

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

Table No. 1 - Particulars of Noticees		
Noticee No.	Name of the Noticees	PAN
1.	Talwalkars Healthclubs Limited	AAFCT7279N
2.	Girish Talwalkar	AAAPT8175H
3.	Prashant Talwalkar	AAAPT3528N
4.	Anant Gawande	AABPG3008P
5.	Harsha Bhatkal	AACPB3100C
6.	Girish Nayak	ABMPN9599G

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

In the matter of Talwalkars Healthclubs Limited

1. Background of the Case:

1.1. Talwalkars HealthClubs Limited (hereinafter referred to as “**THL**”/ “**Company**”), earlier known as Talwalkar Lifestyle Limited (hereinafter referred to as ‘**TLL**’) was incorporated on April 23, 2016 as a fully owned subsidiary of Talwalkars Better Value Fitness Limited (hereinafter referred to as ‘**TBVFL**’). Although THL was incorporated in Financial Year (‘FY’) 2016-17, its business operations commenced from FY 2017-18, only after TBVFL (engaged in the business of providing basic gym services, aerobics, yoga, diet-based weight reduction programs, massage, spa and health counselling) demerged its operations into lifestyle business and gym business. As a result of the demerger, TBVFL retained lifestyle business while the gym business was transferred to THL. In FY 2017-18 (year of demerger), select percentage of income, expenses, assets and liabilities were transferred from TBVFL’s books of accounts to form TLL’s/THL’s books of accounts.

- 1.2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) was in receipt of several complaints against THL and TBVFL during the period from August 2019 to October 2019. The complaints, *inter alia*, indicated default in payment of interest on term loans despite significant cash balance. As per the financial results ending March 2019, both the companies (TBVFL and THL) had a total cash balance of approximately ₹77 Crores and total default by both the companies of interest payment as on July 2019 was only ₹3.5 Crores (Term Loan) which raised suspicion over the authenticity of their books of accounts.
- 1.3. SEBI, after preliminary examination, took up the matter for detailed investigation, and KPMG was appointed as the forensic auditor on August 24, 2020 to assist the investigating authority for conducting forensic examination of books of accounts of both THL and TBVFL for 4 financial years (2016-17 to 2019-20). The forensic auditor submitted the Forensic Audit Report (hereinafter referred to as “**FAR**”) on July 19, 2021 which, *inter alia*, indicated that THL had *prima facie* misrepresented its financials to provide healthy picture to the investors and the examined transactions under various heads of the company were non-genuine.
- 1.4. SEBI examined the FAR along with annual reports of the company, corporate announcements made to the stock exchanges, replies and statements of the directors, Chief Financial officer (“CFO”), Compliance Officer and statutory auditors. SEBI’s Investigation brought to the fore various violations of securities laws on the part of THL and other entities, and a Show Cause Notice dated April 29, 2022 (hereinafter referred to as “**SCN**”) was issued to THL and five other entities. The said SCN forms the subject matter of the present order. A separate show cause notice dated April 29, 2022 was also issued to TBVFL and seven other entities which has been dealt in a separate order. Since some of the issues and facts forming part of the instant proceedings are common with the proceedings against TBVFL and other entities, reference is also drawn to TBVFL at appropriate places while dealing with the instant proceedings.

2. SCN and summary of allegations:

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

2.2. Inflation of bank balance disclosed in financial statements

2.2.1. As on March 31, 2019, TBVFL and THL had over 250 branches within India and being separate legal entities pursuant to their demerger, they were required to maintain separate bank accounts, whereas they continued to maintain same bank accounts in respect of all their branches. The bank accounts were maintained branch-wise and each branch had a 'Collection account' and a 'Payment account'. The bank balances were proportionately transferred to THL to prepare the financial statements (through a book entry) at the end of each FY till FY 2017-18. The proportionate transfer of balances was based on a management estimate without any underlying rationale.

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

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

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

Amount in ₹ Crores

Particulars	Amount
Bank balance as per TBVFL financial statement	53.94
Bank balance as per THL financial statement	42.04
Total balance	95.98
Balance of Axis bank account (as per the accounting records of TBVFL and THL)	94.72

Particulars	Amount
Actual Bank balance - Axis bank account 004010200059343	5.65
Difference / reconciling amount	89.07
Less: Increase in balance due to book entries passed in the accounting records	(193.20)
Add: Difference in balance due to genuine reconciling items.	104.13

Table No. 3- (Fictitious receipts and reversal of book entries)
Amount in ₹ Crores

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

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

2.3.1. CWIP account includes all amounts spent on fixed assets that are in process of construction or completion. THL accounted all expenses on fixed assets in CWIP account and thereafter transferred the same to respective asset ledger accounts such as buildings, gym equipment, furniture, amongst others. It was observed that a cumulative amount of ₹

35.36 Crores was recorded towards rent of gym equipment and administrative expenses and was transferred to CWIP account in the FY 2018-19 i.e. the same financial year instead of recording such expenses in the profit and loss account for FY 2018-19 which led to arbitrary inflation of the financial statements showing a higher profit and higher assets. The details are as under:

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

Particulars	FY 2018-19
Rentals of gym equipment Rent was paid to three entities – OPC Asset Solutions Private Limited, Tata Capital Financial Services Limited and Connect Residuary Private Limited ('CRPL') towards rental of gym equipment.	31.72
Admin expenses Expenses towards travel, salary, housekeeping, accounting charges, etc.	3.64
Total	35.36

2.3.2. Additionally, a cumulative amount of ₹58.20 Crores incurred towards interest expenses on loans and debentures, and professional fees was transferred to CWIP account in the same year in which they were incurred and not recorded in the profit and loss account. In the absence of underlying documents, it was unclear if these expenses were incurred towards creating an asset. The particulars are as under:

Table No. 5- (capitalization of expenses)

Amount in ₹ Crores

Particulars	FY 2018-19
Incorrect capitalization of expenses	
Professional fees Paid to multiple third parties towards legal services, fund raising and advisory services. These were initially recorded as professional fees in profit and loss account. However, later they were transferred to CWIP.	29.62
Interest on term loan and debentures THL obtained term loans from banks for general business expansion and capital expenses. It also issued non-convertible debentures.	24.73
Interest on loans from a related entity	3.85

Particulars	FY 2018-19
THL transferred 3.85 Crore of interest expenses paid to a related entity Better Value Leasing and Finance Limited ('BVLFL') to THL. This amount was recorded as CWIP in the accounting records.	
Total	58.20

2.3.3. As per Indian Accounting Standard ("Ind AS") 16 – Property Plant and Equipment (PPE) – *"The cost of the item of PPE includes: (a) The purchase price, which includes the import duties and any non-refundable taxes on such purchase, after deducting rebates and trade discounts (b) Costs which are directly attributable to bringing assets to the condition and location essential for it to operate in a manner as intended by the management (c) Initial estimate of costs of removing and dismantling an item and restoring a site where it is located."* Thus, only those costs need to be capitalized which either help in bringing the asset to the current condition or increasing the efficiency of the asset. Thus, THL has allegedly inflated its profit by ₹ 35.36 Crores during the FY 2018-19. The second impact of this entry was inflation of CWIP account in balance sheet by ₹ 35.36 Crores.

2.3.4. As per Ind-AS 23 – "Borrowing costs", *borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset form part of the cost of that asset. Other borrowing costs are recognized as an expense.* However, THL, despite repeated reminders by the forensic auditor had not submitted underlying documents for rationale for capitalization of expenses regarding interest on term loans and interest on loans from related parties. Thus, capitalization of expenses related to the same has led to overstatement of profits by ₹58.20 Crores for the FY 2018-19.

2.3.5. As on March 31, 2019, THL recognized goodwill of ₹ 60 Crores from CWIP which was allegedly in violation of Ind-AS 38 which states *"Internally generated goodwill shall not be recognized as an asset. Internally generated goodwill is not recognized as an asset because it is not an identifiable resource (i.e. it is not separable nor does it arise from contractual or other legal rights) controlled by the entity that can be measured reliably at cost."*

2.3.6. Thus, the company was alleged to have violated Ind-AS 16, Ind-AS 23 and Ind-AS 38.

2.4. Inappropriate recognition of revenue and expenses; Revaluation of investments for inflation of revenue.

2.4.1. Revenue/ expenses apportioned from TBVFL

In FY 2018-19, THL recorded fees & subscription revenue of ₹ 214.35 Crores out of which revenue of ₹ 100.25 Crores was transferred from TBVFL and recognized in THL. In this regard, the Statutory auditor of THL, Ajay Shobha & Co, did not provide any qualification with respect to the revenue recognition whereas M K Dandekar & Co, the statutory auditor of TBVFL provided qualification on the financial statement of TBVFL on the apportionment of revenue stating *“Post demerger of the Company, Revenue from Operations were collected in Talwalkars Better Value Fitness Limited (TBVF) and based on the management estimate, share of revenue pertaining to the Talwalkars HealthClubs Limited (THL) was transferred at the end of each month. However, the audit evidence for the apportionment of revenue between TBVF and THL was not adequate.”*

2.4.2. Potential fictitious revenue recognized from sale of gym equipment

In FY 2018-19, THL accounted ₹ 7.24 crore revenue from sale of a gym equipment to Satkam Enterprises Private Limited (“SEPL”). This amount was reversed on June 30, 2019 i.e. in the next FY allegedly indicating fictitiously recording of the revenue to improve its profitability. Further, the revenue from sale of gym equipment should have been recognised only when the outcome of the transaction could be measured reliably. Thus, THL did not recognize the revenue in accordance with AS 9- ‘Revenue Recognition’ since the revaluation of investments did not lead to any transfer in property of goods/ services and there was no benefit from sale of the gym equipment as the entry was subsequently reversed.

2.4.3. Potential fictitious revenue recognized from upward revaluation of investments:

2.4.3.1. In FY 2018-19, THL recognized ‘Other operating revenue’ of ₹35 Crore by upward revaluation of the following investments:

- i. Power World Gyms Limited (‘PWG Sri Lanka’)– ₹ 10 Crore
- ii. Growfitter Private Limited (‘GPL’) – ₹ 16 Crore
- iii. Tallwall Trading Private Limited (‘TTPL’)/Satkam Enterprises Private Limited (‘SEPL’) – ₹ 9 Crore

In addition, in FY 2017-18, THL recognized ₹10 Crores as other income by upward revaluation of its investment in GPL. The following was observed from the review of these revaluation entries.

2.4.3.2. Revaluation of investment 'PWG Sri Lanka'

2.4.3.2.1. In FY 2015-16, TBVFL disclosed investment of ₹4.87 Crores to acquire 49.50% shares of PWG Sri Lanka. Subsequent to its demerger, this investment was disclosed in the financial statements of THL. In FY 2017-18 and FY 2018-19, THL revalued its investment in PWG Sri Lanka upwards by ₹41.86 Crores and ₹10 Crores, respectively. The corresponding fictitious credit for this upward revaluation was made to ₹41.86 Crores to Reserves and Surplus (increase in reserves) and ₹10 Crores to Other operating income (increase in income).

2.4.3.2.2. In FY 2017-18, THL provided a corporate guarantee to PWG which was disclosed in PWG's financial statements. However, no such disclosure was made in THL's financial statements.

2.4.3.2.3. In FY 2017-18, THL invested ₹25 Crore in PWG as share application money pending allotment. However, the payments were realized in FY 2018-19. PWG's financial statements did not disclose share application money pending allotment to be receivable from THL in its financial statements.

2.4.3.2.4. The forensic audit highlighted that the GST number of PWG was inactive and cancelled *suo moto* for both Maharashtra and Karnataka, indicating closure of business operations.

2.4.3.3. Revaluation of investments in 'GPL'

2.4.3.3.1. In FY 2017-18 and FY 2018-19, THL revalued its investment in GPL upwards by ₹10 Crores and ₹16 Crores, respectively based on a valuation report prepared by M/s Jain & Chopra (Chartered Accountants). The corresponding credit for this upward revaluation was made to 'Other income' in the Profit and Loss account (increase in income of ₹26 Crores). The valuation report dated February 15, 2017 used inappropriate estimates of earnings to arrive at a valuation of ₹21.56 Crores for GPL, wherein rates of earnings was projected to grow by 215 % and 150%, respectively for FY 2017-18 and FY 2018-19, whereas, the actual earnings decreased by 195% and 77%, respectively. GPL had not filed its financial statement after FY

2018-19. The projections and estimates used in the valuation report are as below:

Table no. 06- (Financial position of GPL)

Amount in ₹ Crores

Particulars	2016-17	2017-18	2017-18 (% Increase)	2018-19	2018-19 (% Increase)	2019-20	2019-20 (% Increase)
EBITDA	(0.64)	0.74	215%	1.85	150%	3.79	105%
Free cash flow	(0.65)	0.72	210%	1.30	81%	2.68	106%

2.4.3.4. Revaluation of investments in 'TTPL'/SEPL'

2.4.3.4.1. In FY 2018-19, THL disclosed that it revalued its investment in TTPL upwards by ₹9 Crore. The corresponding credit for the revaluation was made to 'other operating income' (increase in income of ₹9 crore). Although the financial statement of THL disclosed ₹9 Crore as upward revaluation of investment in TTPL, the accounting records highlighted that THL revalued its investment in SEPL by ₹9 Crore. In absence of the revaluation, it was also unclear whether the investment in TTPL or SEPL was revalued.

2.4.3.5. In this regard para 7 of Ind-AS 18 states that *"Revenue is the gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants."* Further para 20 of Ind-AS 18 states that, *"When the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction shall be recognised by reference to the stage of completion of the transaction at the end of the reporting period. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied: (a) the amount of revenue can be measured reliably; (b) it is probable that the economic benefits associated with the transaction will flow to the entity; (c) the stage of completion of the transaction at the end of the reporting period can be measured reliably; and (d) the costs incurred for the transaction and the costs to complete the transaction can be measured reliably"*.

2.4.3.6. Thus, it was noted that the revenue recognised by THL due to revaluation of investments did not meet the definition of revenue as specified in para 7 of Ind-AS 18.

2.4.4. Investments in entities with low net worth and non-provision of impairment loss

THL invested in share capital of four entities (three of them were related entities). In addition, THL also provided advance to three of above mentioned related / other entities. The details of such investments/ advances are as under:

2.4.4.1. Investment in Talwalkars Better Value Fitness (Singapore) Pte. Limited ('TBVFPL Singapore'):

2.4.4.1.1. TBVFPL Singapore is the wholly owned subsidiary of THL located in Singapore and incorporated in 2017. In FY 2017-18, THL invested ₹7.87 crore in 'TBVFPL Singapore'. In the same FY, the statutory auditor of 'TBVFPL Singapore', 'Stamford Assurance PAC' issued the 'Disclaimer of Opinion' citing material uncertainty on going concern for the period from August 22, 2017 to March 31, 2018. The 'Disclaimer of Opinion' issued by the auditor stated the following:

- i. The company had given advances to a third party and a related party for which agreements and confirmations were not provided for review.*
- ii. Inability to obtain bank confirmations due to non-authorization by management to send bank confirmation requests to banks.*
- iii. Unavailability of financial information of its subsidiary PWG Fitness (Pvt) Limited incorporated in Sri Lanka to assess recoverability of investment.*
- iv. Material uncertainty on the going concern of the company due to financial loss incurred by the company.*

2.4.4.1.2. Thus, despite the comment from the auditor which implied that the entity's financial position was unfavourable and may lead to closure of business, THL did not record the provision for its investment in TBVFPL Singapore. The non-creation of provision is allegedly in violation of Ind-AS 36 'Impairment of Assets' and Ind- AS 37 'Provisions, Contingent Liabilities and Contingent Assets'.

2.4.4.1.3. The financial position of TBVFPL Singapore is as below which clearly reflects that TBVFPL had low net worth and was incurring losses.

Table No. 07- (Financial position of TBVFPL Singapore)

Amount in ₹ Crores

Particulars	FY 2017-18	FY 2018-19
Shareholder's funds (Net worth)	7.99	7.93
Total assets (Current and non-current)	8.01	7.95
Revenue	-	-
Profit before tax	(0.10)	(0.05)

2.4.4.2. Investment in Inshape Health and Fitnez Private Limited ('IHFPL'):

2.4.4.2.1. IHFPL was incorporated in 2008 and was in the business of establishing and managing health care, slimming centres and gymnasium. THL disclosed IHFPL as "Associate Company" in its financial statement for FY 2017-18. The financial position of IHFPL is as below.

Table No. 08- (Financial position of IHFPL)

Amount in ₹ Crores

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

2.4.4.2.2. In FY 2018-19, THL invested ₹2.09 Crores in IHFPL. During FY 2017-18, IHFPL's net worth was merely ₹0.91 Crores. Subsequently, in FY 2018-19, the statutory auditor of IHFPL, 'Venkatesh & Co.' resigned from its services citing non-receipt of requisite details to conduct the audit which casts a significant doubt on the financial and operational status of IHFPL.

2.4.4.2.3. Additionally, THL in FY 2018-19 paid ₹1.28 Crores to IHFPL. In the same FY, TBVFL also paid net of ₹7.15 crore to IHFPL comprising of ₹7.75 Crore payments and ₹ 0.60 Crore receipts. This amount was transferred to THL in the same FY and was disclosed in the financial statements of THL in FY 2018-19.

2.4.4.2.4. It was further observed that the GST numbers of IHFPL were inactive and cancelled *suo moto* both for Tamil Nadu and Karnataka highlighting closure of business operations.

2.4.4.3. Investment in Tallwall Trading Private Limited ('TTPL'):

2.4.4.3.1. TTPL, erstwhile Abhipray Enterprises Private Limited, was incorporated on January 11, 2018 and was in the business of operating gymnasiums and fitness centres. THL disclosed TTPL as its subsidiary in FY 2017-18 and FY 2018-19. TTPL has not filed its financial statements since its incorporation. In FY 2017-18, THL paid ₹16.50 Crores to TTPL and disclosed ₹ 7.50 Crores as investment in share capital to acquire 100 % equity shares and ₹9 Crore as loans and advances. In absence of underlying documents, the rationale for investment and advances paid to a newly incorporated entity is unclear. The investment and advances could not be traced due to non-availability of financial statement of TTPL.

2.4.4.4. Investment in Satkam Enterprises Private Limited ('SEPL'):

2.4.4.4.1. SEPL was incorporated on January 12, 2018 and was in the business of operating gymnasiums and fitness centres. SEPL has not filed its financial statements since incorporation with Ministry of Corporate Affairs (MCA). In FY 2017-18, THL paid ₹15.50 Crores to SEPL and disclosed ₹7.50 Crore as investment and ₹8 Crores as loans and advances. In absence of underlying document, the rationale for investment and advances paid to a newly incorporated entity is unclear. The investment and advances could not be traced due to non-availability of financial statement of SEPL.

2.4.4.4.2. Para 9 of Ind-AS 36 – "*Impairment of assets*" states that, "An entity shall assess at the end of each reporting period whether there is any indication that an asset may be impaired. If any such indication exists, the entity shall estimate the recoverable amount of the asset." In 2017-18, TBVFPL Singapore statutory auditor 'Stamford Assurance PAC' issued a 'Disclaimer of Opinion' citing material uncertainty on going concern for the period 22 August 2017 to 31 March 2018. This is a sufficient indicator for impairment of asset. Further, para 60 of Ind-AS 36 states that, "An impairment loss shall be recognised immediately in profit or loss, unless the asset is

carried at revalued amount in accordance with another Standard.” However, THL did not recognize impairment loss nor did it make provision as per IND AS 37“.

2.4.4.4.3. Further, investments in these low net worth companies is giving an impression of expansion of THL and hence portraying a rosy picture to the investor.

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

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

2.7. Vide the SCN, the Noticees were called upon to show cause as to why suitable directions be not issued and/or penalty be not imposed as deemed fit under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with Section 15HA and 15HB of the SEBI Act and Rule 5 of SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 against them for the alleged violations mentioned in the SCN. The Noticees were advised to file their replies within 21 days from the receipt of the SCN.

3. Delivery of SCN, replies and hearing:

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

Table No. 9- (Status of delivery of SCN, replies and hearing)

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

NOTICEES' SUBMISSIONS:

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

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

- 4.1.1. Pursuant to an application filed by Axis Bank before the Mumbai bench of NCLT, Corporate Insolvency Resolution Process (“**CIRP**”) in respect of the Corporate Debtor (i.e. THL) was initiated vide order dated March 09, 2021.
- 4.1.2. Since no resolution plan was received by the Resolution Professional (“RP”) in the CIRP of the Corporate Debtor, the NCLT allowed the initiation of liquidation proceedings for the Corporate Debtor in accordance with Section 33(2) of the Code vide order dated 28 April 2022. The NCLT, vide the said Order appointed Mr. Gajesh Labhchand Jain as the liquidator of the Corporate Debtor. The Liquidation Commencement Date was June 27, 2022.
- 4.1.3. In accordance with Section 34(2) of IBC, upon the appointment of the liquidator, inter alia, all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor shall cease to have effect and shall vest with the liquidator.
- 4.1.4. Upon appointment, the liquidator issued public announcement dated June 30, 2022 in accordance with Regulation 12 and 16 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“Liquidation Regulations”) inviting all the stakeholders to submit their claims in the liquidation proceedings of the Corporate Debtor. Accordingly, upon the receipt of claim and its subsequent verification and assessment, claims of various stakeholders of the Corporate Debtor were admitted.
- 4.1.5. Subsequently, a list of stakeholders of the Corporate Debtor was prepared and its stakeholders' consultation committee was constituted.
- 4.1.6. Upon review of the SCN, the liquidator understands that the Corporate Debtor is being investigated for violations pertaining to provisions of SEBI Act, PFUTP Regulations and LODR Regulations for FY 2016-17, 2017-18, and 2018-19, basis the forensic audit report and certificates signed by the CFO.
- 4.1.7. Currently applications under Section 45 (avoidance of undervalued transactions), and Section 66 (fraudulent trading or wrongful trading) of IBC are pending adjudication before the Mumbai bench of the NCLT involving various group companies of the Corporate Debtor, and the erstwhile management of Corporate Debtor.

4.1.8. The RP, during the CIRP appointed a transactional auditor which submitted its report to the RP regarding dubious/undervalued/fraudulent/preferential transactions which were purportedly undertaken at the time when the Corporate Debtor was being managed by the erstwhile promoters and management. Accordingly, the RP had approached the Hon'ble NCLT seeking appropriate directions.

4.2. **Noticee No.2 and 3**—Vide their letters dated October 18, 2022, they have filed separate but similar written submissions. While denying all the allegations contained in the SCN they have, *inter alia*, stated the following:

4.2.1. Vinayak Gawande and Anant Gawande ("**Gawandes**") who had various business interests, having one of their leading companies Better Value Leasing and Finance Pvt. Limited proposed to Madhukar Talwalkar, Prashant Talwalkar and Girish Talwalkar ("**Talwalkars**") to form a company combining Gawandes' strength and expertise in banking, finance and legal areas and Talwalkars' expertise in operation of Gyms. The Gawandes introduced Harsha Bhatkal ("**Bhatkal**") to the Talwalkars as an associate of Gawandes and a Mergers and Acquisitions expert.

4.2.2. The Gawandes, Bhatkal and Talwalkars, agreed to adopt the 'Talwalkar' name for the company due to the goodwill the brand name had acquired in the last 90 years in the fitness industry. Accordingly, on this understanding, Talwalkar Better Value Fitness Private Limited was incorporated and a Shareholders Agreement dated July 2003 ("**SHA**") was executed between the Talwalkars and co-promoters Gawandes and Bhatkal expressly defining the role of each promoter group in TBVFL.

4.2.3. At the instance of Gawandes and Bhatkal, TBVFL was subsequently converted from private limited company to public limited company in 2009, listed on the stock exchanges in 2010 and thereafter demerged into TBVFL and Talwalkars Healthclubs Limited in 2017-18.

4.2.4. The entire process was solely taken care of by Gawandes and Bhatkal along with Girish Nayak ("**Nayak**"), who was one of the Key Employees of Better Value Fitness Pvt. Ltd. (a company of the Gawandes) and at the insistence of Gawandes had joined TBVFL on its incorporation and Mr. Dinesh Rao ("**Rao**"), another associate of Gawandes who had joined TBVFL in May 2009.

4.2.5. The role and responsibilities of each of the promoter groups remained distinct as laid down in SHA and subsequently at the time of listing in the Draft Red Herring Prospectus ("**DRHP**") and Red Herring Prospectus

("RHP"). Thus, all the finances, accounts, loans, taxations and relevant statutory compliances of TBVFL were handled by Gawandes (Harsha Bhatkal, Girish Nayak and Anant Gawande). The Talwalkars cannot be held liable for alleged violations committed by Gawande Group.

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

Background of THL:

Incorporation as private limited company under SHA

- 4.2.7. *Talwalkars Better Value Fitness Private Limited (TBVFPL) was incorporated in the year 2003. SHA was executed between TALWALKARS and GAWANDES to form the said Private Limited Company. The SHA expressly stated "The 'TALWALKARS' brand is the leader in the area of fitness and gymnasiums and has a history of over seventy years in the field of running gymnasiums and allied activities" and "The GAWANDES have experience expertise and goodwill in finance and merchant banking". The Talwalkars had a brand reputation to their name but the Talwalkars lacked the banking, financial and legal expertise. None of the Talwalkars had any experience or qualification in the finance area. ...The Gawandes and Bhatkal on the other hand requisite experience and qualification to handle the financial and legal affairs of the Private Limited Company...Thus, the parties thereto agreed to bring together their respective expertise and experience for forming and functioning of the said Company, TBVFPL. Accordingly, the areas to manage in the said Company were divided based on expertise. Clause 3.4 of the SHA states that Gawandes and Bhatkal have expertise in banking, financial and legal matters and thus, Gawandes and Bhatkal undertook to be personally involved in day-to-day operational activities of the Company so far as these areas were concerned. Accordingly, it was therein agreed and recorded in Clause 4 and 5 of the Agreement that Borrowings of the Company, appointment of internal auditor, screening of financial accounts, MIS for submission to Board of Directors were the duties of Gawandes and Bhatkal. It is pertinent to note that the said SHA was disclosed to the public investors at the time of the IPO of the Company.*

Conversion to public limited company i.e. TBVFL

Talwalkars Better Value Fitness Private Limited became public limited company i.e. TBVFL on 7 November 2009 with registered address at Mahalaxmi. The Mahalaxmi office building is owned by Gawande Consultants Pvt. Ltd. where Gawandes are the common directors holding 99% share capital...The entire record and the servers of TBVFL and THL were under the control of the Gawandes, Bhatkal and the CFOs as they handled corporate and financial affairs of the companies...The Talwalkars only focused on running the gyms at the branch level from office situated at BKC (which was surrendered on November 12, 2019).

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

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

Demerger of TBVFL and Formation of THL

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

Events post demerger of TBVFL

4.2.10. *In August 2019, TBVFL and THL had defaulted in their loans to the bankers. This was without any knowledge of the Talwalkars as they were always given an impression that the companies were solvent. In fact, the Talwalkars on 22 July 2019 even launched a premium club house in Pune, one of the biggest clubs in Asia in collaboration with a foreign company completely unaware of status of TBVFL financials. Once they became aware, they sought relevant and necessary information on companies' accounts from the Gawande Group but no information was forthcoming and not even the minute books of the company were being shared with us. Since the relevant information was not shared with Talwalkars, Prashant Talwalkar refused to sign the statement of audited financial results of year ending March 31, 2019 and Mr. Anant Gawande, as a director of THL signed the same.*

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

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

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

4.2.11.2. *Pursuant to Anant Gawande's questioning by the Income Tax Department, on February 18, 2020, the finance team of TBVFL and THL sent an email with revised computations of FY 2017-18 for TBVFL and THL seeking a revert from Prashant*

Talwalar on the computations to send to the IT Department. He responded to the said email and asked them to seek response from Vinayak Gawande as all this while it was under his management. Vinayak Gawande in his response to the said email refused to take the responsibility falsely denying that it was his responsibility. The email trail February 18, 2020 onwards on this subject is annexed.

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

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

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

4.2.13. *In the proceedings on draft notice of motions, on September 11, 2020, the Advocate for the Defendants made a statement to the court that they have no objection to give Talwalkars or the Statutory Auditors access to the entire records and server of THL. Accordingly, the statement was recorded by the Hon'ble Judge on September 11, 2020.*

4.2.14. *The Hon'ble City Civil Court, Mumbai vide orders dated October 27, 2020 allowed the said Notice of Motions restraining the Defendants therein and their agents, servants, etc. from preventing the Talwalkars or Statutory Authorities and their authorised representatives from having access to the entire record and server of the THL including but not limited to minutes books, income tax returns, case papers, loan procurement papers, profit and loss accounts and balance sheet of THL at Mahalaxmi Office. As per the said interim order the registered office of THL shall*

continue to be the Mahalaxmi Office. The court also observed in paragraph nos. 9 to 11 therein that prima facie the Gawande Group had created the resolution to avoid responsibilities of THL.

4.2.15. In view of aforesaid orders, Talwalkars requested the Forensic Auditor (Ms Poonam Thakkar- Representative of KPMG India) to start her audit. She planned visit to office premises and gave a confirmation over email dated 09 November 2020. On 10 November 2020, Talwalkars accompanied KPMG team along-with the team of their Chartered Accountant to the registered Mahalaxmi office of the companies. However, to their utter shock and dismay the Gawande Group had ensured that they do not get any access to any of the records of THL. They had remained absent and retained only one peon in the office. All the cupboards of the office were kept fully locked thereby rendering it impossible to KPMG team and Talwalkars to get access to a single document of TBVFL and THL. After couple of minutes, Mr. Nitin Gawande, the younger brother of Mr. Vinayak Gawande barged into the registered office and started driving away all of us and KPMG team from the conference hall. Firstly, he drove us away from conference room and restricted us to reception counter. He was shown the Court order but he phoned Mr. Vinayak Gawande and Mr. Harsha Bhatkal and on their instructions stated that this was not the office of THL as per ROC record. To this Miss Poonam Thakkar told him that she is authorised by SEBI and it is the office of THL as per SEBI's record. He however did not co-operate and their team and the team of Forensic auditors were forced to leave the office. While they were waiting in the reception area, Ms. Poonam Thakkar engaged in a conversation with Girish Talwalkar to know certain facts on the TBVFL. A peon from their office started recording their conversation and on being confronted on his doing admitted to have done so on the instructions of Gawandes and Bhatkal. Ms. Poonam Thakkar has recorded the entire event in her communication dated November 10, 2020.

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

Events post Corporate Insolvency Resolution Process admitted against THL

CIRP admitted against THL and possession of Mahalaxmi Office by IRP

4.2.17. *The Hon'ble NCLT vide order dated January 11, 2021 admitted CIRP against TBVFL on an application filed by Axis Bank. An IRP thus took charge of THL and came in possession of the Mahalaxmi office.*

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

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

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

4.2.20. *Since the IRP took charge of the office of THL, Talwalkars appointed a team of experts headed by Chartered Company Secretaries D.A. Kamat & Co for inspection of the records of TBVFL and THL at Mahalaxmi Chambers. The said inspection was taken on June 18, 2021 and July 29, 2021. On inspection, it was found that many documents were forged by Gawande Group. The CS firm after inspection of documents made a report dated September 09, 2021 recording its findings. The findings of the report are.*

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

4.2.20.2. *For FY 2018-19 – (a) Minutes of Board meeting no. 21 were not available for inspection in the records and data made available to the firm and Minutes of board meeting dated August 20, 2018, November 13, 2018, December 04, 2018 were not intimated to the Stock exchanges (b) anomalies were found in the minutes of the board meeting as per the records and data made available to the firm and as per the data on the stock exchanges. (i) Loan facility obtained from Andhra Bank amounting to 70 crores has been passed in Board meeting dated December 4, 2018, but the minutes of it are incompletely signed. Further the stock exchanges have not been intimated for the holding of the Board Meeting and also for obtaining of the said loan facility. (ii) As per data on the Stock Exchanges, there were board meetings held on February 12, 2019, February 13, 2019*

(rescheduled from February 14, 2019), but the minutes of the said meeting were not made available to the firm for inspection.

4.2.20.3. For F.Y. 2019-20 –(a) anomalies were found in the minutes of the board meeting as per the records and data made available to the firm and as per the data on the stock exchanges. As per data on the Stock Exchanges, there were board meetings held on April 30, 2019, May 6, 2019, May 30, 2019 and August 14, 2019, but the minutes of the said meetings were not made available to the firm for inspection

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

4.2.20.4.1. As per e-form CHG-1, the extract of the minutes of board meeting dated December 4, 2018 is signed by one director i.e. Harsha Bhatkal.

4.2.20.4.2. Minutes of Board meeting dated December 4, 2018 in which the resolution for loan facility is passed is incompletely signed.

4.2.20.4.3. The Stock Exchanges have not been intimated for obtaining of the said loan facility. Also, disclosure / intimation for obtaining the loan facility from Andhra Bank has not been intimated to the Stock Exchanges.

4.2.20.4.4. The Composite Loan Agreement and the sanction letter attached in e-form CHG-1 seems to be initialled by Mr. Dinesh Rao, Authorised Signatory for the said loan purposes. There are no full signatures on the Composite Loan Agreement as well as the sanction letter.

4.2.20.4.5. The e-form CHG-1 has been digitally signed by Mr. Harsha Bhatkal (DIN: 00283946)

4.2.20.5. It was also found that.

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

4.2.20.5.1.1. Some pages of the minutes had been replaced.

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

4.2.20.5.1.3. On the first page of the impugned minutes, someone has written the words “to cancel”.

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

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

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

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

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

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

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

4.2.24.1. *The Talwalkars do not have the necessary qualifications or experience to manage banking, financial or legal affairs of a Company. The Gawandes as stated above, have the requisite knowledge, qualifications and experience to manage the banking, financial and legal affairs of a Company. Since the name "Talwalkar" had goodwill and brand value attached to it due to its presence in the gym industry for more than 90 years, the Talwalkars with their expertise in operating gymnasiums and the Gawandes with their expertise in the area of banking, financial and legal matters came together to form "Talwalkars Better Value Fitness Pvt. Limited". The*

SHA executed between the parties to form TBVFL expressly states the role of Talwalkars and Gawandes in TBVFL. The relevant clauses are reproduced hereunder-

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

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

...

4. Borrowings of the Company

4.1 It shall be the responsibility of the GAWANDES to raise and/or bring in finance either by bank loans or otherwise as may be required by the Company from the time to time for the existing and/or new projects after ascertaining the merits and feasibility of each such project.

...

5. Auditors

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

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

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

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

4.2.24.2. Thus, for over 15 years, TBVFL and thereafter THL was functioning in accordance with the structure clearly defined in the SHA, DRHP and RHP. The Gawande Group headed and handled the Finance Function and the Audit and Legal Function. Noticee No. 2 and 3 were handling the operations of few gyms at branch level and did not have any role in the affairs at the corporate level.

4.2.24.3. Noticee No. 3 has submitted that to manage the operation expenses at the branch level i.e. for the purpose of carrying out day

to day expenses of the gym branches, he was made a signatory in the pool account of THL accounts for branch operations, the details of which were shared with Gawande Group for finalising the accounts. For all corporate expenses including loan transaction, the Gawande Group carried out the same.

4.2.24.4. Girish Nayak, CFO of THL and Dinesh Rao, CFO of TBVFL, are directors of various group companies of the Gawandes. Girish Nayak was an employee in the one of companies of the Gawandes, who was made a CFO of TBVFL by the Gawandes and thereafter the CFO of THL. Both Girish Nayak and Dinesh Rao worked under the instructions of the Gawandes.

4.2.24.5. In June 2019, Mr. Harsha Bhatkal signed several hundies without knowledge of the Talwalkars. The hundies did not have signature of Mr. Prashant Talwalkar.

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

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

Documents fabricated and signatures of Talwalkars forged by Gawande Group

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

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

the Gawande Group and observed that the resolution prima facie appears to be fabricated.

4.2.24.10. In view of the fraudulent conduct of the Gawande Group, they have filed complaints with the police and economic offence wing. However, EOW or the police did not take necessary action. Talwalkars even filed various Criminal Writ Petitions before the Hon'ble High Court seeking action by the authorities.

4.2.24.11. It is only after receipt of certain documents from SEBI pursuant to their inspection that they have found signatures of Prashant Talwalkar have been forged by Gawande group on some loan documents with Axis Bank like disbursal letter and loan agreement.

4.2.24.12. Gawandes in bad faith took advantage of the Talwalkars' trust and in collusion with Bhatkal, Dinesh Rao and Girish Nayak sought to defraud the Talwalkars. The mala fide conduct of the Gawandes to refuse access to the server and records of TBVFL even to the Talwalkars made it clear that Gawandes sought to deliberately keep Talwalkars in the dark and to conceal the forged and fabricated documents. The Talwalkars clearly were never involved in the alleged financial irregularities committed by the Gawande group.

4.2.24.13. It is further submitted that in investigation carried out by both Resolution Professional as well as SEBI, the companies involved in the alleged irregularities are all related to the Gawande Group and have no connection with the Talwalkars. A complete detailed investigation following the alleged discrepancies will reveal that the ultimate beneficiaries are solely the Gawande group and the Talwalkars are in fact the victims of the fraud committed by Gawande Group.

Investigation on the basis of limited information

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

"Notice to the Reader

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

2.1.7 KPMG has not performed an audit and does not express an opinion or any other form of assurance. Further, comments in our report are not intended, nor should they be interpreted to be legal advice or opinion. KPMG does not make any form of representation regarding the sufficiency of procedures that we have performed.

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

...

Limitations

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

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

2.2.6 The bank account statement of "Union bank" (nomenclature as per accounting records) were requested from the Management Representative on 15 April 2021 to perform the bank reconciliations for FY 2018-19. However, the bank account statement was not provided for review.

The accounting records highlighted that Union bank account constituted more than 95 per cent of total bank balance of THL as on 31 March 2019. In the absence of bank account statement, the reconciliation could not be performed."

4.2.24.15. Thus, as stated in 2.1.4 of KPMG'S FAR, only Mr. Girish Nayak, CFO has provided the information pertaining to Accounts & Financial Statements. CA Anant Gawande, Mr. Vinayak Gawande & Mr. Harsha Bhatkal have not provided the relevant information, despite having intricate knowledge of the same.

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

Without prejudice to the aforesaid submissions, it is submitted that SEBI has made the same allegations in TBVFL with respect to alleged inflation

of bank balance disclosed in financial statements and inflation of profits by misutilisation of CWIP account. SEBI has sought to impose penalty twice on me on the same cause of action that also arises in the matter of TBVFL. I submit that the alleged violations qua me in so far as it arises out of the same cause of action based on the same documents is against basic principles of law and as such cannot sustain. In any case, all the transactions pertaining to business, finance and legal affairs in THL were taken care of by the THL-Gawande group and Talwalkars cannot be held liable for irregularities found in affairs managed by them.

Legal Submissions

- 4.2.25. *Section 27 of SEBI Act expressly excludes persons without whose knowledge contravention was committed. The alleged financial irregularities were committed without Talwalkar's knowledge. In view thereof, they do not come under the purview of Section 27 of SEBI Act.*
- 4.2.26. *They have relied in the matter of SEBI v. Gaurav Varshney & Anr to contend that merely because they are the director/, they cannot be held liable to offences of THL when they were not in charge of or responsible for the conduct of the business of the company relating to which allegations are made.*
- 4.2.27. *They have relied in the matter of P.G. Electroplast Ltd. and ors. v. SEBI (Appeal 281 of 2017) to contend that the present SCN does not record any specific finding against them to show they were in charge of the financial affairs of THL. Merely because they were executive director and chairman, does not make them vicariously liable for the acts of THL.*
- 4.2.28. *The allegation of manipulative, fraudulent and unfair trade practice cannot be levelled against the Talwalkars who did not even have the requisite subject knowledge to carry out alleged manipulation, fraud or unfair trade practice. It is the Gawande Group who misled and defrauded the Talwalkars and are solely responsible for using/employing/engaging manipulative, fraudulent and unfair trade practice, if at all. Therefore, they cannot be held liable for any violations of PFUTP Regulations or LODR Regulations.*
- 4.2.29. *They have submitted that in view of the Hon'ble Supreme Court's order in the case of Chintalapati Srinivasa Raju v. SEBI (Civil Appeal no. 19494 of 2017), the judgements, orders or decrees of any court/tribunal are relevant if they relate to matters of a public nature relevant to the inquiry. Since the allegations in the SCN pertain to matters of a public nature, they have submitted that the afore-stated Orders of the Hon'ble City Civil Court has some bearing in the present case. Moreover, they have also filed police complaints against Gawande group for the fraudulent acts committed by them and seek to take further legal action against them for the same. Their acts have caused irreparable damage to the Talwalkar brand and reputation.*

4.2.30. *In view of reasons aforesaid, they have submitted that the allegations in the SCN qua them ought to be dropped. They are not the perpetrator but rather a victim of the fraud orchestrated by the Gawande group.*

4.3. Noticee No. 2 and 3 have also filed separate but similar additional written submissions dated March 14, 2023, which are summarised as under:

4.3.1. They have received expert examination report dated October 18, 2022 from Forgery Detection Private Bureau, whereby Prashant Talwalkar's signatures appearing in photocopy of letter for sanction of credit facilities to the company dated October 3, 2016 were examined. The report concluded that the signatures in the said Sanction Letter are not genuine. On November 25, 2022, they have received Forensic report by handwriting expert, Dr. V.C. Mishra on various loan documents, deeds/agreements, documents related to discounting of hundi & Bills of Exchange, etc. The report opined and concluded that the 61 signatures appearing on mentioned documents appear to be traced and made. Another Forensic Report dated January 16, 2023 by Handwriting Expert. Dr. V. C. Mishra and Manas Mishra on signatures of Girish Talwalkar appearing on minutes of meeting of board of directors of TBVFL for meeting purportedly held on June 26, 2019 and certified true copy of resolution purportedly passed in purported meeting held on May 28, 2019 were examined. The report opined that the signatures on those documents were not same as Girish Talwalkar's signature. The aforementioned reports are attached. In view of the new facts and circumstances after earlier police complaints against Gawande Group, Talwalkars have filed Police Complaint dated February 8, 2023 with the Senior Inspector of Police, Gamdevi Police Station referring to the earlier complaints and seeking an FIR be registered against them and unknown persons for, *inter alia*, defrauding the Talwalkars and usurping the control of the companies and using these companies to siphon off funds for their personal gain. They have also attached the police complaints.

4.4. Pursuant to the hearing dated March 15, 2023, Noticee No. 2 and 3 have also filed combined written submissions vide letter dated April 04, 2023 in the matter of TBVFL and THL which are broadly summarised as under.

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

- 4.4.2. Gawandes defrauded Talwalkars. The conduct of Talwalkars has always been bonafide and they have at all-time cooperated with the authorities in its investigation in the fraud by Gawandes.
- 4.4.3. Forensic Audit was carried out by KPMG on the basis of incomplete information.
- 4.4.4. There is no finding in the Show Cause Notices that Talwalkars were beneficiaries of any monies allegedly siphoned to various companies.
- 4.4.5. The fraudulent conduct of the Gawande Group has caused immense loss to the Talwalkars. The deeds of Gawande Group have depleted the brand value of “Talwalkars” which was built over 80 years.
- 4.4.6. Allegations of same nature have been levelled twice against the Directors – for THL and TBVFL. This is violative of basic principles of law
- 4.4.7. Since the Talwalkars were not in charge of conduct of business of either TBVFL or THL, they cannot be held liable under Section 27 of SEBI Act.

Noticees No. 4, 5 and 6

- 4.5. Noticees No. 4, 5 and 6, vide their respective letter/email dated January 04, 2023 filed separate but similar submissions which are summarised as under:

- 4.5.1. *They have denied every allegation and averment made against them.*
- 4.5.2. *It is a well settled principle that the charges levelled in a SCN must be specific and must show how the charge levelled has been committed in view of the statutory provisions. The same is required so that Noticees can give his proper and effective defence. However, in the present case, the SCN is vague and does not specifically impute any misconduct on their part, nor does the SCN express what their role is in respect of the alleged violations.*
- 4.5.3. *Noticee No. 4 was a Director in THL from 2017 to July 2019(as submitted). His role in THL was limited to: (i) developing business relations, marketing, identifying suitable joint venture partners and to develop overall business strategy in terms of business expansion. Such a role was always subject to the control and supervision of the board of directors; (ii) guiding the professional team in the marketing strategy of the company under the overall supervision of MD and CEO Mr Prashant Talwalkar who took all final marketing, positioning, pricing decisions; (iii)*

coordinating with some activities relating to operations with and at the request of Mr Prashant Talwalkar; (iv) all final decisions for all branches including finance and signing of all cheques as the sole signatory were made solely by Mr Prashant Talwalkar.

4.5.4. Noticee No. 5 has stated that his role in THL was limited to (i) developing business relations, marketing, identifying suitable joint venture partners and to develop overall business strategy in terms of business expansion. Such a role was always subject to the control and supervision of the board of directors; (ii) Specifically, he was involved in building joint ventures with David Lloyd Leisure (leisure clubs), Zorba Renaissance (yoga), Power World Gyms (low-cost gym model in Sri Lanka and later India), InShape Fitness as well as significant business relationships with Zumba Inc. Snap Fitness (franchise business for Asian countries. He was never involved in day-to-day management, accounts and finances of any of these ventures at all. That was either left to the joint venture or business partner or to Mr Prashant Talwalkar; (iii) guiding the professional team in the marketing strategy of the company under the overall supervision of Mr Prashant Talwalkar who took all final marketing, positioning, pricing decisions; (iv) coordinating with some activities relating to operations with and at the request of Mr Prashant Talwalkar; (v) all final decisions for all branches including finance and signing of all cheques as the sole signatory were made solely by Mr Prashant Talwalkar.

4.5.5. Noticee No. 6 has stated that he became the CFO of THL in February 2019. Prior to that, he was the employee of TBVFL. He was appointed on salaried basis, as an employee of THL and he was not a part of promoter group of THL. The quarterly financial results for period of January to March 2019 were not signed by the MD and CFO of THL, Mr. Prashant Talwalkar. Thereafter, in FY2019-2020, the company was only in operation until it defaulted on July31, 2019, but no financial statements were prepared for FY2019-2020. His role in THL as CFO was limited to: (i) raising finances for the company by way of approaching banks and financial institutions for long term or short terms loans upon the instructions of the MD, Mr. Prashant Talwalkar; (ii) collate the relevant financial data of the company and coordinate with the auditor upon the instructions of the MD; (iii) finalise the financial statements of the company as directed by and upon instructions of the MD. In his capacity as CFO, he was not responsible for the decision making in respect of any loans and advances given by THL. In connection with the aforesaid roles and responsibilities, he worked, at all times, under the instructions of the Managing Director of THL and was reporting to him.

4.5.6. *Without prejudice to the foregoing, in relation to violations or non-compliance, if any, they (i.e. Noticees No. 4, 5 and 6) have submitted the following:*

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

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

4.5.6.3. *Noticee No. 4 has stated that he was never a part of the Audit Committee of THL. Until March 2016, he was attending to certain day to day operations of TBVFL. However, from April 2016, he chose to step down from his roles which he was attending to earlier, and hence, from April 2016, he did not attend to day to day operations of the TBVFL. Hence, he agreed not to draw any salary from TBVFL from April 2016. This fact can be verified from the Annual Report of THL for FY2016-2017 (pages 53 and 56) and that of TBVFL for FY2016-2017 (pages 50, 51, 54 and 87) and for FY2017-2018 (pages 54 and 58) that they did not receive any salary or other remuneration from the company from April 2016 onwards. Noticee No. 5 has stated that he was not the member of the Audit Committee during the period of F.Y. 2016-17 and F.Y. 2017-18.*

4.5.7. *They (Noticee NO. 4, 5 and 6) were not involved in the affairs and operations of the company that pertained to the subject matter of the SCN. They had, at no point of time, any knowledge pertaining to the commission of any of the offences as alleged in the SCN, nor were they the decision-making authority in respect of the alleged offences/violations. They had, on the contrary, exercised all requisite due diligence. However, given that these aspects were looked after by the MD and other persons in the company, they acted in good faith and upon their instructions and advice.*

4.5.8. *The liquidator has taken complete charge of the management of THL including possession of all accounts, data, tally systems, records and*

related documents in accordance with the provisions of the Code. In view of the above, they presently have no access to any information, data, documents, records or statements of THL and therefore they restrict the present reply to the limited knowledge they possess on the subject as of today.

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

4.5.10. The Noticees No. 4-6 also submitted issue-wise reply to the SCN as below:

Inflation of bank balance disclosed in financial statements

4.5.11. Noticee No. 4 and 5 has submitted that both Companies (i.e. TBVFL and THL) maintained bank accounts in excess of 200 across various banks. Nearly all those accounts were managed solely by the MD and CEO of TBVFL, Mr. Prashant Talwalkar. Nevertheless, the principle followed by the companies was to have two accounts at each branch and further segregate the accounts for the purpose of pooling funds and for payment of statutory dues and other purposes. As already stated, all the relevant records and statements pertaining to bank accounts are currently in the liquidator's possession and therefore they are unable to comment on the same any further. Prior to liquidation, the data of all these bank accounts was maintained by and under the sole control of Mr. Prashant Talwalkar (and the team reporting to him), which was operating at the office at Bandra Kurla Complex, Mumbai.

4.5.12. Noticee No. 4, 5 and 6 have stated that Hon'ble NCLT Mumbai in 2016 approved of a demerger scheme for TBVFL to be demerged into TBVFL and TLL/THL. The approved date of the said demerger was April 01, 2016. However, the NCLT passed the said demerger order in December, 2017 and issued the same only in February, 2018. It is submitted that in the interim period, all the relevant entries were duly passed and the accounts were audited and verified by the Statutory Auditor. Due to this, various entries that were originally passed in TBVFL for the period from April 2016 to March 2018, were subsequently passed in THL, in order to give effect to the aforementioned demerger scheme. It is also submitted that all the financial statements of the company were audited by the same Statutory Auditor since the F.Y. 2011-12 and no adverse remarks as alleged in the SCN were made out by the said Auditor.

4.5.13. Noticee No. 6 has also stated that he was not in employment of THL for the relevant period of the transactions alleged and therefore the same does not warrant any comment from him.

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

4.5.14. THL was in a state of healthy expansion not only in its gymnasium business, but also in connected allied services. The company apportioned the business costs and running expenses methodically and to the complete satisfaction of the auditors. The company had also submitted its detailed justification to the statutory auditor regularly in each financial year. The auditor did not have any adverse or qualified remarks on the alleged transaction. The company capitalised the expenses to the satisfaction of the auditors and there was no alleged inflation of the CWIP account balance. As stated above, the company was in a healthy state of expansion not only in gym business but also in related services, in consonance with the market conditions at the relevant point in time. The apportionment of costs and running expenses was done to the complete satisfaction of the statutory auditor and based on his analysis and study, the accounts of the company were not qualified.

Inappropriate recognition of revenue and expenses. Revaluation of investments for inflation of revenue:

4.5.15. The said remark was made post facto by the Statutory Auditor after THL had defaulted with Axis Bank Limited. As the companies THL and TBVFL were interlinked and related in terms of having common directors, the Statutory Auditor was fully aware of the alleged transactions and did not make any adverse comments when the quarterly financial results were published by the company.

Revaluation of investments in Power World Gyms Limited (“PWG Sri Lanka”)

4.5.16. It is submitted that when the investments in Power World Gyms Limited was made in Sri Lanka, that company was only operating about 7 gyms. By March 2019, it was operating over 100 gyms through its own company as well as managing PW Gyms owned by THL. This resulted in a significant upward revaluation of PWG brand which was reflected as per the Indian Accounting Standards and accepted by the Statutory Auditor. When Axis Bank Limited froze the bank accounts of THL abruptly and arbitrarily, all the operations of THL, TBVFL and PWG were hampered as

the companies could not issue any payments. Hence, the GST payments could not be made and GST numbers were subsequently cancelled.

Investment in GPL:

4.5.17. It is submitted that GPL is a gym agglomerator. When the Noticee company invested in GPL it was providing services to just about 300 gyms. By 2019, it was providing services to over 8000 gyms and had also done secondary equity placements. Hence the company revalued its investment as per Indian Accounting Standards and accepted by the Statutory Auditor.

Investment in Talwalkars Better Value Fitness Pte. Limited (Singapore):

4.5.18. It is submitted that THL had invested in TBVFL (Singapore) to expand the “Snap Fitness” brand of gyms for which it had taken master franchise in seven Asian countries. Further, plans were made to use this company to expand PWG brand business and gyms were opened in Sri Lanka. Hence, it was not necessary to provide for impairment.

Investment in Inshape Health and Fitnez Private Limited (“IHFPL”)

4.5.19. It is submitted that when THL invested in IHFPL, it had 3 gyms in Chennai. Thereafter, Inshape set up and operated 17 more gyms in Bangalore. As Axis Bank froze the bank accounts of THL, it severely impacted the operations of THL and Inshape as many gyms in THL were operated by the same team of personnel. The inability of THL to support its subsidiary resulted in a collapse in the operations of Inshape

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

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

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

4.5.23. *Additionally, Noticee No. 6 has stated that the Compliance Certificate required under Regulation 17(8) of the SEBI LODR Regulations stated in the SCN pertains to the financial year ended March 31 2018 while he was appointed as the CFO of the THL only in February 2019 and therefore does not warrant any comment from him.*

LEGAL PROVISIONS:

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

SEBI Act, 1992:

“Section 12A. *No person shall directly or indirectly—*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”*

PFUTP Regulations:

Prohibition of certain dealings in securities

Regulation 3. *No person shall directly or indirectly—*

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

stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

Prohibition of manipulative, fraudulent and unfair trade practices
Regulation 4.

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

Regulation 4 of LODR: Principles governing disclosures and obligations

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

from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

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

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

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

(ii) Key functions of the board of directors-

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

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

(8) Overseeing the process of disclosure and communications.

(iii) Other responsibilities:

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

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

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

Regulation 17(8)

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

Regulation 33

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

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

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

Regulation 48

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

CONSIDERATION OF ISSUES:

6. As already noted, the Noticees had filed their respective replies to the SCN and had also made submissions during the personal hearing provided to them. Upon perusal of the SCN, the replies/ submissions filed by the Noticees and the relevant material available on record, the following issues arise for consideration in the present proceedings:
 - A. Whether the violations of the provisions of securities laws alleged in the SCN against Noticee No. 1 i.e., THL are established in light of the submissions made by the liquidator/Noticees?
 - B. If the answer to issue A is in affirmative, what is the liability of each of the Noticees for such violations?
 - C. In consideration of answers to issues A and B, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticees?
7. I now proceed to examine the above listed issues in light of the replies, written submissions and arguments put forward by the Noticees during the personal hearing.

A. Whether the violations of the provisions of securities laws alleged in the SCN against Noticee No. 1 i.e., THL are established in light of the submissions made by the liquidator/Noticees?

8. At the outset, I find it important to clarify that although THL was listed on June 29, 2018, on perusal of the shareholding pattern of TLL (name changed to THL) contained in its Annual Report as available on the website of Stock Exchange(s) for FY 2017-18, I note that at the beginning of financial year 2017-18 i.e., April 01, 2017, 99.94% of the equity shares of THL before its listing were owned by TBVFL and the remaining 0.06% shares were held by Noticees No. 2 to 5, Mr. Vinayak Gawande and Mr. Madhukar Talwalkar. The shareholding of THL was changed during the financial year 2017-18 and before its listing as certain other investors invested into it. Thus, even before its listing, THL was effectively a wholly owned subsidiary of TBVFL (a listed entity) and subsequently it got listed on June 29, 2018. Therefore, any examination into the affairs of TBVFL would automatically entail looking into the affairs of THL.
9. It has been submitted on behalf of THL that in terms of order of Hon'ble NCLT, Mumbai dated April 28, 2022, THL is presently undergoing liquidation under the provisions of IBC and one Mr. Gajesh Labhchand Jain has been appointed as the

liquidator in the matter, who is in charge of the process. It is informed by the liquidator that he has prepared a list of stakeholders of the Corporate Debtor (i.e. THL) and constituted its stakeholders' consultation committee. The liquidator has further informed that currently application under Section 45 (avoidance of undervalued transactions) and Section 66 (fraudulent trading or wrongful trading) of the IBC are pending adjudication before the Mumbai bench of the NCLT involving various group companies of the Corporate Debtor, and the erstwhile management of Corporate Debtor (i.e., Noticees in the SCN). It has also been apprised that the RP, during the CIRP had appointed a transactional auditor which submitted its report to the RP regarding various dubious/undervalued/fraudulent transactions which were purportedly undertaken at the time when the Corporate Debtor was being managed by the erstwhile management. Accordingly, the RP had approached the Hon'ble NCLT seeking appropriate directions.

10. I note that while replying on behalf of THL, the liquidator has merely stated the factual background of the insolvency process which is ongoing and has not made any merit-based submissions with respect to the allegations levelled against the Company. In this regard, as brought out in the preceding paragraphs, detailed allegations, *inter alia*, of inflation of bank balances disclosed in the financial statements, inflation of profits by mis-utilisation of CWIP account, Inappropriate recognition of revenue and expenses, etc. have been made against THL on the basis of the investigation carried out by SEBI. Since the liquidator currently managing the Noticee No. 1 (i.e. THL) has not made any submission in defence of THL in respect of the allegations levelled in the SCN, I do not find it necessary to deal with each and every allegation, narration whereof has already been provided in the preceding paragraphs. Taking note of the ongoing liquidation proceedings against THL and the fact that enforcement action against the Noticees was approved on February 04, 2022, without necessarily going into the issue whether any enforcement directions at this stage against THL (corporate debtor) are viable or not, it would be imperative to deal with the acts/omissions and conduct of THL while addressing the submissions made by other Noticees. Further, the limited purpose of these proceedings would be to determine if THL has violated any of the provisions of securities laws and if so, to assess and determine the penalty, if any, in order to enable SEBI to crystalline its claims and file the same before the liquidator. The observations and deliberations contained in the ensuing paragraphs while dealing with the submissions of other Noticees, shall hold good in respect of THL, insofar as they are applicable.

11. I have carefully perused the submissions made by all the Noticees, and note that Noticees No. 2 and 3 have filed essentially similar submissions, whereas Noticees No. 4, 5 and 6 have filed similar submissions. Thus, for ease of reference and for the sake of brevity, while dealing with their submissions, I will refer to Noticees No. 2 and 3 as "**Talwalkars**" and Noticees No. 4, 5 and 6 as "**Gawandes**", unless the context requires otherwise.

12. I note that the Talwalkars in their replies have provided the background of TBVFL, its incorporation as a private limited company under Shareholders Agreement (“SHA”) between Gawandes and Talwalkars, its conversion to a public company, its listing and subsequently, demerger and formation of THL to events post CIRP. None of the factual details provided by Talwalkars, form the basis of the allegations levelled in the SCN, nor the same have been contested by any entity. Thus, I am not delving further into the same.
13. The pith and substance of the submissions filed by the Talwalkars is that they were not responsible for managing affairs in the area of banking, financial and legal matters and Gawandes had defrauded them. Basically, the Talwalkars in their replies, while putting the entire onus on the Gawandes, have denied all the allegations against them. Further, in their submissions, they have only made generic statements unrelated to the allegations contained in the SCN and have not provided any specific response on merits on the allegations levelled against them in the SCN.
14. It is claimed that the main server, books of accounts including minutes’ books, loan procurement documents, profit and loss accounts and balance sheets, income tax returns, etc. were kept at their registered office at Mahalaxmi where only Gawande Group used to sit and which was under their control. It is stated that Talwalkars only managed the administration of the Gyms from their BKC office. Talwalkars in their replies at various places have imputed various charges against the Gawandes. I also note that Talwalkars have referred to various police complaints made by them against the Gawandes and to the ongoing litigation between them.
15. On the other hand, the Gawandes (i.e., Noticees No. 4, 5 and 6) have contended that they were lower in the hierarchy than the MD of TBVFL/THL, and at all times, it was the MD who shall be responsible for ensuring compliances with the applicable laws. It is further contended that as the member/KMP of the Board of the Company, they always trusted and assumed the fact that the MD of the company would diligently carry out his duties to the company being in a fiduciary position. Moreover, they expected that each person shall fulfil his duties to the company based on the trust imposed upon him in his fiduciary capacity and accordingly, they acted on the instructions of the MD of the company.
16. It is pertinent to mention that similar to the Talwalkars, the Gawandes have also made generic submissions without going into the specificity of each and every allegation levelled in the SCN except for certain instances where they have given their narrative in respect of the allegations. Their narrative also appears to be simply aimed at giving an anecdotal description of the company (i.e., TBVFL) and its affairs since 2003.
17. In this regard, I note that both the groups (Talwalkars and Gawandes) have essentially tried to put the blame on each other. It is a settled law that any

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

18. Moreover, I also note that Talwalkars have made accusation of fabrication and forging of documents by Gawandes and have filed police complaints against them. It is also claimed by Talwalkars that in some documents, which have been relied upon by SEBI, signature of Mr. Prashant Talwalkar has been forged. In connection with the forged signature, Talwalkars have appointed forensic handwriting and fingerprint experts and in this connection have submitted several reports. As per the reports provided by Talwalkars, it is claimed that signatures of Mr. Prashant Talwalkar are not genuine and appear to be traced and made. In this regard, without going into the technicalities and legalities of the claims made by the Talwalkars, I do not find any substance which may connect the allegations made in the SCN with the claims made by the Talwalkars. They have not provided any substance and material to show how these forged signatures as claimed by them are related to the allegations contained in the SCN, other than making the point that it was the Gawandes who had defrauded them. In respect of any instance of forgery w.r.t. handwriting, signatures, etc., the entities are free to approach the Courts of Law where the remedy lies. As far as these proceedings are concerned, it is beyond the scope to go into the correctness of the handwriting

or signatures of any of the Noticees. In view of the above, the said contentions made by Talwalkars appear to be unsubstantiated, without any relevance to the specific allegations levelled in the SCN and are accordingly liable to be rejected.

19. I note that Talwalkars have relied heavily on the SHA executed between them and Gawandes to contend that the SHA had explicitly stated the role of Talwalkars and Gawandes in TBVFL. As per the SHA, Talwalkars had expertise in running gymnasiums and allied activities and they undertook to be personally involved in the day-to-day operational activities of the said Company whereas, Gawandes had expertise in baking, financial and legal matters and they undertook to be personally involved in the day to day operational activities of the Company so far as these areas are concerned. It was further stated by Talwalkars that the details of SHA, the expertise and roles of the directors in TBVFL were also disclosed in the DRHP/RHP. For 15 years, TBVFL was functioning in accordance with the structure defined in the SHA, DRHP and RHP.

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

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

22. In this context, I note that pursuant to receipt of multiple complaints against the Company, various financial irregularities were observed by SEBI and subsequently considering the complexity of the matter, KPMG was appointed as

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

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

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

be an investment in capital of TCSPL by TBVFL as per the SCN and investment in capital of a subsidiary cannot be called routing of funds.

25. With regard to the above submissions, I note that the allegations contained in the SCN are in the nature of misrepresentation of financial statements of the Company and various methods adopted by the Company, and for that purpose as long as it is established that the funds belonging to the shareholders were siphoned off from the Company by dubious means, whether the Talwalkars or Gawandes were the ultimate beneficiary or not, is immaterial and would not absolve them of their liabilities. Thus, the contention made by Talwalkars is unfounded and liable to be rejected.
26. I note that Gawandes (Noticee No. 4, 5 and 6) have stated that the Company is under liquidation and liquidator has been appointed by Hon'ble NCLT who has taken complete charge of the management of THL including possession of all accounts, data, tally systems, records and related documents in accordance with the provisions of the IBC. In view of the same, they do not have access to any information, data, documents, records or statements of THL and therefore they are restricting their replies to the limited knowledge in their possession.
27. With regard to the aforesaid claim made by the Gawandes (Noticees No. 4, 5 and 6), I find it essential to clarify that under the present proceedings, the question regarding grant / access to documents / records, is not required to be addressed or answered by me or the investigation team of SEBI. After service of SCN, it is expected of every Noticee to submit an appropriate response to the SCN and for that purpose, every Noticee is free to gather material / documents in his / her defence. Under the IBC, in respect of every corporate debtor undergoing CIRP or liquidation, the procedural framework has been institutionalized for safe keeping, usage, access, transfer, etc. of the documents belonging to corporate debtor. Accordingly, it is for the Noticees to use the framework to obtain documents / material to defend their case. Given the above understanding, I am not inclined to accept the submission put forth by Noticees No. 4, 5 and 6 that because of limited access to information, data, documents, they are unable to furnish merit-based submissions and accordingly, I am inclined to draw adverse inference against them.
28. I note that with respect to the allegations contained in the SCN, Gawandes (Noticees No. 4, 5 and 6) have also made specific issue-wise replies to some of the allegations which are discussed in the following paras. At this juncture, I find it pertinent to clarify that even though the all the Noticees have not made detailed submissions on merits, the findings recorded in this order, while dealing with submissions made by any of the Noticees, shall hold good in respect of all the Noticees, insofar as they relate to them.

29. Regarding inflation of bank balance disclosed in the financial statements, Gawandes (Noticee No. 4, 5 and 6) have submitted that all the financial statements of the company (i.e., TBVFL) were audited by the same Statutory Auditor since the F.Y. 2011-12 and no adverse remarks as alleged in the SCN were made out by the said Auditor. In this regard, I note that that SCN has alleged that there was misrepresentation in the financial statements of the Company and the financial statements of TBVFL and THL as at March 31, 2018 highlighted a cumulative bank balance of ₹ 95.98 Crores. In the key bank account (Axis bank Account No. 004010200059343) constituting 98% of the bank balance, the balance as per accounting records was ₹94.72 Crores, whereas the bank statements highlighted only ₹5.65 Crores. In this regard, the Noticees (Gawandes), without providing any justification for the alleged misrepresentation of financial statements, have merely made an unsubstantiated statement that the books of accounts were duly audited and certified and there were no adverse comments by the auditor. In absence of any rationale / justification in respect of the allegations noted above and because of lack of any documents / material to substantiate their submission, I am unable to agree with the submissions made by the Noticees (Gawandes).
30. In this context, I also note from the record that regarding the role of the statutory auditors of the Company, SEBI found the same as questionable and has written a letter to National Financial Reporting Authority ("NFRA") and MCA for considering appropriate action against them in accordance with law. Considering the same, the Noticees cannot be allowed to rely on the absence of any adverse comments by the auditors.
31. Regarding the inflation of the bank balance disclosed in the financial statements of THL, it is also submitted that both companies (i.e., TBVFL and THL) maintained bank accounts in excess of 200 across various banks. Nearly all those accounts were managed solely by Mr. Prashant Talwalkar (Noticee No. 3). Nevertheless, the principle followed by the companies was to have two accounts at each branch and further segregate the accounts for the purpose of pooling funds and for payment of statutory dues and other purposes. It has also been submitted that all the relevant records and statements pertaining to bank accounts are currently in the liquidator's possession and therefore they are unable to comment on the same and prior to liquidation, the data of all these bank accounts was maintained by and under the sole control of Mr. Prashant Talwalkar (and the team reporting to him), which was operating at the office at Bandra Kurla Complex, Mumbai.
32. With regard to the above submissions, I note that the Noticees No. 4 and 5 have merely stated the practice which was being followed by the companies (TBVFL and THL) for maintaining the bank accounts without any justification for inflation of bank balance disclosed in the financial statements. Generally, it is expected that distinct legal entities should have distinct and separate bank accounts and by

maintaining common bank account for two distinct and separate legal entities, it can be adversely inferred that the books of accounts were not being followed in a proper manner according to general accounting practices. In addition, thereto, I find it important to point out that the contentions of the Noticees (Gawandes) that the documents are in possession of the liquidator and that prior to the liquidation the bank accounts were maintained by Mr. Prashant Talwalkar and all the data of these bank accounts were under the sole control of Mr. Prashant Talwalkar have already been dealt in the preceding paragraphs and are not repeated for the sake of brevity. It is however relevant to reiterate that after service of SCN, it is expected of every Noticee to submit an appropriate response to the SCN and for that purpose, every Noticee is free to gather material / documents in his / her defence. Inability of the Noticees to obtain documents from the liquidator or gather other material in their support cannot be treated as a valid defence in respect of the allegations levelled in the SCN. Thus, the aforesaid contention of the Noticees (Gawandes) holds no merit and cannot be accepted.

33. Regarding the inflation of profits by mis-utilisation of Capital Work in Progress account, it is stated by the Gawandes (Noticee No. 4, 5 and 6) that THL was in a state of healthy expansion not only in its gymnasium business, but also in connected allied services. The company apportioned the business costs and running expenses methodically and to the complete satisfaction of the auditors. The company had also submitted its detailed justification to the statutory auditor regularly in each financial year. The auditor did not have any adverse or qualified remarks on the alleged transaction. It is further claimed that the company capitalised the expenses to the satisfaction of the auditors and there was no alleged inflation of the CWIP account balance.

34. In this regard, I note that the Noticees (Gawandes) have not provided any justification or attempted to provide any rationale with regard to the specific allegations contained in the SCN related to incorrect recognition of goodwill and incorrect capitalization of expenses which was found to be in violation of the accounting standards such as Ind-AS 38 and Ind-AS 23. As regards their submission that the company capitalized the expenses to the satisfaction of the auditors and there was no alleged inflation of the CWIP account balance and the auditor did not have any adverse or qualified remarks, I find the same to be without any substance since the expenses such as administrative expenses like professional fees, rent of gym equipment being revenue expenses, ought to have been expressed in profit and loss account and should not have been capitalised as per the relevant accounting standards. The said Noticees have not offered any explanation to dispute how the accounting standards such as Ind-AS 38 and Ind-AS 23 were not applicable to the treatment of CWIP entries noted in the SCN nor have they submitted anything to show that the accounting treatment was done in accordance with some other accounting standard. Any lapses on part of the

statutory auditor do not absolve the liability of the Company for the wrongdoings and moreover, as stated in preceding paragraphs, the role of the auditor has also been examined by SEBI and on observing certain lapses on their part reference has been made to MCA and NFRA also for taking appropriate measures as per the law. Thus, the contention of the Noticees (Gawandes) in this regard are devoid of merit and accordingly rejected.

35. For the allegation pertaining to inappropriate recognition of revenue and expenses apportioned from TBVFL, the Noticees (Gawandes) have merely made a statement that the companies THL and TBVFL were interlinked and related in terms of having common directors, the Statutory Auditor was fully aware of the alleged transactions and did not make any adverse comments when the quarterly financial results were published by the company. I note till March 31, 2018, common accounting records were prepared and maintained for TBVFL and THL and from these common records, revenue and expenses were apportioned between TBVFL and THL. The SCN has observed that in FY 2018-19, THL recorded fees & subscription revenue of ₹ 214.35 Crores out of which revenue of ₹ 100.25 Crores was transferred from TBVFL and recognized in THL. In this regard, the statutory auditor of TBVFL had qualified its audit opinion and had categorically stated that *“Post demerger of the Company, Revenue from Operations were collected in Talwalkars Better Value Fitness Limited (TBVF) and based on the management estimate, share of revenue pertaining to the Talwalkars HealthClubs Limited (THL) was transferred at the end of each month. However, the audit evidence for the apportionment of revenue between TBVF and THL was not adequate.* The fact that both TBVFL and THL had common directors who were responsible for the affairs of the company, the Noticees in the present proceedings should have been aware about the lapses on part of the inappropriate recognition of revenue and expenses. The fact that the statutory auditor of THL did not make any adverse remark cannot be used as a recourse to absolve the liability of the Noticees, when it is clear that they were aware about the qualified opinion of the auditor of TBVFL by being common directors and thus in absence of any justification in support of the Noticees' (Gawandes) contention, I am inclined to accept the allegation contained in the SCN as such against them.

36. Regarding the fictitious revenue recognition from upward revaluation of investment in GPL, it is submitted by the Noticees (Gawandes) that GPL is a gym agglomerator and when THL invested in GPL, it was providing services to just about 300 gyms and by 2019, it was providing services to over 8000 gyms and had also done secondary equity placements. Thus, THL revalued its investment as per Indian Accounting Standards and the same was accepted by the Statutory Auditor. For the fictitious revenue recognition from upward revaluation of investment in PWG Srilanka, it is stated that when investments in Power World Gyms Limited was made in Sri Lanka, that company was only operating about 7 gyms and by March

2019, it was operating over 100 gyms through its own company as well as managing PWGyms owned by THL. This resulted in a significant upward revaluation of PWG brand which was reflected as per the Indian Accounting Standards and accepted by the Statutory Auditor. It is stated that when Axis Bank froze the bank accounts of THL, all the operations of THL, TBVFL and PWG were hampered as the companies could not issue any payments. Hence, the GST payments could not be made and GST numbers were subsequently cancelled. The Noticees have not made any submissions with regard to the upward revaluation of investments in TTPL/SEPL as alleged in the SCN.

37. In this regard, I note that the SCN has observed that in FY 2017-18 and FY 2018-19, THL revalued its investment in GPL upwards by ₹10 Crores and ₹16 Crores. The financial position of GPL has been mentioned at Table No. 6 above. The upward revaluation was done on the basis of a valuation report by M/s Jain & Chopra, Chartered Accountants, which used inappropriate estimates of earnings to arrive at valuation of ₹21.56 Crores for GPL. The valuation report projected high growth rates of earnings of 215% and 150% for FY 2017-18 and FY 2018-19. However, the actual earnings decreased by 195% and 77%, respectively. Further, for PWG Srilanka, TBVFL had disclosed investment of ₹4.87 Crore to acquire 49.50% of PWG Srilanka and subsequent to its demerger in FY 2017-18, the investment in PWG Srilanka was disclosed in the financial statements of THL. In FY 2017-18 and FY 2018-19, THL revalued its investment in PWG Srilanka upwards by ₹41.86 Crores and ₹10 Crores, respectively. Similarly, the financial statement of THL disclosed ₹9 Crores as upward revaluation of investment in TTPL, however the accounting records highlighted that THL revalued its investment in SEPL by ₹9 Crore. THL did not provide any valuation report for the upward revaluation and thus it was unclear whether the investment in TTPL or SEPL was revalued.

38. I note that except unsubstantiated statements, the Noticees have not attempted to address the allegations contained in the SCN regarding the revision of valuation of investments of THL in PWG Srilanka, GPL, TTPL/SEPL, etc. Further, the justification that due to freezing of bank account of THL, the business operations of PWG were also hampered and its GST number was cancelled, appears to be an afterthought. The Noticees in fact did not even attempt to justify its investment in TTPL/SEPL. Moreover, the SCN has observed that the revenue recognised by THL due to revaluation of investments does not meet the definition of revenue as specified in para 7 of IND-AS 18. Thus, in absence of any documentary evidence and credible justification, I am inclined to reject the contentions of the Noticees (Gawandes) in this regard.

39. The SCN has also brought out that THL invested in share capital of four entities viz. TBVFPL Singapore, IHFPL, TTPL and SEPL. Out of these, three of them were

related entities (i.e., TBVFPL Singapore, IHFPL and TTPL). THL also provided advances to three of the above-mentioned entities. The detailed narration of the allegations is captured in the paragraph 2. In response to the allegations contained in the SCN, the Noticees (Gawandes) for the investment in TBVFPL (Singapore) have simply submitted that THL had invested in TBVFPL (Singapore) to expand the “Snap Fitness” brand of gyms for which it had taken master franchise in seven Asian countries. Further, plans were made to use this company to expand PWG brand business and gyms were opened in Sri Lanka. Hence, it was not necessary to provide for impairment. Regarding its investment in IHFPL, it has been submitted that IHFPL had 3 gyms in Chennai and subsequently, it setup and operated 17 more gyms in Bangalore and as Axis Bank froze THL’s bank accounts it severely impacted the operations of THL. On a perusal of the details of the investment by THL in the aforesaid four companies and the analysis of the financial status of these four companies (as has been recorded earlier in the order), It appears that by investment in these low net worth companies with questionable existence, THL was attempting to give an impression of expansion and portraying a rosy picture to its investors. In my view, the submissions made by the Noticees (Gawandes) do not inspire confidence and in absence of any credible evidence and documentary proof cannot be accepted.

40. As elaborated in the preceding paragraphs, Noticees No. 2 to 6 have not made specific submissions on merit in respect of the allegations levelled in the SCN except on certain points already discussed in preceding paragraphs. Further, on many occasions, the Noticees have sought to rely on the non-availability of material to defend their case. It is noteworthy that the SCN sent to the Noticees itself contained all the documents which have been relied upon by SEBI for the purpose of the allegations levelled therein. In spite of the same, no specific response / explanation has been submitted by the Noticees on merits to the allegations. It is a settled law that failure to submit any defence despite service of notice is equivalent to admission of the charge levelled in the notice. In this regard, it is relevant to advert to the following observations of Hon’ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014):

“As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.”

41. Similarly, Hon’ble SAT in the matter of Shri Dave Harihar Kiritbhai vs SEBI (Appeal No. 93 and 104 of 2014 decided on December 19, 2014) refused to consider the arguments and documents submitted by the Appellants therein, in

light of the fact that the Appellants had not filed the same before SEBI when the proceedings were ongoing before SEBI. Hon'ble SAT held the following:

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

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

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

- 42.1. Inflation of bank balance disclosed in financial statements;
- 42.2. Inflation of profits by mis-utilisation of Capital Work in Progress account;
- 42.3. Inappropriate recognition of revenue and expenses;
- 42.4. Inappropriate revaluation of investments for inflation of revenue;
- 42.5. Unjustified investments in entities with low net worth and non-provision of impairment losses;

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

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

45. Regulation 4(2) of the PFUTP Regulations provides that dealing in securities is deemed as fraudulent or an unfair trade practice if it involves fraud and may include all or any of acts or omissions mentioned therein. In this regard, Regulation 4(2)(f) [as it read at the relevant point of time], *inter alia*, provides that knowingly publishing or reporting by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities shall be deemed to be fraudulent or unfair trade practice. Having established that THL had misrepresented its financial statements which were not reflecting true and fair affairs of the Company on account of various methods and devices employed by it as discussed in preceding paragraphs and summarised in paragraph 42

accompanied with the fact that the information in the nature of annual reports, financial statements and disclosures, etc. were published by THL for public consumption which clearly were untrue, I find that the violation of Regulation 4(2)(f) stands established against the entity.

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

47. Apart from the above, the SCN also alleges violation of Regulation 4(2)(e) [as it read at the relevant point of time] which *inter alia* provides that any act or omission amounting to manipulation of the price of a security shall be deemed to be manipulative, fraudulent or unfair trade practice, and violation of Regulation 4(2)(r) which provides that planting false or misleading news, which may induce sale or purchase of securities is deemed as fraudulent or an unfair trade practice. In this regard, I note that although it is correct that misleading and untrue financial statements were disseminated by THL, the SCN has not brought out any material reflecting specific acts done by THL to manipulate the price of its securities or planting of any specific false or misleading news inducing the sale or purchase of its securities. Accordingly, I find that allegations of Regulation 4(2)(e) and 4(2)(r) are not established in the present case.

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

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

48.2. The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

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

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

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

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

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

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

55. In this backdrop, I note that in relation to the allegations, the SCN has brought out the role of each and every Noticee. The SCN has observed that during the investigation period, Noticees No. 2 to 5 were the executive directors of THL, while Noticee No. 6 was its CFO. As noted from the SCN and FAR, following were the designations and roles of the Noticees (i.e., directors and CFO of the Company) and the tenure of such role in THL:

Table No. 10- (Role of Noticees in THL and their tenure)

Noticee No.	Name	Tenure	Designation
2.	Girish Talwalkar	23/04/2016 till date	Executive Director (Till FY 2017-18), Chairman (From 2018-19 onwards)
3.	Prashant Talwalkar	23/04/2016 till date	Chairman (till FY 2017-18), Managing Director (From FY 2018-19 onwards)
4.	Harsha Bhatkal	23/04/2016 till date	Executive Director from FY 2016-17 to FY 2019-20
5.	Anant Gawande	10/08/2018 till date	Whole Time Director from FY 2018-19 onwards
6	Girish Nayak	From February 2019	CFO from FY 2018-19 (From February 2019 onwards)

56. It is further observed that as per the annual report of THL for FY 2017-18, Mr. Prashant Talwalkar and Mr. Girish Talwalkar were the executive directors while the former held the position of Chairman as well. Further, Mr. Girish Talwalkar was also the member of Audit Committee. During FY 2017-18, 9 board meetings were held all of which were attended by Mr. Prashant Talwalkar and Mr. Girish Talwalkar. Further they (Mr. Prashant Talwalkar and Mr. Girish Talwalkar) have certified compliance certificate under regulation 17(8) of LODR Regulations. Mr. Anant Gawande and Mr. Harsha Bhatkal were also the executive directors and looked after the day-to-day functioning of THL. Mr. Harsha Bhatkal attended 8 board meetings out of total 9 meetings held during FY 2017-18. The SCN has brought out that the annual report of FY 2018-19 and FY 2019-20 was not published in public domain but the FAR has observed that from FY 2018-19 onwards, Mr. Girish Talwalkar was designated as Chairman of THL whereas Mr. Prashant Talwalkar was the executive director of THL along with Mr. Anant Gawande and Mr. Harsha Bhatkal. Notably, FAR has observed that financial statements of THL were only available from April 01, 2017 till March 31, 2019 with Registrar of Companies (RoC).

57. From the details captured in the above paragraph and Table No. 10, it is clear that during the period under investigation, Noticees No. 2 to 5 being the Executive

Directors/Chairman of THL, were at all times, aware of the financial status and transactions of the company. It is noteworthy that all these Noticees have been associated with THL for a long time, and were the common directors/chairman of TBVFL which has also been observed to be involved in misrepresentation of its financial statements. As noted from the records, in the present case only the entities holding executive position of THL have been proceeded against and Non-Executive Directors including the Independent Directors have been kept out of the present proceedings. I find that Company's fraudulent acts including misrepresentation of the financial statements as discussed in earlier paragraphs, were at all times, in the knowledge of its executive directors i.e. Noticee No. 2 to Noticee No. 5.

58. Accordingly, whatever violations have been committed by the Company are attributable to Noticee No. 2 to Noticee No. 5, who were responsible for the day-to-day affairs of the Company during the relevant time. Hence, Noticee No. 2 to Noticee No. 5, by virtue of holding such directorships and being responsible for the acts, omissions and conduct of the Company are found to be guilty of resorting to fraudulent and unfair trade practices.

59. As regards Mr. Girish Nayak, (Noticee No.6), he was the CFO of TBVFL from February 2017 onwards till February 2019 and thereafter joined as CFO of THL. As defined under regulation 2(1)(f) of the LODR Regulations, *a CFO is a person heading and discharging the finance function of the listed entity as disclosed by it to the recognised stock exchange(s) in its filing.* A CFO is also a part of the *senior management* of a company as provided under regulation 16 of the LODR Regulations. Notably, TBVFL has also been found to have indulged in misrepresentation of financials. In terms of regulation 17(8) of the LODR Regulations, the CFO (along with CEO) is required to provide the compliance certificate to the board of directors *inter alia* certifying that the financial statements do not contain any misleading statement, present a true and fair view of the company's affairs as well as are in compliance with existing accounting standards, applicable laws and regulations as specified under LODR Regulations. It is noted that THL did not file its annual report for FY 2018-19 and FY 2019-20, for which it was obligatory upon the CFO to certify the financials under regulation 17(8) of the LODR Regulations, and THL failed to do so. The financials of THL have been misrepresented and the role of CFO was paramount in certifying that the financials of THL ensured that they present true and fair view of THL's affairs and do not contain any misleading statement. Further, as required under regulation 33(2)(a), while placing the financial results before the board of directors, CFO (along with CEO) of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading. Thus, violation

of Regulation 17(8) and 33(2)(a) of the LODR Regulations is established against Noticees No. 3 and 6.

60. As already concluded in the preceding paragraphs, THL had misrepresented its financial statements and failed to present the true and fair picture of its financial statements. Being at the helm of the financial decisions firstly of TBVFL and later of THL (after it got listed on the Stock Exchanges), it was the responsibility of Mr. Nayak to prevent the financial irregularities in the said Companies and to present true and fair picture of the affairs of the Companies. While, as already noted, THL did not even file its annual report for the FY 2018-19 and 2019-20, which evidences the failure on part of the CFO and the board of THL in presenting a true and fair picture of THL's financials to the shareholders and the market in general. I, therefore, find that Mr. Nayak had failed in the discharge of his duties and is also responsible for the violations committed by the Company.

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

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

63. It has already been noted that the Talwalkars, along with other directors, were in control of the affairs of THL and that they were the members of its Board of Directors and also that they were occupying important positions in the management of THL. It is relevant to mention that they have not brought forward any evidence which may prove that they were diligent in their duties or they had exercised all the due diligence which was expected from them to prevent the

occurrence of the financial irregularities by THL. Moreover, being in control of the affairs of the Company and not taking any steps to prevent the violations committed by THL actually goes on to show that they were negligent in their duties and responsibilities. Thus, the contention of Talwalkars regarding the inapplicability of Section 27 of the SEBI Act is unfounded and is hence rejected.

64. I also note that the reliance of the Talwalkars on the Judgement and order by Hon'ble Supreme Court rendered in the matter of *SEBI v. Gaurav Varshney & Anr* is also misplaced as this decision was rendered in the context of criminal proceedings, whereas the present proceedings are civil in nature and in such civil proceedings, violations can be established on the basis of preponderance of probabilities.
65. The present case is also distinguishable from the case of *P G Electroplast* in respect of which, the order passed by Hon'ble SAT has been relied upon by the Talwalkars. In fact, in the same judgment, Hon'ble SAT had also held that "*The assertions/allegations should also include that the Director/Directors were in charge of and responsible for the business of the Company and by virtue of their position they are liable for penalty.*" In the present case, the SCN has categorically brought out that the Noticees No. 2 to 6 by virtue of their role and position in THL were responsible for the conduct of affairs of THL and were therefore liable for the violations committed by the Company as alleged.
66. Talwalkars have also referred to the Hon'ble Supreme Court's order in case of *Chintalapati Srinivasa Raju v. SEBI* (Civil Appeal no. 1949 of 2017), to submit that the Orders of the Hon'ble City Civil Court passed against the Gawandes have some bearing in the present case as the SCN pertains to matters of a public nature. It is also submitted that they have filed police complaints against Gawande group for the fraudulent acts committed by them and seek to take further legal action against them for the same. In this regard, I note that Hon'ble Supreme Court in the matter of *Chintalapati* (supra) had referred to Section 42 of the Indian Evidence Act, 1872 which *inter alia* provides that Judgments, orders or decrees are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of what they state. Thus, reference was made to Section 42 only for the purpose of determining the relevance of the Judgments, orders or decrees passed by competent courts and which relate to matters of public nature relevant to the enquiry under question. In this regard, it is already noted in paragraph 18 above that court cases which are pending or wherein order has been passed against the Gawandes are unrelated to the specific allegations levelled in the SCN against the Talwalkars and moreover as per Section 42 only, if they relate to public nature relevant to the enquiry, they are relevant. I note that nothing has been brought forward by the Talwalkars which may demonstrate as to how these orders were relevant for the present

proceedings. Moreover, the disputes between the Gawandes and Talwalkars appear to be private in nature and have no relevance for determining their liabilities in the present proceedings as far as the allegations levelled in the SCN are concerned and thus, the reliance on *Chintalapati (supra)* matter is misplaced. I, therefore, do not find any merit in the argument put forth by the Noticees in this regard.

67. In view of the above, for the violations committed by THL and the roles played by Noticees No. 2 to 6, they are liable for the violations of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d), Regulations 4(1), 4(2) (f) and (k) of PFUTP Regulations and Regulations 4(1)(a), (b), (c), (e), (g), (h), and Regulation 48 of LODR Regulations, read with Section 27 of the SEBI Act. Regulations 4(2)(f)(ii) (6) (7) (8), 4(2)(f)(iii) (3) (6) (12) specifically provide for responsibilities of the board of directors and their key functions and thus these provisions are also attracted in case of Noticee No. 2 to 5. (Noticee No. 6 being CFO was not the part of board of directors). Additionally, as observed in paragraph 59, Noticee No. 3 and 6 are also liable for the violation of Regulation 17(8) and 33(2)(a) of the LODR Regulations.

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

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

69. Having regard to the discussions in the earlier paragraphs regarding the role and responsibility of Noticees No. 2 to 6, the question that remains to be addressed is about the directions to be issued and monetary penalty to be imposed against them.

70. I note that Section 11 of SEBI Act casts a duty on SEBI to protect the interests of investors in securities and to promote the development of and to regulate the securities market. Towards fulfilment of the said duty, SEBI has been authorized to take such measures as it thinks fit. Pursuant to the said objective, PFUTP Regulations and LODR Regulations have been framed. The said Regulations, apart from bringing transparency and fairness, aim to preserve and protect the market integrity in order to boost investor confidence in the securities market. By

misrepresenting the financial statements, and by failing to make true and adequate disclosures, the Noticees No. 2 to 6 have not presented the true and fair view of the affairs of THL, and thus have not only defrauded and misled the investors but have also impaired the integrity of the securities market. In view of the same and considering the violations committed by the said Noticees, I find that it becomes necessary for SEBI to issue appropriate directions against them.

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

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

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

72. In the present case, the SCN has not quantified the profit made by the Noticees No. 2 to 6 on account of the violations discussed in preceding paragraphs, nor does it bring out the quantified loss caused to the investors because of the violations committed by the Noticees. However, at the same time, the violations of the provisions of SEBI Act, LODR Regulations and PFUTP Regulations have been established against the Noticees in light of the reasons discussed in detail. I, therefore, find that the above factors have to be considered for the purpose of arriving at the amount of penalty to be levied in the present case.

Order:

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

73.1. Noticees No. 2 to 6 are debarred from accessing the securities market and are also prohibited from buying, selling, and otherwise dealing in

securities market, directly or indirectly, in any manner whatsoever, for a period of 18 months from the date of this order.

73.2. Noticees No. 2 to 6 are further restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a director or a key managerial person, directly or indirectly, for a period of 18 months from the date of this order.

74. It is hereby clarified that the restraints imposed on Noticees No. 2 to 6 above and the restraints imposed on them vide the separate Order No. QJA/VS/CFID/CFID/29159/2023-24 dated September 15, 2023 in the matter of TBVFL shall run consecutively i.e., the period of restraints imposed vide this order shall commence after the expiration of the period of restraints imposed vide the said order in the matter of TBVFL.

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

Table No. 11- (Quantum of penalty)

Noticee No.	Name of the Noticee	Penalty Amount (in ₹) u/s 15HA of SEBI Act	Penalty Amount (in ₹) u/s 15HB of SEBI Act	Total Penalty (in ₹)
1.	Talwalkars Healthclubs Limited*	10,00,000	2,00,000	12,00,000
2.	Girish Talwalkar	10,00,000	2,00,000	12,00,000
3.	Prashant Talwalkar	10,00,000	2,00,000	12,00,000
4.	Anant Gawande	10,00,000	2,00,000	12,00,000
5.	Harsha Bhatkal	10,00,000	2,00,000	12,00,000
6.	Girish Nayak	5,00,000	1,00,000	6,00,000

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

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

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties /disgorgement /recovery /settlement amount/legal charges along with order details)	

77. This order shall come into force with immediate effect. A copy of this order shall be served on the Noticees, all the recognized stock exchanges, depositories and the Registrar and Share Transfer Agents for ensuring due compliance with the above directions.

78. Further, a copy of this Order shall be forwarded to the liquidator of THL, the Ministry of Corporate Affairs, the concerned Registrar of Companies and NFRA for their information.

DATE: SEPTEMBER 15, 2023
PLACE: MUMBAI

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