WTM/ AB /EFD-1/DRA-1/20 /2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: ANANTA BARUA, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Pacific Finstock Limited

In respect of: -

Noticee No.	Name of the Noticees	PAN
1	Pacific Finstock Limited	AABCP1727D
2	Mr. Jayesh Raichand Bhai Thakkar	AAYPT7057L
3	Mr. Bhavesh Desai	AJMPD8376M
4	Mr. Chandresh V. Kahar	CKJPK6535M

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees"

Background:

1. Pacific Finstock Ltd. (hereinafter referred to as 'the company' or 'PFL') was incorporated on 6th day of September 1994 and was listed on Vadodara Stock Exchange and is now shown on the dissemination board of Bombay Stock Exchange Ltd. (hereinafter referred to as, 'BSE'). Securities and Exchange Board of India (hereinafter referred to as, 'SEBI') passed an ad- interim order on October 26, 2017 *inter alia* directing the promoters and the directors (Noticee no. 2 to 4) of the PFL not to sell the shares of the company till further orders and directed the Bombay Stock Exchange to appoint an independent auditor to conduct forensic audit of PFL. These directions were confirmed vide SEBI's confirmatory order dated August 02, 2018.

2. The forensic audit report of M/s. Suresh Chandra & Associates **(Firm Reg. No. 001359N),** furnished by BSE**,**inter alia, concluded that during the period under audit i.e., April 01, 2015 till January 15, 2018, the company has undertaken certain transactions which are pre-judicial to the interest of the Company. The Hon'ble Securities Appellate Tribunal(SAT) has vide order dated October 01, 2018 directed SEBI to issue show

cause notice before October 23, 2018. Accordingly, SCN was issued on October 11, 2018. The Hon'ble SAT has also directed SEBI on November 15, 2018 to pass the final order in the matter within three months.

Show Cause Notice

3. Based on the findings of the forensic audit report, a Show Cause Noticedated October 11, 2018 (hereinafter referred to as, '**SCN**') was issued to all the Noticees for alleged violation of Sections 12A (a), (b) and (c) of the Securities and Exchange Board of India (hereinafter referred to as, 'SEBI Act') and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as, SEBI (PFUTP) Regulations'), to show cause as to why suitable directions under 11(1), 11(4), 11A and 11B of SEBI Act, 1992 should not be passed against them. A copy of the forensic audit report alongwith the annexures was enclosed as annexure to the SCN.

4. The SCN alleged that the Noticee no.1, PFL and its directors (Noticee no. 2 to 4) employed a device or artifice to fraudulently misuse/ misrepresent the funds / books of accounts which are detrimental to the interests of genuine investors. The SCN also stated that the reply of the Noticees to the SCN, together with supporting documents, if any, should reach SEBI within 21 days of receipt of the SCN. The Noticee no. 1 vide letter dated November 03, 2018 submitted its reply.

5. The sum and substance ofallegations (in brief)in the SCN are:

A. *Loans & Advances taken by PFL:*

(i) PFL accepted loans & advances from various entities without specifying the terms of repayment and paying any interest.

(ii) It was observed that the company was actively involved in taking on account payment (unsecured loans) as shown in the year wise movement given below -

Particulars	**2017-18**		**2016-17**		**2015-16**		**2014-15**	
	Debit	**Credit**	**Debit**	**Credit**	**Debit**	**Credit**	**Debit**	**Credit**

Grand Total	**56,63,261**	**6,12,19,306**	**29,36,050**	**6,77,18,256**	**1,15,46,050**	**6,25,49,856**	**20,00,898**	**6,61,01,520**

(iii) There was no consistency in repayment of unsecured loans, these loans were without any interest obligation and tenure.

(iv) During the forensic audit, PFL had inter-alia failed to furnish the details like agreements entered into with the entities, time period since advance taken, interest paid, repayment schedule, purpose etc. In most cases, either the loan agreements are not executed or were executed on plain paper.

(v) The loan amount was static for last 3 to 4 financial years with some loan accounts having debit balance.

B. *Wrong Grouping:*

(i) Anvita Sales Corporation was shown by PFL under the head 'long term borrower'. However, it should have been shown as 'Trade Payables' since PFL had bought securities from Anvita Sales Corporation.

C. *Loans & Advances extended by PFL*

(ii) The company extended Loans & Advances to various entities without specifying the terms of repayment and charging any interest.

(iii) It was observed that the loans and advances given by PFL were not regular in terms of repayment since the repayment / interest terms were either not explicitly mentioned in the loan agreements or there was no loan agreement executed at all. It was further observed that the loan amount was static for last 3 financial years.

(iv) A perusal of few loan agreements further revealed the interest and repayment clause mentioned in the agreement as under –

Interest clause - At an interest rate mutual decided by the management and penal interest for late payment of repayment @ 1 % p.a
Repayment Clause - 45 Months.

However, repayment schedule such as the EMI or installment, commencement of repayment has not been prescribed in the agreement. Moreover, it was observed that the agreements entered by PFL were on plain paper and neither notarized nor on Non-judicial stamp paper which does not have any legal sanctity and are not enforceable in the court of law.

(v) It was observed that till 2017, the company had neither recovered nor charged any interest on the loans and advances given which is prejudicial to the interest of the company. However, the company started charging interest from 2017-18 onwards.

(vi) Loans & Advances and Shares were transferred to Mr. Jayesh Raichand Thakkar and such adjustment of loans & advances and investments by passing entries against the account of Mr. Jayesh Raichand Thakkar revealed that these balances were just mere book entries. Giving loans & advances without interest is pre-judicial to the interest of the company.

D. *Non – disclosure of facts and figures with regard to related parties*

(vii) The company had not disclosed the names of the related parties (more specifically contained in the SCN) in its Audited Financial statements for FY 2015-16 and 2016-17 under the Related Party disclosure as required under the Companies Act, 2013

(viii) PFL had not disclosed the transactions in respect of certain related parties (more specifically mentioned in the SCN), although there were transactions appearing as per books of accounts:

(ix) The Statutory Auditors in their CARO (Companies Auditor's Report Order) report for Financial Year 2016-17 have reported as under-

"The company is in continuing contravention of section 185 of the Companies act 2013 for granting loans & advance of INR 60,10,407/- to directors, Firms and to the companies in which directors/ relatives are / were interested as director / partner/ proprietor".

E. *Over valuation of stock and assets including investments/ non-provisioning of permanent diminution in value of investments*

(x) As per the significant accounting policy followed by PFL, inventory comprising of shares and securities are valued at cost, which was not in accordance with Generally Accepted Accounting Principle. In case, the inventories are valued at lower of cost or market price, the position emerges that there is a steep decline in the value of inventory from Rs. 196.33 Lakhs to Rs. 2.79 Lakhs. (specifics being dealt in the SCN) This has resulted in overstatement of the profit as well as Reserve & Surplus

by Rs. 193.53 Lakhs. However, during the current financial year 2017-18, PFL has provided for the diminution in value of shares amounting to Rs. 187.62 Lakhs on 17.11.2017 based on the prevailing market prices of the scrip.

(xi) Non-recording of inventory (shares as stock in trade) at the lower of cost and fair value in the financial statement has resulted in non-compliance of Accounting Standard-13.

F. Verification of sundry debtors/ receivables

(xii) PFL is presently into equipment leasing and investment in shares either through Religare Securities Ltd. or KFS Trade Capital Pvt. Ltd., year wise / party wise movement of debtors is given hereunder – (in INR)

Particulars	Business	2017-18	2016-17	2015-16	2014-15
Aditya Corporation	Leasing	55,200			
Fresh Enterprise	Leasing		3,60,000	3,60,000	3,60,000
Kavit Green Energy P Ltd	Professional Charges			8,01,000	
Religare Securities Ltd	Stock Trading	14,40,635		-9,39,756	-1,968
Tejora Technologies Ltd	Stock trading			55,00,000	55,00,000
Grand Total		**14,95,835**	**3,60,000**	**66,61,000**	**58,60,000**

(xiii) It was observed that the recovery of lease rentals was not on regular basis. Further, no lease agreement was available for verification.

(xiv) The amount recoverable from Tejora Technologies Ltd. was on account of Sale of share of 170 lakhs in Oct 2011 for which the balance payment of Rs. 55 lakhs was realized in Oct 2016 i.e. after a span of five years. It was observed that no provisions for doubtful debts were made for the debtors, for instance, Tejora Technologies.

(xv) It was observed that the company had made a payment of Rs. 8,01,000/- to Indus Capital Pvt. Ltd. on behalf of Kavit Green Energy Pvt. Ltd. towards professional charges and was shown as trade receivable from Kavit Green Energy Pvt. Ltd. However, it was noticed that the said amount recoverable from Kavit Green Energy was debited to Pacific Health Informatics on 08.01.2016, without any justification.

(xvi) From the above, it is inferred that the above transactions are prejudicial to the interest of the company as there is no timeline set for recovery of the same. Further, the entries have been adjusted internally without any justification for the same.

G. Netting – off of debit balances with unsecured loans

(xvii) The following debit balances were netted out from Unsecured Loans instead of showing it as Advance Recoverable in cash or Kind in the financial statement for 2015-16.

Sr. No	Name of party	Grouped (Head)	Balance Outstanding (In Rs.)
1	Adamina Traders Pvt. Ltd	Unsecured Loans	99,26,150
2	Shrinathji Finstock Pvt. Ltd	Unsecured Loans	4,70,000

(xviii) Such netting off of debit balance from unsecured loans resulted in understatement of Unsecured – Long Term borrowing by INR 1,03,96,150/.

H. Improper grouping and netting off under the head Sundry Creditors:

(xix) It was observed that in certain cases such as of Anand Rathi Shares & Stock Brokers Ltd. and Manan Shah, debit balance of Rs. 18,71,636/- and Rs. 6,00,000/- were outstanding for many financial years and were grouped under Sundry Creditors instead of Other Current Assets. Moreover, no confirmation / justification for non-recovery of these amounts was available.

I. Adjustment of loan balances and investment

(xx) Scrutiny of the books revealed that during the year 2017-18, the company had executed a Net Purchase Agreement on 12.10.2017 with Mr. Jayesh Raichand Thakkar and all the old balances (prior to 2014) appearing under the head 'Loans & Advances' and 'Investments' in shares were transferred to Mr. Jayesh Raichand Thakkar. The details of Loans & advances and Investment in shares adjusted in the ledger account of Mr. Jayesh Raichand Thakkar are given hereunder –

Particulars	Amount (INR)	Remarks

Loans & Advances	189,65,890	Loans & Advances including Corporate Loans and unsecure loans
Investments in Shares	27,64,370	
Total	**2,17,30,260**	

(xxi) Loans & Advances and Shares were transferred to Mr. Jayesh Raichand Thakkar, however, giving loans & advances without interest is prejudicial to the interest of the company and is a contravention to the object clause of the company. This further gives rise to suspicion that these transactions are not business oriented and is also not in accordance with section 185 of The Companies Act, 2013.

(xxii) The company inter-alia failed to furnish the details like agreements entered into with the various entities, time period since advance taken, interest paid, repayment schedule, purpose etc.

(xxiii) Adjustment of loans & advances and investments by passing entries against the account of Mr. Jayesh Raichand Thakkar reveal that these balances are just mere book entries.

J. *Use of bank account for round tripping of funds without having any underlying business transaction*

a. Discrepancy between amount reported in the financial statement and actual amount in bank statement

(i) PFL has bank accounts with Punjab National Bank (PNB), UCO Bank and Bank of India (BOI) (this account is maintained only for Pacific Health Informatics, a Division of PFL).

(ii) Verification of bank balances appearing in Audited balance sheet of 2016-2017 vis-à-vis balance as per bank statement revealed a difference of Rs. 16,37,000/- the details of which are given hereunder –

Name of the bank	**Balance outstanding as per books as on 31.03.2017 (in INR)**	**Balance outstanding as per Bank statement as on 31.03.2017 (in INR)**
PNB - 440	78,211.08 (Debit)	78,211.08 (Debit)
UCO Bank - 20310210000540	3,33,284.82 (Debit)	3,33,284.82 (Debit)
BOI – 250720110000353 (Maintained by Pacific Health Informatics)	36,83,652.72 (Debit)	20,46,652.72 (Debit)

Total	**40,95,148.62 (Debit)**	**24,58,148.62 (Debit)**

(iii) The balance as per bank statement in case of BOI account on March 31, 2017 was Rs. 20,46,652.72/- as against the book balance of Rs. 36,83,652.72/-. This is due to an entry of Rs. 16,37,000/- credited in the books on March 31, 2017 from Mr. Jayesh Raichand Thakkar. The said amount was reversed in the books on June 29, 2017 by debiting the account of Mr. Jayesh Raichand Thakkar. It was observed that the above said amount was merely a book entry as no such instrument was deposited / routed through the bank account.

K. *Transactions in PHI*

(i) It was also noticed that PHI, a division of PFL did not have any business transactions during the period April 01, 2015 to December 31, 2017 and almost all the transactions routed through the bank account i.e. Bank of India related to the following – (a) Kavit Industries Ltd. (Related to the company having common management), (b) Jayesh Raichand Thakkar (Promoter Director of the company) and (c) Contra entries i.e. for cash withdrawal / Deposit.

(ii) The credit summation in the bank ledger during the period was Rs. 7,28,49,456/- as against turnover of mere Rs. 60,970/- which was not substantiated with any business transaction.

(iii) As evident from the cash ledger, frequent cash withdrawals and cash deposit from / to bank were observed, the purpose for which are not ascertainable.

(iv) Further, the purpose for frequent cash withdrawals and cash deposit from / to bank could not be ascertained and also the purpose for many entries with respect to Kavit Industries Ltd. and promoter/director Jayesh Raichand Thakkar. Hence, PFL appears to be using this account for other than business purpose as there is no specific business activity in PHI division (turnover being "zero" since April 2016).

Hearing, Submissions/Replies:

6. Vide letter dated November 03, 2018, PFL submitted its reply, wherein it had inter alia, denied all the allegations contained in the SCN.An opportunity of hearing was granted to the Noticees on December 17, 2018. The advocate on behalf of all the Noticees

appeared before me. The matter was argued and the hearing was concluded. In the hearing, the advocate has denied all allegations contained in the SCN and contended that the Noticees have not violated any of the provisions of Sections 12A (a), (b) and (c) of SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the SEBI (PFUTP) Regulations, 2003.The advocate took time of 10 days to submit the written reply along some documents which was submitted vide letter dated January 05, 2019.

7. The replies and submissions to the allegations in the SCN are as under:

(i) Noticee no. 1 has contended that PFL is a non – deposit taking Non-Banking Financial Company registered with the Reserve Bank of India. It has submitted that PFL is placed on the Dissemination Board of BSE.

(ii) Its accounts were prepared and audited on a going concern basis. Minor contradictions, inconsistencies and insignificant embellishments or technical lapses do not make the entire books of accounts untrue, unfair or fraudulent. In commercial transactions, relationships, mutual faith of both parties is important. Commercial considerations are based on keeping in mind long term relations. Management takes decision based on commercial expediency.

(iii) The Noticees have submitted that: (a) the books of accounts of the company were regularly audited on a going concern basis. (b) PFL has filed regularly income tax returns on the basis of books maintained on a going concern basis. (c) No major qualification by the statutory Auditor for the financial year 2016-17. (d) No bank Loan has been raised. (e) No adverse action has been taken by RBI. (f) No demand of Income Tax has been made and pending against PFL. (g) No shareholder complaint pending.

(iv) On the allegation that Noticee no. 1 accepted loans and advances from various entities without specifying the terms of repayment and paying any interest, the Noticee no. 1 submitted that: - (a) In commercial transactions, relationships, mutual faith of both parties is important. Commercial considerations are based on keeping in mind long term relations. Management takes decision based on commercial expediency. (b) In order to meet its fund requirement, PFL availed unsecured loans from certain entities and most of these loans have been repaid which will be reflected in the books of accounts from the financial year 2017-18.

As on October 17, 2018, Rs. 2,93,54,027/- is outstanding payable and PFL proposes to clear the outstanding by year end. (c) Due to liquidity problems, PFL took loans in the past which are being repaid now. (d) PFL has changed its policy and it now makes loan agreements on stamp paper with notarization. (e) PFL did a genuine mistake in wrong grouping in the year 2016-17 which was corrected 2017 -18 by passing rectification entry. In the year 2017-18, Anvita Sales Corporation is shown under the head 'Trade Payable' instead of 'Long term Borrower'.

(v) On the allegation that Noticee no. 1 extended loans & advances to various entities without entering into agreements or specifying the terms of repayment and charging any interest, the Noticee no.1 has submitted that: (a) In commercial transactions, relationships, mutual faith of both parties is important. Commercial considerations are based on keeping in mind long term relations. Management takes decision based on commercial expediency and its own assessment of parties credibility and reliability. (b) As the company had liquidity problem, it settled the loans mutually on commercial experience basis. Such settlements between borrowers and lenders are an accepted practice. Loan amount of Rs. 1,89,65,890/- has been recovered through a Net Purchase Agreement whereby Mr. Jayesh R Thakkar has been assigned the loans amounting to Rs. 1,89,65,890/-. PFL is in the process of recovering the balance amount from the parties. It has also changed its policy and it now makes loan agreements on stamp paper with notarization.

(vi) On the allegation of non-disclosure of facts and figures in financial statements with regard to related parties, Noticee no. 1 has submitted that: (a) PFL's audited financial statement in the Annual Report for FY 2016 – 17 in Notes on Financial Statement provides Related Party Disclosures wherein a list of related parties is mentioned. Those parties which are not doing any transaction are not mentioned as it has no effect on the financial statement.

(vii) On the findings of over valuation of stock and assets including investments/ non-provisioning of permanent diminution in value of investments, the Noticee no. 1 has submitted that: (a) PFL had shown the stock of Prabhav Industries Ltd., Valuemarte In, Vikas Ecotech Ltd. and Yantra Natural Resources Ltd. (Shri Ganesh Spinner) in its Books of Account as Cost as Closing Stock of Rs. 1,96,33,271/-. The valuation was done as per AS-2 "Valuation of Stock" as opposed to AS -13 "Accounting of Investment".

(viii) On the findings in the Forensic Audit with regard to netting-off of debit balances with unsecured loans, the Noticee no. 1 has submitted that: (a) PFL had taken loans from Adamina Tradrers Pvt. Ltd. in year 2010 – 11 and Shrinathji Finstock Pvt. Ltd. in year 2008 – 09 at that time both parties were shown as unsecured loans and after that PFL has paid full amount. Further, PFL has also given loans and advances over and above its unsecured loans. (b) Settlement of dues between borrowers and lenders mutually is a recognised method of resolving commercial claims matters.

(ix) On the findings in the Forensic Audit with regards to Improper grouping and netting off balances under head 'Sundry Creditors', The company has submitted that: (a) As per PFL, most of the amounts payable have been fully paid but in some cases they have not received bills from the parties. Some of the amounts payable have also been written off. (b) As regards, Anand Rathi Shares & Stock Brokers Ltd. and Manan Shah, debit balance of Rs. 18,71,636/- and Rs. 6,00,000/- were outstanding for many financial years as the company has already paid the amount but bills were not received till date.

(x) On the allegation that the company has used its bank account for round tripping of funds without having any underlying business transaction, Noticee no. 1 has submitted that: (a) PFL had received cheque from Mr. Jayesh Raichand Thakkar of Rs. 16,37,000/- on March 31, 2017 in Pacific Health Informatics (hereinafter referred to as, 'PHI'), a division of PFL but the amount was received in 2017-18 in PFL by RTGS. Therefore, PFL returned the original cheque of Rs. 16.37 lakhs to Mr. Jayesh Raichand Thakkar. The cheque was not cleared due to error in signature. (b) During the personal hearing, it was submitted that Mr. Jayesh Thakkar had issued a State Bank of India cheque of Rs. 16,37,000/- in favour of PHI. The cheque was reversed in the books of PHI because in the meanwhile Mr. Jayesh Thakkar had paid the said amount by RTGS (details provided in the reply). (c) Mr. Jayesh Thakkar had promised to paid an amount of Rs. 14,00,000/- on June 15, 2017. Being a known party, PFL decided to reverse the cheque entry on June 29, 2017 in the books of PHI, a division of PFL itself.

(xi) On the findings in the Forensic Audit that PHI did not have any business transactions during the period April 01, 2015 to December 31, 2017, the company submitted that: (a) PHI is a division of PFL. It was started with the object of business of call center. PHI was engaged in medical transcription and online call center activity in year 2016-17. Therefore, bank account was opened in the name

of PHI. This division worked with foreign clients but it was not so successful till 3 month and was incurring loss. So PFL had stopped the business at that time. *(b)* Mr. Jayesh R. Thakkar had taken advances for business purpose and also extended finance to group company, Kavit Industries Limited.

Consideration of Issues:

8. I have perused the allegations in the SCN, findings of the Forensic Audit and the submissions and replies made before me by the noticees at the time of hearing. In this regard I observe the following:

   a. PFL appears to have extended several Loans & Advances to various entities without specifying the terms of repayment and charging any interest. It appears that the loans and advances given by PFL were not regular in terms of repayment since the repayment / interest terms were either not explicitly mentioned in the loan agreements or there was no loan agreement executed at all. It certain cases, it also appeared that the loan amount was static for last 3 financial years.

   b. PFL appears to have accepted loans & advances from various entities without specifying the terms of repayment and paying any interest. There appears to be no consistency in repayment of unsecured loans, the loans appears to have been without any interest obligation and tenure. In most of the cases, either the loan agreements are not executed or were executed on plain paper. In most cases, the loan amount were static for last 3 to 4 financial years and certain loan accounts were having debit balance. The Noticee has contended that in commercial transactions, privity as acted upon is important, intention, reputation of both parties, relationships, mutual faith of both parties, commercial considerations are based on keeping in mind long term relations. However, I do not see merit in such contention as the Noticee is a registered NBFC.

   c. PFL appears to have not disclosed the names of several related parties in its Audited Financial statements under the Related Party disclosure as required under the Companies Act, 2013, nor disclosed the transactions in respect of certain related parties although there were transactions appearing as per books of accounts.

d. It appears that the stock (shares) shown in the balance sheet as on 31.03.2017 was overvalued and the valuation adopted was against GAAP and also there was no provision made for permanent diminution in value of investments.

e. In certain cases, the debit balances in account were netted-off with unsecured loans.

f. In certain cases there was improper grouping of entries and there was netting-off under the head Sundry Creditors.

g. In certain cases there appeared discrepancy between amount reported in financial statement and the actual amount reflected in the entries in bank statement.

9. I note that, the Forensic Audit report contains the observation that PFL had entered into certain transactions which are pre-judicial to the interest of the company and are in contravention to the object clause of the company such as extending loans and advances to third parties without executing Loan agreements or without receiving any interest payments for 3 consecutive years in certain cases, etc. PFL being an NBFC-ND is legitimately expected to earn interest on loans and advances. I also note that the discrepancy observed by the Forensic Auditor in respect of transactions reported in the financial statement and the actual amount reflected in bank statement, raises suspicion on probable misuse of books of accounts. However, the Forensic Audit Report, does not show any link or bearing of such transactions so as to attract violation of PFUTP regulations as alleged in SCN nor demonstrate violations of specific provisions such as Sections 12A (a), (b) and (c) of SEBI Act and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the SEBI (PFUTP) Regulations, 2003.

10. Noticee no. 1 has stated that it was on the Dissemination Board of BSE. I note that Noticee no. 1 was listed on the Vadodara stock exchange. SEBI vide circular dated May 30, 2012 (CIR/MRD/DSA/14/2012) had issued guidelines facilitating the exit of Derecognized/Non-operational stock exchanges like Vadodara Stock Exchange and guidelines for exit to the shareholders of exclusively listed companies (ELCs) on such stock exchanges by allowing them to get listed on nationwide stock exchange after complying with the diluted listing norms of nationwide stock exchanges, failing which they would be moved to the

Dissemination Board. I also note that the mechanism of Dissemination Board was conceived as a transitory mechanism for those companies that were listed on the derecognised/ non-operational stock exchanges and failed to get listed on the stock exchanges having nationwide trading terminals, so that the interest of the investors in such companies is protected. In the instant case, Noticee no. 1 was moved to the Dissemination Board on November 13, 2015.

11. Some peculiar features of the Dissemination Board are:

a. Under this mechanism, a willing buyer and seller of shares will be given an opportunity to disseminate their offers using the services of brokers of stock exchanges hosting dissemination board. The stock brokers will only act as a 'point of contact' for the investors. The Stock exchange will function only as the disseminator of bid/offer price. The trades resulting out of bids/offers posted on Dissemination Board will be cleared and settled outside stock exchange/ clearing corporation and the stock exchange/clearing corporation will not guarantee the clearing and settlement of such trades. Thus, the trades done pursuant to bid/offer price discovery on Dissemination Board will be off-market transactions.

b. Derecognised/non-operational stock exchanges were required to enter into an agreement with at least one of the stock exchanges with nationwide trading terminals providing the Dissemination Board. Those ELC's that failed to obtain listing on stock exchange having nationwide trading terminals were moved to the Dissemination Board.

c. Exchanges having nationwide trading terminal may not have listing agreement with the ELC's. Hence, the ELC's may not be required to make disclosures in accordance with the Listing Agreement. Any disclosures made by such ELC's are voluntary and the stock exchange hosting the Dissemination Board is required to disseminate the same.

d. No contract note is required to be issued for transactions done through the bid/offer price discovery on the Dissemination Board. The resulting trades will not be

settled through the stock exchange/ Clearing Corporation mechanism and hence, there will be no recourse to the Settlement/ Trade Guarantee Fund and Investor Protection Fund of the Exchange for the trades on Dissemination Board.

12. I note that, in the instant case, the financial statements examined by the Forensic Auditors have not been disseminated by the company on the Dissemination Board. I also note that due to the peculiar nature of the companies placed on the Dissemination Board, the shares of PFL were not available on the stock exchange for trading by the general investors at large. In fact, shares of PFL were not available for trading on the stock exchange and share transfer, if any, was effected only through off-market transactions. I note that, from the forensic audit report, nothing has been demonstrated to show that there was any possible manipulation in the price of shares of PFL, or there was any significant impact on the price of shares of the company due to mis-statements in the Financial Statements of PFL, or that the investors were induced to invest in the shares of PFL due to incorrect accounting practices to attract the provisions of SEBI(PFUTP) Regulations, 2003.

13. I note that there are certain findings of the Forensic Audit such as non -disclosure of related parties as per provisions of Companies Act, 2013 or non-disclosure of transaction with related parties despite entries in books of accounts, discrepancy in respect of transactions reported in the financial statement and the actual amount reflected in bank statement, overvaluation of inventories (shares), wrong grouping and netting-off under the head sundry creditors, etc., may be looked into by the appropriate authorities. As noted in Para 9 the Forensic Audit Report do not bring out the violations of PFUTP Regulations, 2003 as alleged in SCN. I note that PFL has been placed on the Dissemination Board of BSE. Being on the Dissemination Board, there is minimal scope of public shareholders being misled, as shares of PFL were not publicly traded. Hence, considering the factual matrix of the case, the directions contained in the order dated October 26, 2017 and August 02, 2018 against Noticee nos. 1 to 4, are not required to be continued.

Directions:

14. In view of the above findings contained at para 9, 12 and 13, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and Section

11A and Section 11B of the SEBI Act, direct that the present proceedings against Noticee nos. 1 to 4 are disposed-off in terms of observations contained in para 13.

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

16. A copy of this Order shall be forwarded to all the Stock Exchanges, Depositories and Registrars of Mutual Funds for their information and necessary action.

Sd/-

Date: February 13, 2019 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**