WTM/SM/IVD/ID1/7863/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - IN THE MATTER OF ASTRAZENECA PHARMA INDIA LTD.

In respect of:

Noticee No.	Noticee /Name of the entity
1.	AstraZeneca Pharmaceuticals AB Sweden **(PAN: AAGCA8106J)**
2.	Elliott Advisors (HK) Limited **(PAN: AAECE3912A)**
3.	Elliott Management Corporation
4.	Elliott Associates L.P.
5.	Elliott International L.P.
6.	The Liverpool Limited Partnership
7.	Mansfield (Mauritius) Limited **(PAN: AAFCM5272N)**
8.	Suffolk (Mauritius) Limited **(PAN: AALCS8892G)**

(The above *Noticees* are individually referred to by their corresponding name/number and collectively referred to as "*Noticees*")

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") came across certain reports stating, *inter alia,* that the Offer for Sale (hereinafter referred to as "**OFS**") through stock exchange mechanism of the shares of AstraZeneca Pharma India Limited (hereinafter referred to as "the *Company*" or **"*AZPIL*"**) carried out by its sole promoter AstraZeneca Pharmaceuticals AB Sweden (hereinafter referred to as **"*AZPAB*"**) on May 26, 2013 was a deliberate strategy to subsequently get the shares of *AZPIL* delisted at its own convenience . It was also reported that more than 94% of total shares offered through OFS had been subscribed by a group six Foreign Institutional Investors (hereinafter referred to as "**FIIs**") who were reportedly extending support to the promoters of AZPIL in the matter of delisting of AZPIL. The reports also stated that on March 1, 2014, *AZPIL* had informed the stock exchanges that it received a letter from *AZPAB*, proposing to make voluntary delisting

offer to the public shareholders of *AZPIL*. The said information was made public by the stock exchanges on March 3, 2014. As per those reports, *AZPAB* had also requested the board of directors of *AZPIL* to convene a meeting of the board and to take requisite steps to obtain the approval of the shareholders in this regard.

2. In view of the above reports about the OFS and the subsequent delisting offer of *AZPIL*, SEBI undertook an examination of the OFS exercise carried out by the promoter company of *AZPIL* and the earlier attempts made by *AZPIL* to delist its shares from the concerned stock exchanges. The said examination, *inter alia*, revealed the following: -

(1) *AZPAB* (the promoter) had made two unsuccessful attempts in the past to delist the shares of *AZPIL*. In 2004, the delisting could not be completed successfully as the delisting price (₹3,000 per share) discovered through reverse book building process was not acceptable to *AZPAB*. Again, in 2010, the delisting proposal of *AZPAB* was not approved by the shareholders of *AZPIL*.

(2) As on March 31, 2013, *AZPAB* was holding 89.99% of equity share capital of *AZPIL*. In order to comply with the Minimum Public Shareholding (hereinafter referred to as **"**MPS**"**) Norms stipulated in the Securities Contracts (Regulation) Rules, 1957, on May 28, 2013, *AZPAB* carried out OFS of 37,49,950 shares (i.e., 14.99% of equity share capital of *AZPIL*). BSE India Ltd (hereinafter referred to as "BSE") was the designated exchange for the OFS. ICICI Securities Ltd. (hereinafter referred to as "*ICICI*") was appointed as Seller Broker to the OFS. *ICICI* had carried out more than 60 road shows with prospective investors ahead of the OFS.

(3) Though on two previous trading days, i.e., May 24, 2013 and May 27, 2013, the price of the scrip on NSE closed at ₹694.05/- and ₹805.3/- respectively, the OFS floor price was fixed at ₹490/- on May 27, 2013. The cut-off price after book building was determined as ₹620/- per share.

(4) The OFS was oversubscribed 2.84 times. Out of the total 37,49,950 shares offered for sale, 35,25,773 (i.e. 94.02% of total shares offered through the OFS) were allocated to 6 FIIs/Sub-accounts.

(5) Elliott Advisors (HK) Ltd., a SEBI registered FII, provides management service to two end subscribers viz. Elliott International L.P. and Elliott Associates L.P. through Elliott

Management Corporation. From the information provided by Elliott Advisors (HK) Ltd., following relationships were observed among the end-subscribers of shares of *AZPIL*:

(a) Suffolk (Mauritius) Limited, a SEBI registered sub-account, is indirectly wholly owned by Elliott International L.P.
(b) Mansfield (Mauritius) Limited, a SEBI registered sub-account, is indirectly wholly owned by Elliot Associates L.P.
(c) The Liverpool Limited Partnership is a wholly owned by Elliott Associates, L.P.

(6) It was *prima facie* observed that all the end subscribers, i.e., Elliott Associates L.P., Elliott International L.P., The Liverpool Limited Partnership, Mansfield (Mauritius) Limited and Suffolk (Mauritius) Limited were related to each other and these end subscribers were ultimately connected to Elliot Advisors (HK) Limited through Elliott Management Corporation. Therefore, for the sake of convenience, Elliot Advisors (HK) Limited, Elliott Management Corporation, Elliott Associates L.P., Elliott International L.P., The Liverpool Limited Partnership, Mansfield (Mauritius) Limited and Suffolk (Mauritius) Limited are hereinafter collectively referred to as the "*Elliot Group/EG*".

3. In view of the aforesaid findings from the examination, SEBI passed an order dated June 24, 2014, with the following important observations: -

(i) *ICICI*, i.e., the selling broker, had conducted more than 60 road shows prior to the OFS. The OFS floor price was at significant discount to prevailing market price; still the *Elliott Group* was able to acquire 94.02% of the total quantity of shares offered through OFS.

(ii) The floor price was kept at ₹490 against the previous day's closing price of ₹805.3, which led the bids (2.84 times oversubscription) in the OFS hover around this price only. This facilitated the *Elliott Group* to mop up almost all the shares (i.e., 94.02%) offered in OFS at an average price of ₹625.35 which was lower than previous day's closing price by ₹179.95.

(iii) The OFS bid prices of the *Elliott Group* were significantly above the floor price and the then prevailing indicative price.

(iv) The *Elliott Group* entities had placed their bids in the OFS in synchronised manner through 6 FIIs/Sub-accounts and the final bid modifications were made few seconds ahead of the market closing.

(v) The *Elliott Group* entities had no previous exposure to the scrip of *AZPIL*.

(vi) The delisting offer was subsequently made within one year of OFS.

(vii) Earlier delisting offers were unsuccessful/rejected as the retail shareholders were either demanding a higher price of ₹3000 per share or were not keen to delist the *Company*.

(viii) Therefore, the shareholders' resolution passed subsequently, as required for delisting, could not have been successfully passed without favourable voting by the *Elliott Group*.

(ix) The *Elliott Group* and the participating FIIs, with their shareholding, i.e., 15.52% of the equity share capital were in a position to ensure that the delisting was successful even if none of the other public shareholders offer their shares.

(x) The *Elliott Group* by virtue of their 15.52% shareholding as against the 8.89% shareholding of all other public shareholders, had the potential to influence the delisting price in the impending delisting offer in a manner that could be detrimental to the interest of the other public shareholders.

4. In the aforesaid order dated June 24, 2014, it was also observed that if the suspected concerted/co-ordinated action of *AZPAB* and the *Elliott Group* were found to be true then their act/conduct might amount to contravention of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Practice Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the **"PFUTP Regulations, 2003"**) and hence, the matter required further examination in this regard. Through the aforesaid order, the following directions were also issued by SEBI:

(i) BSE and NSE were directed to closely monitor the entire delisting process of *AZPIL* and to allow the final delisting of its shares only after satisfying themselves that the process has been fair and transparent.

(ii) BSE and NSE were also directed to promptly report any aberrations noticed in the delisting process of *AZPIL* to *SEBI*.

(iii) *AZPAB* was directed to finally purchase shares from public shareholders in the delisting offer only after seeking approval of BSE and NSE.

5. The order dated June 24, 2014 was challenged by two public shareholders of *AZPIL,* namely, *Shri Satish Bhatt* and *Shri Pankaj Bhatt* by way of writ petition No. 2157 of 2014 before the Hon'ble Bombay High Court which was disposed of vide order dated October 08, 2010 with the directions, as reproduced herein below:

"25. In the result, we make the following order:

(A) The petitioners as well as respondent nos. 3 and 7 are at liberty to prefer appeal against the SEBI order dated 24 June 2014 under Section 15T of the SEBI Act, 1992 to the Securities Appellate Tribunal.

(B) In the event, appeals as aforesaid are preferred within six weeks from today, the Tribunal shall entertain the same without raising any objection as to limitation.

(C) Until the Tribunal hears and disposes of the petitioners' appeal, respondent nos. 3 and 6 shall not take any further steps in the process of delisting of equity shares;

(D) We request the Tribunal to hear and decide the appeals as expeditiously as possible and preferably by 28 February 2015."

6. Thereafter, the aforesaid petitioners, i.e., *Shri Satish Bhatt* and *Shri Pankaj Bhatt* filed Appeal no. 422 of 2014 appealed before the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as the "Hon'ble SAT"). The said appeal (wherein *AZPIL* and *AZPAB* were *Respondent Nos. 2 and 5, respectively)* was disposed of by the Hon'ble SAT vide its order dated September 11, 2015, with the directions as reproduced herein below:

"6. In these circumstances, we pass the following order:-

(a) Statement made by counsel for Respondent Nos. 2 and 5 that they shall not proceed with the delisting of equity shares of Respondent No. 2 Company till completion of investigation and passing order by SEBI on merits is accepted.

(b) SEBI shall complete the investigation within a period of six months from today and pass appropriate order on merits after hearing the parties including the Appellants as expeditiously as possible.

(c) If the order to be passed by SEBI on merits is adverse to the Appellants, then the said order shall not be given effect to from the date of passing the said order till it is communicated to the Appellants and four weeks thereafter. In other words, if the order is adverse to the Appellants then the above statement made by counsel for Respondent Nos. 2 and 5 shall continue till the order of SEBI is communicated to the Appellants and for a further period of four weeks."

7. As directed in the order dated September 11, 2015 passed by the Hon'ble SAT, SEBI completed its investigation in the matter of *AZPIL* for the period May 2, 2013 to March 30, 2014 (hereinafter referred to as "**investigation period**"). The investigation, *inter alia*, revealed as under:

(1) *AZPIL* wanted to delist its shares from the stock exchanges. *AZPIL* made two attempts for delisting of its equity shares in the years 2004 and 2010 which could not succeed. In the attempt made in the year 2004, the delisting price discovered through Reverse Book Building (RBB) process was ₹3000/- per share which was too high for the *Company* to meet hence, was rejected by the promoter, i.e., *AZPAB*. In the second attempt made in the year 2010, a special resolution as required to be passed as per regulatory compliance by the public shareholders of *AZPIL,* could not be passed.

(2) In terms of provisions Rules 19(2)(b) and 19A of the Securities Contracts (Regulations) Rules, 1957 (hereinafter referred to as **"**SCRR**"**), *AZPIL* was required to achieve 25% minimum public shareholding by June 03, 2013 as it was having only 10% public shareholding at the end of March, 2013.

(3) To achieve minimum public shareholding, as required in terms of the provisions of the SCRR, *AZPIL* resorted to the method of OFS by its promoter to public.

(4) Six FIIs/ participatory notes/ sub-accounts, namely, Elliott Management Corporation, Elliott Associates L.P., Elliott International L.P., The Liverpool Limited Partnership, Mansfield (Mauritius) Limited and Suffolk (Mauritius)

Limited collectively purchased 94.02% of the shares sold through OFS. These FIIs/ participatory notes/ sub-accounts were connected and formed part of the *Elliot Group*.

(5) Before commencing OFS, in order to appoint advisor and selling broker for the OFS, *AZPAB* had sent an e-mail to various banks including *ICICI* inviting them to tender and make presentations with regard to their eligibility for appointment as advisor and selling broker.

(6) Thereafter, on March 28, 2013, *ICICI* was formally appointed as a Selling Broker for OFS as well as a Merchant Banker for delisting of shares in case *AZPAB* decides to delist instead of reducing its shareholding prior to June 03, 2013.

(7) As early as February 10, 2013, before the formal appointment of *ICICI*, in reply to an e-mail from *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) about assessment of the presentations made by participating banks, *Mr. Pawan Singhal* (Company Secretary - *AZPIL*) indicated his preference for selecting *ICICI* as *ICICI* would prefer to contact the existing key shareholders informally to get a sense about possibility of delisting at an acceptable price and if that is not feasible then would go full throttle on OFS.

(8) Various presentations and e-mails were exchanged between *AZPAB,* Elliott Advisors (HK) Limited, Elliott Management Corporation, Elliott Associates L.P., Elliott International L.P., The Liverpool Limited Partnership, Mansfield (Mauritius) Limited and Suffolk (Mauritius) Limited prior to the OFS. After the appointment of *ICICI*, AZ Group and *ICICI* conducted road shows for attracting the potential investors for participation in the OFS. The road shows were conducted in Mumbai, Hong Kong, Singapore, Chennai and Delhi.

(9) In a series of e-mail correspondences pertaining to prospective investors profiles during OFS road shows between April 20, 2013 and April 26, 2013, it is seen that there were queries from *Mr. Ian Brimicombe* (VP, Corporate Finance, *AZ Group*) and *Mr. Himanshu Agarwal* (CFO - *AZPIL*) to *ICICI* as to whether the potential investors in *AZPIL* would like to participate in future delisting of *AZPIL*, and what would be their investment horizon, risk appetite and investment amount, etc.

(10) *ICICI* through a reply dated April 25, 2013 to *Mr. Ian Brimicombe* clarified that investors would be open and in fact would welcome the possibility of delisting. The return expectation would vary with each investor. Further, *ICICI* offered to work towards developing a consensus amongst investors so that delisting premium is reasonable from the *AZ Group* perspective while still being acceptable to investors from a return perspective.

(11) *AZPAB* and *ICICI* met Elliott Advisors (HK) in Hong Kong on May 15, 2013. The *Elliot Group* had no previous exposure to the scrip of *AZPIL*. The interest in the scrip was apparently a result of a road show meeting between *AZPAB*, Elliott Advisors (HK) and *ICICI* official on May 15, 2013.

(12) On May 24, 2013, *AZPAB* filed a notice of OFS with BSE to sell an aggregate of 37,49,950 equity shares of face value of ₹2/- each of *AZPIL* on May 28, 2013**.** After meeting with various investors during road shows, OFS floor price was fixed at ₹490/- per share against the previous day's (May 27, 2013) closing price of ₹805/- per share (i.e., at a discount of ₹315/- per share).

(13) In the OFS process, the *Elliot Group* successfully acquired almost all the shares offered in OFS (35,25,773 shares out of 37,49,950 available in OFS) at an average price of ₹625.35 which was lower than previous day's closing price of ₹805/- per share by ₹179.95/-.

(14) On an analysis of OFS data for the period January 1, 2012 to June 4, 2014, though 80 companies out of 113 were found to have offered shares at a discount during their OFS, the average discount of the OFS floor price (excluding the OFS of *AZPIL*) was **20.52%.** However, the OFS floor price of *AZPIL* was at a discount of 38.65% which was much lesser as compared to that offered by *AZPIL.*

(15) The discount offered during the OFS was substantially higher than available at any other OFS apparently indicated that the intention of OFS, apart from regulatory compliance of MPS, was also to ensure that incoming institutional investors get enough traction for impending delisting process.

(16) Further, the *Elliott Group,* while participating in the OFS bid, amended its order in the last minute of the OFS bidding by increasing bid price substantially (from

around ₹580 - ₹592 to ₹620 - ₹630) to corner the shares in OFS. It cornered 35,25,773 shares out of 37,49,950 available in OFS by modifying bids in the last few minutes.

(17) Further, two entities of the *Elliott Group*, namely, Elliott International L.P. and Elliott Associates L.P., in between them, purchased a total of 3,54,196 shares since May 29, 2013, i.e., day immediately after the OFS and continued to do so over a period until September 12, 2013 from the market via p-notes as shown below:-

Sr. No.	**Participating FII**	**Entity Name**	**No. of Shares Purchased after OFS**	**Average Price (in ₹)**
1	Morgan Stanley Asia (Singapore) Pte	Elliott International L.P.	122308	748.55
		Elliott Associates L.P.	1152	
2	Merrill Lynch Capital Markets Espana S.A. Svb	Elliott International L.P.	190227	750.28
		Elliott Associates L.P.	40509	
Total			**3,54,196**	**749.67**

(18) The purchase of such quantities of shares (38,79,969 shares) by the *Elliott Group* in a scrip (to which it had no previous exposure) with a daily average trading volume of only 37,501 shares (NSE) for the past one year prior to OFS, i.e., the quantities purchased were more than 100 times of the daily average volume, was not a normal action, as post OFS, it would have been extremely difficult to sell such huge number of shares (as purchased by the *Elliott Group*) at the market prices. This fact is also corroborated by the observation made in an e-mail dated February 07, 2014 by *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) addressed to his colleagues stating that "*if our activist (EG) wants to sell in the market he will not make any at current prices*". Further, buying shares of *AZPIL* represented a high risk since *AZPIL* had suspended its production resulting in a near term adverse financial impact as mentioned in the Corporate Presentation dated May 07, 2013.

(19) As per the SEBI (Delisting of Equity Shares) Regulations, 2009 (hereinafter

referred to as "the Delisting Regulations, 2009"), a special resolution with regard to delisting of equity shares can be acted upon '*if and only if* ' the votes cast by the public shareholders in favour of the proposal amount to at least two times the number of votes cast by public shareholders against it. Further, for a delisting offer to be successful, the post offer shareholding of the promoter group should be higher than 90% of the total issued share capital. The delisting is required to be done as per the reverse book building process.

(20) The total shareholding of the *Elliott Group* from September 12, 2013 till the end of Investigation Period was 38,79,969 shares (i.e., 15.52% of total shareholding). The *Elliott Group* did not trade in the scrip until the end of the said period. After the cornering of the shares by the *Elliott Group*, the total shareholding of the *Elliott Group* alongwith that of the promoter of *AZPIL* was just above 90%, i.e., just enough to meet the delisting requirements.

(21) Therefore, purchasing as many shares as possible in the OFS and subsequent additional purchases of shares from the market was the only way whereby the *Elliott Group* could have ensured that it was the only public shareholders group, who have the required quantity of shares and who could be instrumental in helping *AZPAB* to achieve the prescribed 90% shareholding of *AZPIL* through delisting. Further, this combined 90% shareholding also gave the promoters and the *Elliott Group* enough voting power together to fix the final delisting price, as per their convenience.

(22) In order to achieve the delisting target of *AZPIL*, it was necessary for the promoter, i.e., *AZPAB* to take its shareholding from 75% to minimum of 90% through RBB process. If the *Elliott Group* offers its stake of 15.52% during RBB process to the promoter then promoter's shareholding would become 90.52% with support of the *Elliott Group*. Thus, *AZPIL* can achieve delisting, without the participation of retail shareholders, with the help of the *Elliott Group*. In an internal e-mail from *Mr. Simon Loweth* (CFO - *AZ Group*) to *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) on the day after OFS, i.e., May 29, 2013 *Mr. Simon* categorically has stated that "*after a month or two we re-launch the buy-back".*

(23) Regarding the delisting price, as stated in the point 12 of Schedule II of the

Delisting Regulations, 2009, *"The final offer price shall be determined as the price at which the maximum number of equity shares is tendered by the public shareholders. If the final prices is accepted, the promoter shall accept all shares tendered where the corresponding bids placed are at the final price or at a price which is lesser than the final price. The promoter may, if he deems fit, fix a higher final price."*

(24) As there were only 8.99% of the retail shareholders, compared to 15.52% shareholding held by the *Elliott Group*, the *Elliott Group* was in a robust position to influence the price of the delisting and hence, the *Elliott Group* alongwith the promoter had the potential to influence the delisting price in the proposed delisting offer in the manner that could be detrimental to the interest of these left out retail shareholders.

(25) The RBB in the delisting process for the price discovery is a method by which the delisting offer price is achieved fairly as per the Delisting Regulations, 2009. The fairness could be achieved only when the delisting company or the promoters of the delisting company do not do anything which can interfere or influence the price discovery mechanism prescribed under the RBB process.

(26) Contrary to that, it was noticed from various email or other correspondences that the *Elliott Group* and the promoter of *AZPIL* were engaged in discussions for strategically influencing the delisting price outside the permitted price discovery mechanism of RBB process so as to suit their needs without any regard for the interest of the minority public shareholders.

(27) After the OFS, the *Elliott Group* and the promoter of *AZPIL* have entered into discussions with each other. *Mr. Sachin Mistry* (Associate Portfolio Manager, Elliott Advisors (HK) Ltd.) met the promoter's, (i.e., *AZPAB)* representative *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) separately after the OFS on three occasions starting from July 8, 2013.

(28) Thereafter, on July 09, 2013, a telephonic request was made from *AZPAB*/ *AZ Group* to *ICICI* seeking Internal Rate of Return (hereinafter referred to as **"IRR"**) calculations to buy out shareholders of *AZPIL* including the *Elliott Group*. In the said discussion *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Ravi Talwar* (Sr. VP, *ICICI*) participated.

(29) It shows that as early as July 9, 2013 *AZPAB* and *ICICI* were already engaged in working out the amount of money that may be required to buy out shareholders including the *Elliott Group* shareholders at various IRRs.

(30) After seeking the IRR details from *ICICI*, the *Elliott Group* and *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) again met in London on July 08, 2013. Pursuant to their request, on July 16, 2013 *ICICI* shared an excel sheet containing IRR calculations to enable *AZPAB* to buy out shareholders of the *Company* including the *Elliott Group*.

(31) Thereafter, vide email dated August 16, 2013, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) asked *ICICI* to prepare a revised excel sheet to determine sensible limit and range for negotiations with the *Elliott Group*. Vide e-mail dated August 16, 2013, *Mr. Ian Brimicombe* informed *ICICI* that it would decide its sensible limits for "*negotiation with Elliot*".

(32) On August 20, 2013, *Mr. Sachin Mistry* (Associate Portfolio Manager - Elliott Advisors (HK) Ltd.) met *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) at the Annual General Meeting of *AZPIL*. Thereafter, they met on October 03, 2013 in London.

(33) Vide e-mail dated September 11, 2013, *ICICI* indicated to *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) that the exact price would be determined closer to the delisting process depending on the then prevailing market conditions and "*outcome of negotiations*".

(34) Vide another email dated September 19, 2013 to *Mr. Simon* (CFO - *AZ Group*), *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) stated that he had spoken to the largest shareholder, the *Elliott Group* and that the *Elliott Group* was ready to hear more on their next move.

(35) *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) vide his email dated September 23, 2013 addressed to *Mallon Mark* and *David Smith* (EVP Operations) with copy to *Simon Lowth* (then CFO and Executive Director), attaching therewith a delisting paper, stated the *Elliott Group* is willing to sell its stake. The said email

stated "*We have a single large shareholder owning 15.1% who can determine the delisting outcome and is inclined to sell short term. If we wait, his holding may dissipate over time meaning, it would be more difficult to delist."* It was further mentioned that "*Our largest shareholder fund would expect an internal rate of return of at least 25% and possibly as high as 40%. This would be subject to negotiation*." Thereafter, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) had a telephonic conversation with *Mr. Sachin Mistry* (Associate Portfolio Manager, Elliott Advisors (HK) Ltd.) on November 14, 2013.

(36) Vide e-mail dated December 03, 2013, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) addressing to the new CFO (*AZ Group*), *Mr. Dunoyer,* stated that the *Elliot Group* is a willing seller and it is about getting the "*best price possible and achieving a fair value*"**.** Further, the mail recommended that negotiations on the price should start once *Boris* is announced. Thereafter, on January 31, 2014 *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (Associate Portfolio Manager, Elliott Advisors (HK) Ltd.) met in London.

(37) Pursuant to the above stated meeting, vide email dated February 09, 2014, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) addressing to *Mr. Dunoyer*, recorded in his email that the "*negotiating position has now swung in our direction as the share price is low*" and that the *Elliott Group* was a willing seller who have bought at around ₹700/- per share through OFS and would do a sensible deal at fair value. It further signifies that in all the aforesaid email conversations and discussions, the interest of the minority shareholders has been diluted out of picture. The details of the series of communications /events that happened post OFS, from August 16, 2013 to March 03, 2014 with respect to the delisting process of *AZPIL* are enumerated below.

Sl. No.	Date	Event	Participants
1.	16/08/2013	E-mail from *AZPAB/AZ Group* to *ICICI* attaching draft paper on delisting.	Sender: *Ian Brimicombe*, (*AZ Group*) Receiver: *Ravi Talwar (ICICI).*
2.	30/08/2013	Circulation of draft paper on potential for delisting *AZPIL* within *AZ Group* through e-mail	Sender: *Ian Brimicombe* Receiver: *Mallon Mark* (Executive VP International); *Greg*

			Muellon (Deputy General Counsel International); *Graham Baker* (VP Finance International) (**all from *AZ Group***)
3.	19/09/2019-23/09/2013	Internal discussions in *AZ Group* on delisting via e-mail	*Ian Brimicombe* (VP Corporate Finance, *AZ Group*) and *Simon Lowth* (then CFO and Executive Director of *AZPAB* who resigned and David Smith (EVP Operations) (**all from *AZ Group***)
4.	19/11/2013	Updated draft paper by *ICICI*.	Sender: *Ravi Talwar (ICICI).* Receiver: *Ian Brimicombe* (*AZ Group*), *Vishal Kanjani (ICICI)*
5.	03/12/2013	Draft paper on potential for delisting *AZPIL* forwarded to new CFO, *AZ Group*.	Sender: *Ian Brimicombe*, (*AZ Group*) Receiver: *Marc Dunoyer* (CFO, *AZ Group*)
6.	13/01/2014	Updated draft paper by *ICICI*.	Sender: *Ravi Talwar (ICICI).* Receiver: *Ian Brimicombe (AZ Group)*, *Vishal Kanjani (ICICI)*
7.	07/02/2014 - 09/02/2014	Internal discussions in *AZ Group* via e-mail regarding feasibility of delisting considering the shareholding of the *Elliott Group* and possibility of sell off by the *Elliott Group* during the year; reasons for negotiating with the *Elliott Group* regarding delisting in view of low share price. – **Annexure 16 to the SCN**	Sender: *Ian Brimicombe* Receiver: *Mare Danoyes*; *Graham Baker*, *Andy, Staples* (Executive Director), *Miachael Diem* (SVP, Corporate Strategy) (**all from *AZ Group***)
8.	11/02/2014	Meeting with *ICICI* at Mumbai Office.	*Ian Brimicombe* (*AZ Group*), and *Ravi Talwar*, *Vishal Kanjani and Pranjal Srivastava (ICICI)*
9.	15/02/2014	Updated documents for reference of *AZ Group*	Sender: *Ravi Talwar (ICICI)*

			Receiver: *Ian Brimicombe (AZ Group)*, *Vishal Kanjani (ICICI)*
10.	21/02/2014-22/02/2014	Internal discussions at *AZ Group* via e-mail .	Sender: *Ian Brimicombe* Receiver: *Marc Dunoyer*
11.	25/02/2014	Draft board minutes/ resolutions/intimation letters/etc.	Sender: *Vishal Kanjani (ICICI)* Receiver: *Ian Brimicombe (AZ Group)*, and *Ravi Talwar and Pranjal Srivastava (ICICI)*
12.	26/02/2014	Email from *AZ Group* to *ICICI* stating conditional green light for delisting and stating "*AZPAB company secretary is good to go*". – **Annexure 16 to the SCN**	Sender: *Ian Brimicombe (AZ Group)* Receiver: *Ravi Talwar and Vishal Kanjani (ICICI).*
13.	27/02/2014	Changes made to draft intimation letter about delisting.	Sender: *Ian Brimicombe* Receiver: *Clair Marie*, *O'Grady* (Deputy Company Secretary), *Shelley* and *Barnett* (Company Secretary, Assistant) (all from *AZ Group*), and *Ravi Talwar and Vishal Kanjani (ICICI)*
14.	28/02/2014	*ICICI* mailed the process chart and Indicative Activity Schedule for reference to VP Corporate Finance, *AZ Group*	Sender: *Vishal Kanjani (ICICI)* Receiver: *Ian Brimicombe (AZ Group), and Ravi Talwar and Pranjal Srivastava (ICICI)*
15.	28/02/2014	*AZ Group* confirmed terms of engagement with *ICICI*	*Ian Brimicombe (AZ Group) and Ravi Talwar (ICICI)*
16.	28/02/2014	*AZPIL* officials and Chairman of *AZPIL* informed telephonically of the delisting proposal after market hours	*Mr. D E Udwadia (Chairman AZPIL)*, *Ian Bimicombe (AZ Group)*
17.	01/03/2014	*AZPAB* directors approve delisting offer through board resolution; necessary documentation sent to *AZPIL*.	*Jan-Olof Jacke, Yvome Bertlin, per Alfredsson (all from AZ Group)*

18.	01/03/2014	*AZPIL* notified exchanges regarding delisting proposal from *AZPAB*	*Pawan Singhal* (*AZPIL* Company Secretary)
19.	03/03/2014	Intimation of *AZPIL* available on the exchange Website	NA

(38) On March 01, 2014, *AZPAB* directors approved the delisting offer through a Board resolution and *AZPIL* notified the stock exchanges regarding delisting proposal from *AZPAB*. *AZPIL* informed the stock exchanges that its board had received an email dated March 01, 2014 with a scanned copy of the letter from its promoter *AZPAB*, proposing to make a voluntary delisting offer to the public shareholders of *AZPIL*. *AZPAB* had requested the board of *AZPIL* to:-

(i) convene a meeting of the board of *AZPIL* to consider and approve the delisting proposal, and

(ii) take requisite steps to obtain prior approval of the shareholders of *AZPIL* for the delisting proposal by a special resolution passed through postal ballot as per the requirements of the Delisting Regulations, 2009.

(39) Accordingly, a meeting of the board of *AZPIL* was scheduled on March 05, 2014. It was also observed that after the announcement of delisting was made in March 2014, the meetings and discussions and email conversations between *AZPIL* and the *Elliott Group* almost stopped. Contrary to the reasons given by the *Elliott Group* that their discussions with *AZPIL* were for discussions on the financials of the *Company*, it was observed that even after noticing that the quarterly financial results for the quarter ending December 2013 were belatedly declared on February 10, 2014 and the financial results for the entire year of FY 2013-14 were declared belatedly on May 30, 2014, there were hardly any calls/ correspondences / meetings held between the *Elliott Group* and *AZPAB* or *AZPIL* to discuss the financials of the *Company*. It appears that the discussions and the meetings that took place earlier between the *AZPAB* and the *Elliott Group* were mainly meant for influencing the delisting price for the *Company* which stopped soon after the announcement of delisting. The aforesaid engagement/interactions between *AZPAB* and the *Elliott Group* tantamount to acting fraud upon the other minority public shareholders, who were deliberately kept out of these discussions / correspondences and were not knowing about the secret negotiations about delisting pricing that were going on between the promoter of *AZPIL* with the *Elliott group*.

(40) Thereafter, pursuant to issue of postal ballot notice dated May 2, 2014, a special resolution was passed on June 20, 2014, wherein the *Elliott Group* voted in favour of the delisting proposal. The voting pattern in the delisting special resolution is exhibited as under:-

	Total Shareholding	**Promoter Shareholding**	**Public Shareholding (A)**	**Elliott Shareholding (B)**	**Public Shareholding excluding *Elliott* (C=A-B)**
Assent	20052560	1,87,50,000	13,02,560	11,45,963	1,56,597
Dissent	202765	0	2,02,765	0	2,02,765
Total Votes	20255325	1,87,50,000	15,05,325	11,45,963	3,59,362
Not Voting	4744675	0	47,44,675	27,34,006	2010669
Total No. of Shares	2,50,00,000	1,87,50,000	62,50,000	38,79,969	23,70,031

(41) It was thus observed that while proceeding to comply with MPS requirement through the OFS mechanism, the promoter of *AZPIL,* i.e., *AZPAB* ensured that the maximum number of shares in the OFS is bought by one single group of investors who can help it in its future delisting plans.

(42) *AZPIL* fixed the OFS floor price at ₹490/- per share as against the previous day's closing price of ₹805/- per share, i.e., at a discount of 38.65% as against the average of 20.52% discount normally offered by other companies in their OFS programmes during that period. The *Elliott Group*, who subscribed 94.02% of the shares of *AZPIL* offered through OFS by *AZPAB,* also purchased more shares of *AZPIL* from the market taking its shareholding in *AZPIL* to 15.52% of the total shareholding of the *AZPIL*.

(43) After conclusion of OFS, *AZPAB* and the *Elliott Group* entered into a series of fraudulent negotiations and correspondences with an aim to influence the delisting

price of the shares of *AZPIL*.

(44) Subsequently, as per pre-expectation, *AZPIL* also got passed the requisite special resolution by the public shareholders of *AZPIL*, as required in terms of the Delisting Regulations, 2009, with the help of favourable voting from the *Elliott Group*, who were holding 15.52% of the total shareholding of the *Company*.

8. As can be noted from the facts narrated above based on the attendant facts and circumstances, the delisting process undertaken by *AZPAB* could not proceed further in view of the stay granted by the Hon'ble Bombay High Court which was further continued by the Hon'ble SAT.

9. Pursuant to the investigation, a common show cause notice (hereinafter referred to as **"SCN"**) dated December 09, 2016 was issued to *AZPAB* (*Noticee 1*), Elliot Advisors (HK) Limited (*Elliot Advisors – Noticee 2*), Elliott Management Corporation (*Elliot Management – Noticee 3*), Elliott Associates L.P. (*Elliott Associates – Noticee 4*), Elliott International L.P. (*Elliott International – Noticee 5*), The Liverpool Limited Partnership (*Noticee 6*), Mansfield (Mauritius) Limited (*Mansfield – Noticee 7*) and Suffolk (Mauritius) Limited (*Suffolk – Noticee 8*) (hereinafter individually referred by their corresponding name/number and collectively referred to as "*Noticees*") calling upon them to show cause as to why suitable directions under sections 11(4) and 11B of the SEBI Act, 1992 should not be issued against them for the alleged violations Regulations 3(b), (c) & (d) and 4(1) of the PFUTP Regulations, 2003. The SCN was issued to the *Noticees* alleging, *inter alia*, that:

(1) Without participation of the *Elliot Group*, the number of shares with 'assent' to special resolution would be less than the number of shares with 'dissent'. Thus, the result of the voting on special resolution would have been radically different without the participation of the *Elliot Group* in the voting process. If the votes of the *Elliot Group* shareholding in the delisting resolution is removed, the resolution would have been defeated.

(2) The *Elliot Group* and the promoter of *AZPIL* jointly devised a scheme or artifice through their private negotiations for fraudulently influencing the delisting price. Their discussions primarily centred around determining a suitable internal rate of return for the *Elliot Group*. In determining an internal rate of return, both *AZPAB* and the *Elliot Group* had their own respective business interest. On the one hand the *Elliot Group* was interested to derive some return on its investment made by buying

the shares of *AZPIL* through the OFS while on the other hand any higher delisting price would involve extra financial burden on the promoter of *AZPIL*. Hence the promoter of *AZPIL* were interested to negotiate a delisting price with the *Elliot Group* as per their budget before the commencement of the delisting process.

(3) The very act of negotiations conducted by *AZPAB* with the *Elliot Group* for influencing the delisting price in advance, so as to keep it favourable to *AZPAB* and the *Elliot Group* and to circumvent the fair delisting price discovery through RBB mechanism, was fraudulent in nature.

(4) All public investors other than the *Elliot Group* were unaware that the *Elliot Group* held 15.5% of shareholding which was sufficient enough to help in passing a delisting special resolution and in determining the price of delisting through the RBB mechanism.

(5) Further, they were unaware that the promoter of the *Company* and the *Elliot Group* were in talks since July 2013 and the promoter had a deal with the *Elliot Group* in which, the *Elliot Group* would buy shares of *AZPIL* through OFS and would subsequently sell those shares back to the promoter of the *Company* at the time of delisting. The other public shareholders were also not aware that the *Elliot Group* and *AZPAB* had entered into fraudulent arrangement for influencing the delisting price, on the basis of the IRR linked pricing negotiations that was happening between them prior to the delisting process.

(6) The fact that the *Elliot Group* and *AZPAB* were already in talks before the delisting resolution, for influencing the delisting price, it was a vital fact that a single shareholders group, viz., the *Elliot Group* was capable of determining the outcome of the delisting and the price of delisting only such vital and material information was essential to be disseminated to all the shareholders to empower them before they can express their informed consent to the delisting resolution. This information was not available and was concealed from the retail investors. This information would have an impact on the decision of the public investors who have not participated and also to those who participated in delisting resolution. This information was actively concealed by the *Elliot Group* and *AZPAB* from the other public shareholders.

(7) The *Elliot Group* and *AZPAB* conducted discreet discussions for fraudulently influencing the delisting price and thereby have obstructed the flow of informed consent from the shareholders who participated as well as who did not participate

in the delisting resolution. Such information if made available to all the investors would have resulted in a different outcome.

10. I note that subsequent to the issuance of the SCN bearing the above noted findings and allegations, *AZPIL* and the *Elliott Group* have filed their respective replies to the SCN on March 16, 2017 and August 10, 2017. The *Noticees* were also afforded a personal hearing which was held on January 10, 2019 when *Noticee 1* was represented by their authorised representatives from M/s Bharucha & Partners (Advocates & Solicitors) and *Noticees 2 to 8* (the *Elliot Group*) were represented by their authorised representatives from M/s AZB & Partners (Advocates & Solicitors). After the conclusion of personal hearing, written submission dated February 11, 2019 was filed on behalf of the *Noticee 1* and a brief list of dates was filed on behalf of the *Noticees 2 to 8* on January 10, 2019 summarising the narrative of events that transpired during the relevant period of time. Further, in accordance with the order of the Hon'ble SAT in Appeal no. 422 of 2014, an opportunity of personal hearing was also granted to the appellants therein, namely, Mr. Pankaj Bhatt and Mr. Satish Bhatt. After completion of their personal hearing, the aforesaid appellants also have filed short submission in the matter vide email dated June 26, 2019. The submissions and assertions made by various *Noticees,* and also by the appellants, namely, Mr. Pankaj Bhatt and Mr. Satish Bhatt, are summarised herein below:

A. ***Noticee 1***:-

(1) *AZPAB* denies that it had engaged in any negotiations or colluded in any way with the *Elliott Group* with the intention of influencing the delisting price any time either during conducting the OFS or while initiating process for the delisting of shares in *AZPIL*.

(2) The OFS was made precisely to ensure that *AZPIL* remained compliant with applicable securities regulations. Any comparison between the OFS carried out by *AZPIL* and by other companies during the same period is unwarranted and misguided.

(3) The discount of 38.65% that was offered by the *Company* in the OFS, was intended to set the price at a level that was judged appropriate by *AZPAB's* investment advisers *ICICI* and *AZPAB* itself, after taking into account the financial condition of *AZPIL*, prevailing market conditions and the need to secure a quick sale of shares

so as to comply with a regulatory requirement to increase the public shareholding in *AZPIL* by a stated deadline.

(4) *AZPAB* was not aware of the *Elliott Group*'s intention to buy its shares from the OFS and the setting up of the floor price at a discounted rate was in no way intended to facilitate any plans that the *Elliott Group* may have had with respect to the shares of *AZPIL*.

(5) There was no discussion during the course of the roadshow presentation of OFS to *the Elliott Group* on May 15, 2013 which can be stated to be beyond the scope of the presentation and in particular there was no discussion of any possible delisting of *AZPIL* during such roadshow.

(6) Beyond the roadshow presentation, *AZPAB* had no material interaction with the *Elliott Group* until *Mr. Ian Brimicombe* (Vice President - Corporate Finance at AstraZeneca Plc.) met with *Mr. Sachin Mistry* of the *Elliott Group* in London on July 08, 2013 which happened after the *Elliott Group's* investment in *AZPIL* was completed.

(7) Compliance with minimum public shareholding was the key driver behind the setting up of the floor price.

(8) *AZPAB* deliberately left the OFS as late as possible in order to give *AZPIL* time to develop a plan for recovering its business and financial stability. To have tried to sell the necessary number of shares any earlier would, in *AZPAB's* view, have been unrealistic. Accordingly, *AZPAB* found itself needing to sell the shares quickly to meet the applicable regulatory requirement.

(9) On July 08, 2013, at the *Elliott Group*'s request, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (the *Elliott Group*) met in London for approximately an hour and there was no discussion during the meeting of any possible delisting of *AZPIL*.

(10) On August 20, 2013, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (the *Elliott Group*) met at the Annual General Meeting of *AZPIL* and there was no discussion during the said meeting about any possible delisting of

AZPIL.

(11) On September 18, 2013, *Mr. Sachin Mistry* (the *Elliott Group*) telephoned *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) enquiring about the arrangements for replacing the Chief Financial Officer (CFO) of *AZPIL*, *Mr. Himanshu Agarwal*, who had left the *Company* on August 30, 2013 and there was again no discussion during the call of any possible delisting by *AZPIL*.

(12) Though delisting of *AZPIL* was on the agenda of *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*), the internal email exchanged, as annexed to the SCN, does not indicate that *Mr. Ian Brimicombe* intended to discuss the question of delisting with *Mr. Mistry*. In the said email, *Mr. Ian Brimicombe* simply provided *Mr. Sachin Mistry* (the *Elliott Group*) with a further update on *AZPIL's* business and the status in relation to the CFO.

(13) On October 03, 2013, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (the *Elliott Group*) met, at the latter's request, in London for approximately 30 minutes. However, no discussion about any possible delisting of *AZPIL* took place between them.

(14) On November 14, 2013, *Mr. Sachin Mistry* (the *Elliott Group*) attended a conference call hosted by *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) to discuss the second quarter financial results for the financial year 2013-14, of *AZPIL*. Going by the calendar entry in *Mr. Ian Brimicombe's* electronic diary (*Mr. Brimicombe's* Microsoft Outlook calendar entry), *Mr. Ian Brimicombe* was also joined on the same conference call by *Mr. Sanjay Murdeshwar* (*AZPIL's* Managing Director), *Mr. Vimlesh Maheshwari* (*AZPIL's* Finance Controller) and *Mr. Atul Tandon* (*AZPIL's* Finance Head, India Market). Further, *Mr. Sachin Mistry* had joined the said conference call alongwith a colleague from the *Elliott Group* by the name of *Mr. Thongchai Rattanaruengyot*. The calendar entry in *Mr. Ian Brimicombe's* electronic diary makes clear that the subject of the conference call was "*Q2 results*". Indeed the call was scheduled at the request of *Mr. Sachin Mistry*, who had written to *Mr. Murdeshwar* by email two days before noting "*I saw that you have announced your second quarter results today - would like to have a call with you or a relevant person from your financial team for an update on the numbers*" (email from *Mr. Sachin Mistry* to *Mr. Sanjay Murdeshwar*, copied to *Mr.*

Thongchai Rattanaruengyot, dated November 11, 2013 21:31). There was yet again no discussion during the call of any possible delisting of *AZPIL*.

(15) On January 31, 2014 *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (the *Elliott Group*) met, at the latter's request, in London (*Mr. Ian Brimicombe's* Microsoft Outlook calendar entry). They discussed general aspects of *AZPIL's* business during the course of the lunch. There was no discussion during the lunch of any possible delisting of *AZPIL*.

(16) During the course of 19 to 24 February, 2014 *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (the *Elliott Group*) exchanged various emails regarding Q3 2013/14 results of *AZPIL* and appointment of a CFO. *Mr. Sachin Mistry* requested a further conference call to discuss the Q3 2013/14 results of *AZPIL* and also asked whether *AZPIL* had hired a new CFO yet (email from *Mr. Sachin Mistry* to *Mr. Ian Brimicombe* dated February 19, 2014 06:16). *Mr. Ian Brimicombe* responded that no CFO had been appointed as yet, but that a new candidate had been identified.

(17) In the meantime, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) explained he had a financial controller who could assist with questions (email from *Mr. Ian Brimicombe* to *Mr. Sachin Mistry*, copied to *Mr. Thongchai Rattanaruengyot*, dated February 19, 2014 15:53). *Mr. Mistry* indicated that "*he was just looking for a general colour [sic] on performance"* and offered to send through a list of questions (email from *Mr. Sachin Mistry* to *Mr. Ian Brimicombe*, copied to *Mr. Thongchai Rattanaruengyot*, dated February 19, 2014 08:31). *Mr. Brimicombe* said that this would be helpful and that he would line up the local *AZPIL* team to provide further insight through a conference call. *Mr. Sachin Mistry* (the *Elliott Group*) subsequently provided *Mr. Brimicombe* with a list of questions relating to revenue, costs, grant cash / future capex, and positioning as against other multinational companies (email from *Mr. Sachin Mistry* to *Mr. Ian Brimicombe*, copied to *Mr. Thongchai Rattanaruengyot*, dated February 24, 2014 10:31 at **Exhibit 12** - annexed to the reply filed by the *Noticee* to the SCN). The proposed call in question did not ultimately take place.

(18) The SCN appears to raise an issue (at paragraph 34) with the fact that after the delisting announcement, no telephonic call/discussions took place about the Q3

2013/14 financial results which were declared belatedly and that no similar call took place with respect to even the year-end 2013/14 results that was announced on May 30, 2014. The reality was that the results related calls happened only at *Mr. Sachin Mistry's* (the *Elliott Group*) request and *AZPAB* is unable to comment or speculate on why *Mr. Sachin Mistry* did not pursue his request for a call in respect of the Q3 2013/14 results or why he did not subsequently request for a call in respect of the year-end results. *AZPAB* categorically denies that the discussions between *AZPAB* and the *Elliott Group* (all of which were initiated by the *Elliott Group*) were for the purpose of influencing the delisting price as alleged, or indeed involved any discussion about any possible future delisting, or about the price of any such delisting, at all.

(19) The decision to delist *AZPIL* was only in fact taken on February 28, 2014. During the evening of February 28, 2014, after the markets in India had closed, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) contacted a number of stakeholders, including *Mr. Darius Udwadia* (the Chairman of *AZPIL*), *Mr. Pawan Singhal* (the then Vice President - Legal, Secretarial & Compliance Officer at *AZPIL*) and colleagues in AstraZeneca Plc's Company Secretarial division, to make them aware of the imminent announcement of *AZPIL's* delisting. *Mr. Brimicombe* also made a courtesy telephone call (again, after the markets in India had closed) to *Mr. Sachin Mistry* as the representative of the largest single public shareholder in *AZPIL* to make him aware of the forthcoming delisting announcement.

(20) It can be seen from the above that the interactions that *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and others had with the *Elliott Group* during this period were routine and lawful interactions that normally take place with a significant investors (in *AZPIL*) and were interactions in the nature of having relationship with investors. There was nothing inappropriate or untoward about those interactions and at no point during the course of those interactions were there any discussions or negotiations with the *Elliott Group* in relation to the delisting.

(21) **Communications within *AZPAB,* and between *AZPAB* and *ICICI* regarding delisting.**

(a) The SCN also makes reference to certain emails that *Mr. Ian Brimicombe* (VP -

Corporate Finance, *AZ Group*) exchanged with representatives of *ICICI* and *AstraZeneca Plc* after the completion of the OFS on May 24, 2013 but before the announcement of the voluntary delisting made on March 01, 2014, which are alleged as evidence in support of the allegation that discussions or negotiations were underway with the *Elliott Group* in relation to the delisting price.

(b) The SCN highlights (at paragraphs 26 to 28) two instances of communications (on 9 July and 16 August 2013 respectively) to suggest of *AZPAB* asking *ICICI* to prepare IRR calculations to buy out shareholders of *AZPIL* including the *Elliott Group*. These communications reflect that *AZPAB* was considering the possibility of delisting and was interested to understand the potential cost of doing so. They do not demonstrate that *AZPAB* was in discussions or negotiations with the *Elliott Group* to determine a mutually acceptable IRR.

(c) There is no basis for the inferences drawn in the SCN from the routine investor relations meetings between *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (the *Elliott Group*) during this period, as described above. *Mr. Ian Brimicombe's* remarks in an email to *ICICI* of August 16, 2013 (email from *Mr. Ian Brimicombe* to *Mr. Ravi Talwar, Sr. VP ICICI* dated August 16, 2013 16:52) that *AZPAB* would "*then need to decide [their] sensible limits for negotiation with Elliott*" were simply an acknowledgement of the fact that a delisting could only be achieved with the *Elliott Group*'s participation and, as such some thought was needed to be given to what IRR would likely be sufficient to obtain the *Elliott Group's* participation. There were not, contrary to the inferences drawn in the SCN, any negotiations or discussions underway with the *Elliott Group* as to what IRR might be acceptable to them at that time.

(d) Moreover, *Mr. Ian Brimicombe's* (VP - Corporate Finance, *AZ Group*) reference in the aforesaid email to "*negotiation with the Elliott"* reflected his general understanding, based on which, he believed after his conversations with *ICICI*, that at some point in the future, some form of negotiations might take place (after the outcome of the shareholders' vote on the delisting proposals) with the *Elliott Group* and indeed with the other shareholders of *AZPIL* to determine a fair reasonable price for their shares. As to the nature, timing and content of any such negotiations, *Mr. Ian Brimicombe* would be guided by *ICICI* as *AZPAB's*

advisers in respect of any delisting, who would be responsible for ensuring that all activities and formalities that were required for completion of the transaction were in accordance with the applicable laws and regulations.

(e) It should be emphasized that no such negotiations ever took place. Before any such discussions or negotiations could have taken place, *AZPAB* would have ensured that they understood what was permissible and appropriate with *ICICI* regulatory and compliance functions to ensure that *AZPAB* was at all times in full compliance with its legal and regulatory obligations.

(f) To be clear, *AZPAB* never entered into any discussions or negotiations of any kind with the *Elliott Group* in respect of the possible delisting and was at all times acting in compliance with its legal and regulatory obligations.

(g) Similarly, the reference made (in paragraph 30 of the SCN) to an email sent to *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) by *Mr. Ravi Talwar* of *ICICI* on September 11, 2013 (email from *Mr. Ravi Talwar* to *Mr. Ian Brimicombe (AZ Group)*, copied to *Mr. Pranjal Srivastava* and Mr. Vishal Kanjani (*ICICI*), dated September 11, 2013 12:58) referring to the "*outcome of negotiations"* is simply a reference to *Mr. Ian Brimicombe's* understanding of subsequent phases of the process and does not indicate that any negotiations were then underway with the *Elliott Group* as to what IRR might be acceptable. Indeed, the preceding emails exchanged between *Mr. Ian Brimicombe* and *Mr. Ravi Talwar* over the course of 10 and 11 September, 2013 make clear that no discussions were underway with *Elliott Group* at this time.

(h) Elsewhere (at paragraphs 30 to 32) the SCN makes some observations out of context and, by so doing, distorts the contents of email communications that took place between *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and senior executives at *AstraZeneca Plc.* during the period from September 19, 2013 to February 9, 2014 regarding the possibility of delisting. The purpose of these emails was in essence to seek, from those senior executives, approval for a proposal to delist *AZPIL* and to explain the justification for that proposal. *Mr. Ian Brimicombe* had formed the view that a delisting was desirable in order to streamline the business administration and corporate governance, and that the

prevailing market conditions and other factors outlined in his paper dated September 23, 2013 made this a good time to proceed with it.

(i) When *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) referred, in an email of September 23, 2013, to the existence of "*a single large shareholder owning 15.1% who can determine the delisting outcome and is inclined to sell short term"*, he was summarizing the conclusions drawn in his paper of that date to the effect that *AZPAB* "*estimate[d] that Elliott Partners acquired 15% with a view that AZ would delist at some point in the future"*. This understanding was based on the initial indication that *Mr. Ian Brimicombe* had received from *ICICI* at the outset of the OFS process in April 2013 (before the roadshow presentation to the *Elliott Group*) that investors "*in fact may actually welcome the possibility of a delisting"*; and the fact that the *Elliott Group* had previously supported the delisting of Patni Computers, it was therefore conceivable that the *Elliott Group* had decided to adopt a similar investment strategy in respect of *AZPIL*. Such an understanding was not based on any negotiations or discussions with the *Elliott Group* and there had been no such negotiations or discussions.

(j) Again, when *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) stated that the "*largest shareholder fund would expect an internal rate of return (*IRR*) of at least 25% and possibly as high as 40%*", this was based on an analysis of "*off market expectations prior to OFS*" and the various IRR scenarios prepared by *ICICI*. It was not based on any actual indication provided by the *Elliott Group* as to its expected IRR.

(k) As to the statement that "*[t]his would be subject to negotiation*", this was again simply a reference to *Mr. Ian Brimicombe's* understanding of subsequent phases of the process and, in any event, the reference to "*would"* makes clear that no negotiations were underway at that time.

(l) In the same manner, the email sent by *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) to *Mr. Marc Dunoyer* (CFO, *AZ Group*) on December 03, 2013 quoted at paragraph 31 of the SCN also reflects *Mr. Ian Brimicombe's* perception that the *Elliott Group* would be willing to participate in a delisting of *AZPIL*, an understanding that had been formulated independently of any

discussions with the *Elliott Group*, as explained above.

(m) Furthermore, it is hardly surprising that in conducting a delisting, a commercial entity such as *AZPAB* would have been seeking "*the best price possible"* and "*to achie[ve] a fair value"* relative to the intrinsic value of the *Company*. Again, the email makes it clear that, at that point, there had been no negotiations with the *Elliott Group*. Any reference to future negotiations was to *Mr. Ian Brimicombe's* (VP - Corporate Finance, *AZ Group*) understanding of subsequent phases of the process.

(n) Furthermore, these communications between *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and senior executives at *AstraZeneca Plc* illustrate that although *Mr. Ian Brimicombe* was in favour of a delisting at the relevant time, this was not necessarily the approach that *AstraZeneca Plc's* senior leadership was intending to take. For instance, the email sent by *Mr. Ian Brimicombe* to *Mr. Marc Dunoyer* (CFO, *AZ Group*) on February 09, 2014 quoted at paragraph 32 of the SCN (email from *Mr. Ian Brimicombe* to *Mr. Marc Dunoyer* dated February 09, 2014 09:06) formed part of a larger chain of email communications in which *Mr. Marc Dunoyer* asked *Mr. Ian Brimicombe* to justify robustly the commercial rationale behind his delisting proposal. In the email quoted at paragraph 32 of the SCN, *Mr. Ian Brimicombe* set out five reasons as to why he was of the view that a delisting was commercially sensible, of which the *Elliott Group's* perceived willingness to sell, formed only one such reason. Again, any reference to future negotiations reflected *Mr. Ian Brimicombe's* understanding of what would be subsequent phases of the process.

(o) Ultimately, any decision to delist and in particular any decision with respect to the delisting price did not rest with *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and was a matter for the *AstraZeneca Plc* Group CEO and Group CFO (depending on the overall cost). *Mr. Ian Brimicombe* had not at any time been authorised to enter into any discussions regarding the delisting price.

(22) It can be seen from the above that none of the internal communications cited in the SCN provide any basis for the inference that *AZPAB* was engaged in any negotiations with the *Elliott Group* regarding the delisting price prior to the

announcement of the voluntary delisting on March 01, 2014. Taken in their proper context, these communications simply formed part of *AZPAB's* process for assessing whether to grant internal approval to proceed with the delisting proposal and indeed provide evidence with regard to the uncertainty over whether they would go ahead with the delisting at all (since it was still a matter of debate internally). The potential cost of delisting (which would necessarily depend on the delisting price) was clearly a relevant factor in this process, and it was understandable that *AZPAB* would be thinking about the price at which *AZPIL's* public shareholders might be amenable to a delisting. These internal communications were part of that process. However, as explained above, these communications do not in any way suggest that discussions or negotiations as to the delisting were actively ongoing with the *Elliott Group*, or with any of *AZPIL's* other public shareholders, at the time. Rather, they simply reflect *Mr. Ian Brimicombe's* (VP - Corporate Finance, *AZ Group*) understanding that such negotiations might need to take place at an appropriate time in the future within the boundaries of the applicable laws and regulations, for which *AZPAB* would take appropriate advice from *ICICI*. In fact, no such negotiations ever took place. As noted above, had they ever taken place, *AZPAB* would have found out through discussions with *ICICI* about the regulatory and compliance requirements that were permissible and appropriate and would have ensured that it was at all times in full compliance with those legal and regulatory obligations.

(23) In paragraphs 14 and 15 of the SCN, it is suggested that *AZPAB* deliberately fixed the OFS floor price to facilitate "*the Elliott Group to mop up almost all the shares offered in OFS to ensure that incoming institutional investors got enough traction for impending delisting process*". These allegations are categorically denied and are entirely without foundation. Indeed, they presuppose that: (i) *AZPAB* had decided to delist the *AZPIL* shares prior to making the OFS and (ii) an agreement had been reached between *AZPAB* and the *Elliott Group* for the latter to corner most of the *AZPIL* shares from the OFS and then to put those shares in the delisting offer. Each premise is wrong and divorced from reality. The emails relied on by SEBI and those enclosed with this response demonstrate that till as late as February 2014, no decision had been taken by *AZPAB* to delist the shares of *AZPIL*. That being so, there could not have been any intention on the part of *AZPAB* on May 28, 2013 (the date when the OFS floor price was communicated to the stock exchanges) to facilitate the *Elliott*

Group to corner the shares of *AZPIL*. Further, had *AZPAB* and the *Elliott Group* reached agreement before or at the time of the OFS that the *Elliott Group* would put those shares in the delisting offer, there would have been nothing to negotiate at or around the time of the delisting as the delisting price would have been agreed months in advance. Furthermore, had there been a deal between *AZPAB* and the *Elliott Group* as alleged in the SCN, there would have been no reason for *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) to be anxious, as he clearly was, that the *Elliott Group* may "*dissipate"* its shareholding in *AZPIL* "*over time*" [Ref: Email of *Mr. Brimicombe's* email to *Mr. Mark Mallon* (Executive VP - International) and *Mr. David Smith* (Executive VP - Operations), copying *Mr. Simon Lowth* (then CFO and Executive Director resigned in Oct end 2013), dated September 23, 2013 11:59 at **Annexure 13** to the SCN].

(24) **Allegations of concealment of material information from other public shareholders:**

(a) It would be apparent from the above that the *Elliott Group* and *AZPAB* were not "*already in talks before the Delisting Resolution"* and had not "*conducted fraudulent negotiations for influencing the delisting price"* and accordingly the allegation at paragraph 39 of the SCN that these matters were "*actively concealed by EG and the AZPAB from the other public shareholders"* is simply untrue and there is no evidence of this in the SCN or its annexures.

(b) *AZPAB* was made aware by *ICICI* in September 2013 that the *Elliott Group* had picked up the bulk of the shares in the OFS. Given the shareholding pattern of *AZPIL*, that stake could undoubtedly impact the delisting offer should *AZPAB* decide ultimately to make such an offer. *AZPAB* was not, however, under any regulatory or other obligation to track the *Elliott Group's* overall shareholding or disclose details of that shareholding to the market.

(c) As to the assertion in paragraph 39 of the SCN that "*such information if available to investors would have resulted in a different outcome"*, there is no evidence to support this.

(25) **Matters within the knowledge of the *Elliott Group* -**

(a) The SCN makes a number of statements and allegations which relate to matters entirely within the knowledge of the *Elliott Group* and/or which are based on

information provided to SEBI by the *Elliott Group*. These include - the number of shares in *AZPIL* held by the *Elliott Group* at different points of time and the prices at which they were acquired (referred to at paragraphs 9, 14, and 17 of the SCN), the *Elliott Group's* trading activity during the OFS (referred to paragraph 16 of the SCN), the factors prompting the *Elliott Group* to participate in the OFS (referred to at paragraphs 13 and 14 of the SCN), and more generally, the information provided by the *Elliott Group* produced at annexures 1, 6, and 18 to the SCN. *AZPAB* is unable to speak on matters that are entirely within the knowledge of the *Elliott Group*, nor can verify the accuracy of any information provided by them or representations made on their behalf. As such, without making any admission or denial, *AZPAB* is unable to comment on such matters.

(b) *AZPAB* would, however, note that paragraph 16 of the SCN insinuates that there was something untoward in the *Elliott Group* amending "*[i]ts order in the last minute of the OFS bidding by increasing the bid price substantially...*" *AZPAB* had, of course, no visibility as to the *Elliott Group's* having changed its bid price - indeed it had no knowledge that the *Elliott Group* was going to participate in the OFS at all. However, the SCN overlooks that SEBI has specifically permitted that the bids may be modified or cancelled at any time. SEBI's Circular No. CIR/MRD/DP/05/2012 dated February 01, 2012 explicitly provided (in paragraph 5(e)(i)) that "*[modification / cancellation of orders / bids shall not be allowed during the last 30 minutes of the duration of the offer*". By Circular No. CIR/MRD/DP/18/2012 dated 18 July 2012, Clause 5(e)(i) was amended extending this restriction to "*the last 60 minutes of the duration of the offer*". SEBI, by its Circular No. CIR/MRD/DP/04/2013 dated 25 January 2013 amended Clause 5(e)(i) and did away with any time restrictions in respect of modification or cancellation of bids.

B. ***Submissions by Noticees 2 to 8***:–

(1) The SCN is vague and does not meet the applicable evidentiary standards for establishing fraud as the allegations in the SCN are conceptually flawed. No attempt has been made by SEBI to particularize the content and scope of the alleged negotiations, discussions or any arrangement allegedly entered into. Further, any alleged negotiation could not have deprived public shareholders from making an

informed choice in relation to a delisting resolution in any event.

(2) The SCN presumes *mala fides* and fraud on the face of a contrary record. The fraud alleged in the SCN is based on mere suspicion and conjecture. The evidentiary standard adopted by SEBI threatens to have a chilling effect on the ability of institutional investors to engage with management of listed companies in an entirely appropriate and justifiable manner.

(3) *AZPAB* was initially undecided about whether it would proceed with a delisting or an OFS. Ultimately, *AZPAB* chose an OFS, with no decided plan to delist. Paragraph 15 of the SCN alleges that there existed at the time of the OFS an "*impending delisting process"* which is factually incorrect according to the record. In late 2012/early 2013, a delisting was considered to be an alternative to an OFS, as a way of addressing the MPS requirement. Even if a delisting might initially have been the preferred course of action, *AZPAB* considered by late February 2013 that it was not a feasible course of action at that time. When *AZPAB* made a final decision in March 2013 to proceed with an OFS, there was no intention to couple an OFS with a delisting. It is, therefore, clear from the records that the OFS was not a device to facilitate a delisting.

(4) The record provides a rational explanation for the OFS floor price and contains no hint of discussions between *AZPAB* and the *Elliott Group* concerning the OFS. There was no interaction between *AZPAB* and the *Elliott Group* as regards any aspect of the OFS, including the fixing of the floor price.

(5) *ICICI* was deeply involved in the OFS process, has provided a rational explanation for the floor price level and has indeed been exonerated by SEBI as the internal contemporaneous *AZPAB* communications corroborate *ICICI's* explanation. It is incomprehensible that SEBI would therefore exonerate *ICICI* but issue the SCN against the *Elliott Group* and *AZPAB*.

(6) SEBI's comparison of the discounts offered in other OFS transactions '*is conceptually flawed'* and, therefore, any suggestion that the OFS was arranged in a way that would ensure the *Elliott Group* would acquire a material holding of *AZPIL* shares and/or was a device to facilitate a delisting is completely contradicted by the record and unsupported by facts.

(7) *AZPAB* was uncertain about whether the OFS would meet its objective and following the OFS, about the identities of the investors who had participated. *AZPAB* had concerns that the OFS might not achieve the sell-down objective - as late as May 24, 2013, *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) thought that subscriptions were going to be *"tight"*. It was only some days after the completion of the OFS that the identities of the investors in the OFS became known to *AZPAB* and initial speculation about who may have invested did not point to the *Elliott Group* in any way. These facts completely undermine the theory of collusion between *AZPAB* and the *Elliott Group* as regards the OFS, which would have resulted in *AZPAB* being more confident and/or certain about the outcome of the process.

(8) The record reveals that there was no plan to delist until February 2014. Thought was being given to the possibility of a delisting by *Mr. Ian Brimicombe* before then, but the initial recommendation paper which *Mr. Ian Brimicombe* prepared with the assistance of *ICICI* in August 2013 referred to the proposals as being very preliminary and conditional on a range of longer-term factor. It was not until late 2013 that a recommendation paper as regards a delisting was shared with senior *AZPAB* management and the concept was met with skepticism. The theory that the *Elliott Group* and *AZPAB* were in negotiations concerning the details of a delisting starting in July 2013 is therefore untenable.

(9) Even after the delisting announcement on March 3, 2014, there continued to be significant uncertainty within *AZPAB* as to whether or not the delisting would be progressed. As late as March 20, 2014, senior management wanted to know about the pricing of a delisting and why it made sense for *AZPAB*, the response to which was that it would be a further two months until there was an offer to consider. The process of justifying the delisting from a quantitative perspective was ongoing into April 2014 and it is clear that no final decision had been made as late as June 2014.

(10) SEBI has not sought to assail the delisting floor price, so an allegation that the price discovery process was interfered with is unsustainable. Had there been any certainty on price because of any discussion with the *Elliott Group* in this regard, it is inconceivable that it would not have been mentioned in the contents of these post-

announcement internal *AZPAB* communications - instead, there was continuing uncertainty about price and the delisting itself, which belies any theory of collusion months earlier of the type alleged.

(11) The communications between *Mr. Sachin Mistry* (the *Elliott Group*) and *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) were in the nature of relevant investor-relations interactions concerning *AZPIL's* business management and governance issues. The record provides no support whatsoever for SEBI's theory that there were interactions comprising fraudulent negotiations as regards a proposed delisting. Both of the individuals to these postulated negotiations have categorically denied the existence of any such discussions and the record fully bears out those denials – the discussions related to business, management and governance related matters such as the absence of a CFO and published financial results. The phone call on February 28, 2014 made to *Mr. Mistry* after the in-principle decision to delist had been taken by *AZPAB* was part of a wider reaching-out which included calls being placed to officers of *AZPIL*. The *Elliott Group* had no prior knowledge of the proposed delisting.

(12) References to "*negotiations*" in *AZPAB's* internal communications always and invariably embody a suggestion of future negotiation and engagement and these references are, in many cases, after the date of the meetings during which such negotiations are alleged to have taken place. The *Noticees* had no knowledge of the relevant communications prior to the issuance of the SCN and obviously had no control or influence at the time over the brainstorming within *AZPAB* about a possible reach-out to the *Elliott Group*. The relevant annexures to the SCN have been plucked completely out of context and, not only do they not assist SEBI in making good on its case, they actually contradict it because the communications in question serve to demonstrate that no actual negotiations took place.

(13) References in the record to IRR expectations, whether specific to the *Elliott Group* or otherwise, were informed by input and analysis from *ICICI*, not the *Elliott Group*. The SCN provides no particulars whatsoever as regards the *Elliott Group* supplying any information to *AZPAB* about expected returns. The references to very broad-brush IRR ranges belie any credible suggestion that the information could have been derived from the *Elliott Group*. Accordingly, the record is entirely consistent with the

fact that the *Elliott Group* never disclosed to *AZPAB* or *ICICI* any information with regard to expected returns or expectations around the pricing for a delisting of *AZPIL*.

(14) There was uncertainty generally within *AZPAB* regarding the *Elliott Group's* intentions. The *Elliott Group's* investment strategy as regards *AZPIL* was evidently unclear to *AZPAB*. Moreover, *AZPAB* seems to have been aware of the possibility that the *Noticees'* could dispose of their interests in *AZPIL* outside of a delisting and regardless of any *AZPAB* delisting intentions. The fee structure *AZPAB* agreed with *ICICI* as regards the potential delisting would not have made commercial sense had the delisting price been pre-agreed between *AZPAB* and the *Elliott Group*. Thus, the continuing uncertainty on *AZPAB*'s part about the *Noticees'* intentions is another factor which contradicts SEBI's theory of collusion.

(15) **The rationale for investing in the OFS** - The *Elliott Group'* s investment in the OFS was purely on the basis of the *Elliott Group*'s assessment of the value of the shares being offered as an investment opportunity. It was a matter of common knowledge and/or market speculation that *AZPAB* might seek to try to delist the *Company* in the future. At the time of the OFS, however, the possibility of a delisting of *AZPIL* was entirely uncertain. The notion that the *Elliott Group* participated in the OFS as part of an understanding or agreement with *AZPAB* related to a future delisting of *AZPIL* is far-fetched and has no basis in fact.

(16) **The purported manner of bidding in the OFS** - The manner of the *Elliott Group*'s participation in the OFS was in accordance with all applicable laws, regulations and market practice and the *Elliott Group* participated on precisely the same basis and with precisely the same level of information about competing bids as any other participants had. SEBI's circular no. CIR/MRD/DP/04/2013 dated January 25, 2013 removed the restriction of modification or cancellation of bids in an OFS in the last 60 minutes. The idea that the manner of the *Elliott Group*'s participation in the OFS, in particular in terms of increasing bids at the last stage of the process, is indicative of collusion or inappropriate for any other reason, is unsustainable.

(17) T**he engagement between the *Elliott Group* and *AZPAB* following the OFS -** The interactions that took place from time to time between *Mr. Sachin Mistry* (the

Elliott Group) and *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) (and certain other representatives of *AZPIL*) following the OFS were for the purpose of discussing *AZPIL* business, management and governance related matters. The notion that the interactions were occasions for discussion about a delisting is speculative, false and contrary to the evidence on record.

(18) **Voting on the delisting resolution** - As shareholders of *AZPIL* with no relationship of any type with the *Company* and its connected persons, *Suffolk* and *Mansfield* were entitled in the same way as any other public shareholder to vote on the delisting resolution in accordance with their interests. Any suggestion that the casting of votes by the *Elliott Group* to approve a delisting of *AZPIL* is itself indicative of collusion is an obviously unsound notion that cannot be right as a matter of logic and common sense.

(19) **Reasons for disengaging after February 2014 -** It is a matter of sheer conjecture and incorrect on SEBI's part to suggest that any lack of engagement between the *Elliott Group* and *AZPAB* after February 28, 2014 had anything to do with the fact that the *Elliott Group* ceased to be interested in monitoring its investment. It was in fact considered by the *Elliott Group* to be appropriate out of an abundance of caution to disengage with *AZPAB* on a routine basis to avoid both the possibility and appearance of any discussion about the delisting and/or receipt of non-public information in that regard.

C. Representations from Mr. Pankaj Bhatt and Mr. Suresh Bhatt:-

(1) In the matter of delisting of companies listed on stock exchanges, earlier under the reverse book building policy, the companies were required to get the resolution passed by 2/3rd majority (ex-promoters) and thereafter had to acquire at least 50% of shares at the discovered reverse book building price.

(2) As per the current policy, the companies were required to either bring down their promoters' holding to 75% to remain listed or delist as per reverse book building norms.

(3) When the new policy came into effect, delisting process of *AZPIL* was already underway. Suddenly *AZPIL* decided to withdraw the then on-going delisting process

and decided to remain listed by offloading the requisite 15% in the market.

(4) This decision of withdrawing the delisting process and offloading the 15% promoters' holding was fishy and every shareholder was convinced of bad intention of the promoters.

(5) This became publicly visible when *AZPIL* decided to delist the company after the expiry of cooling period of 6 months.

(6) Every shareholder was convinced that the 15% shareholding that the promoter *AZPAB* offloaded in the market was not genuine and was fishy to deprive the minority shareholders of their rights.

(7) The shareholders, therefore, complained to SEBI regarding the same and SEBI started investigation into the subject matter.

(8) In the preliminary findings, as published by SEBI, it was found that the entire 15% shareholding was offloaded at the last minute to a single owner, viz*:- Elliot Group* under their various sub accounts.

(9) This act of buying more than 15% by a single group also violates the Foreign Exchange Regulation Act.

(10) These findings clearly reveal the tacit understanding between *AZPAB* and the *Elliot Group* to use the same offloaded shares for delisting under the new guidelines and completely bypass the minority shareholders.

(11) *AZPIL's* present shareholding pattern shows that the *Elliot Group* shareholding is divested in the market and no more concentrated in the hands of the *Elliot Group*.

(12) The appellants/complainants have incurred heavy legal expenses in pursuing the legal case in High Court, Mumbai and before the Hon'ble SAT and hence *AZPAB* be directed to pay the cost of ₹50 lacs to them.

Consideration of issues:

11. I have gone through the contents of the SCN, replies received in the matter, documents available on record and the written as well as oral submissions made by the *Noticees* and

also the representations made by *Mr. Pankaj Bhatt and Mr. Suresh Bhatt*. The main allegation against the *Noticees* is that after having tried unsuccessfully twice in getting the shares of *AZPIL* delisted, the promoter, i.e., *AZPAB* (*Noticee 1*) had devised a scheme or an artifice to get the scrip delisted and as a part of such arrangement the promoter had managed to get the shares of *AZPIL* subscribed by certain entities, namely, the *Elliot Group* entities (*Noticees 2 - 8*) through an OFS so as to ultimately get the scrip delisted successfully in collusion with those *Elliot Group* entities. Therefore, after completion of the OFS, in order to ensure the delisting of the scrip of *AZPIL*, the *Elliot Group* and *AZPAB* (the promoter of *AZPIL*) allegedly engaged in negotiations for influencing the delisting price to suit their mutual interest and convenience. The acts of such negotiations that continued between *AZPAB* and the *Elliot Group,* with a view to circumvent the fair delisting price discovery through reverse book building mechanism, have been alleged to be fraudulent in nature. The SCN further alleges that all other public investors, other than the *Elliot Group entities,* were unaware that the *Elliot Group entities* held 15.5% of shareholding which was sufficient to help *AZPIL* to get a special delisting resolution passed and to influence the price of delisting in the manner desired by both the parties to such negotiations. It is thus alleged that the promoter of *AZPIL* and the *Elliot Group* entities were in talks since July 8, 2013 pursuant to which the promoter had struck a deal with the *Elliot Group entities* vide which, the *Elliot Group entities* were to buy shares of *AZPIL* through an OFS and would again sell those shares back to the promoter at the time of delisting of the equity shares of the *Company*. It has been accordingly alleged that the *Noticees* have violated the provisions of Regulations 3(b), (c), (d) and 4(1) of the PFUTP Regulations, 2003.

12. At the outset, in order to appreciate the charges levelled against the *Noticees*, it would be proper and necessary to refer to the above-mentioned provisions of the PFUTP Regulations, 2003 which have a bearing on the allegations made against the *Noticees*. These relevant provisions of the PFUTP Regulations, 2003, as applicable at the relevant time, are reproduced hereunder for the sake of reference:

Provisions of PFUTP Regulations:

"Definitions

2. (1) In these regulations, unless the context otherwise requires, -

(a)……..

(b) dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of

any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act.

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government;

(b) the economic situation of the country;

(c) trends in the securities market;

(d) any other matter of a like nature.

whether such comments are made in public or in private;

……..

…….

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

(a) ……

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

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

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

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) … … …"

13. Having perused the charges made against the *Noticees* in the SCN, the submissions of the *Noticees*, and other relevant materials on records, for the purposes of clarity, I find it reasonable to first deal with certain preliminary and technical objections raised by the *Noticees,* who have *inter alia*, harped that the charges in the SCN are vague and do not meet the applicable evidentiary standards for establishing fraud. I find the contentions of the *Noticees* in this regard are far-fetched and not rooted in the facts of the case. I note that the SCN contains detailed enumeration of the allegations, the factual basis of each allegation, the documents relied upon for making such allegation and, wherever necessary, the SCN has also invoked the relevant provisions of the SEBI Act, 1992 read with the relevant regulations. I, therefore, do not find any merit in such technical and perfunctory objection raised by the *Noticees* and hence reject the same *in toto*.

14. The *Noticees* have also contended that *ICICI* was noticed as involved in the negotiations on behalf of *AZPAB,* has not been proceeded against by SEBI as nothing adverse has been noticed against the conduct of *ICICI*. It is trite law to state that in the quasi-judicial proceedings, the adjudicator is bound within the realms of the show cause notice before him. In the instant case, after examining the role of *ICICI*, if SEBI found that it is not necessary to proceed against it, the same logic cannot be extended to other *Noticees*. In fact, in the matter of *Systematix Shares & Stocks India Limited v. SEBI (2012),* the Hon'ble SAT

also had the occasion to deal with a similar argument of the appellant therein contending that the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone was discriminatory. In the said case, the Hon'ble SAT had observed that *"We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."* Considering the foregoing, I reject this contention of the *Noticees in limine* and do not find it necessary to further deal with this contention.

15. I will now proceed to deal with the submissions of the *Noticees* on merit. In the instant case, I note that the allegation against the *Noticees* is two legged – acquisition of shares of *AZPIL* under a purported pre-designed scheme by the *Elliott Group* during the OFS made by *AZPAB* and the alleged fraud committed by the *Elliott Group* and *AZPAB* in influencing the delisting process and price through negotiations. The SCN insinuates that the second leg of allegation is concomitant and interconnected with the first leg of the allegation.

16. In this backdrop, before dealing with the first leg of the allegation that the acquisition of shares by the *Elliot Group* in the OFS was part of a pre-conceived scheme, I find it prudent to iterate and summarize the OFS procedure. It is common knowledge that in an OFS, a buyer has to provide a bid in order to acquire the shares of the company offering its shares. The said company sets a 'floor price.' The prospective buyers cannot bid at a price below the floor price. Once the bids are placed, shares are allocated to the different buyers. There is no minimum limit to participate in an OFS. Thereafter, the designated stock exchange allots the shares based on the allocation methodology, i.e., Multiple Clearing Price (price priority) or Single Clearing Price (proportionate allocation) as specified by the sellers. The allocated shares are credited to the account in a manner similar to the existing equity market transactions. The shares are credited to the Trading Members account on a T+1 basis. In the instant case, the chronology of events leading up to the OFS is presented herein below:

Sr. No.	Date	Event	Participants
1	09/01/2013	*AZPAB,* the promoter of *AZPIL,* sends e-mail to institutions, viz. *ICICI*, JP Morgan, Morgan Stanley, JM Financial, and Citigroup inviting them to tender and make presentation with regards to appointment of one of them as	*Ian Brimicombe* (VP, Corporate Finance, *AZP Group*)

		Advisor and Selling Broker for the possible OFS.	
2	07/02/2013, 08/02/2013	Presentations by different banks to *Ian Brimicombe* (*AZ Group*) and officials of *AZPIL*.	*Ian Brimicombe (AZ Group)*, *Himanshu Agarwal* (CFO - *AZPIL*), *Pawan Singhal* (Company Secretary- *AZPIL*)
3	08/02/2013	E-mail from *Ian Brimicombe (AZ Group)* on assessment of OFS presentation by participating banks.	*Ian Brimicombe (AZ Group)*, *Himanshu Agarwal*, *Pawan Singhal (*both *AZPIL)*, *Johannes Linde* (Head of Legal *AZP Sweden*)
4	10/02/2013	In reply to e-mail from *Ian Brimicombe* (*AZ Group*) on assessment of OFS presentation by participating banks, Pawan Singhal mentions that *ICICI* would prefer to give a shot to contact existing key shareholders informally to get a sense about possibility of delisting at an acceptable price and if that is not feasible then go full throttle on OFS.	*Ian Brimicombe (AZ Group)*, *Himanshu Agarwal*, *Pawan Singhal* (both *AZPIL*), *Johannes Linde* (*AZP Sweden*)
5	14/02/2013	E-mail from *Ian Brimicombe* (*AZ Group*) stating that CFO (*Simon Loweth*) has concluded that *ICICI* should be chosen for the OFS process.	*Ian Brimicombe (AZ Group)*, *Himanshu Agarwal*, *Pawan Singhal* (both *AZPIL*), *Johannes Linde* (*AZP Sweden*)
6	05/03/2013	Draft engagement letter with *ICICI*	Between *Ian Brimicombe (AZPAB*) and *Ravi Talwar* (*ICICI)*
7	05/03/2013	*AZPIL* discloses to the stock exchanges about decision of its promoter *AZPAB* to reduce its shareholding to comply with minimum public shareholding norms	*AZPIL* Compliance
8	28/03/2013	Final agreed copy of the engagement letter between *AZPAB* and *ICICI*.	*Ian Brimicombe (AZ Group)*, Ravi Talwar (*ICICI*), *AZPAB* Sweden Directors

9	17/04/2013 18/04/2013	Roadshows held in Mumbai (attended by 14 entities)	*Ian Brimicombe (AZ Group)*, Himanshu Agarwal (*AZPIL*), *ICICI* Team
10	19/04/2013	Roadshows held in Singapore (attended by 5 entities)	
11	08/04/2013-11/04/2013	Roadshows held in Mumbai (attended by 15 entities)	
112	13/04/2013-14/04/2013	Roadshows held in Singapore (attended by 8 entities)	
13	15/05/2013	Roadshows held in Hong Kong (attended by 3 entities including the *Elliott Group*)	
14	16/05/2013	Roadshows held in Chennai (attended by 5 entities)	
15	17/05/2013	Roadshows held in Delhi (attended by 2 entities)	
16	24/05/2013	*AZPAB* submitted to BSE a notice of OFS of an aggregate of 37,49,950 equity shares of face value of ₹2 each of *AZPIL*, on May 28, 2013.	*AZPAB* directors
17	27/05/2013	Floor price for OFS disclosed to stock exchange as ₹490/-	*AZPAB* directors
18	28/05/2013	OFS Conducted	--

17. While dealing with the first leg of allegation in the SCN I have to deal with a fundamental question as to whether the OFS process was *ab initio* a vitiated and compromised exercise or whether the OFS was launched by the promoter of *AZPIL* merely as a smoke screen to hide the behind-the-scene collusive deal between *AZPAB* and the *Elliot Group*. In this regard the material on record before me bears testimony to the fact that *ICICI* had carried out several roadshows with prospective investors, including the *Elliot Group,* ahead of the OFS. On May 27, 2013, the OFS floor price was fixed at ₹490/- whereas the cut-off price after book building was determined as ₹620/- per share after the OFS was over on May 28, 2013. The OFS was over-subscribed 2.84 times. Out of the total 37,49,950 shares offered for sale, 35,25,773 (i.e., 94.02% of total shares offered through the OFS) were allocated to 6 FIIs/Sub-accounts by the designated stock exchange based on the allocation methodology, namely, Multiple Clearing Price (*price priority*) as specified by the sellers (*AZPAB*). I find it logical for a seller who is divesting his substantial stake in a company

to opt for price priority method as this would enable him to get the best valuation for his stake. Considering the foregoing and the fact that no infirmity can be observed in the aforesaid methodology prescribed for carrying out OFS and also the fact the SCN does not allege any collusion pertaining to the conduct of OFS so as to blame that the entire process of OFS was vitiated, I do not find any reason to doubt the credibility of either the OFS procedure or the allotment of 94.02% of total shares offered through the OFS to the *Elliott Group*.

18. It is an undisputed fact that after the acquisition of 35,25,772 shares of *AZPIL* from the OFS and subsequent open market purchase of 3,54,196 shares (i.e., 1.42% of total shareholding) via P-notes between May 29, 2013 (i.e., day immediately after the OFS was over) and September 12, 2013 by *Elliott International L.P.,* (one of the *Elliott Group* members), the shareholding of the *Elliott Group* in *AZPIL* had increased to 15.52% while the shareholding of the retail investors (other public shareholders) remained only at 8.89%. There cannot be two opinion that the *Elliott Group* by virtue of their 15.52% shareholding as against the 8.89% shareholding of the other public shareholders, had a dominant voice to influence the delisting price in the forthcoming delisting offer in the manner they wanted, which may or may not be fully aligned to the legitimate interest of other public shareholders. The SCN observes that the shareholding of the *Elliott Group* (15.52% in *AZPIL)* was not available in the public domain, consequently other public shareholders were not in a position to take an informed decision. In this regard, *AZPAB* (the promoter) has contended that it was not under any regulatory or other obligation to track the *Elliott Group's* overall shareholding or disclose details of that shareholding to the market. I agree with the contention of *AZPAB* that it, being the promoter of the *Company,* was not under any regulatory obligation to disclose details of that shareholding to the market. However, it is trite law to state that in terms of regulation 29 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "Takeover Regulations") and regulation 13(1), (3) and (6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "Insider Trading Regulations"), the acquirer (who holds more than 5% shares or voting rights) has to make relevant disclosure to the company and obligate the said company to make disclosure to the stock exchanges under the relevant provisions of the said regulations. In the instant case, the record before me does not bear any such disclosure either by the *Elliott Group* or by *AZPIL*. The inherent principle of disclosure-based regime is that the ordinary shareholders are also empowered

by way of equity of information. Although the SCN has not set out any specific charge against the *Noticees* for the non-disclosure to the stock exchanges about the acquisition of shares exceeding 5% of share capital of *AZPIL*, I have to observe that the entities cannot escape from their regulatory burden of disclosure which they owed to other public shareholders at the relevant point in time. Since, the SCN pending for adjudication before me does not enumerate any allegation with regard to the purported non-compliance of the Takeover Regulations or the Insider Trading Regulations by the *Elliott Group* or the *Company*, as the case may be, therefore, in the circumstances, it would be prejudicial to the interests of the concerned *Noticees* and the *Company* and travesty of principles of natural justice if this order is to borne any finding in this regard. Considering the foregoing, I do not find any reason to delve on such purported non-disclosure any further.

19. Moving on to the allegation of collusion between the *Elliott Group* and *AZPAB* at the time of OFS, I note from the SCN that the main reason for alleging such a collusion is the fact that the bid price was modified by the *Elliot Group* in the last minute from around ₹580 - ₹592 to ₹620 - ₹630 so as to successfully subscribe to the shares of *AZPIL* under the OFS. In this regard, I note from the records that the floor price was fixed in consultation with the merchant banker of *AZPAB* and in the SCN no charges have been levelled against any of the said intermediary entity who advised *AZPAB* to fix the floor price to suit their requirement. The record also does not provide for any evidence of discussion between *AZPAB* and the *Elliott Group* or anyone on their behalf relating to fixation of the floor price under the OFS. In addition to the above, I observe that the floor price was not customized to suit any particular entity and as is the norm, it remained the same for all interested entities who wanted to participate in the OFS. It was open to all the potential buyers/subscribers to make analysis of the information available in the public domain, the fundamentals and performance records of *AZPIL*, its risk profile and investment potential and having taken all these facts into consideration, an entity was free to decide or modify its bidding price to the extent possible as per its risk appetite and expectation of return on investment in the *Company*. There is thus no evidence available on records or in the SCN to support the charge that there was a collusion or arrangement between the *Elliot Group* and *AZPAB* under which the *Elliot Group* had acquired the shares of *AZPIL* in the OFS only to ensure successful delisting of the shares of *AZPIL*. Notably, the material on record before me rather suggest that it was only post OFS, that *ICICI* helped *AZPAB* identify the shareholders who purchased the shares offered in the OFS and the various percentages of

shares held by them. Thus, it rules out the possibility of existence of any pre-arrangement between the *Elliot Group* and *AZPAB* prior to the OFS since, *AZPAB* came to know about the identities of those who had purchased shares in the OFS only after conclusion of the OFS exercise. The SCN also states that *Mr. Sachin Mistry* (the *Elliott Group*) met *AZPAB's* representative *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) separately pursuant to OFS for the first time on July 8, 2013. Further, as has been noted above, the SCN makes no allegation about vitiation of the OFS scheme nor does it complain or allege that the dilution of shareholding done in the OFS in compliance with MPS requirement was actually a façade to conceal their scheme for getting the *Company* delisted.

20. As per the SCN, what is intriguing is the fact that the *Elliott Group* had no previous exposure in the scrip of *AZPIL* and after the roadshow of May 15, 2015, the *Elliott Group* had taken considerable exposure in the scrip of *AZPIL* by way of participating in the OFS and thereafter, by way of further acquisition of shares through open market purchases. However, the fact cannot be lost sight of is that the OFS was oversubscribed by 2.84 times which implies, that apart from the *Elliott Group*, there were several other entities who had shown interest in buying the scrip of *AZPIL* and there is nothing on record to indicate that all of them had prior exposure to the scrip of *AZPIL*. Therefore, lack of prior exposure to the scrip of *AZPIL* on the part of the *Elliot Group* cannot be invoked to question the intention of the *Elliot Group's* decision to purchase the shares of *AZPIL*. In my considered view, in the absence of any evidence to the contrary to suggest that the *Elliott Group* had modified its bid in the OFS as part of a collusive design with *AZPAB* or *AZPIL* or the said modification was in breach of any provisions governing the bidding exercise, it would not be justified to draw an adverse inference of collusion or pre-arrangement between the *Elliot Group* and the *Company* or the promoter merely on the fact that bid price was modified by the *Elliot Group* and that the *Group* had further acquired additional shares of the *Company* from the market. It is undisputed that the shareholding of the *Elliott Group* assumed significance especially for the purpose of smooth passage of the delisting resolution. As per the extant Delisting Regulations as applicable to the relevant period in this case, the first and foremost pre-condition that was mandated to be complied with before undertaking the delisting process was that a special resolution as envisaged under regulation 8 of the Delisting Regulations, 2009 had to be passed. It is a matter of fact that in the instant case, apart from the promoter's holding which was 75% post OFS, the *Elliott Group's* holding of 15.52% shares in *AZPIL* had a decisive role to play in

adoption of the said special delisting resolution. In fact, the purchase of additional 3,54,196 shares of *AZPIL* (i.e., 1.42% of total shareholding) between May 29, 2013 (i.e., day immediately after the OFS) and September 12, 2013 from the open market via p-notes by two entities of the *Elliott Group*, namely, Elliott International L.P. and Elliott Associates L.P., did put the *Elliott Group* in a dominant position to facilitate the passage of a special resolution for delisting of *AZPIL*. As stated above, in the OFS, the *Elliott Group* could acquire upto 14.10% of the shareholding in *AZPIL*. However, further acquisition of shares by the *Elliot Group* from the market, as cited above, which took their shareholding in *AZPIL* beyond 15%, placed the *Elliott Group* in an unbeatable advantageous position to help *AZPIL* in passing of the said special resolution for delisting without any hindrance, as was experienced in the past two unsuccessful delisting attempts by *AZPIL*. However, irrespective of the above-stated circumstantial presumption, the mere fact that the *Elliott Group* had subscribed to the OFS of *AZPIL* and also had acquired additional shares from the market after the completion of the OFS so as to take its total shareholding to over 15%, would not in isolation be sufficient to conclude the indulgence of the *Elliot Group* in a scheme or artifice for manipulating the delisting price discovery mechanism in collusion with the promoter of *AZPIL*.

21. The facts pertaining to the two unsuccessful attempts for delisting in the past was in public domain and the expectation by the investors or the prospective investors of another attempt for delisting by the promoter of *AZPIL* could not be ruled out at that point of time when OFS was conducted to comply with the requirement of MPS norms under the SCRR by the *Company*. It is also an admitted fact that *ICICI* was engaged by *AZPAB* as the seller broker for the OFS with an additional mandate to gauge the intent of the prospective investors and explore the possibility of their future participation in buy back or delisting process of the *Company*. However, I find the most compelling reason apparently for which the SCN alleges collusion amongst the *Noticees* was that immediately after acquiring huge quantities of shares in OFS, the *Elliot Group*, promptly went on purchasing additional shares of *AZPIL* from the open market till the *Group's* cumulative holding rose up to 15% of the total share capital of the *Company* and more importantly, the *Elliott Group* have indeed used their voting rights (of 15% shareholding) to vote in favour of the *Company's* delisting resolution. The nonchalant manner in which the *Elliot Group* went on a buying spree till they achieved 15% of stake in a company to which they had no prior exposure is certainly an extraordinary step which raises suspicion about their veiled intent behind such huge

acquisition of shares. However, in my view, in the absence of any evidence to support any conspiratorial design by the *Noticees* at the time of OFS, the afore-stated events pertaining to the acquisition of shares by the *Elliot Group* during OFS and immediately thereafter, have to be treated as unilateral decisions of the *Elliot Group* to acquire upto 15% of shareholding in *AZPIL* probably as part of a larger strategy to play a decisive role in delisting of the company. I have further elaborated this view in the following paragraph.

22. As stated above, the facts pertaining to the previous unsuccessful delisting attempts by *AZPIL* were very much in the public domain. Considering the same, the purchase of additional 1.42% of the total shareholding of *AZPIL* by two entities of the *Elliott Group*, namely, Elliott International L.P. and Elliott Associates L.P., which increased the total shareholding of the *Elliott Group* up to 15% in the *Company*, can impute a motive to the *Elliott Group* for deliberately trying to play a decisive role in the future delisting process. Had the *Elliott Group* restricted itself only to the 14.10% shares of the *Company* purchased during the OFS, the special resolution for delisting initiated by the *Company* would have faced difficulty in getting the approval or assent of the requisite 90% of the shareholding or voting rights in the *Company* despite full support from the *Elliott Group*. However, by purchasing the additional shares of 1.42% in *AZPIL* in open market, the *Elliot Group* ensured that for any delisting proposal to succeed in future, the promoter of *AZPIL* cannot get the mandated special resolution passed without the support of the *Elliot Group*. In their written submission, the *Elliot Group* have contended that it was a matter of common knowledge and/or market speculation that *AZPAB* might seek to try to delist the *Company* in the future. Though, no credible business rational has been advanced with regard to their purchase of the additional 1.42% shareholding in *AZPIL* immediately after their purchase of 14.10% of shareholding of the *Company* in the OFS, the fact that *Elliott Group* was very well anticipating that *AZPIL* may head towards delisting in near future, leads me to believe that the decision to purchase the additional 1.42% shareholding in *AZPIL* by the *Elliott Group* immediately after the OFS may have been taken with a strategic motive to play a decisive role in influencing the delisting process including influencing the delisting price, whenever *AZPIL* initiates a delisting proposal in near future. Moreover, as I can find from the submissions of the *Noticees*, the *Elliott Group* had previously supported the delisting of Patni Computers probably by following a similar strategy. However, beyond the circumstantial presumption about the above stated ambitious motive of the *Elliot Group*, at this point, there is no persuasive evidence on record to conclude that the said acquisition

under the OFS and further acquisition from open market by the two entities of the *Elliott Group* were done at the behest of or under a collusive arrangement with the promoter company of *AZPIL*.

23. My observations in the foregoing paragraphs about the first leg of the allegations pertaining to the alleged collusive arrangement between *AZPAB* and the *Elliott Group* during the OFS process, would now lead me to deal with the second leg of allegation made in the SCN, viz. the alleged fraudulent arrangement between the *Elliott Group* and *AZPAB* in influencing the delisting price through continuous negotiations post conclusion of OFS. The question that stresses for an answer now is, whether post OFS, *AZPAB* and the *Elliott Group* had entered into a collusive nexus and devised a fraudulent scheme under which *AZPAB* was to get successfully delisted with the active support of the *Elliott Group*. In this regard, the SCN has enlisted and relied upon certain communications/email conversations, meetings, etc. apparently relating to the alleged collusive engagements between *AZPAB* and the *Elliott Group* towards achieving delisting of *AZPIL*. In their respective submissions, the *Noticees* on their part have also enlisted and relied upon a series of communications exchanged between them to set right the context of such communications and to disprove the said allegations as well as to buttress their point that they did not have any role in determining the price for delisting. The *Noticees* have also contended that certain parts of the communication have been selectively pulled out and interpreted out-of-context in the SCN. I have perused these communications relied upon by the *Noticees* in my endeavour to understand and decipher the import of these communications, considering the circumstances in which these email / telephonic communications were exchanged preceding the adoption of the delisting resolution. In this backdrop, before examining the veracity of the afore-stated allegation of fraudulent collusive nexus levelled against the *Noticees* in the SCN, it would be appropriate to recapitulate the relevant events and highlight the contents of the relevant communications exchanged amongst the *Noticees* before and after the OFS exercise, as presented in the table below:-

Sl. No	Date	From	To	Relevant Content of the emails
1.	25/04/2013 (7:03 PM) **Exhibit 16** from *AZPAB*	Ravi Talwar (*ICICI*)	*Himanshu Agarwal* and *Brimicombe Ian (AZ Group)*, *Vishal Kanjani* and *Neha Verma (ICICI)*	"*Ian - on your query on the possibility of delisting AZPIL sometime in the future, we believe that the incoming investors will certainly be open to the same. However, the return expectations may vary with each investor.*" "*I-Sec will work towards developing a consensus amongst the investors, so that the delisting premium is responsible from AZ's perspective, while still being acceptable to investors from a return perspective.*"
2.	25/04/2013 (8:09 PM) **Exhibit 16** from *AZPAB*	Ravi Talwar (*ICICI*)	*Himanshu Agarwal* and *Brimicombe Ian (AZ Group)*, *Vishal Kanjani* and *Neha Verma (ICICI)*	"*You need to also give your views on the questions that Ian had asked for each of these funds. If I recollect, there were 4 questions are under.* *Their risk appetite* *Would they like to participate in future de-list.* *Their investment horizon.* *Amount likely to invest.*"
3.	26/04/2013 (17:19:17) **Exhibit 16** from *AZPAB*	*Ravi Talwar (ICICI)*	*Himanshu Agarwal* and *Brimicombe Ian (AZ Group)*, *Vishal Kanjani (ICICI)*	*"As far as the typical long term investors like insurance companies (example HDFC Life) or sovereign funds (example GIC) are concerned, their risk appetite from the perspective of the company returning to sustainable profitability will be higher, as they have a longer tenor in mind. However, this will be lower for say, mutual funds, as they typically look at 1 – 2 years to exit. However, given that our projections suggest return to profitability without the benefit of the grant relatively soon, MFs are likely to find the opportunity interesting even from a relatively shorter term perspective.* ***Would they like to participate in future de-list.*** *I had addressed this in my email. Yes, investors would be open, and in fact my actually welcome the possibility of a delisting.*

				Their investment horizon. *I have addressed this in the first point. We have also given specific holding periods wherever possible for each investor in the note sent yesterday.* ***Amount likely to invest*** *Most MFs and insurance firms in India can invest between USD 4-8 million. FIIs based out of Singapore and HK can easily take up to 25% of the offering (the ceiling prescribed by SEBI)".*
4.	July 8, 2013	*Mr. Sachin Mistry* (Associate Portfolio Manager, Elliott Advisors (HK) Ltd.) met the promoter's, (i.e., *AZPAB)* representative *Mr. Ian Brimicombe* separately on July 8, 2013.		
5.	July 09, 2013	On July 09, 2013, a telephonic request was made from *AZPAB/ AZ Group* to *ICICI* seeking Internal Rate of Return (hereinafter referred to as **"IRR"**) calculations to buy out shareholders of *AZPIL* including the *Elliott Group*. In the said discussion *Mr. Ian Brimicombe*, and *Mr. Ravi Talwar* (Sr. VP, *ICICI*) participated.		
6.	July 16, 2013	On July 16, 2013 *ICICI* shared an excel sheet containing IRR calculations to enable *AZPAB* to buy out shareholders of the *Company* including the *Elliott Group*		
7.	August 16, 2013	Thereafter, vide email dated August 16, 2013, *Mr. Ian Brimicombe* asked *ICICI* to prepare a revised excel sheet to determine sensible limit and range for negotiations with the *Elliott Group. Mr. Brimicombe's* remarks in an email to *ICICI* of August 16, 2013		
8.	August 20, 2013	On August 20, 2013, *Mr. Sachin Mistry* (Associate Portfolio Manager - Elliott Advisors (HK) Ltd.) met *Mr. Ian Brimicombe* at the Annual General Meeting of *AZPIL*.		
9.	30/08/2013 (15:01) **Exhibit 14** from *AZPAB*	*Ravi Talwar (ICICI)*	*Brimicombe Ian (AZ Group)*	*"I am requesting Pawan for the weekly shareholder position data that comes in from the register, for the weeks post the OFS.* *This will help us to get a sense of Elliott's post OFS purchases from the open market."*

10.	10/09/2013 (09:10) **Exhibit 14** from *AZPAB*	*Ravi Talwar (ICICI)*	*Brimicombe Ian (AZ Group), Vishal Kanjani (ICICI)*	*"We will thereafter analyse the date to determine market purchases by Elliott, and send this to you asap."*
11.	10/09/2013 (07:52 PM) **Exhibit 14** from *AZPAB*	*Ravi Talwar (ICICI)*	*Brimicombe Ian (AZ Group)*	*"Over and above the IRR analysis we had shared with you, it would be necessary to speak with Elliott to get a more specific estimate of what they may be looking for."*
12.	September 11, 2013	Vide e-mail dated September 11, 2013, *ICICI* indicated to *Mr. Ian Brimicombe* that the exact price would be determined closer to the delisting process depending on the then prevailing market conditions and "*outcome of negotiations*".		
13.	September 19, 2013	Vide another email dated September 19, 2013 to *Simon, Mr. Ian Brimicombe* stated that he had spoken to the largest shareholder, the *Elliott Group* and that the *Elliott Group* was ready to hear more on their next move**.**		
14.	23/09/2013 (11:59 PM) **Exhibit 7** from *AZPAB*	*Ian Brimicombe* (*AZ Group*)	*Mallon Mark, Smith David N, Lowth Simon (*all from *AZ Group)*	*"We have a single large shareholder owning 15.1% who can determine the delisting out come and is incline to sell short term. If we wait his holding may dissipate over time meaning it would be more difficult to delist."* It was further mentioned that "*Our largest shareholder fund would expect an internal rate of return of at least 25% and possibly as high as 40%. This would be subject to negotiation.*"
15.	October 03, 2013	*Mr. Sachin Mistry* met *Mr. Ian Brimicombe* on October 03, 2013 in London.		
16.	November 14, 2013	*Mr. Ian Brimicombe* had a telephonic conversation with *Mr. Sachin Mistry* on November 14, 2013.		

17.	03/12/2013 (07:30 AM) **Exhibit 18** from *AZPAB*	*Ian Brimicombe (AZ Group)*	*Dunoyer Marc P (AZ Group)*	*"We only need to get from 75% to 90% to delist and reduce a lot of complexity in administering this Company. I think it is important to consider this trade right now for execution in early 2014 as we are about to announce Project Boris which is likely to depress views on AZ's presence in India. I would recommend executing after this announcement.* *We have a willing seller sufficient to achieve delisting but of course it is about getting the best price possible and achieve fair value. I would recommend we start negotiating price once Boris is announced. Of course if we cannot get to the right price we will not need execute."*
18.	January 31, 2014	on January 31, 2014 *Mr. Ian Brimicombe* and *Mr. Sachin Mistry* met in London		
19.	February 09, 2014	Pursuant to the above stated meeting, vide email dated February 09, 2014, *Mr. Ian Brimicombe* addressing to *Mr. Dunoyer*, recorded in his email that the "*negotiating position has now swung in our direction as the share price is low*"		
20.	February 28, 2014	During the evening of February 28, 2014, after the markets in India had closed, *Mr. Brimicombe* contacted a number of stakeholders, including *Mr. Darius Udwadia* (the Chairman of *AZPIL*), *Mr. Pawan Singhal* (the then Vice President - Legal, Secretarial & Compliance Officer at *AZPIL*) and colleagues in AstraZeneca Plc's Company Secretarial division, to make them aware of the imminent announcement of *AZPIL's* delisting. *Mr. Brimicombe* also made a telephone call (again, after the markets in India had closed) to *Mr. Mistry* as the representative of the largest single public shareholder in *AZPIL* to make him aware of the forthcoming delisting announcement.		
21.	June 20, 2014	special resolution was passed on June 20, 2014, wherein the *Elliott Group* voted in favour of the delisting proposal.		

(**emphasis supplied**)

24. In addition to the above, in **Exhibit 15** to its reply, *AZPAB* have, in a report titled as "*AZ India Update on Corporate Structure – August 2013*" *inter alia*, stated as under:

"The shareholders highlighted are effectively controlled by one investor, Elliot partners a US fund based in HK. A foreign investor direct ownership cannot exceed 10% and one investor could not acquire more than 3.75% in the OFS. However, through participating notes acquire via various investors, Elliot now controls

15% of AZPIL's.

……..

Our largest shareholder fund would expect an internal rate of return (IRR) of at least 25% and possibly as high as 40%. This would be subject to negotiation. *Based on the estimated investor buy in price of INR700 per share (likely to be a prudent estimate as the average buy in price was INR626 per share), the total cost of a 25% stake in AZPIL including the premium would be in the range of US$85 assuming a 9 month investment period to Q4 2013.*

Recommendation

…….

As a result of the offer for sale AZPIL, now has a dominant shareholder who controls 15% of AZPIL, sufficient for AZ to reach the 90% delisting threshold in addition, a positive change in the environment, presents a near term opportunity to delist.

…….

The cost of acquiring 25% of AZPIL at various IRR's over time is set out in ***Appendix 2."***

The appendix 2 to the said exhibit is titled "*Economics of the delisting proposal (INR66/US$)*" and lists out the details of internal rate of return in a certain time period. It is to be noted here that the said exhibit does not have any date and from the title it appears that it could be from anytime after the month of August, 2013.

25. I would now examine each of the relevant communications referred to in the table above. The contents of the first three emails addressed by *Mr. Ravi Talwar* of *ICICI* to *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and other officials of *AZ Group* on 25th and 26th April, 2013 (all prior to OFS) reflect the preliminary assessment of *ICICI* about the possibility of delisting of *AZPIL* while the OFS of the *Company* was underway. The contents of the email dated April 25, 2013 (time 7.03 PM) from *Mr. Ravi Talwar* of *ICICI* to *Mr. Ian Brimicombe (AZ Group)*, suggest that the incoming investors would have certain return expectation before they open up to the delisting proposal and that *ICICI* would work towards reaching a consensus with the investors so that the delisting premium is reasonable from the *AZ Group's* perspective as well as acceptable to investors from a return perspective. The second email of the even date from *Mr. Ravi Talwar* of *ICICI* to *Mr. Ian Brimicombe* among others, also dwells on the possibility for participation by the prospective investors in the future delisting process, their investment horizons and the amount likely

to be invested by them, etc. The queries posed in the aforesaid email were replied to by *Mr. Ravi Talwar* of *ICICI* vide email dated April 26, 2013 addressed to *Mr. Ian Brimicombe,* among others, wherein it was clarified that:

(a) Investors would be open and, in fact, may actually welcome the possibility of a delisting;

(b) Most MFs and insurance firms in India can invest between USD 4-8 million. FIIs based out of Singapore and Hong Kong can easily take upto 25% of the offering (the ceiling prescribed by SEBI).

26. It is, therefore, apparent from the afore-mentioned communications that the promoter company, i.e., *AZPAB* had started actively exploring the possibility of delisting of *AZPIL* even before the process of OFS was completed. In fact, the negotiations/road shows undertaken by *ICICI* on behalf of *AZPAB* for OFS also included ascertaining the investment horizon of the prospective investor in OFS, their risk appetite, the amount they are likely to invest and also if they would be open to the idea of delisting of the shares of the *Company*. As I have already observed earlier, *ICICI* was appointed as the seller broker for the OFS as it was also willing to simultaneously work for building a consensus for delisting amongst the existing and prospective investors. Considering the foregoing, I do not have any hesitation in holding that all through the OFS process, *AZPAB* was consciously contemplating and exploring through *ICICI,* the possibility of delisting of *AZPIL* from the concerned stock exchanges as soon as possible. However, just because the promoter of the *Company* was exploring the possibility of a successful delisting procedure for *AZPIL* in near future separately in consultation with its seller broker while the OFS exercise was in progress, it does not *suo moto* establish conclusively that an arrangement or fraudulent scheme was already conceived by the *Noticees* from the time of OFS itself and that the *Elliot Group* had subscribed to the shares of *AZPIL* through the OFS only to achieve their common mutual objective of getting the scrip of *AZPIL* delisted, more so when the SCN itself does not allege or complain about the sanctity of OFS process. Therefore, in the absence any evidence or persuasive material to the contrary to show that there was a meeting of minds between *AZPAB* group and the *Elliot Group* prior to and during the OFS itself, I would prefer to hold on to my earlier observation that there is no material emanating from the afore-stated three communications to indicate that the promoter of the *Company* and the *Elliott Group* had conducted themselves in a collusive manner while carrying out the OFS process of *AZPIL*.

27. Moving on to the other communications and meetings, etc. highlighted in the table above, I find that all of them pertain to the post-OFS period. Having observed that no collusive nexus under any fraudulent scheme was noticed amongst the *Noticees* during the OFS, the communications and other events that occurred after the OFS deserve to be judiciously analysed to see if the *Noticees* have conducted their affairs in a collusive manner under any perceptible fraudulent scheme to accomplish their goal of achieving delisting of *AZPIL*, as has been alleged in the SCN. I note that *Mr. Sachin Mistry* (Associate Portfolio Manager, Elliott Advisors (HK) Ltd.) met *Mr. Ian Brimicombe* of *AZPAB* privately on July 8, 2013, ostensibly for discussing about business of *AZPIL*. Immediately on next day, i.e., on July 9th 2013, a telephonic request was made from *AZPAB* to *ICICI* seeking IRR calculations to buy out shareholders of *AZPIL* including the *Elliott Group*. Subsequently on July 16, 2013 *ICICI* shared an excel sheet containing IRR calculations from the point of enabling *AZPAB* to buy out shareholders of the *Company* including the *Elliott Group*. Thereafter, vide email dated August 16, 2013, *Mr. Ian Brimicombe* of *AZPAB* asked *ICICI* to prepare a revised excel sheet to determine sensible limit and range for negotiations with the *Elliott Group*. It is interesting to note that *ICICI* was asked to work out a sensible limit of IRR calculation on behalf of the *Elliott Group* for which, ideally *ICICI* was supposed to take inputs from the *Elliott Group* about their expected returns from their investment in *AZPIL*. However, the records before me do not indicate that *ICICI* had ever communicated with the *Elliott Group* in the matter. The *Elliott Group* have also in their submissions denied having given any input for IRR calculation to *ICICI*. As stated above, the promoter of the *Company* requested *ICICI* to prepare IRR calculation to buy out shareholders of *AZPIL* including the *Elliott Group* immediately the day after *Mr. Sachin Mistry* privately met *Mr. Ian Brimicombe* of *AZPAB* on July 8th 2013. The preponderance of probability that emerges from the aforesaid sequence of events suggests that *ICICI* was asked to prepare the IRR calculations based on the inputs given by the promoter of the *Company* about the IRR expectation of *Elliott Group*. It is seen that soon after *ICICI* was asked to prepare a revised excel sheet of IRR on August 16, 2013, *Mr. Sachin Mistry* (the *Elliott Group*) met *Mr. Ian Brimicombe* (*AZPAB*) on August 20, 2013 at the Annual General Meeting of *AZPIL* and going by the immediate context in which the meetings were held between the two sides, it raises again a irrefutable probability that the revised IRR calculation was actively being discussed by both sides at that point in time.

28. The two emails dated August 30 and September 10, 2013 (**Exhibit 14**) point to the fact

that the open market purchases made by the Elliott Group post-OFS, were being ascertained and examined at the behest of *AZPAB* so as to find out the date and to get a sense of such purchases of additional shares made by the *Elliott Group*. In another email dated September 10, 2013 (**Exhibit 14**) it was conveyed to *Mr. Ian Brimicombe* (*AZPAB*) (in addition to the IRR analysis that was shared by *ICICI* with *AZPAB)* that it would be necessary to speak to the Elliott Group to get a more specific estimate of what they may be looking for (for delisting). Subsequently, vide e-mail dated September 11, 2013, *ICICI* indicated to *Mr. Ian Brimicombe (AZPAB)* that the exact price would be determined closer to the delisting process depending on the then prevailing market conditions and "*outcome of negotiations*" while, vide email dated September 19, 2013*, Mr. Ian Brimicombe* informs his colleague *Mr. Lowth Simon* (CFO - *AZ Group*) that he had spoken to the largest shareholder, the *Elliott Group* and that the *Elliott Group* was ready to hear more on their next move. It clearly indicates that *Mr. Ian Brimicombe (AZPAB)* has abided by the advice given by *ICICI* through their email dated September 10, 2013 to speak to the *Elliott Group* to get a more specific estimate from them.

29. The email dated September 23, 2013 (**Exhibit 7**) is in the nature of an internal communication between *Mr. Ian Brimicombe* of *AZPAB* and other officials of his group which substantiates the fact that the Elliott Group was acknowledged as the single largest shareholder owning 15.52% of stake in *AZPIL* that could determine the delisting outcome and that the *Elliott Group* was inclined to sell short term. The said email also exposes *Mr. Brimicombe's* anxiety to complete delisting of *AZPIL* at the earliest, else the *Elliott Group* may "*dissipate"* its shareholding in *AZPIL* "*over time*" in which case it would be difficult for them to delist. At the same time *Mr. Ian Brimicombe* shares his thought with his colleagues that the *Elliott Group* would expect IRR of at least 25% and possibly as high as 40% subject to negotiation. This email not only illustrates how the promoter of *AZPIL* was single-mindedly focussed on getting *AZPIL* delisted with the help of the *Elliott Group* but also reveals the fact that by now, *Mr. Ian Brimicombe* of *AZPAB* had, through his previous meetings and interactions with the *Elliott Group*, got some concrete inputs from the *Elliott Group* about the IRR they were expecting from their investment in the *Company*. I note that soon after sharing his views with his colleagues in *AZ Group*, *Mr. Ian Brimicombe* met *Mr. Sachin Mistry* (the *Elliott Group*) privately in London on October 3rd 2013, purportedly for business related discussion and also had had a follow up telephonic conversation with *Mr. Sachin Mistry* on November 14, 2013. Although the records before me do not contain any

minutes of the aforesaid London meeting or the details of telephonic conversations between *Mr. Ian Brimicombe* and *Mr. Sachin Mistry,* given the background and the context in which these private interactions have taken place and given the seriousness with which *Mr. Ian Brimicombe* has been strenuously working towards his delisting endeavour*,* it is understandable that delisting of *AZPIL* was bound to dominate the entire discussions between the two sides in the afore mentioned meeting and tele-conversations.

30. At this point, I would recall the table presented at para-7(37) on page-13 of this order which outlines the events that took place and various steps taken in connection with the delisting of the *Company*. It can be observed from the said table that specific steps pertaining to the delisting of *AZPIL* had already been set in motion by the promoter of *AZPIL* at least as early as from August 16, 2013 when a draft paper on delisting was prepared, circulated within the *Group*, internally debated and updated periodically and these activities continued till the draft delisting proposal was finally approved by the board of the *Company*. It shows the eagerness and alacrity with which the promoter of *AZPIL* was chasing its goal to get *AZPIL* delisted by continuously engaging with the *Elliott Group* to find a mutually acceptable delisting price or range of price based on their expected IRR and at the same time working internally to ensure that the *Company* goes into delisting as soon as they negotiate a deal with the *Elliott Group* since *Mr. Ian Brimicombe* was apprehensive that any delay on their part may lead the *Elliott Group* to dissipate their stake in the market. The aforesaid activities being carried on by the *AZ Group* on a concurrent basis while keeping themselves busy discussing and negotiating with the *Elliot Group* also rebuff their claim that the promoter of AZPIL was uncertain about the delisting of *AZPIL* till February, 2014.

31. In his email dated December 03, 2013, apart from making his intentions clear that the company *AZPIL* should go for delisting in early 2014 after announcement of ***Project Boris*** which was expected to depress the market view about the *Company* (*AZPIL*) in India, *Mr. Ian Biricombe* also describes the *Elliott Group* as a willing seller sufficient to achieve the delisting but of course it is all about getting the best price possible and achieve fair value. I note that all the components of the aforesaid email reiterated in the preceding sentences are of significant import. In the said email *Mr. Ian Biricombe* has described the *Elliott Group* as a **willing seller** sufficient to achieve the support of 90% of shareholding to achieve delisting which again implies that negotiation with the *Elliott Group* at that point of time had already reached the stage of extracting the willingness from the *Elliot Group* to support

the proposed delisting of *AZPIL* pending a final decision (from the *Elliot Group*) about getting the best price possible of the investment made by them in *AZPIL*. It shows that on the strength of his periodic discussions and negotiations with *Mr. Sachin Mistry* of the *Elliot Group*, *Mr. Ian Biricombe* could express in the aforesaid email with conviction that the *Elliot Group* was a willing seller. The price factor also assumed significance in the negotiation as *AZPIL* would be accordingly required to shell out the amount to the selling investors in case the resolution for delisting of its equity shares is adopted. It is trite law to state that any prudent promoter or company would be interested in paying as less as possible for the acquisition of its own shares particularly when the company is on its way out to get delisted from stock exchanges. Having examined the aforesaid communications exchanged and meetings/telephonic discussions held by the *Noticees* through their officials and also the communications relied upon by SEBI in the SCN, and keeping in view the foregoing discussions, I find that the *Noticees* were certainly engaged in discussions/ negotiations to ensure a safe and sure passage of delisting process on the basis of a mutually arrived best possible delisting price or range of price, for the equity shares of *AZPIL,* prior to commencement of actual delisting process.

32. In the aforesaid background I note that *Mr. Ian Brimicombe* (VP - Corporate Finance, *AZ Group*) and *Mr. Sachin Mistry* (the *Elliott Group*) again had a private meeting on January 31, 2014 in London reportedly to discuss regular business matters. Later on, apparently after the announcement of ***project Boris*** which was expected to depress the share price of *AZPIL* as anticipated in the email dated December 03, 2013 discussed above, vide his email dated February 09, 2014, *Mr. Ian Brimicombe* addressing to his colleague *Mr. Marc Dunoyer* (CFO, *AZ Group*), stated that the "*negotiating position has now swung in our direction as the share price is low*". Finally, in the evening of February 28, 2014, after the markets in India had closed, *Mr. Ian Brimicombe* contacted a number of stakeholders, including his colleagues in *AstraZeneca Plc*'s to make them aware of the imminent announcement of *AZPIL's* delisting. The same evening *Mr. Ian Brimicombe* also made a telephone call to *Mr. Sachin Mistry* and intimated him about the forthcoming delisting announcement of *AZPIL*. There is nothing on record to suggest as to what happened between February 09, 2014 when *Mr. Ian Brimicombe* of *AZPAB* felt confident that the negotiating position with the *Elliott Group* has now swung in their favour as the share price of *AZPIL* was low and the evening of February 28, 2014 when *Mr. Ian Brimicombe* conveyed them their decision to go for delisting of *AZPIL*. However, after having carefully and very closely followed the aforesaid

sequence of events, communications, meetings and exchanges of views embedded in those communications, I can clearly observe that post-OFS, throughout his interactions/ discussions *Mr. Ian Brimicombe* was sure that *AZPIL* has to be delisted at the earliest opportunity and that can happen only with the help of the *Elliott Group* and accordingly, he was surreptitiously but vigorously chasing only one question, i.e., what should be the acceptable price at which the *Elliott Group* would be ready to exit from their investment in *AZPIL*. Although he was continuously engaged in private dialogues with *Mr. Sachin Mistry* off and on and was working out IRR calculations that may be agreeable to the *Elliott Group*, he was also visibly waiting for the right opportunity to negotiate and strike a final deal about the delisting price as he was confident that the negotiation would swing in their favour after announcement of ***Project Boris***. To his liking and expectation, as communicated by him vide his email February 09, 2014 referred to above, the share price of *AZPIL* apparently came down and his negotiating position swung in his direction.

33. Keeping the aforesaid in view, even if there is no direct evidence on record to suggest as to whether or not, *AZPAB* and the *Elliott Group* had arrived at a specific negotiated delisting price, this is a fit case where, given the sequence of events, correspondences, exchange of communications, the anxiousness of *AZPAB* to delist *AZPIL* and the private meetings, etc. as narrated above, the preponderance of probabilities very strongly lead me to believe that there certainly was a negotiated deal between the promoter of *AZPIL* and the *Elliott Group* before the decision to delist was conveyed by *Mr. Ian Brimicombe* to his own company officials and also to the *Elliott Group*. In any case, as per *AZPIL's* own admission expressed in Exibit-15 of their written submission (quoted at Para-25 of this order) the promoter of *AZPIL* was knowing that "***Our largest shareholder fund would expect an internal rate of return (IRR) of at least 25% and possibly as high as 40%.***"

34. Needless to guess here that in the evening of February 28, 2014, immediately after taking a decision to proceed for delisting of *AZPIL*, *Mr. Ian Brimicombe* chose to inform in advance only to *Mr. Sachin Mistry* of the *Elliott Group* on the ground that he was the representative of the largest single public shareholder, and not to any of the other public investors. Yet gain it shows that no public investor other than the *Elliott Group* who had the decisive strength to get the special resolution passed, had any place in the horizon of the *Company* or its promoter. Therefore, right from the days after the completion of OFS, *Mr. Ian Brimicombe* of *AZPAB* was using all his energy and dedication only in bringing the *Elliott Group* into his fold. This apparent collusive relationship between the *Company* and its

promoting company and the *Elliott Group* is further corroborated by the fact that the *Elliott Group* finally did support and vote for the special resolution proposed by the *Company* but for which, the said special resolution could not have been passed. Thus, the very smooth passage of the special resolution about which *Mr. Ian Brimicombe* was so apprehensive and doubtful till there is no agreement with the *Elliot Group* about delisting pricing, bears testimony to the fact that there was undeniably an agreed deal about the delisting price or range of price between the two sides at the time when *Mr. Ian Brimicombe* declared their decision to delist *AZPIL* on February 28, 2014.

35. On the basis of the foregoing discussion I find from all the materials including the above cited email correspondences, that the single objective that was weighing in the minds of the promoters of *AZPIL*, i.e., *AZPAB* was to delist the shares of *AZPIL* from the concerned stock exchanges. However, having failed to accomplish the same in previous two unsuccessful attempts for delisting for want of requisite voting support from the public shareholders and at the same time being confronted with the time limit available for *AZPIL* to comply with MPS requirement as prescribed under Rule 19A of the SCRR, 1957 read with Clause 40A of the Listing Agreement, *AZPAB* decided to first comply with the MPS requirement by way of OFS through Stock Exchange mechanism as permitted by SEBI as one of the modes to achieve MPS. However, during the execution of the OFS as well as post OFS, as the email communications cited in the SCN and in the preceding paragraphs would very succinctly suggest, the promoter of *AZPIL* did not wish to treat the OFS as a stand-alone compliance goal and rather, have chosen to use the OFS as an opportunity to campaign for their ultimate aim of delisting the *Company*. This is self-evident from the fact that *ICICI* was engaged as a seller broker to handle the OFS since *ICICI* had expressed their willingness to explore the delisting proposal and mobilise a consensus about it amongst the prospective investors in OFS. Thus, delisting of *AZPIL* was always the uppermost priority for the promoter of *AZPIL* and post-OFS, the promoter *AZPAB* intended to achieve that end.

36. As observed aforesaid, from the events that have unfolded after the completion of OFS, starting with the *Elliott Group* buying additional 1.42% shares of *AZPIL* so as to increase their cumulative ownership to more than 15% stake in the *Company*, the series of communications exchanged between the representatives of promoter of the *Company* and the *Elliott Group* conspicuously indicate that the promoter of the *Company* was very pro-active to arrive at an understanding with the *Elliott Group* about the price at which the *Elliott*

Group would like to exit from their stake in the *Company* so that *AZPAB* can realise its ultimate goal of delisting the *Company* from the stock exchanges. Though the evidence on records does not pin-point at a specific delisting price that might have been agreed upon between the two sides, the attendant facts and circumstances of the case as discussed at length in the preceding paragraphs and the very fact that the *Elliott Group* had voted in favour of the delisting resolution proposed by the company but for which the delisting proposal would have certainly fallen through, would *ipso facto* be sufficient to conclude that there existed a prior meeting of minds between *AZPAB* and the *Elliott Group* with regard to the proposed delisting of *AZPIL*.

37. It is an acceptable fact that a decision to get a company delisted is a business decision and promoter(s) of a company are entitled to take a decision regarding that and also to decide the timing of such delisting as per their business convenience. Similarly, it may not be appropriate to ascribe any illegality to the internal working/deliberations and communication with a merchant banker to ascertain the feasibility of getting the *Company* delisted and to ascertain the likelihood of the major public shareholders extending their support to the proposed delisting. It may not be also correct to attribute wrong motive to the promoter's attempts to estimate the Internal Rate of Return or profit that may be expected by the shareholders when they offer their shares for sale in a delisting process as long as the same is done unilaterally without engaging or entering into negotiation with the investors, since the promoters and the *Company* have to figure out the commercial sense out of their delisting proposal and also have to prepare themselves to meet the possible financial outflows in case the delisting sails through successfully. However, what is disquieting to note is the way the promoters of the *Company* and the *Elliott Group* have conducted themselves while brazenly dealing with each other trying to arrive at an negotiated deal on the best price that may be acceptable to the *Elliott Group* and in this process, the *Noticees* have not bothered to think about the interest of other minority shareholders who had held 8.9% of the total shareholding of the *Company* nor have they thought about the adverse impact of their collusive behaviour on the interest of other investors in the securities market.

38. The reason for ignoring those minority shareholders and for engaging in discussions and email exchanges behind the back of those minority shareholders are self-evident and obvious from the fact that the promoter of the *Company* (*AZPAB*) required support of at least 15% public shareholding and voting power both for the purpose of passing the special

resolution as per the extant provisions of the Delisting Regulations and also to achieve the desired threshold of 90% shareholding in *AZPIL* post Reverse Book Building, so as to make the delisting process successful. Therefore, the promoter of *AZPIL* have concentrated all their focus in engaging with the *Elliott Group* and also in making the estimation of the price at which the *Elliott Group* may agree to sale their stake in the delisting process, in complete disregard for the interest of the remaining public shareholders. The question that arises at this point is whether the discussions and meetings held by the promoter *AZPAB* with the *Elliott Group* and various communications/email exchanges through which the officials of promoters had been trying to arrive at a negotiated price for the purpose of delisting can be called a manipulative or deceptive device in terms of Regulation 3 of the PFUTP Regulations, 2003. My answer to this question would be in the affirmative for the reason that not only did the promoter company vigorously try to arrive at an agreed delisting price with the *Elliott Group* but also with all certainties had finalised a deal based on which the promoter company decided to move the delisting resolution which was quite predictably supported by the *Elliott Group*. It was so obvious from the conduct of the *Noticees* that, without receiving affirmative consent from the *Elliott Group* about their willingness support the proposed delisting on the basis of a fair and sensible deal (may be within a range of 25% to 40% IRR as expected by *AZPAB*), the promoters could not have proceeded with their delisting proposal. Therefore, the entire mechanism of negotiations engaged by the promoters with the *Elliott Group* including on the assured range of returns expected by the *Elliot Group* from the delisting of *AZPIL* can be called a scheme to defraud the other minority shareholders as well as the investors at large and the said scheme was employed by promoters and the *Elliott Group* to fraudulently circumvent the normal price discovery through reverse book building process mandated under the Delisting Regulations, 2009. Having actually supported the special resolution for delisting as proposed by the *Company*, there is no hesitation to believe that the *Elliott Group* was poised to play a decisive role in influencing the delisting price in the Reverse Book Building process at a pre-determined price or range of prices in conformity with their deal already agreed with the promoter of the *Company* prior to announcement of delisting decision by the promoter. The facts of the case as discussed in preceding paragraphs and the manner in which the officials of promoting company of *AZPIL* and the *Elliott Group* have conducted their private parleys leaving the minority shareholders in a lurch, compel me to consider the acts of the *Noticees* post OFS as manipulative and in the nature of fraudulent trade practice within the realms of the PFUTP Regulations, 2003, as have been alleged in

the SCN.

39. To sum it up, I wish to observe that the *Noticees* have conducted their affairs in a very self-effacing manner with an ambition to fulfil their goal of delisting with the support of the *Elliott Group*' stake without any consideration of the commercial interest of the retail shareholders. However, providentially their plan to execute their ambition through an artifice or device in the form of pre-arranged negotiated price for delisting could not fructify due to judicial intervention and the interest of the minority public shareholders remained protected and saved from being adversely affected by the probable manipulative actions of the *Noticees*. From the representations received from Mr. Pankaj Bhatt and Mr. Suresh Bhatt, I am apprised that the *Elliott Group* as on date have already divested their stake in the *Company* through the open market and the entire public shareholding of the *Company* is at present dispersed among large number of shareholders which has *prima facie* dissipated the probability of any foul play by the *Company* or its promoter in the matter of delisting. Under the circumstances the threat of a manipulated delisting and its adverse impact on the interest of the minority shareholders being no more looming and actions and misdemeanours of the *Noticees* having failed to hurt the interest of the shareholders, any collusive understanding that was in existence prior to mooting delisting proposal and passing a resolution thereon, can be said to have lost its relevance at present. At the same time, considering the manner in which the *Noticees* had privately engaged amongst themselves post OFS for the prospect of delisting the scrip of *AZPIL* without involving or taking into account the interest of other retail shareholders, the *Noticees* cannot be absolved from the charge of violation of the provisions of the PFUTP Regulations, 2003 by indulging in unfair trade practice which was glaringly evident in their self-serving conduct itself. The series of private correspondences/ discussions that ensued amongst the *Noticees* as soon as the OFS was over and after the *Elliot Group* was found to have acquired 15.52% of stake in *AZPIL*, all behind the back of other public shareholders only to explore the possibility of delisting with the help of the *Elliott Group,* smack of unethical, opaque and discriminatory conduct of the *Noticees* displaying unfair treatment to other retail public shareholders, apart from indulging in a collusive scheme to get *AZPIL* delisted to suit their mutual interest.

40. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1) and (4), and 11B read with Section 19 of the SEBI Act, 1992, hereby strongly *censure* the *Noticees* for displaying such gross professional misconduct and fraudulent trade practice

in trying to arrive at a private arrangement amongst them so as to help the *Company* sail through the delisting procedure in a manner that was intended to dilute the Reverse Book Building procedure for discovery of the delisting price of the scrip as per stipulations in the SEBI (Delisting of Equity Shares) Regulations, 2009 thereby jeopardising the interests of the retail public shareholders and investors of the company at large. I hereby further;

(a) caution the *Noticees* and direct them to refrain from indulging in such unfair trade practices in future or in any other similar act whatsoever, so as to violate the sanctity of the SCRA, 1956, the SEBI Act, 1992 and the Rules and Regulations made thereunder including the SEBI (Delisting of Equity Shares) Regulations, 2009 both in letter and in spirit by indulging any acts, which are detrimental to the interest of the shareholders and prejudicial to the interest of the investors of securities market;

(b) direct that in case a fresh delisting proposal is initiated by the promoter company anytime in future, the same shall be initiated only after observing the extant provisions of SEBI Act and the regulations framed thereunder; in letter and spirit;

(c) Stock Exchanges, viz. BSE and NSE are hereby directed to closely monitor the entire delisting process to be initiated by the company in future to ensure complete satisfaction of all regulatory stipulations with fairness, transparency and integrity and to promptly report any aberrations noticed in the delisting process of *AZPIL* to *SEBI*.

41. The order shall come into force with immediate effect.

42. A copy of this Order shall also be served upon the Noticees and Stock Exchanges for action as necessary on their part.

-Sd-

DATE: JUNE 05 , 2020 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA