WTM/SM/IVD/ID2/6111/2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	**Mr. K P Joshi (Proprietor of M/S KP Joshi & Co., Chartered Accountants) – ICAI Membership No. 034760**	**AAAPJ6806B**

In the matter of Coral Hub Limited

Background:

1. An investigation was undertaken by Securities and Exchange Board of India (hereinafter referred to as "SEBI") for the period of April 1, 2008 to June 30, 2010 (hereinafter referred to as "Investigation Period") into the matter of manipulation of revenues and profits of Coral Hub Limited (hereinafter referred to as "CHL" or "the Company"). The investigation, *inter alia*, revealed that the Company and its Directors had inflated its sales which led to false and misleading reporting of financial results in the annual reports of the Company. As M/s KP Joshi & Co. (proprietor: Noticee) was the statutory auditor of CHL during the investigation period, the role of Noticee in the alleged manipulation of financial statements of CHL was also investigated.

2. During the course of investigation, the following facts were revealed with regard to alleged misreporting of financial results by the Company and the role of the Noticee as its Statutory Auditor:

a) CHL was incorporated in 1994 as a private limited company and it became a public company on March 13, 2000. It came out with an IPO on August 2, 2008 and was listed on NSE and BSE on August 11, 2008.

b) Investigation revealed that as per Annual reports of CHL, the amount of sales and profits reported by the Company for the financial years 2008-09 and 2009-10 (till 30th June 2010) were as under:

Table No. 1

Sales and Profit of CHL (in ₹)

Particulars	2008-2009	2009-10 (15 months) till June 30, 2010
Sales	61,08,57,165	88,36,78,263
Net Profit after tax	14,65,67,035	20,11,46,296

Further, the customer wise sales for the aforementioned financial years as provided by the Company during investigation is tabulated as under:

Table No. 2

Customer wise sales figures reported by CHL (in ₹)

Sr No.	Name of the Party	2008-09	% of the sales to the total sales	2009-10 (12 months)*	% of the sales to the total sales
1	Raydox Technologies FZ LLC	22,95,13,924	37.57	21,99,43,816	28.93
2	Avington Solutions Ltd.	0	-	1,72,59,682	2.27
3	Rochelle Associates Ltd.	0	-	1,61,54,281	2.12
4	Digital Connections Co-ordinator Auckland	0	-	43,91,083	0.58
5	N D S USA LLC	14,25,52,112	23.34	18,73,38,148	24.64
6	Food & Agriculture Organisation of UN	10,27,66,020	16.82	29,42,58,799	38.71
7	Times 4 Ltd.	8,83,07,600	14.46	0	-
8	Multitrade Corporation	1,97,49,600	3.23	0	-
9	Royal National Institute of Blind	1,25,94,459	2.06	67,28,459	0.89
10	I- Resources	1,44,47100	2.36	1,11,61,152	1.47
11	Canadian National Institute for Blind	7,12,314	0.12	622,352	0.08
12	Hotcourses Ltd	2,50,237	0.04	385,659	0.05
13	Dolphin Computers Access Ltd.	0	-	19,69,004	0.26
Total		**61,08,93,366**	**100.00**	**76,02,12,435**	**100.00**

c) From the aforementioned sales information, it was observed that out of the total sales reported by CHL in the financial years 2008-09 and 2009-10, majority of

the sales were made to a few selected customers. The customer-wise sales reported by CHL for top five customers are tabulated as under:

Table No. 3

Top 5 Customer wise sales reported by CHL (in ₹)

Sr No.	Name of the Party	2008-09	% of the sales to the total sales	2009-10 (12 months)*	% of the sales to the total sales
1.	Raydox Technologies FZ LLC	22,95,13,924	37.57	21,99,43,816	28.93
2.	Avington Solutions Ltd. (UK)	0	-	1,72,59,682	2.27
3.	Rochelle Associates Ltd. (UK)	0	-	1,61,54,281	2.12
	Sub-total of sales of Sr. No. 1 to 3	**22,95,13,924**	**37.57**	**25,33,57,779**	**33.32**
4.	N D S USA LLC	14,25,52,112	23.34	18,73,38,148	24.64
5.	Food & Agriculture Organisation of UN	10,27,66,020	16.82	29,42,58,799	38.71

d) Investigation unearthed that one Tutis Technologies Ltd. (Hereinafter referred to as **"TTL"**), was a promoted entity of CHL and the Manager-Administration of TTL, Mr. Anthony Lopes was a Director in Raydox Technologies FZ LLC, Avington Solutions Ltd. (UK) and Rochelle Associates Ltd. (UK) (entities mentioned at Sr. no. 1 to 3 in Table no. 3 above) which were the customers of CHL and these three entities have together contributed to 37.57% and 33.32% of the total sales of CHL during FY 2008-09 and 2009-10 respectively. From the statements of Mr. Anthony Lopes and Mr. Suthesh Nair CFO of the Company, Investigation revealed that Raydox Technologies FZ LLC, Avington Solutions Ltd. (UK) and Rochelle Associates Ltd. (UK) were companies set up and controlled by the Directors of CHL, namely Mr. G S Chandrashekar, G.S. Viswanathan and Mr. Dilip C Parekh. Hence, these three entities were found to be closely connected to Directors of CHL and sales made to these three entities fell in the category of sales made to related parties, which were required to be disclosed in the Annual Reports under the head, 'related party transactions'.

e) Investigation revealed that the sales figures reported by the Company for financial years 2008-09 and 2009-10 with respect to its other two top ranking customers namely, Food & Agriculture Organisation of UN (hereinafter

referred to as **"FAO UN"**) and N D S USA LLC were inflated by ₹ 38.22 crores and ₹ 32.99 Crores respectively. Accordingly, it was viewed that the cumulative sales figures with respect to the above two customers for financial years 2008-2009 and FY 2009-2010 were inflated by ₹71.21 Crore, which was 51.90 % of the total sales of CHL for these two financial years. Accordingly, the figures of profit carried over into the Balance Sheet of CHL for the above two financial years were also inflated. The details of the above noted inflated sales in respect of FAO UN and N D S USA LLC are presented in the following table:

Table No. 4

Inflated sales reported by CHL

	Name of the entity	**Sales reported by Company (₹ in Crore)**	**Actual Sales (on the basis of replies from Entities) (₹ in Crore)**	**Difference between Actual Sales and sales shown (₹ in crores)**
a)	FAO UN	2008-09 ----- 10.28 2009-10 ----- 29.43 ----- **Total 39.71**	**1.49**	38.22
b)	NDS USA LLC	2008-09 ----- 14.25 2009-10 ----- 18.73 ----- **Total 32.98**	**0**	32.98
c)	**Total (a+b)**	**72.69**		**71.21**
d)	**Total Sales reported (₹ in crore)**			2008-09 ----- 61.09 2009-10 ----- 76.02 ----- **Total 137.11**
e)	**% of Inflation of Sales to the Total Sales reported (c/d*100)**			**51.9%**

f) Investigation noted that the Noticee had acted as statutory auditor of CHL since 1996 onwards. Further, the accounts of CHL for financial year 2008-09 (01.04.2008 to 31.03.2009) and for the 15 months during 2009-10 (01.04.2009 to 31.06.2010) were also audited by the Noticee.

g) Investigation revealed that the Noticee had not acted diligently and did not verify the contracts of work of the Company and merely relied upon the revenue reported to him by Mr. G S Chandrashekar (Director of the Company) and Mr. Suthesh Nair (Vice President Finance of the Company). Investigation also revealed that the Noticee failed to provide the working notes, audit plan and other audit related documents pertaining to the Audit of CHL.

h) It was also revealed that the Noticee did not verify sales of the Company by checking as to whether the payments received against the sales were accounted for and in the absence of audit documents, it was further revealed that, the Noticee had not obtained confirmation from the clients of the Company as per Auditing and Assurance Standard (AAS) 30 issued by The Institute of Chartered Accountants of India (ICAI) to verify the veracity of sales.

i) Based on the above, it has been alleged that the Noticee, in connivance and in collusion with the Directors of CHL has concocted false accounts of CHL during the period of investigation. Such manipulated and misleading results were reported in the Annual Reports of the Company and were also disseminated to the public through the stock exchanges which in turn have misled the investors into investing in securities of the Company. The acts of the Noticee have been alleged to be in violation of the provisions of Section 12 A (a) (b) (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with Regulation 3 (b) (c) (d) read with Regulation 4 (1), 4 (2) (e), (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**).

j) Accordingly, a Show Cause Notice dated October 20, 2016 (hereinafter referred to as **"SCN"**) was issued to the Noticee, asking him to respond as to why suitable direction under Section 11 (B) of SEBI Act, should not be issued against him.

Submissions of the Noticee

3. From the records, it is noted that the Noticee has responded to the SCN vide his written reply dated December 09, 2016. Subsequently, in the interest of natural justice, the Noticee was provided with an opportunity of personal hearing on May 02, 2019. However, none appeared before me for personal hearing on behalf of the Noticee.However, later on vide email dated May 06, 2019, Noticee has submitted additional explanations in the matter. After perusing the above noted written replies, the submissions made by the Noticee are summarized as under:

a) That he is a senior citizen now and has retired from the active profession. He has not cleared Peer review hence is not eligible for audit of listed company, PSUs or Bank and even has not applied for empanelment as an Auditor to CA Institute. Hence, he has not done any such Audits since 2009 onwards.

b) That the management of the Company was vested with the Chairman Mr. Chandrasekhar and the CFO Mr. Suthesh, both of whom were Chartered Accountants. They had prepared the accounts and provided him with necessary details and he had relied on those accounts as furnished by them believing them to be true and correct accounts of the Company. The reason for reliance in them was their professional qualifications, having no adverse antecedent to doubt or disbelieve the details as well as credentials of the Director and the CFO.

c) That for the financial year 2008-09, he had signed the accounts and the reports as a Statutory Auditor. However, he had not signed any documents or papers including the accounts and reports for the financial Year 2009-10. The Company appear to have played a fraud on him by uploading the Annual Report by putting the mark 'Sd/-' in his name thereby, holding out to the world that he has signed the accounts and the audit report for financial year 2009-10. As a logical consequence, neither has he raised any invoice on the Company, nor has the Company paid any fee to him for financial Year 2009-10. Therefore, he

cannot be held responsible / liable for any act of omission or commission committed by the Management for financial Year 2009-10.

d) The Noticee has vehemently denied his alleged connivance and collusion with the Directors of CHL to create false accounts of CHL during the period of statutory audit done by him.

4. I find that sufficient opportunities have been granted to the Noticee for personal hearing which he has not availed, for reasons best known to him. Hence, I proceed to deal with matter based on the materials available on record including the written submissions made by the Noticee.

Consideration of Issues and Findings

5. I note that in the SCN, the Noticee has been alleged to have violated provisions of Section 12 A (a), (b), (c) of SEBI Act read with Regulation 3 (a), (b), (c), (d), 4 (1) 4 (2) (a) and (g) of SEBI (PFUTP) Regulations. Therefore, before moving forward on this issue, it would be proper to visit the aforesatated provisions alleged to have been violated in the SCN. The said provisions are produced hereunder for ready reference:

Section 12 A (a) (b) (c) of SEBI Act

No person shall directly or indirectly –

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

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

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

contravention of the provisions of this Act or the rules or the regulations made thereunder;

Regulation 3 of SEBI (PFUTP) Regulations: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly –

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

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

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

Regulation 4 of SEBI (PFUTP) Regulations: - Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

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

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

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information [relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

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

6. Before I set out to examine as to whether the acts of the Noticee were fraudulent in nature, it is imperative to ascertain if the Noticee has discharged his basic professional duties as an auditor by complying with the principles governing the conduct of auditor, as laid down in the Auditing and Assurance Standards (AASs) prescribed by ICAI (the statutory governing body for audit of companies falling within the purview of the Companies Act), while auditing the accounts of the Company or while signing its audited accounts. It is noted that these standards mandatorily apply to all audits done by all the auditors with effect from the date of prescription by ICAI, which means that the auditors, while discharging their auditing and attestation functions, have to ensure that the AASs are strictly observed in respect of all the financial information covered by their audit reports. Whether the Noticee while performing his duty as statutory auditor has complied with the relevant standards prescribed by the ICAI and the extent to which he was in compliance with such standards, have been discussed and examined in the succeeding paragraphs.

7. I note that ICAI has prescribed AAS 5 regarding 'Audit Evidence', which, *inter alia*, provides that "*the auditor should obtain sufficient appropriate audit evidence through the performance of compliance and substantive procedures to enable him to draw reasonable conclusions therefrom on which to base his opinion on the financial information*". The AAS 5 further provides, in para 7, that external evidence is usually more reliable than

internal evidence and that evidence obtained by the auditor himself is more reliable than that obtained through the entity. Further, para 9 of the AAS 5 states that "*the auditor should be thorough in his efforts to obtain evidence and be objective in his evaluation*".

8. It is noted that the Noticee, while making deposition before the Investigating Officer on June 23, 2015, was asked on the of methodology adopted/followed by him to verify the sales reported by the Company. In response thereto, I note that the Noticee has replied that his staff used to check invoices raised by the Company, but has not been able to furnish any documentary evidence to substantiate such claim. In fact, the Noticee vide his email dated May 06, 2019 has submitted that he relied on the statements, information and explanations of the Director / CFO of the Auditee Entity and had no reasons to disbelieve them.

9. In addition to the above, I note that AAS 30 which deals with 'External Confirmations' has been prescribed to establish standards with respect to the auditor's use of external confirmations as a means of obtaining audit evidence. As per para 4 of AAS 30, "*External confirmation is the process of obtaining and evaluating audit evidence through a direct communication from a third party in response to a request for information about a particular item affecting assertions made by management in the financial statements.*"

10. As stated earlier and depicted in the table no. 4 under para 2 (e) above, the Investigation has unearthed that the sales figures reported by the Company with respect to to two of its customers namely, FAO UN and N D S USA LLC were inflated by ₹ 38.22 crores and ₹ 32.99 crores respectively and therefore, the aggregated sales figures for the two Financial years viz. 2008-09 and 2009-10 were grossly inflated by ₹ 71.21 Crore in the financial statement of the Company which were audited and attested by the Noticee. The inflated sales for the abovementioned two financial years constitute 51.90 % of the total sales for the said two financial years. Similarly, I also note that Raydox Technologies FZ LLC, Avington Solutions Ltd. (UK) and Rochelle Associates Ltd. (UK) were the companies connected to and controlled by the Directors of CHL and together these three companies had contributed to 37.57% and

33.32% of the total sales of CHL during 2008-09 and 2009-10 respectively. However, sales made to these related parties were not disclosed in the Annual Reports under the head, 'Related Party Transactions.' In this regard, I note that as per AAS 18 (Related party disclosures) issued by ICAI, parties are considered to be related if at any time during the reporting period, one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions. Therefore, non-disclosure of such related party transactions in the audited Balance Sheet clearly highlights glaring non-compliance by the Noticee of AAS 18 prescribed by ICAI.

11. I note that there is an allegation against the Noticee of colluding with the management of the Company and for aiding and assisting them by facilitating the concoction of the above noted inflated sales accounts. This is corroborated by the fact that after verification with the purchasing parties during SEBI's investigation, it has been unearthed that annual sales figures reported in the annual financial statements of the Company for financial years 2008-09 and 2009-10, with respect to two of its customers viz. FAO UN and N D S USA LLC were inflated by ₹ 38.22 Crores and ₹ 32.99 Crores respectively, which aggregated to ₹ 71.21 Crore for the relevant two financial years. The aforesaid inflated sales amounted to 51.90 % of the total sales for these two financial years. However, the Noticee did not cross check or verify the sales with the purchasing parties and instead, chose to accept whatever sales figures were reported to him by the Director and CFO of the Company.

12. As pointed out earlier, during the course of investigation, details of the sales figures were sought by the Investigating Officer from FAO UN and N D S USA LLC. In this regard, I note from the reply of India Country Representative of FAO UN vide his e-mail dated 23.10.2013 that FAO had two contracts with CHL for scanning services. The first contract was awarded in July 2001 for 3 years and the second one was awarded in Dec 2005 for 1 year and the last payment to CHL was made in Dec 2009. Total amount paid to CHL from July 2001 till Dec 2009 under the contract was approx. ₹ 1.49 Crores only. Therefore, an actual sales figure of ₹1.49 Crore was arrived at during the Investigation with respect to FAO UN for financial years 2008-

09 and 2009-10 as against total sales of Rs. 39.71 crore claimed to have been made by the Company in its audited accounts. It is important to note that the Noticee in his reply has not disputed to the finding in the Investigation report about the inflated sales figures vis-à-vis the aforesaid two customers. He has also not produced any documents to rebut the allegations of false reporting of sales with respect to the above two entities. The Noticee has also not disputed to the finding that the 03 other customers of the Company viz. Raydox Technologies FZ LLC, Avington Solutions Ltd. (UK) and Rochelle Associates Ltd. (UK) were related entities / connected parties and hence the sales made to them were required to be reported under the category of related parties, however, the sales made to them were admittedly not disclosed under the category of related parties.

13. With no evidence on hand to rebut the aforesaid findings made during the investigation, the Noticee has instead admitted that he has relied on the information furnished by the Director and CFO of the Company before certifying and signing audited accounts which were incorporated in the annual report. Admittedly, the Noticee has not bothered to verify the sales figures with the documents pertaining to the contracts of work executed by the Company and has failed in performing his basic duties as a statutory auditor. The conduct of the Noticee in not preserving the working notes, audit plan and other audit related documents pertaining to the Audit of CHL, even for the period for which he was statutorily required to do so, clearly indicates the involvement of the Noticee in false reporting of sales figures at a highly inflated level, thereby helping the Company in projecting a fabricated Profit & Loss account with artificially enhanced financial results in the Annual Report. I note that the Noticee has taken no precaution to take confirmation from the clients of CHL to verify sales reported by the management of CHL and has merely relied upon the data provided by the management of the Company. The Noticee has apparently not even done the minimum exercise of cross checking the sales figures reported by the management with the supporting base documents such as sales invoices, work contracts, order book, payment received, etc.

14. It is an admitted fact that the Noticee had been the statutory auditor of the Company since the year 1996 and was having long exposure to the accounts of the Company over a long period. Therefore, it is expected that the Noticee would at least be aware about the principal business activities undertaken by the Company, its associated / related companies and its business performance over the years. In the backdrop of his long auditing association with the Company, the quantum of sales as reported by the management of the Company for the relevant years would have easily alerted him with regard to its veracity and he ought to have verified the authenticity of such figures reported by the management from the records, invoices, bills, etc., but they were conveniently omitted by the Noticee. Such a glaring act of omission and causal approach further exposes his probable collusion / connivance with the management of the Company. The word "connivance" is a word of wide import. As per Black's Law Dictionary (9th Edition), the word "Connivance" is defined as "the act of indulging or ignoring another's wrongdoing, especially when action should be taken to prevent it." The mere omission to do something is one thing, however, turning a blind eye and allowing something to done in disregard of the duties of an auditor is not a mere omission, but amounts to connivance.

15. I also note that the Company got listed in August 2008 itself and in the first year of its listing i.e. FY 2008-09, it was all the more expected of the Noticee to discharge his duties diligently, keeping in mind the interest of the new shareholders and other investors in general, while approving and attesting the financial reporting of the annual performance of the Company. The Noticee should have realized that the Company was no more a public company and by becoming a public listed company, the responsibility and accountability of the Noticee as the statutory auditor towards the investors have become onerous. In such circumstances, approving and attesting the wrong financial performance of the Company and attesting the financial statements without any verification or test checking can't be viewed as mere negligence / omission.

16. As pointed out above, the ICAI has made it mandatory for the auditors to apply the approved principles of audit while discharging their attestation function and in

the process, auditors are required to ensure that these principles are diligently followed while doing the audit of financial transactions covered by their audit reports. It is obligatory on the auditor to have reasonable and appropriate audit evidence before framing any reasonable conclusion in their report and in the process, auditors are required to undertake necessary exercise of checking, matching and verifying the accounts and transactions, before taking a final view on the financial information, to be incorporated in the Annual audited accounts of the Company. Further, AAS 5 provides that in the process of forming any opinion, it is pertinent to have reliance on external evidence and it is not advisable for the auditor to rely only on internal evidence, more particularly the evidences furnished by the Auditee Entity itself. In this respect, para 9 of the AAS 5 clearly and categorically provides that "*the auditor should be thorough in his efforts to obtain evidence and be objective in his evaluation*". In the instant proceedings, I note that the Noticee has not followed any of the approved principles while auditing the financial information of the Company and approbating the financial statements without any verification and cross checking of the information so furnished to him. Admittedly, the Noticee has also not preserved and could not furnish any working notes, audit plan and other audit related documents pertaining to the Audit of CHL done by him.

17. The Noticee in his reply has claimed that he has not carried out Statutory Audit of the Company for Financial Year 2009-10 and has not signed any document related thereto for the Company as because, the Peer Review certificate, which is a necessary precondition for conducting the audit of a Listed Company, was not obtained by him till then. He has further submitted that the Company appears to have played fraud on him by uploading the Annual Report by putting the mark 'Sd' against his name thereby holding out to the world that he has signed accounts and the audit report of the Company for FY 2009-10. In support thereof, he submits that he has neither raised any invoice on the Company towards statutory audit fees, nor has the Company paid any fee to him for financial Year 2009-10.

18. The contentions of the Noticee are carefully examined and are found to be devoid of any merit for acceptance. First of all, there is no dispute that the Noticee

has conducted statutory audit of the Company for FY 2008-09, the year in which the Company got itself listed on the stock exchanges and still, has not bothered to take adequate precautions to verify the accounts thoroughly before certifying the audited financial statements. As far as his contention for the period 2009-10 is concerned, I find that the Noticee has already been served with the SCN in the instant matter in the year 2016 but has never raised any objection and has never protested to claim that he has not audited the accounts of FY 2009-10 either through any oral or written presentation before SEBI. The Noticee has also not so far demonstrated his *bonafide* by protesting or complaining against the Company or its management before appropriate authorities for impersonating his signature or for misrepresenting the audited accounts as audited by him which, according to him was not audited by him. The Noticee ought to have filed a criminal complaint for forgery and criminal breach of trust against the management of the Company for falsely projecting him as the statutory auditor for FY 2009-10 due to which he has been served with a SCN from SEBI. However, no such action apparently has been taken by the Noticee to prove his innocence as far as auditing of the Company accounts for FY 2009-10 is concerned. Thus there is no tangible evidence available before me to rely on the contentions made by the Noticee and to controvert the presentations made by the Company that the Noticee has audited their accounts for both the financial years i.e. FY 2008-09 and FY 2009-10.

19. In this connection, it is also noted from the Schedule 17 which is part of the Consolidated Accounts of the Company for the Year ended June 30, 2010 (Page 55 of the Annual Report of the Company) that the Company has paid Auditors Remuneration of ₹ 372,066 during the year which is shown under the head of 'administrative and other expenses'. Since the Company has shown the Noticee to be the statutory auditor having audited their accounts for the year and from the financial statements of the Company for financial year 2009-10, I find that an expenditure towards auditors' remuneration has been claimed in the accounts, it gives no ground to me to disbelieve the presentations made in the accounts itself and rely on the contentions made by the Noticee without any supportive evidence to corroborate his

claim. The Noticee's claim that he has not raised an invoice for his fees on the Company for the said financial year cannot be a ground to reject the concrete evidence that is available from the accounts of the Company itself, pertaining to payment of auditor's remuneration for the said financial year. Further, no evidence for having not received any payment from the Company has also been presented before me either through his bank statements or otherwise. Thus, in the absence of any credible evidence, the submissions of the Noticee don't inspire confidence, hence I find no merit in the argument of the Noticee that he has not raised any invoice / received payment of audit fees from the Company.

20. I note that an entity having raised capital from the public is required to perform diligently and every person associated with the performance of a company is accountable to the investors for all significant and material information disseminated, which is likely to impact the decision making of investors at large. The financial report of a listed Company is the most vital document and most awaited information for the shareholders of the Company who substantially depend on such document along with other material information required to be disseminated by the Company from time to time, for taking informed decisions about their investment in the company. If the audited annual accounts of a listed company contain any specious reporting about the financial performance of the company and result in fake and fabricated disclosures so as to mislead the shareholders and investors, it will grossly amount to a commitment of a fraudulent act on the shareholders and investors by the company and its Directors within the meaning of Regulations 3 & 4 of PFUTP Regulations. In this context it will be relevant to refer the views observed by the Hon'ble SAT in the matter of *HSBC Securities and Capital Markets (India) Private Ltd. v. SEBI*, SAT Appeal No. 99 of 2007, wherein the Hon'ble SAT has observed that "*an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator*".

21. I further note the observation of the Hon'ble Supreme Court in the matter of *Kanaiyalal Baldev Bhai Patel v. SEBI [2017] 143 SCL 124 (SC), that* even an act or omission that has the effect of inducing another person to deal in securities constitutes 'fraud' under the SEBI (PFUTP) Regulations. I also note that if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The Hon'ble Supreme Court in *Kanaiyalal Baldev Bhai Patel (supra),* while dealing with the definition of "*fraud*" as provided under SEBI (PFUTP) Regulations, 2003, observed as under:

> *"…The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required…."*

22. Applying the above test in the instant matter, I find that in my assessment, the facts and circumstances clearly suggest complicity and collusion of the Noticee in preparing such fake and inflated financial results and in dissemination of the same to the public through the Exchanges. I therefore can safely assume that the acts of Noticee in approving such factually erroneous annual reports have induced the public to trade consistently in the shares of the Company believing in good faith, that the financial results of the Company for the above said two financial years are true. In this regard, it is relevant to note that the impact of such misrepresentation / misreporting was such that, on BSE, the price of the scrip opened at ₹ 150 on August 11, 2008 (listing date) touched a peak of ₹ 362.65 on 29.09.2008 and closed at ₹ 344.90 on 26.02.2009. After share split (Face Value ₹ 10 to ₹ 1) the share price opened at ₹ 36.25 (₹ 362.50 pre-split) on 27.02.2009 touched peak of ₹ 67.90 (₹ 679.00pre-split) on 04.06.2009.

23. In view of the reasons recorded above, I find that the auditor has failed in showing any evidence to the effect that he had done his job in compliance with standards of professional diligence and care as required and expected of him as a Statutory Auditor. The Noticee was very well aware of the consequences of his omissions in reporting the actual sales turnover of the Company which otherwise would result into presentation of a completely misleading and manipulated accounts for the two years concerned and consequently would lead to a fraud on the investors in terms of the SEBI Act and the SEBI (PFUTP) Regulations. After an evaluation of how shoddily the entire auditing exercise was conducted by the Noticees, I am of the view that the conduct of the Noticee raises question on his credibility and capacity to do the audit exercise of a listed company, which demand from a statutory auditor not only an audit of high standard and integrity but also to act in a manner so as to protect and further the interest of shareholders instead of getting into dubious collusion with the management. In the facts and circumstances of the case, I find that the allegations in the SCNs cannot be said to be misplaced or unsubstantiated.

24. In view of the foregoing, I have no hesitation to conclude that the alleged acts of the Noticee as an auditor of a listed company are found to be in violation of provisions of Section 12 A (a) (b) (c) of SEBI Act read with Regulation 3 (b) (c) (d) read with Regulation 4 (1), 4 (2) (e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

Directions:

25. In view of the above, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, I hereby pass the following directions:

a) Noticee shall not directly or indirectly issue any certificate of audit and render any other auditing services including issuances of certificates of compliances, whatsoever, to any listed companies and intermediaries registered with SEBI, in compliance with the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, those provisions of the Companies Act 2013 which are administered by SEBI under section 24 thereof, the Rules, Regulations and

Guidelines made under those Acts which are administered by SEBI for a period of 01 year.

b) Listed companies and intermediaries registered with SEBI shall not engage any audit firm wherein Mr. K P Joshi is related / associated directly or indirectly, for issuing any certificate with respect to compliance of any statutory obligations which SEBI is empowered to administer and enforce, under various laws for a period of 01 year.

26. For removal of operational difficulties, it is clarified that the aforesaid directions may not impact ongoing audit assignments already undertaken by the Noticee. However, the Noticee shall complete such ongoing audit assignments as expeditiously as possible but not later than 6 months from the date of this order.

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

28. A copy of this order shall be forwarded to the Noticee, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

Date: December 13, 2019
Place: Mumbai

S. K. MOHANTY
WHOLE TIME MEMBER