

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

Noticee No.	Name of Noticees	PAN
1.	Excel Realty N Infra Limited	AABCE1172H
2.	Mr. Lakhmendra Chamanlal Khurana	AGPPK7179R
3.	Mrs. Ranjana Khurana Lakhmendra	AGPPK7181F
4.	Mr. Arpit Lakhmendra Khurana	BCAPK8310C
5.	Mr. Pramod Yeshwant Kokate	ANOPK4711F

(Aforesaid entities are hereinafter individually referred to by their respective name or respective noticee number and collectively as “the Noticees”).

In the matter of Excel Realty N Infra Limited

- On the basis of a complaint received by SEBI on March 29, 2021, SEBI conducted a detailed examination into the affairs of Excel Realty N Infra Ltd. (hereinafter also referred to as “**Excel**”) for the period from April 01, 2016 to March 31, 2021 (hereinafter referred to as “**Examination Period**”). On the basis of the findings of examination, a show cause notice dated September 12, 2022 (hereinafter referred to as “**the SCN**”) was issued to the Noticees, calling upon them, to show cause as to why they should not be held liable for violations as tabulated below:

S. No.	Name of the Noticee	Violations
1.	Excel Realty N Infra Limited	Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “ SEBI Act, 1992 ”), Regulations 3(b), (c) and (d), and Regulation 4(1), 4(2)(f) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

S. No.	Name of the Noticee	Violations
		(hereinafter referred to as ' SEBI (PFUTP) Regulations, 2003 '), Regulations 4(1)(a),(b),(c),(d),(e),(g),(h),(j), Regulation 33 (1)(a), 33(1)(c), Clause I in Part A of Schedule III read with Reg. 33(1)(e), Reg. 34(3) and Regulation 48 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (hereinafter referred to as ' SEBI (LODR) Regulations, 2015 ').
2.	Mr. Lakhmendra Chamanlal Khurana	Regulation 33(1)(a), 33(1)(c) Clause I in Part A of Schedule III read with Reg. 33(1)(e), Reg. 34(3) and Regulation 48 of the SEBI (LODR) 2015, by Excel, by virtue of provision of Section 27 of SEBI Act, 1992. Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) of SEBI (PFUTP) Regulations, 2003 r/w Sections 12A(a), (b), (c) of SEBI Act, 1992. Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7), (8), 4(2)(f)(iii)(1)(2)(3)(6)(12), proviso to Reg. 33(2)(a) and Reg. 17(8) of SEBI (LODR) Regulations, 2015.
3.	Mrs. Ranjana Khurana Lakhmendra	Regulation 33(1)(a), 33(1)(c) Clause I in Part A of Schedule III read with Reg. 33(1)(e), Reg. 34(3) and Regulation 48 of the SEBI (LODR) 2015, by Excel, by virtue of provision of Section 27 of SEBI Act, 1992.
4.	Mr. Arpit Lakhmendra Khurana	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) of SEBI (PFUTP) Regulations, 2003 r/w Sections 12A(a), (b), (c) of SEBI Act, 1992. Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2)(6)(7)(8), 4(2)(f)(iii)(1)(2)(3)(6)(12) of SEBI (LODR) Regulations, 2015.
5.	Mr. Pramod Yeshwant Kokate	Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) of SEBI (PFUTP) Regulations, 2003 r/w Sections 12A(a), (b), (c) of SEBI Act, 1992. Regulation 17(8) and proviso to Reg. 33(2)(a) of SEBI (LODR) Regulations, 2015.

2. In view of the above allegations made against Noticee no. 1 to 5 in the SCN, they were called upon to show cause as to why suitable directions under Section 11(1), 11B(1) and 11(4) of SEBI Act, 1992, should not be issued against them, including but not limited to, directions for debarment from accessing the securities market and/or dealing in the securities market and /or directions of not being associated with any listed company in any capacity. The Noticees were also called upon to show cause as to why appropriate penalty, as deemed fit, be not imposed upon them, under Section 11(4A) and 11B(2) read with Section 15HA and 15HB of SEBI

Act, 1992, and Rule 5 of SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995.

3. Subsequent to the issuance of the SCN, the Noticees applied for settlement of the present proceedings on November 1, 2022 under Regulation 3(1) of SEBI (Settlement Proceedings) Regulations, 2018. However, their applications for settlement came to be rejected by SEBI on July 19, 2023.
4. Noticee no. 1 has filed its merit based reply dated February 8, 2023. Noticee no. 1 has also sought to adopt the reply dated March 5, 2022, which they had filed with SEBI at the time of Examination (pre-SCN). Noticee no. 1 has also filed an additional reply dated February 17, 2023, wherein they have requested for certain corrections to their merit based reply dated February 8, 2023. Noticees were called for personal hearing on February 20, 2023. On the said date, the authorised representative of Noticees alongwith Noticee no. 2 appeared for hearing and made submissions. Noticee no. 1 has also filed post-hearing written submissions dated March 10, 2023. Along with the written submission, Noticee no. 1 has also filed two certificates both dated March 4, 2023, from Malvika & Associates, Chartered Accounts, certifying the amount being returned from certain entities to Excel. I note that Noticee no. 2 and 5 have filed their separate replies dated February 13, 2023 and Noticee no. 3 and 4 have filed a combined reply dated February 13, 2023.
5. I note that the authorized representatives of the Noticees undertook inspection of documents in the matter, on November 22, 2022. Subsequently, in its reply dated February 8, 2023, Noticee no. 1 had raised objection that it has not been provided with the copy of the investor complaint dated March 29, 2021. However, vide email dated February 17, 2023, SEBI had clarified to the said Noticee, that no such request was made by Noticee no. 1, at the time of inspection of documents held in November 2022. SEBI also forwarded with the said email, a copy of the complaint dated March 29, 2021. A similar objection was raised by Noticee no. 5, in his reply dated February 13, 2023, wherein he had claimed that he has not been provided with the copy of Statements made by the Statutory Auditors. While forwarding the said documents to Noticee no. 5 by its email dated February 17, 2023, SEBI also

informed Noticee no. 5 that the said documents were annexed as Annexure 5 to the SCN, which contained the said statements. It was also informed by SEBI to Noticee no. 5 that an inspection of the aforesaid documents was already taken by his authorized representative on November 22, 2022.

6. In his reply dated February 13, 2023, Noticee no. 5 has contended that he has not been provided with the opportunity of cross-examination of the Statutory Auditors. Vide its email dated February 17, 2023, SEBI had informed Noticee no. 5 that no request for cross-examination was ever received by SEBI from him. It was informed by SEBI to Noticee no. 5 that if he desires to seek cross-examination of the statutory auditors, a formal representation in that regard, elucidating the grounds for seeking cross-examination, may be made before the undersigned at the time of personal hearing. I note that no representation was received from the authorized representative of Noticee no. 5 at the time of personal hearing held on February 20, 2023 nor did they make any oral request/submissions for seeking cross examination of the statutory auditors.
7. The Noticees have also filed letter dated July 21, 2023 providing an update on the status of the amount which has been returned back to Excel alongwith two certificates both dated July 20, 2023, from Malvika & Associates, Chartered Accounts.
8. I have considered the allegations made in the SCN, the replies filed by the Noticees, submissions made during the hearing and the post hearing written submissions filed by the Noticees. I shall now proceed to adjudicate upon the allegations made in the SCN in the following paragraphs:

- 8.1. **Allegation 1:** Misrepresentation in financial statements by continuously showing the balance outstanding from the struck-off and defaulter companies.

- 8.1.1. **Charge in the SCN:**

- 8.1.1.1. The following are the details of the investments/ advances made by Excel during the Examination Period in the companies that are either struck off/ declared default by the MCA:

Table 1**(Rs. in Lakhs)**

Sl. No.	Name of the party	Investments/ Advances as on the year ending					Date of Strike off by MCA
		2016-17	2017-18	2018-19	2019-20	2020-21	
1	Duflon International Ltd	919.00	919.00	919.00	919.00	919.00	June 23, 2017
2	Jaihind Mercantile Pvt. Ltd	984.00	984.00	984.00	984.00	984.00	December 04, 2018
3	Nayan Trade Resources Pvt. Ltd*	849.00	926.00	944.00	898.00	898.00	NA
4	Everlike Vincom Pvt. Ltd.	79.00	79.00	79.00	-	-	NA
5	N & J Mercantile Pvt. Ltd.	253.00	253.00	253.00	253.00	253.00	September 11, 2018
6	Solari Home Textile Pvt. Ltd.	237.50	141.50	141.50	141.50	0.00	September 11, 2018
7	Spring Fab And Tex Pvt. Ltd.	212.50	187.50	137.50	0.00	0.00	September 11, 2018
8	Twin Best Multi Trade Pvt Ltd ('TBMTPL')	0.00	0.00	0.00	0.00	713.50	September 11, 2018
	Total (a)	3534.0	3490.0	3458.0	3195.50	3767.50	
	Total Assets (b)	17465.28	17655.82	17407.24	17574.91	17669.59	
	% of a of b	20.23%	19.77%	19.87%	18.18%	21.32%	

*While examining the case, it was observed that the company was declared as a defaulter company by MCA

8.1.1.2. It is observed that the Company had invested in the properties of TBMTPL in the FY 2020-21 i.e. two years after TBMTPL was struck off by MCA.

8.1.1.3. The outstanding from the above-mentioned entities, as on February 28, 2022, are as under:

Table -2**(Rs. in Lakhs)**

S. No.	Name of the Company	Balance outstanding as on February 28, 2022
1	Duflon International Ltd.	816.00
2	Jaihind Mercantile Pvt. Ltd.	727.00
3	Nayan Trade Resources Pvt. Ltd.	761.00
4	Twin Best Multi Trade Pvt Ltd	632.50
	Total	2936.50

8.1.1.4. The replies submitted by the Company are not tenable on the following grounds.

8.1.1.4.1. Reference is drawn to the Press Release (Posted On: 05 SEP 2017 at 4:37 PM by PIB Delhi), where the Department of Financial Services had advised all the banks to take immediate steps to put restrictions on the bank accounts of struck-off companies. Hence, it indicates that once a company is struck off in the record of ROC, then those bank accounts of companies cannot be under operation till such companies are legally restored under Section 252 of the Companies Act 2013 by an order of the National Company Law Tribunal. The restoration, as and when it happens shall be reflected by the change in the status of the company from 'Struck-off' to 'Active'. The Department of Financial Services has, through the Indian Banks Association, advised all Banks that they should take immediate steps to put restrictions on bank accounts of such struck-

off companies. A list of such companies, Registrar of Companies wise, has been published on the website of the Ministry of Corporate Affairs.

- 8.1.1.4.2. In view of the above, it is not clear how the above-mentioned transactions could take place and are legally tenable most importantly, credit transactions to these accounts by Excel. In the case of TBMTPL, the outstanding liability of Rs 7.13 Cr has been created in 2020-21, two years subsequent to TBMTPL being struck off by MCA (11/09/2018). Excel had also accepted that it relied on the representation made by TBMTPL.
- 8.1.1.5. Also, no disclosures were made in the annual report/ quarterly financials regarding the investments in properties of the entities that are either struck off or declared default by MCA as mentioned in table 1 above. Considering the materiality of the amount outstanding i.e. approx. 20% of the total assets of the Company (refer table no. 1), Excel should have disclosed/ informed the facts to the investors. This non-disclosure is material to the understanding of the financial results and has kept the investors in dark on the actual financial affairs of the company. Therefore, it is alleged that the Company has violated Clause I in Part A of Schedule III read with Reg. 33(1)(e) of SEBI (LODR) Regulations, 2015, Additionally, by not providing for the provisioning or writing off those investments/ advances, it is alleged that the Company had misstated its financial results by inflating the assets, thereby misleading its investors and lenders on the actual financial condition of the Company.

8.1.2. **Reply by the Noticees:**

- 8.1.2.1. We, however, wish to submit that in Table 1, the names of Struck-off Companies include name of M/s Nayan Trade Resources Private Limited whose name has not been struck-off. We are enclosing herewith a copy of master data of Nayan Trade Resources Private Limited as displayed on MCA website which shows that the said Company is active till date. As regards outstanding amount of Rs. 898.00 Lakhs due from Nayan Trade Resources Pvt. Ltd as on 31.03.2021, the Company has recovered 360.50 Lakhs (Rs. 137 Lakhs in FY 2021-22 and Rs. 223.50 Lakhs in current Financial Year) and the outstanding amount has been reduced to 537.50 lakhs as on 7th February, 2023.
- 8.1.2.2. We, however, wish to submit that our Company received further payments from the Companies whose names have been alleged to be Struck-off by ROC, which is permissible u/s 248(6) of Companies Act, 2013. It is pertinent to mention that such payments have been received through banking channels from the said Companies. We are giving below the outstanding balances due from the said alleged Struck-off Companies as at end of Financial Year 2020-21, as on 28th February, 2022, 30th November, 2022 and as on: 7th February, 2023.

Sr. No	Name of Party	Amount shown as outstanding at the end of FY 2020-21	Balance outstanding as on 28 th February, 2022	Balance outstanding as on 30 th November, 2022	Balance outstanding as on 7 th February, 2023
1.	Dufflon International Limited	919.00	816.00	816.00	816.00
2.	Jaihind Mercantile Pvt Ltd	984.00	727.00	567.00	73.00*
3.	N & J Mercantile Pvt Ltd	253.00	0	0	0
4.	Twin Best Multi Trade Pvt Ltd	713.50	632.50	466.50	466.50
	Total	2869.50	2175.50	1849.50	1355.50

From the above Table it may kindly be observed that outstanding amount from the above-mentioned Parties as at 31st March, 2021 was Rs. 2869.50 Lakhs which was reduced to Rs. 2175.50 Lakhs as on 28.02.22 which was further reduced to Rs.1849.50 Lakhs as on 30.11.22 and was further reduced to Rs. 1355.50 Lakhs as on 7th February, 2023 i.e. 7.67% (1355.50 Lakhs / 17669.59 Lakhs).

- 8.1.2.3. We further wish to submit that the amount received from the Struck-off Companies i.e. from Dufflon International Limited, Jaihind Mercantile Pvt. Ltd and N & J Mercantile Pvt. Ltd. was received through Banking Channels and credited to our Company's Bank Account. Hence, such receipt of payment through banking channels from struck-off companies in discharge of their liabilities to our Company is permissible u/ s 248(6) of Companies Act, 2013. It is respectfully submitted that the said payments received by the Company from struck off Companies cannot be alleged in violation of the statutory provisions embodied in the Companies Act, 2013. We further wish to mention that the reliance on Press Release posted on 5th September, 2017 by PIB Delhi is totally misplaced as statutory provisions made in Companies Act, 2013 will prevail over any Press Release. Hence it is clear that if any violation of the said advisory made by Department of Financial Services was made by Banks and not by our Company as misconstrued in para 3.1.5.1 of SCN.
- 8.1.2.4. Further wish to submit that two of the Companies whose names have been Struck-off namely Dufflon International Limited and Jaihind Mercantile Pvt. Ltd have already filed Appeals before the National Company Law Tribunal for revival u/ s 252 of the Companies Act, 2013.
- 8.1.2.5. We further wish to submit that the above-named Companies whose names have been Struck-off were regularly filing Income Tax Returns and had also provided Confirmation of Balances to the Company for amount outstanding in their Accounts in the Books of our Company.
- 8.1.2.6. We further submit that our Company has made provision at the rate of 10% i.e. for Rs. 217.55 Lakhs against Rs. 2175.50 Lakhs outstanding from the said Companies as at 31st March, 2022 which is reflected in Note No. 17 of Financial Statements of our Company. The Auditors have also made following Observations in their Report dated 21/05/2022 as under:

"As per Ind AS 109 "Financial Instrument" the company is required to consider "Provision for Expected Credit Loss" on all financial assets based on expected probability of recoverability of such financial instrument. During the year, the company has provided Rs. 2,17,55,000/- as Expected Credit Loss (ECL)."

"As per management explanation, the advance of Rs. 2175.50 Lacs is receivable from companies in which NCLT proceeding are pending and the management is hopeful for the recoverability of whole amount, but due to the pendency in NCLT proceedings and by following conservative approach the Company has decided to provide 10% ECL in each year."

"For balance advances, the management is following up with the parties and is hopeful for recovery of whole amount. But in the absence of adequate basis/ supporting documents, we are unable to comment on the measurement of carrying amount of all the financial assets appearing in the financial statements for the year ended 31st March, 2022."

"Due to long outstanding the above advances the management should be considered the same for ECL or discounted as per term and conditions".

- 8.1.2.7. We wish to submit that due to Covid-19 pandemic which had aggravated in second wave, the process of recovery against the Outstanding Investments/ Advances had slowed down. However, in spite of all odds the Company has recovered Rs. 1514 Lakhs during Covid-19 pandemic and thereafter as a result the outstanding amount of Rs. 2869.50 Lacs as at 31st March, 2021 has been reduced to Rs.1355.50 Lakhs as at 7th February, 2023 following are the details of recoveries made.

SR.NO.	PARTIES	AMOUNT RECOVERED (IN LAKHS)
1.	Dufflon International Limited	Rs.103
2.	Jaihind Mercantile Private Limited	Rs.911
3.	N & J Mercantile Limited	Rs.253
4.	Twin Best Multi Trade Pvt. Ltd	Rs.247
Total		Rs.1514

It is pertinent to mention that the Company had recovered the entire outstanding dues from N & J Mercantile Pvt Ltd.

- 8.1.2.8. With reference to para 3.1.4.4 of SCN we wish to submit that at the time of making Investment of Rs. 713.50 Lakhs in Twin Best Multi Trade Pvt Ltd the Company was unaware that the name of the said Company was Struck-off on 11.09.2018 as the Investment was made during Covid-19 pandemic. However, the Company. has already recovered Rs. 247 Lakhs from "Twin Best Multi Trade Pvt Ltd" and the Outstanding Amount as at 07.02.2023 is Rs. 466.50 Lakhs. The Company is hopeful of recovery of Balance Amount of Rs. 466.50 Lakhs though a provision of Rs. 63.25 Lakhs has been made in the Accounts from FY 2021-22.
- 8.1.2.9. With reference to para 3.1.6 of SCN we wish to submit that the Investment in the Properties of the Entities that are either Struck-off or declared defaulter by MCA as mentioned in Table 1 at Page no. 2 of SCN was not 20% of the Total Assets. We wish to submit that as per the Master-data of M/s. Nayan Trade Resources Private Limited, the Company has made Annual Filing upto 31.03.2021. Hence the Company was not a Defaulter Company due to Non-Compliance of Annual Filing. It appears that the M/s Nayan Trade Resources Private Limited has been considered as Defaulter Company based on the list of Defaulter Company as on 23.04.2016. Hence, if amount of Rs. 898 Lakhs is excluded from total amount of Rs. 3767.50 Lakhs the Balance Amount of Rs. 2869.50 Lakhs is less than 20% i.e.16.24% (2869.50 Lakhs/17669.59 Lakhs). The Company has recovered Rs. 360.50 Lakhs from Nayan Trade Resources Pvt. Ltd. and the outstanding amount has been reduced to 537.50 lakhs as on 7th February, 2023. The total outstanding was of Rs. 2869.50 Lakhs and Rs. 1514.00 Lakhs recovered now total outstanding balance of Rs. 1335.50 Lakhs i.e. 7.67% (1335.50 Lakhs/17669.50 Lakhs)
- 8.1.2.10. We reiterate that the Company was not aware that the name of Twin Best Multi Trade Pvt. Ltd. was Struck-off by ROC at the as it was made during Covid-19 Pandemic. Hence, we deny that there was any nondisclosure of materiality of the amount and the Company has made violation of clause (i) of Part A of Schedule III (or Schedule IV) read with Regulation 33(1)(e) of SEBI (LODR) Regulations, 2015 as alleged. We further deny that by not providing for the provisioning or writing off those Investments/ Advances the Company has misstated its Financial Results by inflating the assets as alleged. We further refute that the Company had mislead its Investors and Lenders on the actual financial condition of the Company as alleged.

8.2. **Allegation 2:** Misuse of funds and misrepresentation through long outstanding balance of loan and advances and non-provisioning for 9 years.

8.2.1. **Charge in the SCN:**

- 8.2.1.1. Excel had entered into agreements of investment in property since FY 2010-11. Also, it is observed that the Company had advanced interest free loans to various entities. A brief summary of investments and loan & advances from the past many years are as under:

Table - 3

(Rs. in Lakhs)

S. No.	Name of the party	Investments and Loans & Advances as on year end				
		2016 – 17	2017- 18	2018- 19	2019- 20	2020 -21
1	Bloomdale Finvest Pvt Ltd	736.00	928.00	937.00	934.00	934.00
2	Divyadhwani Investment Pvt Ltd	942.00	942.00	942.00	942.00	942.00
3	Image Developers	425.00	425.00	425.00	425.00	425.00
4	Intellect Developers Pvt Ltd	2,550.00	2,550.00	2,550.00	2,550.00	2,550.00
5	Lalita Exports Pvt Ltd	707.50	839.50	836.50	564.50	565.50
6	Ranjana Construction Pvt Ltd	227.60	227.60	227.60	227.60	-
7	Sailee Developers	-	-	-	819.60	819.60
8	Samath Erectors & Developers	-	-	-	31.00	75.83
9	Shubhangi Deshmukh	-	-	-	80.78	-
10	Tinal Pharmaceuticals Pvt Ltd	784.60	915.60	868.60	868.60	868.60
11	Tista Impex Pvt Ltd	490.50	490.50	414.50	-	-
12	R.M. Realty Pvt. Ltd.	150.00	120.00	120.00	150.00	150.00
13	Harmeet Kaur Anand	60.00	60.00	60.00	-	-
14	Maa Shakumbari Devi Charitable trust	176.17	272.85	289.75	309.28	309.28
15	Makrina Construction Pvt. Ltd.	375.00	375.00	375.00	375.00	375.00
16	Meeti Developers Pvt. Ltd.	7.30	7.30	7.30	-	-
17	SAILEE DEVELOPERS	819.60	819.60	819.60	-	-
18	Samarth Erectors & Developers	31.00	31.00	31.00	-	-
19	Karbhari Investment Pvt. Ltd.	131.00	131.00	131.00	131.00	-
20	Safal Infraprojects	-	-	-	20.34	20.34
	Total (a)	8613.27	9134.95	9037.85	8428.70	8034.15
	Total Assets (b)	17465.28	17655.82	17407.24	17574.91	17669.59
	% of a of b	49.32%	51.74%	51.92%	47.96%	45.47%

- 8.2.1.2. It is noted that the entities Bloomdale Finvest Pvt Ltd, Solari Home Textile Pvt Ltd, Spring Fab & Tex Pvt Ltd, TBMTPL, Karbhari Investment Pvt Ltd, Divyadhwani investment Pvt Ltd, N & J Mercantile Pvt Ltd, Nayan Trade Resources Pvt Ltd, Tinal Pharmaceuticals Pvt Ltd and Lalita Exports Pvt Ltd. are connected through common directors viz., Naynesh Parikh Thakorlal and Jasmina Parikh Naynesh. Naynesh Parikh Thakorlal is also a director in Jaihind Merchantile Private Limited.
- 8.2.1.3. It is also observed that most of the property agreements were required to be compulsorily registered under Section 17(b)/17(c) of Registration Act, 1908, but they were not registered. Further, all the property agreements were not duly stamped making such agreements not acceptable as evidence under the court of law.
- 8.2.1.4. National Stock Exchange ('NSE') in its examination report, had also stated that the nature of business of all the companies from whom the amount is due to Excel does not include dealing in the purchase/sale of land or property, infrastructure or developer activities, etc. and does not seem to be in the normal course of business transactions.
- 8.2.1.5. The Company's replies are not tenable on the fact that a listed entity acts on behalf of all stakeholders. It is agreeable that the management decisions need not be always prudent and rewarding. However, the fact that these amounts were carried forward in the books of accounts for 8-9 years and they have been cancelled in FY 2019-20 questions the intention of the Company to complete these transactions. Hence, the Company's reply that due to financial difficulties, it couldn't execute its agreements and hence cancelled those agreements seems to be insupportable. Also, it is impractical and unlikely that a project has been underway for more than 8 years and is still available for completion of transactions.
- 8.2.1.6. It is pertinent to note that the Company has not disclosed to the investors that owing to financial difficulties, the Company is unable to execute those transactions. It is also noted

that the said investments/ loans and advances constitute more than 45% of total assets all those years, thus making it a material information. By not doing so, the Company has kept the investors at dark and investors unaware of the state of affairs both operationally and financially.

- 8.2.1.7. Also, no provisioning being done for these loans and advances and carrying forward these in the books of accounts indicates that Company continued to mislead their investors. It does not seem to be a coincidence that most of the companies to whom the Company has made loans and advances are related to each other through common directorship and interest free advances have been given and have been outstanding for more than 8-9 years with no provisioning being done. The Company ought to have made provision for impairment of assets in accordance with IndAS 36 in either of the FY 2016-17, 2017-18 or 2018-19. The fact that the Company continued to carry forward these loans and advances as part of their 'Assets', has inflated their Balance sheets and simultaneously not making provision for loss, led to overestimating their profits, which did not give a true and fair view of the financial position of the Company during the FY 2016-17, 2017-18 and 2018-19. Hence, it is alleged that by not complying with the mandate of IndAS 36, the Company has violated Reg. 48 of SEBI (LODR) Regulations, 2015.

8.2.2. Reply by the Noticees:

- 8.2.2.1. We wish to submit that the Outstanding Amount of Rs. 8034.15 Lakhs due from various entities as at end of FY 2020-21 includes an amount of Rs. 75.83 Lakhs shown as due from Samarth Erectors & Developers which is incorrect as our Company had advanced an amount of Rs. 31.00 Lakhs only. The Company had since executed 3 Registered Agreement for Sale all dated 24.12.2020 for purchase of 3 Flats at a Sale Price of Rs. 75,82,908/-.
- 8.2.2.2. We further wish to submit that out of Rs. 8034.15 Lakhs shown as Outstanding from various Entities as on date, the: Company has recovered Rs. 653.17 Lakhs. The amount due from various entities as on 07.02.2023 is given in the following table:

S. N o.	Name of the Party	Investments and Loans & Advance as on year end						As on 07.02.2023
		2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	
1	Bloomdale Finvest Pvt Ltd	736.00	928.00	937.00	934.00	934.00	911.00	866.00
2	Divyadhwani Investment Pvt Ltd	942.00	942.00	942.00	942.00	942.00	821.00	821.00
3	Image Developers	425.00	425.00	425.00	425.00	425.00	425.00	425.00
4	Intellect Developers Pvt Ltd	2550.00	2550.00	2550.00	2550.00	2550.00	2550.00	2550.00
5	Lalita Exports Pvt Ltd	707.50	839.50	836.50	564.50	565.50	366.50	366.50
6	Ranjana Construction Pvt Ltd	227.60	227.60	227.60	227.60	0	0	0
7	Sailee Developers	0	0	0	819.60	819.60	819.60	819.60
8	Samarth Erectors & Developers	0	0	0	31.00	0	0	0
9	Shubhangi Deshmukh	0	0	0	80.78	0	0	0
10	Tinal Pharmaceuticals Pvt Ltd	784.60	915.60	868.60	868.60	868.60	698.60	698.60
11	Tista Impex Pvt Ltd	490.50	490.50	414.50	0	0	0	0
12	R.M Realty Pvt Ltd	150.00	120.00	120.00	150.00	150.00	150.00	150.00
13	Harmeet Kaur Anand	60.00	60.00	60.00	0	0	0	0
14	Maa Shakumbhari Devi Charitable Trust	176.17	272.85	289.75	309.28	309.28	309.28	309.28
15	Makrina Construction Pvt Ltd	375.00	375.00	375.00	375.00	375.00	375.00	375.00
16	Meeti Developers Pvt Ltd	7.30	7.30	7.30	-	0	0	0
17	Sailee Developers	819.60	819.60	819.60	-	0	0	0
18	Samarth Erectors & Developers	31.00	31.00	31.00	-	0	0	0
19	Karbhari Investment Pvt Ltd	131.00	131.00	131.00	131.00	0	0	0

20	Safal Infraprojects	-	-	-	20.34	20.34	0	0
	Total (a)	8613.27	9134.95	9037.85	8428.70	7959.32	7425.98	7380.98
	Total Assets(b)	17465.28	17655.82	17407.24	17574.91	17669.59	17912.39	
	% of a of b	49.32%	51.74%	51.92%	47.96%	45.47%	41.63%	

8.2.2.3. Our submission on amount due from various entities are as under:

- 8.2.2.3.1. As regards outstanding amount of Rs. 934.00 Lakhs due from Bloomdale Finvest Pvt. Ltd as on 31.03.2021, it is submitted that the said amount was advanced prior to IPO. We submit that the Company has recovered Rs. 68 Lakhs (Rs. 23 Lakhs in FY 2021-22 and Rs 45 Lakhs in current Financial Year) and the outstanding amount has been reduced to 866.00 lakhs as on 07.02.2023. We are hopeful of recovering the rest of the amount.
- 8.2.2.3.2. As regards amount due from Divyadhwani Investment Pvt Ltd. we wish to submit that as against outstanding amount of Rs. 942.00 Lakhs as at 31.03.2021, the Company has recovered Rs. 121 Lakhs and the outstanding amount has been reduced to Rs. 821 Lakhs as at 31.03.2021. The Company has recovered 121 Lakhs and the outstanding amount has been reduced to 821 Lakhs as at 07.02.2023. We confirm that the outstanding amount of Rs. 821 Lakh due from Divyadhwani Investment Pvt Ltd is fully recoverable.
- 8.2.2.3.3. As regards amount due from Image Developers we wish to submit that the Company had made advance payment of Rs. 425 Lakhs to the said party against purchase of property. The agreement entered into by the Company with Image Developers for purchase of property is subsisting and is secured. The amount of Rs. 425 Lakhs was given Image Developers before the company had come out with IPO.
- 8.2.2.3.4. As regards amount due from Intellect Developers Pvt Ltd we wish to submit that the amount is fully recoverable. M/s Intellect Developers Pvt Ltd has acknowledged the amount due to our Company in their audited annual accounts for FY 2021-22. The said Company has provided confirmation of amount due to us also.
- 8.2.2.3.5. As regards outstanding amount of Rs. 565.50 Lakhs due from Lalita Exports Pvt Ltd as on 31.03.2021, it is submitted that the Company has received Rs. 199 Lakhs in FY 2021-22 and the outstanding amount has been reduced to Rs. 366.50 Lakhs as on 07.02.2023. The amount of Rs. 565.50 Lakhs was given Lalita Exports Pvt Ltd before the company had come out with IPO.
- 8.2.2.3.6. As regards amount due from Sailee Developers we wish to submit that the Company had made advance payment of Rs. 819.60 Lakhs to the said party against purchase of property. The agreement entered into by the Company with Sailee Developers for purchase of property is subsisting and is secured. The amount of Rs. 819.60 Lakhs was given Sailee Developers before the company had come out with IPO.
- 8.2.2.3.7. As regards amount due from Tinal Pharmaceuticals Pvt. Ltd, the outstanding amount due as on 31.03.2021 was Rs 868.60 Lakhs has been reduced to 698.60 Lakhs and the Company has received Rs.170 Lakhs till 07.02.2023, the amount due from Tinal Pharmaceuticals Pvt. Ltd was given by the Company before the Company had come out with IPO.
- 8.2.2.3.8. As regards amount due from R.M. Realty Pvt developers we wish to submit that the Company had made advance payment of Rs. 150 Lakhs to the said party against purchase of property. The agreement entered into by the Company with R.M. Realty Pvt Ltd for purchase of property is subsisting and is secured.
- 8.2.2.3.9. As regards amount due from Maa Shakumbhari Devi Charitable Trust we wish to submit that the Company had made advance payment of to the said trust against purchase of property. The agreement entered into by the Company with Maa Shakumbhari Devi Charitable Trust for purchase of property is subsisting and is secured.
- 8.2.2.3.10. As regards amount due from Makrina Construction Pvt Ltd, we wish to submit that the Company had made advance payment of Rs. 375.00 Lakhs to the said Company against purchase of property. The agreement entered into by the Company with Makrina Construction Pvt Ltd purchase of property is subsisting and is secured.
- 8.2.2.3.11. With reference to para 3.3.4 of SCN we wish to submit that it is not necessary that nature of business of the Companies with whom we have entered into Agreements for Purchase of Properties should necessarily include dealing in the Purchase / Sale of

Land or Property, Infrastructure or developer activities, etc. These Companies had entered into Agreements for Sale of their Properties details of which are duly mentioned in the respective Agreements.

- 8.2.2.3.12. With reference to para 3.3.7 of the SCN we wish to submit that the Company had made Investments/ Loans and Advances in several cases before making Public Issue as mentioned below. Hence the Investments / Loans and Advances did not constitute more than 45% of total assets after the Company became a Listed Company, as alleged in SCN. We further wish to submit that the Company was not required to make disclosure to the Stock Exchanges, as alleged. We, therefore refute that the Company had kept the investors in dark and investors were unaware of the state of affairs both operationally and financially as alleged.
- 8.2.2.3.13. We are giving below the details of Advances and Agreement entered in by the Company with the respective parties for an aggregate amount of Rs. 3612.70 Lakhs before to the Company had come out with IPO.

Sr.No.	Name of the Party	Agreement Date	Amount (in Lakhs)
1.	Lalita Exports Pvt. Ltd	01/08/2008	565.50
2.	Tinal Pharmacauticals Pvt Ltd	25/08/2008	868.60
3.	Bloomdale Finvest Pvt. Ltd	16/09/2008	934.00
4.	Sailee Developers	12/12/2007	819.60
5.	Image Developers	25/03/2008	425.00
Total			3612.70

- 8.2.2.3.14. With reference to para 3.3.8 of SCN, we wish to submit that since all the Loans and Advances made by the Company were recoverable, there was no impairment of assets necessitating any provisioning in the books of accounts. Hence, the Company continued to carry forward loans and advances as part of its assets. We refute that the Company had inflated its Balance Sheets and not making provision for loss had led to over estimating its profits which did not give a true and fair view of the financial position of the Company during the F.Y. 2016-17, 2017-18 and 2018-19 as alleged. We refute that the Company had made any violation of Regulation 48 of SEBI (LODR) Regulations, 2015 by not complying with the mandate of Ind AS 36 as alleged.

8.2.3. Findings on Allegations 1 & 2:

- 8.2.3.1. Allegation 1 relates to the Advances/investments given/ made by Excel to 8 entities which have subsequently been struck-off / declared defaulter by MCA. Allegation 2 relates to Advances/ investment given/ made by Excel to 18 entities which do not form part of the category of companies described in Allegation 1 .i.e. companies that are not struck-off. Allegation 1 & 2 deal with similar issue hence, they are being dealt together herewith. The short case of the SCN, in both the Allegations 1 & 2, is that the transactions with 26 entities (8 entities of Allegation 1 and 18 entities of Allegation 2) which apparently are being carried forward in the books of Excel since 8-9 financial years on the Asset side of the Balance Sheet without providing for

any 'impairment/ write-off', have led to misrepresentation of the financial statements of Excel. Such 'Advances/ investments' constituted around 67% (Table 1 + Table 3) of the total assets of Excel in any of the Financial Years from 2016-17 to 2020-21. It is the case of the SCN that, had appropriate impairment / provisioning norms in accordance with IndAS 109/ IndAS 36 (as applicable) been followed by Excel, the balances outstanding from these parties, which are shown as Assets in the Balance Sheet of Excel, would have been reduced to 'nil' and the profit of Excel would also have been reduced over the years due to the norms of provisioning/ impairment. The SCN alleges that the investors in the shares of Excel were misled to believe in the false story portrayed by the bloated financial statements of Excel. In its defence, Excel has submitted that it had entered into transactions for purchase of immovable properties from these parties way back in 2008-11, for the expansion of its BPO business. It is the case of Excel that while initial advance amount came to be paid by it towards the purchase of these immovable properties but subsequently, owing to the poor financial health of Excel, it could not honour the balance obligations of payment of full consideration under the impugned 'Agreements for Sale'. Hence, in the FY 2019-20, it decided to cancel the earlier Agreements which were executed a decade ago. In terms of the Cancellation Agreements, the entities to whom advances were made, have undertaken to refund the amount paid by Excel and accordingly, Excel has attached with its replies the proof of receipt of funds from some of the parties. It is the case of Excel that since the amount paid as Advance was fully recoverable from all the parties, thus, no provision for impairment was made in the books of accounts of Excel and the allegations in the SCN are therefore misplaced.

- 8.2.3.2. After perusing through the various copies of transaction documents executed by Excel with the entities to whom funds were advanced and the Annual Reports of Excel as available on record, I find the following;

8.2.3.2.1. Excel had entered into unregistered 'Agreement for Sale' with the seller parties. The SCN has alleged that most of the property agreements were required to be compulsorily registered under Section 17(b)/17(c) of Registration Act, 1908, but they were not registered. The Noticees have contended that a 'contract for sale' of immovable property in terms of Section 54 of the Transfer of Property Act, 1882 does not require compulsory registration in terms of Section 17(2)(v) of the Registration Act, 1908. I note that all the 'Agreements for Sale' executed by Excel stated that the Sale Deed shall be executed and registered only after payment of full consideration by Excel. I note that none of the agreements for sale contained the time period within which final sale deed was to be executed and consequences of non-execution of the registered Sale Deed such as whether there will be forfeiture of advance paid by Excel, whether there will be liquidated damages, etc. I find that, except in one instance, none of the 'Agreements for Sale' contained any payment schedule that would indicate the timeline for payment of consideration amount and it was left open to the parties to decide amongst themselves the schedule of payment. I find that taking refuge under this clause, Excel continued to show these 'Advances/ Investments' for 8-9 years in the Balance Sheet of Excel. I note that almost all the 'Agreements for Sale' which were executed by Excel with the seller parties were verbatim the same.

8.2.3.2.2. I note that the Noticees have been unable to produce any documentary proof for the balance outstanding from the following entities namely, Ms. Shubhangi Deshmukh, M/s. Tista Impex Pvt. Ltd., Ms. Harmeet Kaur Anand, M/s. Maa Shakuntala Devi Charitable Trust, M/s. Makrina Construction Pvt. Ltd., M/s. Meeti Developers Pvt. Ltd., M/s. Safal Infraprojects, M/s. Everlike Vincom Pvt. Ltd. and M/s. TBMTPL. In respect of TBMTPL, M/s. Maa Shakuntala Devi Charitable Trust and M/s. Makrina Constructions LLP only the Ledger 'Confirmation of Accounts' is available in the reply of Excel. I note that these Ledger Confirmations, wherever available, only prove that the entities have acknowledged the

amount due to Excel. However, in the absence of the base transaction document such as 'Agreement for Sale or Loan Agreement, etc, the Ledger Confirmations of accounts do not prove anything about the nature of transaction such as whether it was an Investment, loan or Advance..

8.2.3.2.3. The Noticees have claimed that due to financial difficulties, Excel could not honour the obligation under the 'Agreement for Sale' and hence, cancelled the agreements with the selling parties. However, I note that the Noticees have produced copies of Cancellation Agreements in respect of only seven parties, namely, Duflon International Ltd., Jaihind Merchantile Pvt. Ltd., Nayan Trade Resources Pvt. Ltd., Bloomdale Finvest Pvt. Ltd., Divyadhwani Investment Pvt. Ltd. and Lalita Exports Pvt. Ltd. I find that no evidence of cancellation of 'Agreement of Sale' has been produced by the Noticees for the remaining 17 entities.

8.2.3.2.4. In none of the copies of 'Agreements for Sale' that have been produced by the Noticees, there is mention of the name, designation or title of the signatory who is executing the contract on behalf of the seller company. Furthermore, though there are blank spaces for Name and signature of witnesses but no persons have signed as witness to the execution of these 'Agreements for Sale'.

8.2.3.2.5. I note that the nature of business of all the companies from whom the amount is due to Excel does not include dealing in the purchase/sale of land or property, infrastructure or developer activities, etc. and does not seem to be in the normal course of business transactions.

8.2.3.2.6. The 'Agreement for Sale' executed between Excel and Bloomdale Finvest Pvt. Ltd. on September 16, 2008, does not even mention the complete address of the place where the Land Parcel is located. It merely mentions the address as "GRAM GONDWARA, RING ROAD 2, KHASRA 338. 339/1. 339/2. 340/1," There is no mention of the district,

Taluka or the state where this land parcel is located, let alone the PIN code. The incomplete address in an agreement on the basis of which funds to the tune of Rs. 9 Crores came to be transferred by Excel raises doubt.

8.2.3.2.7. The Noticees have contended that there is no bar on a struck-off company from meeting its liabilities. I note that Section 250 of the Companies Act, 2013 makes it clear that a Company which has been struck-off from the register of companies, its Certificate of Incorporation shall be deemed to have been cancelled except for the purpose of payment or discharge of the liabilities or obligations. However, it is the case of the SCN that the amount outstanding from these entities ought to have been written off/ impaired from the Financial Year in which they were struck-off, if not from the financial years in which those investments were made, since the probability of recovery from such struck-off companies is near to negligible. I agree with the allegations in the SCN and note that subsequent recovery from such accounts cannot justify the accounting treatment provided to such 'investment/ Advances' in the year in which they were struck-off i.e. Financial Year i.e. FY 2017-18 and FY 2018-19.

8.2.3.2.8. The Noticees have produced the copy of a Leave and License Agreement with R M Reality Pvt. Ltd. Excel had kept an earnest money deposit of Rs. 1.5 Crore with R M Realty Pvt. Ltd. I note that the license under the said Leave and License Agreement has ended on April 4, 2016. However, Excel has included the deposit receivable from R M Reality Pvt. Ltd. as outstanding until the FY 2020-21. I find that if this balance has been pending since April 2016, it ought to have been written off.

8.2.3.2.9. From Annexure 5 to the SCN and the Annual Reports of Excel for the relevant years, I find that from the FY 2017-18 to FY 2020-21, all the Statutory Auditors during this period had made an adverse remark in the

‘Emphasis of Matter’ section of the Auditor’s Report in respect of the ‘Investment in Properties’ by Excel. These remarks noted that ‘No impairment provision has been made by Excel for these ‘investment in properties despite they being older than 36 months’. It further noted that an assessment of Fair Value in respect of these investments was hampered because of the absence of “specific timelines, registered transfer deeds and external valuations”. Here, it is pertinent to note that since its listing in 2009 until FY 2016-17, M/s. S. G. Kabra & Co. were the Statutory Auditors of Excel. It was only in FY 2017-18 that a new statutory auditor, namely M/s. R. Soni & Co., came to be appointed for Excel and from the same financial year adverse remarks came being issued against the financial statements of Excel.

8.2.3.2.10. The SCN has alleged that Excel had advanced Rs. 7.13 Cr to TBMTPL, after two years it was struck-off by MCA (September 11, 2018). Excel has contended that the said transaction took place during Covid – 19 pandemic and during this time they relied on the representations made by TBMTPL which ultimately turned out to be false. I note that Excel has entered into transactions for purchase of immovable properties/ lent interest free money to seven companies which have been found to be struck-off by MCA. While six of such companies were struck-off subsequent to the transaction with Excel, but in the case of TBMTPL it is found that Excel was already struck-off two years before the date of the transaction. Therefore, I do not agree with the more than simplistic explanation provided by Excel in this regard. I note that Excel could not produce any document such as ‘Loan Agreement’ or ‘Agreement for Sale’ to support its claim that it relied on the representation made by TBMTPL. It is not a case of mere due-diligence failure as is being made out by Excel, rather it raises serious doubts on the genuineness the transaction entered with TBMTPL by Excel. A listed company undertaking a transaction worth the value of 7.13 Crores with a company that is already declared struck-off by MCA two years earlier? Excel has contended that it has started receiving payments from TBMTPL.

However, that does not help the case of Excel. I note that the said transaction with TBMTPL ought to have been written-off in its entirety in the year of investment itself i.e. FY 2020-21.

8.2.3.2.11. I note that the transaction with TBMTPL also raises doubt on the transactions of Excel with nine other connected entities namely, Bloomdale Finvest Pvt Ltd, Solari Home Textile Pvt Ltd, Spring Fab & Tex Pvt. Ltd., Karbhari Investment Pvt. Ltd., Divyadhwani investment Pvt. Ltd., N & J Mercantile Pvt. Ltd., Nayan Trade Resources Pvt. Ltd., Tinal Pharmaceuticals Pvt. Ltd. and Lalita Exports Pvt. Ltd. I note that all these nine entities are connected with TBMTPL through common directors viz., Naynesh Parikh Thakorlal and Jasmina Parikh Naynesh. I also note that these 10 connected entities are part of the 26 entities which are impugned in Allegation 1 and 2.

8.2.3.2.12. I note that the amount transferred by Excel to the 26 impugned entities herein as 'Investment/ Advances' is unsecured. However, Excel has claimed that the amount due from Intellect Developers Pvt. Ltd., Image Developers Pvt. Ltd., Sailee Developers and Samarth Electors & Developers is fully secured against Property Agreements. On perusal of the copies of the 'Agreements for Sale' executed by Excel with these entities, I find that there is no provision of any security/ guarantee underlying these transactions. Thus, the claim of Excel that the dues are secured is not tenable.

8.2.3.3. I find that Excel has transferred funds to the tune of around Rs. 121 Crores to 26 entities during the years 2008 to 2011, under the pretext of purchase of immovable properties. Except for two instances i.e. in the case of Samarth Electors and Developers and R M Reality Pvt. Ltd., none of the transaction reached finality. The Noticees have claimed that Excel did not have enough funds to complete the transactions and hence, all the Agreements for Sale were terminated. However, I note that this claim by the Noticees could not be proved with sufficient satisfactory evidence. The

Noticees could produce Cancellation Agreements in case of only 7 instances out of the 24.

8.2.3.4. I note that the Noticees have constantly emphasized the fact that the funds which were advanced to the selling parties (including the struck-off companies) is gradually being returned by them. In this regard, the Noticees have furnished certificates from Chartered Accountant and copies of bank statements of Excel. I note that the factum of return of some funds from few of the entities does not vitiate the charge of misrepresentation of financial statements. The SCN has alleged that these Advances/ investments ought to have been written off/ impaired in accordance with the applicable AS/ IndAS at the earliest in the span of 8-9 years, failing which, the financial statements of Excel remained misrepresented and accordingly, investors were misled. I find that receipt of funds by Excel on the purported cancellation of agreements from some of the entities out of 24 entities, from the FY 2019-20 and that too after raising of adverse remarks by the statutory auditors, does not dilute or take away the allegation made in the SCN.

8.2.3.5. I note that all the aforesaid factors, lead to the conclusion that the transactions with the 24 (26-2) entities which have been shown as 'Long Term Loans / Advances' or 'Investments' on the Asset side of the Balance Sheet of Excel for the period from FY 2016-17 to FY 2020-21 without providing for 'impairment' or provisioning for loss in accordance with IndAS 109 or IndAS 36, as applicable, has led to overstatement of its Assets and Profits for the relevant period. I find that the transaction with the 24 entities were unsecured and the failure of Excel to consummate the deals into finality for 8-9 long years, called for impairment / write-off of these transactions from the Balance Sheet of Excel after the expiry of 36 months itself. However, since the Examination Period in the present SCN is limited to the period from FY 2016-17 to 2020-21, hence, I shall limit my findings to the said period. I also note that the failure by Excel to adopt the appropriate accounting treatment was also highlighted by the Statutory

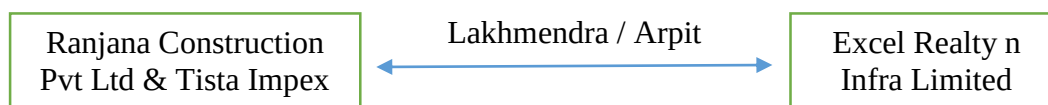
Auditors of Excel as an adverse remark in the Statutory Auditor Reports from FY 2017-18 to 2020-21. Further, cancellation of the 'Agreements for Sale' and the subsequent return of funds, only took place after the adverse remarks by the Statutory Auditors. In any event, subsequent return of some funds from few of the entities does not justify the non-impairment/ provisioning for 9 long years. I note that the impugned outstanding balances ought to have been impaired / written-off and if funds came to be recovered subsequently then the same should have been accounted for as 'recovery' in the Financial Year of its receipt.

8.2.3.6. In view of the foregoing non-compliance of the mandate of IndAS 109 or IndAS 36, as applicable, for the FY 2016-17 to FY 2020-21, I find that Excel has violated the provisions of Regulation 48, Regulation 33(1)(a) and Regulation 33(1)(c) read with Regulation 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(j) of SEBI (LODR) Regulations, 2015.

8.3. **Allegation 3:** Misrepresentation by Non-Disclosure of Balance outstanding from Related Parties:

8.3.1. **Charge in the SCN:**

8.3.1.1. It is observed that transactions had been undertaken between Ranjana Construction Private Limited ('**RCPL**') and Tista Impex Private Limited ('**TIPL**'). Both RCPL and TIPL are related parties, through the common directors viz Mr Lakhmendra Chamanlal Khurana and Mr Arpit Lakhmendra Khurana. Both of them are promoters in Excel.



8.3.1.2. When information was sought from the Company, they had confirmed that RCPL had an outstanding balance of Rs. 2,27,60,000/- in the FY 2018-19 and FY 2019-20 and TIPL had an outstanding balance of Rs. 4,14,50,000/- in FY 2018-19. These outstanding balances have not been disclosed under related party transactions in the Annual reports from FY 2017-18 to FY 2019-20.

8.3.1.3. The said balances have not been disclosed as Related Party Transaction in the Financial Statements of Excel. Excel was required to disclose the aforesaid related party transaction in the 'notes to accounts' section of the Financial Statements for the financial years i.e. F.Y. 2018-19 and F.Y. 2019-20, as per the mandate of IndAS 24, non-compliance of which has led to alleged violation of Reg. 48 of SEBI (LODR) Regulations, 2015. It is also alleged that the aforesaid related party transaction was required to disclose in the Board's Report in Form AOC-2 in accordance with Section 134(3)(h) of Companies Act, 2013 read with Rule 8(2) of Companies (Accounts) Rules, 2014. However, from the Annual Report of FY

2018-19 and FY 2019-20, it is observed that no such disclosure relating to these transactions, has been made by Excel in the Board's Report/ Director's Report section of the Annual Report of Excel for FY 2018-19 and 2019-20, which is alleged to be in violation of Regulation 34(3) of SEBI (LODR) Regulations, 2015.

- 8.3.1.4. Hence, it is alleged that the said non-disclosure has also resulted in the annual report not showing a true and fair view of the state of affairs of the company from FY 2017-18 to FY 2019-20. It is further alleged that the company is in non-compliance of Ind AS 24 as well as AS 18 - Related Party Disclosures. Hence, it is alleged that the company has also violated Regulations 4(1) (a) and (b) and 48 of SEBI (LODR) Regulations, 2015.

8.3.2. Reply by the Noticees:

- 8.3.2.1. With reference to para 3.2.1 to 3.2.4 of SCN we repeat and reiterate our submissions made in para 28 and 29 at page numbers 7 and 8 of our Reply dated 05.03.2022. We, however, submit that the Related Party Transactions with Ranjana Construction Pvt Ltd. and Tista Impex Pvt. Ltd. were in Ordinary Course of Business of the Company and were entered into at arms' length. Hence the Board of Directors of the Company was not required to disclose the said transaction in Form AOC-2 in accordance with 134(3)(h) of Companies Act, 2013 read with Rule 8(2) of the Companies (Accounts) Rules, 2014. We wish to further submit that Related Party Transactions are not prohibited per se and no undue benefit was given to Related Parties at the cost of any Investor. We wish to further submit that non-disclosure of Related Party Transactions was an inadvertent technical breach owing to which disclosures under Related Party Transactions were missed out in Annual Report for FY 2017-18 to FY 2019-20. We further wish to submit that Company has recovered the entire amount owed to it by Ranjana Construction Pvt. Ltd. and Tista Impex Pvt. Ltd.
- 8.3.2.2. We wish to submit that Non-Disclosure of the said Related Party Transactions in Annual Reports for FY 2017-18 to FY 2019-20 was inadvertent and unintentional. We therefore deny that the said Non-Disclosure resulted in not showing true and fair view of the State of Affairs of the Company in the Annual Report of FY 2017-18 to FY 2019-20. We further refute that the Company is in non-compliance of IND AS 24 as well AS 18 as alleged. We further refute that the Company has also violated Regulations 4(1)(a) and (b) and Regulation 48 of SEBI (LODR) Regulations, 2015 as alleged.

8.3.3. Findings on Allegation 3:

- 8.3.3.1. I note that RCPL and TIPL were related parties of Excel owing to the common directorship of Noticee no. 2 and 4, in terms of Regulation 2(1)(z)(b) of SEBI (LODR) Regulations, 2015 read with Section 2(76)(iv) of Companies Act, 2013. RCPL had an outstanding balance of Rs. 2,27,60,000/- to Excel in the FY 2018-19 and FY 2019-20 and TIPL had an outstanding balance of Rs. 4,14,50,000/- to Excel in FY 2018-19. Accordingly, Excel was required to disclose the aforesaid related party transactions in the 'notes to accounts' section of the Financial Statements for the financial years i.e. F.Y. 2018-19 and F.Y. 2019-20, as per the mandate of IndAS 24, non-compliance of which has led to violation of Regulation 48, Reg. 33(1)(a), 33(1)(c) r/w. Reg. 4(1)(a), 4(1)(b) and 4(1)(c) of SEBI (LODR) Regulations, 2015.. I also note that the aforesaid related party transactions were required to be disclosed in the

Board's Report in Form AOC-2 in accordance with Section 134(3)(h) of Companies Act, 2013 read with Rule 8(2) of Companies (Accounts) Rules, 2014. However, from the Annual Report of FY 2018-19 and FY 2019-20, I find that no such disclosure relating to these transactions, has been made by Excel in the Board's Report/ Director's Report section of the Annual Report of Excel for FY 2018-19 and 2019-20, which is violation of Regulation 34(3) of SEBI (LODR) Regulations, 2015.

8.3.3.2. I note that Excel has acknowledged the default in disclosure of related party transactions, but it has attempted to downplay the impugned default as a mere technical violation. I note that non-disclosure of related party transactions worth 6 Crores at two places in the Annual Report for consecutive two Financial Years, is not by any standards a mere technical violation.

8.4. **Allegation 4:** Misuse and diversion by providing interest free loans to the Wholly-owned Subsidiary ('WOS').

8.4.1. **Charge in the SCN:**

8.4.1.1. Excel has stated that it had set up a WOS namely Excel Info FZE at RAK Free Trade Zone, Ras Al Khaimah, United Arab Emirate ('UAE'), on December 16, 2009, to explore new avenues of business opportunities and augment its income.

8.4.1.2. Since the incorporation of the WOS, Excel had advanced it a total sum of USD 49,78,000 (Rs. 22.91 Cr) by way of an interest-free loan during the FY 2009-10 to FY 2012-13 for which details are as under:

Table -4

Financial Year	Amount (USD)	Amount (INR)*
FY 2009-10	29,60,000	14,04,32,168
FY 2010-11	18,28,000	8,32,88,433
FY 2012-13	1,00,000	54,40,990
Total	49,78,000	22,91,61,591

*Average conversion exchange rate during the respective years is taken for conversion from USD to INR.

8.4.1.3. Excel has stated that it had received back only Rs. 98,58,831/- from its WOS in February 2012. The current outstanding as on March 31, 2021 is Rs. 34.90 Crores and it is observed that no interest has been charged for the said amount.

8.4.1.4. On analysis of the financials of WOS, the following are further observed:

- 8.4.1.4.1. The loans so received from Excel, have been transferred to other parties and were shown as trade receivables for which no details are available in the financials of both Excel and its WOS.
- 8.4.1.4.2. Also, the loans advanced by Excel have been shown as trade payable in the books of accounts of its WOS.
- 8.4.1.4.3. However, the analysis of the financials of WOS indicates that there is either nil or negligible turnover during the FY 2009-10 to FY 2012-13 as under:

Table -5 **Figures in AED**

Year	Trade Receivables O/s balance	Trade payables O/s balance	Turnover during the year
FY 2009-10	1,08,60,495	1,08,63,200	Nil
FY 2010-11	1,78,63,187	1,79,01,269	Nil
FY 2011-12	1,71,33,187	1,71,71,269	Nil
FY 2012-13	1,75,02,195	1,75,40,277	25,400

Table -6 *Figures are converted in INR- yearend exchange rate is taken for respective yrs.*

Particulars	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
Balance O/s of Loan given to WOS in the books of the company	13,36,14,400	21,92,53,100	23,96,99,649	26,08,91,104
Trade Receivables balance in the books of WOS	13,31,46,410	21,89,97,313	21,00,47,732	21,45,71,660
Trade payables balance in the books of WOS	13,31,79,573	21,94,64,187	21,05,14,606	21,50,38,534
Turnover in the books of WOS	-	-	-	3,11,396

- 8.4.1.4.4. On the analysis of above tables (Table no. 5 & 6), it is clear that the WOS has transferred the funds received from the Company (shown as trade payables) to other party/parties (shown as Trade receivable). It is also observed that the balance as on March 31, 2013 of trade receivables and trade payables as mentioned above continues to be carried forward till FY 2020-21 in the books of WOS. Hence, it is alleged that this indicates clear intention and deliberate attempt on the part of the Company to misrepresent the financials and misuse and divert funds.
- 8.4.1.4.5. The Company has been showing the said loans to WOS as non-Current Assets under long-term loans and advances in the financials till FY 2016-17. From FY 2017-18, these loans have been reclassified as current assets and Loan.
- 8.4.1.5. As per the examination report of NSE, the existence of the WOS i.e., Excel Info FZE in UAE is under question due to following reasons:
- 8.4.1.6. Upon verification done by NSE of Trade License Number (5004599) (refer below screen shot-1) & P.O. Box number (refer below screen shot-2) of its subsidiary on UAE Website, no such company was found.

Screen Shot- 1

← → ↻ 🔒 adbc.gov.ae/CitizenAccess/CustomPage/LicenseDetails.aspx

🏠 Home

Invalid License Number
Licence Number
5004599

× 4 5 1 3 ↻

Verification Code

Search

Browser Compatibility: IE 11+, Firefox 10+, Google Chrome 5+, Safari 1+, Opera 12+ [Terms and Conditions of Use](#) [Information Security Policy](#)

Screen Shot- 2

← → ↻ 🔒 icrif.ae/en/search?country=AE&search-type=po-box&search=328457&city=RAS_AL_KHAIMAH

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- 8.4.1.7. Upon checking on Google map also, such name has not been found.
- 8.4.1.8. Company had granted interest free loan to the WOS which was further advanced to other entities.
- 8.4.1.9. Excel has been showing the said loans to WOS as non-Current Assets under long-term loans and advances in the financials till FY 2016-17. From FY 2017-18, these loans have been reclassified as current assets. This treatment of accounts is in violation of Para 66 of IND AS 1 'Presentation of Financial Statements'.
- 8.4.1.10. As the recovery of the loans was doubtful, the Company ought to have made provision for bad debts or written off the loans, in accordance with Ind AS 109 in either of the FY 2016-17, 2017-18, 2018-19, 2019-20 or 2020-21. By not making the appropriate provision for loss, it is alleged that, the consolidated profits/losses of Excel were overstated/ understated for the respective financial years and thereby leading to misrepresentation in the financial statements of Excel.

8.4.2. Reply of the Noticees:

- 8.4.2.1. At the outset, we wish to submit that the allegations made in para 3.4.5.1 to 3.4.5.2 of SCN are based on unfounded assumptions that the existence of Excel Info FZE, our WOS owned Subsidiary in UAE is under question as NSE in its Examination Report has stated that upon verification done by NSE of Trade Lice No. 5004599 and PO Box No. of the said WOS in UAE, no such Company was found. Since the entire premises based on which the allegations about existence of our WOS has been made is factually incorrect, any adverse inference drawn from such patently erroneous assumption is legally unsustainable. We strongly refute that no such Company by name Excel Info FZE, in UAE was found upon verification of Trade Licence No. 50004599 done by NSE. We wish to submit that Commercial Licence No. 5004599 of WOS i.e. Excel Info FZE has been renewed upto 15.12.2023 by Government of Ras Al Khaimah.
- 8.4.2.2. With specific reference to para 3.4.2 of SCN, we wish to submit that our Company had advanced USD 19,18,000 to its WOS in the Year 2010-11. However, in table 4 the amount mentioned is USD 18,28,000 which is incorrect.
- 8.4.2.3. With specific reference to para 3.4.3 of SCN, we wish to submit that as against amount of Rs. 22,91,61,591/- advanced by our Company to Excel Info FZE, a WOS of the Company at RAK Free Trade Zone, Ras Al Khaimah, UAE, the Company has till date received back Rs.8,09,47,500/-. We are confident that our Company will receive the balance amount also from its WOS and the outstanding amount due from our WOS is fully recoverable.
- 8.4.2.4. With specific reference to para 3.4.4 of SCN, we wish to submit that in the Audited Annual Accounts of WOS for FY ended 31.03.2021 the following disclosures under Related Party Transactions have been made,

Kindly refer Note No.4 and 5 as reproduced herein below:

"#4. Related Party Transactions

The Entity enters into transactions with other entities that fall within the definition of a related party as contained in IAS 24, Related party disclosures. Such transactions are in the normal course of business and at terms that correspond to those on normal arms-length transactions (except revenue related transactions) with third parties. Related parties comprise entities under common ownership and/or common management and control; their partners and key management personnel.

The management decides on the terms and conditions of the transactions and services received/ rendered from/ to related parties as well as other charges, if applicable.

a) Due to related parties

<i>Amount due to related</i>	<i>17,540,277</i>	<i>17,540,277</i>
<i>Party</i>	<i><u>17,540,277</u></i>	<i><u>17,540,277</u></i>

Note: There is no written contract/obligation of repayment and consideration against the amount due to the related party; and it has been considered as current liability to be repay, whenever requested by the related party.

5. Advances, deposits and other receivables

<i>Other receivables</i>	<i>17,540,277</i>	<i>17,540,277</i>
	<i><u>17,540,277</u></i>	<i><u>17,540,277</u></i>

- 8.4.2.5. With specific reference to para 3.4.4.2 of SCN, we refute that the Loans advanced by our Company to its WOS has been shown as trade payable in the books of accounts of WOS, as alleged.

- 8.4.2.6. With specific reference to para 3.4.4.3 and 3.4.4.4 of SCN, we wish to submit that the analysis of Financials of WOS for the FY 2009-10 to 2012-13 are of no relevance as the Investigation Period is from 01.04.2016 to 31.03.2021.
- 8.4.2.7. With specific reference to para 3.4.4.5 of SCN, we wish to submit that the Loans to WOS was reclassified as current assets from FY 2017-18 as on reassessment of amount due from WOS, the Board of Directors of the Company were advised that since the amount was due from its WOS and was fully recoverable the same should be shown under the head current assets.
- 8.4.2.8. With specific reference to para 3.4.7 of SCN, we refute that the treatment of accounts with regard to Loans to WOS is in violation of para 66 of IND AS 1, 'Presentation of Financial Statements' as alleged.

8.4.3. Findings on Allegation 4:

- 8.4.3.1. On the basis of some preliminary examination by NSE, the SCN has raised suspicion on the existence of the WOS of Excel. However, after going through the copies of the Commercial Licence No. 5004599 of WOS i.e. Excel Info FZE issued by RAKEZ (Ras Al Khaimah Economic Zone Authority), as presented by the Noticees with their reply, I find that the Trade License of the WOS of Excel was renewed every year and hence, the doubts on existence of the WOS as expressed in the SCN are misplaced.
- 8.4.3.2. The SCN alleges that the WOS has transferred the funds received from Excel (shown as trade payables) to other party/parties (shown as Trade Receivable). The SCN states that the balance as on March 31, 2013 of Trade Receivables and Trade Payables continued to be carried forward till FY 2020-21 in the books of WOS. Therefore, the SCN alleges that in the absence of any corresponding turnover of WOS, the balance of Trade Receivable's indicates that there is deliberate attempt on part of Excel to misrepresent the financials and misuse and divert funds.
- 8.4.3.3. I note that the Noticees have failed to explain or provide any documentary proof in support of the Trade Receivable's of WOS of Excel. Excel has in its reply produced an extract of 'Note no. 4 and 5 of Audited Annual Accounts of WOS for FY ended March 31, 2021, however, Excel has failed to provide the copy of the Audited Annual Account of WOS for the year ended March 31, 2021, hence, the claims of Excel based on these Notes are not tenable.

8.4.3.4. The Noticees have submitted that it is not the case of the SCN that the funds lent to WOS by Excel have been routed to the promoters of Excel or its connected entities. The Noticees have further submitted that there was no misuse or diversion of funds and that the funds were lent to the WOS for genuine business purposes and out of the Rs. 22,91,61,591/-, Rs.898.90 Lakhs has already been returned by WOS till July 19, 2023. I note that the fact of belated efforts of Excel to recover the funds from its WOS, does not help the case of the Noticees as far as the allegations of misrepresentation of financials are concerned. In any event, I note that the funds lent by Excel to WOS has been incorrectly treated by the WOS as Trade Payable. Further, the amount lent by Excel to WOS has been outstanding in the consolidated financial statements of Excel as Trade Receivables since FY 2011-12 to FY 2020-21, without any return during this period. I note that the said amounts ought to have been written-off by following the norms of provisioning in terms of IndAS 109. Further, the refund came about in the year 2022 after the adverse remarks being raised by the statutory auditors from the FY 2017-18 and after the issuance of SCN in the present matter. Also, the return of funds does not justify the failure to make appropriate provision for 10 long years. Thus, I find that the consolidated Financial Statements of Excel for the FY 2016-17 to 2020-21 were misrepresented, since it ought to have made provisioning for the loans to WOS in terms of IndAS 109. On failure to provide for the appropriate provisioning, I note that Excel has violated the provisions of Reg. 48, Regulation 33(1)(a) and Regulation 33(1)(c) read with Regulation 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(j) of SEBI (LODR) Regulations, 2015.

8.4.3.5. With respect to the allegation of re-classification of loans to WOS from non-current asset to current asset from FY 2017-18, the Noticees have submitted that on reassessment, the Board of Directors of Excel were advised that since the amount was due from its WOS and was fully recoverable the same should be shown under the head current assets. I note that as brought out in the earlier para, the loans to WOS ought to have been completely written-off. Without prejudice, I find that the alleged

reclassification was also based on whimsical grounds. A current asset is not 'Current' merely because it is fully recoverable and due, it has to satisfy any of the four criteria's enlisted in para 66 of IndAS 1. I find that even if the board of Excel expected that the loans to WOS would be realized in the next 12 months, which did not happen, Excel could have rightly changed the classification from FY 2017-18. However, I find that the loans to WOS continued to be shown as 'Current Assets' even after FY 2017-18. Therefore, I find that the reasons for classification of loans to WOS from 'non-current' to 'current' were not in line with the requirements of Para 66 of IndAS 1. Thus, I find that Excel has failed to comply with IndAS 1 for the FY 2017-18 to FY 2020-21, resulting into violation of Regulation 48, Regulation 33(1)(a) and Regulation 33(1)(c) read with Regulation 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(j) of SEBI (LODR) Regulations, 2015.

9. On the basis of the discussion in the foregoing paragraph no. 8, I note that the transactions for purchase of immovable properties from 24 entities which have been shown by Excel as 'Investments / Advances' and which constituted around 66% of the Total Assets of Excel over the years, have been found to have inflated the Assets and Profits of Excel during the period from FY 2016-17 to FY 2020-21. The Trade Receivables in the consolidated financial statements of Excel have been found to be misrepresented. The investors in the shares of Excel were led to believe the story which was communicated to them vide the financial statements of Excel for the FY 2011-12 to FY 2020-21. I find that these financial statements were manipulated and significantly misstated. I note that since the Examination Period in the present SCN is limited to the period from FY 2016-17 to 2020-21, hence, I shall limit my findings to the said period. I note that the publication of these manipulated financial results during FY 2016-17 to FY 2020-21, which were untrue and misleading, operated as deceit on the shareholders of Excel. The markets have not considered the above mentioned misrepresentation by Excel since the investors have been kept in dark not knowing the facts as detailed above. Had the information regarding misrepresentation of financials known to the investors, there would have been a fall in share price of Excel. In view of the above, I find that Excel has violated the provisions of Section 12A(c) of SEBI Act, 1992 and Regulation

3(d), Regulation 4(2)(k) read with Regulation 4(1) of SEBI (PFUTP) Regulations, 2003.

10. I note that Noticee no. 2 is the promoter and he was the Chairman–cum- Managing Director of Excel during the FY 2016-17 to 2020-21. During pre-SCN inquiry in the present matter, Noticee no. 2 had submitted that all the decisions of Excel both management and financial were taken by him on behalf of the Excel. The minutes of the proceedings of Inquiry were annexed with the SCN. Noticee no. 2 has not denied aforesaid submissions made at the time of pre-SCN Inquiry. Therefore, I find that Noticee no. 2 is responsible for the violation of Regulation 34(3), Regulation 48, Regulation 33(1)(a) and Regulation 33(1)(c) read with Regulation 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(j) of SEBI (LODR) Regulations, 2015, by Excel. Further, I note that Noticee no. 2 has falsely certified that the financial statements of the Company for the Examination Period, present a true and fair view of the Company's affairs and are in compliance with existing accounting standards, applicable laws and regulations. Thus, I find that Noticee no. 2 has violated the provision of Regulation 17(8) and proviso to Reg. 33(2)(a) of SEBI (LODR) Regulations, 2015. I note that, considering the financial statements of Excel were found to be misrepresented and manipulated, Noticee no. 2 being the managing director of Excel, deliberately chose to furnish untrue and fraudulent compliance certificate under Regulation 17(8) of the SEBI (LODR) Regulations, 2015. Therefore, I find that Noticee no. 2 has also violated the provisions of Section 12A(c) of SEBI Act, 1992 and Regulation 3(d), Regulation 4(2)(k) read with Regulation 4(1) of SEBI (PFUTP) Regulations, 2003. For failing to ensure the integrity of the listed entity's accounting and financial reporting systems, I find that Noticee no. 2 has also violated Regulation 4(2)(f)(ii)(7) of SEBI (LODR) Regulations, 2015.

11. I note that Noticee no. 3 and 4 were the whole time executive directors of Excel during the Examination Period. Noticee no. 3 is the spouse of Noticee no. 2 and Noticee no. 4 is the son of Noticee no. 2 and 3. Noticee no. 3 and 4 have claimed that they were not responsible for the Accounting and compliance function at Excel. However, I find this claim by the said Noticees to be a mere bald assertion without

any supporting documents. Claims made merely to escape from the consequences of the present proceedings. These Noticees have not even stated the functions/ portfolio's which they were handling, if not for Accounting/ Compliance. Nonetheless, regardless of the departments being looked after by them at Excel, the obligation to authenticate and approve the quarterly/ annual financial statements under Regulation 33(2)(a) and 33(2)(d) of SEBI (LODR) Regulations, 2015 is direct and definite. Noticee no. 3 and 4 have claimed that the financial statements were already vetted by the Audit Committee, hence they were not expected to intervene. I note that the obligation of Audit Committee is to recommend the financial statements but the responsibility of the board of directors is to authenticate and approve the financial statements. Thus, the members of the board cannot abdicate from liability merely because the Audit committee has recommended. Further, their continued silence on the bloated Balance Sheet of Excel, despite the remarks of the statutory auditors of Excel in 'Emphasis of matter' paragraph of the Audit Report, speaks a lot about their connivance with Noticee no. 2 in perpetrating the fraudulent disclosure. I note that Noticee no. 3 is also a signatory to all the annual financial statements disclosed in the Annual Report for the FY 2016-17 to 2020-21. In view of the above, I find that Noticee no. 3 and 4 are also responsible for the violation of Regulation 34(3), Regulation 48, Regulation 33(1)(a) and Regulation 33(1)(c) read with Regulation 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(j) of SEBI (LODR) Regulations, 2015, by Excel. For being part of the fraudulent scheme alongwith Noticee no. 2, I find that Noticee no. 3 and 4 have also violated the provisions of Section 12A(c) of SEBI Act, 1992 and Regulation 3(d), Regulation 4(2)(k) read with Regulation 4(1) of SEBI (PFUTP) Regulations, 2003. For failing to ensure the integrity of the listed entity's accounting and financial reporting systems, I find that Noticee no. 3 and 4 have also violated Regulation 4(2)(f)(ii)(7) of SEBI (LODR) Regulations, 2015.

12. I note that Noticee no. 5 was the Chief Financial Officer of Excel during the entire period of the Examination Period. I note that the financial statements of Excel have been found to have been misstated for the Examination Period. In view of the same, I find that the Certificates issued by Noticee no. 5 under Regulation 17(8) of SEBI (LODR) Regulations, 2015, certifying that the financial statements of Excel

for the Examination Period, do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading, turns out to be false. I note that being the CFO of Excel, Noticee no. 5 deliberately chose to furnish such false Certificates to facilitate the Scheme of fraudulent disclosure carved out by Noticee no. 2, 3 and 4. In view of the above, I note that Noticee no. 5 has violated the provisions of Section 12A(c) of SEBI Act, 1992 and Regulation 3(d), Regulation 4(2)(k) read with Regulation 4(1) of SEBI (PFUTP) Regulations, 2003, and Regulation 17(8) and proviso to Reg. 33(2)(a) of SEBI (LODR) Regulations, 2015.

13. The Noticees have been called upon by the SCN, to show cause as to why penalty under Section 15HA and 15HB of the SEBI Act, 1992 should not be imposed on them, for the violations alleged to have been committed by the Noticees. The relevant extract of Section 15HA and Section 15HB of SEBI Act, 1992 is as under:

“Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, 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 or three times the amount of profits made out of such practices, whichever is higher

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”

14. I find that as in the present case, violations of Section 12A(c) of SEBI Act, 1992 and provisions of SEBI (PFUTP) Regulations, 2003 have been made out against the Noticees in the foregoing paras, therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against the Noticees. Regarding the allegation of violation of Section 15HB of SEBI Act, 1992 as alleged against the Noticees, I note that for the violation of SEBI (LODR) Regulations, 2015, Excel is liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, the rules or the

regulations made or directions issued by SEBI for which no separate penalty has been provided. Since, SEBI (LODR) Regulations, 2015 are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HAA) does not separately provide for any penalty for violation of SEBI (LODR) Regulations, 2015, therefore, for violation of SEBI (LODR) Regulations, 2015 by Excel, as found in this order, penalty under Section 15HB is attracted against Excel. Similarly, Noticee no. 2 to 5 who are the directors/CFO of Excel are liable for imposition of penalty, for the violations of SEBI (LODR) Regulations, 2015 which are found to be committed by them, under Section 15HB of the SEBI Act, 1992.

15. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

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

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

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

16. I note that it has been found that the transactions executed by the Excel with 24 seller parties amounting to around Rs. 119 crore constituting approximately 66% of the Total Assets of Excel during the period from FY 2016-17 to 2020-21, were misrepresented in the Balance Sheet of Excel for the said period. I note that Noticee no. 2 was the Chairman cum Managing Director of Excel during the period FY 2016-17 to 2020-21. I note that both management and financial decisions were taken by Noticee no. 2 on behalf of the Excel. Noticee no. 3 and 4 were the whole

time directors of Excel for the same period. Being part of the board of directors, Noticee no. 3 and 4 approved the financial statements of Excel. I note that all the violations which have been identified in the previous paragraphs took place at the time when Noticee no. 2, 3 and 4 were at the helm of affairs at Excel. I note that Noticee no. 5 was the Chief Financial Officer of Excel for the period FY 2016-17 to 2020-21 i.e. the period when the financial statements of Excel are found to have been misrepresented. I also note that Excel has claimed that out of the Rs. 22,91,61,591/-, Rs.898.90 Lakhs has already been returned by WOS till July 19, 2023. Excel has produced certificates from Chartered Accountant certifying the return of money from WOS. Excel has also produced copies Foreign Bill Transaction Advice from Federal Bank as supporting evidence in support of its claim.

17. I note that in terms of the Companies (Auditor's Report) Order, 2020, the Statutory Auditor of a Company is expected to report specifically *inter alia* on the following items:

- I. whether during the year the company has made investments in, provided any guarantee or security or granted any loans or advances in the nature of loans, secured or unsecured, to companies, firms, Limited Liability Partnerships or any other parties, if so, indicate-
 - a. whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-
 - A. the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to subsidiaries, joint ventures and associates;
 - B. the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to parties other than subsidiaries, joint ventures and associates;
 - b. whether the investments made, guarantees provided, security given and the terms and conditions of the grant of all loans and advances in the nature of loans and guarantees provided are not prejudicial to the company's interest;
 - c. in respect of loans and advances in the nature of loans, whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;
 - d. in case any loan or advance in the nature of a loan is given which was due for repayment during the year and has been renewed or extended or fresh loans granted to settle the overdue of existing loans given to the same parties;

- e. in case the company has given any loans or advances in the nature of loans either repayable on demand or without specification of any terms or period of repayment.

I further note that in terms of Section 173 of the Companies Act, 2013, the terms of reference of every Audit Committee shall, *inter alia*, include the following:

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors' report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties:
Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;
- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters.

In view of the aforesaid provision of Section 177 of the Companies Act, 2013, it would be appropriate, if the return of balance money from the WOS of Excel, is overseen by the Audit Committee of Excel.

Directions and monetary penalties:

18. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), and 11B(1), 11B(2) of SEBI Act, 1992 read with Section 19 and Rule 5 of the SEBI (Procedure for holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 1995, direct as under:

- (i) Noticee no. 1 shall take all steps to bring back the balance amount of funds outstanding from the WOS of Excel within a period of one (1) year from the

coming into force of this order. The Audit Committee of Excel shall review the compliance of this direction at regular intervals;

- (ii) Noticee no. 1 is restrained from accessing the securities market for a period of six (6) months, from the date of coming into force of this order;
- (iii) The Noticee no. 2 is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of two (2) years, from the date of coming into force of this order;
- (iv) The Noticee no. 3, 4 and 5 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of one (1) year, from the date of coming into force of this order;
- (v) Noticee no. 2 is restrained from being associated with the securities market including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI or any Market Infrastructure Institution, for a period of one (1) year, from the date of coming into force of this direction;
- (vi) The Noticee no. 1, 2, 3, 4 and 5, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
Noticee no. 1	Excel Realty N Infra Limited	Section 15HA of the SEBI Act, 1992.	5 lakh (Five Lakh)
		Section 15HB of SEBI Act, 1992	5 lakh (Five Lakh)
Noticee no. 2	Mr. Lakhmendra Chamanlal Khurana	Section 15HA of the SEBI Act, 1992.	90 Lakh (Ninety Lakh)
		Section 15HB of SEBI Act, 1992	10 lakh (Ten Lakh)
Noticee no. 3	Mrs. Ranjana Khurana Lakhmendra	Section 15HA of the SEBI Act, 1992.	20 Lakh (Twenty Lakh)
		Section 15HB of SEBI Act, 1992	5 lakh (Five Lakh)

Noticee no. 4	Mr. Arpit Lakhmendra Khurana	Section 15HA of the SEBI Act, 1992.	20 lakh (Twenty Lakh)
		Section 15HB of SEBI Act, 1992	5 lakh (Five Lakh)
Noticee no. 5	Mr. Pramod Yeshwant Kokate	Section 15HA of the SEBI Act, 1992.	10 lakh (Ten Lakh)
		Section 15HB of SEBI Act, 1992	5 lakh (Five Lakh)

- (vii) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of coming into force of this order. The said Noticees shall remit / pay the said amount of penalties through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, CFID-SEC1, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

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

19. The obligation of the Noticees, restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of coming into force of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees,

restrained/ prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

20. This Order except direction at para 18(v) above, comes into force with immediate effect. The direction at para 18(v) shall come into effect after expiry of 45 days from the date of this order.

21. This Order shall be served on all the Noticees, the members of the Audit Committee of Excel, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of mutual funds to ensure necessary compliance.

Sd/-

Date: July 28, 2023

Place: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**