

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/58427	Date: September 15, 2023
Circular Ref. No: 203/2023	

To All NSE Members

Sub: SEBI Order in the matter of Talwalkars Better Value Fitness Limited

SEBI vide its Order no. QJA/VS/CFID/CFID/29159/2023-24 dated September 15, 2023 has hereby restrained following entity from accessing the securities market and are also prohibited from buying, selling, and otherwise dealing in securities market, directly or indirectly, in any manner whatsoever, for a period of 18 months from the date of this order.

Sr. No.	Name of the Entity	PAN
1	Girish Talwalkar	AAAPT8175H
2	Prashant Talwalkar	AAAPT3528N
3	Madhukar Talwalkar	AAAPT8172A
4	Vinayak Gawande	AABPG4476B
5	Anant Gawande	AABPG3008P
6	Harsha Bhatkal	AACPB3100C
7	Grirsh Nayak	ABMPN9599G

This Order shall come into force with immediate effect.

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

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page at the below link:

<https://www.nseindia.com/regulations/member-sebi-debarred-entities>

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

National Stock Exchange of India

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of

National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: - SEBI Order in the matter of Talwalkars Better Value Fitness Limited

**SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

Under Sections 11(1), 11(4), 11(4A), 11B (1), 11B (2) read with Section 15HA and Section 15HB of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

Table No. 1 - Particulars of Noticees		
Noticee No.	Name of the Noticees	PAN
1.	Talwalkars Better Value Fitness Limited	AABCT8207A
2.	Girish Talwalkar	AAAPT8175H
3.	Prashant Talwalkar	AAAPT3528N
4.	Madhukar Talwalkar	AAAPT8172A
5.	Vinayak Gawande	AABPG4476B
6.	Anant Gawande	AABPG3008P
7.	Harsha Bhatkal	AACPB3100C
8.	Girish Nayak	ABMPN9599G

(The aforesaid entities are hereinafter individually referred to by their respective names/noticee numbers or collectively as “the Noticees”).

In the matter of Talwalkars Better Value Fitness Limited

1. Background of the Case:

1.1. Talwalkars Better Value Fitness Limited (hereinafter referred to as “**TBVFL**”/ “**the Company**”) was incorporated in 2003 and was engaged in the business of providing basic gym services, aerobics, yoga, diet-based weight reduction programs, massage, spa and health counselling. On February 20, 2018, TBVFL was demerged into two entities, TBVFL and Talwalkar Lifestyle Limited (hereinafter referred to as ‘**TLL**’), whose name was later changed to Talwalkars HealthClubs Limited (hereinafter referred to as ‘**THL**’) on January 16, 2019. Pursuant to the demerger, the entire gym business was hived off to TLL whereas TBVFL focused on nutrition and wellness services. In FY 2017-18 (year of demerger), select percentage of income, expenses, assets and liabilities were transferred from TBVFL’s books of accounts to form THL’s books of accounts.

1.2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of several complaints against TBVFL and THL during the period from August 2019 to October 2019. The complaints, *inter alia*, indicated default in payment of interest on term loan despite significant cash balance. As per the financial results ending March 2019, both the companies (TBVFL and THL) had a total cash balance of approximately ₹77 Crores and total default by both the companies of interest payment as on July 2019 was only ₹3.5 Crores (Term Loan) which raised suspicion over the authenticity of their books of accounts.

1.3. SEBI, after preliminary examination, took up the matter for detailed investigation, and KPMG was appointed as forensic auditor on August 24, 2020 to assist the investigating authority for conducting forensic examination of books of accounts of both TBVFL and THL for 4 financial years (2016-17 to 2019-20). The forensic auditor submitted the Forensic Audit Report (hereinafter referred to as “FAR”) on July 12, 2021 which, *inter alia*, indicated that TBVFL had *prima facie* misrepresented its financials to provide healthy picture to the investors and the examined transactions under various heads of the company were non-genuine.

1.4. SEBI examined the FAR along with annual reports of the company, corporate announcements made to the stock exchanges, replies and statements of the directors, Chief Financial officer (“CFO”), Compliance Officer and statutory auditors. SEBI’s Investigation brought to the fore various violations of securities laws were observed on the part of TBVFL and other entities, and a Show Cause Notice dated April 29, 2022 (hereinafter referred to as “SCN”) was issued to TBVFL and seven other entities. The said SCN forms the subject matter of the present order. A separate show cause notice dated April 29, 2022 has also been issued to THL and five other entities which has been dealt in a separate order. Since some of the issues and facts forming part of the instant proceedings are common with the proceedings against THL and other entities, reference is also drawn to THL at appropriate places while dealing with the instant proceedings.

2. SCN and the summary of allegations:

2.1. The summarized observations and allegations contained in the SCN against the Noticees are as under:

2.2. Inflation of bank balance disclosed in financial statements

2.2.1. As on March 31, 2019, TBVFL and THL had over 250 branches of their gyms and service centres within India and being separate legal entities

pursuant to their demerger, they were required to maintain separate bank accounts, whereas they continued to maintain same bank accounts in respect of all their branches. The bank accounts were maintained branch-wise and each branch had a 'Collection account' and a 'Payment account'. The bank balances were proportionately transferred to THL to prepare the financial statements (through a book entry) at the end of each FY till FY 2017-18. The proportionate transfer of balances was based on a management estimate without any underlying rationale.

2.2.2. The financial statements of TBVFL and THL as on March 31, 2018 highlighted a cumulative bank balance of ₹95.98 Crores. The key bank account constituting 98% of the bank balance was Axis Bank A/c No. '004010200059343' for which *the balance as per accounting records* was ₹94.72 Crores, whereas the bank statements showed only ₹5.65 Crores.

2.2.3. THL's shares were also listed on stock exchanges on June 29, 2018 (i.e. a fortnight prior to filing the financial statements of FY 2017-18 i.e. August 10, 2018). It appeared that TBVFL and THL had inflated their bank balance to present a healthy financial position of THL immediately after listing its equity shares on stock exchanges. The Axis Bank account was further analysed to identify the reconciling items and it was observed that its bank balance was arbitrarily inflated due to the many book entries (mentioned below) not supported by transfer of funds in the accounting records. The SCN also provided the details of the bifurcation of reversal entries in Capital Work in progress account (hereinafter referred to as '**CWIP account**'), reversal of entries of receivables from Talwalkars Club Systems Private Limited (hereinafter referred to as '**TCSPL**'), reversal of entries of receivables from Omnibus Infrastructure Private Limited (hereinafter referred to as '**OIPL**') and reversal of entries of payments to Zorba Renaissance Private Limited (hereinafter referred to as '**ZRPL**').

Table No. 2 - (Inflation of bank balance in financial statements)

Amount in ₹Crores

Particulars	Amount
Bank balance as per TBVFL financial statement	53.94
Bank balance as per THL financial statement	42.04
Total balance	95.98
Balance of Axis bank account (as per the accounting records of TBVFL and THL)	94.72
Actual Bank balance - Axis bank account 004010200059343	5.65
Difference / reconciling amount	89.07
Less: Increase in balance due to book entries passed in the accounting records	(193.20)

Particulars	Amount
Add: Difference in balance due to genuine reconciling items.	104.13

Table No. 3- (Fictitious receipts and reversal of book entries)

Amount in ₹ Crores

Particulars	Amount
Fictitious receipts to increase bank balance at the end of the year	
▪ By transferring CWIP balances to bank – multiple book entries (receipts as well as payments) were passed to incorrectly enhance the bank balance and reduce CWIP balance.	180.12
▪ Fictitious receipts from a related party – Book entries were recorded to indicate receipts from TCSPL. These entries were reversed in the next financial year and did not reflect in the bank statements.	36.79
▪ Fictitious receipts from a third party – Book entries were recorded to indicate receipts from an entity OIPL. These entries were reversed in the next financial year and did not reflect in the bank statements	26.07
Sub-total (a)	242.98
Payment entries to fictitiously reduce the bank balance	
▪ Payment to a third party – Book entries were recorded to indicate payments to ZRPL. These entries were reversed in the next financial year and did not reflect in the bank statements.	49.78
Sub-total (b)	49.78
Net increase in bank balance due to fictitious entries (a-b)	193.20

2.2.4. The bank balances for other financial years were also analysed to ascertain the quantum of reconciling items. It was observed that there were many items in other financial years also and their reconciliation was not provided by TBVFL.

2.2.5. On 31 July 2019, TBVFL and THL defaulted in payment of interest to banks/financial institutions amounting to ₹0.94 crore and ₹2.50 crore, respectively. Although, the review of their accounting records highlighted bank balance of ₹20.28 crore as on July 31, 2019, whereas as per the bank accounts it was only ₹93,624.

2.3. Inflation of profits by mis-utilisation of CWIP account

2.3.1. CWIP account includes all amounts spent on fixed assets that are in process of construction or completion. TBVFL accounted all expenses on fixed assets in CWIP account and thereafter transferred the same to respective asset ledger accounts such as buildings, gym equipment, furniture, amongst others. It was observed that a cumulative amount of ₹88.09 Crores was incurred towards rent of gym equipment and administrative expenses and was transferred to CWIP account in the same financial year instead of recording such expenses in the profit and loss account which led to arbitrary inflation of the financial statements showing a higher profit and higher assets. The details are as under:

Table No. 4-(Inflation of profits by mis-utilisation of CWIP account)
Amount in ₹ Crores

Particulars	FY 2016- 17	FY 2017- 18	FY 2018- 19	Total
Incorrect capitalization of expenses				
Rentals of gym equipment Rent was paid to three entities – OPC Asset Solutions Private Limited, Tata Capital Financial Services Limited and Connect Residuary Private Limited ('CRPL') towards rental of gym equipment.	15.71	23.00	18.79	57.50
Admin expenses Expenses towards travel, salary, housekeeping, accounting charges, etc.	13.83	13.10	3.66	30.59
Total	29.54	36.10	22.45	88.09

2.3.2. Additionally, a cumulative amount of ₹127.70 Crores incurred towards interest expenses on loans and debentures, and professional fees was transferred to CWIP account in the same year in which they were incurred. In the absence of underlying documents, it is unclear if these expenses were incurred towards creating an asset. With respect to professional fees paid to Mahavir Richab Investments Private Limited (hereinafter referred to as 'MRIPL'), it was observed that no business operations were conducted at its registered address. The address only had a sign board of Mr. Sumit Khasgiwala, whose firm 'M/s. S Khasgiwala & Co.' were the statutory auditors of MRIPL.

Table No. 5- (capitalization of expenses)

Amount in ₹ Crores

Particulars	FY 2016- 17	FY 2017- 18	FY 2018- 19	Total
Incorrect capitalization of expenses				
Professional fees Paid to multiple third parties towards legal services, fund raising and advisory services. These were initially recorded as professional fees in profit and loss account. However, later they were transferred to CWIP. Of the above, TBVFL paid net ₹18.48 Crore (comprising ₹22.13 Crore payments and ₹ 3.65 Crore receipts) to MRIPL.	14.60	42.12	5.63	62.35
Interest on term loan and debentures TBVFL obtained term loans from banks for general business expansion and capital expenses. They also issued non-convertible debentures.	22.43	25.10	2.51	50.04
Interest on loans from a related entity TBVFL recorded ₹24.45 Crore as interest expenses to a related entity Better Value Leasing and Finance Limited in the profit and loss statement. During the same period, ₹15.31 Crore of the interest expenses were transferred to CWIP.	3.85	4.46	7.00	15.31
Total	40.88	71.68	15.14	127.70

2.3.3. As per Indian Accounting Standard ("Ind AS") 16 – Property Plant and Equipment (PPE) – “The cost of the item of PPE includes: (a) The purchase price, which includes the import duties and any non-refundable taxes on such purchase, after deducting rebates and trade discounts (b) Costs which are directly attributable to bringing assets to the condition and location essential for it to operate in a manner as intended by the management (c) Initial estimate of costs of removing and dismantling an item and restoring a site where it is located.” Thus, only those costs need to be capitalized which either help in bringing the asset to the current condition or increasing the efficiency of the asset. Thus, TBVFL has allegedly inflated its profit by ₹88.09 Crores during the period from April

01, 2016 to March 31, 2019 by wrongful accounting. The second impact of this entry was inflation of CWIP account in balance sheet by ₹88.09 Crores.

2.3.4. As per Accounting Standard (“AS”) 10- *“Property Plant and Equipment”* and AS 16- *“Borrowing cost”*, the interest payable on term loans utilized solely for constructing an asset may be capitalized. Thus, interest of loan that can be directly attributable to construction of asset can be capitalized. As per Ind-AS 23 –*“Borrowing costs”*, *borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset form part of the cost of that asset. Other borrowing costs are recognized as an expense.*” However, TBVFL, despite repeated reminders by the forensic auditor had not submitted underlying documents for rationale for capitalization of expenses regarding interest on term loans and interest on loans from related parties. The forensic auditor, BRG Consulting (India) Private Limited (hereinafter referred to as “**BRG**”), appointed by Axis Bank, had written in its forensic audit report that the term loan taken from Axis bank for capital needs were either returned by capital creditors or round tripped to TBVFL and hence it was not possible to ascertain whether the said term loans were used for creation of an asset. Thus, capitalization of expenses related to the same has led to overstatement of profits by ₹127.70 Crores for the period between April 01, 2016 to March 31, 2019. The second impact of the entry was inflation of CWIP account in balance sheet by ₹127.70 Crores.

2.3.5. Thus, the company was alleged to have violated AS-10, AS-16, Ind-AS 16 and Ind-AS 23.

2.4. Inflation of assets, liabilities and revenue through round tripping of funds; Mismatch in financial statement disclosures; No business operations at registered addresses and inactive statutory registrations.

2.4.1. TBVFL had obtained term loans from banks for its capital expansion and submitted work orders and proforma invoices of its capital creditors i.e. Nitash Engineering and Consulting Private Limited (hereinafter referred to as “**NECPL**”), Omnibus Infrastructure Private Limited (hereinafter referred to as “**OIPL**”) and Gympac Fitness Systems Private Limited (hereinafter referred to as “**GFSP**”) for disbursement of loans.

2.4.2. The disbursement requests and the corresponding transactions in the bank accounts were analyzed to identify instances of round tripping of funds. The review indicated that amounts paid by Axis bank as term loans to the capital creditors were paid by the capital creditors or by Growfitter

Private Limited (hereinafter referred to as “GPL”) within ten days of the disbursements. The summary of disbursements and their receipt is as below:

Table No. 6- (Summary of disbursements and their receipt)

Amount in ₹ Crores

Tranche no.	Loan disbursed to	Date of disbursement	Loans extended	Funds received from	Date of receipt	Funds received by TBVFL
Funds received back from the same entity to whom they were disbursed						
Tranche 1	NECPL	27-Mar-17	8.85	NECPL	28-Mar-17	8.85
Tranche 2	GFSPL	27-Mar-17	10.99	GFSPL	28-Mar-17	10.99
Tranche 3	GFSPL	30-Mar-17	21.98	GFSPL	30-Mar-17	21.98
	Total (A)		41.82			41.82
Funds received from GPL						
Tranche 4	GFSPL	3-Dec-16	20.00	GPL	13-Dec-16	20.00
Tranche 5	OIPL	7-Jul-17	5.15	GPL	12-Jul-17	5.15
	Total (B)		25.15			25.15
	Grand total (A + B)		66.97			66.97

2.4.3. The accounting records were also reviewed to verify the accounting entries recorded for the above transactions and the following was observed:

Table No. 7- (Accounting entries)

Amount in ₹Crores

Particulars	Debit	Credit	Remarks
Accounting entry for obtaining loans from bank			
Capital creditors	66.97		Asset recognized for advance payment to capital creditors.
Loans		66.97	Liability recognized towards bank loan.
Accounting entries for receiving loan from capital creditors or from GPL			
Bank	66.97		Loans to be utilized for capital expenses were returned to TBVFL by capital creditors and a related party (increase in bank balance)

Particulars	Debit	Credit	Remarks
Capital creditors Account		0.27	A part of funds received from capital creditors is adjusted against their advance (reduction of asset)
Revenue Account		25.15	Fictitious revenue recognized (Receipt from GPL incorrectly adjusted against revenue). M K Dandeker & Co., statutory auditor of TBVFL had also qualified its audit report stating that it could not verify the underlying documents of income earned from GPL.
Inter branch payable Account		41.55	Inter branch liability recognized to adjust amount received in bank accounts.

2.4.3.1. **Recognition of fictitious assets, liability and revenue:** The net impact of the accounting entries on financial statements was as below.

- 2.4.3.1.1. ₹ 41.55 Crores advance given to capital creditors, though returned by them, were accounted as “inter-branch” liability which led to fictitious creation of both asset and liability of ₹41.55 Crores in the financial statement during FY 2016-17.
- 2.4.3.1.2. ₹ 25.15 Crores received from a related party were accounted as “revenue” leading to a fictitious increase in profits during FY 2016-17.

2.4.3.2. **Advances to capital creditors and related disclosures:**

NECPL:

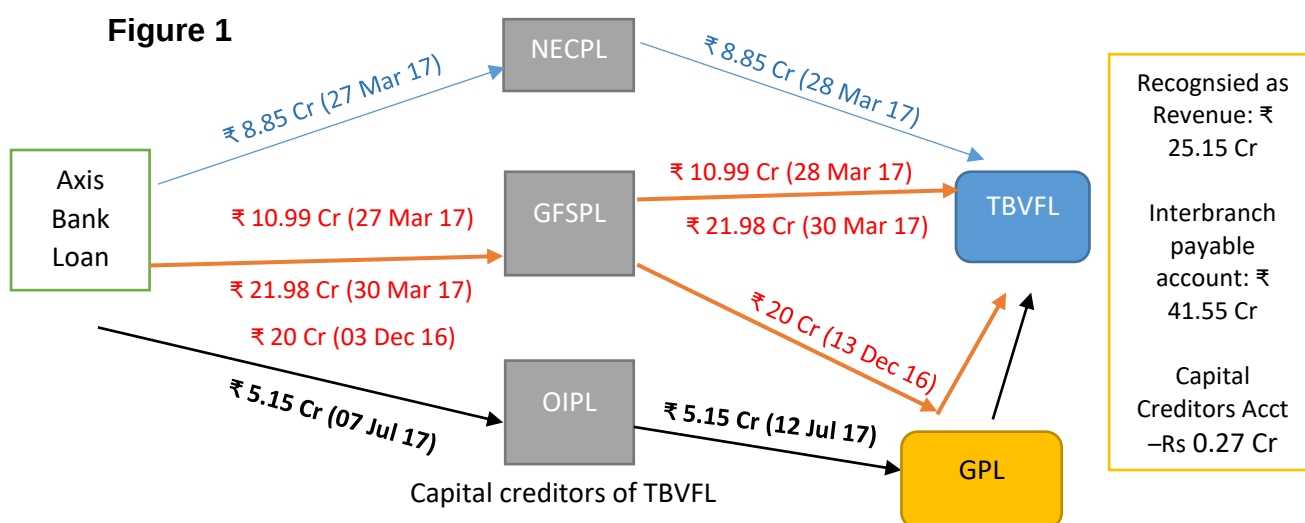
- 2.4.3.2.1. TBVFL disclosed ₹24.55 crore as advance given to NECPL as on March 31, 2018. However, the same was not disclosed in the financial statement of NECPL as the total assets of NECPL as on March 31, 2018 were only ₹13.55 crore and net worth was ₹0.15 Crores.
- 2.4.3.2.2. No business operations were conducted at NECPL’s registered address. The review indicated that the GST number of NECPL (GSTIN: 33AAECN6089R1ZO) was inactive and cancelled *suo moto* on 26 October 2018 indicating closure of business operations. It was observed that Gawande & Associates (located in Mumbai) was the statutory auditor of NECPL (located in Chennai). The financial statements of NECPL were signed by Mr. V.V. Rao from Gawande & Associates. Mrs. Yamini Anant Gawande, a shareholder of TBVFL is also a partner in Gawande & Associates.

OIPL:

2.4.3.2.3. In 2017-18, TBVFL paid ₹53.36 Crores in multiple tranches to OIPL as loans and advances. The said amount was not disclosed in the financial statements of OIPL as its disclosed assets and net worth were merely ₹0.02 Crores and ₹ 0.01 Crores, respectively.

2.4.3.2.4. In 2018-19, OIPL paid net amount of ₹32.36 Crores (of the total outstanding of ₹ 53.36 Crores) to TBVFL. In 2019-20, TBVFL paid ₹2 Crores to OIPL. The balance amount of ₹23 Crores remained outstanding in the books of TBVFL till 31 March 2020. The financial statements of OIPL were not filed for FY 2018-19 and FY 2019-20. The review indicated that the GST number of OIPL (GSTIN: 27AABCO7316D1ZO) was inactive and cancelled *suo moto* on 1 February 2019 indicating closure of business operations.

2.4.4. Thus, it is alleged that TBVFL has indulged in round tripping of funds, and has subsequently inflated its revenue by ₹25.15 crore (₹ 20 Crores in FY 2016-17 and ₹ 5.15 Crores in 2017-18) and its assets and liabilities by ₹ 41.55 crores (FY 2016-17), and has thus misrepresented its financial statements. The same has been depicted in the flowchart below:



2.4.5. As per para 6.1 of AS- 9 – *Revenue recognition*: A key criterion for determining when to recognize revenue from a transaction involving the sale of goods is that the seller has transferred the property in the goods to the buyer for a consideration. The transfer of property in goods, in most cases, results in or coincides with the transfer of significant risks and rewards of ownership to the buyer. However, there may be situations

where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership. Revenue in such situations is recognized at the time of transfer of significant risks and rewards of ownership to the buyer". Thus, TBVFL has allegedly violated AS 9- *Revenue Recognition* because it has recognized revenue without any transfer in property of goods/ services. Also the same is reiterated by IND AS 18- *Revenue Recognition*.

2.4.6. Further, it is noted that existence/business activity of these capital creditors is in question due to suspension of GST number. Also the transactions are questionable since mismatch in disclosures as per the financials of TBVFL and these entities.

2.4.7. BRG which was appointed as Forensic Auditor to conduct fund utilization audit on behalf of Axis Bank in its forensic audit report has stated that Axis bank had lent approximately ₹298 Crores to TBVFL and observed round tripping of borrowed funds for inflation of revenue and diversion for other general purposes such as payment of interest, loans and advances to related parties among others.

2.5. Non - disclosure of Corporate guarantee given to ZRPL as contingent liability

2.5.1. During the Financial Year 2017-18, TBVFL had given corporate guarantee of ₹55 Crores to ZRPL, however, the same was not disclosed as contingent liability in the books of TBVFL. Para 86 of Ind AS 37 - *Provisions, Contingent Liabilities and Contingent Assets* provides that unless the possibility of any outflow in settlement is remote, an entity shall disclose for each class of contingent liability at the end of the reporting period a brief description of the nature of the contingent liability and, where practicable: (a) *an estimate of its financial effect, measured under paragraphs 36–52*; (b) *an indication of the uncertainties relating to the amount or timing of any outflow*; and (c) *the possibility of any reimbursement*. Thus, TBVFL has allegedly violated Ind AS 37 by non-disclosure in financial statements for FY 2017-18 of corporate guarantee of ₹55 Crores given to ZRPL.

2.6. Inflation of revenue by revaluation of investments

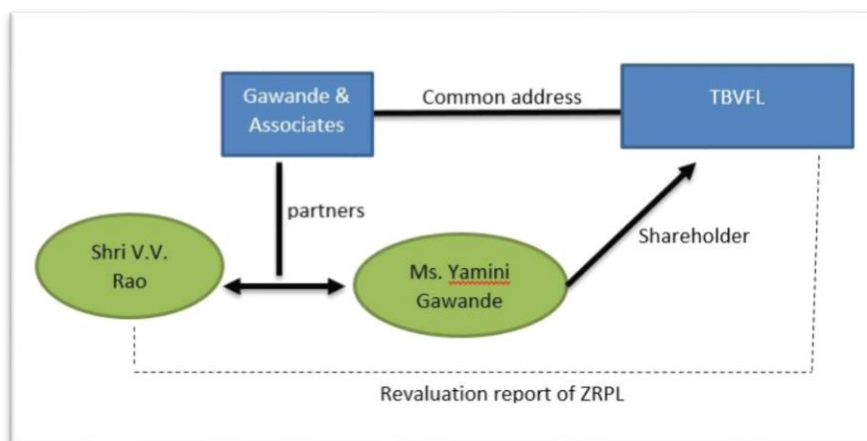
2.6.1. In the FY 2018-19, TBVFL revalued its investments in two entities upwards by ₹34.97 Crores and recognized corresponding profit of ₹ 32.28 Crores (Liabilities were increased by ₹2.69 crore without an impact on profit). The observations identified from the review of revaluation entries are as below:

2.6.2. Revaluation of investment in ZRPL

2.6.2.1. In September 2018, TBVFL had invested ₹1 lakh in ZRPL to obtain 40% equity stake. In the same year, TBVFL revalued its investment in ZRPL upwards by ₹26 Crores by crediting profit and loss account (income recognized of ₹ 26 Crores).

2.6.2.2. The revaluation was done based on a valuation report of ZRPL issued by a Chartered Accountant firm 'V.V. Rao & Co'. Mr. V.V. Rao is a partner in an entity named Gawande & Associates and both Gawande & Associates and TBVFL were registered at the same address. Further, Yamini Anant Gawande, a shareholder of TBVFL was a partner in Gawande & Associates. The disbursement requests submitted by TBVFL to Axis bank for obtaining loans were also attested by Mr. V.V. Rao.

Figure 2



2.6.2.3. The valuation report used inappropriate estimates of future revenues and profits to arrive at a valuation of ₹147.13 crore for ZRPL. The review of the valuation report highlighted *projected high growth rates* of revenue and profit after tax i.e. 618% and 2,253 %, respectively for the FY 2018-19. However, the actual revenue for FY 2018-19 increased only by 59 % and ZRPL incurred a loss of ₹19.62 crores as compared to ₹ 0.34 crore profit in FY 2017-18. ZRPL has not filed its financial statement after FY 2018-19. TBVFL had acquired 40% stake in ZRPL without paying securities premium. Thus, TBVFL revalued its investment on the basis of a valuation report prepared prior to its acquisition of shares in ZRPL without paying securities premium.

Table No. 8- (Observations on the valuation report)

Amount in ₹ Crores

Particulars	2017-18 (Actual)	2018-19 (Projected)	2018-19 (%Increase)	2019-20 (Projected)	2019-20 (%Increase)	2020-21 (Projected)	2020-21 (%Increase)
Revenue	8.50	61.00	618%	150.00	146%	274.00	83%
Expense	(8.04)	(49.00)	509%	(107.00)	118%	(190.00)	78%
Profit before Tax (PBT)	0.46	12.00	2509%	43.00	258%	84.00	95%
Income Tax	(0.12)	(4.00)	3233%	(15.00)	275%	(29.00)	93%
Profit after Tax (PAT)	0.34	8.00	2253%	28.00	250%	55.00	96%

2.6.3. Revaluation of investments in Talwalkars Club Systems Private Limited ('TCSPL')

2.6.3.1. In the FY 2018-19, TBVFL revalued its investment in TCSPL upwards by ₹8.97 crore. The corresponding credit for this upward revaluation was made by ₹6.28 Crore to Profit and loss account (increase in income) and ₹2.69 Crore to financial guarantee liability (increase in liability).

2.7. Inappropriate recognition of revenue and expenses

2.7.1. **Fictitious revenue recognized from capital creditors:** It was observed that GFSPL was the supplier of gym equipment to TBVFL. TBVFL recorded revenue in the nature of commission and fees and subscription from GFSPL as below:

- FY 2016-17: ₹ 5.24 Crores of commission income
- FY 2017-18: ₹ 15.08 Crores of commission income
- FY 2018-19: ₹ 2 Crores of fees and subscription income

2.7.2. On December 3, 2016, Axis bank on behalf of TBVFL disbursed ₹20 Crore to GFSPL. Further, TBVFL received ₹20 Crore from GPL on December 13, 2016 (receipt was from GPL whereas, the amount was disbursed to GFSPL). This receipt was accounted as *advance* received from GPL. Subsequently, on December 15, 2016 i.e., two days after receiving the advance from GPL, TBVFL adjusted this amount as *revenue*

from GPL, allegedly indicating that the amounts received from GPL were towards a mere round-tripping of funds paid to GFSPL.

2.7.3. Qualifications by M K Dandeker & Co., statutory auditor of TBVFL:

In FY 2018-19, M K Dandeker & Co. qualified its audit report stating that they were unable to obtain appropriate audit evidence for ₹54.46 crore (out of ₹73.05 crore) of operating revenues recognized by TBVFL viz. Fees and subscription revenue of ₹ 19.26 crore (GPL – ₹17.26 crore and GFSPL – ₹ 2 crore), Income recognized by revaluation of investment in ZRPL–₹ 26 crore, Consultancy fees from ZRPL – ₹ 9.20 crore

2.7.4. Internal financial controls on revenue recognition: In FY 2016-17 and 2017-18, M K Dandeker & Co. also provided a qualified opinion on the effectiveness of internal financial controls of TBVFL with regard to revenue recognition stating, *“The Company’s operating effectiveness and internal control system for Revenue from operations with regard to Fees and Subscription is not commensurate with the size of the Company and the same needs to be strengthened by the Management.”*

2.7.5. Apportionment of revenue and expenses between TBVFL and THL post demerger: The auditor provided qualification on the apportionment of revenue and expenses stating:

- a. *Revenue - “Post demerger of the Company, Revenue from Operations were collected in Talwalkars Better Value Fitness Limited (TBVF) and based on the management estimate, share of revenue pertaining to the Talwalkars Healthclubs Limited (THL) was transferred at the end of each month. However, the audit evidence for the apportionment of revenue between TBVF and THL was not adequate.”*
- b. *Expenses - “Post demerger of the Company, the expenses were incurred by Talwalkars Better Value Fitness Limited (TBVF) and based on the management estimate, share of expenses pertaining to Talwalkars Healthclubs Limited (THL) was transferred at the end of each month. However, the audit evidence for the apportionment of expenses between TBVF and THL was not adequate.”*

2.7.6. Para 20 of IND AS 18 provides that when the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction shall be recognised by reference to the stage of completion of the transaction at the end of the reporting period. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied:

- (a) the amount of revenue can be measured reliably;

- (b) it is probable that the economic benefits associated with the transaction will flow to the entity;
- (c) the stage of completion of the transaction at the end of the reporting period can be measured reliably; and
- (d) the costs incurred for the transaction and the costs to complete the transaction can be measured reliably.

2.7.7. Further, as per para 6.1 of AS 9 – *Revenue recognition: A key criterion for determining when to recognize revenue from a transaction involving the sale of goods is that the seller has transferred the property in the goods to the buyer for a consideration. The transfer of property in goods, in most cases, results in or coincides with the transfer of significant risks and rewards of ownership to the buyer. However, there may be situations where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership. Revenue in such situations is recognized at the time of transfer of significant risks and rewards of ownership to the buyer*”. Thus, TBVFL has allegedly violated AS 9 and Ind-AS 18 because it has recognized revenue without any transfer in property of goods/ services. The impact of the such fictitious revenue recognition on the profit and loss is as below.

Table No. 9- (impact of fictitious revenue recognition)

Amount in ₹ Crore

	Particulars	FY 2016-17	FY 2017-18	FY 2018-19
A.	Originally reported Revenue	257.69	303.51	85.76
B.	Originally reported Expenses	161.80	186.64	68.15
C.	Net profit before taxes	95.89	116.87	17.61
D.	Observations impacting Net Profit			
	Revaluation of investment in ZRPL	-	-	26.00
	Revaluation of investment in TCSPL	-	-	6.28
	Revenue earned from GFSP	5.24	15.08	2.00
	Revenue earned from GPL	20.00	-	17.26
	Revenue from consultancy fees qualified by M K Dandeker & Co.	-	-	9.20
	Sub-total of adjustable items (D)	25.24	15.08	60.74
E.	Net profit after adjustments (C-D)	70.65	101.79	(43.13)

2.8. Inflation of investments through book entries not backed by money transfers and investments in entities with low net worth

TBVFL disclosed various book entries of investments and loans that were not backed by money transfers in the bank accounts and in this regard the following was observed.

2.8.1. Investment in ZRPL:

2.8.1.1. ZRPL provided wellness related services such as Yoga and Zumba under the brand name of Talwalkars. Mr. Harsha Bhatkal (one of the Directors of TBVFL) was also a Director in ZRPL from May 2, 2018 till August 12, 2019.

2.8.1.2. The accounting records indicated that TBVFL passed a book entry of investment in ZRPL on March 31, 2017 amounting to ₹10 Crores and disclosed it as investment in share application money (pending allotment). Subsequently, on September 30, 2017, THL recorded a book entry of ₹10 Crore and disclosed it as refund from ZRPL. Both these entries were not reflected in the bank accounts of TBVFL. The Management Representative stated that TBVFL had invested in ZRPL due to high growth potential of Yoga business. However, ZRPL raised funds from other investors and hence, the amount invested by TBVFL was refunded. ZRPL's financial statements had no disclosure of either the investment or refund.

2.8.1.3. The financial position of the above mentioned company - ZRPL is as below.

Table no. 10 - (financial position of ZRPL)

Amount in ₹ Crore

Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Shareholder's funds (Net worth)	0.08	0.43	15.14
Total assets (Current and non-current)	0.44	56.07	42.50
Loans obtained from financial institutions basis TBVFL's bank guarantee	-	55.00	24.65
Revenue	1.74	8.41	12.95
Profit before tax	0.10	0.46	(19.53)

2.8.1.4. **Understatement of liability of ZRPL:** The review of ZRPL's bank statements for FY 2017-18 highlighted net receipts of ₹49.78 Crore from ZRPL comprising ₹84 Crore of receipts and ₹34.22 Crore of payments. In the same FY, TBVFL passed book entries from March 22, 2018 to March 31, 2018 indicating that it repaid the entire amount of ₹49.78 crore to ZRPL. However, these were only book entries and were not backed by transfer of funds. These book entries were reversed in the month of June in the next FY. Thus, it appeared that accounting entries was merely recorded to understate the liabilities as on March 31, 2018.

2.8.2. **Investment in Medastouch Private Limited** (hereinafter referred to as '**MPL**'): In FY 2018-19, TBVFL disclosed ₹6.51 Crores as investment in MPL. However, the same was merely a book entry and could not be traced in the bank accounts of TBVFL. Subsequently, on June 30, 2019, TBVFL reversed this entry with a narration "*Being stale & reversed*". TBVFL disclosed ₹6.51 Crore as investment in MPL as at March 31, 2019. However, MPL disclosed receivable of ₹3.49 crore from TBVFL indicating difference in the financial statement disclosure.

2.8.3. **Investment in PWG Fitness Private Limited** (hereinafter referred to as '**PWG**'): In FY 2016-17, TBVFL disclosed ₹20 crore investment in PWG towards share application money (pending allotment). The review of accounting records highlighted that this was merely a book entry (not backed by transfer of funds) that was reversed in the subsequent year. The Management Representative stated that PWG was a renowned brand in Sri Lanka and the investment was proposed to leverage their brand name in India through association with TBVFL. The review indicated that the GST numbers of PWG were inactive and cancelled *suo moto* indicating closure of business operations.

2.8.4. **Investment in Force Fitness (India) Private Limited** (hereinafter referred to as '**FFIPL**'): In FY 2016-17, TBVFL disclosed investments of ₹35 crore in FFIPL towards share application money (pending allotment). In FY 2017-18, this amount was disclosed as a refund in THL. No such disclosure was made in the financial statements of FFIPL. The review highlighted that ₹20 crore out of ₹35 crore were debited from TBVFL's bank account on March 31, 2017 but were also credited back on the same date. The balance amount of ₹15 crore was not reflected in bank account and was merely a book entry. As at March 31, 2017, the net worth of FFIPL was only ₹3.61 crore. The Management Representative stated that the investment in FFIPL was proposed as the entity had a tie up with a global gym brand 'Snap fitness'. They added that the proposed

investment was not successful as FFIPL did not agree with the valuation of ₹35 crore offered by TBVFL.

2.8.5. The financial position of the above mentioned company - FFIPL is as below.

Table no. 11- (financial position of FFIPL)

Amount in ₹ Crore

Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Shareholder's funds (Net worth)	3.61	0.93	Financial statements unavailable on public domain
Total assets (Current and non-current)	18.82	12.77	
Revenue	17.21	9.19	

2.8.6. **Investment in GPL:** In FY 2016-17, TBVFL invested ₹5 Crore in GPL towards share application money (pending allotment). Share premium was paid only by TBVFL and not by other shareholders. The financial statements of GPL indicated that TBVFL was allotted 9,598 shares (19% of share capital of GPL) for its investment during the year. During the same FY, GPL allocated the remaining 81% shares to other shareholders. The net worth of GPL totalled to ₹4.92 crore comprising ₹0.05 crore of share capital, ₹5.24 crore of share premium and ₹0.37 crore of loss incurred during the year. The management representative of TBVFL confirmed that it paid ₹5,200 per share as share premium (aggregating to approximately ₹5 crore). Thus, TBVFL paid share premium for acquiring shares in a newly formed entity while the other shareholders were issued shares without share premium.

2.8.7. The financial position of the above mentioned company - GPL is as under:

Table no. 12- (financial position of GPL)

(Amount in ₹ Crore)

Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Shareholder's funds (Net worth)	4.92	7.79	15.14
Total assets (Current and non-current)	5.45	8.08	5.82
Revenue	0.77	2.31	4.88
Profit before tax	(0.38)	(1.11)	(1.96)

2.8.8. **Investment in Inshape Health and Fitnez Private Limited** (hereinafter referred to as 'IHFPL'): IHFPL was incorporated in March

2008 and had filed its financial statements till March 31, 2018 only. In FY 2015-16, TBVFL disclosed ₹0.56 crore as investment in IHFPL to obtain 51% shareholding of IHFPL, this amount could not be traced from the bank accounts provided to the forensic auditor as the investments were prior to April 1, 2016. IHFPL disclosed TBVFL as its shareholder in the financial statements of FY 2015-16. Mr. Dinesh Srinivas Rao (Chief Financial Officer of TBVFL from FY 2018-19) was also the Director in IHFPL and hence, TBVFL disclosed IHFPL as its related entity for FY 2018-19. TBVFL invested ₹12.50 Crore in IHFPL during FY 2018-19. The investment could be traced in the bank accounts of TBVFL. The net worth of IHFPL till FY 2017-18 was merely ₹0.91 crore. The review indicated that the GST numbers of IHFPL were inactive and cancelled *suo moto* on December 31, 2019, indicating closure of business operations.

2.8.9. The financial position of IHFPL is as below:

Table no. 13- (financial position of IHFPL)

Amount in ₹ Crore			
Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Shareholder's funds (Net worth)	1.06	0.91	Financial statements unavailable in public domain
Total assets (Current and non-current)	3.85	29.16	
Revenue	3.32	3.19	
Profit before tax	0.05	0.06	

2.8.10. **Investment in Talwalkar Club Systems Private Limited (hereinafter referred to as 'TCSPL') and Talwalkar Club Private Limited (hereinafter referred to as 'TCPL')**

2.8.10.1. TCPL was incorporated on March 21, 2014 with Mr. Prashant Talwalkar and Mr. Vinayak Gawande as its Directors. TCPL was a 100% subsidiary of TBVFL till FY 2018-19. In 2019-20, David Lloyd Clubs acquired 50% equity shares of TCPL, and the entity's name was changed to DLL Talwalkar Club Private Limited.

2.8.10.2. TCSPL was incorporated on March 17, 2016 with Mr. Prashant Talwalkar and Mr. Harsha Bhatkal as its Directors. TCSPL is also a 100 % subsidiary of TBVFL.

2.8.10.3. In 2017-18, TBVFL invested ₹16.50 Crore towards share application money (pending allotment) of TCSPL, which in turn invested this money in the equity shares of TCPL. The management representative confirmed that TCSPL was incorporated only for club operations of TBVFL. It is uncertain, if TCSPL conducted any business operations as it did not have any revenues, expenses or

assets (other than TBVFL's investment) as on March 31, 2018. The rationale for routing the investments in TCPL through TCSPL could also not be ascertained.

2.8.11. On the basis of the above observations, it is alleged that the value of investments mentioned in the financial statements are not reliable as the same were mere book entries with fabricated net worth figures.

2.8.12. The company also had made media announcements about tie-ups and acquisitions to lure investors. It was also observed from the FAR that the financial statements of TCPL, TCSPL, OIPL, PWG and THL, for FY 2016-17 and 2017-18, were all audited by Lakdawala & Associates. Public domain searches on Lakdawala & Associates highlighted that Lakdawala & Co. (having same partner and office address as Lakdawala & Associates) were the statutory auditors of Punjab and Maharashtra Cooperative bank ('PMC bank') during FY 2018-19. The audit report of PMC bank indicates that no physical trace of Lakdawala & Associates was found on the address as per media articles. The same address was mentioned on the audit report of TCPL, TCSPL, PWG, MPL and THL.

2.8.13. The above facts regarding non-existence of statutory auditors of these companies and non-filing of financial statements by the investee companies make these transactions more dubious. Thus, it is alleged that the company had tried to paint a rosy picture about its investments and expansion by trying to inflate its investments by merely passing book entries towards year end and subsequently reversing them.

2.9. Advances given to connected companies without rationale which are not in the interest of the company.

2.9.1. Unclear nature of advances paid to Mickey Keki Mehta/ Dr. Mickey Mehta's 360° Wellness Temple Private Limited (hereinafter referred to as 'MMWTPL')

2.9.1.1. The accounting records highlighted that payments and receipts of ₹25.81 crore and ₹5.20 crore respectively, were made to Mickey Keki Mehta, out of which, ₹5.61 crore were disclosed in the books of TBVFL and ₹15 crore in the books of THL. As per bank statements, only ₹20.13 crore were paid to Mickey Keki Mehta as against payments and receipts disclosed in the accounting records. The Management Representative stated that Mickey Mehta was a popular brand in the field of holistic wellness. The payment was

made to carry out expansion of the brand across TBVFL's chain of fitness centres. The agreements, approvals for advance paid to Mickey Mehta were requested from TBVFL. However, the details were not provided.

2.9.1.2. In FY 2018-19, TBVFL paid ₹2.93 crore to MMWTPL and disclosed it as loans and advances. In the absence of financial statements of MMWTPL, this investment could not be traced from its financial statements.

2.9.1.3. The registered address of both MPL and MMWTPL was same. It was a residential address of Mr. Mickey Mehta and no business operations were conducted from there.

2.9.2. Unclear business transactions with Tribhovandas Bhimji Zaveri and Brothers Private Limited (hereinafter referred to as 'TBZ Brothers') and Tribhovandas Bhimji Zaveri and sons Private Limited (hereinafter referred to as 'TBZ sons'):

2.9.2.1. During FY 2016-17 and FY 2017-18, TBVFL paid a net amount of ₹11.55 crore to TBZ Brothers comprising ₹52.75 crore payments and ₹41.20 crore receipts. The review of accounting records highlighted only payments and receipts entries with TBZ Brothers, and no invoices or interest expenses were recorded. The rationale for frequent payments and receipts with TBZ Brothers was not ascertained. The rationale for payment to TBZ Brothers was requested from management, however, the details were not provided. The review indicated that the GST numbers of both TBZ Brothers and TBZ Sons were inactive from July 01, 2017 indicating closure of business operations.

2.9.2.2. On April 01, 2016, TBVFL had an outstanding receivable balance of ₹16.50 crore from 'TBZ Sons'. This amount remained outstanding throughout the review period (₹13.30 crore and ₹3.20 Crore in the books of TBVFL and THL, respectively). M K Dandeker & Co., the statutory auditor did not state any qualification in this regard in their audit report. It may be noted that although the advance amount was outstanding for over four years, TBVFL did not make any provisions or write off this balance from the accounting records. Thus, the non-provisioning of long outstanding balance *prima facie* indicates violation of AS 28 'Impairment of Asset' and AS 29 'Provisions, Contingent Liabilities and Contingent Assets'

2.9.2.3. The last available audit reports (FY 2015-16) of TBZ brothers and TBZ sons were audited by Yamini Gawande from Gawande & Associates. It may be noted that Yamini Gawande is also a shareholder of TBVFL. The registered address of Gawande & Associates and TBVFL were also same

2.10. A summary of all the transactions discussed in preceding paragraphs is depicted in the Figure and Table below (showing the transfer of funds from TBVFL to its connected entities):

Figure 3

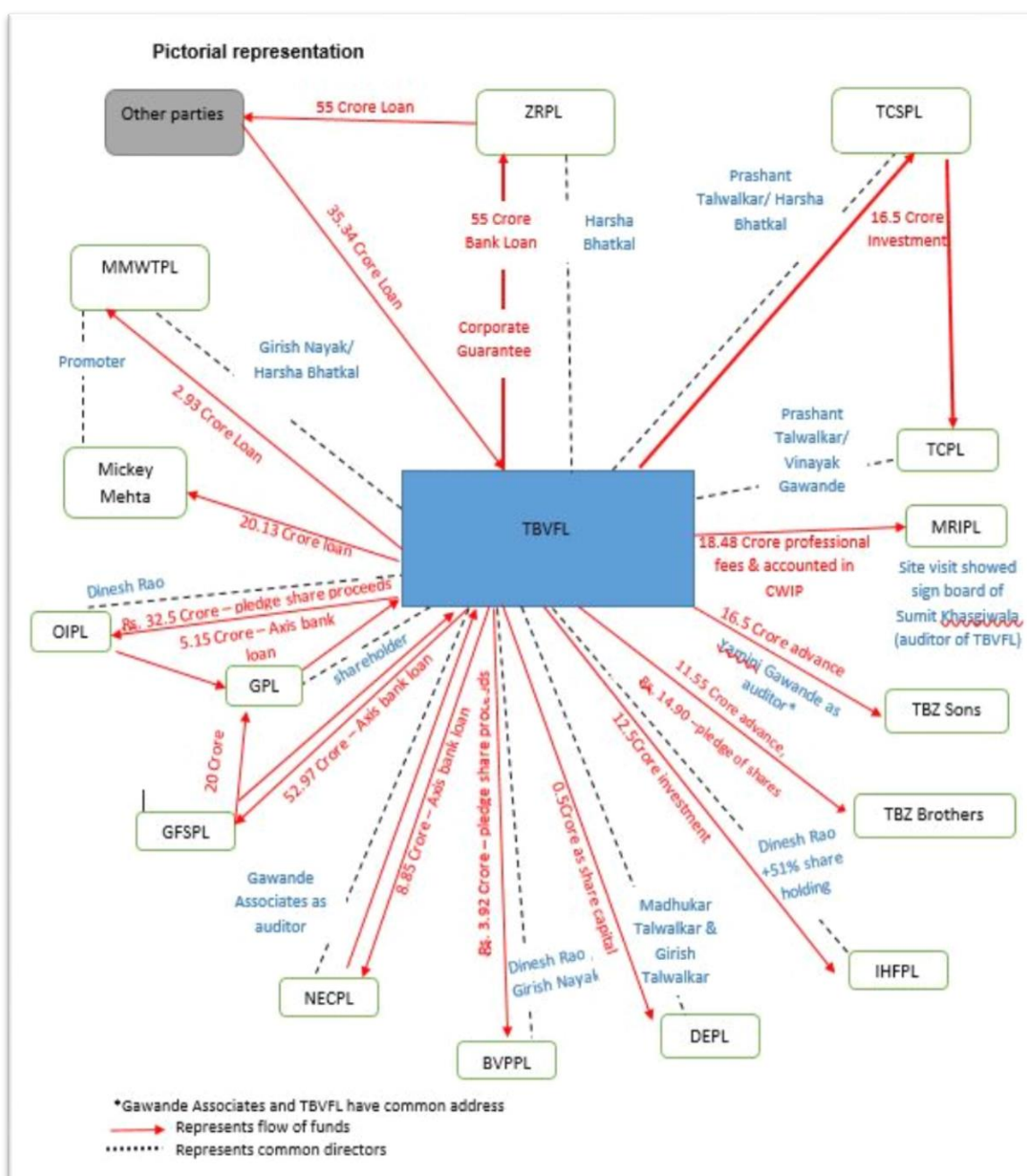


Table no. 14- (Flow of funds)

Amount ₹ Crore

Name of receiving entity	Nature of funding	Amount
GF SPL	Capital Creditor	52.97
Mickey Keki Mehta	For expansion of the brand	20.13
OIPL	Capital Creditor	5.15
	Unidentified reasons	32.50
MRIPL	Professional fees	18.48
TCSPL / TCPL	Investment in capital	16.50
TBZ Sons	Unidentified reasons	16.50
TBZ Brothers	Unidentified reasons	14.90
	Unidentified reasons	11.55
IHFPL	Investment	12.50
NECPL	Capital Creditor	8.85
GPL	Investment in capital	5.00
Better Value Properties Pvt. Ltd	Unidentified reasons	3.92
M P Doshi & Co	Unidentified reasons	2.16
MMWTPL	Loans and advances	2.93
TOTAL		224.04

2.11. Based on the observations noted above, it was alleged in the SCN that the company has violated the provisions of Sections 12A (a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”), Regulations 3 (b), (c) and (d) and 4(1) and 4(2)(f), 4(2)(k) and 4(2)(r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, (hereinafter referred to as “PFUTP Regulations”). It was also alleged that the company has violated provisions of Regulations 4(1)(a), (b), (c), (e), (g) and (h), 4(2)(f)(ii)(6), (7) and (8), 4(2)(f)(iii)(3), (6) and (12), Regulation 33(2)(a) and Regulation 48 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 Regulations, 2015 (hereinafter referred to as “LODR Regulations”).

2.12. It was also alleged in the SCN that that Noticee No. 2 -8 have violated Section 12A(a), (b) and (c) of the SEBI Act, Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f), (k) and (r) of the PFUTP Regulations and Regulations 4(1)(a), (b), (c), (e), (g), (h), 4(2)(f)(ii)(6), (7) and (8), 4(2)(f)(iii)(3), (6) and (12), 33(2)(a) and 48 of the LODR Regulations read with Section 27 of SEBI Act. Noticee No. 8 was additionally alleged to have violated Regulations 17(8) and 33(2)(a) of the LODR Regulations.

2.13. Vide the SCN the Noticees were called upon to show cause as to why suitable directions be not issued and/or penalty be not imposed as deemed fit under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with Section 15HA and 15HB of the SEBI Act and Rule 5 of SEBI (Procedure for holding

Inquiry and Imposing Penalties) Rules, 1995 against them for the alleged violations mentioned in the SCN. The Noticees were advised to file their replies within 21 days from the receipt of the SCN.

3. Delivery of SCN, replies and hearing:

3.1. The SCN was duly served on the Noticees and all the documents which were relied upon in the SCN including FAR were provided to the Noticees. For ease of reference, the details in respect of delivery of SCN, dates of the replies and hearings are given below:

Table No. 15- (Status of delivery of SCN, replies and hearing)

Noticee No.	Name of the Noticee	Status of delivery of SCN	Date of Inspection of documents	Reply/Written Submissions	Date of Hearing and Status
1.	Talwalkars Better Value Fitness Limited	SCN dated April 29, 2022 not delivered as the entity is under liquidation. Vide letter dated February 21, 2023, the SCN was delivered to the liquidator	Not requested	March 22, 2023	March 15, 2023 (Concluded)
2.	Girish Talwalkar	SCN dated April 29, 2022 served upon the Noticee through post	July 18, 2022	October 15, 2022 and post hearing submissions dated March 14, 2023 and April 04, 2023	
3.	Prashant Talwalkar				
4.	Madhukar Talwalkar				
5.	Vinayak Gawande		October 04, 2022	January 04, 2023	January 11, 2023 (Concluded)
6.	Anant Gawande				
7.	Harsha Bhatkal				
8.	Girish Nayak				

NOTICEES' SUBMISSIONS:

4. The Noticees, vide their respective letters/emails have submitted their written submissions to the SCN which are summarized as under:

4.1. **Noticee No.1—** Hon'ble NCLT, vide its order dated April 28, 2022, initiated liquidation proceedings against Noticee No. 1 under the provisions of Insolvency and Bankruptcy Code, 2016("IBC") and for the same reason, SCN dated April 29, 2022 could not be delivered. Vide letter dated February 21, 2023, the SCN was served upon the official liquidator, Mr. Gajesh Labhchand Jain, who vide his letter dated March 22, 2023 submitted the reply on behalf of the Noticee and also appeared for the personal hearing on March 15, 2023. The summary of the submissions filed by the liquidator is as under:

4.1.1. *Pursuant to an application filed by Axis Bank before the Mumbai bench of NCLT, CIRP in respect of the Corporate Debtor (i.e. TBVFL) was initiated vide order dated January 11, 2021 read with corrigendum dated January 18, 2021.*

4.1.2. *Since no resolution plan was received by the RP in the CIRP of the Corporate Debtor, the NCLT allowed the initiation of liquidation proceedings for the Corporate Debtor in accordance with Section 33(2) of the Code vide order dated 28 April 2022. The NCLT, vide the said Order appointed. Mr. Gajesh Labhchand Jain as the liquidator of the Corporate Debtor. The Liquidation Commencement Date was June 27, 2022.*

4.1.3. *In accordance with Section 34(2) of IBC, upon the appointment of the liquidator, inter alia, all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor shall cease to have effect and shall vest with the liquidator.*

4.1.4. *Upon his appointment, he issued a public announcement dated June 30, 2022 in accordance with Regulation 12 and 16 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") inviting all the stakeholders to submit their claims in the liquidation proceedings of the Corporate Debtor. Accordingly, upon the receipt of claim and its subsequent verification and assessment, he admitted the claims of various stakeholders of the Corporate Debtor.*

- 4.1.5. Subsequently, he also prepared a list of stakeholders of the Corporate Debtor and constituted its stakeholders' consultation committee.
- 4.1.6. Upon review of the SCN, he understands that the Corporate Debtor is being investigated for violations pertaining to provisions of SEBI Act, PFUTP Regulations and LODR Regulations for FY 2016-17, 2017-18, and 2018-19, basis the forensic audit report and certificates signed by the CFO.
- 4.1.7. Currently applications under Section 45 (avoidance of undervalued transactions), and Section 66 (fraudulent trading or wrongful trading) of IBC are pending adjudication before the Mumbai bench of the NCLT involving various group companies of the Corporate Debtor, and the erstwhile management of Corporate Debtor.
- 4.1.8. The RP, during the CIRP appointed a transactional auditor which submitted its report to the RP dubious/undervalued/fraudulent which were purportedly undertaken at the time when the Corporate Debtor was being managed by the erstwhile promoters and management. Accordingly, the RP had approached the Hon'ble NCLT seeking appropriate directions.
- 4.2. **Noticee No.2, 3 and 4—**Vide their letters dated October 15, 2022, they have filed separate but similar written submissions. While denying all the allegations contained in the SCN they have, *inter alia*, stated the following:
- 4.2.1. Vinayak Gawande and Anant Gawande ("**Gawandes**") who had various business interests, having one of their leading companies Better Value Leasing and Finance Pvt. Limited proposed to Madhukar Talwalkar, Prashant Talwalkar and Girish Talwalkar ("**Talwalkars**") to form a company combining Gawandes' strength and expertise in banking, finance and legal areas and Talwalkars' expertise in operation of Gyms. The Gawandes introduced Harsha Bhatkal ("**Bhatkal**") to the Talwalkars as an associate of Gawandes and a Mergers and Acquisitions expert. The Gawandes, Bhatkal and Talwalkars, agreed to adopt the 'Talwalkar' name for the company due to the goodwill the brand name had acquired in the last 90 years in the fitness industry. Accordingly, on this understanding, Talwalkar Better Value Fitness Private Limited was incorporated and a Shareholders Agreement dated July 2003 ("**SHA**") was executed between the Talwalkars and co-promoters Gawandes and Bhatkal expressly defining the role of each promoter group in TBVFL. At the instance of Gawandes and Bhatkal, TBVFL was subsequently converted from private limited company to public limited company in 2009, listed on the stock exchanges in 2010 and thereafter demerged into

*TBVFL and Talwalkars Healthclubs Limited in 2017-18. The entire process was solely taken care of by Gawandes and Bhatkal along with Girish Nayak ("Nayak"), who was one of the Key Employees of Better Value Fitness Pvt. Ltd. (a company of the Gawandes) and at the insistence of Gawandes had joined TBVFL on its incorporation and Mr. Dinesh Rao ("Rao"), another associate of Gawandes who had joined TBVFL in May 2009. The role and responsibilities of each of the promoter groups remained distinct as laid down in SHA and subsequently at the time of listing in the Draft Red Herring Prospectus ("DRHP") and Red Herring Prospectus ("RHP"). Thus, all the finances, accounts, loans, taxations and relevant statutory compliances of TBVFL were handled by Gawandes (with Anant Gawande as CFO of TBVFL until 2017), Bhatkal, Nayak (CFO of TBVFL after Anant Gawande and until the demerger, thereafter CFO in THL) and Rao (CFO in TBVFL after demerger) (the Gawandes, Bhatkal Nayak and Rao together hereinafter referred to as "**Gawande Group**"). The Talwalkars were responsible solely for the administration and running of the Gymnasiums which was Talwalkar family's traditional business. Thus, they cannot be held liable for alleged violations committed by Gawande Group.*

- 4.2.2. It is stated that the SCN has not captured the entire facts in the matter and reiterated that Gawande Group was responsible for handling banking, financial and legal matters. Talwalkars were to take care of administration and running of the gyms as was their traditional business and expertise. The complete facts in the matter are as under-

Background of TBVFL:

Incorporation as private limited company under SHA

- 4.2.3. Talwalkars Better Value Fitness Private Limited (**TBVFPL**) was incorporated in the year 2003. SHA was executed between TALWALKARS and GAWANDES to form the said Private Limited Company. The SHA expressly stated "The 'TALWALKARS' brand is the leader in the area of fitness and gymnasiums and has a history of over seventy years in the field of running gymnasiums and allied activities" and "The GAWANDES have experience expertise and goodwill in finance and merchant banking". The Talwalkars had a brand reputation to their name but the Talwalkars lacked the banking, financial and legal expertise. None of the Talwalkars had any experience or qualification in the finance area. ... The Gawandes and Bhatkal on the other hand requisite experience and qualification to handle the financial and legal affairs of the Private Limited Company.... Thus, the parties thereto agreed to bring together

their respective expertise and experience for forming and functioning of the said Company, TBVFPL. Accordingly, the areas to manage in the said Company were divided based on expertise. Clause 3.4 of the SHA states that Gawandes and Bhatkal have expertise in banking, financial and legal matters and thus, Gawandes and Bhatkal undertook to be personally involved in day-to-day operational activities of the Company so far as these areas were concerned. Accordingly, it was therein agreed and recorded in Clause 4 and 5 of the Agreement that Borrowings of the Company, appointment of internal auditor, screening of financial accounts, MIS for submission to Board of Directors were the duties of Gawandes and Bhatkal. It is pertinent to note that the said SHA was disclosed to the public investors at the time of the IPO of the Company.

Conversion to public limited company i.e. TBVFL

4.2.4. *Talwalkars Better Value Fitness Private Limited became public limited company i.e. TBVFL on 7 November 2009 with registered address at Mahalaxmi. The Mahalaxmi office building is owned by Gawande Consultants Pvt. Ltd. where Gawandes are the common directors holding 99% share capital. The entire record and server of TBVFL and THL including but not limited to minutes' books, income tax returns, case papers, loan procurement papers, profit and loss accounts and balance sheet, etc. & other financial or statutory documents were kept at the registered office i.e. Mahalaxmi Office. The entire record and the servers of TBVFL and THL were under the control of the Gawandes, Bhatkal and the CFOs as they handled corporate and financial affairs of the companies. They were the only persons who had the server password and access. The Talwalkars only focused on running the gyms at the branch level from office situated at BKC (which was surrendered on November 12, 2019).*

Listing of TBVFL and publication of DRHP and RHP in pursuance thereof

4.2.5. *In 2010, TBVFL was listed on Bombay Stock Exchange. All the listing requirements were solely taken care of by the Gawande Group which included publication of DRHP and RHP. The Gawande Group in TBVFL's DRHP detailed the expertise of each of the directors and expressly stated that the Gawande Group had vast experience in the areas of business including financial, marketing and legal. In the RHP, the SHA was also disclosed to the public and brief biographies of all the directors were given.*

Demerger of TBVFL and Formation of THL

4.2.6. Vide NCLT order dated December 21, 2017, TBVFL (pre-merger) demerged into TBVFL and Talwalkar Lifestyles Ltd with effect from February 20, 2018. Talwalkar Lifestyles Ltd.'s name was thereafter changed to Talwalkars Healthclubs Ltd. ("THL") on November 3, 2018. Both companies had registered address of Mahalaxmi Office. After demerger, TBVFL had directors –Madhukar Talwalkar, Girish Talwalkar, Vinayak Gawande, Harsha Bhatkal, Dinesh Shriniwas Rao (CFO) and THL had directors – Girish Talwalkar, Prashant Talwalkar, Anant Gawande, Harsha Bhatkal and Girish Nayak (CFO) (Anant Gawande was CFO till 2017). As per the demerger scheme, the Gym Business of TBVFL (pre-merger) which included all the debts, liabilities, duties and obligations and also including, without limitation, all properties and assets (except for Gym Premises owned by TBVFL) stood transferred to THL.

Events post demerger of TBVFL

4.2.7. In August 2019, TBVFL and THL had defaulted in their loans to the bankers. This was without any knowledge of the Talwalkars as they were always given an impression that the companies were solvent. In fact, the Talwalkars on 22 July 2019 even launched a premium club house in Pune, one of the biggest clubs in Asia in collaboration with a foreign company completely unaware of status of TBVFL financials. Once they became aware, they sought relevant and necessary information on companies' accounts from the Gawande Group but no information was forthcoming and not even the minute books of the company were being shared with us.

Investigations initiated by Government authorities in the matters of TBVFL and THL and mala fide conduct of Gawande Group

4.2.8. In January, 2020, Prashant Talwalkar was summoned by the income tax department and questioned about TBVFL's and THL's accounts and finances. Since Prashant Talwalkar was not responsible for the accounts, thereafter they summoned Anant Gawande for the questioning resulting in revised computations in financial reports of FY 2017-18. In view of the affairs of the companies coming under the scanner of various Government authorities, the Gawande group sought to evade liability and inter alia carried out following acts.

4.2.8.1. *The Gawande Group along with CS Ms. Geeta Canabar, Ms. Monika Khatri and compliance officers Avanti Sankav and Gayatri Prasad fabricated a record of board resolution dated 16 January 2020 to shift the registered office of the Companies from Mahalaxmi Office to Bandra Gym. The Gawande group had deliberately not circulated any meeting notice with agenda to shift the registered office to the Talwalkars. The Gawande Group thereafter fraudulently uploaded the said Resolution on ROC website. The purported resolution dated 16 January 2020 and fraudulent ROC form are annexed.*

4.2.8.2. *Pursuant to Anant Gawande's questioning by the Income Tax Department, on February 18, 2020, the finance team of TBVFL and THL sent an email with revised computations of FY 2017-18 for TBVFL and THL seeking a revert from Prashant Talwalar on the computations to send to the IT Department. He responded to the said email and asked them to seek response from Vinayak Gawande as all this while it was under his management. Vinayak Gawande in his response to the said email, also marked to Girish Talwalkar and Madhukar Talwalkar refused to take the responsibility falsely denying that it was his responsibility. The email trail February 18, 2020 onwards on this subject is annexed.*

4.2.8.3. *During the same period, Harsha Bhatkal sought to resign from the operating responsibilities of the Gyms managed and controlled by him and further sought to change the reporting from him to Prashant Talwalkar.*

Suits filed by Talwalkars against Gawande Group inter alia seeking directions for cooperation by Gawande Group and access to necessary records of TBVFL and THL

4.2.9. *On August 24, 2020, SEBI appointed KPMG as forensic auditor for assistance in investigation against the companies. Since, the Gawande Group was neither co-operating with them nor SEBI in its investigation, they filed Suits along with Draft Notice of Motions in the Hon'ble City Civil Court at Mumbai against Mr. Vinayak Ratnakar Gawande, Mr. Harsha Ramdas Bhatkal, Mr. Dinesh Shriniwas Rao, Mr. Anant Ratnakar Gawande, Ms. Monika Khatri and Ms. Geeta Canabara (later added to the suit) (Defendants) seeking inter alia access to entire records and server of the Companies. They also challenged the fabricated board resolution of January 16, 2020 passed by Gawande Group to shift the registered office of the Companies to Bandra Gym.*

- 4.2.10. *In the proceedings on draft notice of motions, on September 11, 2020, the Advocate for the Defendants made a statement to the court that they have no objection to give Talwalkars or the Statutory Auditors access to the entire records and server of TBVFL. Accordingly, the statement was recorded by the Hon'ble Judge on September 11, 2020.*
- 4.2.11. *The Hon'ble City Civil Court, Mumbai vide orders dated October 27, 2020 allowed the said Notice of Motions restraining the Defendants therein and their agents, servants, etc. from preventing them or Statutory Authorities and their authorised representatives from having access to the entire record and server of the TBVFL and THL including but not limited to minutes books, income tax returns, case papers, loan procurement papers, profit and loss accounts and balance sheet of TBVFL at Mahalaxmi Office. As per the said interim order the registered office of TBVFL shall continue to be the Mahalaxmi Office. The court also observed in paragraph nos. 9 to 11 therein that prima facie the Gawande Group had created the resolution to avoid responsibilities of the Companies.*
- 4.2.12. *In view of aforesaid orders passed Talwalkars requested the Forensic Auditor (Ms Poonam Thakkar- Representative of KPMG India) to start her audit. She planned visit to office premises and gave a confirmation over email dated 09 November 2020. On 10 November 2020, they accompanied KPMG team along-with the team of our Chartered Accountant to the registered Mahalaxmi office of the companies. However, to their utter shock and dismay the Gawande Group had ensured that they do not get any access to any of the records of TBVFL and THL. They had remained absent and retained only one peon in the office. All the cupboards of the office were kept fully locked thereby rendering it impossible to KPMG team and Talwalkars to get access to a single document of TBVFL and THL. After couple of minutes, Mr. Nitin Gawande, the younger brother of Mr. Vinayak Gawande barged into the registered office and started driving away all of us and KPMG team from the conference hall. Firstly, he drove us away from conference room and restricted us to reception counter. He was shown the Court order but he phoned Mr. Vinayak Gawande and Mr. Harsha Bhatkal and on their instructions stated that this was not the office of TBVFL and THL as per ROC record. To this Miss Poonam Thakkar told him that she is authorised by SEBI and it is the office of TBVFL and THL as per SEBI's record. He however did not co-operate and their team and the team of Forensic auditors were forced to leave the office. While they were waiting in the reception area, Ms. Poonam Thakkar engaged in a conversation with Girish Talwalkar to know certain facts on the TBVFL. A peon from their*

office started recording their conversation and on being confronted on his doing admitted to have done so on the instructions of Gawandes and Bhatkal. Ms. Poonam Thakkar has recorded the entire event in her communication dated November 10, 2020.

4.2.13. Since the Defendants refused to follow the order of the Hon'ble City Civil Court, an action of breach is initiated by them. The Hon'ble City Civil Court was pleased to pass order dated November 12, 2020 allowing their prayer for police protection and escort to access the registered office of TBVFL at Mahalaxmi Chambers, Mumbai. They accordingly addressed a letter dated November 13, 2020 to Senior Inspector of Police, Gamdevi Police Station seeking assistance in terms of the order.

Events post Corporate Insolvency Resolution Process admitted against TBVFL

CIRP admitted against TBVFL and possession of Mahalaxmi Office by IRP

4.2.14. The Hon'ble NCLT vide order dated January 11, 2021 admitted CIRP against TBVFL on an application filed by Axis Bank. An IRP thus took charge of TBVFL and came in possession of the Mahalaxmi office. Talwalkars became aware of the same in a meeting on January 21, 2021.

4.2.15. Talwalkars received summons for production of documents from SEBI and in response to the same vide letter dated February 4, 2021, they informed SEBI of all the aforesaid events that took place and submitted the supporting documents.

4.2.16. Talwalkars received another summons from SEBI dated June 18, 2021, to which, vide letter dated July 2, 2021, they reiterated the aforesaid submissions and further replied to any additional queries sought.

Action taken by Talwalkars on forged and fabricated records found on inspection of minute books and certain records of TBVFL and THL

4.2.17. Since the IRP was also misguided by the Gawande Group on the issue of registered office of TBVFL, Talwalkars informed the IRP that the registered office of TBVFL continued to be Mahalaxmi Office after which IRP took charge of the office of the company. Thereafter, they appointed a team of experts headed by Chartered Company Secretaries D.A. Kamat & Co for inspection of the records of TBVFL and THL at Mahalaxmi

Chambers. The said inspection was taken on June 18, 2021 and July 29, 2021. On inspection they found that many documents were forged by Gawande Group. The CS firm after inspection of documents made a report dated August 14, 2021 recording its findings. The findings of the report are.

4.2.17.1. The last recorded minutes of TBVFL is of June 26, 2019.

4.2.17.2. For FY 2018-19 – (a) Some minutes of board meeting were not available for inspection in the records and data made available to the firm, (b) anomalies were found in the minutes of the board meeting as per the records and data made available to the firm and as per the data on the stock exchanges. As per data on the Stock Exchanges, there was a board meeting held on February 14, 2019 (rescheduled from February 13, 2019), but the minutes of the said meeting were not made available to the firm for inspection.

4.2.17.3. For F.Y. 2019-20 – (a) Minutes of Board meeting dated June 26, 2019 inspected in the records were not intimated to the Stock Exchanges, (b) anomalies were found in the minutes of the board meeting as per the records and data made available to the firm and as per the data on the stock exchanges. As per data on the Stock Exchanges, there were board meetings held on May 28, 2019 and August 16, 2019, but the minutes of the said meetings were not made available to the firm for inspection.

4.2.17.4. Details of Charge ID :100266631 – There was a charge id registered against Andhra Bank Limited amounting to ₹70 crores in the e-form CHG-1 filed with the Ministry of Corporate Affairs in which it was observed:

4.2.17.4.1. Board Resolution is not attached in the e-form CHG-1.

4.2.17.4.2. The resolution mentioned in e-form CHG-1 for digitally signing of the said e-form is of Board Meeting held on May 8, 2014 and resolution number is 13. However, as per the minutes of said the Board Meeting, the resolution is general in nature and passed by the Board of Directors granting authority to Whole Time Director / MD or Company Secretary to digitally sign and file e-forms and maintenance of Statutory Registers under the Companies Act, 2013. Further, the minutes of the meeting state that the resolution is passed in accordance of replacement of the Companies Act, 1956 with the new Companies Act, 2013. There is no specific resolution passed by the Board in regards for digitally signing of e-form CHG-1 in this regard.

4.2.17.4.3. *No minutes of the Board Meeting were found for obtaining loan facility from Andhra Bank. Further, the Stock Exchanges have not been intimated for obtaining of the said loan facility. Also, disclosure / intimation for obtaining the loan facility from Andhra Bank has not been made to the Stock Exchanges.*

4.2.17.4.4. *The e-form CHG-1 has been digitally signed by Mr. Vinayak Gawande (DIN: 00324591)*

4.2.17.5. *It was also found that.*

4.2.17.5.1. *Minutes of Board meeting dated December 4, 2018 are false and fabricated. They are tampered with to avail loan of ₹70 crores from Andhra Bank. Some observations made by after perusing the minutes are as follows.*

4.2.17.5.1.1. *Some pages of the minutes had been replaced.*

4.2.17.5.1.2. *Signatures of Girish Talwalkar were only on the 1st and 2nd page of the resolution. On page no. 4 and 6, his short signatures are forged. The remaining pages did not have his signatures.*

4.2.17.5.1.3. *On the first page of the impugned minutes, someone has written the words "to cancel".*

4.2.17.5.1.4. *The resolutions therein are also fraudulent in as much as they refer to resolution of 2014 for making joint and several signatures by few directors, which was never passed for raising finance.*

4.2.17.5.1.5. *The entire minute book does not carry concluding signature of Girish Talwalkar in authentication of the minutes.*

4.2.18. *In view of the findings, Talwalkars filed complaints dated August 12, 2021 and September 22, 2021 with both Gamdevi Police station and Economic Offence Wing ("EOW"), Mumbai against the Gawande group.*

4.2.19. *Pursuant to its investigation, SEBI issued the SCN on April 29, 2022. Talwalkars sought inspection of the documents relied upon by SEBI in the SCN vide email dated June 18, 2022 and requested for copies of all the inspected documents vide letter dated July 21, 2022. SEBI vide a CD provided some documents. On inspection it was found that there were statements of Independent Directors and Compliance officers which formed part of the investigation but were missing in the CD. Some of the statements exonerated Talwalkars from the allegations in the SCN. Talwalkars crave leave to produce the email and letter when required.*

4.2.20. On receipt of documents in the CD, the Talwalkars noticed that Prashant Talwalkar's signatures on some of the documents relied upon by SEBI were forged. Some of the documents were loan related documents with Axis Bank like disbursal letter and loan agreement but he had not signed any such documents. Therefore, Talwalkars sent all the documents to a Forensic Handwriting and Fingerprint expert, Dr. V.C. Mishra for verification. Talwalkars received one interim report dated June 21, 2022 from the expert. The expert in his report has opined that the documents' signatures do not match Prashant Talwalkar's signatures. They are awaiting further reports on more documents given to the expert for verification and crave leave to produce, rely and refer to it.

4.2.21. In view of the aforesaid facts and on perusal of the investigation report along with some of the documents provided, Talwalkars made the following submissions, all of which are in the alternative and without prejudice to the other:

Talwalkars were not responsible for managing day to day affairs in the area of banking, financial and legal matters.

4.2.21.1. The Talwalkars do not have the necessary qualifications or experience to manage banking, financial or legal affairs of a Company. The Gawandes as stated above, have the requisite knowledge, qualifications and experience to manage the banking, financial and legal affairs of a Company. Since the name "Talwalkar" had goodwill and brand value attached to it due to its presence in the gym industry for more than 90 years, the Talwalkars with their expertise in operating gymnasiums and the Gawandes with their expertise in the area of banking, financial and legal matters came together to form "Talwalkars Better Value Fitness Pvt. Limited". The SHA executed between the parties to form TBVFL expressly states the role of Talwalkars and Gawandes in TBVFL. The relevant clauses are reproduced hereunder-

"3.3 The TALWALKARS have expertise in running gymnasiums and Allied Activities. The TALWALKARS hereby undertake to be personally involved in the day to day operational activities of the Company and to make adequate time available for the same.

3.4 The GAWANDES have expertise in banking, financial and legal matters and they hereby undertake to be personally involved in the day to day operational activities of the Company so far as these areas are concerned and to make adequate time available for the same.

...

4. Borrowings of the Company

4.1 It shall be the responsibility of the GAWANDES to raise and/or bring in finance either by bank loans or otherwise as may be required

by the Company from the time to time for the existing and/or new projects after ascertaining the merits and feasibility of each such project.

...

5. Auditors

5.1 The internal auditor of the Company will be appointed by the GAWANDES, strictly on the basis of merit and may vary from city to city.

5.2 The reporting format should be as far as possible standardised So as to combine reports at the central office.

5.3 All screening of financial accounts, MIS reports will be done by the GAWANDES for submission to the Board of Directors of the Company.”

Moreover, details of SHA, the expertise and roles of each of the directors in TBVFL is also disclosed to the public in the DRHP and RHP, which is drafted and published on the instructions of the Gawande Group. Thus, it is not a disputed fact that Talwalkars did not have any role in managing the banking, financial or legal affairs of TBVFL. As clearly stated in the DRHP and RHP, banking, financial and legal affairs were solely Gawande Group’s responsibility.

4.2.21.2. Thus, for over 15 years, TBVFL was functioning in accordance with the structure clearly defined in the SHA, DRHP and RHP. The Gawande Group headed and handled the Finance Function and the Audit and Legal Function. Noticee No. 2 was handling the operations i.e. the administration and functioning of the gyms in Bangalore and Chennai and thereafter handling operations at branch level whenever required. Noticee No. 3 was handling the operations i.e. administration and functioning of the gyms. The 15-year long business relationship between the two groups was the reason, the Talwalkars trusted the Gawandes and Bhatkal in good faith and did not interfere in their management of TBVFL.

4.2.21.3. Noticee No. 3 has submitted that to manage the operation expenses at the branch level i.e. for the purpose of carrying out day to day expenses of the gym branches, he was made a signatory in the pool account of TBVFL accounts for branch operations, the details of which were shared with Gawande Group for finalising the accounts. For all corporate expenses including loan transaction, the Gawande Group carried out the same.

4.2.21.4. Anant Gawande was the CFO in TBVFL until 2017. Until 2019, Girish Nayak was the CFO of TBVFL who later resigned to join THL in 2019. Thereafter, Dinesh Rao was appointed CFO of TBVFL. It is pertinent to note that both Girish Nayak and Dinesh Rao are directors of various group companies of the Gawandes. Dinesh Rao even in his resignation email dated November 20, 2019, addressed only

Harsha Bhatkal, Anant Gawande and Vinayak Gawande for resignation. On perusal of his resignation email read with his statement reproduced in the IR, it is evident that all acts done by Dinesh Rao were solely on the instructions of the Bhatkal and Gawandes and in collusion with them. Similarly, Girish Nayak also acted on the instructions and in collusion with the Gawandes and Bhatkal.

4.2.21.5. Talwalkars submit that Mr. Harsha Bhatkal was signing the cheques on behalf of TBVFL. In fact, he had made various requisitions of lakhs of rupees to Axis bank by signing cheques along with RTGS application for TBVFL.

4.2.21.6. The Talwalkars had no reason to doubt the conduct of Gawande Group as TBVFL since its incorporation had never faced any issue in its functioning. The Talwalkars in good faith trusted all the financial reports prepared by the Gawande Group and signed it without questioning it due to the longstanding relations.

4.2.21.7. All the allegations against TBVFL arise out of the Forensic Audit Report of KPMG. All the allegations as stated in the paragraph no. 3 of the SCN pertain to technical aspects of Accounting, Finance and Compliances, which were entirely handled by the Gawande group. Since, the Talwalkars were not handling the banking, financial or legal affairs, the Talwalkars cannot be alleged to have committed such violations.

Documents fabricated and signatures of Talwalkars forged by Gawande Group

4.2.21.8. It is submitted that on inspection of records at TBVFL's registered office (Mahalaxmi Office), several Minutes of Board meetings were found to be fabricated and signatures of Talwalkars forged thereon. The entire transaction worth ₹70 crores with Andhra Bank has been done in a fraudulent manner, without knowledge of the Talwalkars.

4.2.21.9. The Gawande group in order to evade liability had also sought to fraudulently shift the registered office from Mahalaxmi office to Bandra Gym. The Gawande group fabricated resolution dated January 16, 2020 for this purpose and further filed the same with ROC to change the registered address. In the challenge to the purported resolution fabricated by Gawande Group, the Hon'ble City Civil Court in its orders dated October 27, 2020 passed in Notice of Motion no. 1350 and 1351 of 2020 has also recorded bad conduct of the Gawande Group and observed that the resolution prima facie appears to be fabricated.

- 4.2.21.10. *In view of the fraudulent conduct of the Gawande Group, they have filed complaints with the police and economic offence wing. However, EOW or the police did not take necessary action. Talwalkars even filed various Criminal Writ Petitions before the Hon'ble High Court seeking action by the authorities.*
- 4.2.21.11. *It is only after receipt of certain documents from SEBI pursuant to their inspection that they have found signatures of Prashant Talwalkar have been forged by Gawande group on some loan documents with Axis Bank like disbursement letter and loan agreement.*
- 4.2.21.12. *Gawandes in bad faith took advantage of the Talwalkars' trust and in collusion with Bhatkal, Dinesh Rao and Girish Nayak sought to defraud the Talwalkars. The mala fide conduct of the Gawandes to refuse access to the server and records of TBVFL even to the Talwalkars made it clear that Gawandes sought to deliberately keep Talwalkars in the dark and to conceal the forged and fabricated documents. The Talwalkars clearly were never involved in the alleged financial irregularities committed by the Gawande group.*
- 4.2.21.13. *It is further submitted that in investigation carried out by both Resolution Professional as well as SEBI, the companies involved in the alleged irregularities are all related to the Gawande Group and have no connection with the Talwalkars. A complete detailed investigation following the alleged discrepancies will reveal that the ultimate beneficiaries are solely the Gawande group and the Talwalkars are in fact the victims of the fraud committed by Gawande Group.*

Investigation on the basis of limited information

- 4.2.21.14. *Without prejudice to aforesaid grounds, KPMG was able to carry out Forensic Audit only on the basis of limited information. The report gives a Notice to the Reader and states its Limitations reproduced under-*

"Notice to the Reader

2.1.4 Mr. Dinesh Rao, Chief Financial Officer of TBVFL (hereinafter termed as 'Management Representative' provided information pertaining to TBVFL either directly to KPMG or to SEBI, who in turn provided the information to KPMG. Reference to the information obtained from TBVFL in this report should be construed as information provided directly to KPMG or through SEBI.

2.1.7 KPMG has not performed an audit and does not express an opinion or any other form of assurance. Further, comments in our report are not intended, nor should they be interpreted to be legal

advice or opinion. KPMG does not make any form of representation regarding the sufficiency of procedures that we have performed.

2.1.10 Given the limitations as elaborated in section 2.2 of this report, the results of our work with respect to review of transactions should be considered only as a guide. Our report and comments should not be considered as a definitive pronouncement on any individuals or companies.

...

Limitations

2.2.1 The review period for the financial statements of TBVFL was from 1 April 2016 to 31 March 2020. Although the accounting records were provided for the review period, the financial statement for Financial Year ('FY') 2019-20 were not filed with Registrar of Companies ('ROC'). In the absence of financial statements for FY 2019-20, it could not be ascertained if the accounting records for FY 2019-20 were complete.

2.2.2 The rationale and supporting documents though requested on 15 April 2021 and 8 June 2021, were not provided for the following accounting entries or adjustments:

Thus, as stated in 2.1.4 of KPMG'S FAR, only Mr. Girish Nayak, CFO has provided the information pertaining to Accounts & Financial Statements. CA Anant Gawande (Who was a CFO of TBVFL till its demerger in 2017), Mr. Vinayak Gawande & Mr. Harsha Bhatkal have not provided the relevant information, despite having intricate knowledge of the same.

Similarly, the financial statement for FY 2019-20 were not filed with ROC. In the absence of financial statements for FY 2019-20, it could not be ascertained if the accounting records for FY 2019-20 were complete.

Without prejudice to my aforesaid submissions, on perusal of the bank accounts allegedly used for the purpose of transfers, alleged to be an irregularity, some of the accounts were solely under the control of the Gawande group where most alleged irregular transactions have taken place. In any case, all the transactions pertaining to business, finance and legal affairs were taken care of by the Gawande group.

Legal Submissions

4.2.22. Section 27 of SEBI Act expressly excludes persons without whose knowledge contravention was committed. The alleged financial irregularities were committed without their knowledge. In view thereof, they do not come under the purview of Section 27 of SEBI Act.

- 4.2.23. *They have relied in the matter of SEBI v. Gaurav Varshney & Anr to contend that merely because they are the director/, they cannot be held liable to offences of TBVFL when they were not in charge of or responsible for the conduct of the business of the company relating to which allegations are made.*
- 4.2.24. *They have relied in the matter of P.G. Electroplast Ltd. and ors. v. SEBI (Appeal 281 of 2017) to contend that the present SCN does not record any specific finding against them to show they were in charge of the financial affairs of TBVFL. Merely because they were executive director and chairman/MD/in charge of financial affairs of TBVFL does not make them vicariously liable for the acts of TBVFL.*
- 4.2.25. *The allegation of manipulative, fraudulent and unfair trade practice cannot be levelled against the Talwalkars who did not even have the requisite subject knowledge to carry out alleged manipulation, fraud or unfair trade practice. It is the Gawande Group who misled and defrauded the Talwalkars and are solely responsible for using/employing/engaging manipulative, fraudulent and unfair trade practice, if at all. Therefore, they cannot be held liable for any violations of PFUTP Regulations or LODR Regulations.*
- 4.2.26. *They have submitted that in view of the Hon'ble Supreme Court's order in the case of Chintalapati Srinivasa Raju v. SEBI (Civil Appeal no. 19494 of 2017), the judgements, orders or decrees of any court/tribunal are relevant if they relate to matters of a public nature relevant to the inquiry. Since the allegations in the SCN pertain to matters of a public nature, they have submitted that the afore-stated Orders of the Hon'ble City Civil Court has some bearing in the present case. Moreover, they have also filed police complaints against Gawande group for the fraudulent acts committed by them and seek to take further legal action against them for the same. Their acts have caused irreparable damage to the Talwalkar brand and reputation.*
- 4.2.27. *In view of reasons aforesaid, they have submitted that the allegations in the SCN qua them ought to be dropped. They are not the perpetrator but rather a victim of the fraud orchestrated by the Gawande group.*
- 4.3. Noticee No. 2, 3 and 4 have also filed separate but similar additional written submissions dated March 14, 2023 which are summarised as under:
- 4.3.1. They have received expert examination report dated October 18, 2022 from Forgery Detection Private Bureau, whereby Prashant Talwalkar's signatures appearing in photocopy of letter for sanction of credit facilities to the company dated October 3, 2016 were examined. The report concluded that the signatures in the said Sanction Letter are not genuine. On November 25, 2022, they have received Forensic report by

handwriting expert, Dr. V.C. Mishra on various loan documents, deeds/agreements, documents related to discounting of hundi& Bills of Exchange, etc. The report opined and concluded that the 61 signatures appearing on mentioned documents appear to be traced and made. Another Forensic Report dated January 16, 2023 by Handwriting Expert. Dr. V. C. Mishra and Manas Mishra on signatures of Girish Talwalkar appearing on minutes of meeting of board of directors of TBVFL for meeting purportedly held on June 26, 2019 and certified true copy of resolution purportedly passed in purported meeting held on May 28, 2019 were examined. The report opined that the signatures on those documents were not same as Girish Talwalkar's signature. The aforementioned reports are attached. In view of the new facts and circumstances after earlier police complaints against Gawande Group, Talwalkars have filed Police Complaint dated February 8, 2023 with the Senior Inspector of Police, Gamdevi Police Station referring to the earlier complaints and seeking an FIR be registered against them and unknown persons for, *inter alia*, defrauding the Talwalkars and usurping the control of the companies and using these companies to siphon off funds for their personal gain. They have also attached the police complaints.

4.4. Pursuant to the hearing dated March 15, 2023, Noticee No. 2, 3 and 4 have also filed combined written submissions vide letter dated April 04, 2023 in the matter of TBVFL and THL. It is stated that Mr. Madhukar Talwalkar (Noticee No. 4) is not a noticee in the matter of THL. Therefore, the submissions made for him are with respect to allegations in the matter of TBVFL. The submissions are summarised as under.

4.4.1. The Talwalkars have at all-time cooperated with the authorities in its investigation in the fraud by Gawandes.

4.4.2. Forensic Audit was carried out by KPMG on the basis of incomplete information.

4.4.3. There is no finding in the SCN that Talwalkars were beneficiaries of any monies allegedly siphoned to various companies.

4.4.4. The fraudulent conduct of the Gawande Group has caused immense loss to the Talwalkars. The deeds of Gawande Group have depleted the brand value of "Talwalkars" which was built over 80 years.

4.4.5. Allegations of same nature have been levelled twice against the Directors – for THL and TBVFL. This is violative of basic principles of law

4.4.6. Since the Talwalkars were not in charge of conduct of business of either TBVFL or THL, they cannot be held liable under Section 27 of SEBI Act.

Noticee No.5

4.5. Noticee No. 5 (Vinayak Gawande) vide his letter/email dated January 4, 2023 filed submissions which are summarised as under:

4.5.1. *The SCN is in the matter of TBVFL, however the allegations detailed in the said SCN are also in respect of THL. The Noticee was never a Director of THL and has no knowledge of their business dealings..*

4.5.2. *On the application filed by Axis Bank against TBVFL, Hon'ble NCLT, Mumbai Bench, vide order dated January 11, 2021 read with corrigendum dated January 18, 2021, appointed Mr. Saurabh Kumar Tikmani as the IRP of the Corporate Debtor. Subsequently, he was confirmed as RP by the members of CoC of the Corporate Debtor vide CoC meeting dated February 17, 2021. The IRP/RP had taken charge of the management of the company including possession of all the accounts, records and related documents and assets in accordance with the provisions of the IBC.*

4.5.3. *The NCLT vide its order dated April 28, 2022 initiated liquidation proceedings against the Corporate Debtor and appointed Mr. Gajesh Jain as the liquidator of the TBVFL. The liquidator has taken charge, from the RP, of the management of the company including possession of all the accounts, records and related documents and assets in accordance with the provisions of the IBC.*

4.5.4. *In view of the above orders, Noticee No. 5 was practically out of the management of TBVFL and the management of the TBVFL is now vested with the Liquidator. All the accounts, records and related documents and all other assets which were earlier under control of the RP, are now under control of the Liquidator. In view of the admission of the Petitions and/or initiation of liquidation under IBC, he has practically no access to any information, documents, and data and therefore will not be able to comment or reply to the SCN in a productive manner.*

4.5.5. *Apart from the non-availability of data for the reasons as mentioned above, Noticee No. 5 is also prevented from collecting the data and analysing it to reply to the SCN for the following reasons;*

- 4.5.5.1. *The entire staff of TBVFL, has resigned long back that is from September, 2019 since the MD and CEO of TBVFL did not pay their salaries with exception to others.*
- 4.5.5.2. *In any case primary responsibility is on MD and CEO to reply to SCN as per the provisions of SEBI Act.*
- 4.5.6. *Both TBVFL and THL were managed by Talwalkars. Mr. Prashant Talwalkar was earlier MD and CEO of TBVFL and later of THL. Mr. Girish Talwalkar became MD and CEO of TBVFL after Prashant stepped down as MD and CEO. Both TBVFL and THL were chaired by Talwalkars. Mr. Girish Talwalkar was Chairman of TBVFL till he became its MD and CEO and after that Mr. Madhukar Talwalkar became the Chairman. Mr. Girish Talwalkar was Chairman of THL. Mr. Prashant Talwalkar was Audit Committee member of THL and Mr. Girish Talwalkar also was Audit Committee member of TBVFL. All minutes of Board, Audit Committee and General Body were signed by the Chairman that is Talwalkars.*
- 4.5.7. *He was asked to step down as Executive Director with effect from April 01, 2016 as his contribution was very low to the management of the TBVFL and hence, TBVFL (controlled and managed by Talwalkar family) stopped paying remuneration to him as opposed to Talwalkars, who continued to draw remuneration considering the fact that they were MD and CEO or Chairman. They were provided BMW 7 series and Mercedes Benz cars to carry out their duties apart from several other benefits. The compliance certificates and declarations that accounts carry true and fair view of the affairs of TBVFL were signed by Prashant or Girish in their capacity as MD and CEO. He relied on their certificates and declarations trusting them completely and as it would not have been possible for him to go through every accounting entry and details accompanying it.*
- 4.5.8. *There was a SHA signed between Gawandes and Talwalkars in 2003 when the private limited company was incorporated. That SHA did specify certain responsibilities to be undertaken by Talwalkars and Gawandes. However: -*
- 4.5.8.1. *The Company TBVFL was not party to this SHA.*
- 4.5.8.2. *It was never ratified by the Board of TBVFL.*
- 4.5.8.3. *It was never incorporated in the Articles of TBVFL.*
- 4.5.8.4. *At the time of formation of TBVFL and signing of SHA, no Director was designated as MD and CEO or for that matter for any Executive position.*
- 4.5.8.5. *Mr. Prashant Talwalkar was appointed as MD and CEO in 2009 as TBVFL was proposing IPO and which it did in 2010 so that the*

responsibility is cast upon him to manage the company entirely as a MD and CEO is expected to manage.

4.5.8.6. Post IPO, the SHA has no meaning as it became redundant. Though it was referred to in the DRHP, it was not put before the General Body for its approval.

4.5.9. Noticee No. 5 was reappointed as Whole Time Director (WTD), in the 11th AGM of TBVFL held on September 14, 2014, for a period of 5 years on a monthly remuneration of ₹3,50,000/- only and was paid this remuneration till 31st March, 2016. However, as mentioned earlier as on that date Talwalkar family informed him that since they alone were managing the company and he was not actively participating in the day-to-day management, TBVFL shall discontinue with the payment of remuneration to him with effect from April 1, 2016. The statement made by Talwalkar family regarding his non-involvement in the day to-day management of the TBVFL was correct and hence I readily accepted discontinuance of remuneration with effect from April 01, 2016. This fact can be verified from the Annual Report of TBVFL for FY2016-2017.

4.5.10. Without prejudice, it is submitted that no personal or otherwise monetary gains were received by him by virtue of any of the transactions arraigned in this SCN or otherwise. On the contrary, it is submitted that he has through the companies controlled by him and his family, infused large funds in TBVFL. He craves leave to rely upon the documents containing details of the said infused funds at a later stage in these proceedings.

TBVFL and his Role in the Company

4.5.11. He joined his father in his Income tax practice in 1984 or so and since then he is looking after the practice till date. His knowledge and understanding of corporate and tax laws is very good and that has helped him in his practice as a consultant. Somewhere in 2003, he, his brother Anant and his friend Harsha Bhatkal decided to join Talwalkar family to develop the Gym business into pan India operations and formed a company (TBVFL). Since his expertise was in corporate and tax laws, he did all necessary paper work related to the company formation and which was vetted by the lawyers/CA of Talwalkar family.

4.5.12. After incorporation of the TBVFL, he accompanied Mr. Prashant Talwalkar, to identify locations across India where they could start new Gyms. In that connection he joined him in the negotiations with the prospective landlords. He also verified and finalised lease/leave & licence

agreements. As they started getting more funds, they also bought few properties. He was, along with Prashant, responsible to negotiate purchase of all properties except Solapur. Subsequently he, with the help of lawyers, verified the title of the property and facilitated the purchase. Over a period of time, he made standard drafts of Leave & Licence Agreements, Letter of Intent, Franchise Agreements, etc. and these, to the best of his knowledge, were used in more or less all the properties that were rented out by the TBVFL with minor modifications.

4.5.13. As the opening of the Gyms increased, his going with Prashant to identify locations came down substantially as he had to look after my busy consultancy practice and almost stopped after the TBVFL went public in 2010. Apart from visits to the Gyms occasionally when he was in any town for some other work, he has not even visited any Gym in last several years. Prashant set up a large corporate office in BKC in 2011 or so and then he created his own legal team. His involvement, after that on that account also became insignificant except occasional advice that team needed. His consultancy team in the earlier years used to file IT and company law returns of TBVFL and also facilitated filing of Service Tax Returns, etc. However, post listing of the TBVFL in 2010, the Company started appointing professionals like Company Secretary, CA's etc who were in full time employment of the TBVFL and they were looking after all the required filings, etc that was earlier done by his consultancy team. Again, all these professionals would seek his advice on any difficulty that was faced by them.

4.5.14. He was never a member of Audit Committee.

4.5.15. He was never on the Board of THL.

4.5.16. Apart from the role played by him in the TBVFL, as mentioned above, he never looked into finance. In all these years he has not met or interacted with any lender or its officers who have given money to the Company or its subsidiaries. He never looked into operations and barring few old employees from the operations team, whom he knew from early days of the TBVFL, he did not know anyone. He has never met nor do he know any vendor or supplier of the TBVFL.

4.5.17. His role post listing of the TBVFL in 2010 was limited to advise the team as and when they needed his help and attend Board Meetings, AGM.

4.5.18. Careful reading of the regulations quoted in the SCN regarding "Principles governing disclosures and obligations" and "Responsibilities of

the board of directors”, indicates that the CEO and CFO were duty bound to provide compliance certificate to the board of directors as specified in Part B of Schedule II (Regulation 17(8) of LODR. As he was not involved into day-to-day management of TBVFL, was not a member of Audit Committee was also not the CEO or CFO of TBVFL, he totally and completely relied on the compliance certificate provided by the CEO and CFO and representations made by them before that board in respect of the financial results and believed the same to be true and consequentially believed that the financial results which were presented before the board did not contain any false or misleading statement or figures and did not omit any material fact which may make the statements or figures contained therein misleading.

4.5.19. The violations mentioned in the SCN are in the nature of the transactions that have been taken or entered into by TBVFL through its MD and CEO in the normal course of its business and who has certified to the board that the same are not false or misleading or omit any material fact which may make them misleading. He, as a director of the board, relied on the statement made by the MD and CEO the top most officer of the company that those statements made by him are true.

4.5.20. He vehemently denies that he had prima facie knowledge that TBVFL published manipulated financial results for the FY 2016-17 and FY 2017-18 which were untrue and misleading. He also denies all the other allegations as mentioned in the SCN.

Notices No. 6, 7 and 8

4.6. Noticees No. 6, 7 and 8 vide their respective letter/email dated January 04, 2023 filed separate but similar submissions which are summarised as under:

4.6.1. They have denied every allegation and averment made against them.

4.6.2. It is a well settled principle that the charges levelled in a SCN must be specific and must show how the charge levelled has been committed in view of the statutory provisions. The same is required so that Noticees can give his proper and effective defense. However, in the present case, the SCN is vague and does not specifically impute any misconduct on their part, nor does the SCN express what their role is in respect of the alleged violations.

4.6.3. Noticee No. 6 was a Director and CFO in TBVFL until February 2017. His role in TBVFL was limited to: (i) raising finances for the company by

way of approaching banks and financial institutions for long term or short terms loans upon the instructions of the MD and CEO Mr. Girish Talwalkar; (ii) collate the relevant financial data of the company and coordinate with the auditor upon the instructions of the MD; (iii) finalise the financial statements of the company as directed by and upon instructions of the MD. In his capacity as CFO, he was not responsible for the decision making in respect of any loans and advances given by TBVFL. In connection with the aforesaid roles and responsibilities, he worked, at all times, under the instructions of the MD of TBVFL and was reporting to him.

4.6.4. Noticee No. 7 has stated that his role in TBVFL was limited to (i) developing business relations, marketing, identifying suitable joint venture partners and to develop overall business strategy in terms of business expansion. Such a role was always subject to the control and supervision of the board of directors; (ii) Specifically, he was involved in building joint ventures with David Lloyd Leisure (leisure clubs), Zorba Renaissance (yoga), Power World Gyms (low-cost gym model in Sri Lanka and later India), InShape Fitness as well as significant business relationships with Zumba Inc. Snap Fitness (franchise business for Asian countries). He was never involved in day-to-day management, accounts and finances of any of these ventures at all. That was either left to the joint venture or business partner or to Mr Prashant Talwalkar; (iii) guiding the professional team in the marketing strategy of the company under the overall supervision of Mr Prashant Talwalkar who took all final marketing, positioning, pricing decisions; (iv) coordinating with some activities relating to operations with and at the request of Mr Prashant Talwalkar; (v) all final decisions for all branches including finance and signing of all cheques as the sole signatory were made solely by Mr Prashant Talwalkar.

4.6.5. Noticee No. 8 has stated that he was a Director and CFO in TBVFL from February 2017 to February 2019. He was appointed on salaried basis, as an employee of TBVFL and he was not a part of promoter group of TBVFL. Subsequently, Mr. Dinesh Rao became CFO of TBVFL who is not a noticee to the SCN. His role in TBVFL was limited to: (i) raising finances for the company by way of approaching banks and financial institutions for long term or short terms loans upon the instructions of the MD and CEO Mr. Girish Talwalkar; (ii) collate the relevant financial data of the company and coordinate with the auditor upon the instructions of the MD; (iii) finalise the financial statements of the company as directed by and upon instructions of the MD. In his capacity as CFO, he was not responsible for the decision making in respect of any loans and advances

given by TBVFL. In connection with the aforesaid roles and responsibilities, he worked, at all times, under the instructions of the MD of TBVFL and was reporting to him. Regarding, CEO and CFO certification dated May 30, 2017 it is stated that the same pertains to year ended March 31, 2017 while he was appointed as CFO of TBVFL only in February 2017.

4.6.6. Without prejudice to the foregoing, in relation to violations or non-compliance, if any, they have submitted the following:

4.6.6.1. They were lower in hierarchy than the MD and at all times, it is the MD who shall be responsible for ensuring compliance with all applicable laws to the company.

4.6.6.2. As a member/KMP of the Board/Company, they have always trusted and assumed the fact that the MD of the company would diligently carry out his duties to the company being in a fiduciary position. Moreover, as a member of the Board they always expected that each person shall fulfil their duties to the company based on the trust imposed upon them in their fiduciary capacity and accordingly acted on the instructions of the MD of the company.

4.6.6.3. Noticee No. 6 and 7 have stated that until March 2016, they were attending to certain day to day operations of the Company. However, from April 2016, they chose to step down from his roles which they were attending to earlier, and hence, from April 2016, they did not attend to day to day operations of the company. Hence, they agreed not to draw any salary from the Company from April 2016. This fact can be verified from the Annual Report of THL for FY2016-2017 (pages 53 and 56) and that of TBVFL for FY2016-2017 (pages 50, 51, 54 and 87) and for FY2017-2018 (pages 54 and 58) that they did not receive any salary or other remuneration from the company from April 2016 onwards.

4.6.6.4. Noticee No. 7 has stated that he was only a director in TBVFL until March 30, 2018. Thereafter, he stepped down as director and was not in employment of the Company in FY2018-19 and FY2019-20. Therefore, he has dealt with the review period of this SCN pertaining upto March 30, 2018.

4.6.6.5. Noticee No. 6 was only a member of the Audit Committee only until February 2017. Noticee No. 7 was never a member of the Audit Committee of TBVFL. It is also pertinent to note that in 2003, a SHA

was entered into by the shareholders and promoters of TBVFL including the Noticees to this SCN. Based on the provisions of the SHA, various responsibilities and obligations were assigned to the promoters, including me, which included executive roles on the board of directors as well as day to day involvement in operations, but all of which were deemed to be amended when altered by the board directors of TBVFL. Thus, the board of TBVFL was reconstituted and a MD was appointed in and around April 2010, when the company made an IPO and the shares of the company were listed on the stock exchanges. Thereafter, the board of directors was reconstituted from time to time in compliance with the listing agreements and the LODR Regulations. Although the SHA was never terminated, after listing, the shareholders of TBVFL were guided by its Articles of Association and the spirit of SHA was lost.

4.6.7. They were not involved in the affairs and operations of the company that pertained to the subject matter of the SCN. They had, at no point of time, any knowledge pertaining to the commission of any of the offences as alleged in the SCN, nor were they the decision-making authority in respect of the alleged offences/violations. They had, on the contrary, exercised all requisite due diligence. However, given that these aspects were looked after by the MD and other persons in the company, they acted in good faith and upon their instructions and advice.

4.6.8. The liquidator has taken complete charge of the management of TBVFL including possession of all accounts, data, tally systems, records and related documents in accordance with the provisions of the Code. In view of the above, they presently have no access to any information, data, documents, records or statements of TBVFL and therefore they restrict the present reply to the limited knowledge they possess on the subject as of today.

4.6.9. No personal or otherwise monetary gains were received by them by virtue of any of the transactions arraigned in this SCN or otherwise.

4.6.10. The Noticees No. 5-8 also submitted issue-wise reply to the SCN as below:

Suspicion over authenticity of books of accounts (cash reserves) for the period August 2019 to October 2019:

4.6.11. They stated that as of March 31, 2019, the cash balance of TBVFL's account was approximately ₹77 crores and the said amount was utilised

for meeting operations and financial obligations in the months immediately subsequent. These books of accounts were duly audited and certified by the auditors without any adverse or qualifying remarks when they were presented as a part of the financial statements of the 4th quarter of the Financial Year 2018-19.

Inflation of bank balance disclosed in financial statements of TBVFL and THL

4.6.12. *Both Companies (i.e. TBVFL and THL) maintained bank accounts in excess of 200 across various banks. Nearly all those accounts were managed solely by the MD and CEO of TBVFL, Mr. Prashant Talwalkar. Nevertheless, the principle followed by the companies was to have two accounts at each branch and further segregate the accounts for the purpose of pooling funds and for payment of statutory dues and other purposes. As already stated, all the relevant records and statements pertaining to bank accounts are currently in the liquidator's possession and therefore they are unable to comment on the same any further. Prior to liquidation, the data of all these bank accounts was maintained by and under the sole control of Mr. Prashant Talwalkar (and the team reporting to him), which was operating at the office at Bandra Kurla Complex, Mumbai*

Inflation of profits by mis-utilisation of Capital Work in Progress account:

4.6.13. *TBVFL was in a state of healthy expansion not only in its gymnasium business, but also in connected allied services. The company apportioned the business costs and running expenses methodically and to the complete satisfaction of the auditors. The company had also submitted its detailed justification to the statutory auditor regularly in each financial year. The auditor did not have any adverse or qualified remarks on the alleged transaction. MRIPL was providing financial services from time to time as per the requirements of the company. The amount of fees payable to them were negotiated and finalised based on the nature of perks involved. It is pertinent to note that the address of MRIPL stated in the notice is not the address at which TBVFL corresponded with them. The company capitalised the expenses to the satisfaction of the auditors and there was no alleged inflation of the CWIP account balance. As stated above, the company was in a healthy state of expansion not only in gym business but also in related services, in consonance with the market conditions at the relevant point in time. The apportionment of costs and running expenses was done to the complete satisfaction of the statutory*

auditor and based on his analysis and study, the accounts of the company were not qualified.

Inflation of assets, liabilities and revenue through round tripping of funds, mismatch in financial statement disclosures and no business operations at registered office and inactive statutory registrations:

4.6.14. Suppliers such as GPL and NECPL assisted the Company in setting up over 60 gyms as well as over 35 yoga studios. All the transactions were in routine course of business. GPL is the largest supplier of gym equipment in India with a turnover of more than ₹100 crores with a nation-wide network. They are also the sole distributor of Life Fitness equipment which is one of the largest gym equipment manufacturer having turnover that exceeds USD 2 billion. Life Fitness USA owns and sells other brands like Brunswick, Hammer Strength and Bally Fitness among others. GPL is one of the biggest gym and wellness agglomerator in India. In their normal course of business, they collect fees from potential clients from different gyms and such collected amounts are in turn paid to gym operators like GPL. The amounts received by GPL is on account of the same.

Recognition of fictitious assets, liability and revenue (BRG Audit Report):

4.6.15. Company raised funds not only through the loans granted by Axis Bank Limited but also periodically through equity infusion and also through Non-Convertible Debentures. Company deployed its funds to generate profits from operations through its own gyms as well as its subsidiaries for legitimate purposes. Company is duty bound to pay interest to its lenders and taxes to the Government wherever they are due. Nevertheless, separately, Axis Bank Limited took-over the loan of ₹198 crores from State Bank of India and lent an additional amount of ₹100 crores. These additional funds were disbursed directly by the bank to the suppliers after thorough verification. Thereafter, the bank carried out inspection of the actual utilisation of the monies lent and no adverse remarks on the same were received by TBVFL.

Non-disclosure of Corporate Guarantee given to Zorba Renaissance Private Limited as contingent liability:

4.6.16. The alleged disclosure was an inadvertent error on the part of TBVFL. The Guarantee given was discussed and issued with the permission of the Board of Directors. Company and the Company had disclosed all the

relevant information pertaining to the same to the auditor M. K. Dandekar & Co. as well. The minutes of the same are now available with the liquidator.

Apportionment of revenue and expenses between THL and TBVFL post demerger:

4.6.17. They are presently not in possession of valuation reports which were made by the Company for the purpose of compliance with Indian Accounting Standards or actual dilution of any equity in any company mentioned at the relevant place in the Notice. Nevertheless, valuations were done based on Indian Accounting Standards and independently approved by the auditors of both companies. Zorba Renaissance Private Limited was primarily in business of providing spiritual and yogic health. It did several rounds to marquee investors nationally and internationally. Some of its celebrity shareholders includes Jennifer Lopez, Malaika Arora, Jayesh Parekh and many more. At that time, they had about 91 stores across India and it raised about USD 4 million at valuation of equal to or more than the valuation taken for IND AS. Dilutions of a similar nature were carried out from time to time.

Investment in GPL:

4.6.18. TBVFL made a strategic investment in GPL. At the time of making the aforesaid investment, GPL was catering to about 300 gyms. TBVFL identified the potential in growth of GPL which eventually began to cater to atleast 2,000 gyms across India and became one of the largest agglomerators. Hence the returns obtained as aforesaid, proved that the investment made was the correct choice of TBVFL at the relevant point of time and looking to prevailing market conditions and growth opportunities.

4.6.19. In so far as the specific role alleged against them in the SCN, it is submitted that the financial statements of the company were duly audited and certified by the company's statutory auditor. Given that they were acting on the instructions of the company's MD and further in view of the auditor's certification and the absence of any adverse remarks, they did not have any reason to believe that there was any misstatement in the company's financial statements or that the same were not in accordance with the applicable accounting standards and laws.

4.6.20. For the reasons aforesaid, they have denied that they had prima facie knowledge that TBVFL allegedly published manipulated financial results for the review period of FY 2016-17 through to FY 2019-20

4.6.21. The SCN does not allege any financial gain to them on account of any such alleged wrongdoing.

4.6.22. Additionally, Noticee No. 8 has stated that no personal or otherwise monetary gains were received by him by virtue of any of the transactions arraigned in the SCN. On the contrary, as a financial aid to TBVFL, he has infused funds amounting to ₹80,00,000 as unsecured loan on May 25, 2019 for the target company, Better Value Leasing and Finance Ltd. The amount was subsequently infused into TBVFL on same date. Being a salaried employee, infusing such large amount of unsecured loan would not have been prudent if he believed that there was misstatement in Company's financial statements or the same were not in accordance with applicable accounting standards and laws.

LEGAL PROVISIONS:

5. Before dealing with the issues involved and the replies of the Noticees, it would be appropriate to refer to the provisions of law which are alleged to have been violated by the Noticees and the relevant extracts thereof are reproduced hereunder:

SEBI Act, 1992:

“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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”

PFUTP Regulations:

Prohibition of certain dealings in securities

Regulation 3. No person shall directly or indirectly—

- (a)
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

Prohibition of manipulative, fraudulent and unfair trade practices

Regulation 4.

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.
- (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:
 - (f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
 - (k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;
 - (r) knowingly planting false or misleading news which may induce sale or purchase of securities.

Regulation 4 of LODR: Principles governing disclosures and obligations

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

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

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

(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(ii) Key functions of the board of directors-

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

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

(8) Overseeing the process of disclosure and communications.

(iii) Other responsibilities:

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

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

Regulation 17(8)

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

Regulation 33

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a) The quarterly financial results submitted shall be approved by the board of directors:

Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

Regulation 48

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

CONSIDERATION OF ISSUES:

6. As already noted, the Noticees had filed their respective replies to the SCN and had also made submissions during the personal hearing provided to them. Upon perusal of the SCN, the replies/ submissions filed by the Noticees and the relevant material available on record, the following issues arise for consideration in the present proceedings:
 - A. Whether the violations of the provisions of securities laws alleged in the SCN against Noticee No. 1 i.e., TBVFL are established in light of the submissions made by the liquidator/Noticees?
 - B. If the answer to issue A is in affirmative, what is the liability of each of the Noticees for such violations?
 - C. In consideration of answers to issues A and B, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticees?
7. I now proceed to examine the above listed issues in light of the replies, written submissions and arguments put forward by the Noticees during the personal hearing.
 - A. Whether the violations of the provisions of securities laws alleged in the SCN against Noticee No. 1 i.e., TBVFL are established in light of the submissions made by the liquidator/Noticees?**
8. It has been submitted on behalf of TBVFL that in terms of order of Hon'ble NCLT, Mumbai dated April 28, 2022, TBVFL is presently undergoing liquidation under the provisions of IBC and one Mr. Gajesh Labhchand Jain has been appointed as the liquidator in the matter, who is in charge of the process. It is informed by the liquidator that he has prepared a list of stakeholders of the Corporate Debtor (i.e. TBVFL) and constituted its stakeholders' consultation committee. The liquidator has further informed that currently application under Section 45 (avoidance of undervalued transactions), and Section 66 (fraudulent trading or wrongful trading) of the IBC are pending adjudication before the Mumbai bench of the NCLT involving various group companies of the Corporate Debtor, and the erstwhile

management of Corporate Debtor (i.e., Noticees in the SCN). It has also been apprised that the RP, during the CIRP had appointed a transactional auditor which submitted its report to the RP regarding various dubious/undervalued/fraudulent transactions which were purportedly undertaken at the time when the Corporate Debtor was being managed by the erstwhile management. Accordingly, the RP had approached the Hon'ble NCLT seeking appropriate directions.

9. I note that while replying on behalf of TBVFL, the liquidator has merely stated the factual background of the insolvency process which is ongoing and has not made any merit-based submissions with respect to the allegations levelled against the Company. In this regard, as brought out in the preceding paragraphs, detailed allegations, *inter alia*, of inflation of bank balances disclosed in the financial statements, inflation of profits by mis-utilisation of CWIP account, inflation of assets and revenue, non-disclosure of corporate guarantee given to ZRPL and Inflation of revenue by revaluation of investments, etc. have been made against TBVFL on the basis of the investigation carried out by SEBI. Since the liquidator currently managing the Noticee No. 1 (i.e. TBVFL) has not made any submission in defence of TBVFL in respect of the allegations levelled in the SCN, I do not find it necessary to deal with each and every allegation, narration whereof has already been provided in the preceding paragraphs against the Noticees. Taking note of the ongoing liquidation proceedings against TBVFL and the fact that enforcement action against the Noticees was approved on February 04, 2022, without necessarily going into the issue whether any enforcement directions at this stage against TBVFL (corporate debtor) are viable or not, it would be imperative to deal with the acts/omissions and conduct of TBVFL while addressing the submissions made by other Noticees. Further, the limited purpose of these proceedings would be to determine if TBVFL has violated any of the provisions of securities laws and if so, to assess and determine the penalty, if any, in order to enable SEBI to crystalline its claims and file the same before the liquidator. The observations and deliberations contained in the ensuing paragraphs while dealing with the submissions of other Noticees, shall hold good in respect of TBVFL, insofar as they are applicable.
10. I have carefully perused the detailed submissions made by all the Noticees, and note that Noticees No. 2, 3 and 4 have filed essentially similar submissions whereas Noticee No. 5, 6, 7 and 8 have filed similar submissions. Thus, for ease of reference and for the sake of brevity, while dealing with their submissions, I will refer to Noticees No. 2, 3 and 4 as **"Talwalkars"** and Noticees No. 5, 6, 7 and 8 as **"Gawandes"**, unless the context requires otherwise.
11. I note that the Talwalkars in their detailed replies have provided the background of the Company, its incorporation as a private limited company under Shareholders Agreement ("SHA") between Gawandes and Talwalkars, its conversion to public company, its listing and subsequently demerger and formation of THL to events post CIRP. None of the factual details provided by

Talwalkars, form the basis of the allegations levelled in the SCN, nor the same have been contested by any entity. Thus, I am not delving further into the same.

12. The pith and substance of the submissions filed by the Talwalkars is that they were not responsible for managing affairs in the area of banking, financial and legal matters and Gawandes had defrauded them. Basically, the Talwalkars in their replies, while putting the entire onus on the Gawandes, have denied all the allegations against them. Further, in their submissions, they have only made generic statements unrelated to the allegations contained in the SCN and have not provided any specific response on merits on the allegations levelled against them in the SCN.
13. It is claimed that the main server, books of accounts including minutes' books, loan procurement documents, profit and loss accounts and balance sheets, income tax returns, etc. were kept at their registered office at Mahalaxmi where only Gawande Group used to sit and which was under their control. It is stated that Talwalkars only managed the administration of the Gyms from their BKC office. Talwalkars in their replies at various places have imputed various charges against the Gawandes. I also note that Talwalkars have referred to various police complaints made by them against the Gawandes and to the ongoing litigation between them.
14. On the other hand, Noticee No. 5 has contended that both TBVFL and THL were managed by Talwalkars. Mr. Prashant Talwalkar was earlier MD and CEO of TBVFL and later of THL. Mr. Girish Talwalkar became MD and CEO of TBVFL after Prashant stepped down as MD and CEO. Both TBVFL and THL were chaired by Talwalkars. Mr. Girish Talwalkar was Chairman of TBVFL till he became its MD and CEO and after that Mr. Madhukar Talwalkar became the Chairman. Mr. Girish Talwalkar was Chairman of THL. Mr. Prashant Talwalkar was Audit Committee member of THL and Mr. Girish Talwalkar was Audit Committee member of TBVFL. All minutes of Board, Audit Committee and General Body were signed by the Chairman i.e., Talwalkars. As submitted, Noticee No. 5 was asked to step down as Executive Director with effect from April 01, 2016 as his contribution was very low to the management of the TBVFL and hence, TBVFL (controlled and managed by Talwalkar family) stopped paying remuneration to him as opposed to Talwalkars, who continued to draw remuneration considering the fact that they were MD and CEO or Chairman. It was also submitted that the compliance certificates and declarations that accounts carry true and fair view of the affairs of TBVFL were signed by Prashant or Girish in their capacity as MD and CEO. Noticee No. 5 relied on their certificates and declarations trusting them completely and as it would not have been possible for him to go through every accounting entry and details accompanying it. Similarly, Noticee No. 6, 7 and 8 have also contended that they were lower in the hierarchy than the MD of TBVFL and at all times it was the MD who shall be responsible for ensuring compliances with the applicable laws. It is further contended that as the member/KMP of the Board of the Company, they always trusted and assumed the fact that the MD of

the company would diligently carry out his duties to the company being in a fiduciary position. Moreover, they expected that each person shall fulfil his duties to the company based on the trust imposed upon him in his fiduciary capacity and accordingly, they acted on the instructions of the MD of the company.

15. It is pertinent to mention that similar to the Talwalkars, the Gawandes have also made generic submissions without going into the specificity of each and every allegation levelled in the SCN except for certain instances where they have given their narrative in respect of the allegations. Their narrative also appears to be simply aimed at giving an anecdotal description of the company and its affairs since 2003.

16. In this regard, I note that both the groups (Talwalkars and Gawandes) have essentially tried to put the blame on each other. It is a settled law that any Company being a juristic person cannot act on its own and for that reason, the board of the Company is constituted comprising executive and non-executive directors whose roles and responsibilities are clearly defined. So, a collective onus is put on the board to manage the affairs of the Company and they are required to discharge their duties with utmost sincerity and in the best interests of the Company. The responsibilities increase multi-fold in case of a public listed company as millions of shareholders repose their trust in the management and expect it to discharge its functions effectively. In this background, the contention that only one group/person is responsible and not the other group (regardless of the positions that the members of the groups held in the company), is baseless and without any merit. The fact that all the Noticees were Executive Directors (other than Girish Nayak who was the CFO) and were handling/involved in day-to-day affairs of the Company in one capacity or other makes them all liable for their respective roles for the lapses on part of the Company for their respective roles. All the Directors/KMPs of the Company are expected to discharge their functions independently and take their individual assessment of the situation and take decisions accordingly. They are not expected to fulfil their duties solely on the basis of trust imposed upon others and are liable to be held independently responsible for the acts and omissions by the Company. Having said that, I also note that SEBI's jurisdiction is only to investigate and enquire into the affairs of the listed companies and those companies which intend to get their securities listed. Any *inter se* / private dispute between the Noticee(s) which does not have any bearing on the pending proceedings *per se* is outside the scope of SEBI and it would not be appropriate to comment upon the same. In the instant proceedings, I am only required to look into the allegations levelled against the Noticees in the SCN and responses of the Noticees thereto and arrive at my findings in relation thereto. Thus, in this regard, I find that the above noted contentions of the Noticees (2,3,4,5,6,7 and 8) are untenable and are therefore rejected.

17. Moreover, I also note that Talwalkars have made accusation of fabrication and forging of documents by Gawandes and have filed police complaints against them. It is also claimed by Talwalkars that on some documents which have been

relied upon by SEBI, signature of Mr. Prashant Talwalkar has been forged. In connection with the forged signature, Talwalkars have appointed forensic handwriting and fingerprint experts and in this connection have submitted several reports. As per the reports provided by Talwalkars, it is claimed that signatures of Mr. Prashant Talwalkar are not genuine and appears to be traced and made. In this regard, without going into the technicalities and legalities of the claims made by the Talwalkars, I do not find any substance which may connect the allegations made in the SCN with the claims made by the Talwalkars. They have not provided any substance and material to show how these forged signatures as claimed by them are related to the allegations contained in the SCN, other than making the point that it was the Gawandes who had defrauded them. In respect of any instance of forgery w.r.t. handwriting, signatures, etc., the entities are free to approach the Courts of Law where the remedy lies. As far as these proceedings are concerned, it is beyond the scope to go into the correctness of the handwriting or signatures of any of the Noticees. In view of the above, the said contentions made by Talwalkars appear to be unsubstantiated, without any relevance to the specific allegations levelled in the SCN and are accordingly liable to be rejected.

18. I note that Talwalkars have relied heavily on the SHA executed between them and Gawandes to contend that the SHA had explicitly stated the role of Talwalkars and Gawandes in TBVFL. As per the SHA, Talwalkars had expertise in running gymnasiums and allied activities and they undertook to be personally involved in the day-to-day operational activities of the said Company whereas, Gawandes had expertise in baking, financial and legal matters and they undertook to be personally involved in the day to day operational activities of the Company so far as these areas are concerned. It was further stated by Talwalkars that the details of SHA, the expertise and roles of the directors in TBVFL were also disclosed in the DRHP/RHP. For 15 years, TBVFL was functioning in accordance with the structure defined in the SHA, DRHP and RHP.
19. On the other hand, Gawandes specifically Noticee No. 5, have contended that the SHA between Gawandes and Talwalkars was signed in 2003 when the private limited company was incorporated. That SHA did specify certain responsibilities to be undertaken by Talwalkars and Gawandes. However, the Company/TBVFL was not a party to this SHA which was neither ratified by the Board of TBVFL nor incorporated in the Articles of TBVFL. It is also stated by the Gawandes that at the time of formation of TBVFL and signing of SHA, no Director was designated as MD and CEO or for that matter for any Executive position, Mr. Prashant Talwalkar was appointed as MD and CEO in 2009 as TBVFL was proposing IPO and which it did in 2010 so that the responsibility is cast upon him to manage the company entirely as a MD and CEO is expected to manage. Further, post IPO, the SHA has no meaning as it became redundant, and though it was referred to in the DRHP, it was not put before the General Body for its approval. Noticee No. 6, 7 and 8 have also stated that based on the provisions of the SHA, various responsibilities and obligations were assigned to the promoters, including them, which included executive roles on the board of directors as well as day to day

involvement in operations, but all of which were deemed to be amended when altered by the board of directors of TBVFL. Thus, the board of TBVFL was reconstituted and a MD was appointed in and around April 2010, when the company made an IPO and its shares were listed. Thereafter, the board of directors was reconstituted from time to time in compliance with the listing agreements and the LODR Regulations. Although the SHA was never terminated, after listing, the shareholders of TBVFL were guided by its Articles of Association and the spirit of SHA was lost.

20. With regard to the above rival contentions, I note that both the groups i.e. Talwalkars (Noticees No. 2, 3 and 4) and Gawandes (Noticees No. 5, 6, 7 and 8), while relying on the SHA, have tried to put the entire blame for the lapses on part of the Company on each other. While acknowledging that SHA is an important document which can delineate the rights and obligations of the shareholders forming part of the agreement, I note that when a Company is listed, it is required to comply with all the applicable laws including the rules and regulations specified by SEBI. SEBI has framed extensive regulations in the form of LODR Regulations amongst others which all the listed entities are required to follow and in this scenario the onus lies upon the Company as an entity to comply with them. The Company while relying on any shareholder agreement cannot derogate the provisions of securities laws and for any derogation and non-compliance with the securities laws, it shall be liable along with the persons responsible for such non-compliance. In this context, it is also reiterated that both the groups have not made any merit-based submissions with respect to the allegations levelled against them in the SCN. In absence of any justifiable reason, I am of the view that the contentions raised by both the groups in this context do not merit any consideration and are liable to be rejected.

21. I note that Talwalkars, while relying on the '*Notice to readers*' and '*limitations*' mentioned by KPMG in its report, have contended that the forensic audit carried out by KPMG is based on incomplete information as only Mr. Girish Nayak has provided the information whereas, Gawandes and Bhatkal have not provided any information. As submitted, KPMG has not performed an audit and has not expressed an opinion or any other form of assurance. Further, Financial Statements of FY 2019-20 were missing at the time of preparing the report.

22. In this context, I note that pursuant to receipt of multiple complaints against the Company, various financial irregularities were observed by SEBI and subsequently considering the complexity of the matter, KPMG was appointed as forensic auditor for assisting the investigating authority for conducting the holistic forensic examination of the books of accounts of the Company. Upon conclusion of the forensic audit, it was opined by the forensic auditor that TBVFL had misrepresented its financials. Upon considering the FAR and SEBI's own investigation, SCN was issued to the Noticees. Thus, KPMG was only appointed to assist SEBI in its investigation and upon receipt of the FAR, an independent assessment of the observations made by KPMG was carried out by SEBI and

SCN was issued to the Noticees. Having said that, it is also pertinent to note that as KPMG was appointed by SEBI, it was obligatory upon TBVFL and the persons associated with it to provide the requisite information/documents to the forensic auditor and if any information/document sought by the forensic auditor was not provided to it, the Noticees cannot take a plea that the forensic audit was based on incomplete information as it is the collective responsibility of the Company and the persons associated with it to provide the forensic auditor with complete information and documents. Further, the contention that financial statements of FY 2019-20 were missing at the time of preparation of report by KPMG is also misleading since the reason the financial statements were missing was that the Company had not filed its financial statements with the RoC, and for that reason KPMG could not have ascertained if the accounting records for FY 2019-20 were complete. Moreover, SEBI has investigated the matter from FY 2016-17 to FY 2019-20 and various violations of the securities laws have been observed. Thus, financial statements of only FY 2019-20 were not the sole basis for levying the allegations against the Noticee. Further, the contention that KPMG has not performed an audit and has not expressed any opinion or any other form of assurance is also devoid of merit as KPMG was tasked only with fact-finding by SEBI and only pursuant to SEBI's own investigation, SCN has been issued. Further, the statement made by KPMG appears to be generic in nature and does not in any manner support the case of the Noticees.

23. Furthermore, the contention of Talwalkars that allegations of same nature are levelled twice against the Directors – for THL and TBVFL in violation of basic principles of law, is also devoid of any merit since post the demerger of TBVFL into THL and TBVFL, both the entities were operating as separate legal entities which were listed on the stock exchanges. Thus, as separate entities, allegations have been levelled against them and separate SCNs have been issued to them. The SCNs have been issued to the Noticees for their roles in the respective Companies (THL and TBVFL). The contention of the Noticees in this regard is therefore rejected.

24. It is contended by the Talwalkars that the SCN has not made any findings that they were the beneficiaries of any money allegedly siphoned to various companies. It is claimed by them that the only alleged involvement of the Talwalkars is in the companies namely, TCSPL and TCPL (Mr. Prashant Talwalkar, director). It is submitted that even in the said companies, the associates of Gawande Group managed the financial affairs. In any case, TCSPL and TCPL were 100% subsidiaries of TBVFL. The nature of funding is stated to be an investment in capital of TCSPL by TBVFL as per the SCN and investment in capital of a subsidiary cannot be called routing of funds.

25. With regard to the above submissions, I note that the allegations contained in the SCN are in the nature of misrepresentation of financial statements of the Company and various methods adopted by the Company and for that purpose as long as it is established that the funds belonging to the shareholders were

siphoned off from the Company by dubious means, whether the Talwalkars or Gawandes were the ultimate beneficiary or not, is immaterial and would not absolve them of their liabilities. Thus, the contention made by Talwalkars is unfounded and liable to be rejected.

26. I note that Noticee No. 5, 6, 7 and 8 have stated that the Company is under liquidation and liquidator has been appointed by Hon'ble NCLT who has taken complete charge of the management of TBVFL including possession of all accounts, data, tally systems, records and related documents in accordance with the provisions of the IBC. In view of the same, they do not have access to any information, data, documents, records or statements of TBVFL and therefore they are restricting their replies to the limited knowledge in their possession.

27. With regard to the aforesaid claim made by the Noticees No. 5, 6, 7 and 8, I find it essential to clarify that under the present proceedings, the question regarding grant / access to documents / records, is not required to be addressed or answered by me or the investigation team of SEBI. After service of SCN, it is expected of every Noticee to submit an appropriate response to the SCN and for that purpose, every Noticee is free to gather material / documents in his / her defence. Under the IBC, in respect of every corporate debtor undergoing CIRP or liquidation, the procedural framework has been institutionalized for safe keeping, usage, access, transfer, etc. of the documents belonging to corporate debtor. Accordingly, it is for the Noticee(s) to use the framework to obtain documents / material to defend their case. Given the above understanding, I am not inclined to accept the submission put forth by Noticees No. 5, 6, 7 and 8 that because of limited access to information, data, documents, they are unable to furnish merit-based submissions and accordingly, I am inclined to draw adverse inference against them.

28. I note that with respect to the allegations contained in the SCN, Noticee No. 6, 7 and 8 have also made specific issue-wise replies to some of the allegations which are discussed in the following paras. At this juncture, I find it pertinent to clarify that even though the Noticees have not made detailed submissions on merits, the findings recorded in this order, while dealing with submissions made by any of the Noticees, shall hold good in respect of all the Noticees, insofar as they relate to them.

29. Regarding suspicion over authenticity of books of accounts (cash reserves) for the period August 2019 to October 2019, it has been submitted that as of March 31, 2019, the cash balance of TBVFL's account was approximately ₹77 Crores and the said amount was utilised for meeting operations and financial obligations in the immediately subsequent months. It has also been submitted that these books of accounts were duly audited and certified by the auditors without any adverse or qualifying remarks when they were presented as a part of the financial statements of the 4th quarter of the Financial Year 2018-19. In this regard, I note that that SCN has alleged that there was misrepresentation in the financial

statements of the Company. On July 31, 2019, TBVFL and THL defaulted in payment of interest to banks/financial institutions amounting to ₹0.94 crore and ₹2.50 crore, respectively despite their accounting records highlighting bank balance of ₹ 20.28 crore as on July 31, 2019, whereas in actual, the balance as per bank accounts were only ₹ 93,624. In this regard, the Noticees(Gawandes) without providing any justification for the alleged misrepresentation of financial statements have merely made an unsubstantiated statement that the books of accounts were duly audited and certified and there were no adverse comments by the auditor. In absence of any rationale / justification in respect of the allegations noted above and because of lack of any documents / material to substantiate their submission, I am unable to agree with the submissions made by the Noticees(Gawandes).

30. In this context, I also note from the record that regarding the role of the statutory auditors of the Company, SEBI found the same as questionable and has written a letter to National Financial Reporting Authority ("NFRA") and Ministry of Corporate Affairs ("MCA") for considering appropriate action against them in accordance with law. Considering the same, the Noticees cannot be allowed to rely on the absence of any adverse comments by the auditors.

31. Regarding the inflation of the bank balance disclosed in the financial statements of TBVFL, it is also submitted that both companies (i.e. TBVFL and THL) maintained bank accounts in excess of 200 across various banks. Nearly all those accounts were managed solely by Mr. Prashant Talwalkar (Noticee No. 3). Nevertheless, the principle followed by the companies was to have two accounts at each branch and further segregate the accounts for the purpose of pooling funds and for payment of statutory dues and other purposes. It has also been submitted that all the relevant records and statements pertaining to bank accounts are currently in the liquidator's possession and therefore they are unable to comment on the same and prior to liquidation, the data of all these bank accounts was maintained by and under the sole control of Mr. Prashant Talwalkar (and the team reporting to him), which was operating at the office at Bandra Kurla Complex, Mumbai.

32. With regard to the above submissions, I note that the Noticees(Gawandes) have merely stated the practice which was being followed by the companies (TBVFL and THL) for maintaining the bank accounts without any justification for inflation of bank balance disclosed in the financial statements. Generally, it is expected that distinct legal entities should have distinct and separate bank accounts and by maintaining common bank account for two distinct and separate legal entities, it can be adversely inferred that that the books of accounts were not being followed in a proper manner according to general accounting practices. In addition, thereto, I find it important to point out that the contentions of the Noticees that the documents are in possession of the liquidator and that prior to the liquidation the bank accounts were maintained by Mr. Prashant Talwalkar and all the data of these bank accounts were under the sole control of Mr. Prashant Talwalkar have

already been dealt in the preceding paragraphs and are not repeated for the sake of brevity. It is however relevant to reiterate that after service of SCN, it is expected of every Noticee to submit an appropriate response to the SCN and for that purpose, every Noticee is free to gather material / documents in his / her defence. Inability of the Noticees to obtain documents from the liquidator or gather other material in their support cannot be treated as a valid defence in respect of the allegations levelled in the SCN. Thus, the aforesaid contention of the Noticees (Gawandes) holds no merit and cannot be accepted.

33. Regarding the inflation of profits by mis-utilisation of Capital Work in Progress account, it is stated that TBVFL was in a state of healthy expansion not only in its gymnasium business, but also in connected allied services. The company apportioned the business costs and running expenses methodically and to the complete satisfaction of the auditors. The company had also submitted its detailed justification to the statutory auditor regularly in each financial year. The auditor did not have any adverse or qualified remarks on the alleged transaction. It is also stated that Mahavir Richab Investments Private Limited ("MRIPL") was providing financial services from time to time as per the requirements of the company. The amount of fees payable to them were negotiated and finalised based on the nature of perks involved. It is also stated that the address of MRIPL stated in the SCN is not the address at which TBVFL corresponded with them. It is further claimed that the company capitalised the expenses to the satisfaction of the auditors and there was no alleged inflation of the CWIP account balance.
34. In this regard, I note that the Noticees (Gawandes) have not provided any justification or attempted to provide any rationale with regard to the specific allegations contained in the SCN related to violations of Ind AS-16, Ind AS-23, AS-10 and AS-16 and merely made statements without any documentary proof in justification of their claims. Further, regarding the contention that the Company capitalised the expenses to the satisfaction of auditor who did not have any adverse or qualified remarks on the alleged transaction, I find the same to be without any substance since the expenses such as administrative expenses like professional fees, rent of gym equipment being revenue expenses, ought to have been expressed in profit and loss account and should not have been capitalised as per the relevant accounting standards. The said Noticees have not offered any explanation to dispute how the said accounting standards were not applicable to the treatment of CWIP entries noted in the SCN nor have they submitted anything to show that the accounting treatment was done in accordance with some other accounting standard. I also note that SEBI in its investigation had also examined the role of the statutory auditor and sought clarifications from them. In response to which, the auditor had stated the following.

"2 (a) We have sought and obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit with the exception of the Company not obtaining independent confirmation for advances, trade payables and receivables.

We have also not received independent confirmation for certain Bank balances and borrowings. In the absence of those confirmation/reconciliation, the balance appearing in the books of accounts have been adopted as the basis for preparation of annual accounts.

...
2 (d) In our opinion, the aforesaid standalone financial statements comply with the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014 except for testing and accounting of Impairment Loss on Fixed Assets, Capital Work in Progress, Continuous- Loss making branches as required under Accounting Standard 28 – Impairment of Assets and accounting treatment for depreciation as required under Accounting Standard 10 – Property, Plant and Equipment.

The Company had not even complied with the mandatory Accounting Standards and not tested for impairment, and therefore being Statutory auditors of the Company, we cannot compute and quantify the impact of the same in our auditor's report. The fact that the Company has not complied with the accounting standard by itself is a grave error than mere quantification of the impact."

35. From the aforesaid response of the auditors, I note that the submission made by the Noticees(Gawandes) that the company capitalised the expenses to the satisfaction of the auditors and the auditors had not made any adverse or qualified remarks on the financial statements, is not entirely true. The auditor had clearly remarked that the company had complied with the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014 *except for testing and accounting of Impairment Loss on Fixed Assets, Capital Work in Progress and Continuous Loss making branches*. Moreover, the auditor has stated that the Company had not even complied with the mandatory Accounting Standards and not tested for impairment, and therefore being Statutory auditors of the Company, they cannot compute and quantify the impact of the same in auditor's report. It is further stated that the fact that the Company has not complied with the accounting standard by itself is a grave error than mere quantification of the impact. Thus, the auditors had in unambiguous terms made adverse remarks on the financial statements and the statements were not up to the satisfaction of the auditors.
36. Considering the response of the auditors, it appears that they relied on management representation for capitalization of expenses to CWIP and the management had not provided any copies of any underlying documentation to verify the exact nature of these expenses. Further in Audit report of 2018-19, the statutory auditors had qualified *Property Plant and Equipment* stating that, "Regular Admin and other Expenses which were transferred to Capital Work in Progress (CWIP) amounting to ₹ 185 million has been capitalized during the year and had also stated in their reply to SEBI dated May 18, 2021 that, "During the year 2018-19, we were not given adequate information/ justification/

documentation for Capitalisation of such revenue expenses and hence we had given a disclaimer of opinion with regard to Capitalisation of Revenue Expenses in our Auditors report.” Thus it appears that management did not provide adequate documentation for capitalization of expenses for FY 2016-17, FY 2017-18 but not for FY 2018-19. Additionally, any lapses on part of the statutory auditor do not absolve the liability of the Company for the wrongdoings and moreover, as stated in preceding paragraphs, the role of the auditor has also been examined by SEBI and on observing certain lapses on their part reference has been made to MCA and NFRA also for taking appropriate measures as per the law. Thus, the contention of the Noticees (Gawandes) in this regard are devoid of merit and accordingly rejected.

37. Regarding the inflation of assets, liabilities and revenue through round tripping of funds and mismatch in financial statement disclosures, it has been submitted that suppliers such as GPL and NECPL assisted the Company in setting up over 60 gyms as well as over 35 yoga studios. All the transactions were in routine course of business. As submitted, GPL is the largest supplier of gym equipment in India and one of the biggest gym and wellness agglomerator in India. In their normal course of business, they used to collect fees from potential clients from different gyms and such collected amounts would in turn be paid to gym operators like GPL and the amounts received by GPL is on account of the same.
38. With regard to the above submissions, I note that the Noticees(Gawandes) have only made an unsubstantiated statement that all the transactions with GPL were in normal course of business and have not provided any documentary proof like their clients' data, invoices for the gym equipments and their delivery notes, if any. Further, as brought out in the SCN, TBVFL had disclosed ₹24.55 crore as advance given to NECPL as on March 31, 2018. However, the same was not disclosed in the financial statement of NECPL as the total assets of NECPL as on March 31, 2018 were only ₹13.55 crore and its net worth was only ₹ 0.15 crore. No business operations were conducted at the registered address of NECPL and its GST number was inactive and was cancelled *suo moto* on October 26, 2018 indicating closure of business operations. Further, one of the associated entities of TBVFL was the statutory auditor of NECPL. Thus, the arguments put forth by the Noticees(Gawandes) appear to be an afterthought and without any concrete evidence to prove otherwise. Accordingly, the above noted contentions of the Noticees are liable to be rejected.
39. In response to the allegations of recognition of fictitious assets, liability and revenue, it has been submitted that the Company raised funds not only through the loans granted by Axis Bank but also periodically through equity infusion and also through Non-Convertible Debentures. Company deployed its funds to generate profits from operations through its own gyms as well as its subsidiaries for legitimate purposes. Company is duty bound to pay interest to its lenders and taxes to the Government wherever they are due. Axis Bank took-over the loan of ₹198 crores from State Bank of India and lent an additional amount of ₹100

crores. These additional funds were disbursed directly by the bank to the suppliers after thorough verification. Thereafter, the bank carried out inspection of the actual utilisation of the monies lent and no adverse remarks on the same were received by TBVFL.

40. As regards the above submissions, I note that the allegation in the SCN against the Noticees(Gawandes) is not for raising of funds and disbursal of funds to the suppliers. While, it may be true that the funds were disbursed by the bank directly to the supplier of the Company after verification, but the allegation is that the Company inflated its assets, liabilities and revenue through round tripping of funds and it recognised fictitious assets and revenue. The SCN records that TBVFL had obtained term loans from banks for its capital expansion and submitted work orders and *pro-forma* invoices of its capital creditors NECPL, OIPL and GFSPL for disbursement of loans. The disbursement requests and the corresponding transactions in the bank accounts were analysed during the investigation, which indicated that amounts paid by Axis bank as term loans to the capital creditors were paid back by the capital creditors or by a related party - GPL within ten days of the disbursements. The summary of disbursement and their receipt has already been detailed earlier at Table no. 6. The tranche-wise break up of loans extended and received back by TBVFL has also been provided in the SCN.
41. The accounting records were also reviewed to verify the accounting entries recorded for the above transactions and the same are mentioned at Table no. 7. Thus, the SCN has brought out that ₹41.55 Crores were advanced to capital creditors which were returned to the Company and were accounted as “inter-branch” liability. This led to fictitious creation of both asset and liability of ₹41.55 Crore in the financial statement during FY 2016-17. Further, ₹25.15 Crore received from a related party were accounted as “revenue” leading to a fictitious increase in profits during FY 2016-17. I note that the Noticees(Gawandes) have not made any specific response to the allegations contained in the SCN and have only made generic and unsubstantiated statements to put forth their version about the alleged wrongdoings. I am therefore unable to agree with the submissions of the Noticees in this regard.
42. In response to the non-disclosure of Corporate Guarantee given to Zorba Renaissance Private Limited (ZRPL) as contingent liability, Noticees(Gawandes) have contended that the alleged disclosure was an inadvertent error on the part of TBVFL. The Guarantee given was discussed and issued with the permission of the Board of Directors and the Company had disclosed all the relevant information pertaining to the same to the auditor M. K. Dandekar & Co. as well. The minutes of the same are now available with the liquidator.
43. In this regard, the SCN records that during FY 2017-18, TBVFL had given corporate guarantee of ₹55 crores to ZRPL however, the same was not disclosed as contingent liability in the books of TBVFL. The Noticees have agreed that the Corporate Guarantee was not disclosed and stated the same to be an inadvertent

error on the part of TBVFL. In my view, non-disclosure of a contingent liability of a substantial amount of ₹55 Crore by a listed company in its financial statements is not condonable and has to be viewed very seriously. Clearly, to me, even the argument of there being an inadvertent error, appears to be an afterthought and is therefore unacceptable.

44. For the allegation pertaining to inappropriate recognition of revenue and expenses by apportionment of revenue and expenses between THL and TBVFL post their demerger, it has been submitted by the Noticees(Gawandes) that they are not in possession of valuation reports which were made by the Company for the purpose of compliance with Indian Accounting Standards or actual dilution of any equity in any company. Nevertheless, valuations were done based on Indian Accounting Standards and independently approved by the auditors of both companies.

45. In respect of the above submissions, I find it important to reemphasize that after service of SCN, it is expected of every Noticee to submit an appropriate response to the SCN and for that purpose, every Noticee is free to gather material / documents in his / her defence and merely a statement that Noticees are not in possession of the appropriate record/documents is not an acceptable defence and the same is liable to be rejected. Notwithstanding the same, I note that regarding the apportionment of revenue and expenses between TBVFL and THL post demerger, the auditor had provided qualification on the apportionment of revenue and expenses by stating as under:

a. *“Revenue – “Post demerger of the Company, Revenue from Operations were collected in Talwalkars Better Value Fitness Limited (TBVF) and based on the management estimate, share of revenue pertaining to the Talwalkars Healthclubs Limited (THL) was transferred at the end of each month. However, the audit evidence for the apportionment of revenue between TBVF and THL was not adequate.*

Expenses – Post demerger of the Company, the expenses were incurred by Talwalkars Better Value Fitness Limited (TBVF) and based on the management estimate, share of expenses pertaining to Talwalkars Healthclubs Limited (THL) was transferred at the end of each month. However, the audit evidence for the apportionment of expenses between TBVF and THL was not adequate.”

46. Thus, the SCN has brought out that in the absence of clarity on revenue and expenses apportionment, the revenue and expenses disclosed by TBVFL in the financial statements may not be relied upon. In absence of any justification and documentary proof in support of the Noticees'(Gawandes) contention, I am inclined to accept the allegation contained in the SCN as such against all the Noticees.

47. Regarding the Investment in GPL, it is stated that TBVFL made a strategic investment in GPL. At the time of making the aforesaid investment, GPL was catering to about 300 gyms. TBVFL identified the potential in growth of GPL which eventually began to cater to at least 2,000 gyms across India and became one of the largest agglomerators. The returns obtained proved that the investment made was the correct choice of TBVFL at the relevant point of time and the prevailing market conditions and growth opportunities.
48. In this regard, the SCN records that in FY 2016-17, TBVFL had invested ₹5 crore in GPL towards share application money (pending allotment). The financial position of GPL has been mentioned at Table No. 12 above. The share premium was paid only by TBVFL and not by other shareholders and the financial statements of GPL indicated that TBVFL was allotted 9,598 shares for its investment during the year. During the same FY, GPL allocated the remaining 81% shares to other shareholders. The net worth of GPL totalled to ₹4.92 crore comprising ₹0.05 crore of share capital, ₹5.24 crore of share premium and ₹0.37 crore of loss incurred during the year. Thus, the SCN records that it was unclear as to why TBVFL paid share premium for acquiring shares in a newly formed entity while the other shareholders were issued shares without share premium. The SCN has made similar observations with regard to investments of TBVFL in companies like ZRPL, MPL, PWG, FFIPL, IHFPL, TCSPL and TCPL also.
49. With regard to the above-mentioned allegations, except for the unsubstantiated statements, the Noticees (Gawandes) have not even attempted to make any submissions to address the allegations contained in the SCN. Such unsubstantiated statements of the Noticees (Gawandes) hold no merit and are therefore is rejected.
50. As elaborated in the preceding paragraphs, the Noticees No. 2 to 8 have not made specific submissions on merit in respect of the allegations levelled in the SCN except on certain points already discussed. Further, on many occasions, the Noticees have sought to rely on the non-availability of material to defend their case. It is noteworthy that the SCN sent to the Noticees itself contained all the documents which have been relied upon by SEBI for the purpose of the allegations levelled therein. In spite of the same, no specific response / explanation has been submitted by the Noticees on merits to the allegations. It is a settled law that failure to submit any defence despite service of notice is equivalent to admission of the charge levelled in the notice. In this regard, it is relevant to advert to the following observations of Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014):

“As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the

adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.”

51. Similarly, Hon'ble SAT in the matter of *Shri Dave Harihar Kiritbhai vs SEBI* (Appeal No. 93, 104 of 2014 decided on December 19, 2014) refused to consider the arguments and documents submitted by the Appellants therein, in light of the fact that the Appellants had not filed the same before SEBI when the proceedings were ongoing before SEBI. Hon'ble SAT held the following.

“... it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal and on basis of submissions of Appellant and Respondent, in accordance with applicable law.

7. In view of above, the Tribunal cannot consider the submissions of Appellant nor look at the documents produced before this Tribunal, since these were not made available or produced before Ld. A.O., despite being provided ample opportunities and since fresh submissions and documents cannot be accepted in Appeal as these were not made or produced before Ld. A.O., the Tribunal will decide this matter on basis of material and evidence before Ld. A.O.”

52. In view of the foregoing discussions, it is established that TBVFL has misrepresented its financial statements and it is responsible and liable for;

- 52.1. Inflation of bank balance disclosed in financial statements;
- 52.2. Inflation of profits by mis-utilisation of Capital work in Progress account;
- 52.3. Inflation of assets, liabilities and revenue through round-tripping of funds and recognition of fictitious assets, liability and revenue;
- 52.4. Non - disclosure of corporate guarantee given to ZRPL as contingent liability;
- 52.5. Inflation of revenue by revaluation of investments;
- 52.6. Inappropriate recognition of revenue and expenses;
- 52.7. Inflation of investments through book entries not backed by money transfers and investments in entities with low net worth; and
- 52.8. Advances given to connected companies without rationale which are not in the interest of the company.

53. Having established that TBVFL has misrepresented its financial statements, I note that the SCN has alleged that TBVFL has violated Section 12A(a), (b) and (c) of the SEBI Act, Regulations 3(b), (c) and (d), 4(1), 4(2) (f), (k) and (r) of the PFUTP Regulations and Regulation 4(1)(a), (b), (c), (e), (g) and (h), 4(2)(f)(ii)(6), (7) and (8), and 4(2)(f)(iii)(3), (6) and (12) of the LODR Regulations. Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3 (b), (c) and (d) of the PFUTP Regulations, inter alia, prohibit, buying, selling, dealing in securities in a fraudulent manner, employment of any manipulative/ deceptive device, scheme or artifice to defraud in connection with dealing in securities, engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities.

54. Regulation 4(1) of the PFUTP Regulations prohibits manipulative, fraudulent or unfair trade practices relating to securities market. The term 'fraud' has been defined in Regulation 2(1)(c) of PFUTP Regulations, and the said definition is 'inclusive'. The terms 'unfair trade practices' and 'manipulative' are not defined in the PFUTP Regulations but have been illustrated by Courts in various judgments. I note that the acts mentioned in the explanation to Regulation 4(1) were already covered under Regulation 4(1) as being fraudulent as well as unfair trade practice. What was earlier implicit has now been made explicit by adding 'Explanation' to Regulation 4(1) of PFUTP Regulations with effect from October 19, 2020. The aforesaid amendment, though introduced on October 19, 2020, does not change the ambit of Regulation 4(1). Acts of diversion/ mis-utilisation/ siphoning of funds of a listed company or employing any device, scheme or artifice to manipulate the books of accounts or financial statements of such company, that would directly or indirectly manipulate the price of the securities of that company, thereby inducing the investors to deal in securities or to remain invested in the securities of that company, are undoubtedly fraudulent and unfair trade practices relating to the securities market, which are covered by the rigor of Regulation 4(1) of PFUTP Regulations. I also note that the Explanation to Regulation 4(1) of the PFUTP Regulations not only includes the price manipulation which is explicit but also covers the price manipulation which can be implied by an act or omission or conduct of the listed company. I find that an act of concealment of information related to mis-utilization of funds by a listed company, which if disclosed would have the potential to impact the share price of that listed company, is undoubtedly fraudulent and unfair trade practice relating to securities market and covered under Explanation to Regulation 4(1) of the PFUTP Regulations. Thus, in view of the discussions in the preceding paragraphs, it is clear that TBVFL has misrepresented its financial statements and same amounts to fraud and unfair trade practice and make TBVFL liable for the violation of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d) and 4(1) of the PFUTP Regulations.

55. Regulation 4(2) of the PFUTP Regulations provides that dealing in securities is deemed as fraudulent or an unfair trade practice if it involves fraud and may include all or any of acts or omissions mentioned therein. In this regard,

Regulation 4(2)(f) [as it read at the relevant point of time], *inter alia*, provides that, knowingly publishing or reporting by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities shall be deemed to be fraudulent or unfair trade practice. Having established that TBVFL had misrepresented its financial statements which were not reflecting true and fair affairs of the Company on account of various methods and devices employed by it as discussed in preceding paragraphs and summarised in paragraph 52 accompanied with the fact that the information in the nature of annual reports, financial statements and disclosures, etc. were published by TBVFL for public consumption which clearly were untrue, I find that the violation of Regulation 4(2)(f) stands established against the entity.

56. Further, Regulation 4(2)(k) [as it read at the relevant point of time], *inter alia*, provides that disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities, shall be deemed to be fraudulent or unfair trade practice. In this regard, I am of the view that by disseminating financial statements through the platform of stock exchanges(s) or otherwise, TBVFL has attempted to demonstrate a rosy picture of its affairs, which was clearly misleading and was designed to influence the decisions of the investors dealing in its securities and thereby likely to induce its sale and/or purchase, and thus, in effect has violated Regulation 4(2)(k) of the PFUTP Regulations.

57. Apart from the above, the SCN also alleges violation of Regulation 4(2)(r) which provides that planting false or misleading news which may induce sale or purchase of securities is deemed as fraudulent or an unfair trade practice. In this regard, I note that although it is correct that misleading and untrue financial statements were disseminated by TBVFL, the SCN has not brought out any material reflecting planting of any specific false or misleading news inducing the sale or purchase of its securities. Accordingly, I find that the allegation of violation of Regulation 4(2)(r) is not established in the present case.

58. Regarding the alleged violation of Regulation 4 of LODR Regulations, I note that it lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provide that the listed entity shall make disclosures and abide by its obligations under LODR regulations, in accordance with the following principles:

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

58.2. The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into

- consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
- 58.3. The listed entity shall refrain from misrepresentation and ensure that the information provided to recognized stock exchange(s) and investors is not misleading.
 - 58.4. The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
 - 58.5. The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognized stock exchange(s) in this regard and as may be applicable.
 - 58.6. The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders
59. As discussed above, TBVFL has been found to be in violation of Section 12A(a), (b) and (c) of the SEBI Act, Regulations 3(b), (c) and (d), 4(1), 4(2)(f) and (k) of the PFUTP Regulations. Further, violation of Regulation 48 of the LODR Regulations also stands established as the Company did not comply with the applicable accounting standards. In view of the same, it is clear that TBVFL was not in compliance of the principles laid down in the aforesaid clauses of Regulation 4(1) of LODR Regulations and hence violation of Regulation 4(1)(a), (b), (c), (e), (g) and (h) of LODR Regulations stands established against it.
60. Regarding the violation of Regulations 4(2) (f) (ii) (6), (7) and (8), and 4(2)(f)(iii) (3), (6) and (12) of the LODR Regulations by TBVFL, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles related to disclosure or other obligation of the listed entity under the LODR Regulations, is specifically of the board of directors of the listed entity. The said obligations are not fastened on the listed entity itself. Therefore, Regulations 4(2) (f) (ii) (6), (7) and (8), and 4(2)(f)(iii) (3), (6) and (12) of the LODR Regulations are not attracted in respect of the Company (TBVFL) as the same pertain to obligations of the board of directors.
61. In view of the foregoing, I find that the violations of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d) and 4(1) and 4(2)(f) and 4(2)(k) of the PFUTP Regulations and violation of Regulation 4(1)(a), (b), (c), (e), (g) and (h) and Regulation 48 of LODR Regulations stand established against Noticee No. 1

B. If the answer to issue A is in affirmative, what is the liability of each of the Noticees for such violations?

62. Having held that the violations alleged in the SCN against TBVFL (Noticee No. 1) have been established, I now advert to the question as to the liability of each of the Noticees in respect of the said violations.

63. In this context, I note that Talwalkars have relied upon the order of Hon'ble Supreme Court in the matter of *SEBI v. Gaurav Varshney & Anr* to contend that merely because they were the director(s), they cannot be held liable for the offences of TBVFL. Further, reliance has been placed on the decision of Hon'ble SAT in the matter of *P.G. Electroplast Ltd. and ors. v. SEBI* (Appeal 281 of 2017) to contend that the SCN does not record any specific finding against them to show they were in charge of the financial affairs of TBVFL. Further, Noticee No. 2 has stated that merely because he was the Executive Director and Chairman does not make him vicariously liable for the acts of TBVFL. Similarly, Noticees No. 3 and 4 have contended that merely because they were the MD and Director does not make them vicariously liable for the acts of TBVFL. It is also submitted by the Talwalkars that the alleged financial irregularities were committed without their knowledge and the Gawande group were handling the banking, financial and legal matters and thus they do not come under the purview of Section 27 of SEBI Act.

64. In connection with the above, I find it pertinent to note that any company being an artificial person and an inanimate legal entity cannot act by itself. It acts through its individual directors, who are expected to discharge their responsibilities on behalf of the company with utmost care, skill and diligence. Also as per Section 179 of the Companies Act, 2013, the Board of a company is entitled to exercise all such powers and do all such acts and things which the company is legally authorized. The duty expected from an individual as a director of a company, has been succinctly expounded by the Hon'ble Supreme Court of India in the following findings made in the matter of *N Narayanan vs Adjudicating Officer, SEBI* (Order dated April 26, 2013):-

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

65. In this backdrop, I note that in relation to the allegations, the SCN has brought out the role of each and every Noticee. The SCN and FAR has observed that during the investigation period, following were the designations and roles of the Noticees (i.e., directors and CFO of the Company) and the tenure of such role in TBVFL.

Table No. 16- (Role of the Noticee and their tenure)

Noticee no	Name of the noticee	Designation	Period
2	Girish Talwalkar	Executive Chairman (2016-17) Non- Executive Chairman (2017-18) MD and CEO (2018-19 onwards)	FY 2016-17 to FY 2019-20
3	Prashant Talwalkar	MD and CEO till 2018-19	FY 2016-17 and FY 2018-19
4	Madhukar Talwalkar	Whole-time Director	FY 2016-17 to FY 2019-20
5	Vinayak Gawande	Whole-time Director	FY 2016-17 to FY 2019-20
6	Anant Gawande	Whole-time Director	FY 2016-17 and FY 2018-19
7	Harsha Bhatkal	Whole-time Director	FY 2016-17 and FY 2018-19

Noticee No. 8 - Mr. Girish Nayak was the CFO of TBVFL from February 2017 to February 2019 i.e for the FY 2016-17 to FY 2018-2019.

66. The details of the Board Meetings attended by the directors are as follows:

Table No. 17- (Details of the Board Meetings)

Noticee no	Name of the director	FY 2016-17		FY 2017-18	
		No. of meetings held	No. of meetings attended	No. of meetings held	No. of meetings attended
2	Girish Talwalkar	6	6	10	10
3	Prashant Talwalkar	6	4	10	7
4	Vinayak Gawande	6	5	10	10
5	Harsha Bhatkal	6	5	10	10
6	Madhukar Talwalkar	6	3	10	8
7	Anant Gawande	6	6	10	9

67. From the details captured in the above Table No. 16 and 17, it is clear that during the period under investigation, Noticees No. 2 to 7 being the Executive Directors (Girish Talwalkar was the non-executive chairman for a brief period during 2017-18) of TBVFL, were at all times, aware of the financial status and transactions of the company. It is noteworthy that Noticees No. 2 to 7 have been associated with the Company for a long time, even before the IPO. As noted from the records, in the present case only the Executive Directors of TBVFL have been proceeded against and Non-Executive Directors including the Independent Directors have been kept out of the present proceedings. Further Mr. Anant Gawande (Noticee No. 7) was the member of the audit committee and attended 5 meetings (out of total 5 meetings held) during FY 2016-17 and 2 meetings (out of total 4 meetings held) during FY 2017-18. I find that Company's fraudulent acts including misrepresentation of the financial statements as discussed in earlier paragraphs, were at all times, in the knowledge of the aforesaid directors i.e. Noticee No. 2 to Noticee No. 7.
68. Accordingly, whatever violations have been committed by the Company are attributable to Noticee No. 2 to Noticee No. 7 who were responsible for the day-to-day affairs of the Company during the relevant time. Hence, Noticee No. 2 to Noticee No. 7, by virtue of holding such directorships and being responsible for the acts, omissions and conduct of the Company are found to be guilty of resorting to fraudulent and unfair trade practices.
69. As regards Mr. Girish Nayak, (Noticee No.8), he was the CFO of TBVFL from February 2017 to February 2019 and thereafter joined as CFO of THL. As defined under regulation 2(1)(f) of the LODR Regulations, a *CFO is a person heading and discharging the finance function of the listed entity as disclosed by it to the recognised stock exchange(s) in its filing*. A CFO is also a part of the *senior management* of a company as provided under regulation 16 of the LODR Regulations. Mr. Nayak resigned from the post of CFO in February 2019 and then became the CFO of THL, which also indulged in misrepresentation of financials. In terms of regulation 17(8) of the LODR Regulations, the CFO (along with CEO) is required to provide the compliance certificate to the board of directors *inter alia* certifying that the financial statements do not contain any misleading statement, present a true and fair view of the company's affairs as well as are in compliance with existing accounting standards, applicable laws and regulations as specified under LODR Regulations. I note from the Annual Report (2016-17 and 2017-18) of TBVFL that Mr. Girish Nayak, (Noticee No.8) had signed the certification under regulation 17(8) of LODR Regulations along with Mr. Prashant Talwalkar (Noticee No. 2). As required under regulation 33(2)(a), while placing the financial results before the board of directors, CFO (along with CEO) of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading. Thus, violation of Regulation 17(8) and

33(2)(a) of the LODR Regulations is established against Noticee No. 3 (for his role and during his tenure as CEO) and Noticee No. 8. Further, as already concluded in the preceding paragraphs, TBVFL had misrepresented its financial statements and failed to present the true and fair picture of its financial statements. Being at the helm of the financial decisions of the Company for the period during which the financial irregularities had taken place, it was the responsibility of Mr. Nayak to prevent the financial irregularities in the Company and to present true and fair picture of the affairs of the Company. I, therefore, find that he had failed in the discharge of its duties and is also responsible for the violations committed by the Company.

70. I note that reliance has been placed by the Talwalkars on Section 27 [proviso to sub-section (1)] of the SEBI Act, to contend that the financial irregularities were committed without their knowledge and the Gawande group was handling the banking, financial and legal matters and thus they do not come under the purview of Section 27 of SEBI Act. In this regard, I note that Section 27 imposes liability on every person who at the time, when the contravention was committed by the Company was in charge of, and was responsible to the company for the conduct of the business of the company. The Talwalkars have taken refuge to the proviso to Section 27 which *inter alia* provides that if the person who has been preceded with for the violation committed by the Company, establishes that the violation was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention, he shall not be liable.

71. In my view, the language of Section 27 is unambiguously clear as regards the position that any person [covered under sub-section (1)] cannot escape the vicarious liability by merely contending that the violations were committed by the Company without his knowledge, rather, such person is mandatorily required to show that he had exercised all the due diligence to prevent the commission of the alleged contravention. Further, liability of the Directors under Section 27(2) of the SEBI Act also arises when the contravention committed by the Company is attributable to the neglect of the Directors.

72. It has already been noted that the Talwalkars, along with other directors, were in control of the affairs of TBVFL and that they were the members of its Board of Directors and also that they were occupying important positions in the management of TBVFL. It is relevant to mention that they have not brought forward any evidence which may prove that they were diligent in their duties or they had exercised all the due diligence which was expected from them to prevent the occurrence of the financial irregularities by TBVFL. Moreover, being in control of the affairs of the Company and not taking any steps to prevent the violation committed by TBVFL actually goes on to show that they were negligent in their duties and responsibilities. Thus, the contention of Talwalkars regarding the inapplicability of Section 27 of the SEBI Act is unfounded and is hence rejected.

73. I also note that the reliance of the Talwalkars on the Judgement and order by Hon'ble Supreme Court rendered in the matter of *SEBI v. Gaurav Varshney & Anr* is also misplaced as this decision was rendered in the context of criminal proceedings, whereas the present proceedings are civil in nature and in such civil proceedings, violations can be established on the basis of preponderance of probabilities.
74. The present case is also distinguishable from the case of *P G Electroplast* in respect of which, the order passed by Hon'ble SAT has been relied upon by the Talwalkars. In fact, in the same judgment, Hon'ble SAT had also held that "*The assertions/allegations should also include that the Director/Directors were in charge of and responsible for the business of the Company and by virtue of their position they are liable for penalty.*" In the present case, the SCN has categorically brought out that the Noticees No. 2 to 8 by virtue of their role and position in TBVFL were responsible for the conduct of affairs of TBVFL and were therefore liable for the violations committed by the Company as alleged.
75. Talwalkars have also referred to the Hon'ble Supreme Court's order in case of *Chintalapati Srinivasa Raju v. SEBI* (Civil Appeal no. 1949 of 2017), to submit that the Orders of the Hon'ble City Civil Court passed against the Gawandes have some bearing in the present case as the SCN pertains to matters of a public nature. It is also submitted that they have filed police complaints against Gawande group for the fraudulent acts committed by them and seek to take further legal action against them for the same. In this regard, I note that Hon'ble Supreme Court in the matter of *Chintalapati* (supra) had referred to Section 42 of the Indian Evidence Act, 1872 which *inter alia* provides that Judgments, orders or decrees are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of what they state. Thus, reference was made to Section 42 only for the purpose the purpose of determining the relevance of the Judgments, orders or decrees passed by competent courts and which relates to matters of public nature relevant to the enquiry under question. In this regard, it is already noted in paragraph 17 above that court cases which are pending or wherein order has been passed against the Gawandes are unrelated to the specific allegations levelled in the SCN against the Talwalkars and moreover as per Section 42 only, if they relate to public nature relevant to the enquiry, they are relevant. I note that nothing has been brought forward by the Talwalkars which may demonstrate as to how these orders were relevant for the present proceedings. Moreover, the disputes between the Gawandes and Talwalkars appear to be private in nature and have no relevance for determining their liabilities in the present proceedings as far as the allegations levelled in the SCN are concerned and thus, the reliance on *Chintalapati* (supra) matter is misplaced. I, therefore do not find any merit in the argument put forth by the Noticees in this regard.
76. In view of the above, for the violations committed by TBVFL and the roles played by the Noticee No. 2 to 8, they are liable for the violations of Section 12A(a), (b)

and (c) of the SEBI Act and Regulations 3(b), (c) and (d), Regulations 4(1), 4(2) (f) and (k) of PFUTP Regulations and Regulations 4(1)(a), (b), (c), (e), (g), (h), and Regulation 48 of LODR Regulations, read with Section 27 of the SEBI Act. Regulations 4(2)(f)(ii) (6) (7) (8), 4(2)(f)(iii) (3) (6) (12) specifically provide for responsibilities of the board of directors and their key functions and thus provisions are also attracted in case of Noticee No. 2 to 7. (Noticee No. 8 being CFO was not the part of Board of Directors). Additionally, as observed in paragraph 69, Noticee No. 3 and 8 are liable for the violation of Regulation 17(8) and 33(2)(a) of the LODR Regulations.

C. In consideration of answers to issues A and B, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticees?

77. As brought out in the preceding paragraphs, the violations alleged in the SCN have been established against all the Noticees. With regard to Noticee No. 1 (TBVFL), in light of the ongoing liquidation proceedings (ordered by NCLT on April 28, 2022), I am not inclined to issue any enforcement directions against Noticee No. 1. However, considering the seriousness of the violations, I am inclined to impose the penalty against Noticee No. 1, which would be lodged with the liquidator and would enable the participation in liquidation estate of corporate debtor as per the water fall mechanism prescribed for distribution of liquidation estate of corporate debtor in terms of the provisions of IBC.

78. Having regard to the discussions in the earlier paragraphs regarding the role and responsibility of Noticees No. 2 to 8, the question that remains to be addressed is about the directions to be issued and monetary penalty to be imposed against them.

79. I note that Section 11 of SEBI Act casts a duty on SEBI to protect the interests of investors in securities and to promote the development of and to regulate the securities market. Towards fulfilment of the said duty, SEBI has been authorized to take such measures as it thinks fit. Pursuant to the said objective, PFUTP Regulations and LODR Regulations have been framed. The said Regulations, apart from bringing transparency and fairness, aim to preserve and protect the market integrity in order to boost investor confidence in the securities market. By misrepresenting the financial statements, and by failing to make true and adequate disclosures, the Noticees No. 2 to 8 have not presented the true and fair view of the affairs of TBVFL, and thus have not only defrauded and misled the investors but have also impaired the integrity of the securities market. In view of the same and considering the violations committed by the said Noticees, I find that it becomes necessary for SEBI to issue appropriate directions against them.

80. Regarding the imposition of penalty under the provisions of the SEBI Act, guidance is provided by Section 15J of the SEBI Act. The said provision reads as follows:

“Factors to be taken into account while adjudging quantum of penalty. 15J.

While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

81. In the present case, the SCN has not quantified the profit made by the *Noticees* No. 2 to 8 on account of the violations discussed in preceding paragraphs, nor does it bring out the quantified loss caused to the investors because of the violations committed by the *Noticees*. However, at the same time, the violations of the provisions of SEBI Act, LODR Regulations and PFUTP Regulations have been established against the *Noticees* in light of the reasons discussed in detail in the preceding paragraphs. I, therefore, find that the above factors have to be considered for the purpose of arriving at the amount of penalty to be levied in the present case.

Order:

82. I, therefore, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B(1) of the SEBI Act, hereby issue the following directions:

82.1. Noticees No. 2 to 8 are debarred from accessing the securities market and are also prohibited from buying, selling, and otherwise dealing in securities market, directly or indirectly, in any manner whatsoever, for a period of 18 months from the date of this order.

82.2. Noticees No. 2 to 8 are further restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a director or a key managerial person, directly or indirectly, for a period of 18 months from the date of this order.

83. Further, in exercise of the powers conferred upon me in terms of sections 11(4A) and 11B (2) read with Section 15 HA and 15HB of the SEBI Act, I hereby impose the following penalty on the Noticees.

Table No. 18- (Quantum of Penalty)

Noticee No.	Name of the Noticees	Penalty Amount (in ₹) u/s 15HA of SEBI Act	Penalty Amount (in ₹) u/s 15HB of SEBI Act	Total Penalty (in ₹)
1.	Talwalkars Better Value Fitness Limited*	20,00,000	4,00,000	24,00,000
2.	Girish Talwalkar	20,00,000	4,00,000	24,00,000
3.	Prashant Talwalkar	20,00,000	4,00,000	24,00,000
4.	Madhukar Talwalkar	20,00,000	4,00,000	24,00,000
5.	Vinayak Gawande	20,00,000	4,00,000	24,00,000
6.	Anant Gawande	20,00,000	4,00,000	24,00,000
7.	Harsha Bhatkal	20,00,000	4,00,000	24,00,000
8.	Girish Nayak	10,00,000	2,00,000	12,00,000

**Penalty for the purpose of lodging of claim by SEBI with the liquidator*

84. The above named Noticees shall remit / pay the said amount of penalties within forty-five (45) days from the date of receipt of this order. They shall remit / pay the said amount of penalties through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in by clicking on the payment link: ENFORCEMENT - > Orders -> Orders of ED/CGM (Quasi-Judicial Authorities) -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticees may contact support at portalhelp@sebi.gov.in. The confirmation of e-payment shall be sent to the Division Chief, Coordination Division, Corporation Finance Investigation Department, SEBI, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	

Payment is made for: (like penalties /disgorgement /recovery /settlement amount/legal charges along with order details)	
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85. This order shall come into force with immediate effect. A copy of this order shall be served on the Noticees, all the recognized stock exchanges, depositories and the Registrar and Share Transfer Agents for ensuring due compliance with the above directions.

86. Further, a copy of this Order shall be forwarded to the liquidator of TBVFL, MCA, the concerned Registrar of Companies and NFRA for their information.

Sd/-

DATE: SEPTEMBER 15, 2023
PLACE: MUMBAI

V. S. SUNDARESAN
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA