

**BEFORE SECURITIES AND EXCHANGE BOARD OF INDIA
EXECUTIVE DIRECTOR, MR. MANOJ KUMAR**

FINAL ORDER

**UNDER SECTION 12A OF SECURITIES CONTRACTS (REGULATION) ACT, 1956
AND SECTIONS 11 (1), 11(4), 11(4A), 11B(1), 11B(2) READ WITH SECTION 15 HA OF
SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

In respect of:

Noticee. No.	Name of the Noticee	PAN
1	Shilpi Cable Technologies Limited	AADCR3380E
2	Mr. Mukesh Gupta	AEIPG5741G
3	Mr. Manish Goel	AEDPG0138E
4	Mr. Ghanshyam Pandey	AEDPP9478A

In the matter of the Initial Public Offer of Shilpi Cable Technologies Limited.

BACKGROUND:

1. In the year 2011, Shilpi Cable Technologies Limited (hereinafter referred to as “SCTL/the Company”) came out with an Initial Public Offer (“IPO”) for issue of 80,98,145 equity shares having face value of ₹ 10 each through 100% book building process at a price of ₹ 69 per fully paid-up equity share (including a premium of ₹ 59 per equity share) and aggregating to approximately ₹ 55.87 crore.
2. Securities and Exchange Board of India (“SEBI”) conducted an investigation with respect to the utilization of IPO proceeds, deviation in deployment of IPO proceeds from the objects mentioned in the final prospectus/ Red Herring Prospectus (“RHP”) and violations of the provisions of Securities and Exchange Board of India Act, 1992 (“SEBI Act”), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations, 2009”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations”).

SHOW CAUSE NOTICE:

3. Pursuant to the investigation, a show cause notice dated August 18, 2021 (“the SCN”) was issued to SCTL, Mr. Mukesh Gupta, Mr. Manish Goel and Mr. Ghanshyam Pandey (hereinafter collectively referred to as “*Noticees*” and individually by their respective names or *Noticee* No.) alleging that SCTL has violated section 61 of the Companies Act, 1956, and the *Noticees* have collectively violated section 21 of the Securities Contracts (Regulation) Act, 1956 (“SCRA”) read with clause 43A of the Equity Listing Agreement (as it existed then), sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (k) of PFUTP Regulations, regulation 57(1), clause 2(a)(i) of Schedule VII, clause 2(I)(A)(2)(h) of Para A of Schedule VIII, clauses 2(XII)(B)(31)(a)(ii) and 2(XII)(B)(31)(a)(iii) of Part A of Schedule VIII of ICDR Regulations, 2009. The SCN called upon the *Noticees* to show cause as to why appropriate directions and penalty under section 12A of SCRA and sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) read with 15HA of SEBI Act should not be issued / imposed against them.
4. The SCN contained the following observations and allegations with regard to the *Noticees* :-
 - 4.1 *SCTL was incorporated on July 9, 2006 as a public limited company with the name Rosenberger Shilpi Cable Technologies Limited. The company was established as a 50:50 joint venture between Shilpi Communications Pvt. Ltd and Rosenberger Hochfrequenztechnik GmbH & Co KG, Germany, to take up the project of Radio Frequency (RF) cables. On May 10, 2008, the said joint venture ceased and all the shareholding of Rosenberger Hochfrequenztechnik GmbH & Co KG in the said company was transferred to Shilpi Communication Pvt. Ltd. On October 21, 2008, the name of the company was changed to SCTL. Subsequently, in the year 2011, SCTL came out with an IPO as mentioned earlier.*
 - 4.2 *Pursuant to the IPO, SCTL was listed on BSE Ltd. and National Stock Exchange of India Ltd. on April 8, 2011. As per the disclosures made by SCTL under Clause 43A of the Equity Listing Agreement with the Exchanges, the IPO proceeds were completely utilized over the period April 2011 - March 2013. The said period from April 2011 to March 2013 was taken as the Investigation period (IP) for the purpose of investigation.*
 - 4.3 *During the IP, Mr. Mukesh Gupta was the Chairman and Managing Director (“CMD”) while Mr. Manish Goel and Mr. Ghanshyam Pandey were the Whole Time Directors*

("WTD") of SCTL. Mr. Ghanshyam Pandey had resigned from the office of Whole Time Director of the Company w.e.f. May 31, 2012. Subsequently, he continued as a non-executive director till Sept 1, 2013, when he was again re-appointed as Whole-time Director and continued as such till 2017.

4.4 The allegations against the Noticees as contained in the SCN are discussed in the ensuing paragraphs under separate heads.

4.5 Deviation in deployment of IPO proceeds from that mentioned in the RHP without complying with the necessary regulatory compliances:

4.5.1 Investigation revealed that a substantial portion of the IPO proceeds was used by SCTL to repay unsecured creditors, advances to a group entity – Shilpi Communication Pvt. Ltd. for payments to the vendors who were subsequently selected by SCTL to replace the vendors mentioned in the prospectus, and working capital requirement. A summary of the comparison between the actual utilization of IPO proceeds, as observed from the bank statements and supporting documents submitted by SCTL in its letter dated February 19, 2016 to that mentioned in the prospectus is as follows:

TABLE—1

(in ₹ crore)

S. No	Particulars	Utilization proposed in the Prospectus (A)	Submission of the company reg. the utilization of IPO proceeds as on date of co. reply i.e. Feb 19, 2016 (B)	As observed from the supporting documents and bank statements in Co's reply dated Feb 19, 2016 (C)	Deviation (after taking the full utilization of IPO proceeds) (D) = (A) – (C)
1	To raise funds for capital expenditure on Cable/wire Assembly shop	8.65	1.62	-	8.65

2	To raise funds for capital expenditure on Tools for 3G enabling	4.47	-	-	4.47
3	To raise funds for capital expenditure on augmenting cable manufacturing capabilities	16.21	19.36	-	16.21
4	To raise funds towards margin for working capital for the proposed new businesses	15.54	27.88	-	15.54
5	To raise funds for investment in the Subsidiary of the Company, M/s Shilpi Cabletronics Limited	5.00	5.00	5.00	-
6	To raise funds for General corporate purposes	3.00	-	0.20	2.80
7	To meet the expenses of the issue	3.00	2.02	0.62	2.38
	Total	55.88	55.88	5.82	50.05

4.5.2 Further, investigation observed that IPO proceeds were used to make payments as per the following table:

TABLE —2 (all fig. in ₹ crore)

S.No	Particulars	Amount
1	Advances to Group Companies *	7.78
2	FDs as margin payment for LCs *	11.33
3	Repayment of Unsecured Loans already taken *	11.18

4	To meet working capital requirements of existing business *	17.36
5	Amount paid towards Term Loan *	2.41
Total		50.05

* IPO proceeds were deployed under these heads contrary to what was mentioned in the prospectus

4.5.3 In terms of section 61 of the Companies Act, 1956, approval of the shareholders of the company is essential for alteration of objects of the IPO proceeds. The said provision of the Companies Act, necessitated the company to seek the approval of shareholders in a general meeting before changing the terms of objects/ contracts mentioned in the prospectus like changing the objects of utilization of IPO proceeds. Though, the change of objects of utilization of IPO proceeds were approved by the Board of SCTL in its meeting dated July 29, 2011, but it was observed that the entire proceeds of IPO were spent between April 07, 2011 and April 18, 2011 for payments to the 20 entities (details provided in Table 3 below).

4.5.4 Hence, it was alleged that SCTL had deviated from the objects of the IPO by approximately ₹ 50 Crore by utilizing proceeds towards objects, different from the objects to the Issue mentioned in the prospectus, without taking necessary prior approval of shareholders, and is in violation of section 61 of the Companies Act 1956.

4.6 Made Incorrect and Misleading disclosures on Exchanges regarding utilization of IPO proceeds-

4.6.1 It was observed that SCTL had made payments to the following entities from the IPO proceeds:

TABLE—3

Sl No.	Particulars	Date of payments	Amount (in ₹ crore)	Remarks
1.	Payment of IDBI Term Loan	07.04.2011	2.41	
2.	Salasar Trading Co.	07.04.2011, 08.04.2011 and 13.04.2011	8.20	Approx. ₹ 6 crore were transferred through a layer of transactions to off-shore entities i.e. Glints Global General Trading and King Tech Ltd.
3.	King Empire Tradexim Pvt. Ltd.	07.04.2011, 08.04.2011	2.60	

4.	King Power Industries Pvt. Ltd.	07.04.2011, 08.04.2011	2.50	
5.	E.I. Dupont De Nemours & Co.	13.04.2011	0.03	
6.	Dubai Cable Company Pvt. Ltd.	13.04.2011, 19.04.2011	1.68	
7.	RRJR Trading Pvt. Ltd.	09.04.2011	0.75	
8.	Shilpi Cabletronics Limited	07.04.2011, 11.04.2011 and 18.04.2011	6.73	Of the same, ₹1.92 crore, ₹0.37 crore were transferred to Entity (3) and (4) respectively
9.	FDR with PNB 100% Margin for FLC	08.04.2011	11.33	Closure amount of ₹ 12.35 crore was utilized for payment of ₹ 12.91 Crore to Glints Global Limited (HK) (erstwhile Ford Asia International Limited) for purchase of machinery
10.	Shilpi Communication Pvt. Ltd.	08.04.2011, 11.04.2011	6.05	
11.	SE Investments Limited	13.04.2011	0.24	
12.	Prerna Arcade Pvt Limited	08.04.2011, 11.04.2011	9.00	
13.	Progressive Trade Impex Pvt Ltd	09.04.2011	0.70	
14.	Sarswati Vincom Ltd.	07.04.2011	1.00	
15.	Essential Trade Expo Pvt Ltd	09.04.2011	0.24	
16.	LC-Hanwha Corporation	11.04.2011	1.81	
17.	D & A Financial Services (P) Limited	07.04.2011	0.35	
18.	Hem Securities Limited	07.04.2011	0.22	
19.	Sobhagya Advertising Services	07.04.2011	0.05	
20.	Other Expenses/ Payments	-	0.003	

- 4.6.2 *It was observed that the disclosures made by SCTL to the Exchanges regarding the utilization of IPO proceeds under Clause 43A of the Equity Listing Agreement (made every quarter after SCTL's listing in April 2011) were inconsistent with SCTL's reply dated February 19, 2016 and the bank statements of the company. Investigation revealed that the payments from the entire IPO proceeds were made during the period April 07, 2011 to April 19, 2011. However, according to the disclosures made by the company regarding the quarterly utilization of IPO proceeds, some portion of the IPO proceeds remained unutilized till March 2013.*
- 4.6.3 *Therefore, it was alleged that SCTL had made incorrect and misleading disclosures to Exchanges regarding the utilization of IPO proceeds required as per Clause 43A of the Equity Listing Agreement.*
- 4.6.4 *Mr. Gupta was the Chairman and Managing Director (CMD) of SCTL during the IP and was involved in the management of its affairs and had signed several documents in relation to the IPO. Being the Chairman of the Board, he was involved in the IPO process and the utilization of IPO proceeds. Mr. Goel was a promoter director/ Whole Time Director in the company during the IP and was involved in the management of the affairs of the company. Further, he had also signed several documents in relation to the IPO and was involved in the utilization of IPO proceeds. Mr. Pandey was a Whole Time Director in the company during the IP and was actively involved in the day to day affairs of the company including the IPO process and the utilization of IPO proceeds. Further, Mr. Gupta and Mr. Pandey had attended the Board meeting dated April 7, 2011 wherein the change in supplier from that mentioned in the RHP was approved, and Mr. Gupta, Mr. Goel and Mr. Pandey had also attended the Board meeting dated July 29, 2011 wherein the resolution regarding changes to the objects of the IPO proceeds mentioned in the RHP were approved.*
- 4.6.5 *Thus, it was alleged that Mr. Gupta, Mr. Goel and Mr. Pandey, by virtue of their positions in SCTL, were aware of the incorrect and misleading disclosures regarding the utilization of IPO proceeds being made to Exchanges. In light thereof, it was alleged that SCTL, Mr. Gupta, Mr. Goel and Mr. Pandey were in violation of section 21 of the SCRA read with clause 43A of the Equity Listing Agreement and sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (k) of PFUTP Regulations.*

4.7 Failure to comply with the requirement of disclosing all monies utilized and unutilized out of the issue proceeds under appropriate separate heads in its balance-sheets:

- 4.7.1 SCTL had disclosed on Exchanges that the total fixed deposits out of the IPO proceeds as on June 2011 were ₹ 32.25 crore. However, SCTL in its letter dated February 25, 2015 had submitted that the IPO proceeds to the tune of ₹11.50 crore was double-counted i.e. under the head capital expenditure as well under fixed deposits as on end of June 2011 and the fixed deposit from the IPO proceeds as on June 2011 was ₹ 20.75 Cr. Thus, it was observed in the investigation that there was an overstatement of utilization of IPO proceeds by SCTL in the quarterly disclosures made to the Exchanges.
- 4.7.2 From the reply of SCTL dated December 9, 2014 along with the supporting documents it was observed that out of ₹20.75 Cr fixed deposits, ₹ 19.53 Cr came from the proceeds of bill discounting which SCTL had done with Ratnakar Bank for the customer BRG Iron and Steel Co Pvt Ltd. The same was informed by Ratnakar Bank vide email dated March 2, 2020. Thus, the investigation observed that the amount used to create fixed deposits by SCTL was not entirely from the proceeds of the IPO.
- 4.7.3 In view of the above, it was alleged that SCTL failed to prepare proper report of utilization of IPO proceeds while making disclosures in its financial filings with Exchanges and its annual report. Further, it was also alleged that SCTL failed to disclose all monies utilized and unutilized out of the issue proceeds under appropriate separate heads in its balance-sheets, indicating the purpose for which such monies had been utilized and also indicating the form in which the unutilized monies have been invested.
- 4.7.4 Mr. Gupta, Mr. Goel and Mr. Pandey, by virtue of their respective positions in SCTL were alleged to have failed to comply with the requirement of disclosing all monies utilized and unutilized out of the issue proceeds under appropriate separate heads in its balance-sheets,
- 4.7.5 Therefore, it was alleged that the Noticees were in violation of Clauses 2(XII)(B)(31)(a)(ii) and 2 (XII)(B)(31) (a)(iii) of Part A of Schedule VIII of ICDR Regulations, 2009.

4.8 Disclosed distorted, false and vague information in the agenda pertaining to change/ alteration of objects of IPO in the notice to the AGM dated Sept 29, 2011:

- 4.8.1 SCTL vide its letters dated November 26, 2014, November 28, 2014 and February 25, 2015, had submitted that it had altered the objects of the IPO after taking authorization of the shareholders in the AGM held on September 29, 2011.
- 4.8.2 It was observed that the information mentioned in the resolution and the Explanatory Statement as part of the notice, and as part of the annual report, to the members regarding the AGM dated September 29, 2011 was vague and provided blanket powers authorizing the Board of SCTL to alter the objects stated in the prospectus. SCTL did not mention the details regarding the actual utilization under appropriate heads vis-a-vis what was proposed in the prospectus, the amount of savings out of capital expenditure, IPO expenses proposed to be utilized in working capital, and the total amount pending to be utilized till the point of obtaining shareholders' ratification.
- 4.8.3 As noted earlier, the entire proceeds of IPO were used during the month of April 2011 itself to make payments to entities and for means divergent from that mentioned in the prospectus. However, the same was not mentioned in the notice prior to the AGM dated September 29, 2011. From the information disclosed to the shareholders by the notice/ resolution, it was projected by SCTL that the IPO proceeds were still pending to be utilized.
- 4.8.4 Further, Mr. Gupta, Mr. Goel and Mr. Pandey, by virtue of their respective positions in the company during the IP (i.e. CMD / WTD) were aware of the distorted, false and vague information provided to the shareholders in the notice to the AGM dated September 29, 2011.
- 4.8.5 Thus, it is alleged that SCTL and other Noticees failed to inform the shareholders that their approval was a post facto approval of actual deployment of IPO proceeds and presented distorted, false and vague information to the shareholders in the notice to the AGM, and prevented the shareholders from taking an informed decision while voting on the said agenda and acted detrimentally to the rights of the shareholders.

4.8.6 Hence, it was alleged that the Noticees were in violation of sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (k) of PFUTP Regulations.

4.9 Failed to make disclosures of material information in RHP/ prospectus:

4.9.1 In paragraph 24 of the RHP/prospectus under the chapter 'Risk Factors', SCTL had disclosed that as on September 30, 2010, it had unsecured loan amounting to ₹15.91 crore which may be repayable on demand. Further, regarding the material developments concerning the unsecured loans taken by SCTL after the filing of DRHP, SCTL vide a certificate dated February 17, 2011, had stated that barring certain litigations (mentioned therein), no other circumstance has arisen since September 30, 2010 which materially and adversely affects the company's business.

4.9.2 SCTL vide letters dated November 28, 2014, February 19, 2016 and February 25, 2016 had submitted that it had made payments/ transfers to Saraswati Vincom (₹ 1 crore), Prerna Arcade (₹ 9 crore), Progressive Trade Impex (₹ 0.7 crore) and Essential Trade Expo (₹ 0.24 crore) from the IPO proceeds towards the repayment of unsecured loans.

4.9.3 From the RHP/ prospectus, investigation observed that unsecured loans taken by SCTL from Prerna Arcade, Progressive Trade Impex and Essential Trade Expo Pvt. Ltd, from September 30, 2010 till the date of opening of issue were not disclosed.

4.9.4 SCTL, vide letter dated February 25, 2016, had submitted that in the RHP dated March 15, 2011 and prospectus dated March 28, 2011, the financial detail was presented as on September 30, 2010 (within the time limit of six months specified) and accordingly the detail of unsecured loans as on September 30, 2010 has been duly disclosed in the Risk Factors of the RHP/ prospectus. Since, the unsecured loans from Progressive Trade Impex Pvt. Ltd. (₹ 0.7 crore), Prerna Arcade Pvt. Ltd. (₹ 10 crore) and Essential Trade Expo Pvt. Ltd. (₹ 0.5 crore) had been taken after September 30, 2010, they were not shown in the RHP/ prospectus. Further, SCTL in its reply dated February 19, 2016 also submitted that it had also taken an additional unsecured loan of ₹ 4.70 crore from SE Investments Ltd. on November 25, 2010 apart from the unsecured loans availed from Prerna Arcade, Progressive Trade Impex and Essential Trade Expo Pvt. Ltd.

- 4.9.5 Investigation observed that these additional unsecured loans resulted in almost 100% increment in the figure of unsecured loans to that disclosed in the RHP (₹15.91 Cr as on September 30, 2010). Investigation further observed that this additional unsecured loan taken by SCTL between the filing of DRHP (i.e. September 3, 2010) and the issue open date (i.e. March 22, 2011), had materially increased the risks associated with the issue and should have been incorporated in the Risk Factors disclosed in the offer documents/ prospectus.
- 4.9.6 Investigation observed that these additional unsecured loans availed, during the period between the filing of DRHP and the issue open date, from SE Investments Ltd, Progressive Trade Impex Pvt. Ltd., Prerna Arcade Pvt. Ltd. and Essential Trade Expo Pvt. Ltd. which totaled to ₹ 15.9 crore, were material with respect to the issue, and could have significantly influenced the investment decision of the investors. However, this was neither disclosed in the prospectus or by filing updated offer document to SEBI nor by means of public notice by SCTL.
- 4.9.7 Mr. Gupta, Mr. Goel and Mr. Pandey, by virtue of their respective positions in the company during the IP (i.e. CMD / WTD), were aware of the non-disclosure of such unsecured loans, which had materially increased the risks associated with the issue, taken by SCTL between the filing of DRHP and the issue open date. Mr. Goel had signed the certificate on material developments dated Feb 17, 2011 made with the Merchant Banker inter alia stating that barring certain litigations (mentioned therein), no other circumstance has arisen since filing of DRHP with SEBI which materially and adversely affect the company's business.
- 4.9.8 Thus it was alleged that the Noticees failed to disclose such material developments in the prospectus, misrepresented the true financial position of SCTL and thereby misled the investors from taking an informed decision, and violated Section 12A (a), (b) and (c) of the SEBI Act read with Reg. 57(1) and Clause 2(a)(i) of Schedule VII and Clause 2(I)(A)(2)(h) of Para A of Schedule VIII of ICDR Regulations, 2009 and regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f) and 4(2)(k) of PFUTP Regulations.

4.10 Transferred IPO proceeds for dubious transactions to entities, whose credentials are questionable:

- 4.10.1 Payments made to King Empire Tradexim Pvt. Ltd., King Power Industries Pvt. Ltd. and Salasar Trading Co.:

- 4.10.1.1 *From the analysis of bank account statements of SCTL and its reply dated February 19, 2016, it was observed that SCTL had utilized some of the IPO proceeds towards transactions with entities whose credentials and businesses are doubtful.*
- 4.10.1.2 *It was observed that several payments to the tune of ₹ 8.20 crore from the IPO proceeds have been made to Salasar Trading Co. (Salasar Trading) and payments to the tune of ₹ 2.5 crore and ₹ 2.6 crore from the IPO proceeds were made to King Power Industries Pvt. Ltd. (King Power Industries) and King Empire Tradexim Pvt. Ltd. (King Empire Tradexim), respectively.*
- 4.10.1.3 *SCTL, in its letter dated February 19, 2016 had submitted that the aforesaid payments were for the purpose of working capital. Upon perusal of the bills submitted in support of the said transactions, investigation observed that the goods described in the bills are connectors, cables and jumpers.*
- 4.10.1.4 *Investigation revealed that both King Power Industries and King Empire Tradexim were formed on the same date i.e. April 22, 2010. From their financial statements, investigation observed that these 2 entities did not have any major fixed assets and had abnormally high levels of inventory turnover. Further, from the total turnover and the total expenses for FY 2010-11, it was observed that King Power Industries and King Empire Tradexim were not involved in any value addition of goods. Their major assets were trade receivables and their funding were mainly met by unsecured short term borrowings and trade payables. Further, from the Profit and Loss statement for the Financial Year ending 2011, investigation observed that King Empire Tradexim had incurred expenses of ₹ 2.35 lac towards salary and ₹ 0.93 lac towards rent which are disproportionately low given the substantially high sales and expenses figures.*
- 4.10.1.5 *From the ledger statements of King Power Industries, in the books of SCTL, for the financial years 2010-11 and 2011-12, investigation observed that SCTL had purchased goods worth ₹ 11.53 Crore and ₹ 106 Crore from King Power in the financial years 2010-11 and 2011-12, respectively.*
- 4.10.1.6 *From the ledger statements of King Empire Tradexim in the books of SCTL and Shilpi Cabletronics Pvt. Ltd. (then subsidiary of SCTL) investigation observed that SCTL and Shilpi Cabletronics Pvt. Ltd. had purchased goods worth ₹ 11.53 crore and ₹ 16.8 crore, respectively and aggregating to ₹ 28.3*

crore during the Financial Year 2010-11 from King Empire Tradexim. However, from the financial statements of King Empire Tradexim for the financial year 2010-11, investigation observed discrepancy with regard to the total revenue of King Empire Tradexim and the same had been reported as ₹ 24.90 crore.

4.10.1.7 It is alleged that SCTL and Shilpi Cabletronics Pvt. Ltd. were the only customers of King Empire Tradexim during the financial year 2010-11.

4.10.1.8 Investigation observed that though King Power Industries and King Empire Tradexim were incorporated in April 2010, SCTL placed substantial portion of its purchases with King Power Industries and King Empire Tradexim during the period 2010-11 and 2011-12. Further, the financials of these companies were not commensurate with their high revenue and expenses figures and that they were not found to be involved in production/ manufacturing of products. Hence, it was observed that the credentials of the companies - King Power Industries and King Empire Tradexim were doubtful.

4.10.1.9 From the bank statements of Salasar Trading, King Empire Tradexim, King Power Industries and another entity named Golden Jubilee Sales, investigation observed that they had frequent transactions amongst themselves. During the financial year 2011-12, Golden Jubilee Sales had infused ₹ 99 lakh each in the share capital of King Empire Tradexim and King Power Industries.

4.10.1.10 From the KYC and AOF of the bank accounts of the entities –King Empire Tradexim, King Power Industries and Golden Jubilee Sales Pvt. Ltd. and the records available on MCA, investigation observed that Salasar Trading Co., King Empire Tradexim and King Power Industries were related entities.

4.10.1.11 From the analysis of bills for the goods purchased by SCTL from the aforesaid entities, investigation observed that it had purchased the items- Din Male Connector 7/8 Feeder cable, Dual Male Connector 7/8 Feeder cable and 1.5 Jumper Din Male & Female Connector from Salasar Trading, King Power Industries and King Empire Tradexim.

4.10.1.12 In this regard, SCTL failed to provide any supporting documents i.e. way-bill to prove if any actual movement of goods took place or the transactions were mere book entries without any actual movement of goods.

4.10.2 Payment made to RRJR Trading Pvt. Ltd.:

- 4.10.2.1 From the bank account statements of SCTL, it was observed that ₹ 0.25 crore out of the IPO proceeds was transferred from SCTL's IDBI Bank A/c- 11655100001465 to the bank account of RRJR Trading Pvt. Ltd. (RRJR) i.e. Axis Bank A/c 910020000490830 on April 9, 2011 and ₹ 0.50 crore was transferred from SCTL's SBI Bank A/c 30877793951 to the bank account of RRJR on April 8, 2011.
- 4.10.2.2 From the Balance Sheet and Profit and Loss Statement of RRJR for the period Apr 01, 2010 to Mar 31, 2011 and from Apr 01, 2011 to Mar 31, 2012, investigation observed that RRJR did not have any fixed asset and had losses for the respective periods. The major asset of RRJR was trade receivables, and funding of RRJR was mainly met by unsecured short term borrowings and Trade payables.
- 4.10.2.3 From the ledger statements of RRJR and the books of SCTL, investigation observed that SCTL had made purchases worth ₹ 62.48 Crore during the FY 2010-11 and had a net credit balance of ₹ 0.29 Crore as on end of March 31, 2011. Further, the ledger statement of RRJR for the FY 2011-12 revealed that there were numerous payments made to RRJR by SCTL without any purchase of goods by SCTL from RRJR.
- 4.10.2.4 SCTL in its reply dated Feb 19, 2016 had submitted that the payments were made for purchase of raw materials. The examination of the invoices indicated that the goods described in the bills are jumpers, connectors and feeder cables. Further, from the ledger of RRJR in the books of Shilpi Cabletronics (then wholly owned subsidiary) and associated invoices, investigation observed that RRJR had procured similar goods from Shilpi Cabletronics.
- 4.10.2.5 Though as per MoA of RRJR, its object is trading and other activities in goods pertaining to textiles, but both SCTL and Shilpi Cabletronics dealt in items pertaining to cables, jumpers and connectors with RRJR.
- 4.10.2.6 Further, upon analysis of the invoices submitted by SCTL and by Shilpi Cabletronics, it was observed that products purchased by RRJR from Shilpi Cabletronics were subsequently sold to SCTL at a higher value. A few illustrations are mentioned below:

SI No.	Details of sales made to RRJR by Shilpi Cabletronics					Details of purchases made by SCTL from RRJR				
1	Date of invoice	10-Mar-11				Date of invoice	12-Mar-11			
	Invoice No.	278				Invoice No.	228			
	Description of goods	Connect or ¼ inch	Qty: 3000 pcs	Rate: 433/pc	Amount: ₹12,99,000	Description of goods	Connect or ¼ inch	Qty: 3000 pcs	Rate: 434/pcs	Amount: ₹13,02,000
		Connect or 7/8	Qty: 1200 pcs	Rate: 609/pc	Amount: ₹7,30,800		Connect or 7/8	Qty: 1200 pcs	Rate: 610/pcs	Amount: ₹7,32,000
	Total (+@12.5 % VAT)	₹ 22,83,525				Total (+@12.5 % VAT)	₹ 22,88,250			
2	Date of sale	28-Jan-11				Date of sale	29-Jan-11			
	Invoice No.	263				Invoice No.	214			
	Description of goods	Feeder Cable 7/8"	Qty: 3265 mtr	Rate: 630/mtr	Amount: ₹20,56,950	Description of goods	Connect or 7/8	Qty: 320 pcs	Rate: 639/pc	Amount: ₹2,04,480
		Surge Arrester for 7/8 inch Feeder Cable	Qty: 1050 pcs	Rate: 650/pcs	Amount: ₹6,82,500		Feeder Cable 7/8"	Qty: 3519 mtr	Rate: 631/mtr	Amount: ₹22,20,489
		Connect or 7/8	Qty: 315 pcs	Rate: 638/pcs	Amount: ₹2,00,970		Surge	Qty: 105 pcs	Rate: 651/pcs	Amount: ₹6,86,805
	Total (+@12.5 % VAT)	₹ 33,07,973				Total (+@12.5 % VAT)	₹ 35,00,746			

4.10.2.7 In view of the above, it was alleged that the entire transactions, involving the process of sale of goods by Shilpi Cabletronics to RRJR at a price lower to what RRJR sold to SCTL and in quantity higher to what RRJR sold to SCTL, were sham transactions.

4.10.3 Amount transferred to Shilpi Cabletronics Pvt. Ltd. (then wholly owned subsidiary):

4.10.3.1 From the bank account statements of SCTL, it was observed that payment of ₹6.73 Crores was made to Shilpi Cabletronics Pvt. Ltd in four tranches. SCTL in its prospectus had mentioned that one of the objects of the IPO was to raise funds for investment in the subsidiary – Shilpi Cabletronics Limited and had proposed ₹ 5 crore for such investment. With regard to the additional amount to the tune of ₹ 1.73 Crore transferred to Shilpi Cabletronics, SCTL had replied that the same was for Shilpi Cabletronics' urgent working capital requirement and subsequently Shilpi Cabletronics was merged into SCTL.

4.10.3.2 Investigation observed that the additional payment of ₹ 1.73 Crore to Shilpi Cabletronics Limited for its working capital requirement is divergent from the objects of the issue proposed in the final prospectus.

4.10.3.3 From PNB's email dated Feb 28, 2020, it was observed that Shilpi Cabletronics had subsequently transferred the funds from its bank account (PNB 4904008700000080) during the period 07.04.2011 to 13.04.2011 to the following entities:

Sl No.	Name of the entity	Amount transferred (in ₹ crore)
1	Essential Tradexpo Pvt. Ltd.	0.06
2	King Empire Tradexim Pvt. Ltd	1.92
3	King Power Industries Pvt Ltd	0.37
4	OTTMISC- Shilpi Cabletronics Ltd. (Hong Kong)	0.89
5	Progressive Trade Impex Pvt. Ltd	0.06
6	Salasar Trading Company	0.01
7	Shilpi Cable Technologies Limited	0.30
8	Shilpi Cabletronics Ltd.	1.62
9	KJRS Trading (P) Ltd.	0.25

4.10.3.4 As noted in the above table, out of the ₹ 6.73 Cr transferred to Shilpi Cabletronics, an amount of ₹ 2.3 Cr was transferred to the entities – Salasar Trading, King Empire Tradexim and King Power Industries. As noted earlier, investigation had revealed that the transactions with the aforesaid entities are suspicious and sham. On the basis of the same, it is alleged that an amount of

₹ 2.3 Cr transferred to Shilpi Cabletronics from the IPO proceeds was made for dubious transactions and with entities whose credentials are questionable.

4.10.4 Mr. Gupta, Mr. Goel and Mr. Pandey by virtue of their respective positions in the company during the IP, were aware of the payments made for such dubious transactions to entities - King Empire Tradexim Pvt. Ltd., King Power Industries Pvt. Ltd., Salasar Trading Co. and RRJR, whose credentials were questionable. Hence it was alleged that the Noticees had transferred IPO proceeds for dubious transactions to entities i.e. King Empire Tradexim Pvt. Ltd., King Power Industries Pvt. Ltd., Salasar Trading Co. and RRJR Trading Pvt. Ltd. whose credentials were questionable, and had therefore, violated Sections 12A(a), (b) and (c) of the SEBI Act read with regulations. 3(a), 3(b), 3(c), 3(d) 4(1) of PFUTP Regulations.

4.11 Transferred ₹ 6.05 Crore of the IPO proceeds to group company/ promoter entity – Shilpi Communication Pvt. Ltd:

4.11.1 From the bank account statements of SCTL, investigation observed that a total of ₹ 6.05 Crore was transferred to Shilpi Communication Pvt. Ltd. (promoter of SCTL) in a series of transactions.

4.11.2 SCTL, in its reply dated February 19, 2016 had submitted that advances were given to Shilpi Communication Private Limited and ₹ 4.6 Crore was recovered during the year 2011-12. Further an amount of ₹ 0.40 Crore was adjusted out of Credit Balance of ₹ 1.06 Crore of Shilpi Communication Private Limited in the books of Shilpi Cabletronics Limited. Regarding the ₹4.6 crore recovered by SCTL, the following details were submitted towards receipt of funds from Shilpi Communication Private Limited:

Bank Account	Branch	Amount (in ₹ Cr)	Dated
PNB-CC	Patparganj, Delhi	0.19	13.04.2011
IDBI-CC	Red Cross Branch	0.3	18.07.2011
PNB-CC	Patparganj, Delhi	0.01	02.08.2011
PNB –Current	Patparganj, Delhi	0.05	29.11.2011
PNB CC	Patpargajn, Delhi	3	22.03.2012
PNB CC	Patpargajn, Delhi	0.05	26.03.2012
PNB CC	Patpargajn, Delhi	1	30.03.2012
	Total	4.6	

- 4.11.3 From the bank statements of SCTL and Shilpi Communication and the ledger statement of Shilpi Communication, frequent transactions were observed between the two entities.
- 4.11.4 From the abovementioned ledger statements, it was observed that even though there were frequent fund transfers between the three group companies, no bill entries for supply or receipt of goods and services were observed in the ledgers to support such payments. Further, as per the Annual Report of SCTL for the financial year ending 2012, no sales or expenses were made by SCTL with the promoter company - Shilpi Communication.
- 4.11.5 From Shilpi Communication's bank account statement, it was observed that the amount of ₹ 5 crore received from SCTL was further transferred to Prerna Arcade Pvt. Ltd. on April 09, 2011.
- 4.11.6 Though SCTL has claimed that part of the funds transferred to Shilpi Communication were subsequently received and part of which was adjusted against the entries of Gloster Metal & Alloys (group entity of SCTL) and Shilpi Cabletronics (which was later merged with SCTL), from the bank account statements and the annual report of SCTL, it is observed that there were significant fund transfers between the entities and that there were no related party purchases or sales amongst them.
- 4.11.7 Accordingly, it was observed that the claim of the company that the funds transferred to Shilpi Communication Pvt. Ltd. from IPO proceeds were returned to SCTL cannot be adequately substantiated.
- 4.11.8 Mr. Gupta, Mr. Goel and Mr. Pandey by virtue of their respective positions in the company during the IP, were aware of the advances made to Shilpi Communication Pvt. Ltd. without any underlying transaction.
- 4.11.9 Therefore, it was alleged that SCTL and the other Noticees had transferred ₹ 6.05 Crore of the IPO proceeds to group entity for its use without any underlying transaction and have violated of sections 12A(a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations.
5. By way of the SCN, the Noticees were called upon to show cause as to why appropriate directions under Section 12A of SCRA and sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) read with 15HA of SEBI Act should not be issued against them.

Service of SCN and Personal Hearing:

6. The SCN dated August 18, 2021 was sent to all the *Noticees* by SPAD and was served on 2 *Noticees* namely, Mr. Goel and Mr. Pandey. As regards SCTL and Mr. Gupta, the SCN could not be served through SPAD. The same was subsequently served on them through affixture on November 8 and 11, 2021.
7. An opportunity of personal hearing was provided to the *Noticees* on October 13, 2022. Since the company (i.e. SCTL) is undergoing liquidation (in terms of the order of NCLT), for the hearing, it was represented by the liquidator appointed by NCLT. Mr. Goel appeared for himself and also informed that his father (Mr. Gupta) / *Noticee* No. 2) had passed away. Mr. Pandey vide a letter / email dated sought adjournment, which was granted. On October 13, 2022, the hearing was concluded in respect of all the *Noticees* (except Mr. Pandey) and they were given time till October 31, 2022 to file their written submissions in the matter. The said *Noticees* filed their written submissions albeit with a minor delay. Subsequently, an opportunity of hearing was provided to Mr. Pandey on December 9, 2022 when he appeared along with his authorized representative(s). Mr. Pandey also sought time to file his written submissions in the matter and filed the same vide an email dated December 21, 2022.

NOTICEES' SUBMISIONS:

8. The submissions made by the *Noticees* vide their replies, during the personal hearing and their written submissions are summarized as under:

8.1 SCTL (Noticee no.1) —replies submitted by liquidator appointed by NCLT namely, Huzefa Fakhri Sitabkhan as SCTL is under liquidation

- 8.1.1** *Corporate Insolvency Resolution Process ("CIRP") was initiated on the Corporate Debtor vide an order dated May 24, 2017 of the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi ("NCLT") and subsequently an Interim Resolution Professional ("IRP") was appointed under the process vide an order of the NCLT dated July 13, 2017. Thereafter, the CIRP was set aside by an order of the Hon'ble National Company Law Appellate Tribunal, New Delhi dated August 01, 2017 which was re-instated vide an order dated December 15, 2017, issued by the Hon'ble Supreme Court of India. The IRP appointed by the NCLT was later confirmed and took charge of the Corporate Debtor in the capacity of the Resolution Professional ("RP") for managing CIRP.*

- 8.1.2** *Further, based on application filed under section 22(3)(b) for replacement of RP, an order dated June 07, 2018 was issued by the NCLT wherein, Mr. Huzefa Fakhri Sitabhan was appointed as the RP of the Corporate Debtor and subsequently took charge of the affairs of the Corporate Debtor on June 12, 2018. The charge was handed over to Mr. Huzefa by the erstwhile RP of the Corporate Debtor, i.e., Mrs. Rita Gupta.*
- 8.1.3** *Later, due to the culmination of the CIRP with no successful resolution, Mr. Huzefa on the instructions of the Committee of Creditors of the Corporate Debtor filed an application for initiation of Liquidation proceedings on the Corporate Debtor which commenced vide an order dated May 01, 2019 wherein Mr. Huzefa was appointed as the Liquidator.*
- 8.1.4** *Pursuant to the initiation of the liquidation process, Mr. Huzefa is taking necessary steps as articulated under the Insolvency and Bankruptcy Code, 2016 ("IBC") and applicable liquidation regulations towards the dissolution of the SCTL by realizing / selling the assets and thereafter distributing the proceeds received among the various stakeholders of the SCTL in terms of the waterfall mechanism mentioned under section 53 of IBC.*
- 8.1.5** *The services of all the employees of SCTL have been terminated by the NCLT order itself and therefore it is now only the liquidator and his team which take care of the entire liquidation process and the interests of the stakeholders involved in the process.*
- 8.1.6** *The matter mentioned in the SCN is related to the time-period much prior to the liquidator's appointment and therefore, he has no comments to make on the said matter.*
- 8.1.7** *Mr. Huzefa entered into a contract with a document management agency, i.e., Crown Records Management ('Crown') wherein the scope covered, (i) safe preservation of the records of SCTL and, (ii) digitization of all the physical records of SCTL. In accordance with the terms of the contract, all the physical records, which were received by Mr. Huzefa at the time of taking charge, located at the Delhi and Rajasthan facilities of the Corporate Debtor, were handed over to Crown which transported the records to its storage facility, indexed them, created digital copies of the records and preserved them safely in their warehouse. As mentioned, Mr. Huzefa has been provided digital copies of all the records of SCTL*

along with a Master Index which helps in easy identification and extraction of required records from the record dump. The same set of the digital records along with the master index are being referred to by Mr. Huzefa to supply information to multiple agencies carrying out investigations on SCTL.

8.1.8 Mr. Manish Goel, the erstwhile MD of SCTL, through an email dated August 17, 2022 sought a copy of the SCN from Mr. Huzefa which was provided to Mr. Goel vide an email dated August 22, 2022. Apart from the said communication, Mr. Huzefa was never approached by Mr. Goel with any specific query pertaining to SEBI's ongoing investigation. However, in response to the request for information received from Mr. Goel pertaining to the investigations being carried out by the Serious Fraud Investigations Office and Enforcement Directorate, Mr. Huzefa had provided digital copies of all the records of SCTL along with the Master Index file through a hard disk drive. To reiterate, the digital dump of files handed over to Mr. Goel covers all the records handed over to Mr. Huzefa at the time of taking charge of SCTL and no information or record of SCTL has been withheld by Mr. Huzefa.

8.1.9 Further, during the hearing dated October 13, 2022, Mr. Goel raised an issue about not having access to a specific file which was maintained by the erstwhile management of SCTL on SEBI's investigations. Subsequently, on searching the records, it was noted that two files related to SEBI's investigations were found in the records of the erstwhile legal department of SCTL which were secured by Crown and digital copies of these files as provided to Mr. Huzefa were already shared with Mr. Goel in the hard disk and the same could be located using the master index shared alongwith.

8.2 Mr. Manish Goel (Noticee No. 3)

8.2.1 The documents which Mr. Goel requires to produce for the purpose of investigation are under in the control and possession of the Liquidator of "Shilpi Cable Technologies Limited" and Mr. Goel has requested him several times to provide both the hard and soft copies of the documents. Despite his best efforts, he has not been able to gather any of the relevant documents.

8.2.2 Macquarie Bank Ltd. had preferred an application against SCTL under section 9 of IBC for initiation of CIRP which was admitted by the Ld. Adjudicating Authority vide order dated May 24, 2017.

- 8.2.3 *An application under Section 33(1) of IBC was filed by the RP for issuance of directions for liquidation of SCTL. The said application was allowed by the Ld. Adjudicating Authority on May 1, 2019 whereby the liquidation process was initiated and a fresh moratorium under section 33(5) of IBC was commenced.*
- 8.2.4 *The State Bank of India has also preferred an application under section-95 of IBC against Mr. Goel. An Interim Moratorium as per section 96 of IBC has been imposed with respect to Mr. Goel which is mentioned in the order dated October 13, 2021 passed by the Ld. Adjudicating Authority.*
- 8.2.5 *Mr. Goel has requested for the earlier notices and replies that have been submitted by all the Noticees (including the liquidator) so as to enable him to submit his reply on the merits and facts of the case.*
- 8.2.6 *Mr. Goel has placed reliance on order of Hon'ble Securities Appellate Tribunal in the matter of "Dewan Housing Finance Vs. SEBI" to submit that SEBI should not proceed further in the matter since the proceedings under IBC are in progress.*

8.3 Mr. Ghanshyam Pandey (Noticee no 4)

- 8.3.1 *Mr. Pandey submitted that it is hard to recall specific actions from 11 years back, however, he could state with confidence that he was not involved in any financial affairs or financial decision making of the Company.*
- 8.3.2 *SCTL was a heavily promoter dominated company. The two promoters, Mukesh Kumar Gupta and his son Manish Goel, controlled 75% of the Company even post-IPO. Mr. Gupta was the CMD as well. All this made the presence of other persons largely irrelevant even if they were notionally called "whole time directors".*
- 8.3.3 *Mr. Pandey was a technical person involved in process of production of cables. As a part of the Company, he was responsible for supervising the production of cables. He was also responsible for hiring human resources for production and quality testing. Specifically, he also had the responsibility of informing the promoters about how much raw material is required. However, the responsibility of procuring the raw material was with the CMD – Mr Mukesh Gupta and his son Mr. Manish Goel.*

- 8.3.4 *Before the IPO in 2011, Mr. Pandey had informed the promoters about the requirement of raw materials and machinery and also suggested a few reputed suppliers. However, the promoters finally chose who the suppliers of raw materials and machinery would be. In fact, the suggestion to change the suppliers came from Manish Goel.*
- 8.3.5 *Mr. Pandey has never been a promoter or MD of the Company. He had resigned as a Director on May 9, 2017 and the resignation was accepted on June 6, 2017. Since May 2017, he has not been associated with SCTL Therefore, he does not have any records or papers pertaining to the IPO that was held in 2011. SCN also states that “Ghanshyam Pandey had resigned from the office of Whole-time Director of the Company w.e.f. 31 May, 2012.” That itself shows that his involvement in the day-to-day affairs was minimal and he wasn’t even part of the company for a large part of the period mentioned in SCN.*
- 8.3.6 *His resignation from the Company in 2012 was due to circumstances created by the promoters where he had absolutely no say in the management of the Company. Decisions were being taken and executed by the promoters of the Company without even consulting or informing him. He was therefore compelled to resign from the Company.*
- 8.3.7 *In 2013, the Company asked him to join back to supervise a green field project in Abu Dhabi in the name of Winston Metal Industries LLC (Abu Dhabi). He was assured that he would not be involved in the day-to-day affairs of SCTL. This has also been found by the Forensic Audit carried out at the behest of Banks. This is the only reason, he agreed to join back in 2013.*
- 8.3.8 *None of the alleged details mentioned in SCN or Investigation Report pertain to his role in the Company or any action that he had taken. The decision to undertake any transaction in the running of the company was that of the Promoters, MD (who was also a promoter) and the CFO. To the best of his memory, the authorized signatory to operate the bank accounts of the Company was the then MD, who was also a promoter of the Company.*
- 8.3.9 *The Minutes of the Board Meeting dated February 17, 2011 show that only the MD– Mr. Mukesh Kumar Gupta, and his son Mr. Manish Goel were authorized to deal with the proceeds of the IPO. In fact, the Agenda items 12 and 13 in the minutes of the Board Meeting dated February 17, 2011 are important in this respect.*

- 8.3.10 *All financial transactions in relation with and pursuant to the IPO could only be carried out by the MD and his son. Mr. Pandey neither had a say nor was he empowered to act on any financial transaction to be entered into or executed by the Company. Even though he was a director in relation with production of RF Cable equipment, he was not informed about financial aspects of the company.*
- 8.3.11 *The minutes of board meetings dated April 7, 2011 and July 29, 2011, and AGM dated September 29, 2011 collectively show the following-*
- 8.3.11.1 *The change in supplier as mentioned in the minutes dated April 7, 2011 was suggested by Mr. Manish Goel and was suggested on the pretext of substantial savings in capital expenditure. Other members of the Board consented to this suggestion based on proposed decrease in expenditure. It is noteworthy that he was one amongst many board members other than the promoters.*
- 8.3.11.2 *Mr. Pandey was not empowered to act upon the Issue proceeds. He could not decide how and where to expend issue proceeds. These decisions were being taken by the MD and Promoters.*
- 8.3.11.3 *The Resolutions passed by the Board on July 29, 2011 and in the AGM dated September 29, 2011 were unopposed and all the present and voting shareholders had voted in favour of the resolution after the explanatory statement under section 173(2) of Companies Act, 1956 was evidently published. In any case, Mr. Pandey was not responsible for the preparation of these resolutions.*
- 8.3.11.4 *As far as the transactions entered into in April 2011 are concerned, Mr. Pandey was not provided the details of these transactions. He was only informed as part of the Board. He did not have knowledge about the alleged transactions that SEBI has referred to in April 2011 in the Investigation Report and SCN.*
- 8.3.12 *Mr. Pandey was not responsible for preparation of the financial statements of the Company. Only the MD, Promoters (including Manish Goel) and CFO would have had the specific knowledge of the expenditure of the company and the specific allocation of the IPO Proceeds.*

- 8.3.13 *Mr. Pandey's background is in technical aspects of manufacturing cables. In particular, his role in the Company was useful only for the manufacture of various kinds of cables. His expertise and background has never been in finance.*
- 8.3.14 *As far as the Equity Listing Agreement which was entered into by SCTL on April 4, 2011 is concerned, this agreement was only signed by the Promoters, and Mr. Pandey was not a signatory. He was also never in charge of any issues of regulatory compliance for the Company.*
- 8.3.15 *All the quarterly filings made by the company during the relevant period have been signed by Mr. Mukesh Kumar Gupta, the Company Secretary and seem to have been also run by the Chartered Accountant. Mr. Pandey was not privy to these disclosures prior to these being made public.*
- 8.3.16 *In certain letters exchanged between the Company and SEBI, the Company has stated that Special Resolution dated September 29, 2011 had complied with the mandate of section 61 of the Companies, 1956.*
- 8.3.17 *The Equity Listing Agreement is a very long and substantial document. Mr. Pandey was not shown the same and nor was he tasked with ensuring the compliance of the same. Further, he was never kept aware or responsible for maintaining records or for complying with specific provisions of the listing agreement. He cannot in any manner whatsoever be made responsible for the disclosures made by the Promoters, CFO and the Compliance Officer to the Exchanges in compliance with Clause 43A of the Equity Listing Agreement.*
- 8.3.18 *Further, the letters of 2012, 2014, 2015 and 2016 were never shared with Mr. Pandey nor were his views elicited. This is crucial as he was never shown this letter while he was part of the Company and the responses on behalf of the Company seem to have been issued by the MD and Promoters of the Company, without informing him about their existence and eliciting his views on it.*
- 8.3.19 *SEBI is trying to make a case by alleging that the resolution passed in the AGM was distorted and false and vague. This is without specifying what part of it is vague or untrue. In any case, Mr. Pandey was not responsible for framing the resolutions for the purpose of an AGM. The Board was informed by the MD and Promoters and Compliance Officer that the resolution was compliant with the relevant applicable laws and regulations.*

- 8.3.20 *It is important to note that the detail required in and timing of such a resolution substantially changed after the advent of the Companies Act, 2013. This also paved the way for the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 7 of these Rules provides the specific information that ought to be contained in a special resolution for any Shareholders Meeting. However, this rule cannot be made applicable to any Shareholders Approval that took place prior to the advent of these rules. SEBI is committing an error of law in this respect.*
- 8.3.21 *SEBI ought to analyse the facts of the present case and AGM resolution on the basis of the law as laid down by the Securities Appellate Tribunal in “Mohandas Shenoy Adige v SEBI, Judgment dated August 26, 2021 which laid down that “25. ...subsequent event/decision by the Company cannot lead to an adverse inference being drawn nor can it lead to a conclusion that the prospectus of the Company was misleading the subscribers”.*
- 8.3.22 *As per the Investigation report (Pages 49-50 thereof), the allegations against Mr. Pandey are not the same the ones made in the SCN. Also, the action recommended is vague and does not point out the specific action proposed to be taken by SEBI in case an alleged contravention is made out.*
- 8.3.23 *The investigation report also makes the very same allegation that has already been dropped vide the Order dated May 30, 2022 pronounced by the Hon'ble Adjudicating Officer. It is surprising that these allegations, which after Mr. Pandey's response, have been dropped by the SEBI are being relied upon again for the purpose of the present SCN.*
- 8.3.24 *Any questions about the dubious nature of these entities and their credentials can only be addressed to the persons responsible for these transactions. Neither was Mr. Pandey aware about any details with respect to these transactions, nor did he receive any benefits from these transactions. He has only been paid a salary by the Company and his Income Tax Returns can be examined to verify this fact. He has never had any dealing with these entities in his life.*
- 8.3.25 *The Supreme Court of India has laid down repeatedly that the allegations in the Show Cause Notice need to be particularized against the Noticee. In SEBI's SCN, it has not pointed out a single instance against Mr. Pandey where he has transgressed any law or regulation.*

8.3.26 *Reliance is placed on the judgment of Supreme Court in Gorkha Security Services v Govt. of NCT of Delhi & Ors. (2014) 9 SCC 105, and SEBI v Kishore R. Ajmera (2016) 6 SCC 368, and SAT order P. G. Electroplast Ltd. and Others v SEBI 2019 SCC Online.*

8.3.27 *Mr. Pandey's role, responsibility and authority cannot in any manner be comparable with that of the other Noticees – who are promoters of the Company. As has been held by the Supreme Court of India, SEBI should point out (i) The material/grounds to be stated which according to the SEBI necessitates an action; (ii) Particular penalty/action which is proposed to be taken (if warranted).*

8.3.28 *Today the Company is under liquidation. It is being investigated by SFIO and CBI in addition to SEBI. Mr. Pandey has been assisting all these agencies with their investigations. He is ready to cooperate fully with SEBI as well.*

8.3.29 *It is settled law that in these proceedings under SCRA/ SEBI Regulations, it is the function and not a position of an individual that is to be looked at. While Mr. Pandey has been shown as a “whole time director”, the factual reality about his function is clear. Reliance has been placed on decision of SAT in Sayanti Sen v Securities and Exchange Board of India [2019 SCC Online SAT 132].*

Consideration and findings:

9. 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. I have carefully considered the SCN, the replies/ submissions of the *Noticees* and the relevant material available on record. As brought out in the SCN, the following is *inter alia* alleged against the *Noticees* in the present proceedings:

9.1 SCTL as a company deviated in deployment of IPO proceeds from that mentioned in the RHP without complying with the necessary regulatory compliances;

9.2 All the *Noticees* (i.e. SCTL, Mr. Gupta, Mr. Goel and Mr. Pandey) :—

- made Incorrect and Misleading disclosures on Exchanges regarding utilization of IPO proceeds;
- failed to comply with the requirement of disclosing all monies utilized and unutilized out of the issue proceeds under appropriate separate heads in its balance-sheets;

- disclosed distorted, false and vague information in the agenda pertaining to change/ alteration of objects of IPO in the notice to the AGM dated Sept 29, 2011;
- failed to make disclosures of material information in RHP/ prospectus;
- transferred IPO proceeds for dubious transactions to entities, whose credentials are questionable; and
- transferred ₹ 6.05 Crore of the IPO proceeds to group company/ promoter entity – Shilpi Communication Ltd.

10. I now proceed to deal with the question whether the above mentioned allegations levelled in the SCN against the *Noticees* are established in light of the submissions made by them and the material available on record.

11. With respect to *Noticee* No. 1 i.e. SCTL, it is noted from the record that SCTL is presently undergoing liquidation pursuant to NCLT's order dated May 1, 2019 and the liquidator appointed by NCLT (i.e. Mr. Huzefa) is in-charge of the process. The liquidator has filed the reply to the SCN on behalf of SCTL but has not been able to provide any specific response to the allegations citing the reason that he came to be appointed as a liquidator several years after the period of alleged violations. On behalf of SCTL, Mr. Goel, in his response, has submitted that in view of the proceedings under IBC, there is a moratorium as per Section 14 of IBC which imposes complete prohibition on the institution of any proceedings. He also placed reliance on the order of Hon'ble SAT in the matter of *Dewan Housing Finance Vs. SEBI* in this regard. Mr. Goel, however, has not made any submissions on merit to defend the allegations levelled against SCTL in the SCN. Mr. Pandey also in his submissions has not put forth any defense on behalf of SCTL. In this regard, as brought out in the preceding paragraphs, detailed allegations of deviation in deployment of IPO proceeds, making incorrect and misleading disclosures on Exchanges, disclosure of distorted, false and vague information in the agenda pertaining to change/ alteration of objects of IPO in the notice to the AGM, failure to make disclosures of material information in RHP/ prospectus, etc., have been made against SCTL on the basis of the investigation carried out by SEBI. In the absence of any submission in defense of SCTL in respect of the allegations leveled in the SCN, I do not want to burden the order by delving into each and every allegation, narration whereof has already been provided in the preceding paragraphs. Taking note of the ongoing liquidation proceedings against SCTL, the fact that the action proposed in the present proceedings was approved by the competent authority on August 13, 2021 and considering the purport of section 33(5) of IBC, I note that while a direction may not be viable against SCTL (corporate debtor) as such, but dealing with the acts / omissions and conduct of SCTL while

addressing the submissions made by other Noticees will be essential. The observations and deliberations contained in the ensuing paragraphs while dealing with the submissions of other Noticees, shall hold good in respect of SCTL, insofar as they are applicable.

12. As regards *Noticee* No. 2 (Mr. Mukesh Gupta) in the present proceedings, his son i.e. Mr. Goel in his reply as well as during the personal hearing, brought on record that his father had passed away on April 7, 2021. Subsequently, he also submitted a copy of the death certificate of Mr. Gupta issued by South Delhi Municipal Corporation. In this regard, I note that the present SCN envisages issuance of directions under section 12A(a) of SCRA and sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) read with 15HA of SEBI Act. It is noteworthy that in terms of section 28B of the SEBI Act, upon the death of a *Noticee*, proceedings against him can be continued against his legal representatives, if such proceedings relate to refund, disgorgement or recovery of penalty (imposed on the *Noticee* prior to his death). In the present proceedings, since the *Noticee* i.e. Mr. Gupta had died before imposition of any penalty, the liability, if any, to pay does not pass on to his legal representative in light of section 28B(1) of the SEBI Act. Further, it is not the case in the present SCN that the IPO proceeds diverted by SCTL were routed to Mr. Gupta. The SCN also does not envisage any direction for refund or disgorgement from Mr. Gupta. Having considered the purport of section 28B of the SEBI Act and the nature of the directions that are envisaged in the peculiar facts of the present case, I find that in view of the death of Mr. Gupta on April 7, 2021 (as evidenced from the South Delhi Municipal Corporation certificate), the present proceedings as against Mr. Gupta shall abate.
13. *Noticee* No. 3, Mr. Goel has taken the plea that the documents which he requires to produce for the purpose of investigation / present proceedings are under the control and possession of the Liquidator of SCTL whom he has requested several times to provide both the hard and soft copies of the documents, but he has not been able to gather any of the relevant documents to reply to the SCN. The liquidator (Mr. Huzefa) on the other hand has submitted that he had entered into a contract with a document management agency, i.e., Crown Records Management wherein the scope covered, i) safe preservation of the records of SCTL and, ii) digitization of all the physical records of SCTL. Accordingly, all the physical records received by Mr. Huzefa at the time of taking charge from the erstwhile RP, located at the Delhi and Rajasthan facilities of SCTL, were handed over to Crown which transported the records to its storage facility, indexed them, created digital copies of the records and preserved them safely in their warehouse. In response to the request for information received from Mr. Goel pertaining to the investigations being carried out by the Serious Fraud Investigations

Office and Enforcement Directorate, Mr. Huzefa had provided digital copies of all the records of SCTL along with the Master Index file through a hard disk drive. Further, during the hearing dated October 13, 2022, Mr. Goel raised an issue about not having access to a specific file which was maintained by the erstwhile management of SCTL on SEBI's investigations. Subsequently, after searching the records, Mr. Huzefa submitted that two files related to SEBI's investigations were found in the records of the erstwhile legal department of SCTL which were secured by Crown and digital copies of these files as provided to Mr. Huzefa were already shared with Mr. Goel in the hard disk and the same could be located using the master index shared alongwith.

14. At the outset, with respect to the above mentioned conflicting claims of Mr. Goel and the liquidator regarding access to the old records of SCTL, 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 defense. Under the IBC, in respect of every corporate debtor undergoing CIRP or liquidation, the procedural framework has been institutionalized for safe keeping, usage, access, transfer, etc. of the documents belonging to corporate debtor. Accordingly, it is for the *Noticee* to use the framework to obtain documents / material to defend his case. Given the above understanding, I am not inclined to accept the submission put forth by Mr. Goel that he has not been able to access the documents in possession of the liquidator for the purpose of preparing his response.
15. Mr. Goel in his reply, without prejudice to other submissions made by him, has asked for earlier notices and replies that have been submitted by all the *Noticees* so as to enable him to submit his reply on merits and facts of the case. Mr. Goel, during the personal hearing, was categorically informed that it is his responsibility to submit explanations and materials in his defense and he was also given time to furnish the same. The allegations levelled in the SCN have been made on the basis of independent facts and none of the statements of the other *Noticees* have been relied upon in support of such allegations. The events and transactions detailed in the SCN are borne out from the investigation conducted by SEBI. It is not the case of SEBI that the charges against Mr. Goel emanate from any claim, counter claim or statement made by the other *Noticees*. Thus, I do not find any merit in the submission of Mr. Goel in this regard seeking copies of earlier notices and replies that have been submitted by other *Noticees*.

16. It is noted from the written / oral submissions made by Mr. Goel that he has not made specific submissions on merit in respect of the allegations levelled in the SCN. His response emphasized mainly on the non-availability of material to defend his case. It is noteworthy that the SCN sent to Mr. Goel 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 response / explanation, at all, has been submitted by Mr. Goel on merits to any of the allegations. It is a settled law that failure to submit any defense 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 observation 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.”

17. In view of the above, I find that the allegations in the SCN discussed in detail in earlier paragraphs stand established against Mr. Goel.

18. Mr. Goel along with his response, has also submitted a copy of the NCLT Principal Bench, New Delhi's order dated October 13, 2021 whereby NCLT declared interim moratorium pursuant to an application of State Bank of India against Mr. Goel (as a personal guarantor) under section 95 read with 96 of IBC. In this regard, on perusal of section 96 of IBC, I note that the effect of the interim moratorium is only in respect of the debt that is due and cannot be stretched to mean that interim moratorium contemplates to stay any future liability or obligation. In this regard, I place reliance on the judgment of Hon'ble NCLAT in the matter of *Ashok Mahindru and Ors. Vs. Vivek Parti* [NCLAT Order dated November 29, 2022 in Company Appeal (AT) (Insolvency) No. 1324 of 2022] wherein the following was held:

“9. When we read Section 96(1)(b) with the definition of 'debt' in Section 3(11), what is contemplated to be stayed is the proceeding relating to debt, which means a liability or obligation in respect of a claim which is due from any person. Interim moratorium shall be for such proceedings which relate to a liability or obligation due i.e. due on date when interim moratorium has been declared. Section 96(1)(b) cannot be read to mean that any future liability or obligation is contemplated to be stayed.”

19. In view of the above, I find that the interim moratorium declared in respect of Mr. Goel shall not bar imposition of any direction / penalty on him under these proceedings. In this context, it is also noted that since the order declaring interim moratorium is dated October 13, 2021, the NCLT website was checked to ascertain the present status of the said proceedings. As seen from the NCLT website link https://nclt.gov.in/case-details?bench=ZGVsaGk=&filing_no=MDcxMDEwMjA2OTQ5MjAyMQ== the matter is still pending for further hearing and is next listed on July 19, 2023.
20. Apart from the above submissions, Mr. Goel has also sought to rely on the order of Hon'ble SAT in the matter of *Dewan Housing Finance Ltd.* to argue that the present proceedings cannot be continued because of the moratorium imposed in the matter. To this point, it is important to clarify that under the IBC, any bar imposed because of the moratorium is limited to the corporate debtor and does not extend to the directors or promoters. Further, the order of Hon'ble SAT in the matter of *Dewan Housing Finance Ltd.* is inapplicable in the present case since SCTL is already undergoing liquidation whereas, the said order was passed by Hon'ble SAT in the context of a moratorium imposed in terms of section 14 of IBC. As already stated, in the present case, no protection is accorded by any provision of IBC to directors of SCTL. Accordingly, the submission of Mr. Goel is devoid of any substance and is rejected.
21. At this juncture, I find it pertinent to clarify that even though Mr. Goel has not made detailed submissions on merits, the findings recorded in this order, while dealing with submissions made by other Noticees, shall hold good in respect of Mr. Goel also insofar as they relate to him.
22. Noticee No. 4 (Mr. Pandey) has contended that SCTL was a promoter dominated company and he did not have any role in the financial decision making of SCTL. He has denied all the allegations levelled in the SCN on the ground that he was appointed as a director for technical support and had no role at all in the financial decision / decisions regarding utilization of IPO proceeds made by SCTL. In order to address the allegations against Mr. Pandey, I find it important to assess the various facts which may help in ascertaining his role and position in SCTL. Mr. Pandey was a director of SCTL at the time of its IPO but had later resigned from the office of Whole Time Director of the Company w.e.f. May 31, 2012. Subsequently, he continued as a non-executive director. However, during the AGM dated Sept 23, 2013, he was re-appointed as Whole Time Director w.e.f. Sept 01, 2013. Ultimately, he resigned as a Director on May 9, 2017 and his resignation was accepted on June 6, 2017. In this connection, Mr. Pandey has submitted that his resignation from the Company in 2012

was due to circumstances created by the promoters where he had absolutely no say in the management of the Company. The said submission is however, contradictory to conduct displayed by him of re-joining the company and continuing as a non-executive director for about an year and thereafter, again as a WTD for a further period of 4 years.

23. I note that in the Board Meeting dated July 29, 2011, wherein the change in objects clause mentioned in the DRHP was approved, Mr. Pandey was re-appointed as a Whole Time Directors of SCTL. It is also noted from the record (especially the minutes of the said Board Meeting dated July 29, 2011) that Mr. Pandey was associated with SCTL since its incorporation. Mr. Pandey was also authorized to sign the agreement and other documents with an entity named Balaji Technologies for providing technical and commercial support.

24. In my view, it is important that Mr. Pandey was present in the Board Meeting wherein change in objects of the issue was discussed and approved by the Board of SCTL. There is no dispute as to his designation in SCTL at that time i.e. Whole Time Director. Further, in the minutes of the meetings referred above, there is no record regarding any dissent expressed or communicated by Mr. Pandey. It is seen from the record that he was present in the concerned Board Meetings and had accorded his consent to the proposals put forth in the said meetings.

25. Mr. Pandey was also a member of the Audit Committee of SCTL as seen in the annual reports of SCTL from FY 2011-12 onwards. The following is noted from the Annual report of SCTL for FY 2011-12:

“The Audit committee was re constituted on 10th October 2011 due to the resignation of Mr Anirudh Goel from board of the company and Mr Ghanshyam Pandey was introduced as member of the committee.

The re-constituted Audit Committee of the Company as on date comprises of 2 Non Executive Independent Directors and one Executive Director. i.e. Mr Sandeep Gupta, as Chairman; Mr Ghanshyam Pandey and Mr Sunil Kala, as the Members of the Committee.”

26. Further, as noted from the prospectus of SCTL, Mr. Pandey along with Mr. Gupta and Mr. Goel became the first director of SCTL post its IPO. Other than that, Mr. Pandey was also a signatory to the prospectus filed by SCTL. As stated in the prospectus, Mr. Pandey “ ... started his career with Voltas as Manager in 1976. Later, he joined the

Sales Department of M/s Fixwell Pushin Cards Limited in Delhi as a Manager in 1980 and worked there till 1988. Thereafter he started working with the Shilpi group. Presently he is working with M/s Shilpi Cable Technologies Ltd as Chief Executive Officer.” Mr. Pandey’s name also appeared in the prospectus in the list of top 10 shareholders of SCTL prior to the IPO. He was also a KMP of SCTL and was one out of the 3 Executive Directors of SCTL, the other 2 being Mr. Gupta and Mr. Goel. Apart from the above, Mr. Pandey also had other associations with SCTL e.g. as disclosed in the prospectus, the property provided by SCTL to Mr. Pandey for residential purposes of Mr. Pandey and his dependent family members, was taken on lease by SCTL from Mrs. Lakshmi Pandey (wife of Mr. Ghanshyam Pandey).

27. Regarding the role of Mr. Pandey in SCTL, I find it pertinent to advert to the following observations recorded by the Hon'ble Delhi High Court (in *Ghanshyam Pandey v. UOI and Anr.* Dated February 15, 2023) while dealing with a petition filed by Mr. Pandey challenging the issuance of a *look out circular* against him at the request of Serious fraud Investigation Office:

*“20. At this stage, it is crucial to discuss the role of the Petitioner. The Petitioner was the CEO of Shilpi Cables between 2006 to 2012. Thereafter, he was a whole time director of Shilpi Cables from 2013 to 2017. **He was also a member of the audit committee from 2011 to 2016-2017.** It is during this very period that the transactions claimed by the SFIO to be fraudulent transactions have occurred. Apart from the role that the Petitioner played in Shilpi Cables, he was also the head of operations of M/s Winston Metals LLC between 2013 to 2016 and was stationed in Dubai. The said company is stated to be a step-down subsidiary of Shilpi Cables and a subsidiary of Shilpi Worldwide DMCC, Dubai. It is not disputed that the Petitioner was stationed in Abu Dhabi for several years and also operated a bank account in Abu Dhabi.*

*21. **The above facts insofar as the positions occupied by the Petitioner is concerned, is not in dispute. This Court is thus of the opinion that the Petitioner is not merely a professional director of Shilpi Cables as is claimed to be. He had a much more active role.** Even if it is presumed that he was a professional director, as a member of the audit committee of Shilpi Cables, with his qualifications, the Petitioner would have played a key role in the day to day management and administration of not merely Shilpi Cables but also its group companies which were located abroad.*

...

29. The Petitioner did not merely play a role in the management and administration of Shilpi Cables but, being an auditor also owed a duty to report any shortcomings or misconduct within the company. Thus, the Petitioner cannot be completely absolved of responsibility merely on the ground that he was a mute spectator. Persons like the Petitioners who hold positions of responsibility in such companies do not merely owe a duty to their employer but also owe a duty to the role that they play, especially, if they are involved in crucial role such as auditing.”

28. In connection with the foregoing discussion, I find it trite 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 (corresponding to section 291/292 of the Companies Act, 1956), 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 26 April, 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.”

29. The above discussed facts and circumstances show that Mr. Pandey was closely associated with and actively involved in the affairs of SCTL along with Mr. Gupta and Mr. Goel, contrary to his claim of being a director providing technical expertise. The association of Mr. Pandey with SCTL in the capacity of a WTD from the day of its listing till 2017 (except acting as a non-executive director for about one year) is not disputed. His presence in Board Meetings / General Body Meetings wherein the agenda of fund utilization and subsequent ratification were discussed, also goes on to show that he

was at all times aware of the utilization of the IPO proceeds in the manner as brought out in the SCN. In light of the above discussion I find that Mr. Pandey was also responsible and liable for the violations of SCTL related to fund mis-utilization / diversion as alleged in the SCN.

30. Mr. Pandey has placed reliance on the judgment of Hon'ble Supreme Court in the matter of *Gorkha Security Services v Govt. of NCT of Delhi & Ors.* to contend that in any SCN, the charge against the *Noticee* needs to be particularized, and in the instant SCN, not even a single instance has been pointed out. In this regard, I find that the said contention of the *Noticee* is based on an incorrect understanding of the SCN. It is noteworthy that in the instant SCN, after narration of every allegation or instance of violation, there is a categorical statement that *Noticee* No. 4 (being a Whole Time Director / Executive Director along with Mr. Gupta and Mr. Goel) at the relevant point of time, was responsible for the conduct of the affairs of SCTL and was therefore, allegedly liable for the violation. It is also important to mention here that the SCN levels allegation only against the Executive Directors of the company and Mr. Pandey was a WTD and a KMP of SCTL. The specificity of the allegation emanates from the fact that Mr. Pandey was a WTD of the company, associated with it even before the IPO, was a signatory to the prospectus, had other connections with SCTL as already discussed and was also present in the Board Meetings and the AGM / EGM (as a shareholder also) wherein the decision regarding the change in utilization of the IPO proceeds was taken / ratified. As noted from the records, in the present case only the executive directors of SCTL have been proceeded against and non-executive directors including the independent directors have been kept out of the present proceedings. For the above reasons, the present case is also distinguishable from the case of *P G Electroplast* in respect of which, the order passed by Hon'ble SAT (i.e. *P. G. Electroplast Ltd. and Others v SEBI* 2019 SCC OnLine SAT 148) has been relied upon by Mr. Pandey. 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.*" As already discussed, in the present case, the SCN has categorically brought out that Mr. Pandey (amongst others) by virtue of his position in SCTL as a WTD was responsible for the conduct of affairs of SCTL and was therefore liable of the violations as alleged. I, therefore do not find any merit in the argument put forth by Mr. Pandey in this regard.

31. Mr. Pandey has put forth an argument that he was not privy to any of the filings made to the stock exchanges under the Listing Agreement on behalf of SCTL and all the documents in this regard were filed by Mr. Gupta and the Company Secretary and

were also run through by the Chartered Accountant. With regard to this argument, I note that the alleged violation regarding wrong quarterly filings was only ancillary to the primary violation of utilization of IPO proceeds in a manner different from that disclosed in the prospectus. As already recorded, the wrong utilization of IPO proceeds on part of SCTL took place in April 2011 only, and thereafter, SCTL and other Noticees only took to cover up the same. As regards Mr. Pandey, the record before me does not specifically bring out that Mr. Pandey was assigned with the task of making the filings the Listing Agreement on behalf of SCTL. On account of the same, I find that Mr. Pandey can be given the benefit of doubt in respect of the violation by SCTL relating to filings with the stock exchanges. However, the findings as regards his role and responsibility for other violations of SCTL shall not be diluted because of the said benefit of doubt.

32. Mr. Pandey has made a submission regarding the SCN stating that the allegations levelled in the SCN and the investigation report (on pages 49 and 50) are not the same. In this backdrop, I have perused the investigation report and the SCN. It is noted that in the investigation report, on pages 49 and 50, the actions proposed against all the entities in the matter has been charted. On a comparison of the SCN with the allegations charted on the said pages of the investigation report, it is noted that there is no difference in the allegations except for minor syntax changes. I, therefore, reject the submission of Mr. Pandey in this regard.
33. As regards the allegation in relation to disclosure of distorted, vague and false information in the agenda pertaining to change in objects of IPO in the notice of AGM dated September 29, 2011, Mr. Pandey has submitted that SEBI is trying to make a case by alleging that the resolution passed in the AGM was distorted, false and vague without specifying what part of it is vague or untrue. In this regard, SEBI's investigation (as brought out in the SCN) revealed that information mentioned in the resolution and the Explanatory Statement as part of the notice to the members regarding the AGM dated September 29, 2011 provided blanket powers authorizing the Board of SCTL to alter the objects stated in the prospectus and did not mention the details regarding the actual utilization (which was completed in April 2011) under appropriate heads vis-a-vis what was proposed in the prospectus, the amount of savings out of capital expenditure, IPO expenses proposed to be utilized in working capital, and the total amount pending to be utilized till the point of obtaining shareholders' ratification. Considering the same, I find that the SCN has clearly brought out the vagueness and falsity in the notice for AGM. The submission of Mr. Pandey in this regard is unfounded and is liable to be rejected.

34. In the same context, Mr. Pandey has alluded to Rule 7 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 to argue that the requirements relating to details and timing to be contained in notice for AGM were only introduced after the Companies Act, 2013. In this regard, I find that the SCN does not allege any violation of the said Rules or any related provision of the Companies Act, 2013. The allegation contained in the SCN is with respect to the vagueness and falsity of the information contained in the notice, which is factual in nature, and is in breach of the principle of true and fair disclosure of information to the shareholders, which has always been existent in the Company Law, even in the earlier Companies Acts. Thus, I find that the submission put forth by Mr. Pandey is devoid of any merit.
35. Another submission made by Mr. Pandey is that the present SCN has been issued for the same set of allegations which have been dropped by the SEBI's Adjudicating Officer vide order dated May 30, 2022. In this regard, on a perusal of the said order dated May 30, 2022, I note that the said proceedings before Adjudicating Officer were initiated for failure in making disclosures to the Stock Exchanges regarding the voting results for the businesses transacted in the AGM, within the specified timeline. However, in the present SCN, there is no such allegation. For the said reason, I find no merit in the submission made by Mr. Pandey in this regard and reject the same.
36. Mr. Pandey has also submitted that he does not recollect the entire facts and details of the matter since the transactions concerned pertain to the year 2011-12. In this context, I find it relevant to address the delay in completion of these proceedings, even though the same has not been specifically raised as a ground by any of the *Noticees*. It is essential to take on record that the Hon'ble SAT in various cases such as *Ashok Shivlal Rupani & Ors. vs. SEBI* (Appeal No.417 of 2018 along with other connected appeals decided on August 22, 2019), *Sanjay Jethalal Soni & 7 Ors. vs SEBI* (Appeal No.102 of 2019 and other connected appeals decided on November 14 2019) and *Anilkumar Nandkumar Harchandani & Ors. vs. SEBI* (Appeal no.75 of 2019 decided on December 5, 2019) has held that delay in launching the proceedings by SEBI caused prejudice to the Appellant(s) as they were not able to raise the proper defense for want of record. At the same time, I also find it important to note that delay in issue of show-cause notice itself would not exonerate the defaulters under the SEBI Act and the relevant Regulations, as has been held by the Hon'ble Supreme Court in *Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari* (2019) 5 SCC 90. On the aspect of delay and its impact on proceedings in the context of SEBI, the Hon'ble Supreme Court in its judgment in the matter of *SEBI v. Sunil Krishna Khaitan and Ors* (Decided on July 11, 2022) discussed its earlier decision in the matter of *Bhavesh Pabari* and held the following

“81. This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in Bhavesh Pabari (supra) had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under:

35. The Appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc. The show-cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere.

82. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast Rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-

cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty.

of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time.⁵¹ This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment.”

37. Viewing the present case in light of the above observations of the Hon'ble Supreme Court, I note that there is no dispute regarding the fact that largely the alleged fund diversion / mis-utilization took place in the year 2011-12 and certain reporting / correspondence in that regard have taken place in the subsequent couple of years. Thus, delay in the present proceedings has to be regarded as a factor before arriving at any decision. Coming to the specific nature of allegations in the present case, the crux thereof is that the funds raised in the IPO by SCTL from public shareholders were diverted for objects and to entities other than those disclosed upfront in the prospectus. As disclosed in the final offer document (available on SEBI's website), SCTL, by way of the IPO had sought to issue 80,98,145 equity shares at a price of ₹. 69/- per fully paid up equity share aggregating ₹5587.72 lacs constituting 25.07% of the post issue paid up capital of the company. Thus, the allegations in the present SCN relate to diversion of the funds that were raised from the public by SCTL and therefore, despite the delay in the present case, appropriate directions are required to be issued. Needless to say that delay will be considered as a mitigating factor for the purpose of issuance of any directions as envisaged in the SCN.

38. In view of the foregoing discussion, it is established that in the present matter:

38.1 SCTL as a company deviated in deployment of IPO proceeds from that mentioned in the RHP without complying with the necessary regulatory compliances;

38.2 All the *Noticees* are responsible and liable for—

38.2.1 failing to comply with the requirement of disclosing all monies utilized and unutilized out of the issue proceeds under appropriate separate heads in its balance-sheets;

38.2.2 disclosing distorted, false and vague information in the agenda pertaining to change/ alteration of objects of IPO in the notice to the AGM dated Sept 29, 2011;

38.2.3 failing to make disclosures of material information in RHP/ prospectus;

- 38.2.4 transferring IPO proceeds for dubious transactions to entities, whose credentials are questionable;
- 38.2.5 transferring ₹ 6.05 Crore of the IPO proceeds to group company/ promoter entity – Shilpi Communication Ltd.;
- 38.2.6 making incorrect and misleading disclosures on Exchanges regarding utilization of IPO proceeds (*As recorded earlier, Mr. Pandey has been given the benefit of doubt in respect of the violation pertaining to clause 43A w.r.t. misleading disclosures to stock exchanges*).

39. On account of the above acts / omissions, SCTL has violated section 61 of the Companies Act, 1956, and all the *Noticees* (including SCTL) have collectively violated section 21 of SCRA read with clause 43A of the Equity Listing Agreement (as it existed then), sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2)(f) and (k) of PFUTP Regulations, regulation 57(1), clause 2(a)(i) of Schedule VII, clause 2(I)(A)(2)(h) of Para A of Schedule VIII, clauses 2(XII)(B)(31)(a)(ii) and 2(XII)(B)(31)(a)(iii) of Part A of Schedule VIII of ICDR Regulations, 2009. As already recorded, the violation of section 21 of SCRA read with clause 43A of the Equity Listing Agreement has not been established against Noticee No. 4 (Mr. Ghanshyam Pandey).

Directions and Penalties:

40. 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 (SCTL), in light of the time elapsed since the diversion / mis- utilization of IPO proceeds (which took place in April – May, 2011) and the ongoing liquidation proceedings (ordered by NCLT on May 1, 2019), I am not inclined to issue any directions against Noticee No. 1. As regards Notice No. 2 (Mr. Mukesh Gupta), in view of his death on April 7, 2021 (as evidenced from the South Delhi Municipal Corporation certificate) and detailed reasons already recorded, the present proceedings as against him shall abate. However, having regard to the discussions in the earlier paragraphs regarding the role and responsibility of Noticees No. 3 and 4, the question that remains to be addressed is about the directions to be issued and monetary penalty to be imposed against them.

71. I note that Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorized to take such measures as it thinks fit. Pursuant to the said objective, PFUTP Regulations and ICDR Regulations have been framed. The said Regulations apart from bringing

transparency and fairness among other things aims to preserve and protect the market integrity in order to boost investor confidence in the securities market. By diverting the IPO proceeds and by failing to make true and adequate disclosures in the Prospectus, not only the investors were defrauded and misled but it has also impaired the integrity of the securities market. Additionally, the violations of Companies Act, 1956 and Listing Agreement were also established in the present case. In view of the same and considering the violations committed by the Noticees, I find that it becomes necessary for SEBI to issue appropriate directions against them. However, before issuing such directions, the delay, as already discussed, will be considered as a mitigating factor.

41. 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.”

42. In the present case, the SCN has not quantified the profit made by the Noticees No. 3 and 4 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, ICDR Regulations, PFUTP Regulations, Companies Act, Listing Agreement read with SCRA have been established against the Noticees no. 3 and 4 in light of the reasons discussed in detail in the preceding paragraphs. I, therefore, find that the above factors have to be considered for the purpose of arriving

at the amount of penalty to be levied in the present case.

Order:

43. 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), 11B(1) of SEBI Act read with section 12A of SCRA hereby issue the following directions:

43.1 Mr. Manish Goel and Mr. Ghanshyam Pandey shall, within six months from the date of this order take steps to call back and return to SCTL ₹ 50.05 crore, which were diverted / mis-utilized as found in this order;

43.2 Mr. Manish Goel and Mr. Ghanshyam Pandey shall also furnish to SEBI a Compliance Report duly certified by an independent SEBI registered Merchant Banker, other than the one who managed the IPO of SCTL, within two weeks of the date of compliance of the above direction.

43.3 Mr. Manish Goel and Mr. Ghanshyam Pandey 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 1 year from the date of this order.

43.4 Mr. Manish Goel and Mr. Ghanshyam Pandey are further restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a Director or key managerial person, directly or indirectly, for a period of 1 year from the date of this order.

44. Further, in exercise of the powers conferred upon me in terms of sections 11(4A) and 11B(2) read with section 15 HA of SEBI Act, I hereby impose the following penalty on Noticee No. 3 and 4:

Name of the Noticee	Penalty Amount (₹)
Mr. Manish Goel	5,00,000
Mr. Ghanshyam Pandey	5,00,000

45. 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 said *Noticees* may contact support at portalhelp@sebi.gov.in. The confirmation of e-payment should be sent to “The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

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

46. 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.

47. Further, a copy of this Order shall be forwarded to the liquidator for SCTL, the Ministry of Corporate Affairs / concerned Registrar of Companies for their information.

Date: June 13, 2023
Place: Mumbai

Sd/-
MANOJ KUMAR
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA