SETCO AUTOMOTIVE LTD
LIPE CLUTCH

To,

February 06, 2026

BSE Limited, **Dept. of Corporate Services,** Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai - 400 001 **Company Code: 505075**	**National Stock Exchange of India Ltd,** **Listing Department** Exchange Plaza, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 **Scrip Symbol: SETCO**

Sub: Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Receipt of Order passed by Securities and Exchange Board of India (SEBI)

Dear Sir/Madam,

Pursuant to Regulation 30 of the SEBI ((Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations'), as amended from time to time, we enclose herewith an order passed yesterday by Securities and Exchange Board of India.

Requisite details pursuant to sub-para 20 of Para A of Part A of Schedule III of Listing Regulations are as under:

Sr. No.	Particulars	Details
i.	**Name of the authority**	Securities and Exchange Board of India
ii.	**Nature and details of the action(s) taken, initiated or order(s) passed**	As mentioned in para 118 of the enclosed order
iii.	**Date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority**	February 05, 2026
iv.	**Details of the violation(s)/contravention(s) committed or alleged to be committed**	As mentioned in the enclosed order
v.	**Impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible**	Not ascertainable

This is for your information and record

Thanking you,

Yours faithfully,

For Setco Automotive Limited

HIRENKUMAR POPATBHAI VALA

Digitally signed by HIRENKUMAR POPATBHAI VALA
Date: 2026.02.06 13:26:29 +05'30'

Hiren Vala

Company Secretary

Encl: As above

QJA/SS/CFID/CFID-SEC2/32034/2025-26

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4), 11(4A), 11B (1), 11B (2) READ WITH SECTION 15HA AND 15HB OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Sl. No.	Noticee Name	PAN
1	Setco Automotive Ltd.	AAACG7777K
2	Setco Auto Systems Pvt. Ltd.	AADCT6512A
3	Harish Sheth	AAJPS0670D
4	Udit Harish Sheth	ADQPS5292M
5	Arun Arora	AACPA2055P
6	Ashok Kumar Jha	AAJPJ8790P
7	Suhasini Somesh Sathe	ARMPS9398C
8	Rovinder Kumar Singla	AGWPK4110D
9	Urja Harshal Shah	AZIPS3369M
10	Jatinder Bir Singh Gujral	ADZPG1795L

The abovementioned entities/persons are hereinafter individually referred to by their respective names or Noticee number and collectively as "the Noticees.

In the matter of Setco Automotive Limited.

Prefatory.

1. The Securities and Exchange Board of India (SEBI) is the pivotal expert body in the capital markets. It derives its powers mainly from the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). The objects of the SEBI Act are; to ensure (i) protection of investors in securities (ii) promote the development of the securities *market*; and (iii) regulate the securities market. This order of these objects is sacrosanct. SEBI has been granted powers in order to empower it to appropriately achieve these objects.

2. Hon'ble Supreme Court of India has made an interesting observation in the context of SEBI's powers in the case of ***Clariant International v. SEBI*** in following words: "*The SEBI Act confers a wide jurisdiction upon the Board. Its duties and functions thereunder, run counter to the doctrine of separation of powers. Integration of power by vesting legislative, executive and judicial powers in the same body, in future, may raise a several public law concerns as the*

principle of control of one body over the other was the central theme underlying the doctrine of separation of powers. ……Our Constitution although it does not *incorporate the doctrine of separation of powers in its full rigour, does make horizontal division of powers between the Legislature, Executive and Judiciary. See Rai Sahib Ram Jawaya Kapur v. State of Punjab....The Board exercises its legislative power by making regulations, executive power by administering the regulations framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the* implementation *thereof. The only check upon exercise of such wide-ranging power is that it must comply with the Constitution and the Act. In that view of the matter, where an expert Tribunal has been constituted, the scrutiny at its end must be held to be of wide import."*

3. A closer look on the above observations shows that the only restriction on the exercise of the wide-ranging power is that it must comply with the Constitution and the SEBI Act itself. The true character of the SEBI Act lies not in its sombre title but in its design and purpose and specific provisions describing the role and functions of SEBI. Section 11(2)(e) of the SEBI Act casts a duty on SEBI to take measures for '*prohibiting fraudulent and unfair trade practices relating to securities markets'.* The purpose of section 11(2)(e) of the SEBI Act is to prohibit *fraudulent and unfair trade practices relating to securities market*. In this case, it would be apposite to examine the scope of '*fraud'* and '*fraudulent'*, '*unfair' and 'manipulative'* practices as envisaged for prohibitions under section 12A of the SEBI Act.

4. This case has voluminous records including a show cause notice (40 pages along with 26 Annexures containing voluminous documents and other records in 3 CDs) as well as replies/submissions of the Noticees (total about1500 pages) which are mostly flowing with meaningless verbiage. Further, all the facts and circumstances are largely common, intrinsically liked and intertwined but scattered as the basis for four main charges leading to same responses from Noticees for each set of charge and repeated contentions by the Noticees. While saying so, I am not finding fault with SCN or replies thereto since in legal documents, in India, we sometimes use language beyond understanding for which George Orwell only may have the solution. *'We use eight words to say what can be said in two'*[1].

[1] *As aptly remarked by (Late) Bibek Bebroy in his Article "The Plain Truth" published in Indian Express on November 12, 2020*

5. While holding so, I am also mindful of the caution commanded by Hon'ble Supreme Court in the matter of ***Board of Trustees of Martyrs of Memorial Trust and Anr. Vs Union of India and Others***[2] in following words:-

> *"22. Brevity in judgement has not lost its virtue. All long judgements or orders are not great nor brief orders are always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focussed consideration. A slipped consideration or cryptic order or decision without any reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with seriousness it deserves."*

6. Hence, in order to avoid burdening this order further with repetitive narrations of same facts as repeatedly mentioned as verbiage in the SCN and voluminous replies thereto, I deem it appropriate to deal with each allegations taking into account whole gamut of facts together while dealing with allegations and replies, issue wise, in this order.

Background.

7. The snapshot of the background of the Noticees is as following: -

   (a) Setco Automotive Limited (SAL) was incorporated in 1982. It has been engaged in the manufacturing of Clutch products for Medium and Heavy Commercial Vehicles (MHCV) and of systems and Hydraulics (Pressure Converters) and has marketed these products under the brand name 'LIPE Clutches'.

   (b) Shares of SAL (Noticee No.1') are listed on BSE and NSE.

   (c) Setco Auto Systems Pvt. Ltd. (Noticee No. 2- 'SASPL'), wholly owned subsidiary of SAL.

   (d) Mr. Harish Sheth (Noticee No.3) is Managing Director & Promoter of SAL.

   (e) Mr. Udit Harish Sheth (Noticee No.4) is Whole Time Director & Promoter of SAL.

[2] *Civil Appeal No. 4444 of 2010 decided on October 04, 2012*

(f) Mr. Arun Arora (Noticee No.5), Mr. Ashok Kumar Jha (Noticee No. 6) and Ms. Suhasini Somesh Sathe (Noticee No.7) are the independent directors and Audit Committee members of SAL.

(g) Mr. Rovinder Kumar Singla (Noticee No.8) was Chief Financial Officer (CFO) of SAL from August 02, 2021 to May 30, 2022.

(h) Ms. Urja Harshal Shah (Noticee No.9) is the Executive Director of SAL from September 28, 2015; and

(i) Mr. Jatinder Bir Gujral (Noticee No.10) was Chief Executive Officer (CEO) of SAL from April 01, 2019 to March 31, 2022.

8. Apart from the above, other entities which are not Noticees, but are relevant for this case are:

(a) Setco Engineering Private Limited (SEPL)- a company controlled by Noticees No. 3 &4;

(b) SE Transstadia Pvt. Ltd. (SETPL), another company controlled by Noticees No. 3 &4;

(c) M/s Western Engineering Works ('WEW') wherein Noticees No. 3 and 4 are partners;

(d) Transstadia Technologies Private Limited (TTPL) another company controlled by Noticees No. 3 and 4; and

(e) India Resurgence Fund (IRF) - a special situation fund[3] registered with SEBI as an Alternative Investment Fund (AIF). As SSF it infuses capital and purchases loans of portfolio in distressed companies and special situations for resolution/revival/turnaround of companies in distress, with the capacity to invest in both debt and equity.

[3] *A s a special situation fund is an investment vehicle that profits from unique corporate events or market dislocations, rather than broad market trends, by investing in companies undergoing mergers, bankruptcies, restructurings, spin-offs, or regulatory changes, aiming to capitalize on temporary mispricings and unlock value as the situation resolves. These funds often invest in distressed assets or complex situations, providing capital for turnarounds and exploiting specific catalysts for significant returns.*

Investigation and Show Cause Notice

9. SEBI conducted an investigation in the matter of Noticee No.1 to ascertain whether the financial statements published by it for FY 2019-20 to FY 2021-22 were prepared and disclosed in accordance with the applicable Accounting Standards and whether there is any violation of the provisions of SEBI Act, the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('the PFUTP Regulations') and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('the LODR Regulations'). The Investigating Authority ('IA') of SEBI submitted the Investigation Report (IR).

10. Based on the IR a *prima facie* opinion was formed by the competent authority that the Noticees have possibly violated the provisions of SEBI Act and Regulations made thereunder and, thus, it was decided to proceed against the Noticees. Pursuant to the investigation and based on such *prima facie* opinion, SEBI issued a common Show Cause Notice ('SCN') dated October 14, 2024 to the Noticees. The SCN called upon the above Noticees to explain as following: -

    a) Noticees No.1 to 4 and Noticees No. 9 and 10 were called upon to show cause as to why appropriate directions under Sections 11(4) and 11B(1) read with Section 11(1) of the SEBI Act including directions to prohibit them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and directions not to be associated with any registered intermediary/listed company and any public company which intends to raise money from public in the securities market, in any manner whatsoever, should not be issued against them and why monetary penalty under Section 11(4A), 11B (2) read with section 15HA and 15HB of the SEBI Act read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, referred to as 'the Adjudication Rules') should not be imposed for the alleged violations; and

    b) Noticees No. 5 to 8 were called upon to show cause as to why appropriate monetary penalty under Sections 11B(2) and 11(4A) read with Sections 15HB of the SEBI Act read with Rule 5 of the Adjudication Rules should not be levied against them for the alleged violations of the provisions of the LODR Regulations.

Snapshot of the SCN

11. The SCN makes the following allegations: -

A. <u>Diversion of funds/assets of SAL to the Promoter entities of SAL through a scheme of marketing/ liaisoning service commission.</u>

a) Noticee No.1 entered into a Business Transfer Agreement (BTA) dated August 31, 2021 with Noticee No.2 to slump sell its clutch business to Noticee No.2 for Rs. 0.05 crore. Noticee No.2 raised funds of Rs. 265 crores from IRF through Non-Convertible Debentures (NCDs) at Internal Rate of Return ('IRR') of 23%, Compulsory Convertible Debentures (CCDs) and equity (35%). This includes Rs. 50 crore invested by IRF through equity and convertibles debentures of Noticee No.2. Noticee No.1 raised funds of Rs. 350 crores from IRF through NCDs. Thus, Noticee No.1 and 2 raised total Rs. 615 crores from IRF.

b) The clutch business was the main operation that continuously generated all operating revenues for Noticee No.1. Since Noticee No.1 was facing cash crunch, the slump sale was done to raise funds from IRF.

c) After raising the funds, as above, from IRF, a one-time lump sum Rs. 107.76 crores (in 2021-22) was paid in the garb of marketing commission by Noticee No. 2 to SEPL, a company of promoters of Noticee No.1 to support it in meeting its own liability, despite poor financial health of Noticees No.1 and 2, wherein clutch business was facing cash crunch. Additionally, during FY 2019-20 to 2021-22, total marketing commission of Rs. 16.70 crore was paid by Noticee No.2 to SEPL.

d) As per the service terms in the marketing agreement between Noticee No.1 and SEPL dated July 01, 2017 (valid for 5 years from July 01, 2017 to March 31, 2022), Noticee No.1 had to pay commission @ 2% on all exports Original Equipment Manufacturers ('OEMs') and SPD sales. As per the service terms in the marketing agreement between Noticee No.2 and SEPL dated August 31, 2021, the SEPL had to provide marketing and liaisoning services with customers of Noticee No.2 to promote the sale of the products manufactured by it to which Noticee No.2 had agreed to pay to SEPL a lump sum marketing commission payment of Rs. 110 crores.

e) As per the agreement dated July 01, 2017 between SAL and SEPL (valid for July 2017 to March 2022), the scope of the work of the agreement, *inter alia*, provided as follows:

- SEPL will arrange for yearly requirements of goods and monthly schedules from all customers.
- SEPL will follow up with SASPL on the production status of the orders received from the customers as per monthly schedules.
- SEPL will liaison with the customers for receipt of goods and follow up with customers for payments.
- SEPL will liaison between company and customers for rejections, warranty related issues.

f) As per the marketing agreement dated August 31, 2021 between Noticee No.2 and SEPL, the service terms were as under:

- SEPL will market and liaison with customers of Noticee No.2 to promote sale of the products manufactured by Noticee No.2.
- All orders solicited and taken by SEPL were subject to acceptance and confirmation in writing by a duly authorized officer of Noticee No.2.

g) No new customers had been added in the customer list of Noticees No.1 and 2 after transfer of clutch business. Additionally, Ashok Leyland Limited (a customer of SAL) informed SEBI that they had no technical or commercial transactions with SEPL for their Original Equipment/Original Equipment Spares (spares) business and that it had interacted with Noticees No. 3 and 4 as they were heading Noticee No.1. Similarly, Tata Motors Limited (TML) informed SEBI that TML had not created any vendor code for SEPL and hence, there is no Service/ Direct Material Purchase Order (PO) for SEPL in the records of TML. Hence, no marketing/ liaisoning services were provided either by SEPL or by Noticee No.3 (MD of SAL, SASPL and SEPL) or Noticee No.4 (Promoter and Director of SAL, SASPL and SEPL) on behalf of SEPL in terms of above marketing agreements.

h) In Extraordinary General Meeting ('EGM') of shareholders of Noticee No.1 held on May 22, 2021, the shareholders voted in favour of the resolution pertaining to the amendment to the terms of the marketing commission arrangement between SEPL and Noticee No.2. The said resolution, *inter alia*, explains as follows:

- That the then rate of commission charged by SEPL to Noticee No.1 was 2% of all sales made by SAL with respect to the clutch business.

- Going forward, as part of restructuring, it was proposed that the amount of marketing commission paid to SEPL will be 2% of all sales made by SASPL and the aggregate marketing commission payable to SEPL by SASPL will be capped at approximately Rs. 8 crores per annum.

- SASPL proposed to make a one-time payment to SEPL in the range of Rs. 100 crores to Rs. 110 crores to compensate SEPL for the loss of future revenue on account of restructuring the marketing commissions.

i) However, shareholders' approval for marketing commission other than the lump sum amount of Rs. 110 crores to the promoter entity was never taken before the EGM held on May 22, 2021.Thus, the shareholders of Noticee No.1 have approved the resolution of marketing commission under the pretext that marketing services/ activities are/were done by SEPL. Therefore, shareholders of Noticee No.1 were not informed that marketing/ liaisoning services, if any, are performed only by the Promoter and Directors of the Noticee No.1, i.e., Noticees No.3 and 4, not by SEPL.

j) No valuation of the clutch business was done by Noticee No.1 prior to the proposal of transfer of clutch business through notice dated April 26, 2021 or prior to approval of the said proposal in EGM held on May 22, 2021. Rather, the valuation was carried out on May 04, 2023 i.e., around 2 years after the date of sale of clutch business. Further, while calculating the value of clutch business, terminal value of free cash flow is negative Rs.40.06 crore in contradiction to the positive terminal value for marketing commission of Rs.194 crores from the clutch business. Additionally, marketing commission is calculated on a perpetual basis even though Noticees No. 3 and 4 are mortal human beings and they were the ones providing the marketing services in the name of SEPL.

k) Further, vide letters dated April 12, 2012 and April 17, 2012, the Registrar of Companies (RoC), provided conditional approval to Noticee No.1 for marketing commission to WEW that was valid only till March 31, 2015. However, the conditional approval for marketing commission was neither provided to SEPL nor was it applicable from 2019-20 to 2022-23.

Additionally, there is no similarly comparable arrangement of SAL's contract with any other entity to prove that the agreement with WEW was not disadvantageous to Noticee No.1.

l) This payment of marketing commission to SEPL during the investigation period was a scheme adopted by Noticees No.1 and 2 to divert funds from Noticee No.1 and its subsidiary Noticee No.2 to the promoter entity SEPL. The acts of diversion of funds by Noticees No.1 and 2 in connivance with Noticees No. 3 and 4 to the promoter group entity SEPL are in the nature of manipulative, fraudulent and unfair trade practices in the securities market.

m) No marketing/ liaisoning services were provided either by SEPL or by Noticee No.3 (MD of SAL, SASPL and SEPL) or Noticee No.4 (Promoter and Director of SAL, SASPL and SEPL) on behalf of SEPL. However, the payment of marketing commission to SEPL during the investigation period was a scheme adopted by Noticees No.1 and 2 to divert funds from Noticee No.1 and its subsidiary Noticee No.2 to the promoter entity SEPL. The acts of diversion of funds by Noticees No.1 and 2 in connivance with Noticees No. 3 and 4 to the promoter group entity SEPL are in nature of manipulative, fraudulent and unfair trade practices in the securities market.

n) Had there been no transfer of clutch business, Noticee No.2 would not have received funds from IRF. Also, as Noticee No.2 is the subsidiary of Noticee No.1, on consolidation basis these funds were assets of Noticee No.1 which has direct/ indirect control over such assets. Further, it has been alleged that in the absence of marketing documents, contracts, agreements, or letters of engagement between SEPL and SAL's customers, the Audit Committee lacked sufficient basis to approve payments of marketing commissions to SEPL.

o) No expenditure related to marketing and liaisoning activities was recorded. Even the cost of sales of SEPL consisted only of GST paid on the commission received.

p) Further, by diverting Rs. 107.76 crore, respectively, to SEPL in the form of payment of marketing commission, Noticees No.1 and 2 have overstated expenditure and understated profits in the standalone and consolidated financial statements of Noticee No.1 and reduced the amount of profit to the extent of Rs.124.45 crores during the investigation period.

B. <u>Misappropriation/Misutilisation and diversion of assets/funds of SAL by investment in the Promoter entities and subsequent impairment</u>

a) Despite having poor financial health and cash crunches during FY 2019-20 to 2022-23, Noticees No.1 and 2, respectively, invested in Non-Convertible Cumulative Redeemable Preference Share ('NCCRPS') of Rs. 10 each of SEPL @ 9% and @ 0.01% and then impaired such investments. Noticee No.1 invested a total of Rs. 81.96 crore in 9% NCCRPS of SEPL. Noticee No.1 continued to invest in NCCRPS of SEPL despite impairing value of the investment in SEPL every year. As per the financial statements of Noticee No.1 for FY 2019-20 to 2021-22, year-wise value of the total investments and impairments by SAL in SEPL is as follows:

Table No:1

Rs. in crore

Particulars	**2019-2020**	**2020-2021**	**2021-2022**	**Total**
Investment in SEPL	38.85	19.75	23.36	81.96
Provision for diminution in investment	1.44	4.10	6.39	11.93

b) Also, in no financial year, the dividend of 9% on NCCRPS was received by Noticee No.1 from SEPL. Despite this, it continued to invest in SEPL while its clutch business was short of funds, faced cash crisis and had raised funds from IRF @ IRR of 23%. Further, the statement of application of the funds raised from IRF by Noticee No.1 provides that it used Rs. 15.63 crore from the funds raised through IRF to invest in SEPL. This Rs. 15.63 crore is included in the total investment of Rs. 23.36 crore during 2021-22 made by Noticee No.1 in SEPL.

c) SEPL had pledged its complete equity holding of SAL to the private lenders and borrowed the funds. These funds were used by SEPL to invest in SETPL, another promoter group company. Thus, the funds borrowed by SEPL through pledging the shares of Noticee No.1 were not used for Noticee No.1 but for SETPL. Hence, it is alleged that although Noticee No.1 had no role in pledging of shares and received no funds, it invested in SEPL to protect the invocation of the said pledged shares of SEPL. Thus, it is alleged that funds of Noticee No.1 were used to protect/ safeguard the financing of the promoter group company SETPL.

d) The invocation of the promoters' share of Noticee No.1 is the personal liability of the promoter/SEPL and not of Noticee No.1. Hence, it is alleged that to protect the invocation of promoters' shares and to protect the position of the promoter entity in SAL's management, Noticee No.1 invested/funded SEPL/ promoter entity. It is further alleged that such act of Noticee No.1 amounts to misutilisation of its funds/ resources in favour of its promoter entity.

e) All the loans, other than loan from Yes Bank, on which personal guarantees of Noticees No. 3 and 4 were provided, were firstly secured by fixed assets (excluding cars/vehicles) and then secured by the stocks and book debts of Noticee No.1. Total amount of such loans was Rs. 89.64 crore and Rs. 96.56 crore for 2019-20 and 2020-21, respectively. Further, as on March 31, 2022, no loan from banks/financial institutions was outstanding on which any personal guarantee of the promoter entity was given. There was only loan taken by Noticee No.1 from Yes Bank for which no charge was created on fixed assets or properties of Noticee No.1. The loan taken from Yes Bank was against personal guarantee of Noticees No. 3 and 4. The said loan was repayable in 4 EMIs each of Rs. 5.0 crore to be repaid by April 2020. The said loan of Yes Bank was repaid in April 2020.

f) As per the Annual Reports of Noticee No.1, for 2019-20 and 2020-21, total value of non-current assets net of cars and vehicles was Rs. 441.05 crores (i.e., 443.24 crores of non-current assets Rs. 2.19 crore of cars and vehicles) and Rs. 437.56 crores (Rs. 439.49 crore of non-current assets – Rs. 1.93 crore of cars and vehicles). Therefore, it is alleged that the value of first charge was enough to cover the loan amount on which personal guarantee by promoters was provided.

g) In view of the above, it is alleged that Noticee No.1 failed to exercise adequate due diligence in application of its funds and invested in such instruments/entity and in such conditions wherein no lenders/financial institutes were willing to give loans to the promoter entity/SEPL. Further, such investment was done to support the promoter entity/ SEPL to meet its personal obligations.

h) During 2019-20 to 2021-22, despite impairing value of the investment in SEPL every year, Noticee No.1 invested total of Rs. 81.96 crores in NCCRPS of SEPL and impaired total investment by Rs. 11.93 crores. Further, Noticee No.1 did not recover any amount of dividend due on such investments in NCCRPS of SEPL. By impairing the investment,

Noticee No.1 forewent the amount to be received from the promoter entity/ SEPL. Hence, it is alleged that by investing in SEPL, Noticee No.1 misutilised funds of Rs. 81.96 crores and by creating provision on such investment, it diverted Rs. 11.93 crores to the promoter entity SEPL.

i) Financial statements of Noticee No.1 for 2021-22 and the statement of application of the funds raised from IRF indicate that Noticee No.2 invested Rs. 13.07 crores in 0.01% NCCRPS of Rs. 10 each of SEPL. This investment was done by Noticee No.2 after transfer of clutch business to it by Noticee No.1 after raising funds from IRF @ IRR of 23%. With transfer of the clutch business Noticee No.2 became the core source of revenue for Noticee No.1. Annual reports of Noticee No.1 for 2021-22 state that the funds from IRF were raised because the clutch business was facing cash crisis and that the funds have been utilized, *inter alia*, to repay dues to all existing lenders including working capital lenders and to meet overdue statutory liabilities and pressing creditors. However, investment of these funds in 0.01% NCCRPS of SEPL was not in line with the disclosures made in the Annual Report. Thus, it is alleged that although it was disclosed that the funds were raised @ IRR of 23% to meet business requirements, the amount was invested @ 0.01% in the promoter entity.

j) Further, the financial statements of Noticee No.1 for 2021-22 and 2022-23 state that Noticee No.2 advanced Rs. 5.98 crore at interest rate of 9% per annum to TTPL and impaired Rs. 2.99 crore on such advances.

k) The investment by Noticee No.2 in TTPL was not done considering the business requirements of Noticees No. 1 and 2. Although Noticees No. 1 and 2 raised funds from IRF at IRR of 23%, Noticee No. 2 advanced those funds to TTPL only at the rate of 9% per annum. As TTPL could not repay the advance, the said advance to TTPL was also impaired in the next year to the amount of Rs. 2.99 crore. Financial statements of TTPL for 2021-22 state that the net worth of TTPL as on March 31, 2022 was negative Rs. 11.60 crore. Thus, despite going through cash crisis to run clutch business, Noticee No. 2 decided to advance funds to the promoter group entity TTPL (having negative net worth) at low rate of interest and then impaired such advances. In view of the above, it is alleged that the cost of raising funds by the promoter entity has been borne by Noticees No. 2 and its holding company Noticee No.1.

l) By investing in SEPL and TTPL, Noticee No.2 misutilised the funds worth Rs. 19.05 crore (Rs. 5.98 crore + Rs. 13.07 crore) and bore the differential coupon cost, which otherwise would have been borne by the promoter entity/ SEPL. Further, by impairing the advances given to TTPL, Noticee No.2 diverted funds of Rs. 2.99 crore to the promoter group entity TTPL.

m) In view of the above, it is alleged that such acts of misutilisation and diversion of funds from Noticee No.2 to the promoter entities SEPL and TTPL under the garb of investment and subsequent impairment are in nature of manipulative, fraudulent and unfair trade practices in the securities market.

n) In view of the above, it has been alleged that by misappropriation/ misutilisation of assets/ funds of SAL and diversion of the funds through subsequent impairment of the investment in promoter/ SEPL, SAL has violated Section 12A(a), 12A(b), 12A(c) of SEBI Act, 1992 and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

C. Non- compliance with the disclosure requirements and other allegations

a) As per the Notice dated April 26, 2021 for EGM of May 22, 2021, shareholders were informed that the fund will be raised from IRF at such interest rates and on such terms and conditions as may be determined by the Board of Directors. Noticee No.1, vide corporate announcement dated September 06, 2021, announced that for issuance of NCDs, fixed rate is 5% per annum and redemption will be as per Debenture Trust Deed. However, in the agreements between Noticee No.1 and IRF and that between Noticee No.2 and IRF, it was provided that:

- All obligations in relation to the NCDs shall accrue at the Fixed Interest Rate and be payable on a monthly basis on each Fixed Interest Payment Date.

- In addition, a redemption premium shall accrue on all obligations in relation to the NCDs. The redemption premium shall be payable in accordance with the Trust and Retention Account (TRA) Agreement and upon any redemption (part or full) of the NCDs so as to provide the debenture holders the Investor IRR from the relevant deemed date of allotment of such debentures till the date of such

redemption of the debentures to the satisfaction of the debenture holders (the "Redemption Premium").

- Fixed Interest Rate means 5% (five percent) per annum.
- Investor IRR shall mean an IRR of 18% (Eighteen percent) per annum.

b) Even in SAL's annual report, it did not provide complete disclosure about the fixed interest rate of 5% per annum and the redemption cost of 18% per annum applicable to the funds raised through NCDs from IRF.

c) In view of the above, it is alleged that SAL and SASPL did not disclose the complete cost of the NCDs depriving its shareholders and users of financial statements from evaluating the nature and extent of risks arising from NCDs to which Noticees No.1 and 2 were exposed. Hence, it is alleged that Noticee No.1 failed to comply with the provisions of Ind AS 107 which resulted in violation of Regulation 4(1), 33(1)(c), 34(3) and 48 of the LODR Regulations.

D. Not making transactions at arm's length basis. - Noticee No.1 did not charge interest on unsecured loan to its subsidiaries Setco MEA Limited UAE, Setco Automotive (NA) Inc., Setco Automotive (UK) Ltd. thereby, it did not make these transactions at arm's length basis.

E. Non- Appointment of CFO within the specified time. - Noticee No.1 has violated the provisions of Regulation 4(1)(g) of the LODR Regulations read with Section 203(4) of Companies Act, 2013 as its CFO, Mr. Vinay Shahane, vacated the office with effect from November 23, 2020 but new CFO, Mr. Rovinder Kumar Singla was appointed with effect from August 02, 2021 after more than 6 months of vacancy of the CFO position.

12. In view of the above facts and *prima facie* opinion, the SCN alleged contraventions by respective Noticees as detailed in the following table: -

Table No.: 2

Noticee	Alleged Act/ Conduct	Alleged Violations
1.	Used a scheme of the marketing/liaisoning service commission, in connivance with the its promoters (Noticees No. 3 and 4) and its wholly owned subsidiary Noticee No.2 for diverting a	Section 12A(a), 12A(b), 12A(c) of the SEBI Act and regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k)

Noticee	Alleged Act/ Conduct	Alleged Violations
	total amount of Rs. 124.45 crore (Rs. 16.69 crore from a listed company SAL and Rs. 107.76 crore from Noticee No.2) to a promoter entity Setco Engineering Private Limited (SEPL). The acts of diversion of funds under the garb of marketing commission, is in the nature of manipulative, fraudulent and unfair trade practices in securities market.	and 4(2)(r) of the PFUTP Regulations.
	Diverting Rs. 16.69 crore and Rs. 107.76 crore, respectively, to promoter group entity in the form of payment of marketing commission, have overstated expenditure and understated profits in the standalone and consolidated financial statements of Noticee No.1 and reduced the amount of profit to the extent of Rs.124.45 crore during the investigation period. The financial statements of Noticee No.1for the period from FY 2019-20 to FY 2021-22 do not represent true and fair picture of the company's operating activities. Publishing manipulated/misrepresented financial results	Regulations 4(1)(c), 4(1)(e), 4(1)(g), 4(1)(h), 4(1)(j), and 4(2)(e) of the LODR Regulations.
	Misappropriation/ misutilisation of assets/ funds (Rs. 81.96 crore) and by creating provision on such investment, diversion of Rs. 11.93 crore to the promoter entity SEPL.	Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.
	In the Annual report, Form AOC-2 was not attached by SAL. Thus, it is alleged that Noticee No.1 failed to provide Form AOC–2,	Rule 8(2) of the Companies (Accounts) Rules, 2014 read with Regulation 4(1), 33(1)(c) and 34(3) and 48 of the LODR Regulations.

Noticee	Alleged Act/ Conduct	Alleged Violations
	Not appointing CFO within the specified time period of 6 months from the date of such vacancy.	Regulation 4(1)(g) of the LODR Regulations read with Section 203(4) of Companies Act, 2013
2.	Connived with Noticee No.1 and its promoters to divert funds of Rs. 107.76 crore to the promoter group entity.	Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.
	Investing in SEPL and TTPL, in connivance with SAL and its promoters, misutilised and misappropriated funds of Rs. 19.05 crore (Rs. 5.98 crore + Rs. 13.07 crore). Further, by impairing the advance given to TTPL, Noticee No.2 diverted funds of Rs. 2.99 crore to the another promoter group company TTPL.	Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.
3.	Incorrectly portrayed that marketing/liaisoning services were provided by SEPL to Noticee No.1 and approved payment of marketing commission to SEPL. Further, despite Noticee No.1 and Noticee No.2 undergoing financial crisis, approved investments by Noticees No.1 and 2 in promoter entities such as SEPL and TTPL and impairments of such investments. Being signatory to the financial statements for Noticees No.1 and 2, did not explain in the annual reports the exact purpose of investment in SEPL, i.e., to protect the invocation of the pledged shares of the promoters in Noticee No.1. Used Noticee No.1 for implementation of a scheme, device and artifice	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations r/w Section 12A (a), (b), (c) of the SEBI Act and Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7), 4(2)(f)(iii)(1), 4(2)(f)(iii)(3), 4(2)(f)(iii)(5), 4(2)(f)(iii)(6), 4(2)(f)(iii)(7) and 17 (8) of the LODR Regulations r/w regulations 4(1), 4(2)(e), 33(1)(a), 33(1)(c), 34(3) and 48 of the LODR Regulations

Noticee	Alleged Act/ Conduct	Alleged Violations
	to defraud the investors/ shareholders by misrepresenting the financial statements.	read with Section 27 of the SEBI Act.
4.	Incorrectly portrayed that marketing/liaisoning services were provided by SEPL to Noticee No.1 and approved payment of marketing commission to Noticee No.2. Further, it is alleged that despite Noticees No.1 and 2 undergoing financial crisis, Noticee 4 approved investments by Noticees No.1 and 2 in promoter entities such as SEPL and TTPL and impairments of such investments. Further, being signatory to the financial statements for Noticees No.1 and , did not explain in the annual reports the exact purpose of investment in SEPL, i.e., to protect the invocation of the pledged shares of the promoters in Noticee No.1.	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations r/w Section 12A (a), (b), (c) of the SEBI Act and Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7), 4(2)(f)(iii)(1), 4(2)(f)(iii)(3), 4(2)(f)(iii)(5), 4(2)(f)(iii)(6), 4(2)(f)(iii) (7) of the LODR Regulations read with Regulation 4(1), 4(2)(e), 33(1)(a), 33(1)(c), 34(3) and 48 of the LODR Regulations read with Section 27 of the SEBI Act.
5, 6 &7	Audit Committee members: have shown gross negligence and disregard to the provisions of Corporate Governance which led to loss to investors; failed to discharge their basic duties leading to the loss of the interest of minority shareholders of Noticee No.1; their acts indicate gross negligence; failed to act in the interest of the company and the shareholders.	Regulation 18(3) read with Para A of Part C of Schedule II and 24(2) of the LODR Regulations.
8.	Being CFO of Noticee No.1, provided false CEO and CFO certification for FY 2020-21	Regulation 17(8) r/w Part B of Schedule II of the LODR Regulations.

Noticee	Alleged Act/ Conduct	Alleged Violations
9.	As Executive Director, was part of the Board meetings in which critical business decisions, including the matters related to payment of marketing commission to SEPL and investments by Noticees No.1 and 2, were taken. She was well aware of such decisions/details and was also signatory to the financial statements of Noticee No.1. She did not discharge her responsibilities in the best interest of the listed entity and its shareholders. She failed to act diligently which affected different shareholder groups differently and did not treat all shareholders fairly. Therefore, it is alleged that Noticee No. 9 aided and abetted Noticee No.1 and its promoters in the alleged siphoning/diversion of funds and misrepresentation of its financial statements.	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations r/w Section 12A (a), (b), (c) of the SEBI Act and Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7), 4(2)(f)(iii)(1), 4(2)(f)(iii)(3), 4(2)(f)(iii)(5), 4(2)(f)(iii)(6), 4(2)(f)(iii) (7) read with regulations 4(1), 4(2)(e), 33(1)(a), 33(1)(c), 34(3) and 48 of the LODR Regulations read with Section 27 of the SEBI Act.
10.	As CEO of Noticee No.1 he was part of the Board meeting in which resolutions were taken pertaining to payment of marketing commission by Noticees No.1 and 2 and investment by them in SEPL. He did not discharge his responsibilities in the best interest of the company and the shareholders. He aided and abetted Noticee No.1 and its promoters in the alleged siphoning/diversion of funds leading to misrepresentation of financial statements of Noticee No.1. Accordingly, financials of SAL did not represent the true and fair view of affairs of Noticee No.1 and contained materially untrue statements.	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations r/w Section 12A (a), (b), (c) of the SEBI Act read with Section 27 of the SEBI Act and Regulation 17(8) r/w Part B of the Schedule II of the LODR Regulations.

Noticee	Alleged Act/ Conduct	Alleged Violations
	Despite being aware of the fraudulent transactions, Noticee No. 10 signed fraudulently manipulated financial statements for FY 2019-20, FY 2020-21 and FY 2021-22 and signed false and misleading CEO/CFO Certificates	

Inspection of documents /Replies/hearing.

13. The Noticees inspected the documents and filed their replies to the SCN on different dates. Noticee No.2 disputed the supply of all materials asked by it and also asked for cross – examination of the IA. After duly considering the request of Noticee No.2, it was noted that information/documents requested were either not relevant to the charges levelled against it in the SCN and non-disclosure of such information did not cause prejudice to Noticee No.2 or were with respect to internal noting which were not part of evidence. The request for cross-examination of the IA was also rejected giving due and valid reasons.

14. The Noticee No.2 challenged the said communication by filing an appeal before the Hon'ble Securities Appellate Tribunal (SAT) which it was pleased to dismiss vide order dated March 17, 2025 with observations to the following effect:

- the basis on which SCN had been issued had been made available to the Noticee;
- file noting is not necessary to be provided as the Noticee could file its reply without them;
- cross-examination of the IA was not necessary.

15. Accordingly, the inspection of documents was concluded on different dates on November 28, 2024 and December 02,2024 and filing of replies by the Noticees was completed on different dates starting from October 31, 2024 to February 06, 2025. The different Noticees were also provided opportunities of personal hearing on different dates on February 12, 2025, March 03, 2025, April 15, 2025 and June 16, 2025 when the Learned Advocates appeared on their behalf and made oral submissions based on their replies. [Mr. *Vala, Advocate, Mr. Anurag Jain, Advocate, Mr. N. S. Vivani, Advocate, Mr. Ashish Ahuja, Advocate, Ms. Smriti Shah, Advocate, Ms. Samiksha Maskara, Advocate all i/b Wadia Ghandy & Co., represented Noticees No. 1, 3, 4, 8, 9, 10. Mr Shyam Mehta, Senior Advocate, Ms. Parinaz Bharucha, Advocate, Ms Valentine*

Mascarenhas, Advocate, Mr. Anurag Jain, Advocate, Ms. Anubha Sital, Advocate i/b RHP Partners represented Noticee No. 2 and Mr. Anil Choudhary, Advocate and Mr. Parker Karia, Advocate i/b Finsec Law Advisors represented Noticees No.5, 6 and 7.].

16. Post the personal hearing, additional submissions were made by Noticees No.1, 3 and 4 on May 15, 2025 and Noticees No. 8, 9 and 10 on May 09, 2025. Further additional submissions were filed by Noticees No. 1, 3, 4, 8, 9 and 10 on July 08, 2025 and November 25, 2025. Noticee No.2 filed additional submissions on June 23, 2025 and November 24, 2025.

Impending Settlement Applications.

17. All the Noticees had proposed to SEBI for settlement of the present proceedings under regulation 3(1) of the SEBI (Settlement Proceedings) Regulations, 2018 ('the Settlement Regulations') during December 2024 without admitting or denying the violations alleged against them. In terms of Regulation 8(1) of the Settlement Regulations, the proceedings were continued as detailed above but passing of the final order was kept in abeyance during pendency of the settlement applications. Settlement Department of SEBI, during August 2025 informed that settlement application of Noticees No.1 to 4 and Noticees No. 8-10 was disposed of as withdrawn. However, order has to be passed only after disposal of other settlement applications. Later, on December 12, 2025, it was informed that the other 3 entities – Noticees No. No. 5, 6 and 7 withdrew their applications for settlement on November 24, 2025. Accordingly, the matter is now proceeded with for disposal in accordance with law.

Consideration of Issues and Findings.

18. I have duly considered the replies and submissions in response to each of the allegations. I note that several issues relating to regulatory overreach and manner of issuance of SCN have been vehemently contested by the Noticees. Having alluded the matrix of the commencement and conducting the proceedings as above and after considering wordy SCN and voluminous replies, I proceed to deal with technical objections first.

Consideration of technical objections and findings.

19. Certain Noticees have contended that the procedure provided under Rule 4 of the Adjudication Rules, has not been followed while issuing the SCN since the first stage of issuing a Notice for

the purposes of holding inquiry was not done and hence the entire proceedings have been vitiated. I note that after SCN was issued for common purpose under Section 11/11B (1) and 11B (2) it contained all the elements of Rule 4. After receipt of reply it was deemed appropriate to proceed under Section 11/11B (1) and also under Section 11B (2) read with Rule 4/5 of the Adjudication Rules together. It is pertinent to mention that in the case of *Kavi Arora vs. SEBI in SLP no. 15 149 of 2021* it was pertinently observed as follows:

> *"46. After the Board forms its opinion to appoint an Adjudicating Officer, comes the next stage, which is the stage under Rule 4 of an inquiry for adjudging under Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J and 15HB whether any person has committed contraventions as specified in those sections.*
>
> *The inquiry commences with a Show Cause Notice calling upon the noticee to show cause why an inquiry should not be held against him. The Show Cause Notice has to specify the nature of offence alleged to have been committed and the penalty proposed, to enable the noticee to effectively reply to the show cause. A reading of Section 4(3) makes it clear that, if after considering the cause, if any shown by the noticee, the Adjudicating Officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for appearance of that person either personally or through his lawyer or other authorised representative. The noticee is not required to be heard personally or through lawyer before taking a decision to proceed with an inquiry in respect of the contraventions alleged in the Show Cause Notice. Decision to proceed or not to proceed with the inquiry may be taken on the basis of the reply of the noticee to the Show Cause Notice. Once it is decided to proceed with the inquiry, an opportunity of personal hearing is mandatory. The inquiry has to be conducted in accordance with law, in compliance with the principles of natural justice."*

20. In this case procedure prescribed in Adjudication Rules was duly followed and no prejudice has been caused to the Noticees on any technical grounds in this regard.

21. The Noticees have also contended that SEBI's claims are based on conjecture rather than demonstrable irregularities or violations of the law, especially since they had taken commercially prudent measures, supported by approvals from the audit committee, board of directors, and shareholders. The business decisions were undertaken in good faith to stabilize operations and

safeguard shareholder value. Merely labelling actions as "*fraud*," "*diversion*," or "*misutilization*" without substantiating these claims with detailed reasoning or cogent evidence is insufficient to meet the burden of proof required under the law.

22. According to them burden of proof to demonstrate contraventions under the SEBI Act and PFUTP Regulations lies with SEBI. SEBI must establish fraudulent intent in the actions of Noticee No.2, direct nexus between the alleged actions and harm caused to investors or the securities market and evidence supporting the claims. In *Chandrasen Ganpatrao Bhise v. SEBI, (2022 SCC OnLine SAT 857),* Hon'ble SAT held that that regulatory authorities are required to substantiate allegations of fraud with concrete findings of fact, supported by unequivocal documentary evidence. In *Balram Garg v. SEBI (2022 9 SCC 425),* the Supreme Court held that regulatory authorities cannot shift the burden onto the accused to refute claims that lack proper substantiation. In *DLF Ltd. v. SEBI, 2015 SCC OnLine SAT 54*, Hon'ble SAT emphasized the need for conclusions supported by evidence. In *Price Waterhouse & Co. v. SEBI, (2019) SCC OnLine SAT 165* it has been emphasized that the threshold for proving fraud under SEBI regulations requires specific and compelling evidence. In *Ess Ess Intermediaries v. SEBI,* 2013 *SCC OnLine SAT 24,* Hon'be SAT held that allegations of fraud or misconduct must be grounded in "*clear and unambiguous evidence*." In this regard, it is settled position that for holding a person guilty of having been indulged in fraudulent and unfair trade practices as alleged in this case, the finding must be sustained by a higher degree of preponderance of probability than that required in any other civil default. There must be convincing preponderance of probability to support the allegation of fraudulent practices. This onus is on SEBI. Merely, probabilising or endeavouring to prove the *fraud* or mere suspicion of intention of making undue profit or avoidance of loss is not sufficient to make good the charge of fraudulent plan or device or artifice in connection with issue, purchase or sale of or dealing in securities as required in Section 12A and regulation 3 of the PFUTP Regulations.

23. The Noticees have further contended that the PFUTP Regulations are not applicable to any fund diversion by Noticee No.2 – a private unlisted company as alleged in the SCN. I note that in para 14 of the SCN it has been alleged that: "*SASPL indulged in the act of diverting funds of Rs. 107.76 crore to the promoter group entity SEPL that amounts to violation of Section 12A(a), 12A(b), 12A(c) of the SEBI Act read with Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations."* The fund diversion by an unlisted company *per se* is certainly out of domain of SEBI Act and PFUTP Regulation as alleged in para 14 of the SCN. Thus, in my

view fund diversion simpliciter by an unlisted private company as recited in para 14 of the SCN will be out of ambit of the provisions charged as they are intended to protect the investors in a listed company.

24. However, when seen in perspective and context, the SCN actually alleges, in its paras 49 and 50, that Noticee No. 2 '*connived'* with Noticee No.1 and its promoters to divert funds of Rs. 107.76 crore received from IRF to the promoter entity SEPL and violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. Further, by investing in SEPL and TTPL, in connivance with SAL and its promoters, it misutilised and misappropriated funds of Rs. 19.05 crore (Rs. 5.98 crore + Rs. 13.07 crore). Further, by impairing the advance given to TTPL, Noticee No.2 diverted funds of Rs. 2.99 crore to another promoter group company TTPL. Thus, it violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. The provisions alleged to have been violated by Noticee No.2 are reproduced as following:

SEBI Act:

"12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations:

*"**3. Prohibition of certain dealings in securities.***

No person shall directly or indirectly –

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive

device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(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.

Explanation – For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company ***that would directly or indirectly manipulate the price of securities of that company*** *shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.*

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: —

(e) any act or omission amounting to manipulation of the price of a security including, influencing or manipulating the reference price or bench mark price of any securities;

(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;"

25. A bare reading of the prohibitions in above Section 12A or Regulations 3 and 4 points that the emphasis is on "*no person*" to cover one and all who may engage in *fraudulent, manipulative* or *unfair* trade practices relating to the securities market or in connection with dealing in securities. Therefore, the PFUTP Regulations are applicable to private unlisted companies also if their conduct is in connection of and impacts the dealing in securities of a listed companies or impacts the interests of investors of securities of listed company. Thus, if Noticee No.2 has *connived* with Noticee No.1 as alleged in para 49 and 50 of the SCN and acted in concert or league in any *fraudulent device, plan* or *artifice* in connection with '*dealing in securities'* of Noticee No.1 in terms of Regulation 3 and 4, it can't escape liability only because it is a private unlisted company.

26. The words '*fraud*" and *'fraudulent'* have been defined under regulation 2(1)(c) of the PFUTP Regulations as follows: -

Definition of 'fraud" – Regulation 2(1)(c).

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behaviour by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;"

27. The author of this order had privilege of drafting this definition of "*fraud*" in PFUTP Regulations and owes gratitude to the able guidance of Former Chief Justice of India, Mr. Justice M. N. Venkatachalliah (Retd.) who was heading then existing Legal Advisory Committee (LAC). Of SEBI. While deliberating review of PFUTP Regulations of 1995, it was then felt that the definition of '*fraud'* under PFUTP Regulations 1995 was incomplete and not suitable for prohibiting securities market abuses as envisioned in section 11(2)(e) of the SEBI Act. Further, the definition of civil fraud under Indian Contract Act, 1972 or criminal fraud in Indian Penal Code, 1860 was also not found suitable since *fraud* contemplated in SEBI Act is wider in content and context both. It is not necessarily limited to a civil fraud or a criminal fraud. Therefore, a more comprehensive definition of *fraud,* with fusion of civil fraud and tortious fraud liability with inclusive elements of misrepresentations, active concealment, suppression of truth, suggestion of false fact, fund transfers as sham transactions, tortious deceit, etc. as pronounced by House of Lords in leading case of *Derry v Peek* and by Hon'ble Supreme Court in *McDowell & Co. Ltd v/s. CTO, (1985) 154 ITR 148 (SC)]*[4], was adopted. Rest all provisions were then drafted by the concerned department of SEBI taking into account the principles behind definition of *fraud* as provided in the present PFUTP Regulations. This approach has found favour in many judgements of Hon'ble Supreme Court such as in the case of ***SEBI V. Shri Kanaiyalal Baldevbhai Patel.***[5] In this case Hon'ble Supreme Court also that the definition of "*fraud*" expands beyond what can normally be understood to be a '*fraudulent'* act. The emphasis is on act of inducement. It further held that for scrutinizing the cases under the PFUTP Regulations, mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.

28. Thus, antifraud provisions of the SEBI Act and PFUTP Regulations are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the securities market, which is also portrayed in the above definitions

4 SC held that *, "it will be difficult for judicial process to accord its approval to it"*
[5] Civil Appeal No. 2595 of 2013 ; (2017) 15 SCC 1

of the words "*fraud*" and '*fraudulent'*. The definition of '*fraud'* under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of term '*fraud'*. In this regard it is relevant to rely upon following observations of the matter of ***N. Narayanan v. SEBI***[6], the Hon'ble Supreme Court observed as follows:

> *"33….. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors' protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. "Market abuse" impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality". The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rise of the scrip of the company. Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse."*

29. In my view, the words *"in connection with dealing in securities"* in regulation 3 of the PFUTP Regulations do not signify that the person employing the *device* and engaging in act, practice, etc. should actually buy or sell securities. Prevention of *market abuse* and preservation of *market integrity* is the hallmark of securities law. Section 12A read with Regulations 3 and 4 of the PFUTP Regulations essentially intended to preserve *"market integrity"* and to prevent *"market abuse"*[7]. Hon'ble Supreme Court in its the judgement dated September 20, 2017 in ***SEBI V. Shri Kanaiyalal Baldevbhai Patel***[8] observed that: *"It should be noted that the provisions of regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation like the one under consideration."*

[6] *Judgment dated 26.04.2013*
[7] *ibid*
[8] *Civil Appeal No. 2595 of 2013 ; (2017) 15 SCC 1*

30. As per section 2(1) (b) of the PFUTP Regulations, the expression *'dealing in securities'* includes:

> *"(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;*
>
> *(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and*
>
> *(iii) any act of providing assistance to carry out the aforementioned acts."*

31. Thus, any act which is '*knowingly'* and clandestinely designed by the company and its directors so as to benefit the promoters/directors ***and designed to*** influence the investment decision of the investors and assistance to carry out such act would be part of the expression "*in connection with dealing in securities"* and in turn any such act and/or omission forming part of a plan and device would fall within the scope of prohibitions under Section 12A of the SEBI Act and Regulation 3 and 4 of the PFUTP Regulations. In this regard, it is relevant to refer to the following observation of Hon'ble SAT in the matter of ***V. Natarajan vs. SEBI***[9]: -

> *"... ... These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true…"*

32. In such cases, as a matter of principle, while interpreting this regulation, I must weigh against an interpretation which will protect unjust claims over just, fraud over legality and expediency over principle. The fraudulent dealings in securities market under regulation 3 are not limited to trading and manipulations in prices of securities only. The scope of fraudulent dealings in securities is wide within the scope of the SEBI Act and PFUTP Regulations. As per section 2 (c) of the PFUTP

[9] *Appeal No. 104 of 2011, decided on June 29, 2011*

Regulations, *fraud* includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include: -

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

33. Hon'ble Supreme Court in its the judgement dated September 20, 2017 in ***SEBI V. Shri Kanaiyalal Baldevbhai Patel (supra)*** gave a liberal interpretation to the definition of '*fraud'* under regulation 2(c) of PFUTP Regulations stating as follows:

> '*5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities.*
>
> *6. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".'*

34. The Noticees have contended that in above referred *Kanaiyalal Baldevbhai Patel case,* it was held that *'inducement'* and '*deception'* both are essential components of *fraud* but these two components are entirely absent from the SCN and no connection between financial transactions of Noticee No.1 and the securities market has been shown. In my view, in this judgment, Hon'ble Supreme Court has not held that deception is an essential element of *"fraud"* under Regulation 2 (c). In fact, the definition under Regulation 2(c) as also observed by Hon'ble Supreme Court clearly includes any act, expression, omission or concealment committed, *whether in a deceitful*

manner or not within the ambit of '*fraud'* under said Regulation 2(1(c). Hon'ble Supreme Court further held that the emphasis is on the act of '*inducement'* and the scrutiny must, therefore, be on the meaning that must be attributed to the word "*induce*" under said Regulation 2(c). In my view, the investment decision of shareholders of Noticee No.1 would always depend upon true and fair disclosures about its transactions. If the shareholders are aware that any business decision of a company is potentially going to reduce their shareholdings' value, they may execise their choice to exit or remain invested as per their will. Thus, in my view, there is no quarrel with above observations of Hon'ble Supreme Court and the allegation of *fraud* without specifically alleging *inducement* or *deception*. If alleged acts and omissions of Noticees ***were designed*** as plan, device or artifice to the detriment of minority shareholders of Noticee No.1 or exclusive benefit of the Noticees at the cost of such shareholders, the case would fall within prohibitions under Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulations 3(b), (c) and 3(d) of the PFUTP Regulations.

35. I note that indulging in any fraudulent or *unfair trade practice in securities market* is prohibited in regulation 4(1). Unfair trade practice has not been defined under the PFUTP Regulations. A clear cut generalized definition of the '*unfair trade practice'* may not be possible to be culled out from the aforesaid definitions. Broadly, a trade practice is *unfair* if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is *unfair* is to be determined by all the facts and circumstances surrounding the transaction. Moreover, the concept of '*unfairness'* is broader than and includes the concept of '*deception'* or '*fraud'*. The fund diversion clandestinely or using misrepresentation of fact surely impact and influence the investment decision of shareholders of the concerned company and would indirectly impact the price of the shares of the company and therefore, will certainly be a manipulative, fraudulent or an unfair trade practice in securities markets and fall within wide scope of Regulation 4(1) of the PFUTP Regulations. The "*fraud on the market theory,"* as endorsed in ***SEBI v. Rakhi Trading Pvt. Ltd***.[10] and ***N. Narayanan*** (*Supra*), establish that fund diversions are presumed to influence investor behaviour, thereby constituting unfair trade practices.

[10] *(2018) 13 SCC 753)*

36. However, subsequently, the scope of regulation 4(1) was clarified to make it specifically inclusive by adding an Explanation (incompletely quoted in the SCN) according to which indulging in diversion, misutilisation or siphoning off of assets or earnings of a listed company ***that would directly or indirectly manipulate the price of securities of that company*** would fall within the scope of Regulation 4(1). It is pertinent to mention that the initial intent of this Explanation was to clarify that element of dealing in securities or the element of inducing others to deal in securities need not be specifically proved in such cases where fund diversion is clandestinely made to reap the benefit of such diversions. Such concealed diversion would influence the investment/disinvestment decisions of the investors. Therefore, such diversion of funds are unfair trade practices and the element of dealing in securities or the element of inducing others to deal in securities need not be specifically proved in such cases.[11] However, the element of direct or indirect impact ***in the price of securities of that company*** in the Explanation which was notified and laid (before the Parliament), this condition is an essential ingredient for impugned acts to fall in regulation 4(1). Accordingly, it is necessary to allege that the acts specifically listed in Regulation 4(1) directly or indirectly impact the price of securities of the concerned company. In this case in has not been done in the IR and SCN. Be that as it may, this Explanation has not diluted the essence of prohibitions under Section 11(2) (e) and Section 12A of the SEBI Act and Regulation 3 of the PFUTP Regulations.

37. While Explanation to Regulation 4(1) requires possible direct or indirect impact of price of securities of the concerned company due to fund diversion, etc., Regulation 4(2)(e) operates in different field *viz*; the price manipulation by dealing in securities as actual *cause and effect*. In this case, in the SCN, there is not even a mention of price manipulation or influencing or manipulating the reference price or bench mark price of securities of Noticee No.1 as required under regulation 4(2)(e). Further, the present case is not a case of disseminating information or advice through any media, whether physical or digital as required under regulation 4(2)(k). Further, in this case there is no fact brought out in SCN to allege knowingly planting false or misleading '*news'* which may induce sale or purchase of securities as required under Regulation 4(2) (r) of the PFUTP Regulations. It is settled position that a view founded on what is claimed to be the spirit of the law is always attractive, for it has a powerful appeal to sentiment and emotion; but the deciding authority has to gather the spirit of the law from the language unless it suffers from ambiguity. What one may believe or think to be the spirit of the law cannot prevail

[11] *Para 2.3 of SEBI Board Note proposing the amendment of 2018.*

if the language of the law does not support that view, especially when penal provisions are invoked.

38. As regards the allegation of contravention of Regulation 4(2(f) it is inferred from the grouping of allegations in SCN that:

(a) By diverting Rs. 16.69 crore and Rs. 107.76 crore, respectively, to SEPL Noticee No.1 overstated expenditure and understated profits in its standalone and consolidated financial statements and reduced the amount of profit to the extent of Rs.124.45 crore during the investigation period;

(b) Noticee No.2 connived with Noticee No.1 and its promoters to divert funds of Rs. 107.76; and

(c) Noticees No 3 and 4; being signatory to the financial statements for Noticees No.1and 2, did not explain in the annual reports the exact purpose of investment in SEPL and knowingly published information which was not true in the course of dealing in securities;

(d) Noticee No.9 being Executive Director aided and abetted Noticee No.1, Noticee No3 and Noticee No. 4 in the alleged misrepresentation of its financial statements;

(e) Noticee No.10, despite being aware of the fraudulent transactions, signed fraudulently manipulated financial statements for FY 2019-20, FY 2020-21 and FY 2021-22 and signed false and misleading CEO/CFO Certificates.

39. These facts have also been mentioned in the allegation of contravention of provisions of Regulations 4(1)(c), 4(1)(e), 4(1)(g), 4(1)(h), 4(1)(j), and 4(2)(e) of the LODR Regulations. I prefer to deal with the same accordingly within the scope of these Regulations while dealing with merits of these allegations.

Business Judgement.

40. Learned Advocates for the Noticees No.1 and 2 have vociferously contended that SEBI's decision to question the transaction, which has undergone detailed scrutiny and approval by all stakeholders, reflects a regulatory overreach into the commercial and strategic decisions of the Noticee No.1. The appropriateness of the transaction has already been validated through an

established governance process and SEBI's observations fail to account for these approvals. SEBI's role is not to second-guess transactions undertaken in compliance with applicable laws and with requisite approvals. By stepping into areas that involve commercial substance and strategic decision-making, SEBI exceeds its mandate. Relying upon, the judgement of Hon'ble Supreme Court in *Miheer H. Mafatlal v. Mafatlal Industries Ltd., JT 1996 (8) 205,* it has been contended that as long as a company's management takes decisions in the interest of the company and in good faith, no action should be taken against them even if such business judgement is found to be erroneous. They have also relied upon the judgement in *Shri Fidaali Moiz Mithiborwala and Anr. v. Aceros Fortunate Industries Pvt. Ltd. and Ors., 2017 SCC OnLine NCLT 846,* the Hon'ble NCLT observed that the act of the person in the management shall not be *mala fide* with a sole motive for their unlawful gain or to unlawful loss to the aggrieved. Further, in *Brehm v. Eisner, 2000 Del. LEXIS 51,* the Supreme Court of Delaware observed that Courts do not measure, weigh or quantify directors' judgments unless there are unconscionable cases where directors irrationally squander or give away corporate assets.

41. It is pertinent to mention that Section 27 of the SEBI Act provides for a legal defense for individual culpability of the officers who were not in know of or were diligent in trying to prevent the company's non-compliance. If the contravention has been committed by a company and it is proved that the contravention had been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. In my view, an open immunity to directors as sought to be contended may lead to tyranny and militate against principles behind the liability under section 166 and 149 (12) of the Companies Act, 2013, the corporate governance provisions and the prohibitions contained in the SEBI Act.

42. The functions of SEBI under the provisions of SEBI Act converge with principles of corporate governance so as to maintain the tethering balance between corporate functionality and privilege of indoor management and between accountability towards investors' interests and corporates' opportunity with ease of doing business. In modern times, particularly with increasing scope of corporate responsibility beyond its indoor business, a listed company cannot enjoy an unlimited protective shield from the outsiders dealing with the company much less from the Regulator bestowed with duty of investors' protection. The scope for regulatory intervention in the case like present one could be to examine if the Noticees acted in *mala fide* manner, for their own interests

and against the interests of the investors in Noticee No.1 unethically/unfairly or fraudulently which adversely impacted the integrity of the securities markets.While the directors' business judgments cannot be measured, weighed or quantified, if their decision is unconscionable where they irrationally squander or give away corporate assets the case will certainly call for scrutiny. Generally, promoter's interests diverge from company and shareholder interests. If they decide to effectively transfer promoter liabilities onto the listed entity and its shareholders and actively conceal material alternatives from shareholders while seeking their approvals, the benefit of this exception will not be available. Any act falling within scope of prohibitions under the SEBI Act and PFUTP Regulations and affecting integrity of the securities market cannot be allowed in the garb of business decisions of directors.

Consideration of Allegations on merits and findings.

43. Although an allegation in the SCN is that the Noticee No.1 had not charged interest on unsecured loan to its subsidiaries Setco MEA Limited UAE, Setco Automotive (NA) Inc., Setco Automotive (UK) Ltd, the SCN (in para 39 and 40) does not charge Noticee No.1 for any contravention of Section 188 of the Companies Act, 2013.As the subject matter of this Section 188 is not delegated to SEBI and SCN also does not charge Noticee No.1 for any contravention in this regard, I do not deem it appropriate to examine this allegation.

44. Keeping above analyses in mind, I proceed to examine the merits of the allegations. I note that the allegations in this matter are broadly in following categories viz;

(a) Firstly, the diversion of funds/assets of Noticee No.1 to its the promoters' entities through a scheme of marketing/liaisoning service commission;

(b) Secondly, misappropriation/misutilisation and diversion of assets/funds of Noticee No.1by investment in the promoters' entities and subsequent impairment; and

(c) Thirdly, non- compliance with the disclosure requirements.

(d) Lastly, delay in appointment of CFO.

A. <u>Diversion of funds/assets and misappropriation/misutilisation and diversion of assets/funds</u>

45. The first two allegations are inter -connected and contravention of same provisions have been alleged hence, I prefer to deal both allegations by rearranging, in short, the factual matrix of the SCN. The crux of this allegation is that Noticee No.1, its wholly owned subsidiary Noticee No.2, and other Noticees viz; Noticees No. 3, 4, 9 and 10 engaged in a structured scheme to divert company funds to promoter entity i.e. SEPL/TTPL wherein there was:

(a) **Slump Sale of Clutch Business & Valuation –**

- Pursuant to BTA dated August 31, 2021, Noticee No.1 transferred its clutch business (sole revenue-generating unit) to Noticee No.2 *via* a slump sale for Rs. 0.05 crore. Post this transfer, Rs.615 crores was raised from IRF by Noticees No.1 and 2 through NCDs, CCDs, and equity at an effective IRR of up to 23%.

- No valuation of the clutch business was done prior to the slump sale. A post-facto valuation (2023) showed negative terminal value (Rs.40.06 crore) in contradiction to the positive terminal value for marketing commission of Rs. 194 crores from the clutch business.

- This restructuring was undertaken primarily to facilitate fund raising from IRF.

(b) **Misleading Shareholder Approval:**

- Shareholders approved a one-time payment of Rs. 100–110 crore without full disclosure-

  - in the EGM held on May 22, 2021, the shareholders of Noticee No.1 approved the amendment to the terms of the marketing commission arrangement with SEPL and Noticee No.2;

  - the resolution of marketing commission was approved under the pretext that marketing services/ activities are/were done by SEPL. Therefore, shareholders of Noticee No.1 were not informed that marketing/ liaisoning services, if any, are performed only by the Promoter and Directors of Noticee No.1, i.e., Noticees No.3 and 4.

(c) **Alleged Fund Diversion through Marketing Commission:** Rs.107.76 crore (one-time) and Rs.16.69 crore were paid as marketing commission to SEPL, a promoter entity.

- IR finds no evidence of actual marketing or liaisoning services by SEPL or by Noticees No.3 and 4, basis:
    - OEM customers denied any dealings with SEPL.
    - No marketing records, contracts, or expenses existed.
- The above payments allegedly overstated expenses and misled shareholders who approved the payments believing services were rendered.
- Perpetual marketing commission was paid to SEPL despite services allegedly being performed only by promoters who have no perpetual life. There was no comparable arrangement/ between Noticee No.1 and any other entity to show that its agreement with WEW was not disadvantageous to Noticee No.1.
- RoC had given conditional approval to Noticee No.1 for marketing commission to WEW that was valid only till March 31, 2015. No such approval was given for marketing commission to SEPL nor was it applicable from 2019-20 to 2022-23.

(d) **Protection of Promoter Interests**

- SEPL pledged shares of Noticee No.1 to raise funds for another promoter entity.
- SAL's investments allegedly helped prevent invocation of pledge of promoters' shares, thereby protecting promoter control using company funds.

(e) **Investments in Promoter Entities & Impairments.**

- Noticee No.1 invested Rs. 81.96 crore in 9% NCCRPS of SEPL, impaired Rs.11.93 crore, and received no dividend.
- Noticee No.2 invested Rs.13.07 crore in 0.01% NCCRPS of SEPL and advanced ₹5.98 crore to TTPL, impairing Rs.2.99 crore.
- Funds raised at 23% p.a. IRR were allegedly diverted to promoter entities at negligible or low returns.

46. I have perused the replies of the Noticees carefully and after due consideration and taking into account the above analysis and rulings, I hold that if; -

(a) the Noticees No1, 3 and 4 are found to have misrepresented the truth or concealed the material fact in respect of impugned financial transactions to the detriment of investors (in this case limited to minority shareholders of Noticee No.1);

(b) the impugned decisions of Noticees No.1, 3 and 4 was taken in connivance with Noticee No.2 as alleged with *mala fide* design to divert the assets of Noticee No.1 to the detriment of minority shareholders of Noticee No.1;

(c) Noticee No.9 being Executive Director aided and abetted Noticee No.1, Noticee No3 and Noticee No. 4 in the alleged misrepresentation of financial statements of Noticee No.1;

(d) Noticee No.10, being CEO aided and abetted Noticee No.1, Noticee No. 3 and Noticee No. 4 and knowingly signed fraudulently manipulated financial statements for FY 2019-20, FY 2020-21 and FY 2021-22 and signed false and misleading CEO/CFO Certificates;

their act affects integrity of securities market and would fall within the ambit of prohibitions under Section 12A(a), 12A(b), 12A(c) of the SEBI Act and regulation 3(b), 3(c), 3(d) and 4(2)(f) of the PFUTP Regulations.

47. At the first instance, I deem it pertinent to deal with certain ancillary concerns that are made basis of charge in the SCN. First, such concern is regarding the valuation of clutch business of Noticee No.1. According to the Noticees, neither the SEBI Act nor the LODR Regulations mandate obtaining a valuation report for a slump sale. Section 50B of the Income Tax Act, 1961 ('the I-T Act') provides the mechanism for computing capital gains in such transactions but does not require a valuation report to determine consideration or prescribe a specific methodology for its calculation. Accordingly, Noticee No.1 was under no statutory obligation to obtain a valuation report for the slump sale. Nevertheless, Noticee No.1 procured valuation reports viz; (i) a Review of Computation of Consideration under Rule 11UAE of the Income Tax Rules, 1962 for the purpose of slump sale,

dated October 28, 2021, by CNK & Associates LLP, and (ii) another report dated October 29, 2021, for computation of consideration, by V Parekh & Associates. The Computation Reports confirmed that the valuation of Rs. 0.05 crore was consistent with the negative net worth of the clutch business and adhered to the provisions of the I-T Act.

48. I note that although the SCN does not allege any undervaluation of the clutch business of Noticee No.1, it only alleges that the clutch business was the main operation that continuously generated all operating revenues for Noticeee No.1 and since Noticee No.1 was facing cash crunch, the slump sale was done to raise funds from IRF. In this case, the slump sale of the clutch business to Noticee No.2 for Rs. 0.05 crore was governed by Section 180 of the Companies Act, 2013, which does not mandate a valuation report if approved by the special resolution of the shareholders of the company. Nevertheless, in this case, the two independent NAV-based computation reports (Oct 2021) confirmed valuation consistency. A further DCF valuation (May 2023), voluntarily obtained as a governance measure, also confirmed negative net worth. These valuations conducted later (NAV and DCF methods) confirmed that the clutch business had negative net worth at the time of transfer. Thus, the consideration of Rs.0.05 crore reflected negative net worth and a negative terminal value (~₹40.06 crore) at the time of transfer. The hiving off of clutch business from Noticee No.1 to Noticee No. 2, was based on an independent valuation of future commission rights (revenue-linked), taking into account the loss-making clutch business valuation. The relevant extract of the valuation report for arriving at the one-time marketing commission payable to SEPL is as follows:

Table No.:3

(Amount in Rs. Crore)

Existing Structure			1	2	3	4	5	6	7	
	Rs. cr.		**FY22**	**FY23**	**FY24**	**FY25**	**FY26**	**FY27**	**FY28**	
	Sales		650	800	1,000	1,100	1,200	1,300	1,400	
									9,691	<-- **Terminal value**
	Commission	2%	13	16	20	22	24	26	28	
									194	<- **Commission**
2% with cap of 8 Cr.	Commission	2%	8	8	8	8	8	8	8	
	Forgo		-5	-8	-12	-14	-16	-18	-214	
	Discounting factor		0.86	0.73	0.63	0.54	0.46	0.40	0.34	
	Value		4	6	8	8	7	7	**72**	
	Total value								**112**	

49. From the above, I note that the marketing commission is capped at 2% of sales with a cap of Rs. 8 crore and in the valuation, the annual sales have also shown an increasing trend. Free cash flow is calculated after deducting capital expenditures from operating cash flow. Thus, even with increasing sales, a distressed business may have debts and operations costs that exceed its operational income. Therefore, I do not find any discrepancy if the valuation report has positive marketing commission and negative cash flows. In these facts and circumstances, no *mala fide* can be found with regard to valuation of the said clutch business.

50. SCN alleges that RoC had given conditional approval to Noticee No.1 for marketing commission to WEW that was valid only till March 31, 2015. No such approval was given for marketing commission to SEPL nor was it applicable from 2019-20 to 2022-23. Further, no marketing records, contracts, or expenses existed with Noticee No.1/SEPL. The Noticees have contended that Noticee No.1 outsourced its marketing and liaisoning functions to WEW for around 20 years. In 2017, this work was transferred to SEPL with terms of agreement and 2% commission on sales as payable to WEW remaining intact. The RoC approval was issued under the framework of the Companies Act, 1956, which required such approvals for related party transactions. This requirement ceased with the introduction of the Companies Act, 2013, because Section 188 of the Companies Act, 2013 (which deals with related party transactions) mandated obtaining shareholders' approval for related party transactions exceeding 10% of turnover. As the marketing commissions paid to WEW / SEPL were 2% of SAL's turnover, they fell below this threshold and did not require shareholder approval under the new framework. The Noticees have also contended that the requirements of RoC approvals fall within the purview of MCA and not SEBI as Section 24 of Companies Act, 2013 does not delegate administration of section 188 to SEBI.

51. I note that under section 188 of the Companies Act, 2013, Noticee No.1 was required to only obtain the consent of its Board of Directors given by a resolution at a meeting of the Board. Therefore, the allegation on Noticee No.1 regarding not seeking approval from RoC for payments to SEPL is not established. Further, as per regulation 23 (1) of the LODR Regulations, "*a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower."* Additionally, as per regulation 23(4) of the LODR Regulations, all material related party transactions shall require prior approval of the shareholders through resolution. Therefore, shareholder approval is required only for material related party transactions,

i.e., for transactions that do not exceed 10% of the company's turnover, no shareholder approval is required. Also, as SAL had no other marketing agreement with any entity, it would be incorrect to state that the agreement with WEW/SEPL was disadvantageous to SAL. Admittedly, the RoC approval to Noticee No.1 for marketing commission to WEW was valid till March 31, 2015 and the same was not applicable for marketing commission (@ 2% of SAL's turnover) to SEPL during relevant period from 2019-20 to 2022-23. Thus, it is admitted position that the compliance obligation of RoC approval was no longer required for such related party transactions for marketing commission by Noticee No.1 to SEPL. Shareholder approval was required only for "*material*" RPTs exceeding 10% of turnover, which was not the case here. Audit committee approval, not shareholder approval, governed the recurring commission arrangements in this case. Thus, this basis is not tenable.

52. The other basis (adverse inference in para 9.3.6 of the SCN) for alleging *mala fide* with regard to the allegation is that the OEM customers denied any dealings with SEPL as OEM customers interacted with Noticee No.3 and 4 and not SEPL or Noticee No.2. It is admitted position that Noticee No.1, Noticee No.2 and SEPL all three companies are group companies with Noticees No.3 and 4 being promoters of each of these companies. If Noticees No.3 and 4 interacted with OEM customers as head of Noticee No.1, no fault could be found that they were not interacting for services to be given by SEPL to Noticee no.1. Merely, because SEPL itself did not engage with OEM customers at the relevant times and they were contacted only by Noticee No. 3 and 4 cannot lead to inference that SEPL did not make efforts to engage with customers. Indubitably, a company is an artificial legal entity and cannot take decisions and meet OEM customers for negotiations. Thus, the authority to represent, engage, and decide vests with individuals such as persons comprising its Board of directors. Thus, the communication from OEM customers as relied upon in IR only suggests that SEPL did not engage with them and they knew only Noticee No.3 and 4. This is not a reasonable basis as Noticees No.3 and 4 who had, since long been engaging with OEM customers in capacity of promoters of Noticee No.1 and partners of WEW, were after above arrangements, representing SEPL/SAL as its directors.

53. Another basis in this regard is that there was no comparable arrangement/ between Noticee No.1 and any other entity to show that its agreement with WEW was not disadvantageous to Noticee No.1. Noticees have contended that SEPL, a promoter of Noticee No.1, had entered into an agreement with later to provide marketing and liaisoning services. SEPL took over these responsibilities from WEW, a partnership firm where the promoters of SEPL, Noticees No. 3 and 4, were partners. SEPL continued to operate under the same scope of work and terms as WEW. The marketing and liaisoning

services under the agreement with SEPL were carried out directly by its directors, Noticees No.3 and 4, who also served as promoters and directors of Noticee No.1. This dual arrangement or double-hatting is a common practice where individuals perform dual roles across related entities to optimize resources and ensure seamless coordination. I note that the exercise during investigation has not resulted in any negative allegation in this regard. The absence of any arrangement with any other party cannot be founded fault with as this arranging was in public domain and not hidden by the Noticees from anyone. The credibility or accuracy of the investigation is profound and fault free on several aspects. However, the absence of any cogent and verifiable material in respect of the dealings of Noticee No.1 with its OEM customers and similar arrangements in any other company in the same business at that time, the anticipatory observation in this regard belies the findings in the IR. The IR does not show any payment made to them as individuals.

54. A concern in the SCN is that marketing commission is calculated on a perpetual basis even though Noticees No. 3 and 4 are mortal human beings and they were the ones providing the marketing services in the name of SEPL. This concern is about longevity of directors but it misses legal status of SEPL who has entered into an arrangement as a separate legal entity. Legally, a company has perpetual succession until it is wound up and dissolved. It is perpetual truth that human directors cannot be immortal. SCN presupposes that directors a company which engage in any such service should have immortal directors. This presupposition lead to impossibility. However, if Noticees 3 and 4 are incapacitated for any reason, it would be an issue not only concerning SEPL but also for Noticeee No.1 and 2. This concern has to be addressed by board of Noticee No.1 or policy makers as to how to address a situation in a listed company if all directors are incapacitated or died. But this certainly cannot be ground to suggest that SEPL will lose its life alongwith lives of Noticees No.3 and 4 as attempted in the SCN. However, when seen in the context and perspective what becomes relevant is that whether Noticees No.3 and 4 used SEPL as conduit to get money in the garb of marketing commission for their personal benefit? This aspect is being dealt with in the later part of this order while dealing with merits of this allegation.

55. Learned advocate for Noticee No.3 pithily argued that observation in para 9.2.3 of the SCN is incorrect as it states that no shareholders' approval for marketing commission other than lump sum amount of Rs. 110 crores to SEPL was taken before the EGM held on May 22, 2021. To buttress her argument, learned advocate submitted that Regulation 23(2) of the LODR Regulations requires prior approval of related party transactions by audit committee and not approval of shareholders by a resolution to be passed in EGM as stated in Para 9.2.3 of the SCN. On perusal of said para 9.2.23

and provisions of Regulation 23(2) of the LODR Regulations, I find merit in this argument of learned advocate. I note that in the Notice to EGM held on May 22, 2021, Noticee No.1 had disclosed to its shareholder the proposal of lump sum marketing commission of Rs. 110 crore and marketing commissions @ 2% based on annual sales to SEPL.

56. A vibrant restructuring market for distressed assets facilities credit recovery albeit at cost but is desirable because it restores credit multipliers. Risk is mitigated but at a high cost. It is a common phenomenon and no fault can be fixed for such high cost recoveries as it is market driven. The SSFs, as permitted by SEBI to fix this distress, also come in as white knights to restore the credit multipliers at high costs and to secure their interest as they invest out of monies mobilised from investors. Further, any investment is made for positive net present value(NPV) i.e. where the present value of cash flow exceeds the investment. Such value is realised over the economic life of the business. From the investee company's point of view, economic life may be finite in PPP, mining, etc. but in niche business like in the present case the situation may not always be the same. In the best of the businesses, the stage of positive NPV occurs beyond the discounted payable period of 3 to 4 years or more but required return takes much longer. The security of investment by SSF, thus, becomes very crucial. Thus, these factors also become relevant factors for the cost of restructuring. Thus, no fault can be found that IRF restructured the loans at high cost.

57. Having dealt with ancillary concerns in SCN as above, I proceed to deal with core issue as alleged therein. In that regard, it must be kept in mind that while ethics influence fiduciary duties, courts avoid substituting their moral views for directors' rational business calls, preserving managerial discretion. It is obligatory upon the Regulator to apply the law keeping in mind the objective and purpose of the Regulations and it must evince rational interpretation and not be influenced by moral propensity. Also, the judgement of Hon'ble High Court of Kerala in the matter of ***Cochin Malabar Estate and Industries Ltd. and Anr. vs. P. V. Abdul Khader and Anr, 203(2) KLJ1*** is also relevant to rely upon. In that case, Hon'ble High Court of Kerala held that *"... The judges are ill - equipped to make business judgements. The Court cannot as a rule adjudicate upon the commercial judgement of board of directors.....Even a commercial misjudgement would not amount to oppression or mismanagement. The board of directors may err, every error cannot be a ground for action and the company court is not correctional court for all errors....."* Further, Hon'ble SAT in the matter of ***D-Link (India) Ltd. V SEBI [2008] 85 SCL 385 (SAT)*** dealing with similar issue held that: "*the company and its board of directors are best judges of the interest of their shareholders and it was primarily a business decision which the company took and neither the Board nor we can substitute*

our own views for theirs..... This is not a matter which affects the securities market… ... The Board is primarily a market regulator and its duty is to ensure that the market remains a safe place for the investors to invest. It cannot interfere with the business decisions taken by the company so long as they do not prejudicially affect the securities."

58. Further, while initiating actions as contemplated in this case, it is paramount to take into account the guiding factors under section 11 and 11 B of the SEBI Act as discussed above. The duty under section 11 is investor protection and orderly development of securities market. Interests of investors are undoubtedly of paramount importance. The object of section 11 which has *bona fide* purpose of investors' protection and orderly development of securities market should not be pushed aside giving way to mere technicalities and any measure in the interest of the investors which would pass the legal tests provided in the Regulation should be welcome. I am mindful of the fact that a business decisions of board of directors normally cannot be found fault by regulator unless such decision is found fraudulent or it affects integrity of securities market.

59. Keeping the above factors in mind, I proceed to examine as to whether the payment of Rs.124.45 crores marketing commission to SEPL from the funds received from the IRF was a fraudulent diversion and misutilisation of funds of Noticee No.1 that was against the interests of its shareholders and was only for the benefit of Noticees No.3 and 4 and it influenced the decision of minority shareholders (investors).

60. It is noted that Noticee No.1 was paying marketing commission to WEW/SEPL and disclosing the same in its Annual Reports of concerned Financial Years wherein Noticees No.1 and 2 and SEPL were disclosed as group companies with Noticees No.3 and 4 being promoters of each of them. Noticee No.1 has been paying marketing commission to WEW/ SEPL since 2004-05. The Annual Reports of SAL identify Noticees No.3 and 4 exercising significant control over WEW/SEPL. The marketing commission paid to associate concerns since 2004-05 is as follows:

Table No. :4

Year	**Commission (in Rs. lakh)**
2004-05	65.53
2005-06	129.32
2006-07	91.82
2007-08	170.14
2008-09	193.11

2009-10	220.55
2010-11	389.86
2011-12	553.04
2012-13	682.22
2013-14	619.71
2014-15	616.55
2015-16	863.79
2016-17	858.58
2017-18	893.86
2018-19	1,196.79
2019-20	834.09
2020-21	620.24
2021-22	215.56
2022-23	291.67
2023-24	250.00
2024-25	528.13

61. The IR attempts to allege that Rs. 16.69 crore from Noticee No.1 to SEPL was also fraudulent fund diversion but has not questioned the payments made to WEW as disclosed in the Annual Reports of Noticee No.1. IR perhaps has considered this amount because it was paid during investigation period but has exonerated the previous payments. Role of IA is to find facts and if a fact which has been continuing since long period it cannot be found fault partially. It can be totally legal or totally illegal. If payments made to WEW prior to investigation period are accepted as valid the same payment made by Noticee No.1 to SEPL cannot be invalid. IR clearly recognises its scope beyond the investigation period as it says - *"However, whenever deemed necessary, references were made to the events/ timeframes outside this period."* I, therefore, do not find any fault with payment of Rs. 16.69 crore by Noticee No.1 to SEPL.

62. I note that there is no quarrel that Noticee No.1, at the relevant times was, the largest manufacturer of auto-component and focused on MHCV clutches, faced severe and prolonged financial distress between 2018–2023 due to industry-wide slowdown. It was facing BS-VI transition disruptions, rising input costs, credit downgrades, and liquidity constraints due to market forces on its survivability and in also determining its optimal capital structure so as to turn around the company's profitability. It is also undisputed position that while the Noticees were taking steps for financial help, the COVID-19 hit this niche business hard, triggering defaults, disrupting supply chains, and threatening livelihoods for the employees and gig- workers of several companies. These factors cumulatively eroded profitability, restricted access to credit, and placed Noticee No.1 under acute

financial stress and it faced an acute liquidity crisis and financial crunch that threatened immediate shutdown of its clutch business. Its working capital was exhausted, promoter shares were fully pledged, share prices were falling, and conventional funding avenues were closed. A shutdown would have resulted in irreversible loss of OEM customers, mass employee layoffs, creditor losses, insolvency proceedings, and total erosion of shareholder value in Noticee No.1. Then Noticee No.1 secured temporary advances (Rs.12 crore at 12% interest) from long-standing customers and suppliers. It is also matter of record that Noticee No.1 made sustained attempts to raise capital through QIPs, structured finance, strategic investors, and lenders (Centrum, Edelweiss, Eaton, others), but most of the efforts failed due to market conditions, regulatory barriers, or investor withdrawal. As these efforts could be in the interest of Noticee No.1 and its shareholders, to that extent I don't not find any *mala fide* on the part of the Noticees.

63. However, it is pertinent to note that when the efforts to save the company was failing, the promoters changed the strategy and made all efforts to protect their own interests at the cost of Noticee No.1 and its minority shareholders. For instance, as admitted in the reply of Noticee No.1 that: -

> *"In or around August 2019, the Company had various oral discussions with Kotak wherein it offered to fund and takeover all loans against securities of the Company. However, this offer came with draconian conditions such as: (i) purchase of all promoter shares; (ii) ability to run the Company and use the promoters as employees; and (iii) exit the Company after 3-4 years by a strategic sale. All OEM relationships were single-handedly managed by Mr. Harish Sheth and Mr. Udit Sheth. Any change in their control over the Company would have resulted in loss of business."*

64. The Noticees, in the above submissions, suggest that even a gradual removal of Noticee No. 3 and 4 from Noticee No.1, over a period of 3-4 years, would result in loss of business because OEM relationships were single-handedly handled by them through SEPL. It is admitted fact that although the investments by Noticee No.1 and 2 in SEPL were made to salvage promoters/SEPL (which had raised approx. Rs. 150 crore) by pledging promoter's shares in Noticee No.1 and promoter's personal property to several banks) to invest in another promoter company SETPL, the default by SEPL would certainly jeopardize SAL's financial stability as loss of promoter control is likely to lead to lenders re-evaluating risk and seeking additional guarantees and in turn would adversely impact the shareholders' value in Noticee No.1. The Noticees No.3 and 4 being in charge of affairs of Noticees No1, 2, SEPL SETPL and TTPL all, were in position to gauge '*distance of default'* and '*probability*

of default'. They were in know of every situation faced by Noticee No.1. They had higher fiduciary duties of due diligence to protect to interests of Noticees No1 and its shareholders. Any prudent person having fiduciary duty to protect Noticee No.1 and its shareholders would accept such proposal instead of trying to protect his own interest at the cost of shareholders of the Noticee No.1. I find that these conditions – (i) purchase of all promoter shares (ii) ability to run Noticee No.1 and use promoters as employees and (ii) exit Noticee No.1 after 3-4 years by a strategic sale – were in the interests of the Noticee No.1 and its minority shareholders and promoters faced threat of losing their control over Noticee No.1, hence they did not pursue this proposal of Kotak Special Situations Fund.

65. Rather, after about two years of Noticee No.1 facing financial crunch they opted for a restructuring the loan of SEPL by IRF (a special situation fund-AIF) predominantly in the interests of Noticees No. 3 and 4 and in the interests of the SEPL/TTPL, entities controlled by them. It is important to mention here that SEPL, the promoter entity, had incurred borrowings to support SETPL (another promoter entity), pledging almost 100% of its holding in Noticee No.1 and providing personal guarantees to lenders. It was this borrowing that was restructured envisaging funding arrangement with IRF, involving:
    - Slump sale of its clutch business of Noticee no.1 to Noticee No.2,
    - Issuance of high-yield NCDs (@23% IRR,
    - Equity infusion into Noticee No.2,
    - Security including pledges of shares and personal guarantees of promoters.

66. It is noted that in the Notice dated April 26, 2021 for EGM dated May 22, 2021, item No. 11 it was, *inter alia*, disclosed to shareholders of Noticee No.1 that:

    "Post the consummation of the slump sale of the Clutch business to ClutchSub, ClutchSub may seek to limit the aggregate annual marketing commission payable by ClutchSub to SEPL on sales made by the ClutchSub and SEPL and the ClutchSub may enter into an arrangement wherein a one-time payment will be made by ClutchSub to SEPL to appropriately compensate SEPL for the aforesaid loss of future revenue on account of restructuring the marketing commissions and the terms will be finalised by the board of ClutchSub and SEPL.

    Currently, the rate of commission charged by SEPL to the Company is 2% of all sales made by the Company with respect to the Clutch business. Going forward, as part of Restructuring, it is proposed that the amount of marketing commission paid to SEPL will be 2% of all sales made

by ClutchSub and the aggregate marketing commission payable to SEPL by ClutchSub will be capped at approximately Rs. 8,00,000 (Rupees Eight Lakh only) per annum. The ClutchSub is proposing to make a one-time payment to SEPL in the range of Rs. 100,00,00,000 (Rupees One Hundred Crores Only) to Rs. 110,00,00,000 (Rupees One Hundred Ten Crores only) to compensate SEPL for the aforesaid loss of future revenue on account of restructuring the marketing commissions."

67. It was also disclosed that:

"Certain of the directors of the company (including Mr. Harish Sheth, Chairman and Managing Director and Mr. Udit Sheth, Vice Chairman) are common between the company, SEPL, ClutchSub and LCPL and therefore to that extent such directors may be interested in the aforesaid transactions. Furthermore, Mr. Harish Sheth, Chairman and Managing Director and Mr. Udit Sheth, Vice Chairman also form part of the promoter group of the Company and are shareholders of SEPL and to that extent are interested in the aforesaid transactions proposed to be entered into with SEPL.

...it is stated that since the directors are common between the various group entities and the shareholders of SEPL are directors of the Company, principles with respect to voting of the members as applicable to related party transactions under the extant provisions of the Companies Act and Listing Regulations would be applicable in respect of this item."

68. Therefore, it is noted that while approving the resolution minority shareholders of Noticee 1 were aware that: -

(a) the clutch manufacturing business of Noticee No.1 shall be transferred to Noticee No.2 at such consideration as may be decided by the board of Noticee No.1 not exceeding Rs. 5 lakh;

(b) SEPL was a promoter controlled entity where in Noticees No. 3 and 4 were directors and shareholders;

(c) SEPL was a company controlled by Noticees 3 and 4 and Noticee No.1 was paying 2% of all sales made by it to SEPL;

(d) as part of restructuring, the amount of marketing commission paid to SEPL will be 2% of all sales made by Noticee No. 2 and the aggregate marketing commission payable to SEPL by Noticee No. 2 will be capped at approximately Rs. 8 crores per annum; and

(e) one-time payment of the marketing commissions to SEPL in the range of Rs. 100 crores to Rs. 110 crores to compensate SEPL for the loss of future revenue on account of restructuring.

69. Thus, although the allegation that shareholders voted in favour of the resolution regarding payment of one-time marketing commission to SEPL without knowing that SEPL was a promoter entity is not correct, it is pertinent to note that the following most important and material disclosures were not made to shareholders at all: -

(a) that it was the loans of SEPL that were being paid; and

(a) the mortgages on personal assets of promoters were being released at the costs of Noticeee 1 by recording a one-time lump sum marketing commissions as expense in the books of Noticee No.1.

70. Thus, the disclosures to shareholders were certainly misleading and there was misrepresentation and active concealment of material facts. The shareholders were not aware that it is the risk of default by SEPL that will lead to adverse repercussions for Noticee No.1 and the payment of Rs. 107.76 crore to SEPL was being made to avert the default by SEPL. To that extent, the disclosures were incomplete, misleading and manipulative. I, therefore, find that the shareholders approved the resolution under the pretext that Noticee No. 1 was under financial distress and financing was for benefit of Noticee No.1. Despite the financial stress, when it came to drawing marketing commission from Noticee No.1, both Noticees No.3 and 4 have continued to take commission through WEW/SEPL for over two decades and sought compensation of Rs. 107.76 crore as one-time lump sum payment at a time when Noticee No.1 was financially struggling and by no means was in a position to make such payment especially considering its uncertain future.

71. SEPL had pledged its complete equity holding in Noticee No.1 to the private lenders and borrowed the funds. These funds were used by the SEPL to invest in SETPL, another promoter group company. Thus, the funds borrowed by SEPL through pledging the shares of Noticee No.1 were not used for Noticee No.1 but for SETPL. Thus, although Noticee No.1 had no role in pledging of shares and did not receive funds, it invested in SEPL to protect the invocation of the said pledge of shares held by

SEPL. Thus, the funds of Noticee No.1 were used to protect/ safeguard the financing of the promoter group company SETPL. The invocation of the promoters' share in Noticee No.1 was the personal liability of the promoter/SEPL and not of Noticee No.1. Hence, to protect the invocation of promoters' shares and to protect the position of the Promoter entity in SAL's management, Noticees No. 3 and 4 funded SEPL/ promoter entity. This was clearly misutilisation of SAL's funds/ resources in favour of promoter entity. Noticees No. 3 and 4 acted solely for their own benefits and created additional burden of high interest costs on the finances of Noticee No.1.

72. The details of shares of promoters pledged with IRF are noted as follows:

Table No. : 5

Date of event	**Creation/ Release of pledge**	**Particulars**	**No. of shares**
14.09.2021	Creation of pledge	SEPL	2,17,29,875
15.09.2021	Creation of pledge	Harish Sheth	1,16,000
15.09.2021	Creation of pledge	Udit Sheth	5,82,863
16.09.2021	Creation of pledge	Urja Shah	42,64,000
27.09.2021	Creation of pledge	Harish Sheth	81,575
27.09.2021	Creation of pledge	Harish Sheth HUF	61,080
27.09.2021	Creation of pledge	Sneha sheth	1,54,900
27.09.2021	Creation of pledge	Urja Shah	20,725
01.10.2021	Creation of pledge	SEPL	2,94,83,970
26.10.2021	Creation of pledge	Harish Sheth	27,00,000
26.10.2021	Creation of pledge	SEPL	50,000
03.12.2021	Creation of pledge	SEPL	82,50,000
31.12.2021	Creation of pledge	Udit Sheth	21,80,000
04.02.2022	Release of pledge	Urja Shah	42,64,000
08.02.2022	Release of pledge	Urja Shah	20,725
17.01.2023	Release of pledge	SEPL	83,00,000
20.01.2023	Creation of pledge	SEPL	83,00,000
	Total shares pledged to IRF		***6,53,90,263***

73. Further, the details of the funds received and utilization thereof by SEPL (by way of marketing commission and issuance of preference shares to SAL discussed later in this Order) as on November 18, 2021, are as follows:

Table No. : 6

Particulars	Date	Amount	Remarks
INFLOW OF FUNDS			
Issue of Preference Shares to SAL	6.09.2021	15,63,00,000	Preference Shares issued to SAL
Issue of Preference Shares to SASPL	6.09.2021	12,88,21,000	Preference Shares issued to SASPL
One time marketing commission	6.09.2021	87,32,79,000	Part payment of one-time marketing commission from SASPL
One time marketing commission	17.11.2021	19,34,95,500	Balance payment of one-time marketing commission from SASPL
Issue of Preference Shares to SASPL	17.11.2021	19,54,500	Preference Shares issued to SASPL
Total Received		***135,38,50,000***	
UTILIZATION OF FUNDS			
Housing and Finance Limited	7.09.2021	52,00,00,000	Repayment of Loan. Loan taken in 2016/ 2017 by SEPL. Rate of Interest – 12.50%. Security – Bungalow at Nepean Sea Road (of Promoters) and Personal Guarantee of Promoters. Upon repayment of the loan, mortgage was released.
JHP Finvest Private Limited on behalf of Harish Sheth	7.09.2021	22,16,23,196	Repayment of loan. Loan taken in the name of Harish Sheth – 2018. Accordingly, Harish Sheth is shown as a debtor in the books of SEPL. Rate of Interest – 23% Secured by pledge of 1,34,00,000 (10.01%) shares of SAL. Upon repayment of the loan, shares were released from pledge.
Finquest Financial Solutions	7.09.2021	18,41,74,615	Repayment of loan. Loan taken – 2017. Rate of Interest– 23% Secured by pledge of 1,83,00,000 shares of SAL (13.68%). Upon repayment of the loan, shares were released from pledge.
Ashish Ahuja	7.09.2021	8,47,51,015	Repayment of loan. Rate of Interest – 16% Loan taken in – 2017. Security – Pledge of 37,00,000 (2.77%) shares of SAL. Upon repayment of the loan, shares were released from pledge.
Tata Capital Financial Services Limited	7.09.2021	3,15,31,901	Repayment of Loan. Rolling loan facility, sanction amount – Rs. 40 Crores. Rate of Interest – 14% Security – Pledge of 3,05,60,884 (22.85%)

Particulars	Date	Amount	Remarks
			shares of SAL and Personal Guarantee of Promoters. Upon repayment of the loan, shares were released from pledge.
Yes Bank on behalf of Transstadia Holdings Private Limited	7.09.2021	6,06,99,288	Repayment of Loan. Loan taken by Transstadia in 2017. Rate of Interest– 15%. Security – Pledge of 47,84,000 (3.58%) shares by Promoter of shareholding in SAL and Personal Guarantee of Promoters.
Anil Kadakia	7.09.2021	2,00,00,000	Repayment of Loan. Rate of interest 18%. Loan taken in 2017-18. Repaid with interest. [*Not a related party.*]
Topsel Private Limited	7.09.2021	1,00,00,000	Repayment of Loan. No defined term. Rate of Interest – 12% [*Not a related party.*]
TDS and GST Dues of the Company	7.09.2021	2,56,19,985	Statutory dues payable by SEPL
GVFL Venture Capital Golden Gujarat Growth Fund I	18.11.2021	17,30,00,000	Repayment of Loan. Rate of interest 19%. 82,50,000 (6.17%) shares SAL were pledged for the loan. Upon repayment of the loan, shares were released from pledge.
SEPL	18.11.2021	2,24,50,000	Payment of outstanding interest, TDS & other dues.
Total utilization		**135,38,50,000**	

74. From the above table, it is seen that while Noticees No.1 and 2 borrowed funds from IRF at 23% p.a., with first charge being on the assets of Noticee No.1, it was SEPL (and resultantly the promoters) who cleared its personal liabilities with amount received as marketing commission and issuance of cumulative preference shares to Noticee No.1. Among other things, mortgage (Rs. 52 crore) on Bungalow at Nepean Sea Road (of Promoters) has been released, loan in the name of Noticee No.3 against shares of Noticee No.1 (Rs. 22.16 crore) has been paid off and statutory dues of SEPL (Rs. 4.8 crore) were paid. The security structure as detailed in the IRF term sheet is reproduced below:

"Security Structure

The security for the NCDs to be issued by SAL and ClutchCo as detailed above shall include but shall not be limited to the following, as finalised and detailed in the Definitive Documentation:

(a) First and exclusive mortgage charge on all fixed assets of ClutchCo.

(b) First and exclusive hypothecation on all the movable assets of ClutchCo (other than cars which have been secured for certain car loans) including current assets and bank/escrow accounts.

(c) Pledge of 100% shares of ClutchCo

(d) ***Personal and Corporate Guarantee from the Promoters".***

75. Thus, the promoters/SEPL have transferred the debt to Noticee No.1, a listed company already in distress since many years, secured against their personal assets and shares of Noticee No.1 to it. While earlier, a default by SEPL would have caused invocation of pledged shares of Noticee No.1 held by SEPL and attachment of bungalow of promoters, after the funding from IRF, a default would first result in attachment of assets of Noticee No.1. Although the marketing and liaisoning functions were outsourced for around 20 years (earlier to WEW, later to SEPL on identical terms) and the long-standing arrangement for payment of marketing commission (@2% of sales to WEW a partnership of Noticees No.3 and 4) was disclosed in SAL's Annual Reports, the alleged lump sum payment within approved range of Rs.100–110 crore by Noticee No. 1 to SEPL, was made at a time when Noticee No. 1 was financially struggling and by no means was in a position to make such payment. It would be naïve to believe that certain conditions for funding were not emphasized by the management of Noticee No.1 such as the one pertaining to payment of one-time lump sum amount in the garb of marketing commission.

76. In view of the above, I find that Noticees No.3 and 4 failed to exercise adequate due diligence in application of the funds of Noticee No.1 and invested in such instruments/ entity and in such conditions wherein no lenders/financial institutes were willing to give loans to the promoter entity/SEPL. In fact, as admitted by Noticees No.3 and 4, during the investigation, payment of lump sum marketing commission to SEPL was part of the structure to meet the liability of SEPL. Therefore, irrespective of the arrangement having been approved by the Audit Committee, Board of Directors and shareholders, the non-disclosure of distress in SEPL amount to concealment of a material fact and influenced the decision of shareholders/investors in securities of Noticee No. 1. Such non-disclosure operates as fraud in terms of regulation 2(1) (b) (ii) of the PFUTP Regulations.

77. While the valuation methodology (perpetual commission vs. negative terminal value of business) was not found arithmetically flawed, I find that: -

- The restructuring effectively enabled SEPL/promoters to repay promoters' debts.

- Personal assets and pledged shares of promoters were released, while Noticee No.1 assumed high-cost debt secured on its assets.
- The distinction between promoter interests and company interests was blurred.
- The structuring of loans with help of IRF was promoter-centric rather than being in alignment with minority shareholders' interest.

78. The second limb of the charge is that Noticees No.1 and 2 misappropriated/misutilised funds of Noticee No.1 and 2 by investing/advancing funds in promoter entities SEPL and TTPL and diverted the funds by subsequent impairments of investments/advances. It is alleged that such acts of misutilisation and diversion of funds from Noticee No.2 to the promoter entities SEPL and TTPL under the garb of investment and subsequent impairment are in the nature of manipulative, fraudulent and unfair trade practices in the securities market.

79. I note that allegations of misutilisation of funds of Noticee No.1 broadly emanate from the concern that investments by Noticees No.2 and 3 in SEPL were done to salvage SEPL, which had pledged all shares of Noticee No.1 to invest in another group company SETPL and that the funding from IRF was used to protect the invocation of the said pledged shares of SEPL. Resultantly, the objective was to protect/safeguard the financing of the promoter group company SETPL and the personal liability of the promoter/SEPL and not Noticee No.1. SEPL, the promoter entity, had incurred borrowings to support SAL's group operations, pledging almost 100% of its holding in Noticee No.1 and providing personal guarantees to lenders. Default by SEPL would have jeopardized SAL's financial stability.

80. Noticee No.1 invested Rs. 38.85 crore through 9% NCCRPS in SEPL in 2020-21. However, it secured funding from IRF in 2021-22 and invested another Rs. 19.75 crore and Rs. 23.36 crore in SEPL through 9% NCCRPS during FYs 2020-21 and 2021-22. The statement of application of the funds raised from IRF by Noticee No.1 provides that it used Rs. 15.63 crore from the funds raised through IRF to invest in SEPL. However, it did not receive any coupon from SEPL and further impaired total amount of Rs. 10.49 crore during FY 2020-21 to FY 2021- 22. The investments in SEPL were approved by Audit Committee and were disclosed in financial statements in compliance with applicable accounting standards. I agree that SEPL, as owner of SAL shares, had the right to utilize such shares as it deemed appropriate without the necessity to use it for SAL. Further, the pledge of SAL's shares was carried out transparently and in compliance with applicable disclosure norms. However, none of these contentions support the investment and impairment of investments

made by Noticee No.1 in SEPL as these were primarily driven to help SEPL meet its liabilities and were not linked to the functioning of Noticee No.1.

81. Further, with respect to the non-payment of dividend on NCCRPS instruments, the Noticees have contended that the investments by Noticee No.1 into SEPL were driven by necessity to mitigate a potential insolvency and risk of cessation of operations. Further, the investment in SEPL was part of the conditions set out for IRF funding and IRF funding, being rescue financing, was a necessity not an option for SAL. Also, NCCRPS are cumulative in nature meaning that any unpaid dividends accrued and remained payable, preserving SAL's entitlement. These instruments are specifically structured to provide financial flexibility during challenging periods by allowing the issuer to defer dividend pay-outs without being in default. The absence of dividend payments during the financial period in question does not constitute a financial loss for SAL. With respect to impairment of investment, Noticee No.1 has stated that the impairments are in accordance with the requirements of Indian Accounting Standards ('Ind AS) 36 and it does not extinguish SEPL's obligation to repay the underlying investment.

82. I note that shares of Noticee No.1 were pledged by SEPL to invest in SETPL, a group company. However, the declining share price triggered margin shortfalls on the pledged shares, forcing SEPL to pledge additional shares to meet these shortfalls. As a result, SEPL ultimately pledged nearly 100% of its shareholding in Noticee No.1. The onset of pandemic in 2020 resulted in further declining of prices of Noticee No.1 exacerbating the margin shortfalls on the pledged shares. Accordingly, Noticee No.1 made investments in SEPL during the investigation period as alleged in the SCN even before the IRF funding and despite non-payment of coupon and diminution in investment. The Noticees have contended that previous investment by Noticee No.1 in SEPL (in years before the investigation period) has been repaid. However, in all likelihood, the earlier investments were made when the financial conditions of both Noticee No.1 and SEPL were different. Irrespective of the financial conditions, repayment of earlier instruments is immaterial with respect to the non-repayment of coupon and principal by SEPL during the investigation period. The Noticees have contended that a default by SEPL would have created risks for Noticee No.1 due to standard cross-default provisions and these investments should not be viewed as conventional profit driven investments. If these are not seen as conventional profit driven investments, they can only be viewed as transfer to cover the liability of SEPL a promoter controlled entity. This is more so because these were related party transactions and should have been done on an arm's length basis. Mere disclosure

in Annual Report as done in this case will not help, in the facts and circumstances of the case, when shareholders are not informed with adequate details in fair manner about these transactions and funds have been misutilised as alleged.

83. Additionally, while Indian Accounting Standard 36 requires that assets are carried in books at their recoverable amount, it does not prescribe that even when investments are not being recovered, more funds should be invested in same/similar instruments, which is the allegation in this case. Although it does not extinguish the liability of SEPL, the recording of impairment legally signals to the shareholders that Noticee No.1 does not expect to recover the impaired amount. Hence, the submission by Noticee No.1 that it is hopeful of recovering it is just that – a claim not backed by solid evidence – and makes a mockery of the accounting standards by which a company is required to record its finances. In view of the above, I find that the usage of NCCRPS instruments to help an ailing promoter company (which was not in a position to repay the coupon or principal) year after year amounts to misuse of funds of Noticee No.1.

84. The SCN alleges that the funds of Noticees No.1 were misutilised and diverted to support SEPL and TTPL. Such misutilisation and diversion of funds are in the nature of manipulative, fraudulent and unfair trade practices in the securities market. The Noticees have stated that investments in SEPL were made with shareholder approval and were transparently disclosed in financial statements. Further, the investments have been defended drawing reference to the financial distress in Noticee No.1with the objective of stabilizing it and its associate entities. Additionally, it has been stated by the Noticees that impairments do not extinguish SEPL and TTPL's obligations for payment to Noticee 2 and that of Rs. 5.98 crore advanced to TTPL, Rs. 3 crores have already been repaid. I note that the term sheet, *inter alia*, provides as follows:

> "*INR 550 crore to be invested in SAL and ClutchCo as debt instrument (NCDs) as above mentioned, shall be utilized to:*
>
> *refinance all fund and non-fund based debt of the Clutch Business / ClutchCo.*
>
> *INR 105 cr. shall be utilized by ClutchCo to make payment to SEPL…*
>
> *In the range of INR 10 to 15 cr. will be funded by ClutchCo in SEPL by way of preference shares.*
>
> *The balance amount after taking into account the abovementioned items, to be utilised to finance the working capital, stretched creditors and statutory liabilities of the Clutch Business to be detailed in definitive documents"*

85. The statement of application of the funds raised from IRF indicate that Noticee No.2 invested Rs. 13.07 crore in 0.01% NCCRPS of Rs. 10 each of SEPL. Further, financial statements of Noticee No.1 for FY 2021-22 and FY 2022-23 state that Noticee No.2 advanced Rs. 5.98 crore at interest rate of 9% per annum to TTPL, a promoter group entity where Noticees No.3 and 4 are directors along with 2 others, and impaired Rs. 2.99 crore on such advances. I note that the investment in NCCRPS of SEPL were made in line with the conditions of IRF funding. It is a matter of fact that entities under financial distress are often subject to higher interest rates or returns by lenders and investors due to the elevated risk of default and the IRR of 23% charged by IRF reflects standard market practices in distressed lending scenarios. However, such lending at exorbitant costs would be acceptable if the lending was directly to SEPL or if it was Noticee No.1 that was in dire need of funds. The financial statements of Noticee no.1 for FY 2019-20, FY 2020-21 and FY 2021-22 show following key financial figures:

Table No. : 7

Balance sheet item of SAL *(Amount in Rs. crores)*

Particulars	**FY 21-22**	**FY 20-21**	**FY 19-20**
Share holders' funds	83.78	126.13	231.53
Current Liabilities	42.45	399.69	370.12
Current Assets	29.15	182.90	251.11
Investment in Group Entities	121.82	190.09	168.79

86. In the instant case, SEPL was in dire need of funds and while its default would have had its consequences on Noticee No.1 and its shares, the deal as it was agreed only ended up creating further stress in Noticee No.1. While there is no information as to whether any other deal was available to Noticee No.1 during that time, in the present case, 23% interest p.a. has been paid by Noticee no.1 while funds have flown almost for free from Noticee No.2 to SEPL. This finding is not arrived at with a hindsight bias as it is noted from the submissions of the Noticee that during August 2019, Noticee No. 1 had various oral discussions with Kotak Special Situations Fund wherein it offered to fund and takeover all loans against securities of Noticee No.1. However, the offer came with conditions such as (i) purchase of all promoter shares (ii) ability to run Noticee No.1 and use the promoters as employees and (iii) exit SAL after 3-4 years by a strategic sale. Thus, Noticees No.3 and 4 could have gone ahead with the deal and received necessary funding at the cost of promoters selling their shares to Kotak Special Situations Fund. As things stood in August 2019 and the events that followed from thereon, make it clear that Noticee No. 1 kept transferring funds to SEPL through NCCRPS during 2019-20 to 2021-22 under the pretext of saving Noticee No. 1 because of imminent

promoter default and resulting implications whereas the motive was to retain control over Noticee No. 1. Similarly, advancement of Rs. 5.98 crore at the interest rate of 9% p.a. to TTPL during FY 2021-22 and FY 2022-23 when Noticee no.2 had raised funds at 23% p.a. amounts to reckless and negligent decision making as the financial results of Noticee No.2 are consolidated with that of Noticee 1 and, therefore, fall under the SEBI purview. Further, Noticee No.1 did not recover any amount of dividend due on such investments in NCCRPS of SEPL. Thus, by impairing the investment, Noticee No.1 forewent the amount to be received from the promoter entity/ SEPL. By investing in SEPL, it misutilised funds of Rs. 81.96 crore and by creating provision on such investment, it transferred Rs. 11.93 crore to the promoter entity SEPL.

87. I, therefore find that Noticee No.1 misappropriated/ misutilised funds (Rs. 81.96 crore) and by creating provision on such investment, transferred Rs. 11.93 crore to the promoter entity SEPL. Further, Noticee No.2 invested in SEPL and TTPL, in connivance with Noticee No.1 and its promoters and misutilised and misappropriated funds of Rs. 19.05 crore (Rs. 5.98 crore + Rs. 13.07 crore). Further, by impairing the advance given to TTPL, Noticee No.2 transferred funds of Rs. 2.99 crore to the another promoter group company TTPL.

88. I am inclined to give benefit of doubt with respect to the allegations of misrepresentation of financial results because while the approvals may have been taken by misleading disclosures, the financial implications of such transactions have been appropriately recorded in the financial books of Noticee No. 1. Hence, violation of regulation 4(2)(f) of the PFUTP Regulations as alleged in pertaining to publishing of financial results that are not true is not established against Noticees No.1 and 2.

89. In view of the above it is found that the payment was made with the concealment of a material fact about use of funds were for releasing mortgage of promoters' property from the funds of Noticee No1 and repayment of loans of SEPL. In this case, it has been seen that a large portion of the funds were utilized to release the personal property of Noticee No. 3 and payment of statutory dues by SEPL. Hence, I find that the payment of Rs. 107.76 crore to SEPL amounted to misutilisation of funds of Noticee No. 1 in violation of provisions of Section 12A(a), (b), (c) of the SEBI Act and Regulation 3(b),3 (c) and 3 (d) of the PFUTP Regulations. Further, since the non-disclosure of the fact that the promoters had to salvage SEPL amounts to concealment of a material fact and such transfer of funds to SEPL/TTPL through NCCRPS operated as a fraud upon the shareholders, Noticees No. 1 and 2 violated provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act. and Regulation 3(b), 3(c), and 3(d), of the PFUTP Regulations.

B. Non- compliance with the disclosure requirements.

90. The SCN alleges that Noticee No. 1 disclosed that for issuance of NCDs, fixed rate is 5% per annum and redemption will be as per Debenture Trust Deed ('DTD') whereas the IRF funding has been raised at the rate of 23% p.a. The Noticees have contended that regulatory frameworks categorize the redemption premium under *"redemption terms"* rather than "*coupon rate"* or "*interest rate*." SAL's compliance with Regulation 30 of the LODR Regulations ensured that stakeholders were informed of the fixed coupon rate of 5% and were directed to the DTD for detailed redemption terms. The redemption premium was incorporated into the NCD's overall structure, with its details documented in the DTD. The DTD was made accessible for inspection under Section 71 of the Companies Act 2013, read with Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014. Further, the redemption premium rate while not disclosed as a standalone figure, was reflected in SAL's financial statements, particularly the Profit and Loss account, which accounted for the effective IRR of 23%.

91. I note that Clause 7 of Ind AS 107 requires financial statements to include information on the role of financial instruments in the company's financial health, covering their contributions to assets, liabilities, income and expenses. It also mandates comprehensive disclosure of risks arising from these instruments, including credit, liquidity, and market risks, along with strategies for managing them. Specifically, the Object clause and clause 7 of IND AS 107 (Financial Instruments: Disclosures) require entities to provide disclosures and information in their financial statements that enable users to evaluate:

- the significance of financial instruments for the entity's financial position and performance; and
- the nature and extent of risks arising from financial instruments to which the entity is exposed during the period and at the end of the reporting period, and how the entity manages those risks.

92. Further, Regulation 30 of LODR Regulations read with the SEBI Circular dated September 9, 2015 ("SEBI Circular 2015"), requires listed entities to disclose, *inter alia*:

- The coupon or interest rate offered, along with the schedule of payments for interest and principal.

- Details of redemption, including the manner of redemption (e.g., from profits or fresh issue).

93. Redemption premium is the extra amount paid by issuer of NCDs to its investors above the original face value when the investment is paid back. Therefore, it becomes part of redemption terms and in this case, is different from the 5% monthly coupon payable to IRF. From the corporate announcement dated September 06, 2021, I observe that the disclosure mentioned 5% coupon interest payable monthly and "*details of redemption of debentures*" and "*special rights/interest/privileges attached to the instrument and changes thereof*" to be "*as per the terms of the debenture trust deed*". Note 15 to the Consolidated Financial Statements for FY 2021-22 as shared by the Noticees lists down NCDs worth Rs. 565 crore and accrued interest of Rs. 52.98 crore (9.38% of 565 crores as funding was received in September 2021). The profit and loss account for 2021-22 discloses an increase in finance costs from Rs. 59.08 crore in 2020-21 to Rs. 108.32 crore in 2021-22.

94. Further, the details of the NCDs issued to IRF have been mentioned in the consolidated financial statements for 2021-22 along with the security structure for these NCDs as follows:

"The parent company issued 3500 nos. of unlisted Non-Convertible Debentures of face value of Rs. 10 lakhs each to India Resurgence Fund. The said liability was then transferred to the transferred company SASPL under BTA.

.....

Security Structure for Non-Convertible Debentures issued by india Subsidiary is as under:

(a) First and exclusive mortgage charge on all fixed assets of the company.

(b) First and exclusive hypothecation on all the movable assets of the company (other than cars which have been secured for certain car loans) including current assets and bank/escrow accounts.

(c) Pledge of 100% shares of the company held by holding company

(d) Personal guarantee of the Promoters

(e) Corporate Guarantee of Setco Automotive Limited and Setco Engineering Private Limited

(f) Pledge of promoter holding of SAL Shares and SEPL Shares (including all preference shares and convertible securities)

(g) Demand Promissory Notes and letter of continuity thereto

(h) Undated Cheques from SAL."

95. I also note that the shareholders of Noticee No.1 approved the issuance of NCDs through a postal ballot on May 22, 2021, granting its Board of Directors full authority to finalize all terms and

conditions of the issuance, including the coupon rate, redemption premium and other conditions. The DTD was always available for inspection by shareholders. Therefore, I am of the opinion that while the disclosure of redemption premium of 18% could have definitely been made more transparently by Noticee No.1, in the facts and circumstances of this case including disclosure in annual reports, benefit of doubt can be extended to the Noticees. Therefore, violation of regulation 4(1), 33(1)(c), 34(3) and 48 of the LODR Regulations is not established.

96. The other allegation under this head as per the SCN is that in the Annual Report for FY 2021-22, Form AOC-2 was not filed. Thus, it is alleged that Noticee No.1 failed to provide Form AOC–2, in non-compliance of Rule 8(2) of the Companies (Accounts) Rules, 2014 which also resulted in violation of the proper disclosure requirements, contravening provisions as per Regulation 4(1), 33(1)(c) and 34(3) of the LODR Regulations. The Noticees have submitted it to have happened due to oversight and have contended that the lapse was procedural and not intentional as all related-party transactions for FY 2021-22 were disclosed in the financial statements under Note 38 in compliance with Ind AS 24. These transactions were conducted within the ordinary course of business, assessed as non-material, and aligned with Section 188 of the Companies Act, 2013.

97. I note that while filing the financial statements with MCA, an entity has to file AOC-2 Form mentioning the particulars of contracts or arrangements with related parties referred to in Sub-section (1) of Section 188 of the CA 2013, read with the provisions of Section of 134(3)(h) of the CA 2013, i.e., Form AOC-2 in financial statements requires disclosure of material related party transactions, including certain arm's length transactions. On perusal of Note 38 of financial statements for 2021-22, I observe that Setco MEA Limited UAE, Setco Automotive (NA) Inc., Setco Automotive (UK) Ltd. have been disclosed as related parties with Setco Automotive (UK) Ltd. being disclosed as Wholly Owned subsidiary of Noticee No.1. Loans and advances to these three entities have also been disclosed. Hence, the omission of Form AOC-2 did not compromise the integrity or comprehensiveness of SAL's financial disclosures. Hence, I consider this lapse as a venial one.

C. Non- Appointment of CFO within the specified time

98. The SCN further alleges that Noticee No.1 has violated the provisions of Regulation 4(1)(g) of the LODR Regulations read with Section 203(4) of Companies Act, 2013 as its CFO, Mr. Vinay Shahane, vacated the office with effect from November 23, 2020 but new CFO, Mr. Rovinder

Kumar Singla was appointed with effect from August 02, 2021 after more than 6 months of vacancy of the CFO position.

99. The Noticees have submitted that Section 203(4) of the Companies Act, 2013 is a specific provision of company law, and at the relevant time, there was no corresponding obligation under the LODR Regulations that empowered SEBI to take action on this issue. Under Section 24 of the Companies Act, 2013, SEBI's regulatory jurisdiction is limited to matters specifically related to securities markets, such as the issue and transfer of securities and the non-payment of dividends, for listed companies or those intending to list their securities. All other matters under the Companies Act, 2013, including managerial appointments under Section 203, are to be administered and enforced by the MCA or other authorities designated under the Companies Act, 2013. Hence, this matter is not under SEBI's purview. Further, the Noticees have stated that the delay in appointing the CFO was caused by extraordinary circumstances beyond its control. The vacancy arose due to the untimely demise of the then serving CFO during the first wave of the COVID-19 pandemic. SAL's operational headquarters are located in Kalol, Gujarat, a remote region with limited access to talent pools for specialized roles such as that of a CFO during that time. The pandemic significantly amplified these challenges, as potential candidates were unwilling to relocate or commit to frequent travel due to health risks and logistical constraints.

100. I note that in terms of Section 203(4) of the Companies Act, 2013 the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy of the position of CFO. In this case, it is shown that that vacancy in the position of CFO arose on November 23, 2020 on account of the untimely demise of the serving CFO and there was a delay of during the Covid-19 pandemic and the operational headquarters located in a remote area, thereby constraining, appointment of a potential candidate within 6 months. Considering the unprecedented times that the Covid-19 pandemic presented, I take lenient view in this regard and don not consider this allegation worthy of imposing any penalty.

Consideration of action.

101. Having held that the payment of one-time marketing commission to SEPL and investment by Noticees No. 1 and 2 in SEPL and TTPL amounted to misutilisation of funds of Noticee No.1 (Noticee No. 2 being its wholly owned subsidiary), I proceed to ascertain the liability of the directors and other officers associated with the obligations.

102. Section 27(1) of the SEBI Act states that where a contravention under the SEBI Act has been committed by a company, every person who at the time of contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished. This is a peculiar case where the interest of the promoters was pitted against the interest of the company and the promoters decided to salvage themselves from insolvency at the cost of the company. Further, a company, though a legal entity, cannot act by itself. Section 27 (2) of the SEBI Act states that where a contravention under the SEBI Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. It is evident from the impugned transactions of payment of marketing commission, misleading disclosures and investments and impairments in promoter entities that such investment was done through Noticees No. 1 and 2 by Noticees No. 3 and 4 who were the persons in charge of their affairs and also the ultimate beneficiaries being the directors and promoters of SEPL (who had no employees or expenses) and TTPL. The impugned payments/investments in promoter entities has acted as fraud upon the minority shareholders of Noticee No. 1. Further, as is evident from the findings above, these Noticees have failed to appropriately manage their conflicts of interest while managing the business of Noticees No. 1 and 2 so as to shift their liability to Noticees No. 1 and 2. Therefore, Noticees No. 3 and 4 have violated the provisions of Section 12A(a), (b), (c) of the SEBI Act and Regulations 3(b), (c), and (d), of the PFUTP Regulations along with regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(iii)(3), 4(2)(f)(iii)(5), 4(2)(f)(iii)(6) and 4(2)(f)(iii)(7) of the LODR Regulations, which require directors to conduct themselves with operational transparency, monitor effectiveness of Noticee No. 1's governance practices and manage conflict of interest of management. These contraventions attract monetary penalty also under Sections 15HA and 15HB of the SEBI Act as described in the SCN.

103. Noticees No. 9 being the Executive Director of Noticee No. 1 was required to exercise due diligence, maintain high ethical standards, exercise objective independent judgement on corporate affairs and monitor the effectiveness of Noticee No. 1's governance practices as well as conflict of interest of promoter group entities to ensure that all shareholders are treated fairly. She cannot seek to be absolved of this responsibility thrust on members of the board of a company by contending that she was not involved in the operational or financial affairs of Noticee No. 1, that

presence in board meetings is not equivalent to approval and vote was part of "*collective decision making*". She has relied on *Gangula Mohan Reddy v. State of Andra Pradesh, AIR 2010 SC 327* and *Ramesh Kumar v State of Chattisgarh*, to contend that for proving abetment, three prongs must be satisfied: (a) instigating any person to do a thing; (b) conspiracy to do the alleged act; and (c) intentionally aiding by doing or not doing something to facilitate the alleged abetted act. I note that the said case pertains to criminal law and such level of ingredients are not applicable in civil law where concerted actions are sufficient to level a charge of aiding another in any act, specially involving financial fraud. The reliance on *Soumen Chatterjee v. SEBI 2021 SCC Online SAT 620, Sham Sunder v. State of Haryana, (1989) 4 SCC 630* and *Sayanti Sen v. SEBI, 2019 SCC OnLine SAT 132* to contend that merely attending board meetings does not make a person deemed to have knowledge of the affairs and mismanagement of the company is misplaced because in this case, the fact that Noticee No. 1 and 2 were in financial distress was well-known and in such situation payment to promoter entities through one-time lump sum marketing commission and through investments and impairments of NCCRPS instruments was questionable and cannot be expected to have not been known to Executive Director of the company. Further, Noticee No. 9 has not been able to demonstrate her *bona fide* by proving that the impugned decisions of the Board of Noticee No. 1 were taken without her knowledge or consent. I, therefore, find that Noticee No. 9 has violated Section 12A(a), (b), (c) of the SEBI Act, Regulations 3(b), (c), and (d) of the PFUTP Regulations and regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6), 4(2)(f)(ii)(7), 4(2)(f)(iii)(1), 4(2)(f)(iii)(3), 4(2)(f)(iii)(5), 4(2)(f)(iii)(6) and 4(2)(f)(iii)(7) of the LODR Regulations. These contraventions attract monetary penalty also under Sections 15HA and 15HB of the SEBI Act as described in the SCN. However, the allegation of violation of regulation 4(1), 4(2)(e), 33(1)(a), 33(1)(c), 34(3) and 48 of the LODR Regulations by the Noticee No.9 is not made out against Noticee No. 9 as the impugned transactions were reflected in accounting statements of Noticee No. 1.

104. Similarly, Noticee No. 10 being the CEO (from April 2019 to March 2022) of Noticee No. 1 cannot seek to be absolved of his responsibility by stating that his role in board meetings was limited to providing operational inputs and ensuring the implementation of decisions and that presence in board meetings is not equivalent to approval and vote was part of "*collective decision making*". If the contention of collective decision making were allowed, no action for misconduct or violation of provisions of SEBI Act and regulations thereunder can be made out for any listed company and its board of directors and KMPs. The reliance on *SEBI v. Gaurav Varshney (2016) 14 SCC 430* to contend that the liability for an offence depends on the role played by a person in

the company and not by the designation they hold is misplaced because the fact that Noticee No. 1 and 2 were in financial distress was well-known and in such situation payment to promoter entities through one-time lump sum marketing commission and through investments and impairments of NCCRPS instruments was questionable and cannot be expected to have not been known to the CEO of the company. Further, Noticee No. 10 has not been able to demonstrate his *bona fide* by proving that the impugned decisions of the Board of Noticee No. 1 were taken without his knowledge or consent. Therefore, Noticee No. 10 is found to have violated the provisions of Section 12A(a), (b), (c) of the SEBI Act, Regulations 3(b), (c) and (d) of the PFUTP Regulations. As far as certification of financial results is concerned, considering that the impugned transactions were reflected in accounting statements of Noticee No. 1, the charge of false CEO certification is not made out. Accordingly, violation of regulation 17(8) read with Part B of Schedule II of the LODR Regulations is not established.

105. Coming to the role of Noticees 5, 6 and 7, i.e., the audit committee members of Noticee No. 1, I note that under regulation 24(2) of the LODR Regulations, audit committee of listed entity is required to review the financial statements of the listed entity, including the investments made by the unlisted subsidiary of the listed entity. It is pertinent to mention that Section 149(12) of the Companies Act, 2013 contains a safe harbour provision that protects certain types of directors against liability such as (i) an independent director; (ii) a non-executive director who is not a promoter; (iii) a director who is not a key managerial personnel. Such directors: "*shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently."* The Central Government (Ministry of Corporate Affairs) on March 02, 2020 issued a circular clarifying that such directors should not be arraigned in any civil or criminal proceeding under the Companies Act unless they meet the criteria set out in section 149(12). The directors such as nominee directors (nominated by the Government or banks and financial institutions) or those appointed by adjudicatory bodies such as the National Company Law Tribunal (NCLT) are covered in this circular's ambit. In this case, considering that the payment of marketing commission to promoter entity and investment by unlisted subsidiary Noticee No. 2 in associated concerns of Noticee No. 1 was duly disclosed in financial statements of Noticee No. 1, I am inclined to extend benefit of doubt to the Noticees No.5,6 and 7. However, I hereby warn them to be diligent for investors' protection while discharging their obligations as independent directors. Similarly, with respect to Noticee No. 8, the CFO of Noticee No. 1, I am

inclined to extend benefit of doubt because both the payment of marketing commission and investments in promoter controlled entity and its impairments were disclosed in the financial statements of Noticee No. 1.

106. Coming to the possibility of direction and/or imposition of monetary penalty in this case it is pertinent to mention that for exercising the choice to issue directions and monetary penalties in the peculiar facts and circumstances of this case, I have also been guided by the principles of consistency and proportionality. While proportionality demands a penalty should be proportionate with the mischief it seeks to address and penalties cannot be disproportionate to the magnitude of default. No arithmetical formula can be devised to impose a fixed penalty on each case.

107. It is pertinent to consider, in context of actions against companies in such case, that the SEBI Act provides for ample opportunities for creation of businesses, smooth means of capital raising and breathing life to companies where growth is possible under regulated environment. Thus, it entails creative sustenance rather than destruction as it operates in freedom of doing business instead to compulsorily closing it for technical reasons. Having been granted exemplary powers and functions, the duty is also cast on SEBI under section 11 of the SEBI Act to take measures *inter alia* to promote the development of the securities market. The guiding factors for invoking directions under section 11 and 11B are *"the interest of investors or 'orderly' development of securities market*.' One of the crucial facets of the national goal (*Viksit Bharat*) is '*ease of doing business'*. Therefore, all the powers and function are to also be aligned with said National objectives. The duty under section 11 read with section 11B creates greater responsibility to strike a balance between regulatory overreach and possible mischief containment taking into account its duty of market development based on sound principles of corporate governance.

108. This is peculiar case on several counts. No price manipulation has been found or alleged. Except for concealing material disclosures from shareholders as found in this case Noticee No.1 has made all disclosures in its financials. Noticee No. 1 and 2 both had been facing financial crunch. Although after restructuring in this case, Noticee No.1 showed some sign of revival, its present position has again deteriorated. It is, presently, suffering from high cost of borrowing resulting in high interest expense and net losses as can be seen from the below image of its profit/loss since March 2014:

	Mar 2014	Mar 2015	Mar 2016	Mar 2017	Mar 2018	Mar 2019	Mar 2020	Mar 2021	Mar 2022	Mar 2023	Mar 2024	Mar 2025
Sales +	402	508	568	543	554	660	451	348	423	527	616	691
Expenses +	365	444	493	484	493	563	415	358	439	487	544	581
Operating Profit	**38**	**64**	**74**	**59**	**61**	**97**	**36**	**-10**	**-16**	**40**	**72**	**109**
OPM %	9%	13%	13%	11%	11%	15%	8%	-3%	-4%	8%	12%	16%
Other Income +	17	4	6	0	23	6	-1	-24	-93	-8	1	11
Interest	23	26	33	51	50	53	57	59	108	155	180	217
Depreciation	14	16	19	30	32	34	32	34	37	38	35	32
Profit before tax	**18**	**26**	**28**	**-22**	**0**	**17**	**-54**	**-127**	**-254**	**-161**	**-141**	**-129**
Tax %	-2%	21%	19%	-38%	304%	103%	-8%	-3%	1%	19%	-4%	-2%
Net Profit +	**18**	**21**	**23**	**-14**	**-1**	**-1**	**-50**	**-123**	**-257**	**-192**	**-135**	**-126**
EPS in Rs	1.37	1.55	1.74	-0.65	0.28	0.23	-3.33	-8.98	-16.77	-11.40	-8.42	-7.86
Dividend Payout %	39%	39%	46%	-100%	285%	427%	0%	0%	0%	0%	0%	0%

(Source: www.screener.*in)*

109. Further, from the corporate announcement made by Noticee No.1 on September 04, 2025, I note that ICRA has downgraded the credit rating of Noticee No.2 to D (i.e. in default or expected to default soon):

Re: Intimation of Revision in Credit Rating

Pursuant to Regulation 30(6) read with Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("the Regulations"), we wish to inform you that ICRA Limited, vide its letter dated September 3, 2025, has reviewed and revised the credit rating of *Setco Auto Systems Private Limited*, a subsidiary of the Company, as under:

Instrument	**Previous Rated Amount (Rs. crore)**	**Current Rated Amount (Rs. crore)**	**Rating Action**
Long term- Non-convertible Debenture	215.00	215.00	[ICRA] D downgraded from [ICRA] B-(Stable)
Long term- Non-convertible Debenture	350.00	350.00	ICRA] D downgraded from [ICRA] B-(Stable)
Long term- Proposed Non-convertible Debenture	20.00	20.00	ICRA] D downgraded from [ICRA] B-(Stable)
Total	**585.00**	**585.00**	

110. Hence, Noticees No.1 and 2 are is seen to be in persistent distress even at this stage and imminent threat to sustenance of its going concern status. In fact, in the Annual Report of Noticee No.1 for 2024-25, independent auditors have opined as follows:

"*We reproduce hereunder the 'Material Uncertainty related to Going concern' paragraphs forming part of our audit report dt. 22nd May 2025, issued by us for a subsidiary viz. SETCO Auto Systems Private Limited (SASPL), which is reproduced as below:*

We draw attention to the Note No. 45 to the Statement about company's 'Going Concern' status. The financial statement of the Company indicates that the Company has incurred a net loss (i.e., total comprehensive income) of Rs. 11,224 Lakhs during the year ended on 31 March 2025 (Rs. 11,790 Lakhs for the year ended on March 31, 2024) and reports a negative net worth of Rs. 69,577 Lakhs as on March 31, 2025 (Rs. 58,352 Lakhs as of March 31, 2024). The magnitude of accumulated losses and negative net worth of the Company, indicates the material uncertainty related to going concern and needs to be addressed by the Management.
Our opinion is not modified in respect of this matter".

111. This is also not a case of fraudulent dealings by way of manipulative trading causing harm to entire market. The only allegation on Noticee No.2 is connivance with Noticee No.1 which can happen only with involvement of human mind which in this case were Noticees No. 3 and 4. This case is more aligned towards poor corporate governance and unfair acts of management rather than an act of company for its own benefit. Any drastic action against Noticees 1 and 2 at this stage will ultimately harm the minority shareholders of Noticee No.1. Though I hold them technically liable being a legal and juristic person, all their acts were done by Noticeees No. 3, 4, 9 and 10. I, therefore, do not consider this case fit for imposing any restraint or financial burden on Noticees No.1 and 2. However, they must be made answerable as per established tenants of rule of law without leaving incentives for fraudulent practices, based on creativity of disingenuous, to survive the legal gambits. Considering all these factors, I deem it fit to order remedial directions and find that no penalty is necessary under section 15HA or 15HB of the SEBI Act on Noticees No.1 and 2. In my view , such directions are in order to meet the ends of justice. I am also mindful of the purpose of such remedial actions as held in the judgement of Hon'ble SAT in the matter of *Libord Finance Ltd. vs. Whole Time Member, SEBI* wherein it was held that the preventive and remedial measures under section 11/11 B of the SEBI Act might also have penal consequences, but that would be incidental. The purpose or the basis of the order or the directions would nevertheless be to protect the interest of investors.

112. As regards action against Noticees No. 3, 4, I note that they were actively involved in the entire scheme for their sole benefit. Noticees No. 9 and 10 also having managerial positions and involved in decision making in aid of Noticees No. 3 and 4 cannot escape liability for defaults as found in this case. In my dual actions as contemplated in the SCN against these Noticees will be commensurate with their defaults and violations.

113. I note that Section 15I (2) of the Adjudication Rules gives discretion and application of the principles of reasonability and proportionality. Proportionality demands that a penalty should be proportionate with the mischief it seeks to address and penalties cannot be disproportionate to the magnitude of default. In fact, Section 15J of the SEBI Act cast duties to consider several other factors. I reproduce provisions of Section 15J of the SEBI Act as follows:

> ***"Factors to be taken into account while adjudging quantum of penalty.***
> *15J. While adjudging quantum of penalty under section 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 15AA 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."*

114. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under Section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty as he thinks fit"* are of considerable significance, especially in view of the guidelines provided by the legislature in Section 15J. Further, in the explanation appended to Section 15J, which was brought vide Part VIII of Chapter VI of the Finance Act, 2017, the legislative intent has been reinforced that while adjudging the quantum of penalty the Adjudicating Officer has discretion and such discretion should be exercised having due regard to the factors specified in Section 15J. It is also settled position that the words *"shall be liable to*" used in the context of "*penalty*" in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the authority to impose any penalty as he deems fit and commensurate with the violation. Further, having regard to the factors listed in Section 15J and the guidelines issued by Hon'ble Supreme Court of India in ***SEBI v. Bhavesh Pabari Civil Appeal No(S).11311 of 2013*** vide judgement dated February 28, 2019, it is noted that the provisions of Section 15J has to be properly understood, and not to be mechanically applied and other factors reasonable for the facts of the case are also relevant to take into account

for adjudging the quantum of penalty. I have also been guided by the principles of consistency and proportionality.

115. In this case, several allegations made in the SCN have not found ground. Further Noticees 6 and 10 have been found to be acting in aid of Notcees No. 3 and 4. All disclosures expect those concealed from shareholders in Notice of EGM dated May 22, 2021 have been made. However, I hasten to add that SEPL, the promoter entity, had incurred borrowings at high costs to support SETPL (another promoter entity), pledging almost 100% of its holding in Noticee No.1 and providing personal guarantees to lenders. The promoters feared that a default by SEPL would jeopardize SAL's financial stability as loss of promoter control is likely to lead to lenders re-evaluating risk and seeking additional guarantees. The misutilisation of funds of Noticee No.1 broadly emanate from the fact that investments by Noticee No.1 and 2 in SEPL were done at high costs to salvage SEPL, a company wherein Noticees No.3 and 4 are the only shareholders and promoters/directors which had pledged all shares held by it in Noticee No.1 to invest in another promoter company SETPL and that the funding from IRF was used to protect the invocation of the said pledged shares of SEPL and redemption of properties of personal asset of Noticee No.3 . Resultantly, the whole scheme was to protect/safeguard the financing of the promoter group company SETPL and the personal liability of the promoters/SEPL and not Noticee No.1. It is classic case that the scheme in this case was prominently for the benefit of Noticees No.3 and 4. Noticee No.3 got the mortgage on his house released and they both being only shareholders/promoters on SEPL would enjoy benefit of marketing commission planned as fraudulent scheme without information to shareholders of Noticee No.1.

116. It is relevant to consider that the object of PFUTP Regulation in such cases converge with principles of corporate governance enunciated in LODR Regulations. The key objectives i.e. (a) controlling deviant behaviour, (b) protecting the integrity of the securities market (c) enhancing corporate ethics and morality; and (d) foster respect for the rule of law; have been completely flouted by Noticees No. 3 and 4 in this case. SEBI Act and Regulations, perceive management responsibilities towards all the stakeholders in the listed company not as an isolated problem faced by it as an individual business entity but places it in the context of a framework which is founded on public interest in facilitating economic growth by balancing diverse stakeholders' interests. Regulations attribute a primacy to the minority shareholders' protection by the majority and management acting as a collective body so as to ensure the growth of shareholders and encourage investment culture in the economy. Further, the PFUTP Regulations ensure that the interests of stakeholders are not conflated

with the interests of their promoters; the economic value of entity is broader in content than the partisan interests of their managements. These salutary objectives can be achieved if the integrity of the management decisions is placed at the forefront. In this case Noticees No.3 and 4 have completely disregarded this duty. This case is classic example of irresponsible, reckless, negligent and partisan approach of Noticees No.3 and 4.

117. While deciding on the penalty, though I note that actions were done by Noticees No. 3 and 4 for their benefit with the aid of Noticees No. 9 and 10 who voted on resolutions without exercising independent judgement and maintaining operational transparency with shareholders, I consider while imposing penalty under section 15HA and 15HB of the SEBI Act that Noticees No. 3 and 4 continue to hold stake in Noticee No. 1 and have not dumped shares on common investors. Similarly, a monetary penalty for lack of maintaining operational transparency with shareholders and not exercising independent judgement on Noticees No. 3, 4 and 9 for violation of LODR Regulations shall meet the ends of justice in the facts and circumstances of this case. I note that the Noticees have been cooperative during the investigation as well as the current proceedings. Also, there is no previous record of securities market violations against any of these Noticees.

Order and Direction.

118. Considering the aforesaid, I deem this case fit to issue directions restraining the Noticees 3, 4, 9 and 10 from securities market and imposition of monetary penalty on them in order to meet the ends of justice. Accordingly, I, in exercise of the powers conferred upon me under Sections 11(1) and 11B (1), 11B (2) read with Section 15HA and Section 19 of the SEBI Act hereby issue the following directions:

a) Noticee 1 shall desist from any act that harms the interests of minority shareholders and make fair and adequate disclosures in all its Notices of meetings;

b) Noticee 2, 3 and 4 shall always act in *bona fide* manner without harming the interests of investors in Noticee No.1;

c) Noticees No. 3 and 4 are directed to pay, jointly and severally, to Noticees No. 1 and 2 the following amounts:

Table No.: 8

To Noticee No. 1	Rs. 81.96* crore invested by Noticee No. 1 in SEPL with interest at the rate of 23% p.a. from the dates of investment
To Noticee No. 2	Rs, 107.76 crore received as marketing commission by SEPL with interest at the rate of 23% p.a. from the dates of payment of commission.
	Rs. 13.07* crore invested in NCCRPS of SEPL with interest at the rate of 23% p.a. from the dates of investment
	Rs. 5.98* crore invested in NCCRPS of TTPL at the rate of 23% p.a. from the dates of investment

**if any amount/interest has already been repaid, upon provision of proof of such payment, such amount and the corresponding interest thereto shall be deducted for the purpose of calculation of payment amount.*

d) The following Noticees are restrained from accessing the securities market and are further prohibited from buying, selling of securities directly or indirectly, for the period given in table, from the date of this Order:

Table No.: 9

Noticee No.	**Name of Noticee**	**PAN**	**Restraint Period**
3	Mr. Harish Sheth	AAJPS0670D	2 years
4	Mr. Udit Harish Sheth	ADQPS5292M	2 years
9	Ms. Urja Harshal Shah	AZIPS3369M	1 year
10	Mr. Jatinder Bir Singh Gujral	ADZPG1795L	1 year

e) It is hereby clarified /directed that: -

(I) if Noticees Nos. 3, 4, 9 and 10 have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out /square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier;

(II) Noticees Nos. 3, 4, 9 and 10 are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

119. In light of the facts and circumstances of this case as discussed above, the factors listed in Section 15J of the SEBI Act and in exercise of powers conferred upon me under Sections 11(4A), 11B (2) and Section 15I read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules,1995, I hereby impose monetary penalty under Section 15HA of the SEBI Act on the following Noticees for the violations of the provisions of the PFUTP Regulations as found in this order:

Table No.:10

Noticee No.	**Noticee Name**	**Provisions of SEBI Act under which penalty imposed**	**Penalty Amount (Rs.)**
3	Mr. Harish Sheth	Section 15HA	10 lakh
		Section 15HB	1 lakh
4	Mr. Udit Harish Sheth	Section 15HA	5 lakh
		Section 15HB	1 lakh
9	Ms. Urja Harshal Shah	Section 15HA	5 lakh
		Section 15HB	1 lakh
10	Mr. Jatinder Bir Singh Gujral	Section 15HA	5 lakh

120. Noticee Nos. 3,4, 9 and 10 shall remit/ pay the amounts of penalties mentioned against their names in the table above, within 45 days of receipt of this Order through online payment facility available on the website of SEBI i.e. SEBI i.e www.sebi.gov.in on the following path, by clicking on the payment link www.sebi.gov.in/ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, the Noticee(s) may contact the support of portalhelp@sebi.gov.in.

121. Noticee Nos. 3,4,9 and 10 shall forward the details of online payment made in compliance with the directions contained in this Order to the "*The Division Chief, CFID, Securities and Exchange Board of India, SEBI Bhavan – II, Plot No. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051"* and also to email id: tad@sebi.gov.in in the format as given in the following table:

Table No. : 11

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: Penalty or Disgorgement	

122. This Order shall come into force with immediate effect.

123. A copy of this order shall be served on all the Noticees herein, SEBI, recognized Stock Exchanges, Banks, Depositories and Registrar and Share Transfer Agents to ensure necessary compliance.

SANTOSHKUMAR SHUKLA
Digitally signed by SANTOSHKUMAR SHUKLA
Date: 2026.02.05 15:31:17 +05'30'

Date: February 05, 2026
Place: Mumbai

Santosh Shukla
Quasi-Judicial Authority
Securities and Exchange Board of India