further invested by ADF in Eland Crown and Lasdun Ventures, and eventually the said two companies (Eland Crown and Lasdun Ventures) have gone into liquidation. No submission has been made by the *Noticee nos. 1* and *3* with respect to any payment if any, whatsoever received from Zomo or from ADF out of the said investment made by Zomo in the ADF. Further, it is relevant to mention here that a feeble defence has been taken by the *Noticee nos. 1* and *3* by stating that the investments were made by ADF (in the said two companies) as per its own investment policies. However, when the aforesaid statement is seen in the conspectus of facts governing such investment, such a defence is rendered as completely devoid of merit, as at page no. 39, the Forensic Audit Report records that it was Mr. Dinesh Jajodia, who was the Director of Eland Crown (one of the companies to whom ADF transferred the funds). This revelation itself leaves no *iota* of confidence in the defence taken and submission made by the *Noticees*. Thus, in light of the facts that the investment made in ADF was onward made in a company which had one of the alleged complicit persons as the sole Director and also the fact that the said investment never turned back to ADF and in turn to Zomo, I can say firmly that the *Noticee nos. 1* and *3* have not been able to successfully discharge their burden by adequately demonstrating the *bonafide* of ultimate usage of funds invested by the *Company* in such funds and companies which turned out to be bad investment due to the dubious credentials of the ultimate investee company belonging to Mr. Dinesh Jajodia who himself was allegedly involved in manipulating the accounts of the company, in collusion with the *Noticees*. Under the circumstances, the investment in ADF through Zomo by the *Company* appears to be a suspicious *modus operandi* adopted by the *Noticees* to siphon off *Company's* funds rather than a simple investment as is being projected by the *Noticees*.

X. Apart from the above, it is noted from the order dated April 07, 2014 of the Hon'ble Bombay High Court that the FCCBs issued by the *Company* were due for redemption in the January, 2013. In the proceedings before the Hon'ble High Court, the Directors of the *Company* have made tall claims of having an amount of more than INR 1000 Crore in their Foreign subsidiaries, however, ultimately, the *Company* failed to comply with the directions of the Hon'ble High Court to deposit the amount of USD 162 Million, and consequently, the Provisional Liquidator was appointed to take charge of the *Company*. The order dated April 07, 2014 also records that the default in payment to the FCCB holders led to a summary judgment dated February 07, 2014 of Commercial Court of the Queen's Bench Division of the Royal Court's of Justice wherein the amount decreed against the *Company* was USD 171 Million.

XI. As noted above, the *Noticee* Directors have time and again made claims that the investment made out of the funds raised through FCCB were diligently invested and the amount invested are available for redemption. However, despite providing sufficient opportunities and despite, directions passed by the Hon'ble High Court of Bombay, the *Company* and its *Noticee* Directors have failed to bring even a part of the amount so invested, which clearly demonstrates the illicit intent behind making those investments. The above noted failure of the *Company* can't be seen in isolation as a mere coincidence of having made bad investment decision. The same has to be viewed from the perspective of the *Company* going into liquidation in the backdrop of fact that on majority of occasions, the investee companies were found to be associated with Mr. Jajodia and on each of such instances, the investee company had defaulted in making repayment to the investor company and consequently, the *Company* i.e., Geodesic finally failed in fulfilling its redemption obligations for the FCCBs. The said failure is not something that can be termed as a product of some bad business deals but the materials on record and the antecedents of Mr. Jajodia who assisted the *Noticees* in inflating purchases and in falsification of books of accounts so as to evade public scrutiny, read with the evasive and contradicting replies furnished by the *Noticees* sufficiently suggest that the *Company* through its Executive Directors have consciously made such investments and have also knowingly recorded and shown in its books the investment as profitable ones, though in reality, they were very much aware of the fact that these investments will not come back to the *Company* and to cover up their misdeeds to some extent, the *Noticees* indulged in making fake and fictitious purchases in the accounts of the *Company* as unearthed during the investigation conducted by SEBI.

35. At this stage, it is worth referring to the order dated April 19, 2021 passed by SEBI, in a separate proceedings as discussed earlier pertaining to declaration of dividend and announcement of buyback by the *Company*. In this order of SEBI the allegations of making misleading disclosure around the maturity of redemption of FCCB was found to have been made by the *Company* with a sole intent to create an artificial positive market sentiment about the *Company* and to inflate the price of the scrip by making such false announcements to the public and the same findings was also upheld by the Hon'ble Tribunal. The Hon'ble Tribunal, while dismissing the appeal at the threshold vide its order dated September 29, 2021 has held that " *We are also in agreement that failure to implement the announcements was a fraud played by the Company on the investors."*

36. A perusal of the above order of SEBI also demonstrates that in that proceedings as well, tall claims were made that the *Company* had made sound investments and networth of the *Company* is very much intact and it was very much in a position to honour the two announcements of 'buy back' and 'dividend' made by it. However, in reality, the *Company* not only failed in

honouring the two said announcements but also failed to bring sufficient evidence to even evoke an iota of credence on the submissions so advanced by it. It is perceived appropriate to refer certain findings made in the above mentioned order of SEBI dated April 19, 2021 to demonstrate conduct of the *Noticees* and further to expose the actual financial condition of the *Company* and further to establish that knowing very well that the *Company* was in a financial distress and it was not in a position to honour the buyback or dividend, such announcements were made and a smokescreen was created about the finances of the *Company* through manipulated, distorted and inflated books of accounts. The relevant findings as has been made in the aforementioned order are extracted there from as under;

19. *From the aforesaid factors governing the loan, the events surrounding the default in repayment of the loan, and subsequent demands made by ICICI Bank, one thing that clearly emerges out is that the financial health of the Company was admittedly adversely impacted to such an extent that the Company was not able to service its debt liability which was initially limited to only INR 58.59 Crore (short term loan) and INR 12.29 Crore (Derivative Trading Limit). Strangely enough, it has been argued in the present proceedings by the Noticees no. 1 and 3, that in and around January-March, 2013, the total worth of the investments made by the Company out of the FCCBs proceeds was around INR 1,026 Crore. I find it beyond comprehension and acceptance by any stretch of leniency, as to how a company having so much worth of its investments in its foreign subsidiaries, can let happen issuance of a stay order on payment of its dividend for default on repayment of a tiny sum of only INR 70 Crore (approx.). Clearly therefore, such a claim made by the Noticees before me boasting about the worth of their investment in their foreign subsidiaries to be INR 1026 Crore, without any documentary support to substantiate the said claim, has no legs to stand on and no basis to be relied upon. Admittedly, as per the post hearing submissions filed by the Noticees no. 1 and 3, it has been submitted that the said stay order was never challenged by it, as the Company intended to repay the said loan. However, surprisingly enough, no details of any such repayment or even part payment, if any, made to the ICICI Bank has been furnished nor the details of any steps taken towards meeting the debt liability to ICICI Bank have been brought to my attention, so as to lead me to believe that the Company had indeed the financial capability to honour its two important disclosures viz; payment of dividend and buy back. The silence observed by the Noticees on this issue clearly suggests that the Company was not having sufficient liquidity with it so as to repay the loans taken from the ICICI Bank, due to which the proposed dividend payment could not materialise. I also note that the dividends to the shareholders were to be paid only out of the Profits of the Company, in terms of the Section 205 of the Companies Act, 1956. However, the Noticees no. 1 and 3 have not made any efforts to satisfy me that the Company was having sufficient profits in that financial year or previous financial years, out of which it could have paid the dividend so declared by it.*
20. *Notwithstanding the aforesaid, it is also interesting to note here that in terms of the agreements executed with ICICI Bank, even the proceeds of the deposits made through GTSL (subsidiary of the Company)*

out of the FCCBs issue, were agreed upon to be mandatorily used for making prepayment of the loan taken from ICICI Bank by the Company. However, there is nothing on record to show, if the Company ever used such FCCBs proceeds either towards redemption of such bondholders who had invested in said bonds or for repayment of the loan taken from ICICI Bank.

37. To sum the aforesaid observations, the *Noticee nos. 1, 2* and *3* being Chairman/Director; Director & Compliance Officer; and Managing Director, of the *Company*, respectively, when faced with the charges made in the SCN and are put under an obligation to demonstrate how the data contained in the audited books of accounts of the *Company* was reflecting the actual financial health of the *Company,* they have grossly failed in explaining not only the genuineness in the investments made out of the FCCB procedures but also have failed make out a case in their favour, or to inspire even an *iota* of confidence in the integrity of those audited Accounts of the *Company* that have been found to be false, concocted and misleading by the investigation of SEBI and by the forensic auditors as well.

38. I note that the SCN broadly talks about the funds that flowed out of the *Company* in form of investments made in different entities, whereas, the Supplementary SCN has pin-pointed that funds were also diverted from the accounts of the *Company* under the garb of software purchases, from certain fictitious companies, the Directors of which have confessed before SEBI that all such transactions executed between the *Company* and their companies in the name of purchase of software's were sham. It has also emerged from the statements of those persons that these fictitious companies were incorporated by them for the purpose of issuance of fake software sell bills to Geodesic Limited, and in reality, no such transfer of goods (softwares) took place. Further, certain fund movements have also been noted from Geodesic Limited to the various fictitious/share companies, from where the funds were onward transferred to the companies connected to Mr. Dinesh Jajodia. To elaborate the above, it is noticed that on April 04, 2009, an amount of INR 1.15 Crore was transferred from Geodesic Limited to Netformx Information Technology Limited (**Netformx**), which in turn transferred INR 40 Lakh to Savi Portfolio Management Services Limited and INR 75 Lakh to Savi Commodity and Capital Services Limited on April 06, 2009. It is further noticed that Mrs. Savita Jajodia, wife of Mr. Dinesh Jajodia was the Director of Savi Portfolio Management Serviced Limited, whereas, the shareholding of Savi Commodity and Capital Services Limited, was also being held by Mr. Dinesh Jajodia, Mrs. Savi Jajodia and their family members.

39. In so far as Netformx is concerned, it is noted that Mr. Manoj Sharma in his statement has stated that he was one of the Directors of Netformx and this company was not having any actual business but its transactions were being managed by Mr. Mangiram Sharma, on the instructions of the Mr. Dinesh Jajodia, for the sole purpose of supplying fake bills to various entities including the *Company* i.e., Geodesic. At this stage, it is noted from the Supplementary

SCN that Mr. Mangiram Sharma has *inter alia* admitted that he (Mr. Mangiram) was introduced to Mr. Prashant Mulekar (*Noticee no. 2* herein) by Mr. Dinesh Jajodia with an offer to earn commission in lieu of issuance of fake bills to Geodesic Limited. To issue such bogus bills, they have used six such name lending companies including Netformx. Geodesic Limited used to transfer funds to such fictitious/share companies against which fake bills were issued in favour of Geodesic Limited. The amounts so received against the purported sale of software by those fake/shell companies were transferred by way of cheques to other entities as instructed by Mr. Dinesh Jajodia and commission was received for issuing such fake bills and transferring funds as directed by Mr. Dinesh Jajodia.

40. After perusing the allegations that emanate from the Supplementary SCN, it is observed at the outset that, in order to rebut such allegations, it was incumbent on the part of *Noticee nos. 1, 2* and *3* who, being the Promoters and Executive Directors of Geodesic ought to provide persuasive explanations to justify the purported purchase of software from those fictitious companies. When I peruse the reply to the Supplementary SCN filed on behalf of the *Noticee nos. 1* and *3*, I find that there is a candid and implicit admission to the charge of routing money in lieu of fake bills, which can be seen from a plain reading of the following contention of the *Noticees no.1* and *3* reproduced as such from their reply dated December 07, 2021:

"*The bills raised by various entities on the Company are alleged to be bogus on the basis of the contention that they do not do any business and on the basis of the statements of Mangiram Sharma; however, the said statement relates only to the 6 companies mentioned by him; there are other companies which have raised bills on Geodesic Limited, which, <u>to our client's best recollection were not bogus companies</u> and in face, provided software and software related services to the Company. For e.g Simmtronics Infotech Private Limited, a company incorporated in 1994, based in NOIDA and having contract manufacturing facilities at Roorkee provided contract manufacturing services to Geodesic Limited and they raised bills for the same and were duly paid. These bills cannot be termed as bogus. Our client submits that the bills raised by the Company for various software and software services provided were not fake and are not shown to be so." (underline supplied)*

41. From the above, it is evident that *Noticee nos. 1* and *3* have not thrown any light on the merit of the transactions that were executed by Geodesic Limited with the said 6 bogus companies and instead of confronting the allegation of receiving fake software bills from the 6 mule entities, they have sought to take shelter under the reference to some other company, which as per them, was carrying actual business and the transaction of the *Company* with that company was not bogus. Therefore, I find no merit in the above defence since the allegations are specific to their transactions with the 6 fictitious companies, however, instead of providing explanation to the alleged transactions, they have quietly brushed it aside and have preferred to make reference to some other company, transaction with which has not been alleged in the show cause issued in the matter. Under the circumstances, it is difficult to accept the said defence in response to the specific charges made in the supplementary SCN that the bills provided by the

six shell companies were fake. Therefore, in absence of any thing contrary on record which could have tilted the preponderance of probabilities in favour of the *Noticees,* I do not have any hesitation to reject the said irrelevant submission in its totality and hold record that the transactions of the *Company* with the 6 companies were in fact not genuine, consequently, any reporting, entry and reference of the same in the books of the *Company* was fake, frivolous and misleading.

42. Further, with respect to the funds transferred to the companies connected to Mr. Dinesh Jajodia, a claim has been made that some of such companies were SEBI registered intermediaries and funds were transferred as part of investments made by Geodesic Limited into them and in absence access to the records, only cross-examination of Mr. Dinesh Jajodia would establish their stand. However, I observe that the aforesaid submission deserves outright rejection due to multiple reasons as listed out below:

    (a) It has been vaguely claimed that "some" of the companies to which funds were transferred were in the business of investments, and for the rest of such companies to which also funds were transferred, no details regarding their business activities or the nature of underlying transactions have been provided.

    (b) A bald assertion has been made that funds that were transferred to such companies were investment in securities, without providing the details of such investment, which could have been well documented in the books of accounts/Annual Report of the *Company.*

    (c) As regards the cross examination of Mr. Dinesh Jajodia (Tax Consultant of the *Company*) is concerned since no statement of Mr. Jajodia has been recorded by SEBI which could have insinuated a situation for his cross-examination, the demand of the *Noticees* for cross-examination of Mr. Jajodia is misplaced on facts and in law.

    (d) Further, as stated above, the claim of the *Noticees* that those fund transfers by the *Company* were its investments, however, no documents of any nature has been furnished in support of such claim. The *Noticees* as well as the Tax Consultant (Mr. Dinesh Jajodia) are well educated persons (as claimed in the reply of *Noticee nos. 1* and *3*) and it is assumed that while dealing with the funds of a listed company, they would understand and follow the basic due diligence that deserves to be undertaken before making any such investment of funds of the *Company*, which they held in fiduciary capacity on behalf of the shareholders of the *Company*. However, contrary to the above, a frivolous defence by stating that the investments were made to registered intermediaries of SEBI and that the cross examination of Mr. Jajodia would prove their stand was taken by the *Noticees* without specifying as to how the cross examination of Mr. Jajodia is so essential for determination of the issues. Under the circumstances, I see no merit in the above submission of the *Noticees.*

43. I note that a submission has been made that in the verification clause of the statements of Mr. Mangiram Sharma and Mr. Manoj Sharma recorded during investigation by SEBI, names of both these witnesses have been inadvertently recorded as Rajesh Pathak instead of writing the names of the aforesaid two deponents. In this connection, I observe that the said discrepancy in recording the correct names is not fatal to consider those statements in their substance and merit as the said witnesses have not denied having signed the statements made by them during the investigation, and the *Noticees* have been given adequate opportunities to cross-examine the above two witnesses based on the said statements recorded from them during investigation by SEBI. Notwithstanding the same, it is also observed that the statements of the witnesses broadly pertained to creation of fictitious companies and issuance of bogus purchase bills to Geodesic Limited. I observe that if the case of the *Noticee nos. 1* and *3* had any merit, they would have easily shown that the said statement is not truthful by producing cogent evidence to rebut the contentions of the two witnesses with regard to the usage of the software so purchased by Geodesic Limited or by demonstrating the revenue earned by it from those softwares or by showing to me the clients that were acquired by it by virtue of purchase of such software from those 6 companies, which could have lent at least some credibility to their claim that softwares were indeed purchased by Geodesic Limited and the bills issued by the six companies were not bogus, or fake without any actual supply of softwares. In any event, the fact that in the verification part of their statements, the name of some Mr. Rajesh Pathak has been recorded by mistake instead of recording the names of the witnesses, does not render the statements so recorded from those two witnesses illegal or irregular, as during their cross examination proceedings, the two witnesses under oath have reiterated that statements referred to and relied upon in the present proceedings are indeed theirs and they stand by those statements which reaffirms the validity of their statements made by them during the course of investigation and entitles those statement to be accepted as material evidence in support of the allegations made in the SCN and SSCN.

44. It has also been submitted that in absence of documents like Balance sheets, sales tax returns etc., the *Noticee nos. 1* and *3* have not been able to show that taxes on the invoices raised by the six companies were paid, which would have in turn shown that the invoices raised by the six companies were not bogus. At this stage, my attention gets drawn to the cross-examination of Mr. Mangiram Sharma on behalf of Mr. Pankaj Kumar conducted on August 29, 2022, wherein *inter alia,* the following statements were made by Shri Mangiram Sharma:

"Q8: Before recording of your statements by EOW, Mumbai and ED, raids were carried out at your places (factory and residence) by Sales Tax Department. Is it correct?

A8: Yes, raids were carried out at my premises.

Q9: In what context these raids were conducted?

A9: These raids pertained to Geodesic Limited.

Q11: What is the case launched by Sales Tax Department?

A11: The case is for issuance of fake bills without providing any actual product.

Q19: Is it correct to state that raids were carried out due to the observations of Sales Tax Department that Sales tax have been underpaid by you?

A19: No, it is not correct. Witness voluntary stated that raids were carried out as Sales Tax Registration was initially for trading of Iron and Steel for which amendment was filed for sale of Softwares, but the said amendment was not carried out in the records of the Sales Tax Department. Raids were carried out as we were not having any registration for Software sale, nor were we having any engineers etc.

It was stated that payments were received against the bills raised to Geodesic Limited." (underline supplied)

45. I observe that the aforesaid statement made during the cross-examination by Shri Mangiram Sharma confirms that the companies who had issued bills to Geodesic Limited for those purported sale of software were not having any engineers to develop any software nor were having any registration for selling softwares and further those bills were issued showing sale of software without supplying any such product. Under the circumstances, when it becomes uncontroverted that the selling entity had neither sales tax registration nor had it any engineers to develop the software, which the *Company* was supposed to have purchased and made tall claim about the products (so purchased from those six companies) being world class, I find no reason to disbelieve the allegations made in that respect in the SCN. I further find that the *Noticees* in their post cross examination submission, have also failed to adduce any further evidence for my consideration nor have they been able to put forth any cogent explanation to refute the above affirmation made by Shri Mangiram Sharma in his statement during the cross thereby rendering it undisputed that, there was no actual/physical transfer any product or softwares by any of those six companies to Geodesic and the bills raised against the said software purchase were fake and not genuine bills. Consequently, all the connected transactions entered and relevant disclosures made in the books of account of the *Company* imminently become fake and misleading. Surprisingly, I find no argument advanced on behalf of the *Noticees* to refute the above assertions made by Shri Mangiram Sharma nor have the *Noticees* cared to explain the circumstances under which they came in contact of with such fictitious companies and what kind of due diligence were carried out before entering into commercial transactions with companies which even did not have a sales tax registration to deal in those products. Under the circumstances, I see no merit in the claim of the *Noticees* that payments were made towards the Sales Tax, as mere payment to the sales tax authority can't be a factor to conclusively decide that the *Company* had genuine product sale transactions with

those 6 companies when the records speak volumes to the contrary against the specious claims of the *Noticees*.

46. The *Noticee nos. 1* and *3* have also tried to explain that due to failure of one of their products in December 2011, the *Company* had to return the cheques collected towards subscription to such product which led to writing off of debts from Sundry debtors, that included reputed companies like Macquarie Bank, Axis Bank, Wipro etc. However, irrespective of the fact that the debtors of the *Company* were reputed entities, I find no correlation whatsoever of these debtor entities with the act of writing off of debts outstanding towards the *Company* just because of failure of only one product of the *Company,* more so when the *Noticees* in their reply have glorified about a vast and strong bouquet of technical products being offered by the *Company* to its clients. The *Noticee nos. 1* and *3* have further stated that the Audited Balance Sheet for the FY 2011-12 was restated by the *Company* and the said restated financials included the fact of product failure and consequent write off of debtors outstanding balances in the books of the *Company*. I observe that reliance placed on the revised/restated books of accounts does not help the said *Noticees* in any way and rather, it goes to support the charges of the SCN that the financial statements forming part of the Annual Report for FY 2011-12 did not provide a true and fair view of financials of the *Company.* I further find no explanation from the *Noticees* as to why the cheques received by the *Company* form its customers (debtors) were not presented for clearance and kept for months together before they were finally returned to the issuers. It is also not clear as to why the entire sum was returned to all the issuer entities and in the absence of any details about the nature of commercial transactions entered with those entities, I find it to be a very strange coincidence that in all these cases, cheques were kept for months and were not presented for clearance and crediting the sums to the account of the *Company* and instead all the cheques were returned to issuer entities, which indicates that the *Company* had *ab initio,* no intention to realise an amount from those cheques received from the customers and that the commercial transactions themselves were never intended to be honoured.

47. I note that the *Noticee nos. 1* and *3* have evaded the allegation pertaining to *inter-se* cross-holding of fictitious companies and transfer of funds by those fictitious companies to other companies linked to Mr. Dinesh Jajodia, by feigning ignorance about these transactions. In the absence of any tangible explanation from the *Noticees* to justify the aforesaid transactions, the dubious nature of such transactions which involve siphoning of funds from the *Company*, further goes on to strengthen the allegations labelled against the *Noticees* in the SCN.

48. The *Noticee nos. 1* and *3* have also sought to assail the reliance place by SEBI on the statements made by Mr. Dinesh Jajodia and Mr. Mangiram Sharma during the proceedings before the Enforcement Directorate (ED) by contending that those statements form part of the matter pertaining to PMLA, which is pending before the Designated Court, and this is sub-judice. In

this regard, I am of the firm view that, SEBI's case is not "solely based" on the said statements recorded during proceeding before the ED and the said statements forms only one of the many corroborative piece of evidences available in the records before me and, even if the said evidences are not to be considered , the *Noticee nos. 1* and *3* are still not able to free themselves from the clutches of the allegations made against them in the SCN since the other evidences and facts mustered during the investigation by SEBI are sufficient enough to bring home the charges against the *Noticee nos. 1, 2* and *3,* who were at the helm of the affairs of the *Company* during the relevant times.

49. To sum up my aforesaid observations, I note that the SCN read with the Supplementary SCN have raised certain straight forward charges against the *Noticees* for their alleged manipulation and fraudulent acts on account of which the Audited Balance Sheet and Annual Report of the *Company* for the FY 2011-12 failed to provide a true and fair view of the affairs of the *Company*. I observe that the *Noticee nos. 1* and *3* who were controlling the affairs of the *Company* during the relevant period being its Promoter-Directors hence they could have easily defended the aforesaid allegations with strong rebuttals by furnishing the specifics of the investments made by them in the interest of the *Company* and true account of all the expenses carried out by it had these all been done honestly with all due diligence and business prudence in the interest of the *Company*. The said *Noticees* have of course raised their defence and provided some information regarding investments made by the *Company* through its foreign subsidiaries and step down subsidiaries and have also tried to project as to how, those investments had the potential of giving high returns. They have also tried to defend the expenses made for software procurement by the *Company* notwithstanding the fact that the software purchased from the above noted six companies have on the face of strong evidences on the records, turned out to be concocted, bogus and fake. Moreover, based on the detailed discussions made about the investment by the *Company* in the previous paragraph of this order, I can firmly say that the grounds of defence taken by the *Noticee nos. 1* and *3* both in respect of investments and software purchases have been found to be evasive, contradictory and unreliable for want of truth and substance. It has also come to my knowledge and records that the *Company* as well as its subsidiaries like GTSL Hong Kong are underlying winding up proceedings. Under the circumstances, I am constrained to observe that the *Noticee nos. 1*, 2 and *3*, being the Executive Directors of the *Company* have failed to vindicate themselves from the charges levelled in the SCN and Supplementary SCN, and accordingly, are liable to be held guilty of inducing the common investors to invest in the company by publishing Annual Report that contained grossly manipulated figures and misleading financial statements and have thus violated Section 12A(a), (b), (c) of SEBI Act, 1992, read with Regulation 3(b), (c), (d) and 4(1),4(2)(f), (k) & (r) of PFUTP Regulations, 2003.

50. The next issue that requires consideration is whether the *Noticee nos. 4* & *5* (Independent Directors), have failed to oversee the correctness of the financial statements for the FY 2011-12 which are now proven to contain false and misleading figures and amounts and thereby have failed to discharge their duties as Independent Directors. Before embarking on to decide the said issue, I observe that in view of my findings already recorded in the preceding sections of the present order, it is clear that the financial statements of the *Company* for the FY 2011-12 were containing false and misleading statements.

51. In this connection, I note that the *Noticee no. 4* vide his letters dated January 05,2017, April 19, 2021 and December 06, 2021, and *Noticee no. 5* vide his letters dated June 30, 2020, July 27, 2020, August 03, 2020, June 17, 2021 have vehemently contested the charges made against them in the SCN by taking various common pleas and arguments which are summarised in brief herein below:

    I. There is a delay in the present proceedings.

    II. The relevant documents are not in possession so as to defend themselves properly and such documents were provided only during the meetings of the Audit Committee.

    III. No specific role has been attributed and only sweeping allegations have been made, therefore, the allegation of fraud is not sustainable. The charges of having failed to oversee the financial is contradictory with the charges of having committed a fraud. Further, in order to prove the charges of "fraud", some kind of element of "inducement" must be shown, which is lacking in the present case.

    IV. Being independent Directors, *Noticees* were not responsible for day to day affairs of the *Company* and had insight only through Board processes. It needs to be indicated that being Independent Directors, the said *Noticees* participated in fraud or fraud took place with their connivance/consent or the said *Noticees* have not acted with diligence despite having knowledge of fraud through Board processes. Such standards have also been codified under SEBI (LODR) Regulations, 2015 as well as under various Circulars of Ministry of Corporate Affairs.

    V. The Audit Committee was presented with the facts of only first leg of transactions, through which funds were transferred to subsidiaries and group companies and there is no allegation with respect to the said transactions. The funds were further diverted from such subsidiaries/group companies to other entities where the Executive Directors and Mr. Dinesh Jajodia are alleged to be personally interested, and the *Noticees* were not aware of such transactions forming basis of the allegations. The material available on record indicates that the relevant documents pertaining to the affairs of the subsidiaries companies were never placed before the Board of Directors.

VI. The Forensic Audit report admits that the investments made in Sharp Long Consultants, Eland Crown and Alpha Holdings are not mentioned in the Audited Balance Sheet for the FY 2011-12. Further, the said reports also record that: "*On further investigations and analysis, following facts were surfaced based on the records available. There are investments in properties, shares and bank deposits in shell companies in which Mr. Dinesh Jajodia and his family members, Mr. Kiran Kulkarni, Mr. Prashant Mulekar, Mr. Pankaj Kumar are directors and shareholders….*" and "*..Directors of the Geodesic Limited Mr. Pankaj Kumar, Mr. Prashant Mulekar, Mr. Kiran Kulkarni along with Mr. Dinesh Jajodia of the company and its subsidiary companies had fraudulently and intentionally siphoned off funds with strategic planning, layering techniques of the funds raised through FCCB issue from overseas investors and further found part of the funds utilized for acquiring the assets in the names of the companies in which they are directors ….*"

VII. Similarly, a report dated November 23, 2015, prepared by the Ministry of Corporate Affairs also point out towards complicity of the Executive Directors cum Promoters in taking all the financial decisions of the *Company* and also towards the fact that the said Directors were also the Directors of the Geodesic Holding Limited (Mauritius) and Geodesic Technology Solutions Limited (Hong Kong), and were thus knowing about all the investment business carried out by the subsidiaries as well as the step down subsidiaries. The said report also indicates that by falsifying the accounts and showing healthy balance sheet, the Executive Directors of the *Company* have been able to collect funds from the banks/Financial Institutions.

VIII. There was no obligation on the Audit Committee Members to review the accounting entries itself for which internal and statutory auditors were appointed. The test that needs to be applied is what would a person with reasonable prudence would have commented on the documents presented during the meetings.

IX. SCN and Supplementary SCN treats all the Directors as guilty of fraud only due to their directorship and, the law laid down under various judgments [*SMS Pharmaceuticals v Neeta Bhalla (2005) 8 SCC 49; Chintalapati Srinivasa Raju v SEBI (2018) 7 SCC 443; Prita Bag v SEBI (SAT Appeal No. 291 of 2017, Order dated February 14, 2019), Prafull Anubhai Shah v. SEBI (Appeal No. 389 of 2021, Order dated June 28, 2021) etc.]*, have been ignored.

X. *Noticee no. 5* had resigned on December 04, 2012 and *Noticee no. 4* had resigned on May 16, 2013 from the Directorship.

XI. The *Noticee no. 4* had resigned on January 16, 2013 from the Audit Committee, as he was dissatisfied with the Management's inability to answer the questions raised by him.

Copy of emails have been filed including email dated May 16, 2013 addressed to *Noticee no. 1* and *3* which mentions the reason for resignation *inter alia* as:

"- *Fccb payout: I was repeatedly told that the fccb will be paid out in full on the due date in January. It is now mid may and there still isn't clarity. I have repeatedly asked for a bi-weekly update and a clear PERT of balance steps. I keep getting vague answers despite visiting geodesic every week over last 5 months"*.

XII. The Management's accounts and audit confirmations provided to the Statutory Auditor and the Statutory Auditor's report dated December 03, 2012 did not contain any findings of fraud. The financial statements were recast on February 14, 2014, by the time, both of the said *Noticees* had resigned from the directorship.

XIII. Copy of minutes of meetings of Audit Committee for FY 2011-12 based on which allegations have been made are neither discussed nor furnished with the SCN and such documents are also not in possession of SEBI.

XIV. The said *Noticees* have not been implicated by the Forensic Auditors nor have they been named as complicit by any other agency. In terms of the Affidavit filed by Joint Commissioner of Police before the Hon'ble Bombay High Court, the criminal conspiracy was hatched by the three Directors of the *Company* and Mr. Dinesh Jajodia. Infact, a SCN to the *Noticee no. 4* was issued by Ministry of Corporate Affairs with respect to the irregularities in the financial statements, however, ultimately, MCA vide its letter dated November 09, 2016 has exonerated the *Noticee no. 4* from the charges by *inter alia* observing as: "*your reply dated 8.8.2016 has been examined and found to be satisfactory considering the fact that the accounts for the year 2011-12 and 012-13 were revised in the year 2014 and considering that the relevant Director's Report (containing non-compliance) was dated 17.4.2014 which was subsequent to your cessation as director on 16-05-2013 and accordingly you were not an officer in default in this specific case. ..*"

XV. The materials available on record do not indicate that the Independent Directors could have detected the fraud by the management and being Independent Directors, the said *Noticees* had insight into the affairs of the *Company* only though Board processes. The Independent Directors could not have unearthed the complex *modus operandi* deployed by Directors who were also the persons having personal interest being the Promoters of the *Company*. Reliance has been placed on the order dated September 09, 2019 passed by the Hon'ble SAT in the matter of *Price Waterhouse & Co. Vs. SEBI (Appeal No. 6 of 2018),* to contend that even a Statutory Auditor (leave alone Audit Committee Member) cannot unearth a complex fraud.

XVI. There were no unusual changes in the financial statements of FY 2011-12 from the previous year so as to raise any red flag. The Supplementary SCN and its annexures more particularly in the Rejoinder Affidavit filed by Mr. Dinesh Jajodia before the Hon'ble Bombay High Court, it has been admitted that the key perpetrators of the fraud are the Executive Directors of the *Company* along with Mr. Dinesh Jajodia. Further, the trail of bank account entries also indicate that funds have been diverted to foreign companies having Mr. Dinesh Jajodia is a Director or beneficial owner.

XVII. Reliance has been placed on the following judgments/orders to support the submissions: *SEBI Vs. Guarav Varshney and Anr. [(2016) 14 SCC 4 30]; Uppal D. Kumar Vs. SEBI (SAT Appeal no. 220 of 2017); Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector [(2011) (1) SCC 176], G. Unnikrishnan Nair Vs. SEBI (SAT Appeal no. 05 of 2018), Order dated December 31, 2014 passed in the matter of Cals Refineries Limited,* etc.

52. Further, with respect to the Supplementary SCN, *Noticee no. 4* vide his letter dated December 06, 2021 has made the following submissions:

I. The allegations made in the Supplementary SCN does not pertain to the *Noticee no. 4.*

II. The SCN and Supplementary SCN mentions about various irregularities in Financial Statement in the year 2011-12, which were done by *Noticee no. 2* in connivance with Mr. Dinesh Jajodia.

III. The Management's accounts and Audit Confirmations provided to the Statutory Auditor and the Statutory Auditor's report dated December 03, 2012 pertaining to the Financial Year 2011-12 did not contain any findings of fraud. The Financial Statements for the Financial Year 2011-12 were recasted on February 14, 2014 and such recast Financial Statements contained a number of qualifications and adverse remarks. However, *Noticee no. 4* has already resigned as a Director from the *Company* in the year 2013.

IV. The Forensic Auditor appointed by SEBI did not implicate the *Noticee no. 4* for the alleged violations. In an affidavit dated December 22, 2015 filed before by Joint Commissioner of Police, Economic Offences Wing (E.O.W.), Mumbai (as mentioned in the order dated December 22, 2015 passed in Company Petition no. 514 of 2013 of the Hon'ble Bombay High Court), the following has been mentioned *inter alia:*

"15. I say that prima facie it is evident the said <u>3 Directors of the Respondent hatched a criminal conspiracy with the said Dinesh Jajodia, the purported Tax Consultant of the Respondent</u> to cause wrongful gain for themselves and wrongful loss to the shareholders and the FCCB holders, siphoned off funds of the shareholders to the tune of Rs. 250 crores by showing bogus purchases of software and failed to redeem Foreign Currency Convertible Bonds worth US$ 125 million (approx. Rs. 812 crores) to FCCB holders by creating a web of shell companies in various countries with the mala fide intention to siphon off the money through fictitious dealings.

16. I say that the said Accused in furtherance of their common intention, <u>hatched a criminal conspiracy</u> to defraud the shareholders as well as FCCB holders in order to receive wrongful gains to themselves and committed several acts of falsification of accounts, cheating and criminal breach of trust and thereby *committed offences punishable under sections 409, 420, 477 (A), 120 (B) read with 34 IPC." (underline supplied)*

V. The aforesaid shows that the fraud in the affairs of the *Company* were perpetrated at the instance of the three Directors who were managing the day to day affairs of the *Company,* and *Noticee no. 4* has never been named in the investigation conducted by other agencies.

VI. There has been delay in issuing the Supplementary SCN. Reliance has been placed on the judgment of the Hon'ble Supreme Court of India in the matter of *Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294*.

53. *Noticee no. 5*, vide his letter dated June 17, 2021, reiterated his earlier submissions and further has submitted that the documents annexed to the Supplementary SCN do not mention his name anywhere. It has further been submitted that the intricate fraud perpetrated by Mr. Dinesh Jajodia could not have been unearthed by a mere non-Executive Independent member of the Audit Committee, and the Supplementary SCN infact supports the case of the *Noticee.*

54. As noted from the replies of *Noticee no. 4* and *5,* that they have made several overlapping submissions. That there is no dispute to the fact that they being Non-Executive Directors of the *Company,* were not involved in the day to day management of the *Company* and have discharged their responsibilities in good faith and with due-diligence. It is also found that there is no evidence on record, which even remotely indicate that the alleged actions committed by the Executive Directors were committed with the knowledge, consent or approval of the Board of Directors and no specific adverse facts attributing their conduct or knowledge in the violations committed by the *Company* have been alleged in the SCN. It has been further submitted that as diligent Directors, queries have been raised and further upon not being satisfied, they have resigned immediately from the post of the directorship even before the scam was published.

55. I note that the two *Noticees* have also relied upon judicial orders of the Hon'ble Supreme Court, Hon'ble High Court of Bombay and Hon'ble SAT to buttress their contentions that as Independent Directors, they had limited role to play as they were not involved in the day to day functioning or managing the affairs of the *Company*, hence, were not aware of the alleged wrongdoings by the *Company*. Further, *Noticee no. 4* has exercised his diligence immediately after becoming aware of the wrongdoings in the *Company* and ultimately has tendered his resignation from the *Company's* Board hence, he can't be held liable, for the wrongdoings of the *Company*, which has been committed against the wish and consent of the *Noticee*. Reliance have also been placed on an MCA Circular dated July 29, 2011 and an MCA letter dated November 09, 2016 to support the contention that Independent Directors shall not be made liable for a violation which occurred without their knowledge and without their consent or connivance or in cases where they have acted diligently through the Board process. I have perused the judgement of

the Hon'ble Supreme Court in the case of *Chintalapati Srinivasa Raju and ors. v. SEBI,* (2018) 7 SCC 443 relied upon by the *Noticese*, wherein Court has observed that "*Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company……..*"

56. At this stage, it is to be noted that the charges in the present are limited to the non-reporting of the actual picture of the financial health of the *Company* especially pertaining to its investments, profits, reserves and expenses etc. Insofar as *Noticee nos. 4* and *5* are concerned, I note that they have been charged with the allegation of various provisions of securities laws by alleging that being Member of the Audit Committee, they have failed to oversee the correctness of the financial statements. After carefully perusing various factual and legal arguments advanced by the said *Noticees,* I find force in their submissions due to the following broad reasons:

    I. There are enough evidences in form of the Forensic Audit Report, etc., which indicate that complex layered transactions were executed on behalf of the *Company* and the persons behind such acts were the *Noticee nos. 1, 2* and *3* who were the Promoter-Directors of the *Company*. Further, in terms of the Forensic Audit Report, the funds were first invested in the foreign subsidiaries of the *Company* viz., GTSL, Hong Kong and Geodesic Holding Limited Mauritius, from where such funds were further diverted to other entities. There is no insinuation made in the present proceedings with respect to the first level investment or reporting of such investments made by the *Company* out of the FCCB proceeds, into the said subsidiaries, and rather the charges stem from further transfers/siphoning off/misreporting of such investments made in the subsidiaries of the *Company* and there is nothing on record to show that the Audit Committee Members were having knowledge about such onward investments /transfer of funds for the overseas subsidiaries to other companies/entities. On the other hand, the defence taken by the Executive Directors of the *Company* has already been rejected and based on strong factual and evidentiary support, they have been found guilty of misrepresenting the financials of the *Company.*

    II. Further, in the peculiar facts and circumstances of the present case, it appears that the actual facts, figures and the real state of affairs of the *Company* were concealed by the Executive Directors from the Audit Committee. In this regard, I note that vide an email dated May 16, 2013 *Noticee no. 4* had resigned from the Directorship by citing many reasons, few of which are being quoted verbatim herein below:

    "*-forex losses: we have incurred forex losses of Rs 150 cr. There was no mention about this aggressive foreign exchange trades in the audit and board meeting over the years. Nor was any approval sought.*

Keeping the board uninformed is unacceptable. I am greatly pained by this. The magnitude of the loss is staggering.

-Fccb payout- I was repeatedly told that the fccb will be paid out in full on due date in January. It is now mid may and there still isn't clarity. I have repeatedly asked for a bi-weekly update and a clear PERT chart of balance steps. I keep getting vague answers despite visiting geodesic every week over the last 5 months."

III. The aforesaid email was responded to by the *Noticee no. 3* herein on the even date, and the *Noticee no. 1* was also marked copy. From the contents of the said response, it is noted that none of the averments made by the *Noticee no. 4* in the aforesaid email were disputed/denied by the aforesaid two *Noticees*. As can be seen from the aforesaid, it rather contains a clear cut admission of all the statements/averments (made by *Noticee no. 4* in his email), which reads as: "*Most of these things you have mentioned are falling in place and may I request you to bear with us for another <u>fortnight to set all these right</u>. Please go ahead with your resignation if things dont fall in place by 31st of May 2013.* " (underline supplied)

IV. From the aforesaid response, made by *Noticee no. 3* one can easily decipher that grave issues pertaining to Forex Trades which led to loss of INR 150 Crore to the *Company* were not informed by the management to the Audit Committee Members. I observe that such a glaring fact of keeping the things under wraps from the eyes of Audit Committee speaks volume about the deceitful conduct of the Executive Directors who were running the show of the *Company*. Therefore, the aforesaid observation even on a stand-alone basis, carries sufficient weightage to exonerate the Independent Directors of the *Company*.

V. There is no dispute to the fact that the *Noticee no. 4,* whose confrontation with the management of the *Company* has been cited above, had resigned from the Directorship on May 16, 2013, whereas *Noticee no. 5* had resigned on December 04, 2012. Further it is admitted fact that the financial statements of the *Company* for the period of 2011-12 were recast on February 14, 2014. I observe that the *Noticee no. 4* has placed reliance on the decision of Ministry of Corporate Affairs, wherein he has been exonerated from the charges of violations of the Companies Act, 1956 pertaining to non-compliance in Director's Report by virtue of the fact that the accounts for the FY 2011-12 were revised in the year 2014 and by that time, he had resigned from the Directorship of the *Company*.

VI. I note the reliance placed by the *Noticee* on Regulation 25 (5) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to contend that an Independent Director should only be made liable in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. I note that the allegation in the present proceedings is not that the Independent Directors had actively participated in the day to day affairs of the *Company*. There is also no evidence to indicate their direct or indirect participation in the execution of the scheme devised by the Executive Directors against whom strong observation have also be passed by the Hon'ble High Court for their wrong doings, which also does not indicate any involvement or knowledge of the Independent Directors. Under the circumstances, where evidences are not showing direct culpability of *Noticees no. 4* and *5*, it becomes important to see as to whether they have actually had any knowledge of the fraudulent conduct of the *Company* and whether they were party to the said fraudulent conduct or whether they have displayed due diligence that is expected of an Independent Director of a listed company which has raised funds from public. I note that the two *Noticees* i.e. *Noticees no. 4* & *5* were certainly holding the post of Directors during the relevant period. I also find that the two Directors were members of the Audit Committee, however, after perusing the submissions of the *Noticees* along with the materials available on record, I am of the view that the submissions advanced by *Noticee no. 4* and *5* with supporting documents including the MCA letter holding *Noticee no. 4* not as *an officer in default,* can't be ignored. The two *Noticees* have been successful in showing that due diligence has been carried out by them while acting in the capacity of Independent Directors, and have not acted as mute or silent spectator to the nefarious activities of the C*ompany*.

VII. It is also can't be ignored that after coming to know that the *Company* was not observing transparency in its affairs, the *Noticee no. 4* and *5* had taken a decision to step down from the position of directorship. Under the circumstances, considering the submissions made by these two *Noticees* and the manner in which the entire scheme of fraud was hatched and executed, which have been commented upon even by the Hon'ble High Court of Bombay in its order dated April 07, 2014 and further considering the fact that relevant information were not furnished to the Audit Committee, I find that the charges made against *Noticees no. 4* and *5* are falling short of bringing home the allegations made in the SCN against them hence, in my considered opinion such charges would not sustain in the facts of the matter. Accordingly, the proceedings against them deserve to be dropped.

57. The aforesaid observations of mine highlights the fact that the Independent Directors who were the part of the Audit Committee, were not furnished with complete and adequate information about the financial affairs of the *Company* and essential information regarding huge losses incurred from Forex trading were also kept under wraps. Such conduct on the part of the management smacks of the ill-intent of Executive Directors to keep the actual financials undisclosed from the investing public and regulatory authorities. Under the circumstances and

based on the attending facts and circumstances, peculiarity of which have been demonstrated in the previous paragraph, I observe that the facts of this case do not provide adequate probabilities to establish the charges against the *Noticee nos. 4* and *5*. Therefore, both of the said *Noticees* deserve to be exonerated from the present proceedings.

58. To sum up my foregoing discussion and observations, it is now clear that the Promoter-Directors of the *Company* viz., *Noticee nos. 1, 2*, and *3,* have failed to persuade me to trust in their claim that the Audited Balance sheet of the *Company* for the FY 2011-12 was reflecting the actual picture and true financial affairs of the *Company* with respect to investments, profits expenditure etc., and have also failed to controvert the correctness of the observations and findings of the Forensic Audit Report. As already delineated in the order, the investments which were reflected to have been made in the foreign subsidiaries, were further siphoned off from the accounts of those foreign subsidiaries to other various entities of suspected status and dubious antecedents, and ultimately, the *Company* went under liquidation by the directions of the Hon'ble Bombay High Court as it could not meet its obligation to redeem the FCCBs on their maturity for want of funds as the funds raised through such FCCBs had already been siphoned off through one aforesaid investments in foreign subsidiaries, and through onward diversions to other entities for unexplained reasons. It has also come to right as to how the *Company* has entered into a collusive nexus for obtaining fake bills to show software purchases from the six bogus companies controlled by persons who have deposed under oath and have also furnished documents, that further substantiate and corroborate the charges made in the SCN. Thus, all in all, it has been found that the Audited Balance Sheet of the *Company* for the FY 2011-12 was replete with take and misleading financial data and was not containing the true and correct numbers pertaining to the financial health of the *Company*.

59. In view of the foregoing observations and findings, I hold *Noticee nos. 1, 2,* and *3* as guilty of violating Section 12A (a), (b), (c) of the SEBI Act, 1992 read with Regulation 3 (b), (c), (d), 4 (1), 4 (2) (f), (k) and (r) of the PFUTP Regulations, 2003 and the proceedings against *Noticee nos. 4* and *5* are dropped.

60. Therefore, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby restrain the *Noticee nos. 1, 2* and *3* from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of one (01) year from the date of this order.

61. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticees* shall remain frozen.

62. The obligation of the aforesaid debarred *Noticees*, 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, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

63. The Order shall come into force with the immediate effect.

64. A copy of this order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: DECEMBER 19TH, 2022 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA