BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER Ref No.: Order/SS/VS/2019-20/6979-6981]

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of:

1. **M/s Gitanjali Gems Limited (PAN No.: AAACG1642F)**
2. **Mr. Mehul Choksi (PAN No.: AABPC1451E)**
3. **Mr. Dhanesh Sheth (PAN No.: AAEPS3776M)**

In the matter of
Gitanjali Gems Limited

1. Gitanjali Gems Limited (hereinafter referred to as 'Gitanjali' or 'the Noticee No.1), a company listed on the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE') and National Stock Exchange Limited (hereinafter referred to as 'NSE'). M/s Gili India Limited (Gili) and M/s Nakshatra Brands Limited (Nakshatra) are the wholly owned subsidiaries of Gitanjali. M/s Asmi Jewellery India Ltd. (Asmi) was also a wholly owned subsidiary of Gitanjali which was later merged with Nakshatra. Gitanjali, Gili, Nakshatra and Asmi have been referred to as 'Gitanjali group' in this order.

2. Mr. Mehul Choksi (hereinafter referred to as 'the Noticee No. 2') who is also the maternal uncle of one Mr. Nirav Modi, is the Promoter & Managing Director of Gitanjali. Mr. Nirav Modi, his wife Ms. Ami and his brother Mr. Neeshal Modi along with Noticee 2 (hereinafter collectively referred to as 'Nirav Modi group'), are partners in three firms *viz*, Diamond R US, Solar Exports and Stellar Diamonds. Mr. Dhanesh Sheth (hereinafter referred to as 'the Noticee No. 3') is the Executive Director of Gitanjali.

3. Securities and Exchange Board of India ('SEBI') observed that there were various articles / news reports appearing in the media, about a fraud in issuance of Letters of Undertakings (LOUs) by Punjab National Bank (hereinafter referred to as 'PNB') to certain entities, including Noticee No. 1. SEBI undertook examination in the matter from the angle of possible violation of the relevant provisions of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations'), SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 and the provisions of erstwhile Equity Listing Agreement (ELA) by the

No. 1, 2 and 3 (hereinafter collectively referred to as 'the Noticees') and sought explanation and clarification regarding the articles / news reports from PNB.

4. PNB, had vide its email dated February 15, 2018 stated as under:
   a. On January 16, 2018, a firm from the Nirav Modi group approached PNB Brady House branch, Mumbai and presented a set of import documents with a request to allow buyers' credit for making payment to the overseas suppliers. Since there was no sanctioned limit in the name of the above firms, the branch officials requested the firms to furnish at least 100% cash margin for issuing Letters of Undertakings (LOUs) for raising buyer's credit. On denial, the firms contested that they have been availing such facility since past several years.
   b. On scrutiny by PNB, it was observed that the earlier issuance of LOUs had been made by certain officials of Brady House Branch of PNB through SWIFT (a network provided by The Society for Worldwide Interbank Financial Telecommunication that enables financial institutions worldwide to send and receive information about financial transactions in a secure environment) without obtaining necessary approvals of the competent authorities, necessary applications from importer, documents of import, legal documentation with bank and also without making entries in Bank's trade finance module of CBS (Core Banking System).
   c. Upon confirming the first maturity of LOUs liabilities on January 25, 2018 as fraudulent credit against the Bank, Reserve Bank of India (RBI) was informed about the said fraudulent credit through submission of an FMR-1 (fraud report format of RBI) on January 29, 2018 amounting to ₹280.70 crore (related to 3 group firms of Mr. Nirav Modi).
   d. On January 29, 2018, a criminal complaint for registration of FIR against accused persons including the maker & checker employees of the Bank for offence of cheating and fraud was filed with Joint Director (Policy), Central Bureau of Investigation (CBI). The said complaint was registered as an FIR by CBI on January 31, 2018.
   e. In addition to the firms of Nirav Modi group, upon confirming of maturity of liability arising out of LOUs on February 09, 2018 of Gitanjali group companies, a report informing about the fraud for the amount of ₹65.25 crores related to two companies of Gitanjali group was submitted to RBI on February 07, 2018.
   f. Simultaneously, a criminal complaint for registration of FIR against accused persons for offence of cheating and fraud was filed by PNB on February 07, 2018 with the CBI. During this period, further LOUs relating to the Nirav Modi group amounting to ₹379.28 crore also get matured.
   g. PNB also recalled the advances made to companies of Nirav Modi group at their Hong Kong and Dubai branches.

h. On January 29, 2018, PNB reported fraud that has taken place to RBI and also filed FIR with CBI at Delhi and Mumbai against the firms of Nirav Modi group for fraud amounting to ₹280.70 crore (as 26, 27, 28 January, 2018 were holidays.

i. On February 05, 2018, BSE and NSE were informed of the fraud of ₹280.70 crore by the Nirav Modi group.

j. On February 07, 2018, a fresh fraud report of ₹65.25 crore in Gitanjali group was reported to RBI by the PNB and FIR was also lodged.

k. On February 12, 2018, on the basis of investigation report, total fraud of ₹11,394.02 crore in case of unauthorized issuance of LOUs, Foreign Letters of Credit and Inland Letter of Guarantees in the group accounts of Nirav Modi Group & Gitanjali Group and in the account of M/s. Chandri Paper & Allied Products Pvt. Ltd. was reported to RBI.

l. On February 13, 2018, FIR was filed with CBI against above 2 groups and M/s Chandri Paper & Allied Products Pvt Ltd.

m. On February 13, 2018, the Bank also filed complaint with Enforcement Directorate (ED).

n. On February 14, 2018, BSE and NSE were informed by PNB about the above developments.

5. Simultaneously, SEBI sought certain clarifications from the Noticee No. 1. Ms. Pankhuri Warange, who had resigned as the Company Secretary and Compliance officer of Noticee No. 1 with effect from February 13, 2018, vide her email dated February 17, 2018 *inter-alia*, stated as follows:

   a. On February 8, 2018, the Chairman and Managing Director's office received letter from PNB calling off their limits in the Noticee No. 1 and its subsidiaries alleging some fraudulent activity. No details pertaining to alleged transactions were provided by PNB.

   b. It was not considered suitable to place the information in public domain as neither did PNB clarify the allegations nor the officials of Noticee No. 1 had any clue of allegations made by PNB.

   c. Since the officials of Noticee No. 1 had no guideline over this entire issue from senior management and they needed time to investigate the allegations, they took a conscious decision to postpone the meeting of the Audit Committee as well as the meeting of Board of Directors scheduled on February 14, 2018 to approve the unaudited results of the Noticee No. 1 for the quarter and nine months ended December 31, 2017.

   d. The decision to postpone the meeting and results was accordingly informed to stock exchanges quoting *'pressing contingencies'* as reason as till that time nothing substantial could be established by the Noticee No. 1 officials for informing to the stock exchanges.

e. The Company Secretary & Compliance Officer and the Chief Financial Officer of the Noticee No. 1 resigned with effect from February 13 and 15, 2018, respectively.

f. Upon receipt of the letter, the Audit Committee chairman found these allegations to be absolutely baseless as neither the management of Noticee No. 1 had come across any such fraudulent activity nor was anything found amiss or ever reported by the internal and the statutory auditors of the Noticee No. 1.

g. The Audit Committee Chairman immediately refuted the allegations of PNB vide his letter dated February 14, 2018 which was sent to PNB and requested them to provide the corroborative evidence, if any.

h. The Noticee No. 1's offices at Bandra Kurla Complex, Mumbai were visited by the officers of the ED on February 15, 2018 and the officials of the Noticee No. 1 were engaged throughout the day assisting the officers with their requirements.

i. The Noticee No. 1's offices at Bandra Kurla Complex, Mumbai were visited by the officers of the CBI on February 16, 2018 and officials of the Noticee No. 1 were engaged throughout the day assisting the officers with their requirements. Further, the Noticee No. 1 officials had no access to emails in view of the investigations by the CBI.

j. The postponement of the results and non-submission of disclosure was unintentional and solely on account of the aforesaid events and absence of any guidance from the senior management which events were beyond the control of the undersigned.

6. In view of PNB letter dated February 8, 2018, Ms. Pankhuri's email dated February 17, 2018 and fact and circumstances as available on the record following allegations are made:

A. Allegations regarding lack of adequate and timely disclosures pertaining to PNB letter stating withdrawal of credit limits due to alleged fraudulent activity by the Noticee No. 1 and its subsidiaries:

a. It is observed that PNB, in its letter dated February 08, 2018, had clearly stated the following:

i. In view of fraudulent activity by the Noticee No. 1 and its group companies i.e. Gili and Nakshatra, PNB decided to recall credit facilities enjoyed by the Company and its subsidiaries with PNB with immediate effect.

ii. The Gitanjali Group entities were advised to repay the entire outstanding dues plus interest thereon, within 10 days.

iii. The outstanding dues as required to be paid by Gitanjali group are mentioned in the following table:

Sr No	Company Name	Credit Limit withdrawn (in ₹Crores)	Outstanding Dues to be paid (in ₹Crores)
1	Gitanjali Gems Limited	587	645.12
2	Gili India Limited (wholly owned subsidiary	187.5	187.52
3	Nakshatra Brands Limited(wholly owned subsidiary)	110	110
4	*Asmi Jewellery India Ltd.*	100	103.24
Total		984.5	1045.88

iv. Therefore, it was observed that the amount of credit facilities withdrawn by PNB from Gitanjali Group amounted to ₹ 984.5 crore on a consolidated basis. Further, it was observed that Gitanjali Group was required to pay a total amount of ₹1,045.88 Crores to PNB within 10 days from February 08, 2018.

b. It was further observed that, as per Annual Report of the Noticee No. 1 for Financial Year 2016-17, Gitanjali Group had taken a total of ₹7,555 cores as working capital facilities from various banks (on consolidated basis) as on March 31, 2017. In view of the aforesaid PNB letter, Gitanjali Group was required to pay ₹1045.88 Crores (which is approximately 13.8% of its working capital facilities) within 10 days. Therefore, it has been alleged that a substantial portion of its working capital facilities would have been affected because of the said decision of PNB. Thus, it has been alleged that withdrawal of credit limits i.e. termination/revision of a loan agreement was a material event, which, the Noticee No. 1 was required to disclose to the stock exchanges within 24 hours of the event.

c. In addition to that, there was a sudden liability on the company to pay as much as ₹1045.88 crore within 10 days which, *prima facie*, might have had a significant impact on the cash position of the company. This was, *prima facie*, a significant burden on the financials of the company since not only the existing credit facilities was withdrawn, but there was a sudden requirement to repay a huge amount.

d. PNB's allegation of fraud by the Noticee No. 1 and its subsidiaries, *prima facie*, may have had an impact on the image / perception of the company and thereby impacted the share price of the Noticee No. 1. Further, it is observed that, as per clause (6) of Para A of Part A of Schedule III of LODR Regulations, a fraud by the listed entity is a deemed material event. Therefore, It is alleged that being a material event, the aforesaid letter of PNB dated February 08, 2018 required disclosure to be made by the Noticee No. 1 to the Stock exchanges as soon as reasonably possible and, in any case, not later than 24 hours of receipt

of the said letter. However, it is observed that no disclosure regarding the aforementioned letter of PNB has been made by the Noticee No. 1 till date.

e. It is also observed that the disclosure made on February 19, 2018 to the stock exchanges by Ms. Pankhuri Warange, the compliance officer of the Noticee No. 1 was pursuant to her resignation from the company on February 13, 2018. Therefore, it is alleged that the disclosure made on February 19, 2018 by Ms. Pankhuri Warange cannot be construed as the disclosures made by the Company, as the same was not made by an official of the Company on the date of disclosure.

f. It is further noted that there have been several developments on the alleged fraud by Gitanjali group subsequent to the PNB letter as evidenced through PNB disclosures as stated above and various media articles. Further, on March 14, 2018, CBI in their submission to Special Court stated that the fraud amount by Gitanjali group companies has increased by ₹942.18 Crores. However, no disclosures to stock exchanges were made by the Noticee No. 1 on this matter.

g. In view of the failure of the Noticee No. 1 to disclose the information regarding allegation of fraud committed on PNB by the Noticee No. 1/its promoter as well as the termination of credit limit extended to it by PNB, it is alleged that, being a listed company on NSE and BSE, the Noticee No. 1 has failed to comply with the provisions of Regulation 30(1) read with Regulations 30(2) and 30(6) read with Clause (6) of Para A of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015. It is further alleged that the Noticee No. 1 has also violated the provisions of Regulations 30(1), 30(3) and 30(6) read with Clause (5) of Para B of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015.

h. Further, in view of the failure of the Noticee No. 1 to make timely disclosure to stock exchanges regarding rise of sudden obligation to repay an amount of ₹ 1045.88 crores, which was approximately 13.8% of the total working capital facilities extended to it by various banks, it is alleged that the Noticee No.1 has violated Regulations 30(1) read with 30(12) of LODR Regulations.

i. In view of the further failure of the Company to make any disclosures to stock exchanges regarding various subsequent developments viz. CBI's submission to Special Court, filing of FIR against Gitanjali group companies and companies of Nirav Modi group before CBI, visit of officials of CBI and ED to its office etc., it is also alleged that the Company has violated Regulation 30(1) read with Regulation 30(7) of LODR Regulations.

B. Allegations regarding lack of adequate and timely disclosures pertaining to various litigations and actions by enforcement agencies against the Noticee No. 1, its Managing Director and other senior managerial personnel post detection of fraud

a. It was observed that there have been various litigations and actions by enforcement agencies against the Noticee No. 1, its Managing Director the Noticee No. 2 and other senior managerial personnel post detection of the abovementioned fraud, including the following:

Actions by ED:

i. FIR filed by PNB with ED on Feb 13, 2018 against the Noticee No. 1, its subsidiaries and the Noticee No. 2.

ii. Raid by ED on Feb 15, 2018 at the office of the Noticee No. 1.

iii. Summon issued by ED to the Noticee No. 2 on Feb 16, 2018

iv. Attachment of the assets of the Noticee No. 2 by ED on March 01, 2018

Order of NCLT:

v. Order of NCLT dated Feb 23, 2018 wherein it had directed Noticees No. 1, 2 and some of its subsidiaries from removal, transfer or disposal of their funds, assets and properties until further Orders.

Actions by CBI-

vi. FIR filed by PNB with CBI on Feb 13, 2018 against the Noticee No. 1, its subsidiaries and Noticee No. 2.

vii. Arrest of Vice President of the Noticee No. 1 by CBI on Mar 06, 2018

viii. Addition of Section 409 of Indian Penal Code, 1860 and criminal breach of trust in the abovementioned FIR on Mar 14, 2018

ix. Issuance of non-bailable warrant against the Noticee No. 2 by Special CBI court on April 11, 2018

b. In respect of the abovementioned material events, there were various news reports published in many newspapers/websites. In view of these, it was observed that several clarifications were sought by the stock exchanges from the Noticee No. 1 regarding above listed developments in respect of the Company and its officials. However, no disclosures in regard to above material events/ developments were made by the Noticee No. 1 to NSE and BSE.

c. Therefore, it has been alleged that the Noticee No. 1, by its failure to disclose to stock exchanges regarding various litigations as stated above has allegedly violated Regulations 30(1), 30(2) 30(4)(i), and 30(6) read with clause (8) of Para B of Part A of Schedule III of

LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015. Further, it is also alleged that the Noticee No. 1, by its failure to furnish adequate and timely response to the queries/clarifications sought by the stock exchanges, has violated the provisions of Regulation 30(10) of LODR Regulations.

C. Allegations regarding lack of adequate and timely disclosures pertaining to various litigations between the years 2012- 2017

a. It was observed that Nakshatra World Limited, a wholly owned subsidiary of the Noticee No. 1, had filed a Draft Red Herring Prospectus (DRHP) to SEBI in March 2017, wherein various disclosures were made with respect to litigations related to the Noticee No. 1 and other related persons/entities.

b. It was observed from the disclosures made by Nakshatra World Limited in the DRHP that the following litigations have been initiated/going on by/against the Noticee No. 1 and/or its related persons/entities at various forums:

i. Show Cause Notice (SCN) dated August 10, 2014 received by the Noticees No. 1 and 2 from the Development Commissioner, Manikantha SEZ, Kolkata for failure to file the annual performance report for its unit in the Manikanchan SEZ, Kolkata.

ii. Notice dated July 15, 2016 received by the Noticee No. 1 from the Legal Metrology Department, Uttar Pradesh stating that the Noticee No. 1 had published a wrong advertisement in the daily newspaper 'Hindustan" dated February 11, 2016.

iii. SCN dated October 24, 2014 from the Board of Apprenticeship Training, Mumbai to the Noticees No. 1 and 2 to submit the information required under the provisions of the Apprentices Act, 1961.

iv. A civil suit (No. 418 of 2013) filed by the Noticee No. 1 before the High Court of Bombay against Mr. Nitin Lunkad, a local property dealer, for recovery of dues amounting to ₹136.82 million along with interest.

v. A writ petition (No. 6725 of 2009) filed before the High Court of Andhra Pradesh by Forum For A Better Hyderabad against the Noticee No. 1 and others challenging the allotment of forest land to different private sector organizations and alleging that the allotment of forest land is contrary to the provisions of Forest (Conservation) Act 1980 in respect of alleged unauthorised use of land, which was designated as being forest land.

vi. A notice to the Noticee No. 1 from LIC dated November 15, 2016 pertaining to recovery of dues amounting to ₹422.78 million.

vii. A winding up petition (No. 935 of 2015) filed by Mr. Anand Kapadia under the provisions of the Companies Act, 1956 before the High Court of Bombay against the Noticee No. 1 for recovery of dues amounting to ₹6.67 million along with interest.

viii. A winding up petition (No. 713 of 2015) filed by Royal Enterprises under the provisions of the Companies Act, 1956 before the High Court of Bombay against Gitanjali Exports Corporation Limited (now merged with the Noticee No. 1) for recovery of dues amounting to ₹1.36 million.

ix. SCN dated October 26, 2012 issued by SEBI against the Noticee No. 2 and others including the promoters of the Noticee No. 1, alleging violations under the SEBI Act, SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

x. FIR dated February 4, 2015 filed by Mr. Babu Bhimrav Kamble, CEO of United Protection Services, on behalf of Jewelcad Pro Limited and Gemvision Corporation US/UK against the Noticee No. 1's subsidiary, Nakshatra, the Noticee No. 2 and others with the M.I.D.C. police station, Mumbai for unauthorized and illegal use of jewellery design software under the Copyright Act, 1957.

xi. A criminal complaint filed by Mr. Amit Bohra against the Noticee No. 2, Nakshatra World Limited and others before the Metropolitan Magistrate, Jaipur alleging that Nakshatra World Limited had cheated, done criminal conspiracy and caused criminal breach of trust and wrongful loss to him.

xii. Two SCNs dated January 13, 2017 and January 18, 2017 from the Employees State Insurance Corporation, SRO-Marol, Mumbai against Nakshatra World Limited, the Noticee No. 2 and others.

xiii. Certain instances of non-compliance of provisions of the Companies Act, 2013 in the past by Nakshatra World Limited and the Noticee No. 1's step down subsidiaries- Gili, Bezel Jewellery and Nakshatra wherein the Regional Director, Western Region, Mumbai, by an order dated February 10, 2017 had condoned the delay and levied a penalty of ₹50,000 on Nakshatra World Limited.

c. Based on the above, it has been alleged that the aforesaid litigations, which were material in nature were not disclosed to the stock exchanges by the Noticee No. 1. In this regard, SEBI had sought comments of the Noticee No. 1 as to why the aforesaid events were not

disclosed to the stock exchanges as per regulation 30 of LODR Regulations. However, Noticee No. 1 has failed to respond to SEBI on the same till date.

d. Therefore, it has been alleged that the Noticee No. 1 by its failure to disclose the material events regarding various litigations as stated above to the stock exchanges, has allegedly violated Regulations 30(1), 30(2), and 30(6) read with clause (8) of Para B of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015 as well as clause 36 of the erstwhile Equity Listing Agreement.

D. Allegations regarding non-disclosure of resignation of Key Managerial Persons (KMPs) and Director of the Noticee No. 1 to stock exchanges:

a. It was observed that, on February 19, 2018, BSE and NSE had received an email dated February 17, 2018 from Ms. Pankhuri Warange, the then Company Secretary and Vice President-Compliance of the Noticee No. 1, addressed to the Company with regard to her resignation as Vice President-Compliance and Company Secretary w.e.f. from February 13, 2018. In the said Email, Ms. Pankhuri Warange also informed about resignation of Mr. Chandrakant Karkare from the post of Chief Financial Officer w.e.f. February 15, 2018. Thereafter, the Stock Exchanges received another email dated February 19, 2018 from Mr. Krishnan Sangameswaran, Chairman, Audit Committee of the Noticee No. 1, with regard to his resignation from the Board of Directors of the Company.

b. The above persons belong to the list of Key Managerial Persons (KMP) of the Noticee No. 1. However, the Company failed to make disclosures to the stock exchanges in respect to the resignation of all the three KMPs viz. Company Secretary, CFO and Director.

c. Since no disclosures have been made by the Noticee No. 1 regarding the resignation of KMPs to the stock exchanges till date, it is alleged that the Noticee No. 1 has violated the provisions of Regulations 30(1), 30(2) and 30(6) read with clause (7) of Para A of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015.

E. Allegation regarding lack of adequate and timely disclosures pertaining to default/delay in repayment of principal and interest due to LIC and others by the Noticee No. 1

a. It was observed that Life Insurance Corporation of India (LIC), vide letter dated January 31, 2018 to SEBI, had, *inter alia*, stated the following:

i. LIC has exposure in the Noticee No. 1 under Secured Non-Convertible Debentures (NCDs) for ₹125 Crores.

ii. The Noticee No. 1 had issued post-dated cheques which were payable upto July 2019. However, the company stopped making repayments from October 2017 as the post-dated cheques issued by the company towards repayment of principal started getting dishonored every month since October 2017.

iii. Therefore, the Noticee No. 1 has *prima facie* defaulted on debt obligations to LIC since October 2017.

b. In view of the above said letter of LIC, SEBI, vide email dated February 20, 2018, advised the Company to provide comments w.r.t. allegations of LIC. SEBI also issued reminders to the Company by way of letter dated February 22 and 26, 2018. However, the Noticee No. 1 has failed to submit any response in respect of allegations levelled against it by LIC.

c. From the examination of the submissions made by the Noticee No. 1 to NSE and BSE at various stages, it is alleged that the Noticee No. 1 has failed to make any disclosure to the stock exchanges pertaining to the default by it w.r.t the payment of its dues to LIC, as mentioned above.

d. Therefore, it is alleged that the Noticee No. 1, by its failure to make disclosures with respect to delay in payment of interest and principal amount to LIC on NCDs for a period of more than three months from the due date and default in the payment of interest and principal to LIC on NCDs, has violated the provisions of Regulations 30(1), 30(2) and 30(6) read with clause (2) of Para A of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015.

F. Allegation regarding lack of due diligence and care by Board of Directors of the Noticee No. 1.

a. It is further noted that, as per Regulation 4(2)(f) of the LODR Regulations, the Board of Directors of the listed entity are required to carry out the following functions:-

i. As per Regulation 4(2)(f)(i)(2), the Board of Directors and Senior Management are required to conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

ii. As per Regulation 4(2)(f)(ii)(8) of LODR Regulations, one of the key functions of the Board of Directors is to oversee the process of disclosure and communications

iii. As per Regulation 4(2)(f)(iii)(3), members of the Board of Directors are required to act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders

iv. As per Regulation 4(2)(f)(iii)(6), the Board of Directors are required to maintain high ethical standards and take into account the interests of stakeholders

b. As alleged mentioned hereinabove, the Noticee No. 1 has failed to make appropriate disclosures regarding various instances of material events/developments on a regular interval. In this regard, it is alleged that Noticee 2 and Noticee 3, being the Directors of the Noticee No. 1, were primarily responsible to exercise due diligence and care regarding proper and timely disclosures of material events to the stock exchanges. However, it is alleged that Noticee 2, instead of fulfilling his responsibilities as Managing Director of the Noticee No. 1 abdicated the same by leaving the country in the first week of January 2018 i.e. days before the alleged fraud came to light. Further, there is no information available with respect to Noticee 3.

c. It is also understood from media reports that CBI had issued three summons to the Noticee No. 2 on his email id, however, he has neither responded to them nor appeared before CBI. Further, emails and letter by SEBI to the Noticee No. 1 have also been returned/ went unanswered.

d. Further, the allegation of lack of diligence and seriousness of the executive directors and the senior management of the company in dealing with the matter, *prima facie*, is strengthened from the following observations/ instances:

i. The letter of PNB dated February 08, 2018 was forwarded by the Chief Financial Officer to the Compliance Officer only on February 10, 2018 i.e. two days after the same was received by the Chairman and Managing Director's office. As mentioned by the Company Secretary of the Company, the officials of the Noticee No. 1 were apparently clueless w.r.t the said letter as no details of the alleged transactions were available with them (as none of the Executive Directors were reachable).

ii. The officials of the Company tried to gain some insight on this from senior management but due to their non-availability and in absence of any guideline on how to deal with these issues, the officials of the Company decided to verify the facts internally.

iii. The senior officials informed the allegations made by PNB to the Audit Committee Chairman and had a meeting with the Audit Committee Chairman only on 13th February, 2018, five days after receipt of the letter from PNB.

7. In view of the above, it is alleged that the Executive Directors viz. Noticee 2 and Noticee 3 of the Company completely failed to fulfil their responsibilities towards the Company and its stakeholders, especially minority shareholders. It is further alleged that they failed to act in good faith/ with due

diligence and care and did not fulfil their responsibility of maintaining ethical standards in the company. In view of this, it is alleged that the Noticee 2 and Noticee 3 have violated Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(8), 4(2)(f)(iii)(3) and 4(2)(f)(iii)(6) of LODR Regulations.

8. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of LODR Regulations, Equity Listing Agreements and SEBI Circular CIR/CFD/CMD/4/2015 dated September 09, 2015 by the Noticees and appointed Shri Suresh B. Menon, Chief General Manager as Adjudicating Officer (erstwhile AO) vide order dated July 05, 2018 to inquire and adjudge under rule 5 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing) Rules, 2005 (hereinafter referred to as 'Adjudication Rules') and under section 23E and 23H of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'the SCRA'), for the aforesaid alleged violations by the Noticees.

9. The erstwhile AO issued the notice to show cause No. SEBI/HO/EAD-1/31779/2018 dated November 16, 2018 ('the SCN') in terms of rule 4(1) of the Adjudication Rules read with section 23I of the SCRA to the Noticees calling upon them to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under sections 23E and 23H of the SCRA for the aforesaid alleged violations by respective Noticees.

10. Subsequently, pursuant to transfer of the erstwhile AO to another department, this case has been transferred to undersigned by a common *communication-order* dated March 25, 2019. After receipt of record of these proceedings, it was noted that the SCN issued by the erstwhile AO was duly served upon the Noticees by way of affixture of copy of SCN at last known place where the Noticees carried on business as provided on record on February 23, 2019. However, there was no reply of the Noticees received on record. Therefore, in the interest of principles of natural justice and in terms of rule 4 (3) of the Adjudication Rules the Noticees were provided another opportunity to submit their defense and avail the opportunity of personal hearing and the same was communicated vide notice dated May 22, 2019. Vide the said notice, it was clearly indicated that in case of failure to avail the opportunity, the case would be proceeded with *ex-parte* on the basis of the material available on record.

11. The notice dated May 22, 2019 was duly served upon the Noticees on May 25, 2019 in terms of rule 7(c) of the Adjudication Rules by affixing the notice at the address of last known place where the Noticees carried on business as provided on record. However, no reply / communication was

received from them despite such service of notices upon them. It is noted that the Noticees have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them. It was gathered as per SEBI's records that the Noticee No. 1 being a Company which is represented by other two Noticees could also not reply to the notices. Considering the facts of the case, especially that the Noticees are not available at the address provided on record and that the address of the individual Noticees were same as that of the Company and in view of principle held by Hon'ble SAT in its order dated July 15, 2019 in the matter of *Praveen Poddar Vs. SEBI* for making efforts for effective service, another opportunity of personal hearing was provided to all the Noticees on October 14, 2019, which was duly served upon them vide newspaper publication dated September 30, 2019.

12. On schedule date of hearing Mr. Rahul Agarwal appeared on behalf of Noticee No. 2 by submitting Memorandum of Appearance. He submitted that the Noticee No. 2 has not received the SCN dated November 16, 2018 and requested to provide the copy of same. A copy of SCN alongwith its annexures was provided to him and time was granted for filing of reply to SCN. Another opportunity of hearing was granted to Noticee No.2 on November 05, 2019. On November 05, 2019 Ms. Mayuri Sachin Kale and Mr. Nawaz Ayub Sheikh appeared on behalf of Noticee No. 2 and requested further time of 15 days' as Mr. Rahul Agarwal was not keeping well. They also submitted that Hon'ble National Company Law Tribunal (hereinafter Hon'ble NCLT) by its order dated October 08, 2018 had appointed Mr. Vijay Garg as Resolution Professional (RP) under Insolvency and Bankruptcy Code, 2016 (IBC) in the matter of Noticee No. 1.

13. Subsequently, vide notice dated November 07, 2019, alongwith copy of SCN, RP was intimated about the opportunity of personal hearing in the instant matter on November 20, 2019. On November 20, 2019, Ms. Amruta Modak on behalf of the RP appeared and submitted that RP has filed for Liquidation application before Hon'ble NCLT. Mr. Rahul Agarwal on November 20, 2019 tendered reply dated November 20, 2019 of Noticee No. 2 wherein it is *inter alia* submitted as follows:
    a. Hon'ble Bombay High Court vide order dated September 10, 2018 admitted the winding up of Gili India Limited, a 100% subsidiary of Noticee No.1. That section 279(1) of the Companies Act 2013, defines the stay of suit and other legal proceedings when a winding up order has been made or the official liquidator has been appointed as provisional liquidator hence, the present proceedings cannot continue.

b. The allegation are wrong, baseless and vehemently denied by the Noticee No. 2 without any substantial proof.

c. Due to raid/investigation by various Investigating Authorities, plethora of documents, all servers, appliances, hard disk, data etc. were seized and hence Noticee was unable to respond to exchanges in timely manner.

14. In absence of any response from the Noticee No. 3 despite service of notices as aforesaid, it is presumed that he has admitted the charge as alleged in the SCN. In this regard, the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon wherein it has that- *"… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*. Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has, *inter alia*, observed that: *"… 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..."*

15. While deciding the case, I cannot lose sight of settled position of law that the charge should be established with valid reasons and proceedings should conclude in accordance with law. I, therefore, deem it necessary to examine the charge and the supporting material. It is noted that the allegations are leveled based upon observations of examination by SEBI and relevant material such as emails dated February 15 and 17, 2018 of PNB and Ms. Pankhuri Warange, respectively, letters dated February 8, 2018 of PNB to Gitanjali group companies, list of litigations against Gitanjali group and Examination Report. After careful consideration of the allegations and charges levelled against the Noticees and relevant material relied upon in this case, I note that it is neither a case where the allegations are not based upon any material nor a case where the charge is levelled merely based upon probabilities or possibilities.

16. The Noticees have not made any submissions with regard to merits of the allegations so as to show their compliance of provisions charged upon them in this case. Noticee No. 2 has contended that winding up order has been passed against Gili which is a 100% subsidiary of Noticee No. 1, and when there winding up order has been made or official liquidator has been appointed as provisional liquidator, there is stay of suit and other legal proceedings, hence, proceeding cannot be initiated or commenced against the Noticee No. 1. In this case, admittedly, Noticee No. 1 is the parent company of Gili which is claimed to be under winding up. Thus, the benefit and procedure under section 279

of the Companies Act, 2013 is not available in this case where the winding up order has not been passed against the Noticee No.1. I, therefore, reject this contention of the Noticee No. 2.

17. It is further noted that as per the corporate announcement dated April 15, 2019 disseminated on the BSE website that the Noticee No. 1 went through the Corporate Insolvency Resolution Process (CIRP) and the moratorium period of 180 days under section 14 of the IBC ended on the April 06, 2019. Since the CIRP is rejected the logical step in CIRP would be to go for Liquidation of the Company. It is noted that the law as it is legislated under section 33(5) IBC does not require permission or leave of NCLT for continuing the adjudication proceedings under the SEBI Act and there is no such bar, under said section 33(5), on continuance of the instant proceedings. Further, there is no inconsistency with section 33(5) of IBC and the provisions of the SCRA invoked in this case. Thus, there is no bar on continuance of adjudication proceedings for the violations under the securities law, even though liquidation proceedings under section 33(5) IBC are pending. Moreover, there is no communication from the RP of the Noticee No. 1 regarding the liquidation of the Noticee No. 1.

18. Having dealt with objections raised as above, I proceed to deal with allegations and charged against the Noticees. The allegations and charges in this cases are briefly as under :

Sr. No.	**Particulars/Incidents**	**Violation of Regulations by Noticee No.1**	**Violation of Regulations by Noticees No. 2 and 3**
1	The Noticee No. 1 has not made disclosures within 24 hours of occurrence of the following events: 1. Withdrawal of credit limits by PNB in view of the alleged fraud by the Noticee No. 1 and its subsidiaries 2. Sudden obligation to repay an significant amount of ₹1045.88 Crores within 10 days	• Regulation 30(1) read with Regulations 30(2) and 30(6) read with Clause (6) of Para A of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015. • Regulations 30(1), 30(3) and 30(6) read with Clause (5) of Para B of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 –Regulations 30(1) read with 30(12) of LODR Regulations –Regulation 30(1) read with Regulation 30(7) of LODR Regulations.	• Regulation 4(2)(f)(i)(2) of LODR Regulations • Regulation 4(2)(f)(ii)(8) of LODR Regulations • Regulation 4(2)(f)(iii)(3) of LODR Regulations • Regulation 4(2)(f)(iii)(6) of LODR Regulations

	3. Subsequent development in the matter		
2	The Noticee No. 1 has not made disclosures on various litigations and actions by enforcement agencies against Noticee No. 1, its Managing Director and other senior managerial personnel to the stock exchanges as well as not replied on various clarification sought by the stock exchanges till date	• Regulations 30(1), 30(2) 30(4)(i), and 30(6) read with clause (8) of Para B of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015. • Regulation 30(10) of LODR Regulations	
3	No disclosures has been made by the Noticee No. 1 on various litigations to stock exchanges during the years 2012- 2017	Regulations 30(1), 30(2), and 30(6) read with clause (8) of Para B of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015 and clause 36 of the erstwhile Equity Listing Agreement.	
4	No disclosure has been made by the Noticee No. 1 on resignation of Key Managerial Persons (Company Secretary and Chief Finance Officer) and Director to the stock exchanges	Regulations 30(1), 30(2) and 30(6) read with clause (7) of Para A of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015	
5	The Noticee No. 1 has not made disclosures with respect to delay in payment of interest and principal amount for a period of more than three months from the due date and default in payment of interest and principal to LIC on NCDs	Regulations 30(1), 30(2) and 30(6) read with clause (2) of Para A of Part A of Schedule III of LODR Regulations read with corresponding provisions of SEBI circular CIR/CFD/CMD/4/2015 dated September 09, 2015	

19. The above mentioned provisions of law alleged to have been be violated by the Noticees are reproduced below:

LODR Regulations

Principles governing disclosures and obligations.
Regulation 4

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

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

(i) Disclosure of information:

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) Key functions of the board of directors-

(8) Overseeing the process of disclosure and communications.

(iii)Other responsibilities:

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

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

Disclosure of events or information.

30. (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

(4)(i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

(b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

(c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:

Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within thirty minutes of the conclusion of the board meeting.

(7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

(10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information:

Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.

(12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.

SCHEDULE III.

PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s):

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

2. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.

6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.

7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer.

B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):

5. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.

8. Litigation(s) / dispute(s) / regulatory action(s) with impact.

Equity Listing Agreement

36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

(5) Litigation/dispute with a material impact

The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

Part B of Annexure 1 to CIR/CFD/CMD/4/2015 dated September 09, 2015

Litigation(s) / dispute(s) / regulatory action(s) with impact-

"**8.** *The listed entity shall notify the stock exchange(s) upon it or its key management personnel or its promoter or ultimate person in control becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact."*

8.1. ***At the time of becoming the party:***

a) brief details of litigation viz. name(s) of the opposing party, court/ tribunal/agency where litigation is filed, brief details of dispute/litigation;

b) expected financial implications, if any, due to compensation, penalty etc;

c) quantum of claims, if any;

8.2. ***Regularly till the litigation is concluded or dispute is resolved:***

a) the details of any change in the status and / or any development in relation to such proceedings;

b) in the case of litigation against key management personnel or its promoter or ultimate person in control, regularly provide details of any change in the status and / or any development in relation to such proceedings;

c) in the event of settlement of the proceedings, details of such settlement including - terms of the settlement, compensation/penalty paid (if any) and impact of such settlement on the financial position of the listed entity."

20. It is noted that for alleged violation of provision of LODR, the penalty provision of sections 23E of SCRA have been invoked against the Noticee No. 1 for alleged violations of above referred sub-regulations of regulation 30 of the LODR Regulations and clause 36 of the ELA that specify listing conditions to be complied with by a listed company on a continuous basis. However, for the charges based upon same set of facts and circumstances the Noticee 2 and Noticee 3 have been charged to have violated the provisions of Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(8), 4(2)(f)(iii)(3) and 4(2)(f)(iii)(6) of LODR Regulations and penalty provision of section 23H of the SCRA has been invoked against them. In this regard, it is clear from the bare perusal of section 23H that the same contains a residuary penal provision when a specific penal provision is not available. Further, from the plain reading of section 23H of the SCRA, it is noted that the residuary provision therein applies in case of failures in compliance of provisions of: -

a. SCRA,
b. the rules or articles or byelaws or the regulations of the recognised stock exchange or
c. directions issued by SEBI .

21. The non-compliance of LODR Regulations is not covered in this section 23H. It is, however, relevant to mention that a company being a legal person having separate and independent existence than its shareholders acts through its board of directors who individually and collectively hold the position of trust and have fiduciary duties towards the company, the shareholders and other stakeholders. It is settled position that while alleging vicarious liabilities on the directors, the company should also be proceeded with for its defaults (U.*P. Pollution Control Board vs. Modi Distillary AIR 1998 SC 1128).* Thus, the Noticee No. 1 cannot escape liability of its acts and omissions as alleged in the SCN. It is noteworthy that though Noticee No.1 is under process of liquidation under IBC, Noticees No. 2 and 3 who were Managing Director and Whole time Director, respectively of

the Noticee No.1 and were in-charge of the day-to-day affairs of the business activities/ decisions of the Noticee No. 1 during the relevant period cannot escape their vicarious liability for the acts and omissions of the Noticee No. 1 in the peculiar facts and circumstances of this case.

22. In case of Managing Director/ Whole time Directors , courts have held that they are, *prima facie*, deemed to be in charge and responsible for the conduct of business and management of the company and, therefore, liable for its defaults.{*Garda Chemical Pvt LTD V. R Parthasarthy, Asst. Collector Central Excise [1984] 2 ECC 384 [Bom]*}. With regard to scope of liability of such directors for default of the company as in this particular case, I also deem it appropriate to refer to the observations of Hon'ble Supreme Court of India in the matter *of Shri N. Narayanan vs. SEBI* decided on April 26, 2013 wherein it was observed as follows *"... 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."*

23. Regulations 4(2) (f) of the LODR Regulations reinforces the above legal principles and mandates the said fiduciary obligations of the Board of Directors of the listed Company. As per Regulation 4(2) (f)(i)(2), the Board of Directors and Senior Management of the listed company are required to conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making. Regulation 4(2) (f) (ii) (8) of LODR Regulations commands the Board of Directors to oversee the process of disclosure and communications. Regulation 4(2)(f)(iii)(3) requires the members of the Board of Directors to act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders and Regulation 4(2)(f)(iii)(6) requires them to maintain high ethical standards and take into account the interests of stakeholders. These provisions are also as corollary to principles laid down for corporate governance as enshrined under the Companies Act, 2013, LODR Regulations and ELA and are thus meant for ensuring corporate governance in a listed company. Thus, Noticee 2 and Noticee 3, being the executive directors of Noticee No.1, were primarily responsible to exercise due diligence and care regarding proper and timely disclosures of material events as observed in this case to the stock exchanges. However, they have failed to comply with these statutory requirements under Regulation 4(2)(f)(i)(2), 4(2)(f)(iii)(3), 4(2)(f)(iii)(6) and 4(2)(f)(ii)(8) of the LODR Regulations.

24. I also note that it is settled position of law that mentioning of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate the order if the source of such power can be traced to a different provision. In this regard, it is relevant to mention the

judgement of Hon'ble Supreme Court in the matter of *Collector of Central Excise Calcutta Vs. Pradyumna Steel Ltd. 1996982) E.L.T. 441 (S.C.),* wherein it held that '*mere mention of a wrong provision of law when the power exercised is available even though under a different provision is by itself not sufficient to invalidate the exercise of that power.'* In this connection, it is also relevant to mention the judgement of Hon'ble Supreme Court in the matter of *Union of India Vs. Tulsiram Patel (1985) SUPP. 2 SCR, 266* wherein it was held that the exercise of the power is always referable to the source of such power and must be considered in conjunction with it. I, therefore, am of the view that though the SCN invokes section 23 H of SCRA against Noticees No.2 and 3, the order would not be vitiated if the charge on these Noticees is considered and decided by passing an order under section 23E of the SCRA. Be that as it may, the SCN in this case is obviously with regard to an obligation/ liability alleged to have been incurred for non –compliance of listing conditions under the LODR Regulations and clause 36 of the ELA. Thereafter, I am of the view that the alleged violations in this case, are squarely covered within the scope of liability under section 23 E of the SCRA which provides as under:-

"Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

25. In view of the aforesaid principles as laid down by Hon'ble Supreme Court and also envisaged under regulation 4 of the LODR Regulations, in peculiar facts and circumstances of this case Noticees No. 2 and 3 are presumed to be liable for the default of Noticee No.1, Noticee 2 and 3 have failed to submit any evidence regarding any public announcement made to the exchanges disclosing the material information or to show their *bona fide* in the instant matter. It is pertinent to mention that the LODR Regulations were made *inter-alia* to consolidate and streamline the provisions of erstwhile ELA. The requirements under regulation 30 of the LODR Regulations have their genesis in clause 36 of the erstwhile ELA and they apply with regard to any event that had occurred at the time of applicability of said clause 36. In terms of regulation 30 of the LODR Regulations, the listed companies are mandated to disclose the material events as specified in Para A of Part A of Schedule III within 24 hours from the occurrence of the event by informing the concerned stock exchange and uploading on the corporate website of the Company. Further, it is noted that the SEBI Circular dated September 09, 2015, issued under regulation 30 read with regulation 101(2) of the LODR Regulations, lays down comprehensive requirements relating to continuous disclosure requirements

for listed entities. As per Clause 8.1 of the said circular, at the time of becoming the party to the dispute / litigation, the listed entities are obligated to disclose brief details of litigation *viz.* name(s) of the opposing party, court/ tribunal where litigation is filed and quantum of claims, if any. Further, clause 8.2 of the circular prescribes continuous obligations to regularly update and disclose the details prescribed therein till the litigation is concluded or the dispute is resolved.

26. The provisions of clause 36 of the erstwhile Equity Listing Agreement, regulation 30(1), 30(2), 30(3), 30(4)(i), 30(6), 30(7), 30(10) and 30(12) and regulation 4 of the LODR Regulations and SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 are meant to ensure timely dissemination of material and price sensitive information to enable investors to make well-informed investment decisions and , timely, adequate and accurate disclosure of information on an ongoing basis and need of uniformity in disclosures made by listed entities to ensure compliance in letter and spirit. I further note that true, fair, adequate and timely disclosures by the company form one of the basic tenets of governance in the listed companies and are essential for maintaining the integrity of the securities market. Timely disclosures of the details of the abovementioned material events is of significant importance as such disclosures also enable the regulators to monitor such a material events. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014),* has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of *Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI*–the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

27. In this case, the events as described in the SCN i.e., withdrawal of credits limits by PNB in view of the alleged fraud by Noticee No. 1 and its subsidiaries, sudden obligation to repay a significant amount of ₹1045.88 cr. within 10 days, disclosures on various litigations by various enforcement agencies and stock exchanges, disclosures on resignation of KMPs and default in payment of interest and principal to LIC on NCDs etc. are material and price sensitive. I am of the view that with the change in management, the working of the company is expected to change. The market, at large has the right to know about the change in management of a particular company. It is for this reason,

there is a requirement of making corporate announcement by the company to the stock exchanges. Change in management definitely has a bearing on the performance of the company. All these material events which are price sensitive and have a bearing on the performance of the Company were crucial and were never disclosed to the stock exchanges. Further, no disclosures are available on exchanges website or in public domain with regard to any of the aforesaid material events. I note that on occurrence of almost every material event, the exchanges had sought queries/clarifications from Noticee No. 1 but it did not furnish adequate and timely response to the exchanges. Neither of the Noticees have provided any details nor did they cooperate during inquiry/ examination by SEBI as they have not responded to SEBI's information requisition by way of several letters and reminders as mentioned in the SCN. In these facts and circumstances of this case, I am of the view that the Noticees actively and deliberately concealed the important information and did not disclose at all by the Noticees, to the stock exchanges.

28. The information provided on February 19, 2018 to the stock exchanges by an ex -employee of the Noticee No.1 Ms. Pankhuri Warange, was pursuant to her resignation from the employment on February 13, 2018. Such disclosure made on February 19, 2018 by Ms. Pankhuri Warange cannot be construed as the disclosures made by the Company, as the same was not made by a competent official of the Company on the date of disclosure. It is relevant to mention that in the matter of *Premchand Shah and Others V. SEBI* Hon'ble SAT vide its order dated February 21, 2011, held that - "*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner...Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments*." The communication dated February 19, 2018 by such ex- employee does not satisfy the requirements under the LODR Regulations.

29. Since regular disclosures to stock exchanges is essentially an executive function, the Noticees No. 2 and 3 being executive directors (Managing Director and Whole Time Director, respectively) of the Noticee No. 1, ought to have, in the interest of all stakeholders, especially minority shareholders, ensured regular disclosures to the stock exchanges of all the material and price sensitive events as mentioned hereinabove. Instead of fulfilling their responsibilities, based on various media reports, it has been noted that the Noticee No. 2 abdicated his responsibilities by leaving the country in the first week of January 2018, days before the alleged fraud came to light. Further, there is no information available with respect to the Noticee No. 3. Thus, adverse inference is drawn as against Noticee No.3.

30. Noticees No. 2 and 3 holding key positions as Managing Director and Whole Time Director, respectively of the Noticee No. 1, had to perform their duties under obligations of trust and confidence to the Noticee No. 1 and all stakeholders such as the shareholders of the company , the financial markets and regulators . However, they have failed to act in good faith/ with due diligence and care and did not fulfil their responsibility of maintaining ethical standards in the Company. Their acts and omissions, in this case, clearly show lack of due diligence and care on their part. In my view, in the facts and circumstances of this case, the contraventions in this case must attract monetary penalty under section 23E of the SCRA upon the Noticees.

31. For the purpose of adjudication of penalty it is relevant to mention that under section 23I of the SCRA imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 23J of the SEBI Act. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 23J. The factors stipulated in section 23J, which reads as follows:-

23J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 23-I, 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 of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.*

32. Having regard to the factors listed in section 23J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. It is also a settled position that the factors under section 23J are not exhaustive but are inclusive. Further, in these peculiar facts and circumstances of this case, the quantum of penalty has to be adjudged also taking into account the

conduct of the Noticees, the repetitive defaults as found in this case and the principle of proportionality.

33. In this case, the Noticees have committed repeated and serious defaults by not disclosing subsequent material events / information with regard to material events as found hereinabove. The defaults by the Noticees are blameworthy and serious considering the degree of responsibility bestowed upon them by the statute. In this case, Noticee No. 2 and 3 have not only actively concealed the actual fact but have also not cared about regulatory demands and have evaded the information requisitions. The conduct of these directors is apparently *mala fide*. They have breached their fiduciary duties by not only failing to disclose but also deliberately hiding the material events from public, stock exchanges and regulator. They have no immunity from the disclosure of such price sensitive information to the stock exchanges from such obligations under the SCRA, LODR Regulations and ELA. Considering the magnitude of the information involved in the material events as found in this case, the default of the Noticees certainly have a deleterious impact on the market integrity. In this regard, the observations of the Hon'ble Supreme Court, as a word of caution, in the matter of *N. Narayanan vs. Adjudicating Officer, SEBI, in Civil Appeal Nos. 4112-4113 of 2013, (order dated April 26, 2013)* is worth mentioning:

"A word of caution:

43. …. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". …….. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity."

34. This is a case where acts, omissions and conduct of the Noticees attracts above concern as observed by Hon'ble Supreme Court, wherein the Noticees who commanded more respect in society than the stakeholders in Noticee No.1 but defeated the principles of corporate governance as enshrined under LODR Regulations and ELA, should be dealt differently than any normal case. Further, in the peculiar facts and circumstances of this case the default has occurred due to lethargic indifference, needless procrastination, laxity and wilful obstinacy of the Noticees. The law does not permit any allowance to be made for such defaults as found in this case. The brazen failure with

regard to mandatory disclosures of material information and cardinal principles of corporate governance as found in this case, had clearly defeated the purposes of the Regulations i.e. investor protection and protection of integrity of the securities markets. This is not a case where the information with regard to the material events had to come from any third party to the Noticees. In fact, the Noticees were in possession of and were privy to all the material events. Therefore, no lenient view should be taken in this matter and the case deserves imposition of monetary penalty proportionate to the default as found in this case. Such repeated defaults with regard to non-adherence to the laid down obligations as observed in this case would compromise the regulatory framework and should be dealt with sternly by imposing monetary penalty as effective deterrence. Considering the peculiar facts and circumstances of this case, in my view, the default is grave and the gravity of this matter cannot be ignored. I am of the considered opinion that the deliberate defiance of the mandatory obligations and hiding the crucial and material information from investors, regulators and Stock Exchange, as found in this case should be dealt with sternly and the penalty in such cases should serve as effective deterrence. I am also mindful of the fact that the compliance obligations of all Noticees in this case overlap as they arise out of same events and trigger same obligation. Thus, the penalty imposable on the Noticees would be recoverable jointly and severally from them.

35. Considering all the facts and circumstances of the case and factors as above and exercising the powers conferred upon me under section 23I of the SCRA read with rule 5 of the Adjudication Rules. I, hereby impose the monetary penalty upon the Noticees of ₹5,00,00,000/- (Rupees five crores only) under section 23E of the SCRA. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

36. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in

37. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

38. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

39. Copies of this order are sent to the Noticees and also to SEBI in terms of rule 6 and rule 7 of the Adjudication Rules.

Date: February 27, 2020
Place: Mumbai

Santosh Shukla
Adjudicating Officer