BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under 11(1), 11 (4) and 11B (1), 11 B (2), 11 D of the Securities and Exchange Board of India Act, 1992 and Section 12 A (1) and 12 A (2) of the Securities Contract Regulation Act

In the matter of Guiness Securities Limited

In respect of –

Noticee no.	Name of the Noticee	PAN
1.	Guiness Securities Limited	AAACG9843L
2.	Kamal Kumar Kothari	AKYPK8782D
3.	Dharmendra Kothari	AFGPK6680M
4.	Soumen Chatterjee	AKFPC1442D
5.	Deepak Parakh	AFPPP0732C
6.	Shree Kumar Jhanwar	ACIPJ0418R
7.	Babulal Nolkha	ADHPN4106A
8.	Sunita Kothari	AFNPK8049P
9.	S K B Securities Ltd.	AAHCS3335G
10.	Provat Mitra	ANDPM9486G
11.	Somnath Bhattacharjee	ADXPB0019J

12.	Lipika Bhattacharjee	ASSPB2706Q
13.	Hemant Kothari	AFOPK6638P
14.	Krishna Maheswari	AFDPM1446E
15.	Aman Mohan Kothari	AUOPK5221B
16.	Param Commodities Private Limited	AAFCP0003L
17.	Pawan Kumar Modi	AESPM0259F
18.	Murlidhar Sharma	AJMPS1405N
19.	Paramarth Agro Marketing Private Limited	AAFCP0005N
20.	Apurva Commodities Private Limited	AAGCA3264P
21.	Ram Avtar Sharma	ALGPS0914E
22.	Awadhoot Marketing Private Limited	AAECA9172C
23.	Sudarshana Mitra	AHBPM6874G
24.	Shyamal Mitra	AHBPM6875H
25.	Abhijit Pal	BMDPP7532A
26.	Gaurav Choudhary	AFSPC6498P
27.	Superfast Tours and Travels Private Limited	AAECS4607A
28.	Mahabir Chand Jain	ACHPJ8058N
29.	Jayant Kumar Jain	AGUPJ4377R

30.	Shri Vishnu Krupa Commodities Private Limited	AAMCS1499N
31.	Pawantar Agro Agencies Private Limited	AAFCP0004P

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

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1. Background –

1.1. The present proceedings before me emanate from an Inspection Report of National Stock Exchange (for convenience **"NSE"**) dated November 21, 2018 and the Report of Securities and Exchange Board of India (for convenience **"SEBI"**) dated November 28, 2018 ("for convenience "**SEBI Report**") observing therein various irregularities with respect to the working of Guiness Securities Limited (hereinafter referred to as "***GSL / Company***").

1.2. I note that *GSL* is registered with SEBI as an Intermediary in the following categories:

a. a stock broker in equity, equity derivative and currency derivative segments of NSE (Registration no. INZ000167037);

b. a stock broker in equity, equity derivative and currency derivative segments of BSE (Registration no. INZ000167037);

c. a stock broker in equity, equity derivative and currency derivative segments of MSEI (Registration no. INZ000167037);

d. a depository participant of CDSL (Registration no. 433-2007);

e. a depository participant of NSDL (Registration no. 239-2004); and

f. a Research Analyst (Registration no. INH000003390).

1.3. Consequent to the findings made in the above-mentioned reports, various actions were initiated by SEBI against *GSL*. A chronology of the actions initiated by SEBI against *GSL*, and the associated events surrounding SEBI's actions are tabulated below:

Table - 1

Sl. no.	***Event***	***Date***
1.	NSE forwarded an interim report of its preliminary observation to SEBI.	October 22, 2018
2.	Disablement of membership of *GSL* by NSE	November 07, 2018
3.	NSE's final report submitted to SEBI	November 21, 2018
4.	CDSL informed SEBI that the agreement between CDSL and DP – *GSL* had been terminated	December 03, 2018
5.	*Ad interim ex parte order* (for convenience "***Interim Order***"). was passed by SEBI against *GSL* and thirty five other entities upon the finding that the entities were *prima facie* in violation of the SEBI (Brokers and Sub Brokers) Regulations, 1992 (for convenience "***Stock Broker Regulations, 1992***"), SEBI (Intermediaries) Regulations, 2008 (for convenience "***Intermediaries Regulations, 2008***"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating To Securities Market) Regulations, 2003 (for convenience "***PFUTP Regulations, 2003***"), and circulars made thereunder.	December 19, 2018
6.	NSE passed an order suspending *GSL* from the membership of the exchange.	May 06, 2019

7.	A Confirmatory / Revocation Order (for convenience "***Confirmatory Order***") was passed by SEBI confirming the directions issued vide the *Interim Order*. The directions in the *Interim Order*, however, were revoked in respect of 7 entities (Tarun Kanti Sengupta, Kunal Vasumallik, Dipak Rudra, Ashish Kumar Ray, Pradeep Kumar Sarkar, Kalyan Mukherjee, Prasant Ray). So, by way of the *Confirmatory Order*, the directions in the *Interim Order* were confirmed in respect of twenty-nine entities and were revoked in respect of the above-named seven entities.	July 31, 2019
8.	BSE appointed a forensic auditor, Borkar & Muzumdar and the auditor submitted its report where it had been, *inter alia*, observed by the auditor that it was unable to conduct forensic audit due to non-cooperation from the entities involved or *GSL*.	June 10, 2019
9.	NSE appointed a forensic auditor, Jayesh Sangharajka & Co. LLP on March 12, 2019 and pursuant to the appointment, the report was submitted by NSE to SEBI.	October 22, 2019
10.	The Hon'ble Securities Appellate Tribunal (for convenience "**SAT**") while hearing the appeals filed before it by certain entities with respect to the *Confirmatory Order* held that there was no reason to interfere with the *Confirmatory Order*. However, the Hon'ble SAT directed SEBI to decide the proceedings within six months from the date of the Order.	November 17, 2021
11.	The Hon'ble SAT by way of its Order granted time to SEBI to pass order in the matter by June 30, 2022.	May 13, 2022

1.4. I see from the table above that an *Interim Order* was passed in the matter in respect of thirty-six entities, and subsequently a *Confirmatory Order* was passed wherein the

directions issued in the *Interim Order* in respect of twenty-nine entities (including *GSL*) were confirmed and the directions issued under the *Interim* Order in respect of seven other entities were revoked. Thus, the directions contained in the *Interim Order* continue to remain in force with respect to the remaining twenty-nine entities.

1.5. Before I proceed further, it would be relevant to provide a brief summary of the facts and circumstances that insinuated the passing of the *Interim Order* in the matter. The prima facie findings of the *Interim Order* are highlighted hereunder:

Prima-facie Findings of the *Interim Order*

1.5.1. The *Interim Order* has recorded the *prima-facie* findings that *GSL* had misappropriated the securities of its clients by selling them through its related entities and consequent to such misappropriation, *GSL* has in certain cases not reported or mis-reported data under the enhanced supervision mechanism to the Stock Exchanges. Further, the *Interim Order* has also recorded that *GSL* had falsified its Books of Account, funded clients having debit balances by providing further exposure, has not settled the funds and securities of its clients and has not addressed investors' complaints. Furthermore, it has been stated in the *Interim Order* that *GSL* did not satisfy the condition of continuing solvency and had not furnished the required information to SEBI.

Directions of *Interim Order*

1.5.2. Considering the facts as brought out above, the following directions have been passed against the *Noticees* vide the said *Interim Order*:

"a. Guiness Securities Limited, Mr. Kamal Kumar Kothari, Mr. Dharmendra Kothari, Mr. Soumen Chatterjee, Mr. Tarun Kanti Sengupta, Mr. Kunal Vasu Mallik, Mr. Dipak Rudra, Mr. Deepak Parakh, Mr. Shree Kumar Jhanwar, Mr. Babulal Nolkha, Mr. Asish Kumar Ray, Ms. Sunita Kothari, Mr. Pradeep Kumar Sarkar, Mr. Kalyan Mukherjee and Mr. Prasant Ray are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;

b. S K B Securities Ltd., Mr. Provat Mitra, Mr. Somnath Bhattacharjee, Ms. Lipika Bhattacharjee, Mr Hemant Kothari, Mr. Krishna Maheswari, Mr. Aman Mohan Kothari, Param Commodities Pvt. Ltd., Mr. Pawan Kumar Modi, Mr. Murlidhar Sharma, Paramarth Agro Marketing Pvt. Ltd., Apurva Commodities Pvt. Ltd., Mr. Ram Avtar Sharma, Awadhoot Marketing Pvt. Ltd., Mr. Sudarshana Mitra, Mr. Shyamal Mitra, Mr. Abhijit Pal, Mr Gaurav Choudhary, Superfast Tours and Travels Pvt. Ltd., Mr. Mahabir Chand Jain and Mr. Jayant Kumar Jain are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;

c. The aforesaid Noticees and persons shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;

d. The aforesaid Noticees and persons are directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets excluding money lying in bank accounts except with the prior permission of SEBI.

e. The aforesaid Noticees and persons are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately but not later than 5 working days from the date of receipt of these directions.

f. Till further directions in this regard, the assets of the Noticees mentioned at para 14 (a) of this order shall be utilized only for the purpose of payment of money and/or delivery of securities, as the case may be, to the clients/investors under the supervision of the concerned stock exchange(s).

g. The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid Noticees and persons except for the purpose mentioned in sub-para (e) after confirmation from the concerned stock exchange(s)and/ or Depositories as the case may be.

h. The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by the following Noticees except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s).

- *Guiness Securities Ltd.*
- *S K B Securities Ltd.*
- *Param Commodities Pvt. Ltd.*
- *Paramarth Agro Marketing Pvt. Ltd.*
- *Apurva Commodities Pvt. Ltd.*

- *Awadhoot Marketing Pvt. Ltd.*

- *Superfast Tours and Travels Pvt. Ltd.*

i. The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons.

j. Since GSL is a DP with NSDL and CDSL having Registration nos. IN-DP-NSDL-239-2004and IN-DP-CDSL-433-2007 respectively, NSDL and CDSL also directed to closely monitor the activities of GSL as a DP."

2. The Show-cause Notice –

2.1. In addition to the passing of the *Interim Order* and *Confirmatory Order* in the matter, a forensic audit was carried out for the period, October 2008 to March 2018 (hereinafter referred to as the "**Examination Period**") by NSE into the affairs and conduct of business of *GSL* and on the basis of the findings of the said Forensic Audit Report (hereinafter referred to as the "**FAR**") , a common Show-Cause Notice dated October 29, 2021 (for convenience "**SCN**") has been issued under Sections 11(1), 11(4), 11B (1) 11B (2) and 11 D of the Securities and Exchange Board of India Act, 1992 (for convenience "***SEBI Act, 1992***") read with Section 15 HA of the *SEBI Act, 1992* and Section 12 A (1) and 12A (2) read with Section 23 D of the Securities Contract (Regulation) Act, 1956 (for convenience "***SCRA 1956***") to *Noticees* covered under the present proceedings , including the twenty eight entities against whom the directions in the *Interim Order* are still continuing by virtue of the subsequent *Confirmatory Order*. Broadly speaking, the SCN has made the following allegations with respect to the conduct of *GSL* and the other *Noticees*:

2.1.1. ***Misappropriation of Client Securities and diversion of proceeds to related entities*** – *Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31* did not hold shares of certain companies; however, shares were sold by them without owning/acquiring them. By misappropriating the securities belonging to the other clients of *Noticee no. 1* (*GSL*) and selling them through its related entities i.e. *Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31 (*for convenience "***related entities***), and *GSL* have misappropriated the securities of other client and diverted the sale proceeds of such securities amounting to INR 181.66 crores to the above-mentioned *related entities.*

2.1.2. ***Mis-reporting/Non-reporting of data under enhanced supervision to NSE*** – The enhanced supervision of Stock Brokers/Depository Participants requires the uploading of clients' fund balance and securities balance by the Stock Broker for each client on the Stock Exchange system on a monthly basis. Information regarding funds balance and securities balance in respect of certain entities was either wrongly reported or not reported to the Stock Exchange by the *Noticee no. 1* for the months of March 2018, August 2018 and October 2018.

2.1.3. ***Falsification of Books of Account*** – *GSL* overstated its assets and liabilities in the books of accounts. It also overvalued its current investments, provided untrue figures for trade receivables and payables and submitted incorrect client holding statements and trial balance. The above-mentioned acts of *GSL* have resulted in the falsification of its books of accounts and other records.

2.1.4. ***Lack of Solvency of GSL*** – A Stock Broker is under an obligation to maintain the minimum prescribed net worth criteria at all times. It was observed that at certain points of time during the Examination Period, *GSL* was unable to honour its

obligations and did not have sufficient funds to meet client obligations or to pay for claims of complainants. Such instances have led to non-compliance on part of *GSL* with regard to need for continuous net worth.

2.1.5. ***Non-settlement of Funds and Securities*** – The Stock Broker is obligated to carry out the settlement of funds/securities for each of its clients within a prescribed period after the pay-out. It was observed that *GSL* had in various instances, not effected actual settlement of fund and securities for its clients. Such failure on the part of *GSL* resulted in non-settlement of funds and securities of clients amounting to INR 26.43 crore during the financial year 2017-18.

2.1.6. ***Funding to clients having debit balances by providing further exposure*** – A stockbroker should not grant further exposure to a client when debit balance arises out of his/its failure to pay and such debit balance continues for the fifth trading day. It was observed that *GSL* on various occasions had extended further exposure to clients even when their outstanding debit balances had run beyond the fifth day.

2.1.7. ***Non-redressal of investor complaints*** – Stock brokers are under obligation to take adequate steps to redress grievances of investors. It was seen that investors' grievances were pending as on October 30, 2018 which lead to non-redressal of investor complaints by *GSL* for a long time.

2.1.8. ***Non-furnishing of information to SEBI*** – SEBI by way of its letter dated July 24, 2018 sought necessary data from *GSL*, and an inspection was scheduled to be carried out between November 12 and 16, 2018. However, even after repeated reminders and calls from SEBI, the required data and information for inspection

were not provided to SEBI. *GSL* has also failed to produce to the inspecting authority such books, accounts and other documents in its custody or control and has failed to furnish inspecting authority with the statements and information relating to the transactions in securities market.

2.2. Based on the afore-stated facts, it has been alleged in the SCN that the *Noticee no.1* i.e. *GSL* has violated various statutory and regulatory provisions and circulars of SEBI as enumerated below:

- *SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;*
- *SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI circular no. CIR/HO/ MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017;*
- *Rule 15 of the Securities Contracts (Regulation) Rules, 1957 and Regulation 17 of the SEBI (Stock Brokers) Regulations, 1992;*
- *Regulation 9 (g) of SEBI (Stock Brokers) Regulations, 1992;*
- *SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;*
- *SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI circular no. CIR/HO/ MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017;*
- *Regulation 9 (e) of SEBI (Stock Brokers) Regulations, 1992;*

- *Regulation 21 of SEBI (Stock Brokers) Regulations, 1992;*

- *Clauses A (1), (2), (3), (4), (5) and B (6) of the code of conduct as provided under Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992; and*

- *Section 12 A of the SEBI Act, 1992 read with Regulations 3(d) and 4(1) of SEBI (PFUTP) Regulations, 2003.*

2.3. The SCN has also alleged that *Noticees no. 2 to 8*, (for convenience "***Noticee Directors***") being Directors of *GSL*, had aided and abetted the *Company* in violating the above-cited provisions and are liable for such violations in terms of Section 27 of the *SEBI Act, 1992* being the persons in charge and responsible for managing the affaires of *GSL*.

2.4. Further, the SCN has alleged that *Noticees no. 9, 16, 19, 20, 22, 27, 30 and 31*, being *related entities* of *GSL* who traded in securities (sold) not owned/acquired by them and for the said acts of engaging in dealing in securities not lawfully owned by them as well as for the acts of aiding and abetting *GSL* in the misappropriation of client securities and diversion of proceeds, they are in violation of Section 12 A of the *SEBI Act, 1992* read with Regulation 3(d) and 4 (1) of the *SEBI PFUTP Regulations, 2003*.

2.5. Furthermore, the SCN has also alleged that *Noticees no. 10,11,12,13,14,15,17,18,21,23,24,25,26, 28* and *29*, (hereinafter referred to as ***"related entities' Directors"***) being Directors of the entities related to *GSL* i.e. *related entities*, have violated Section 12 A of the *SEBI Act, 1992* read with Regulation 3(d) and 4 (1) of the *SEBI PFUTP Regulations, 2003* read with Section 27 of the *SEBI Act, 1992*.

3. Service of SCN, Personal Hearing, written Replies and Written Submissions from the *Noticees*–

3.3. I find that the SCN has been duly served on all the *Noticees*. Pursuant to the service of the SCN on the *Noticees*, opportunity of personal hearing was also provided to *Noticees no. 1, 5, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29* and *31* on February 16/17, 2022, which was attended by four *Noticees*, namely, *Noticees no. 8, 13, 15* and *29*, while the other *Noticees* remained absent. Similarly, opportunity of personal hearing was provided to the remaining 10 *Noticees* i.e. *Noticees no. 2, 3, 4, 6, 7, 11, 12, 20, 26* and *30* on April 07, 2022. On the said hearing day, i.e. on April 07, 2022, eight *Noticees* i.e. *Noticees no. 2, 3, 4, 6, 7, 11, 12,* and *26* appeared and advanced their respective submissions. The remaining two *Noticees* viz: *Noticees no. 20* and *30* did not attend the personal hearing. The absentee *Noticees* have neither furnished any reasons for not availing the opportunities of personal hearing granted to them nor have sought any adjournment which shows that they are not interested in making a personal appearance before me. Under the circumstances, I consider that adequate opportunities have been provided to the *Noticees* for personal hearing and the matter can now be adjudicated on merit based on facts & evidences on record.

3.4. The details regarding the mode of service of the SCN and hearing Notices to the *Noticees* are noted down hereunder:

Table – 2

Noticee no.	Names of the Noticee	Mechanism of Servicing of SCN	Date of Newspaper Publication and last known address of Noticee on which delivery through SPAD/ Affixture was attempted. (In case the SCN was served through Newspaper Publication)	Mechanism of Servicing of Hearing Notice	Date of Newspaper Publication and last known address of Noticee on which delivery through SPAD/ Affixture was attempted. (In case the Hearing Notice was served through Newspaper Publication)
1	Guiness Securities Limited	Newspaper Publication	03.02.2022 10, Canning Street, 5th Floor, Kolkata-700001	Newspaper Publication	03.02.2022 10, Canning Street, 5th Floor, Kolkata-700001
2	Kamal Kumar Kothari	Delivered, SPAD	-	Delivered, SPAD	-
3	Dharmendra Kothari	Delivered, SPAD	-	Delivered, SPAD	-
4	Soumen Chatterjee	Delivered, SPAD	-	Delivered, SPAD	-
5	Deepak Parakh	Delivered, SPAD	-	Delivered, SPAD	-
6	Shree Kumar Jhanwar	Delivered, SPAD	-	Delivered, SPAD	-
7	Babulal Nolkha	Delivered, SPAD	-	Delivered, SPAD	-
8	Sunita Kothari	Delivered, SPAD	-	Delivered, SPAD	-
9	S K B Securities Ltd	Undelivered, Newspaper Publication	03.02.2022 82, Bentinck Street, 1st Floor, Kolkata – 700001	Undelivered, Newspaper Publication	03.02.2022 82, Bentinck Street, 1st Floor, Kolkata – 700001
10	Provat Mitra	Undelivered, Newspaper Publication	03.02.2022 2/1A, Burdwan Road, 8th Floor, Kolkata – 700027	Undelivered, Newspaper Publication	03.02.2022 2/1A, Burdwan Road, 8th Floor, Kolkata – 700027
11	Somnath Bhattacharjee	Hand Delivered	BG 171, Sonali Apartment, Jorakhana, Rajarhat, Gopalpur, Kolkata- 700102	Delivered, SPAD	-

12	Lipika Bhattacharjee	Hand Delivered	BG 171, Sonali Apartment, Jorakhana, Rajarhat, Gopalpur, Kolkata- 700102	Delivered, SPAD	-
13	Hemant Kothari	Delivered, SPAD	-	Delivered, SPAD	-
14	Krishna Maheswari	Undelivered, Newspaper Publication	03.02.2022 22, Rabindra Sarani, Kolkata-700073	Undelivered, Newspaper Publication	03.02.2022 22, Rabindra Sarani, Kolkata-700073
15	Aman Mohan Kothari	Delivered, SPAD	-	Delivered, SPAD	-
16	Param Commodities Pvt. Ltd.	Undelivered, Newspaper Publication	03.02.2022 Suite no C-1, Madhu Kunj, Laram Centre CHS Ltd., M. A. Road, Off S.V. Road, Andheri (West), Mumbai – 400058	Undelivered, Newspaper Publication	03.02.2022 Suite no C-1, Madhu Kunj, Laram Centre CHS Ltd., M. A. Road, Off S.V. Road, Andheri (West), Mumbai – 400058
17	Pawan Kumar Modi	Undelivered, Newspaper Publication	03.02.2022 149/8, Taramani Ghat Road, Kolkata – 700041	Undelivered, Newspaper Publication	03.02.2022 149/8, Taramani Ghat Road, Kolkata – 700041
18	Murlidhar Sharma	Undelivered, Newspaper Publication	03.02.2022 67/3, Baje Shibpur Road, Sadar, Howrah – 711102	Undelivered, Newspaper Publication	03.02.2022 67/3, Baje Shibpur Road, Sadar, Howrah – 711102
19	Paramarth Agro Marketing Private Limited	Undelivered, Newspaper Publication	03.02.2022 Shop no 5, Rizvi Nagar Co-operative Hsg Society Limited, S.V. Road, Santacruz (West), Mumbai- 400054	Undelivered, Newspaper Publication	03.02.2022 Shop no 5, Rizvi Nagar Co-operative Hsg Society Limited, S.V. Road, Santacruz (West), Mumbai- 400054
20	Apurva Commodities Pvt. Ltd.	Hand Delivered	C-301, Sarita Pl, Oppo Gulfam Hotel Ghartan Pada No-2, W.E. Highway, Dahisar (E), Mumbai-400068	Delivered, SPAD	-
21	Ram Avtar Sharma	Undelivered, Newspaper Publication	03.02.2022 149/8, Taramani Ghat Road, Kolkata – 700041	Undelivered, Newspaper Publication	03.02.2022 149/8, Taramani Ghat Road, Kolkata – 700041

22	Awadhoot Marketing Pvt. Ltd.	Undelivered, Newspaper Publication	03.02.2022 149/8, Taramani Ghat Road, Kolkata – 700041	Undelivered, Newspaper Publication	03.02.2022 149/8, Taramani Ghat Road, Kolkata – 700041
23	Sudarshana Mitra	Undelivered, Newspaper Publication	03.02.2022 63/1, Gouri Bari Lane, Shyambazar, Kolkata- 700004	Undelivered, Newspaper Publication	03.02.2022 63/1, Gouri Bari Lane, Shyambazar, Kolkata- 700004
24	Shyamal Mitra	Undelivered, Newspaper Publication	03.02.2022 63/1, Gouri Bari Lane, Shyambazar, Kolkata- 700004	Undelivered, Newspaper Publication	03.02.2022 63/1, Gouri Bari Lane, Shyambazar, Kolkata- 700004
25	Abhijit Pal	Delivered, SPAD	-	Delivered, SPAD	-
26	Gaurav Choudhary	Delivered, SPAD	-	Delivered, SPAD	-
27	Superfast Tours and Travels Pvt. Ltd.	Undelivered, Newspaper Publication	03.02.2022 11A, Maharshi Debendra Road, Kolkata- 700007	Undelivered, Newspaper Publication	03.02.2022 11A, Maharshi Debendra Road, Kolkata- 700007
28	Mahabir Chand Jain	Delivered, SPAD	-	Delivered, SPAD	-
29	Jayant Kumar Jain	Delivered, SPAD	-	Delivered, SPAD	-
30	Shri Vishnu Krupa Commodities Private Limited	Hand Delivered	C-301, Sarita Pl, Oppo Gulfam Hotel Ghartan Pada No-2, W.E. Highway, Dahisar (E), Mumbai-400068	Delivered, SPAD	-
31	Pawantar Agro Agencies Pvt. Ltd.	Undelivered, Newspaper Publication	03.02.2022 Shop no 5, Rizvi Nagar Co-operative Hsg Society Limited, S.V. Road, Santacruz (West), Mumbai- 400054	Undelivered, Newspaper Publication	03.02.2022 Shop no 5, Rizvi Nagar Co-operative Hsg Society Limited, S.V. Road, Santacruz (West), Mumbai- 400054

3.5. I note that certain *Noticees* have submitted their written replies to the SCN. After perusing the written replies filed by those *Noticees* in response to the allegations made in the SCN and the oral arguments made by various *Noticees* / Authorised

Representatives before me during personal hearing, I summarize their submissions and arguments as follows:

Noticee no. 2, Kamal Kothari

3.6. Mr. Kamal Kothari, *Noticee no. 2*, by way of his reply dated February 14, 2022 has made submissions in response to the SCN. Further, post his personal hearing in the matter, the said *Noticee* has also filed written submission by way of an email dated April 18, 2022 disputing the facts as brought out in the FAR/SCN. He has contended following in the afore-stated replies stating therein that –

a. *GSL* had no substantial number of complaints from investors till 2018 and regular inspections had been carried out by SEBI, NSE, BSE, NSDL and CDSL since 2001.

b. Securities and funds of the clients had not been siphoned off into the personal accounts of the Directors of *GSL* or its *related entities*, and could be traced out from the bank and securities books.

c. *GSL* had taken a lenient view while granting exposure to clients considering the competitive market and considering the need to retain clients.

d. The additional intraday exposure to the clients resulted in huge amount of bad debts due to market volatility. So, in order to run the day to day operations, and to meet the financial crisis, the *Company* pledged client's securities to raise funds. Also, on certain occasions *GSL* sold the securities of clients so that the *Company* could discharge its obligations on time.

e. When the *Company* had adequate funds, it used to buy back the securities of the clients which were sold and in the process the *Company* had to incur a loss of INR 180 crore.

f. The financial constraint was caused as the *Company* favoured some High Networth Individual clients from whom *GSL* was getting good business but unfortunately those clients incurred huge losses, which ultimately converted into bad debts. There was no *mala fide* on the part of *GSL* or the *Noticee* and they were not engaged in any fraudulent practices.

g. *GSL* had given higher exposure to clients. It is a matter of fact that *GSL* incurred operating loss which caused financial hardships and therefore, *GSL* failed to meet margin calls given by the NBFC. Thereafter NBFCs have liquidated the pledged stocks and now those liquidated stocks are missing in our *(GSL's)* books of account.

h. The INR 15.41 crore, alleged to have been received by *GSL* from its *related entities*, had been infused in the *Company* by way of capital or loans.

i. The value of INR 957.95 crore which is shown to be the consolidated valuation of clients' securities in the FAR that had been sold by the *Company* is not correct. The said calculation has also considered the valuation of the bought positions in the scrip, which need to be removed to ascertain the exact valuation of the client's securities sold. Also, it has been stated in the FAR that the negative scrip balances of Shri Vishnu Krupa Commodities Pvt. Ltd. *(Noticee no. 30)* and Param Commodities Pvt. Ltd *(Noticee no. 16)* for the financial year FY 2009-10, FY 2011-12 and FY 12-13, were transferred to S K B Securities Ltd *(Noticee no. 9)* and Superfast Tours and Travels Pvt. Ltd *(Noticee no. 27)* in FY 2012-13. Considering this the negative balance of INR 204.20 crore that was transferred to the above three entities, it should be deducted from INR 957.95 crore of valuation shown in the books of the *GSL*.

j. Further, the consolidated negative value of the accounts of Shri Vishnu Krupa Commodities Pvt Ltd *(Noticee no. 30)*, Paramarth Agro Marketing Pvt. Ltd *(Noticee no.*

19) and Param Commodities Pvt. Ltd *(Noticee no. 16)* for the FY 2009-10 to 2011-12 was INR 204.20 crore and the consolidated negative value of the stocks in the account of S K B Securities Ltd. *(Noticee no. 9)*, Superfast Tours and Travels Pvt. Ltd *(Noticee no. 27)* for the FY 20112-13 was 81.97 crore. So, the remarks made at paragraph 4.1.1. of FAR are also partially incorrect.

k. The findings of NSE stated that the shortfall of securities observed amounted to INR 212.17 crore. Paragraph 6 of the *Interim Order* stated the misuse of client securities to be worth 212.17 crore. SEBI Report on irregularities dated November 28, 2018 stated that the securities misappropriated by *GSL* during the period was at least INR 233.75 crore, which is much less than the valuation alleged in the FAR.

l. Clients' stocks had been pledged with NBFCs, i.e. HDFC Bank, Edelweiss, IL &FS and Ways Vinimay Pvt. Ltd. to raise funds against the clients' indebtedness to discharge the obligation and the pledge was done lawfully. The *Company* had taken a loan of 13,78,50,000 from Ways Vinimay Pvt. Ltd. by pledging shares. Ways Vinimay Pvt. Ltd. has sold the pledged shares for INR 51 crore. However, the *Company* has not been able to realize this amount since all bank accounts and DP accounts are frozen. This material fact has not been considered by the forensic auditor while alleging misappropriation of securities.

m. The *Company* had made regular follow-ups with debtor-clients asking them to make payment and settle the debit balance. However, the clients were seeking more time. *GSL* decided to liquidate the stocks of defaulter clients in related accounts to discharge exchange obligation without taking risk of clients' dispute, with a plan to buy back those securities once the defaulter clients make payment or when the *Company* would

have idle surplus funds. There was no intention of misappropriation or diversion of funds.

n. It is evident that the figure of misappropriation of clients' securities given in the FAR is not reliable. The value of the shortfall of securities is around INR 180 crores.

o. *GSL* wished to revive its business once again by settling all reasonable claims of its clients and commence its trading business.

Mis-reporting or Non-reporting of data under enhanced supervision to NSE

p. *GSL* had not submitted any data on October 25, 2018. NSE fetched the required data/report directly from the *Company's* back office server. There were some discrepancies in the report as certain files/record had not been updated in the back office system. *GSL* had submitted updated fresh data/records on November 19, 2018 after weeding out significant number of inadvertent errors. The SCN and FAR are completely silent on this fact.

q. With regard to the securities and funds balances of 16 accounts not being reported, it was submitted that clients have filed false and frivolous complaints against the *Company*. The *Company* had to recover 2.57 crore from M/ s Lars Securities Pvt. Ltd. and INR 6.24 crore from M/s Lasvin Finvest Pvt. Ltd., but both the clients had filed false complaints claiming huge valuation of their securities and the Ld. Member of IGRP had wrongly admitted the false claims of the aforementioned clients amounting to INR 20.48 crore.

r. The reporting of funds and securities balances of the following clients were not reported by *GSL* for the month of August 2018 owing to litigation going on with these clients at the Investor Grievance cell of exchange, Police Stations and Courts of law.

Falsification of books of account

s. There was no falsification or tampering of accounts by *GSL*, and the *Company* had itself informed NSE about the crisis and has further extended full cooperation with the investigation.

t. Some discrepancies had been seen in the report since certain files/reports had not been updated in the back office system. Subsequently, *GSL* submitted updated fresh data/records on November 19, 2018 after weeding out a significant number of inadvertent errors. The records as on October 31, 2018 were not final, so plentiful errors relating to debtors, creditors, loans given etc. had crept into those records. As several transactions had been missed out previously, several details i.e. number of debtors and creditors etc. got changed subsequently as because the earlier figures did not account for the extremely old transactions.

u. In the trial balances of *GSL* taken by the NSE on October 25, 2018, there had been various transactions which had not been accounted for, resulting in the discrepancies in entries like of Debtors and information under other relevant heads in the books.

v. The FAR has disputed the veracity of the balances of the suspense account. The Forensic Auditors have failed to understand that it was a general accounting practice to mark the payment receipts in the suspense accounts for the time being in case the veracity of payment received is doubtful or the concerned client fails to provide supporting documents to prove that the payment has been made from his bank account. The balances in the suspense account were those payments which had not been mapped in the database of *GSL*. The *GSL* used to transfer funds from the suspense account to the respective client's trading accounts once clients gave supporting documents to substantiate the payments made by them.

Lack of Solvency

w. The said violation has been alleged because correct data has not been considered by the auditor and/or NSE. There is a mismatch in the deposit shown in the Show Cause Notice and in the Exchange files.

Non-settlement of funds and securities of clients

x. *GSL* has complied with the directives of SEBI laid down vide its circular no. SEBI/Ir41RSD/SE/cir-19/2009 dated 03.12.2009 regarding periodical settlement of funds and securities of the accounts of its clients. The *Company* has had a clean record of settling clients' accounts on a regular basis till FY 2016-17, and the same could be appreciated from the inspection reports of NSE and BSE and also of SEBI.

y. Actual settlement of funds and securities had been done in the case of all the sample instances taken by the inspection team except for 37 instances.

z. The instances where settlement had not taken place, related to a few of those clients including the HNIs who did not trade on a daily basis. They used to do delivery based transactions and were not regular in trading. The inspection team of NSE missed out to apply applicable hair-cuts of stock value while calculating net credit amount for actual settlement for the debtor clients.

aa. As per the Risk Management Policy of *GSL*, a haircut of 50% was applied if client was not doing trading frequently and is having continuous balance. In case of continuous debit balance, *Company* had two options i) to square off the holding of funds & securities against the amount of debit balance and release the excess amounts of funds or securities if any, and ii) to apply hair cut as per VaR on the securities and release balance stock at the time of actual settlement.

bb. *GSL* opted for the policy to liquidate the holding of stock of a client to settle its debit balance due to the risk of dispute with clients and also loss of clients. So, *GSL* applied 50% haircut on those accounts which were having continuous debit balance and were doing trade occasionally.

cc. With respect to inactive accounts, the concerned clients had authorised *GSL* to treat their securities as margin and did not require settlement of account. Since *GSL* was in financial trouble, the funds of such inactive accounts had not been released on time.

Funding of Clients having debit balances by providing further exposure:

dd. *GSL* did not allow further exposure to those clients whose accounts had been charged interest/delay payment charge on debit balances, in compliance with the exchange norms.

ee. Further exposure to clients with debit balances was granted in line with NSE circular No. 232/2015 dated May 08, 2015 wherein NSE has clarified that further exposure may be granted to the extent of availability of excess of client's fully paid securities over his debit balance, deposited with the Member.

ff. The reason for the grant of further trading exposure was to allow these clients to trade so as to reduce their debit balance. The clients had made a commitment to reduce debit balance by selling of their stock.

gg. If *GSL* had not allowed exposure to the clients with debit balances, there would have been risk of disputes with these clients, and as the past experience suggests, clients usually file complaints NSE, BSE or SEBI with cooked up stories.

Non-Redressal of investor Complaints

hh. A total of 24 complaints had been filed by the clients with NSE from April 2018 till the passing of the *Interim Order*. *GSL* has resolved 14 out of 24 complaints. Only 10 complaints were pending at the exchange level, out of which 7 complaints had been filed by the Saraf Group.

ii. The complaints filed by this Saraf group were false and frivolous. The claims by this group relate to claims prior to 2011, and hence the claims of the said group should be rejected on the ground of limitation.

jj. Claims of three investors namely, Ram Krishna Saraf, Lasvin Finvest Pvt. Ltd. and Lars Securities Pvt. Ltd. amounted to INR 20.83 crore. The IGRP has admitted the falsified claims of the three complainants to the tune of INR 20, 82, 55,000.54.

kk. *GSL* was entitled to recover a debit balance from the clients of the Saraf group. The Order of the IGRP has been set aside by the Arbitral tribunal of NSE by its order dated August 26, 2019. The three complainants filed appeal before the Commercial Division of the Calcutta High Court. In the appeal filed by Lasvin Finvest Pvt. Ltd the High Court has upheld the Order of the Arbitral Tribunal. The appeals filed by Lars Securities Pvt. Ltd and Ram Krishna Saraf are pending adjudication before the High Court.

ll. The remaining seven complaints were also false and frivolous. The IGRP proceedings have been cancelled by NSE vide letter dated November 06, 2018. Thereafter, the complainants did not take any further action, which shows that their complaints were false and frivolous.

Non-furnishing of Information

mm. It has always tried its best to furnish information/data to SEBI as and when required. The *Company* was in total disarray in view of the termination of its trading right and the pronouncement of ex-parte ad-interim order. *GSL* had missed out some communication from SEBI inadvertently due to unwarranted situation.

nn. *GSL* had acted in a bona fide manner and had submitted all the required information/documents and never neglected or failed or refused to submit the required documents.

Contentions on law

oo. No specific allegation has been levied against the *Noticee* either in SCN or SEBI Report or FAR.

pp. *GSL* has not indulged in a fraudulent manner or has followed any unfair trade practice, and has not engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon any person.

qq. It has been contended that for an offence involving fraud, it was essential that the accused had an 'intent' to commit such violation. Also, for a transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement against *GSL* in the SCN.

rr. Fraud is a serious offence and, therefore, the standard of proof must be of a higher degree and mere conjectures and surmises will not be sufficient to hold a person liable for fraud.

ss. The SCN is silent as to how Section 12 A of the *SEBI Act, 1992* read with Regulation 3 (d) and 4 (1) of *PFUTP Regulations, 2003* have been violated by the *Noticee* as no evidence has been brought out which supported such allegations made in the SCN.

3.7. As stated above, post his personal hearing in the matter, the *Noticee no. 2* has also made certain submissions by way of an email dated April 18, 2022. I note that during the hearing it was submitted by the *Noticee no. 2* that *GSL* had provided exposure to certain High Networth Individuals ("**HNIs**") and as those HNIs defaulted in their payments to it, it resulted in a financial crisis for *GSL*. It was further submitted that to tide over this crisis, *GSL* had pledged/sold securities of its clients. In this regard, *Noticees no. 2 and 3* were asked to provide the details of such HNIs, details as to when their default commenced and the extent of default, along with supporting evidence. In response to the same, by way of his post-hearing submissions, it has been submitted by *Noticee no. 2* that – " *…total debit amount during the investigation period i.e. 2008-09 to 2018-19 was INR 95,74,14,779/- on the part of trading account which is recoverable from the clients. Out to the total said debit, a total amount of INR 5,41,02,499/- were written off after considering it as bad debts as per accounting procedures during the period and a sum of INR 24,85,08,399/- were assigned to related entities and sundry debtor balance INR 65,48,03,879/- which reflected in the Balance Sheet as receivable from clients. We could not recover these amounts from sundry debtor due to sudden suspension by NSE and the whole operation was paralysed.*"

3.8. Further, during their personal hearing *Noticees no. 2 and 3* were asked to provide their comments regarding the roles of other Directors of *GSL*. In this regard, it has been submitted by the *Noticee no. 2* that Mr. **Dharmendra Kothari (*Noticee no. 3*) was** looking after the administration, staff coordination and development of franchisees along with managing the Marketing function and public relations of *GSL*, which had

more than 50,000 clients and more than 150 staff members located in branches spread all across India. With respect to Mr. **Soumen Chatterjee (*Noticee no. 4*),** it has been stated that Mr. Soumen Chatterjee *(Noticee no. 4)* was appointed as an Executive Director who headed the Research Department and was involved in giving advice to the clients. He was appointed as a Research Analyst in 2010, was promoted as Research head in 2012 and became the Director-Research in 2105. With respect to Mr. **Deepak Parakh (*Noticee no. 5*),** it has been stated that he was involved in the operations of *GSL* i.e., day-to-day securities pay-in and pay-out to the exchange and clients risk management etc. Also, he was the Compliance Officer and was responsible for the back office and also assisted SEBI/NSE/BSE in their inspection work. With respect to Mr. **Shree Kumar Jhanwar (*Noticee no. 6*)**, it has been stated that he was the Head – Depository who looked after the entire pay-in and pay-out obligations of *GSL*. With respect to Mr. **Babulal Nolkha (*Noticee no. 7*),** it has been stated that he was the Marketing head of *GSL* and was primarily involved in the development of franchisee business and was taking care of client grievances. With respect to Ms. **Sunita Kothari (*Noticee no. 8*),** it has been stated that she was a house-wife and was not engaged in managing or controlling the business of *GSL* in any manner.

Noticee no. 3, Dharmendra Kothari

3.9. Mr. Dharmendra Kothari, *Noticee no. 3*, by way of a written reply dated February 14, 2022 has made his submissions in response to the SCN. Post the hearing in the matter, the said *Noticee* has also filed written submissions by way of an email dated April 18, 2022.The said *Noticee* has principally raised the following contentions before me through his written and oral submissions–

a. The SCN was vague and did not specifically set out the reasons for the allegations levelled against him. That being the case the SCN was incapable of any reply.

b. That the SCN did not meet the mandatory requirements of a valid Notice as laid down by the Hon'ble Supreme Court.

c. That the issuance of the SCN to the *Noticee* was an abuse of the process of law and was illegal and the Notice in the present case should be struck down / quashed.

3.10. I note from the submissions of the above *Noticee* that the same are substantially similar to the reply filed by *Noticee no. 2*. Since the reply of *Noticee no. 2* has already been summarised in the preceding paragraph, for the sake of brevity, the reply of *Noticee no. 3* is not being repeated here.

3.11. In his email dated April 18, 2022, it has been submitted by the *Noticee no. 3* that he was living with his wife and two daughters and after the closing down of business of *GSL*, he was struggling to find a job and later on he and his wife, have started a clothing business from home for managing family's livelihood.

Noticee no. 4, Soumen Chatterjee

3.12. Mr. Soumen Chaterjee, *Noticee no. 4,* by way of his reply dated January 05, 2022 in response to the SCN as well as in his written submission filed after his personal hearing by way of email dated April 18, 2022, has contended before me as follows –

a. Inquiry in terms of Rule 4 can be held only after the Board (SEBI) forms an opinion under Rule 3 that there are grounds for adjudicating under any of the provisions of Chapter VIA of the *SEBI Act 1992*, and only after formation of this opinion, can an adjudicating officer be appointed for conducting inquiry under Rule 4.

b. That he should be provided with a copy of the opinion formed by the Board that grounds exist for adjudicating in his case and also a copy of the consequent appointment of a competent adjudicating officer. None of these relevant documents has been provided with the SCN.

c. He was appointed as an employee designated as Director Research vide appointment letter dated October 26, 2015, and he was appointed to the Board of Directors on December 29, 2015. Subsequently, on September 30, 2016, the designation of the *Noticee* was changed to the category of a professional.

d. The change of his designation from a Director to the professional category from 30 September 2016 onwards clearly indicated that he possessed certain special professional skills to be designated as a Director in professional category, and was not involved in day to day activities of *GSL*.

e. The Hon'ble SAT in its Order dated January 07, 2021, in the matter of ***Soumen Chatterjee vs. SEBI,*** has quashed the directions passed by way of the *Interim Order* and the *Confirmatory Order* due to the absence of any evidence showing his linkage in the financial irregularities of *GSL*, hence the *Noticee* cannot be held liable for the alleged activities undertaken by *GSL*. The Hon'ble SAT in its Order has given liberty to SEBI to proceed against him if anything against him was found in the Forensic Audit Report.

f. The scope and period of the Forensic Audit provided that the mandate of the Forensic Auditor was to ascertain the actual recipient/beneficiary of the funds/securities siphoned off including identifying role of any Directors of the firm/ *related entities*, based on available information and to the extent feasible.

g. There has not been any finding against the *Noticee*. Name of the *Noticee* has appeared only in the context of the names extracted from the financial statements of *GSL*, and not in the context of any findings against the *Noticee* in the FAR.

h. The Hon'ble SAT had made it clear in its Order dated January 07, 2021 that no discrimination can be made between independent non-executive Directors and executive Directors, as far as reliance placed by the executive Directors on Statutory Compliance Reports and Internal Audit Reports are concerned, and all such independent/ non-executive Directors and executive Directors are to be treated on an equal footing, including the employee executive Directors, who had also relied on the same Reports as were relied upon by the Independent and non-executive Directors.

i. The FAR had recorded the admission of the Managing Director that he had misappropriated the clients' securities to fund losses incurred by *GSL* since 2009-10, and also records that these activities were going on since 2009-10.

j. He was appointed as an employee designated as Director, Research in 2015, and his area of work was limited to research work in capital markets. He was heading the research department, which was under SEBI (Research Analyst) Regulations 2014, that provided for a Chinese wall approach by way of Regulation 15(2) and 16 of SEBI (Research Analyst) Regulations 2014 under which, it was required that a research analyst and a research entity shall ensure independence of its research activities from its other business activities. Because of this, he had no access to any other Department, other than the research department of *GSL*, and there has been no finding that he has access to other departments.

k. It was erroneously recorded in the FAR, under the head 'Summary of related party transactions as per audited financial statement' that his salary was Director's Salary

for the FYs 2015-16 to 2017-18. His salary was drawn in the capacity of an employee of *GSL*, as Director, Research heading the Research Department, and not as a Director of *GSL*. The word 'Director's salary' conveyed an impression that he was being paid for being a Director, which was misleading.

l. He cannot be held responsible as a Director for the conduct of the business of *GSL*, on mere presumption of knowledge as he relied on the same statutory reports as the independent Directors did and there cannot be any discrimination between the two categories of Directors on this count.

m. *GSL* was headed and managed by a Managing Director, and the presence of a Managing Director in *GSL* has been recorded in the *Interim Order* and FAR. As there was a Managing Director looking after the affairs of the *Company*, and he himself used to place all the compliance reports therein confirming all the compliances, other Directors not related to day to day affairs of the *Company* cannot be fastened with the liability for any contravention which occurred under the Managing Director's watch and supervision as the responsibility of contraventions was of the Managing Director.

n. As regards misappropriation of clients' securities, the same had been going on since FY 2009-10 before he joined *GSL* and was a continuing activity. He cannot be held responsible for this misappropriation during the period in which he was not holding directorship in *GSL* as such misappropriation was being done since 2009-10, and 70% of the misappropriation valued at INR 181.66 crore had already taken place till FY 2014-15, and continued thereafter till FY 2017-18.

o. As regards the diversion of funds, out of the total amount diversion of INR 87.91 crore between FY 2008-09 and FY 2017-18, INR 91.08 crore was diverted in the years up to FY 2015-16. A sum of INR 3.17 crore (91.08 as on 31 March 2015 - 87.91 as on 31 March

2018) was brought back into *GSL* after FY 2015-16. His directorship commenced on 29 December 2015, i.e. towards the fag end of FY 2015-16, and there was no finding either in the FAR or in the Notice or in the Investigation Report about the amount diverted between December 29, 2015 and March 31, 2016 during the FY 2105-16, the period when he was a Director of *GSL*. So, out of the net amount of INR 87.91 crores alleged to have been diverted, in reality, gross amount of INR were 91.08 crores were diverted before his directorship years and in fact INR 3.61 crore was brought back during the period of his directorship. No diversion of funds took place during the period of his directorship between December 2015 and 31 March 2018 and thus there was no question of latching any liability on him for acts committed before he became a Director.

p. As regards mis-reporting/ non reporting of data under enhanced supervision regime, he has stated that the violations pertained to difference between the figures reported to NSE in the monthly enhanced supervision reports and the figures appearing in the books of accounts of *GSL* for the month of March 2018. These were never reported to the Board in the meetings that he attended, and such violations pertained to tasks assigned to specific departments, namely, Compliance Department, Finance and Accounts Departments to which he had no access to as he was having access to the Research Department.

q. As regards falsification of Books of account, he has stated that in the FYs 2009-10 to 2014-15, overstating of liabilities and assets has been alleged in the SCN. The overstatement had occurred till 2014-15, and he was not a director during that time. Reference has also been made to the presence of a suspense account in the books of *GSL* between the financial years 2009-10 to 2017-18. A suspense account had been

appearing in the accounts of *GSL* since 2009-10, much prior to his appointment as a Director on 29 December 2015 and it was not something that was started during his period of Directorship. It was also not clear if any law had been contravened by the presence of a suspense account in the books of *GSL*.

r. Regarding the issue of lack of Solvency of *GSL* and non-settlement of funds and securities of clients related to finance and compliance, he being a research analyst, could not have had anything to do with the finances of *GSL*. Also, the matters were never presented before the *GSL* board.

s. As regards funding by *GSL* to its clients having debit balances by providing further exposure to them, the *Noticee* has mentioned that the reference here is to the exposure given by *GSL* to 17 clients out of 60 clients amounting to INR 42.03 crore. The period during which this exposure was provided to the aforesaid number of clients is not mentioned anywhere in the SCN or in the NSE Report. These were related to the finance and surveillance departments of *GSL* and none of those departments was in his control.

t. As regards the non-redressal of investor complaints, the *Noticee* has stated that the complaints in question were received by NSE between 25 September 2018 and 19 October 2018, and those complaints pertained to non- receipt of funds and securities since 2015. All the above complaints pertained to the period before he became a Director of *GSL* i.e. on 29 December 2015. Moreover, it pertained to an activity which was not part of the Research Department, which he was heading. Furthermore, as the NSE Report had recorded, Mr. Deepak Parekh *(Noticee no. 5)* and Mr. Kamal Kumar Kothari *(Noticee no. 2)*, MD were dealing with the investor complaints hence, violations, if any, had to be explained by them.

u. The responsibility of furnishing information to NSE and SEBI was being looked after by the Compliance Department under the guidance of the Managing Director. He had no knowledge of the same as a director as in none of the board meetings attended by him during the period this matter was informed to the Board by the *Company*.

v. He has been made a *Noticee* in the present SCN under Section 27 of the *SEBI Act, 1992* in his capacity as an executive Director of *GSL*. It is established that there was no finding against him in the FAR, SEBI Report or NSE Report, and in all the aforesaid three reports it is mentioned that the Managing Director was at the helm of affairs. And where a Managing Director was present, the responsibility was his.

w. He has discharged the onus of proof of lack of knowledge and due-diligence, cast on him by proviso to Section 27 (1) by showing that he was only an employee Director and was not involved in any of the other departments to which various violations pertained to, and the activities in question were never brought to the notice of the Board of Directors of *GSL*.

x. The onus of proof as per Section 27 (2) was on the person laying the charge to prove that the contravention had been committed with the consent or connivance of, or was attributable to neglect on the part of a Director. The keyword used in Section 27 (2) was 'and it is proved' and that the degree of 'proved' has not been established in his case as neither the FAR nor the NSE Report has pointed out any material against him. A part of the mandate of the FAR was also to identify the role of the Directors. There is no finding in the FAR about his role as a Director in the alleged contraventions. The onus of proof cast upon SEBI to prove as required under Section 27 (2), has not been discharged in his case.

Noticee no. 6, Shree Kumar Jhanwar

3.13. Mr. Shree Kumar Jhanwar, *Noticee no. 6,* by way of his reply dated January 28, 2022 as well as by way of email dated April 18, 2022 post his personal hearing has advanced the following arguments in his defense.

a. He has contended that the period of his directorship in *GSL* has been mentioned in the SCN as November 28, 2013 to March 31, 2016, which is incorrect. The correct period was November 25, 2013 to November 20, 2015.

b. The SEBI Report of November 28, 2018 has not recommended any action against him which means that nothing adverse has been found against him and it was the opinion of SEBI in 2018 itself that no action needed to be taken against him.

c. Inquiry in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995) could only be held after the Board (SEBI) has formed an opinion under Rule 3 that there are grounds for adjudicating under any of the provisions under Chapter VI A. It was only after the formation of this opinion that an adjudicating officer can be appointed and enquiry can be conducted. He, therefore, should be provided with both, a copy of the opinion formed by the Board that grounds exist for adjudication in his case and also a copy of the consequent appointment of the adjudicating officer for adjudicating his case.

d. The FAR has been prepared on October 07, 2019, however the SCN was issued only on October 29, 2021. There is no reason for the grave delay of 2 years in issuing the SCN from the date of the FAR. There are also no adverse findings against him in the SEBI report or in the FAR.

e. He has been made a *Noticee* in the SCN in his capacity as Director of *GSL*. A part of the mandate of the FAR was to identify the role of the Directors. The FAR did not name

him as a Director anywhere nor did it name him at any place in the Report fastening any liability on him for the contraventions as alleged in the SCN nor has it brought out any allegation of complicity against him in siphoning off funds/ securities from *GSL*.

f. The Managing Director of *GSL* has admitted that he had misappropriated the funds and the securities and these activities were going on since 2009-10.

g. As per the provisions of Section 27 of the *SEBI Act, 1992* and as has been judicially held, knowledge of contravention or connivance or knowledge associated with failure to prevent commission of contraventions, are essential ingredients to fasten personal liability on Directors. These ingredients are absent in his case as he has neither been named as a Director in the FAR nor has he been named as a Director in the said SEBI report on irregularities.

h. The mere designation of a Director does not make the Director responsible for the conduct of the business of the *Company*, and where a Managing Director existed, the responsibility for conduct of business of the *Company* was that of the Managing Director.

i. He was an employee of *GSL* and became a Director for a period of 2 years only, between 25 November 2013 and 20 November 2015. No sitting fee was paid to him in his capacity as a Director and he drew his salary only as an employee.

j. He was not a Key Managerial Personnel, and his name appeared in the list of KMPs in the FAR only for the FY 2015-16. He was also not a relative of any KMPs as would be evident from the list of relatives in the FAR.

k. Matters relating to the day-to-day affairs of *GSL* or compliance matters were not discussed nor placed before the Board in the Board meetings. A compliance report and quarterly internal Audit Report certifying full compliance and nil irregularity was

placed before the Board by the Managing Director. Similarly, quarterly internal audit Reports were also placed and those also did not indicate any irregularity at *GSL*.

l. *GSL* was headed and managed by a Managing Director and the same had been recorded in the *Interim Order* and the FAR. Also, the minutes of the meeting held on 24 June 2019 have recorded that Mr. Kamal Kothari *(Noticee no. 2)* has admitted having committed the irregularities to cover up for the losses sustained by *GSL* in the past.

m. As regards the Misappropriation of clients' securities he has stated that such irregularities started in FY 2009-10 much before he became a Director in November 2013. The total amount of misappropriated amount was INR 181.66 crore as per the FAR. He was a Director between November 25, 2013 and November 20, 2015 (FY 2013-14 to FY 2015-16). As per the FAR, an amount of INR 81.97 crore had already been misappropriated till FY 2012-13, and INR 60.35 crore was misappropriated from FY 16-17 onwards. The misappropriation between FY 2013-14 and FY 2015-16 i.e., over a period of 36 months was INR 39.34 crore. During those 36 months, he was a Director for 24 months between November 25, 2013 and November 20, 2015. A month wise break up of misappropriation during those 36 months has not been provided in the FAR. The FAR did not mention the specific amount misappropriated between November 25, 2013 and November 20, 2015, when he was a Director. It was a recorded figure that INR 81.97 crore was misappropriated before he became a Director and a sum of INR 60.35 crore was misappropriated after he ceased to be a Director. The two figures i.e., INR 81.97 crore + INR 60.35 crore amount to INR 142.32, and it represented 78.34% of the total misappropriation i.e. INR 181.66 crore, which has occurred when he was not a Director.

n. Misappropriation of INR 39.34 crore has been reported in FY 2013-14 to 2015-16, which took place during a period of 36 months during which he was a Director only for 24 months however, no month-wise figures of misappropriation has been provided in any of the reports to show how much amount was misappropriated between November 2013 and November 2015 (in 24 months) when he was a Director. It has also not been shown in any of the reports that he had any specific knowledge of the aforesaid misappropriation or that he was complicit in such misappropriation. The misappropriation was going on before he became a Director and continued after that.

o. The total amount of the diversion of sales proceeds from of the misappropriated securities to the *related entities*, as per the FAR, was INR 87.92. The FAR shows that out of INR 87.92 crores of diversions of proceeds, INR 75.61 crore was already diverted till FY 2012 13 before he became a Director on November 25, 2013, which constituted 82.41% of the total diversion. An amount of INR 15.47 crore that was diverted between FY 2013-14 and FY 2015 16 when he was a Director, constituted 17.59% of total amount of diversion of INR 87.92 crore. Thus an amount of INR 15.47 crores was diverted over a period of 36 months, and he was a Director for 24 months during these 36 months. Since no month-wise break up of such diversion is available in FAR or in the SEBI Report to show how much money was diverted in each month during those 36 months, there is no way to know how much of this figure of INR 15.47 crores was diverted during the tenure of his Directorship.

p. Misreporting/ Non reporting of data under enhanced supervision to NSE amounted to the violation of SEBI circulars in 2016 and 2017 and the violation was committed in March 2018.

q. The SCN has alleged that *GSL* overstated Liabilities and Assets for the financial years 2009 -10 to 2014 -15 in case of 7 entities in 12 cases. The FAR records one such case in FY 2014-15, which was the only instance that overlapped with his tenure as a Director between November 25, 2013 and November 20, 2015. Also, considering the fact that the act of overstatement was an activity being carried on since FY 2009-10, it could be said that he had no knowledge or hand in this lone instance that occurred during his period of directorship.

r. The SCN has referred to the presence of a suspense account appearing in the books of *GSL* between the financial years 2009-10 to 2017-18. He was not a Director for the FY 2009-10 to FY 2012- 13, and from FY 2016-17 to FY 2017-18. His period of Directorship was from 25 November 2013 to 20 November 2015, and this practice of maintaining a suspense account was being followed before he became a Director and such practice continued even after he ceased to be a Director. Also he was not part of the accounts and finance team. Further, it is not stated either in the SCN or in the FAR as to how the presence of a suspense account contributed to proving the allegations levelled against *GSL* in the SCN.

s. As regards the overvaluation of *GSL* investments in the balance sheet as compared with the market value of those investments, the relevant financial years involved were FY 2013-14 to FY 2015 16. This matter was never brought before the Board of Directors, and being a finance and accounts matter, he was not in the know of the same. The books of account were finalised and certified by the Statutory Auditors and he was not a signatory to those Balance Sheets either. The issue of overvaluation of investments could not be fastened to him as a Director.

t. The FAR referred to mismatches in trade receivables and trade payables by *GSL* for the financial years 2009-10 to 2017-18 (except for financial year 2011-12). The figures were based on a comparison of NSE trial balance along with clients' master maintained with the NSE vis-à-vis the schedule of debtors and creditors in the Balance Sheet. The maximum mismatch had occurred in the FY 2012-13, and the issue of mismatch was a recurring event every year and was taking place since before he became a Director on 5 November 2013 which also continued after he ceased to be a Director on 20 November 2015. There is no finding in the FAR that he was involved in the mismatch that occurred since 2012-13 and the matter was not discussed in the Board meetings either, which he attended.

u. Reference has been made to the Wrong Client Trial balance. The dates involved are October 31, 2018 and August 31, 2018 but during the said period he was not a Director.

v. As regards the lack of insolvency of *GSL*, the SCN has stated that there was a shortfall of funds to the extent of INR 1.97 crore and INR 8.96 crore as on August 31, 2018, and October 23, 2018, respectively to cover payment of creditors. Also reference has been made to the fact that on the dates of October 23, 2018 and August 31, 2018, *GSL* did not have sufficient funds to meet clients' obligations. However, all these relevant dates fall much beyond his directorship period which ended on November 20, 2015.

w. The SCN has stated that *GSL* had not done actual settlement of funds and securities amounting to INR 19.61 crore pertaining to 37 instances out of 200 instances verified for 23 Clients out of 100 for the financial year 2017-18. Also, it is stated that as on February 28, 2018 funds and securities pertaining to 9646 inactive clients amounting to INR 6.82 crore had not been settled. The said instances pertained to FY 2107-18, by which time he had ceased to be a director of *GSL*.

x. The SCN has alleged that *GSL* provided further exposure to clients having debit balances beyond 5 days. This allegation was on the basis of the Inspection report, which was carried out between October 26, 2018 and November 28, 2018, which observed about the exposure given to 17 clients (out of 60 clients) amounting to INR 42.03 crore beyond 5 days. The allegation of giving undue exposure to clients having debit balances pertains to the year 2018, by which time he had ceased to be a Director of the *Company*. Also, the alleged violations pertain to SEBI Circulars issued on September 26, 2016, and on June 22, 2017, a period when he had ceased to be a Director.

y. The SCN has alleged non-redressal of investors complaints on the part of *GSL*. The investors complaints were received by NSE between September 25, 2018 and October 19, 2018, by which time he already had ceased to be a Director of *GSL*.

z. The SCN has also alleged non-furnishing of information and data sought by SEBI vide letters dated July 24 2018 and several reminders thereafter, during July 2018 and November 2018, when he was not a Director.

y. He has already discharged his onus of proof of lack of knowledge and due-diligence, as cast on him by proviso to Section 27 (1) by showing that he was only an employee Director and the alleged violations had been committed much before he became a Director and those violations were continued even after he ceased to be a Director.

z. The onus of proof as per Section 27 (2) was on the person laying the charge to prove that the contravention has been committed with the consent or connivance of, or was attributable to neglect on the part of a Director. The keyword used in Section 27 (2) was 'and it is proved' and that the degree of 'proved' has not been established in his case as neither the FAR nor the NSE Report has pointed out any material against him. A part of the mandate of the FAR was to identify the specific role of the Directors.

There is no finding in the FAR about his role in the alleged contraventions. Therefore, the onus of proof cast upon SEBI to prove, as required under Section 27 (2) has not been discharged by SEBI in his case.

3.14. The *Noticee* no. 6 has also submitted that on March 13, 2021 some 43 scrips were taken out of his DEMAT Account maintained with Zuari Finserve without informing him. When he sought information on the same from NSDL and NSE, he was informed that they had done the same upon instructions received from SEBI. In this respect, the *Noticee* has prayed that he be released from the case and his shares be returned to his DEMAT account.

Noticee no. 7, Babulal Nolkha

3.15. Mr. Babulal Nolkha, *Noticee no. 7*, by way of his written reply dated January 17, 2022 and post hearing submission vide email dated April 18, 2022 has made similar contentions in the same lines of arguments as have been advanced by preceding 2 Directors of *GSL* i.e. *Noticees no. 4* and *6*. With the only exception that the period of directorship of *Noticee no. 7* as per the SCN was between November 28, 2013 to September 23, 2014, which the *Noticee* has called as an incorrect period and according to him, the correct period was November 25, 2013 to May 13, 2014. He has also contended that out of the total diversion of funds of INR 87.92 crore between FY 2008-09 and FY 2017-18, INR 75.61 crore was diverted in the years up to FY 2012-13 before he became a Director in *GSL*, and INR 3.90 crore was diverted in the financial years subsequent to his resignation on May 13 2014. So, out of INR 87.92 crore, INR 79.51 crore had been diverted before and after the financial years of his directorship, which constituted 90.43% of the total diversion. All other arguments of this *Noticee* being

almost identical to the earlier named 2 other directors, they are not repeated in the interest of brevity.

Noticee no. 8, Sunita Kothari

3.16. Ms. Sunita Kothari, *Noticee no. 8*, in her reply dated January 11, 2022 in response to the SCN and also in her post personal hearing submissions dated April 18, 2022, has explained that she was only an Additional Director in *GSL* for the period August 07, 2000 to September 05, 2012. Her main contention is that she is primarily a housewife and was appointed as an additional Director of the *Company* on August 07, 2000 by her in laws, although she was never actively involved in any aspect of the business of *GSL* nor had received any benefit or remuneration from the *Company* and she has also never been authorised for execution of any trades or transfer of funds on behalf of *GSL* or its *related entities*. According to her, the SCN does not carry any tangible evidence or allegation against her.

Noticee no. 11, Somnath Bhattacharjee and Noticee no. 12, Lipika Bhattacharjee

3.17. These 2 *Noticees* appeared for personal hearing and through a subsequent submission dated April 18, 2022 have stated that Mr. Somnath Bhattacharjee *(Noticee no. 11)* became a Director in *Noticee no. 9* on being asked by Mr. Kamal Kothari (*Noticee no. 2*) and during his tenure as Director, under instructions of Mr. Gaurav Choudhury (*Noticee no. 26*), he had signed some cheques, documents, etc. about which he is not aware. Identical submissions have been made by *Noticee no. 12* and to substantiate their point that they had signed documents, cheques, etc. on instructions of Mr. Gaurav Choudhury (*Noticee no. 26*), *Noticee no. 11* has provided two screenshots of his WhatsApp messages dated December 04, 2018: stating "*Lipika madam ka 2 pan card and*

2 adhar ka xerox with signature kara layiega". The second screenshot October 14, 2019 which reads, "*Plz call Himani urgently.. kuch resignation karvana hai apka*".

Noticee no. 13, Hemant Kothari

3.18. In his reply received on December 10, 2021, Mr. Hemant Kothari, *Noticee no. 13* has made the following contentions before me –

a. S K B Securities Ltd *(Noticee no. 9)* was acquired by the *Noticee's* family in the year 1999, and he was appointed as a non-executive Director in S K B Securities (a related entity of *GSL*) under the instructions of his late father, Jawahar Lal Kothari. After the demise of his father, he separated from the family business and started his own business of construction and realty in 2002. He resigned from S K B Securities *(Noticee no. 9)* on July 03, 2012.

b. The trading account of S K B Securities Ltd *(Noticee no. 9)* was opened with *GSL* in the year 2005. He did not sign any documents/instruments in relation to trades executed and/or order placed in the account of S K B Securities Ltd *(Noticee no. 9)* maintained with *GSL*.

c. He had already been restrained for almost three years from accessing the securities market by virtue of the *Interim Order* and has also been restrained from alienating his assets, and his DEMAT accounts remain frozen.

d. He was not involved in the day to day affairs of S K B Securities Ltd *(Noticee no. 9)* and had no means of knowing any wrongdoings committed as he was a non-executive Director; had no access to day to day functioning of S K B Securities Ltd *(Noticee no. 9)*; had no access to the Ledger maintained by *GSL*; and had no access to any trade details which *GSL* allegedly entered into.

e. SEBI had discharged certain Directors of *GSL*, in the Confirmatory Order, on the ground that they were independent Directors and/or non-executive Directors.

f. Contending against the SCN, *Noticee no. 13* has stated that no specific allegation, except for the reiteration of the fact that the *Noticee* was a Director in S K B Securities Ltd *(Noticee no. 9)*, had been made in the SCN.

g. In allegations made by SEBI for an offence involving fraud, it was essential that the accused had an 'intent' to commit such violation. Also, for a transaction to be termed fraudulent, as per the definition of "fraud", there had to be "inducement" and SEBI had not even alleged inducement.

h. No evidence was present supporting the allegation of SEBI.

i. In the end, *Noticee no. 13* has stated that no transactions were effected between him and S K B Securities Ltd. *(Noticee no. 9)*. For support a certificate from a firm of Chartered Accountants, Sarawagi Ojha & Associates, has been provided. The said certificate stated that "*we have verified the books of accounts including Bank Statement of Mr. Hemant Kothari (PAN AFOPK6638P) for the period 2008-09 to 2017-18, as produced before us, and based on such verification we certify that there is no any material financial transactions between the said Mr. Hemant Kothari and M/s S K B Securities Ltd.*"

Noticee no. 15, Aman Mohan Kothari

3.19. In his reply received on December 10, 2021, Mr. Aman Mohan Kothari, *Noticee no. 15* has made the following contentions before me –

a. He had a short stint of forty (40) days as a non-executive Director and resigned from the position of a non-executive Director of S K B Securities Ltd *(Noticee no. 9)* on July 07, 2012.

b. Not a single financial document was brought before him during the period of his directorship and he had not signed any document or KYC documents or any instrument in relation to the trades executed and/or order placed in the account of S K B Securities Ltd *(Noticee no. 9)* with *GSL*.

c. He was not a major shareholder in S K B Securities Ltd *(Noticee no. 9)*.

d. Other contentions raised by Mr. Hemant Kothari, *Noticee no. 13* have also been made by the present *Noticee*. Accordingly, the same are not reiterated here.

e. *Noticee no. 15* has also relied on the same set of orders/judgements as has been relied upon by *Noticee no. 13*, Mr. Hemant Kothari which are not being reiterated here.

Noticee no. 26, Gaurav Choudhary

3.20. Mr. Gaurav Choudhary, *Noticee no. 26,* by way of his reply dated January 06, 2022 has made his submissions in response to the SCN. Post the hearing in the matter, the said *Noticee* has also filed submissions by way of email dated April 18, 2022. As preliminary contentions the *Noticee* has contended that –

a. The SCN was vague and did not specifically set out the reasons for the allegations levelled against him and did not meet the mandatory requirements of a valid Notice as laid down by the Hon'ble Supreme Court.

b. He joined Awadhoot Marketing Pvt. Ltd. (for short 'Awadhoot') (*Noticee no. 22*) on May 01, 2013 as an employee. When a Director puts his resignation in February 2014, and since, a minimum of two Directors were required as per the applicable law he was forced to become a Director.

c. He was appointed as a non-executive Director of Awadhoot *(Noticee no. 22)* on February 18, 2014 and resigned from the position on April 30, 2015. He had no privileges of a Director and continued to work as an executive.

d. The *Noticee* was neither authorised nor placed any instruction with *GSL* for the execution of trades on behalf of Awadhoot *(Noticee no. 22)*. As regards, diversion of funds it has been shown in the SCN that during the financial years 2008-09 to 2017-18 a total of INR 5.26 crore was diverted. But neither the SCN/FAR does not give a month/date wise details regarding the diversion of funds.

e. In the financial year 2013-14, no trades had been executed and no funds had been transferred from the account of *GSL* to the trading account of Awadhoot *(Noticee no. 22)* or vice versa during the said period.

f. In the FY 2014-15, trades were executed on 5 trading sessions, i.e. March 16, 2015; March 24, 2015; March 26, 2015; March 27, 2015 and March 31, 2015. Similarly, in the FY 2015-16, trades were executed on 6 trading sessions, i.e. April 01, 2015; April 09, 2015; April 16, 2015; April 21, 2015, April 22, 2015 and April 24, 2015. Copies of the financial ledger for the FY 2014-15 and FY 2015-16 have been provided by the *Noticee*.

g. No funds were transferred from *GSL* to the company and vice versa during the period February 18, 2014 to April 30, 2015. No funds based transactions were being carried out in the account of Awadhoot *(Noticee no. 22)*, except the resultant amount of financial entries of the trades executed in the trading account of Awadhoot *(Noticee no. 22)*.

h. Section 149 (12) (ii) of the Companies Act 2013 provided that the liability of a Director arose, only with respect to such acts of omission or commission by a company, which had occurred with his knowledge and with his consent or connivance.

i. Section 27 of the *SEBI Act, 1992* clearly indicated that every person who was responsible for the conduct of the business of the company would be deemed guilty of the offence and would be liable to be proceeded against, but such person would not be punished if he proved that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of the offence.

j. WTM-SEBI in his *Confirmatory Order* had discharged seven Directors of *GSL* on the ground that they were Independent Directors and/or Non-Executive Directors, and, therefore, they may not have been aware of the day to day functioning and wrong doings of *GSL*.

k. He had also relied upon the statutory compliance certificate which did not point out any irregularity or non-compliance by Awadhoot *(Noticee no. 22)* but, the WTM-SEBI applied a different yardstick in his case.

l. The negative balance was not those funds which have been received from *GSL*, but the debit balance which is the resultant funds obligation of purchase of stock. The FAR erred in taking this into consideration as funds received from *GSL*.

m. The SEBI Report dated November 28, 2018, which alleges that client securities of INR 4.71 crore were misappropriated through Awadhoot *(Noticee no. 22)* by *GSL* did not bring on record anything regarding the role or complicity of the *Noticee*. The said report had not recommended any action against the *Noticee*.

n. The FAR had not brought out any specific claims against the *Noticee*, though it had alleged that Awadhoot *(Noticee no. 22)* had sold securities without owing them.

o. Intention was a pre-requisite to prove fraud for violation of *PFUTP Regulations, 2003*. The offences alleged under the *PFUTP Regulations, 2003* in the present case were

serious offences which required evidence of fraud or deceit to be carved out and attributed to the *Noticee* as they were not just ordinary civil defaults.

p. He was suffering for the past three years for no fault of his which had also led to the discontinuation of his job thereby affecting his livelihood and his family.

Noticee no. 29, Jayant Kumar Jain

3.21. In his reply dated January 10, 2022 Mr. Jayant Kumar Jain, *Noticee no. 29*, has made the following contentions before me –

a. Superfast Tours and Travels Pvt. Ltd (*Noticee no. 27*) was started by his father, Mr. Mahabir Chand Jain (*Noticee no. 28)*, with one of his cousin brothers. The company was involved in conducting small "holy" tours amongst family and friends.

b. Once he became an adult he was made a Director in Superfast *(Noticee no. 27)* by his father, though he was not involved in any manner in the conduct of business.

c. He had been working as an office helper at a relative's office in Bangalore since 2012 and that he was currently working at a Sari shop as a salesman.

d. He had no knowledge of the conduct of *GSL*, and that he was not at all related or connected to *GSL* and did not have any relationship/ link / nexus / collusion / connection / dealing / arrangement or agreement with *GSL*.

3.22. Whatever had been done by *Noticee no. 27* had been done by *GSL*, as *Noticee no. 27* had been purchased by the *Company* i.e. *GSL* from *Noticee no. 28* (Mr. Mahabir Chand Jain) and that he had found his father's handwritten note in one of his old files, to this effect

3.23. As stated above, post the hearing in the matter, the present *Noticee* has also made submissions by way of an email dated April 18, 2022. It has been submitted by him

the he was working under Mr. Deepak Parakh (*Noticee no. 5*), who held a key managerial position in *GSL*. He was verbally instructed by Mr. Deepak Parakh *(Noticee no. 5)* to join the board of Awadhoot *(Noticee no. 22)* as Mr. Babulal Nolkha *(Noticee no. 7)* was resigning from the directorship of Awadhoot *(Noticee no. 22)*, and he left the board of Awadhoot *(Noticee no. 22)* in 2015. With respect to the submissions made by Mr. Somnath Bhattacharjee *(Noticee no. 11)* and Ms. Lipika Bhattacharjee *(Noticee no. 12)* during the hearing that they received instructions pertaining to the signing of cheques, documents etc. from him (Gaurav), it has been submitted by the present *Noticee* that the said statements of the Mr. Somnath Bhattacharjee *(Noticee no. 11)* and Ms. Lipika Bhattacharjee *(Noticee no. 12)* were contrary to the facts on record. He has submitted that Mr. Somnath Bhattacharjee *(Noticee no. 11)* and Ms. Lipika Bhattacharjee *(Noticee no. 12)* were Directors in S K B Securities *(Noticee no. 9)* since July 07, 2012, and he joined the company as an executive only on May 01, 2013. So, he could not have been instructing them prior to May 01, 2013.

3.24. The *Noticees*, through their replies, have also placed reliance on certain judicial pronouncements to support their submissions. In this respect, the judicial pronouncements and the arguments advanced, based on those judicial pronouncements, are summarised hereunder:

a. *Dayle De'souza V. Government of India through Deputy Chief Labour Commissioner (C) and Another*, *AIR 2021 SC 5626* to contend that investigating and prosecuting agencies are not to proceed mechanically against Directors of companies.

b. *Gorkha Security Services vs. Govt. of NCT, AIR 2014 SC 3371; S L Kapoor v. Jagmohan and Ors., AIR 1981 SC 136;* and *Commissioner of Central Excise, Bangalore V. M/s*

Brindavan Beverages (P) Ltd. and Ors, (2007) 5 SCC 388 to contend that the SCN was not specific and vague.

c. *KSL & Industries Ltd. V. Chairman, SEBI, 2005 59 SCL 1 SAT* to contend that allegations of fraud cannot be based on wild allegations without any convincing evidence.

d. *Nirmal Bang Securities (P) Ltd. V. SEBI, Order of the Hon'ble SAT dated October 31, 2003 in Appeal no. 54 of 2002*, to contend that allegations of fraud had been made without considering the time-tested judicial precedents.

e. *Chief Engineer, MSEB and Anr. V. Suresh Raghunath Bhokare, AIR (2005) 10 SCC 465* to contend that where fraud and collusion were being alleged, it was incumbent on the authority to set out the nature of the fraud along with full particulars.

f. *SEBI V. Shri Kanaiyalal Baldevbhai Patel, Order of the Hon'ble Supreme Court Order dated August 28, 2018 in Civil Appeal No. 2595 of 2013,* to contend that charges under the *PFUTP Regulations, 2003* needed to be established as per the applicable standards rather than on mere conjectures and surmises.

g. *Nandakishore Prasad v. State of Bihar, AIR1978SC1277* to contend that suspicion cannot be allowed to take the place of proof even in domestic inquiries.

h. *Sujit Biswas V. State of Assam, 2013 (12) SCC 406* and *Raja alias Rajinder V. State of Haryana, 2015 (11) SCC 43* to contend that while scrutinising circumstantial evidence, a Court has to evaluate it to ensure the chain of events was established clearly and completely to rule out any reasonable likelihood of innocence of the accused.

i. *Hindustan Steel vs. State of Orissa, AIR 1970 SC 253* to contend that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or had acted in conscious disregard of its obligation.

j. *Ranjit Thakur vs. Union of India, AIR 1987 SC 2386* to contend that the sentence has to suit the offence and should not be vindictive or unduly harsh.

k. *Maksud Saiyed V. State of Gujarat and Ors, (2008) 5 SCC 668,* to contend that the Penal Code did not contain any provision of vicarious liability on the part of the Managing Director/ Director of the company where the accused was a company.

l. *Sunil Bharti Mittal V. CBI, AIR2015SC923 and Shiv Kumar Jatia V. State of NCT of Delhi, AIR 2019 SC 4463* to contend that where the statutory provision did not specifically provide for vicarious liability, an individual could not be implicated under the same.

m. *Pooja Ravinder Devidasani v. State of Maharashtra & Ors. AIR 2015 SC 675 and Ashok Mai Bafna vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd., (2018) 14 SCC 202* to contend that the complainant should specifically show as to how and in what manner was the accused responsible.

n. *Everest Advertising (P) Ltd. V. State Govt. of NCT of Delhi, (2007)5SCC54* with regard to the question of vicarious liability of the Directors of a company in regard to offences which may have been committed without their knowledge or consent.

o. *Smt G. Vijaylakshmi and Ors. vs. SEBI, (2000) 100 Comp Cases 726 (AP)* to contend that if the Director was able to explain that he had no role to plav in the alleged default the presumption of guilt cannot be fastened upon him.

p. *K. K Ahuja V. V K Vora & Anr., (2009) 10 SCC 48* to contend that if the accused was the Managing Director or the Joint Managing Director, it was not necessary to make an averment in the complaint that he was in charge as the prefix "Managing" to the word "Director" made it clear that they were in charge of and were responsible to the company, for the conduct of the business of the company.

q. *Subhra Jyoti Sardar vs SEBI, Order of the Hon'ble Securities Appellate Tribunal dated 23.02.2021 in Appeal No 470 of 2018*, to contend that in the absence of any finding that a person was involved in the day-to-day affairs of the management of the company coupled with the fact that there was a Managing Director in the Company who was overall responsible and was an officer in default under Section 5 of the Companies Act, an order could not be sustained as it related to the person.

r. *Agritech Hatcheries & Food Ltd V. Valuable Steels India Pvt Ltd, (1999) 96 Comp Cases 534 (Mad),* to contend that when there was a Managing Director, it would be an abuse of process of the Court, if proceedings were launched against the ordinary Directors without examining their role in the default.

s. *SEBI V. Gaurav Varshney*, *(2016) 14 SCC 430*, to contend that the liability of a Director arises from being in charge of and responsible for the conduct of business and not on the basis of merely holding a designation or office in the company.

t. *S.M.S Pharmaceuticals Ltd V. Nita Bhalla, (2005) 8 SCC 89,* to contend that there was no universal rule that a Director of a company was in charge of its everyday affairs.

u. *Parsoli Corporation vs. SEBI, Order of the Hon'ble* SAT *dated 12 August 2011 in Appeal No. 146/2011* to contend that if the charge was serious, higher was the degree of probability to establish the same.

v. *Sterlite Industries vs. SEBI, Order of the Hon'ble SAT dated 22 October 2001 in Appeal No. 20/2001* to contend that even in a proceeding, a person could not be held guilty and awarded punishment, in the absence of reasonably strong evidence.

3.25. **Relevant Provisions**

3.25.1. I note that in the SCN, the acts of the *Noticees* have been alleged to be in violations of various provisions of *SEBI Act, 1992* and *Regulations* made thereunder. Therefore, before moving forward with my observations in the matter, it would be proper to visit the afore-stated regulatory provisions alleged to have been violated in the SCN. The said provisions are produced hereunder for ready reference:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –

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

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

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

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

Securities Contracts (Regulation) Rules, 1957

Rule 15

Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange.

15. (1) Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years:

(a) Register of transactions (Sauda book).

(b) Clients' ledger.

(c) General ledger.

(d) Journals.

(e) Cash book.

(f) Bank pass-book.

(g) Documents register showing full particulars of shares and securities received and delivered.

(2) Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years:

(a) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members.

(b) Counterfoils or duplicates of contract notes issued to clients.

(c) Written consent of clients in respect of contracts entered into as principals.

<u>SEBI (PFUTP) Regulations, 2003</u>

Regulation 3 (d)

3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) ….

(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 Actor the rules and the regulations made there under.

Regulation 4 (1)

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

SEBI (Stock Brokers) Regulations, 1992

Regulation 9

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

(a) the stock broker holds the membership of any stock exchange;

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(c) where the stock broker proposes change in control, he shall obtain prior approval of the Board for continuing to act as such after the change;

(d) he shall pay fees charged by the Board in the manner provided in these regulations;

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

(f)he shall at all times abide by the Code of Conduct as specified in Schedule II; and

(g) he shall at all times maintain the minimum networth as specified in Schedule VI.

Regulation 21

Obligations of stock-broker on inspection by the Board.

21. (1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.

(2) The stock-broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock-broker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the

possession of the stock-broker or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant.

(3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the stock-broker.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give.

Clauses A (1), (2), (3) (4) & (5) of Code of Conduct, Schedule II

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

B Duty to the Investor

(1) Execution of Orders: A stock-broker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved. A stock-broker shall promptly inform his client about the execution or non-execution of an order, and make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.

(2)….

(6) Fairness to Clients: A stock-broker, when dealing with a client, shall disclose whether he is acting as a principal or as an agent and shall ensure at the same time, that no conflict of interest arises between him and the client. In the event of a conflict of interest, he shall inform the client accordingly and shall not seek to gain a direct or indirect personal advantage from the situation and shall not consider clients' interest inferior to his own.

Circulars issued by SEBI

- ***SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993;***
- ***SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009;***
- ***SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016; and***
- ***SEBI circular CIR/HO/MIRSD/MlRSD2/CIR/P/2Q1764 dated June 22, 2017.***

4. Issues for consideration–

4.1. Considering the findings of various facts and evidences by SEBI from FAR and other reports, the allegations levelled against the *Noticees* in the SCN based on such findings and the explanations offered by the *Noticees* through their written and oral replies to the SCN as well as during personal hearing, I find that in this case, the following issues require consideration: -

I. Whether *GSL*, a registered stock broker with SEBI, has —

a) misappropriated clients' securities and diverted the sales proceeds of those clients' securities, to its *related entities*, namely, S K B Securities Ltd. (*Noticee no. 9*), Param Commodities Pvt. Ltd. (*Noticee no. 16*), Paramarth Agro Marketing Private Limited (*Noticee no. 19*), Apurva Commodities Pvt. Ltd. (*Noticee no. 20*), Awadhoot Marketing Pvt. Ltd (*Noticee no.* 22), Superfast Tours and Travels Pvt. Ltd. (*Noticee no. 27*),

Shri Vishnu Krupa Commodities Private Limited (*Noticee no. 30*) and Pawantar Agro Agencies Pvt. Ltd. (*Noticee no. 31*);

b) **mis-reported/not reported data under enhanced supervision regime to NSE;**

c) **falsified its books of account;**

d) **lacked solvency;**

e) **not settled the funds and securities of clients;**

f) **provided funding to clients having debit balances;**

g) **not redressed complaints of investors; and**

h) **not furnished information to SEBI?**

II. **If the answer to Issue no. I is in the affirmative, then whether the Directors of *GSL*, namely, Kamal Kumar Kothari (*Noticee no. 2*), Dharmendra Kothari (*Noticee no. 3*), Soumen Chatterjee (*Noticee no. 4*), Deepak Parakh (*Noticee no. 5*), Shree Kumar Jhanwar (*Noticee no. 6*), Babulal Nolkha (*Noticee no. 7*) and Sunita Kothari (*Noticee no. 8*) can be held liable for the violations committed by the *Company*?**

III. **If the answer to Issue no. I (a) is in the affirmative, then what was the role of the *related entities* and their Directors namely, Provat Mitra** Ltd. ***(Noticee no. 10)*, Somnath Bhattacharjee *(Noticee no. 11)*, Lipika Bhattacharjee *(Noticee no. 12)*, Hemant Kothari *(Noticee no. 13)*, Krishna Maheswari *(Noticee no. 14)*, Aman Mohan Kothari *(Noticee no. 15)*, Pawan Kumar Modi *(Noticee no. 17)*, Murlidhar Sharma *(Noticee no. 18)*, Ram Avtar Sharma *(Noticee no. 21)*, Sudarshana Mitra *(Noticee no. 23)*, Shyamal Mitra *(Noticee no. 24)*, Abhijit**

Pal *(Noticee no. 25)*, Gaurav Choudhary *(Noticee no. 26)*, Mahabir Chand Jain *(Noticee no. 28)* and Jayant Kumar Jain *(Noticee no. 29)* in various violations committed by *GSL*?

4.2. However, before proceeding with the adjudication of the above-mentioned issues it would be relevant to deal with certain preliminary issues raised by the *Noticees*, which are dealt in the subsequent paragraphs of this Order.

SCN is vague and unspecific

4.3. The *Noticees* have *inter alia* stated that the SCN is generic and vague and did not specify the charges in specific terms. In this respect, the *Noticees* have placed reliance upon several case laws to state that the SCN is imprecise and vague.

4.4. Contrary to the aforesaid contention made by the *Noticees*, I find that the SCN has made out specific and clear allegations against the *Noticees*. Further, the SCN has enunciated the details of each allegation levelled against the *Noticees* and has provided the factual basis upon which such allegation has been levelled including the documents relied upon for making such allegations. Further, the SCN has also specified in clear terms the relevant provisions of law under which actions have been proposed against the *Noticees*. For instance, the SCN specifically contains the amount of client securities which were misappropriated by *GSL* and sold those securities through *related entities* and has identified the period during which such misappropriations took place. Similarly, the SCN has also specified the instances wherein mis-reporting / non reporting of data was done by *GSL*, including the instances of non-settlement of funds and securities by *GSL* during different periods that have been specified in the SCN. Thus, I see that the SCN has clearly brought out the allegations, the actions contemplated, as well as the provisions of law under which

such actions are being proposed. I do not find any ambiguity in the contents of SCN as has been contended by the *Noticees*, and the SCN conspicuously *inter alia* narrates as how *GSL*, through its *related entities* has engaged in fraudulently misappropriating the securities belonging to its clients and in the process, *GSL* has been noticed to have appropriated securities of its clients and sold the same through its *related entities*. The SCN also states in specific terms that those *related entities* who were observed to have off-loaded those shares were not the owners of those securities. From the replies and submissions advanced by the *GSL* and its *related entities* as well as the persons who were in charge for managing the affaires of such *related entities*, I don't find that any verifiable justifications have been put forth to explain the reason as to how and why those securities belonging to the clients came to the possession of such *related entities* and why the proceeds of sales of such securities were wrongfully and fraudulently appropriated by these entities. In the absence of any valid reasons or explanation being offered such a contention of the *Noticee* is found to be factually incorrect hence, not tenable.

4.5. Further, the *Noticees* have *inter alia* placed reliance on *Gorkha Security (supra)* to establish their argument of the SCN being vague and generic. I find that the reliance on *Gorkha Security (supra)* is inapt as the observations and legal context of the said case are inapplicable to the facts of the present matter. Also, as already mentioned above, the SCN in the present matter has clearly brought out the areas of allegations as well as quantum of securities / funds involved in such allegations. Furthermore, it must be emphasised that the present matter relates to actions contemplated by SEBI for violations of statutory provisions, whereas in *Gorkha Security (supra)*, the observations of the court were made in respect of issues arising out of a commercial dispute.

Allegation of Fraud in the SCN is not made out against the Noticees

4.6. Further, it has been contended by the *Noticees* that SCN lacks material particular to suggest commission of fraud perpetrated by the *Noticees*. In this regard, I see from the SCN that the allegation is that the *Noticee* has violated Section 12 A read with Regulations 3(d) and 4(1) of SEBI *PFUTP Regulations, 2003*. In this regard, it is to be noted that Regulation 2 (c) of the *PFUTP Regulations, 2003* defines fraud. It would be relevant for the present examination to reproduce the said provision hereunder:

> *"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) <u>an active concealment of a fact by a person</u> 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 <u>another of informed consent</u> or full participation;*
>
> *(8) a false statement made without reasonable ground for believing it to be true; and*

(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."

4.7. Further, Section 12A of the *SEBI Act, 1992* prohibits manipulative and deceptive devices, insider trading and substantial acquisition of securities or control in contravention of the provisions of the *SEBI Act, 1992* and the regulations made thereunder. Similarly, regulation 3(d) of the *PFUTP Regulations, 2003* provides that no person shall engage in an activity which would operate as a fraud or deceit upon any person in connection with the dealing in securities in contravention of the prevailing provisions of law. Similarly, it is seen from a reading of regulation 4 (1) of the *PFUTP Regulations, 2003* that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in the securities market. In the present matter, in my opinion, the act of selling the shares by *GSL* through its *related entities* that it did not own and the retention of the proceeds earned thereof clearly satisfies the definition as provided above, and if such acts have been carried out then the same would clearly fall under the definition of fraud under *PFUTP Regulations, 2003*. Similarly, SEBI has prescribed guidelines for Stock Exchanges to conduct inspection / supervision of the stock brokers and report and take actions for anomalies observed. However, the acts of mis-reporting/non-reporting of data under enhanced supervision to the Stock Exchanges by *GSL* as alleged in the SCN shall tantamount to violation of guidelines prescribed by the regulator. In this respect, I note that no plausible justification has been advanced by the *Noticees* explaining the transfer of shares of its clients to its *related entities* and selling of such shares were undisputedly concealed from the lawful owner of securities. I also note that there is no explanation of mis reporting or concealing of

correct and appropriate statistics from the exchanges, which also caused and induced its client to continue to trade through the *Noticee no. 1*. Rather, there is categorical admission by the *Noticee no. 2* to the fact that in order retain the business some High Networth Clients of *GSL* and in order to prevent default, securities belonging to other innocent clients of *GSL* were sold. It was also stated by *Noticee no. 2* that such acts were done anticipating that upon available of surplus funds, the securities would be purchased to redeem the innocent clients. Further, nothing has been brought on record to suggest and substantiate that such selling of shares of innocent clients were made with their consent. Under the circumstances, considering the above, I am of the firm view that there are more than sufficient elements to bring the acts within the fold of fraud as defined under the *PFUTP Regulations, 2003*.

4.8. Further, the *Noticees* have also argued that for alleging fraud, intent is required to be shown. Also that for fraud to be established inducement has to be shown. In this regard, it is stated that to establish fraud in the context of securities law / *PFUTP Regulations, 2003* reference is to be made to regulation 2 (c) of the *PFUTP Regulations, 2003*. Principles of '*intent*', which are external to the context of securities law, cannot be used for the interpretation of the *PFUTP Regulations, 2003*. In this regard, reference is made to the judgement of the Hon'ble Supreme Court in the matter of The Chairman, *SEBI V. Shriram Mutual Fund*, passed on May 23, 2003 in Appeal (civil) 9523-9524 of 2003, wherein the Hon'ble Apex Court elucidating upon the nature of the *SEBI Act, 1992* has stated that "*In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act*

would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. This apart that unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred."

4.9. Further, as regards the essential need for 'inducement' to be established for showing fraud, the same is not borne out by regulation 2 (c) of the *PFUTP Regulations, 2003* which defines fraud. As may be seen, regulation 2 (c) has two distinctive parts. The first part provides a qualitative criterion based on which an act is to be determined to constitute fraud or not. It is in this part that the word induce finds mention. The second part on the other hand eschews the qualitative test of the first part and provides a list of instances, which if found true would itself constitute fraud, irrespective of whether the qualitative test as provided in the first part is satisfied or not.

4.10. Based on my observations in the preceding paragraphs, I find that the allegation of fraud in the SCN is clearly made out, and the same shall stand clarified on the basis of the finding on the issues being dealt subsequently in paragraph 5 of this Order.

5. Consideration of issues and findings –

Issue I- Whether GSL has engaged in activities which have resulted in the violation of the Rules, Regulations, and Circulars issued by SEBI from time to time?

5.1. It has been alleged in the SCN that *GSL* has violated the following provisions:

- SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;

- SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI circular no. CIR/HO/ MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017;

- Rule 15 of the Securities Contracts (Regulation) Rules, 1957 and Regulation 17 of the SEBI (Stock Brokers) Regulations, 1992;

- Regulation 9 (g) of SEBI (Stock Brokers) Regulations, 1992;

- SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016;

- SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI circular no. CIR/HO/ MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017;

- Regulation 9 (e) of SEBI (Stock Brokers) Regulations, 1992;

- Regulation 21 of SEBI (Stock Brokers) Regulations, 1992;

- Clauses A (1), (2), (3), (4), (5) and B (6) of the code of conduct as provided under Schedule II read with Regulation 9 of SEBI (Stock Brokers) Regulations, 1992; and

- Section 12 A of the *SEBI Act, 1992* read with Regulations 3(d) and 4(1) of SEBI *PFUTP Regulations, 2003*.

5.2. I find from the records that in response to the above-stated allegations made in the SCN, the *Company* has not submitted any separate response or explanation in its

defense. Considering the same, I am relying upon the materials available on records to deliberate upon the issues that are pending for adjudication before me. Replies have been received from Mr. Kamal Kothari *(Noticee no. 2)*, who was the Managing Director, and Mr. Dharmendra Kothari *(Noticee no. 3)*, who was another executive Director of the *Company*. These replies throw light on the working and business practice of *GSL* and make an attempt to defend the actions of the *Company*. I note that the SCN contains multiple allegations against *GSL*, and for the sake of convenience and clarity, I shall deal with each of the allegations independently in the following paragraphs. In considering these allegations, I shall take into account the defences as have been put forth in the replies received from Mr. Kamal Kothari *(Noticee no. 2)* and Mr. Dharmendra Kothari *(Noticee no. 3)*.

Allegation 1

S K B Securities Ltd. (Noticee no. 9), Param Commodities Pvt. Ltd. (Noticee no. 16), Paramarth Agro Marketing Private Limited (Noticee no. 19), Apurva Commodities Pvt. Ltd. (Noticee no. 20), Awadhoot Marketing Pvt. Ltd (Noticee no. 22), Superfast Tours and Travels Pvt. Ltd. (Noticee no. 27), Shri Vishnu Krupa Commodities Private Limited (Noticee no. 30) and Pawantar Agro Agencies Pvt. Ltd. (Noticee no. 31) are related to GSL and connected with each other?

5.3. The SCN has alleged that the above-named *Noticees* were related to *GSL*. In this respect, from the materials (from the FAR and the SEBI Report) available on record, it is noted that the *inter-se* connections being enjoyed by the afore-sated *Noticees* amongst themselves were as under:

Table – 3

Sl. No.	*Noticee* Name	Basis of connection
1.	S K B Securities Ltd *(Noticee no. 9)*	• Shares common Shareholders with *GSL* viz., Mr. Dharmendra Kumar Kothari *(Noticee no. 3)*, Kamal Kumar Kothari & Sons (HUF), Abhijit Kothari and Anand Kothari. • The details of the shareholding of the above individuals in S K B Securities Ltd *(Noticee no. 9)* are provided hereunder: Mr. Dharmendra Kumar Kothari *(Noticee no. 3)*– 1.97% holding in S K B Securities Ltd *(Noticee no. 9)*. Kamal Kumar Kothari & Sons (HUF) – 74.36% holding in S K B Securities Ltd *(Noticee no. 9)*. Abhijit Kothari – 5.42 % holding in S K B Securities Ltd *(Noticee no. 9)*. Anand Kothari – 5.42 % holding in S K B Securities Ltd *(Noticee no. 9)*. • Shares common address with *GSL*. • Mr. Hemant Kothari *(Noticee no. 13)*, a Director of S K B Securities Ltd *(Noticee no. 9)* for the period, November 19, 1999 to July 03, 2012 was a shareholder of *GSL*.
2.	Param Commodities Pvt. Ltd. *(Noticee no. 16)*, Paramarth Agro Marketing	• Mr. Pawan Kumar Modi *(Noticee no. 17)* who was a Director of Paramarth Agro Marketing Private Limited *(Noticee no. 19)* and Apurva Commodities Pvt. Ltd. *(Noticee no. 20)* was also a Director of Guiness

	Private Limited *(Noticee no. 19)*, Apurva Commodities Pvt. Ltd. *(Noticee no. 20)*, Shri Vishnu Krupa Commodities Private Limited *(Noticee no. 30)* and Pawantar Agro Agencies Pvt. Ltd. *(Noticee no. 31)*	Corporate Advisory Services Pvt Limited, which was the merchant banking arm of *GSL*. • Mr. Pawan Kumar Modi *(Noticee no. 17)* was also a shareholder in *GSL* having a 5.24% stake. • As per the KYC data submitted by *GSL*, Mr. Kamal Kumar Kothari *(Noticee no. 2)*, MD of *GSL* acted as the introducer for the opening of the account of Param Commodities Pvt. Ltd. *(Noticee no. 16)*.
3.	Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)*	• Mr. Kamal Kumar Kothari *(Noticee no. 2)* who was a Director of Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* for the period September 26, 2011 to April 20, 2013 and was the Managing Director and a shareholder in *GSL*. • Shares common Directorship with *GSL* viz., Mr. Babulal Nolkha *(Noticee no. 7)* and Mr. Deepak Parakh *(Noticee no. 5)*. • The KYC data of *Noticee no. 22* submitted by *GSL*, shows that the Registered address of *Noticee no. 22* and the registered office address of *GSL* were one and the same. • The introducer for the *Noticee* in the KYC documents was Rajesh Kothari, brother of Mr. Kamal Kumar Kothari *(Noticee no. 2)*, MD of *GSL*.

		• The Board resolution dated March 08, 2006 of *Noticee no. 22* authorised Mr. Kamal Kumar Kothari *(Noticee no. 2)*, MD of *GSL* and Mr. Dharmendra Kothari *(Noticee no. 3)*, Director of *GSL* to deal with *GSL* on behalf of *Noticee no. 22*.

5.4. From the above, it is noticed that there was inter-se nexus amongst the above entities and the materials on record suggest towards a strong connection enjoyed by them. For instance, the *Noticee no. 9* shared common address with *Noticee no. 1*. Similarly, I note that the *Noticees no. 16, 19, 20, 30* and *31* were also connected to *GSL* through Mr. Pawan Kumar Modi *(Noticee no. 17)* who was a common Director in *Noticees no. 16, 19, 20, 30* and *31* and Guiness Corporate Advisory Services Pvt Limited (merchant banking arm of *GSL*). It is further observed that *Noticee no. 2* was exercising control over the *related entities* of *GSL*. For instance, I note that the majority shareholding (more than 74%) in the *Noticee no. 9* were being held by the *Noticee no. 2* (MD of the *Noticee no. 1*) through his HUF where the he is the Karta. Apart from the above, the effective control in the affairs of the *Noticee no. 9* was being exercised by the *Noticee no. 2* through the holdings held by the other Director i.e. the *Noticee no. 3*.

5.5. With respect to *Noticee no. 27*, it is seen that there was movement of funds between *Noticee no. 27* and *GSL* and there was negative balance in the holding statement of *Noticee no. 27* (as mentioned in the FAR). Moreover, Mr. Jayant Jain *(Noticee no. 29)*, a Director in *Noticee no. 27* has claimed that *Noticee no. 27* had been acquired by *GSL*.

5.6. In addition to the above, I note that apart from being directly connected to *GSL*, the *related entities* were also connected with each other. For instance, as already stated

above, *Noticees no. 16, 19, 20, 30* and *31* are connected to each other through a common Director viz. Mr. Pawan Kumar Modi *(Noticee no. 17)*. I also note that *Noticees no. 19* and 31 share common addresses. Similarly, as per the available records before me, *Noticees no. 20* and *30* share a common address.

5.7. It is further pertinent to note that, Mr. Kamal Kothari *(Noticee no. 2)* (MD of *GSL*) in his reply has stated that "*GSL has decided to liquidate stocks of defaulter clients in related accounts to discharge exchange obligation without taking risk of clientele dispute with clear plan to buy back those securities when client will make payment or company will have idle funds.*" (emphasis supplied). From the above, it is also evident that *GSL* was exercising control over the holdings of securities in demat accounts of its *related entities* that further reinforces the connection enjoyed between *GSL* and its *related entities*. In view of the above, I find that there are sufficient evidences to bring home the charge of connection between the *Noticees* as alleged in the SCN.

5.8. I also note that in respect of the allegations of connection between the *Noticees* as alleged in the SCN, no submissions with supporting evidences has been furnished to refute allegations of the *inter-se* connections. At this juncture, I find it apt to refer to and rely on the observation of the Hon'ble Securities Appellate Tribunal (for convenience "SAT") in the case of *Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013- DoD- 11.02.2014)*,wherein the Hon'ble SAT has observed that–"*……As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor have availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices…*"

5.9. Considering the aforesaid discussions and the fact that there are materials sufficient enough to suggest that strong inter se connections existed between *GSL* and *Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31*, and in the absence of any material contrary to the allegations, it is quite clear that *Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31* were all *related entities* of *GSL*.

Allegation 2

GSL has misappropriated clients' securities and diverted the proceeds to related entities (Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31)

5.10. It has been alleged in the SCN that the *GSL* has engaged in activities of misappropriating securities belonging to its clients which it was holding in fiduciary capacity and was not having lawful authorisation to transfer the clients' securities to any other entities. The SCN further narrates that *GSL* has not only misappropriated such securities owned by its clients by unlawfully transferring them to its *related entities* (*Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31)* but also has unlawfully sold such securities without the knowledge of its clients and diverted the sale proceeds for its own benefits.

5.11. As regards the aforesaid allegation, I note that Mr. Kamal Kothari (*Noticee no. 2*) in his written and oral submissions which have been already highlighted in the preceding paragraphs of this Order, has not denied the fact that securities of the clients of *GSL* have been misappropriated and sold through various *related entities* of *GSL*. *Noticee no. 2* has rather tried to put up various arguments and explanations in his defense to justify his actions in selling those securities in the interest of meeting the financial hardships of his brokerage *Company* (*GSL*) because of defaults made by various HNI clients in paying in their obligations to the *Company* to whom *GSL* had

given excessive exposures including additional intra-day exposure in the market in a lenient manner. Such business practices followed by *GSL* caused huge amount of bad debts due to market volatility. According, to Mr. Kamal Kothari *(Noticee no. 2)*, faced with such hardships and in order to run the day to day operation of its broking business and to meet the financial needs, the *Company* did not have an option but to pledge its client's securities to raise funds. The clients' securities had been pledged with NBFCs viz., HDFC Bank, Edelweiss, IL &FS and Ways Vinimay Pvt. Ltd. to raise funds so as to discharge the obligation to exchanges, and the pledge was done lawfully. As regards the sale of client securities, it has been submitted that the *Company* had made regular follow-ups with debtor-clients to make payment and settle the debit balance. However, the clients were seeking more time, so *GSL* decided to liquidate stocks of the defaulter clients in related accounts to discharge exchange obligation without taking risk of dispute with clients, with a clear plan to buy back those securities once when the client would make payment or the *Company* would have idle funds. It has been further submitted that the sale proceeds from the sale of the securities of clients was utilised only in the system to normalise the day to day operation of the *Company*. When the *Company* had adequate funds, the *Company* used to buy back the securities of the clients which were sold earlier for the purpose of meeting clearing corporation obligations. As a consequence of the buy back the *Company* suffered a loss of INR 180 crore. Further, it has been submitted that since *GSL* had given higher exposure to clients and *GSL* incurred operating loss due to financial hardship and therefore *GSL* failed to meet margin calls given by the NBFCs. Thereafter, the NBFCs have liquidated pledged stocks and those pledged stocks were, therefore, not in *GSL*'s books of account.

5.12. On a careful perusal of the afore-stated submissions made by *Noticee no. 2*, I find that while he has candidly admitted of giving excessive exposure to some of his clients and pledging their shares with NBFCs which had to be sold after those clients defaulted in meeting their financial obligations, Mr. Kamal Kothari *(Noticee no. 2)* has remained largely evasive, with respect to the main allegation of the SCN that he has misused the shares of even those clients who did not take any exposure and sold them off through the *related entities* of *GSL* in an unlawful manner to meet his / *GSL*'s payment obligations towards the clearing corporations and / or for the benefit of *GSL* and its *related entities* at the cost of the valuable collateral of the clients who had given their securities to the broking firm in good faith. While it is a different thing and logical for a brokerage firm to get those shares sold of their defaulting clients, it is not an acceptable proposition to sell the shares of non-defaulting clients to make good the loss incurred by the brokerage firm (*GSL*) because of indebtedness or default committed by some other clients or due to market volatility. Therefore, the submission made by *Noticee no. 2* pleading under the name of over exposure, indebtedness, pledging of shares under compulsion and selling of shares of the defaulting clients does not have anything to do with act of the *GSL* in misappropriating and unlawfully selling the shares of the innocent non-defaulting clients which the *GSL* had done in flagrant violation of law and code of conduct prescribed for a registered stock broker.

5.13. I note that the Forensic Auditors in their audit report (FAR) have made an analysis of Holding Statements of the various clients including that of the *related entities* of *GSL* who were also the clients of *GSL*. The Holding Statement provides the summary of all the securities held in a particular Demat account on a specified date, with bifurcation showing the status of such securities. In this regard, reference is made to

Annexure- 6 of the FAR which contains the summarised version of the Holding Statements with respect to the *related entities* of *GSL* i.e. *Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31* from the FYs 2009-10 to FY 2017-18. I note that the Holding Statements in respect of majority of the *related entities* show negative balances of securities held in their respective demat accounts in various scrips during the period FYs 2009-10 to FY 2017-18. There is no dispute that the securities held in a Demat account on a particular date, should be positive or zero and cannot be negative in a normal scenario, however, surprisingly the forensic auditors have found that the monetary balances representing the securities held in the holding statements of the demat accounts of a number of *related entities* of *GSL* were having negative figures which clearly suggests that the demat accounts of such *related entities* did not have adequate securities for selling and yet securities were sold by such *related entities* from their demat accounts which in turn strongly indicates that the securities that were sold from the accounts belonged to demat accounts of other clients which were under the control of *GSL*. The details of total valuation of the scrips apparently sold by the *related entities* of *GSL* between FYs 2009-10 and FY 2017-18, as gathered from the material available on records including the FAR, are presented hereunder:

Table – 4 (INR Crores)

Name of Entity	**FY 09-10**	**FY 10-11**	**FY 11-12**	**FY 12-13**	**FY 13-14**	**FY 14-15**	**FY 15-16**	**FY 16-17**	**FY 17-18**
Shri Vishnu Krupa Commodities Private Limited *(Noticee no. 30)*	-47.66	-19.56	-1.93						

Paramarth Agro Marketing Private Limited *(Noticee no. 19)*	0.78	-63.31	-27.78		2.52				
Param Commodities Pvt. Ltd. *(Noticee no. 16)*	3.22	0.66	-48.62						
S K B Securities Ltd. *(Noticee no. 9)*				-19.98	-29.99	-55.83	-56.05	-77.45	-84.97
Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)*				-61.99	-58.44	-72.99	-66.93	-85.48	-96.69
Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)*						1.36	1.67		
Apurva Commodities Pvt. Ltd. *(Noticee no. 20)*	1.77		0.1						
Pawantar Agro Agencies Pvt. Ltd. *(Noticee no. 31)*		4.63	0.99						
Total	**(41.89)**	**(77.58)**	**(77.24)**	**(81.97)**	**(85.91)**	**(127.46)**	**(121.31**	**(162.93)**	**(181.66)**

5.14. In the context of aforesaid discussion and the table shown above, the negative balances shown against the names of the *related entities* denotes that the amounts

realised by the sale of securities actually did not belonged to such *related entity*, but was owed to someone else. For instance, *Noticees no. 30* was having negative balances of securities worth INR 47.66 crores and INR 19.56 crores in its demat accounts in the FY 2009-10 and 2010-11 respectively. Similarly, *Noticee no. 9* (S K B Securities Ltd.) was having negative balances of securities ranging from INR 19.98 crores to 84.97 crores in its demat accounts during the FYs 2012-13 to 2017-18. The aforesaid negative balances incurred for many *related entities* of *GSL* over a period of 5-6 years, indicating that more and more securities were being sold and there does not appear to be any action to recover outstanding that ought to have taken by *GSL*.

5.15. I also note that the FAR records that the negative balances of securities appearing in the Holding Statements for the FY 2011-12 were transferred from *Noticee no. 30* (-3,17,900), *Noticee no. 19* (-11,00,133) and *Noticee no. 16* (-2,58,600) to S K B Securities Ltd *(Noticee no. 9)* (-10, 72,533) and Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)* (-6,04,100) for the FY 2012-13. I note from the Annexure 7 of the FAR that such transfer of negative balances among the *related entities* was done in around 63 scrips. So, from the above, I find that *GSL* has attempted to spread the negative balances of securities to different entities to create a façade that would hide the fact that the *related entities* did not hold any securities on a continuous basis that had been sold from their accounts. This goes only to further buttresses the allegation that *GSL* had misappropriated the securities of its clients.

5.16. The FAR also highlights the receipts and payments between *GSL* and the *related entities* during from FY 2008-09 to 2017-18. From the said details, the net fund position between *GSL* and its *related entities* standing as on March 31, 2018 is tabulated below:

Table – 5 (INR Crores)

Group Companies	**Payments made by *GSL* to *related entities***	**Payments received by *GSL* from *related entities***	**Net Receivable/ (Payable)**
Apurva Commodities Pvt. Ltd. *(Noticee no. 20)*	7.07	23.96	(16.89)
Awadhoot Marketing Pvt. Ltd *(Noticee no. 22)*	0.13	5.39	(5.26)
Paramarth Agro Marketing Private Limited *(Noticee no. 19)*	122.32	94.66	27.66
Param Commodities Pvt. Ltd. *(Noticee no. 16)*	56.42	11.72	44.70
Pawantar Agro Agencies Pvt. Ltd. *(Noticee no. 31)*	24.47	16.03	8.44
Shri Vishnu Krupa Commodities Private Limited *(Noticee no. 30)*	4.76	61.10	(56.33)
S K B Securities Ltd. *(Noticee no. 9)*	27.59	12.03	15.56
Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)*	-	2.46	(2.46)
Total	**242.76**	**227.35**	**15.41**

The above table clearly suggests that there have been frequent and high value transfers of funds between *GSL* and its *related entities* on an ongoing basis and from the trend of pay-in and pay-outs by *GSL* vis—vis its *related entities* as depicted above, it is clear that as at the end of FY 2017-18 *GSL* was to receive an amount of INR 15.41 crores from its *related entities* who were also its own clients. These facts once again strengthen the fact that the *related entities* were paying out huge sums of money to *GSL* on a continuous basis and those payments could not have been possible but for the sale of the securities that were made from their accounts that belonged to the demat accounts of other clients of *GSL*.

5.17. As is evident from the aforesaid tables (Table no. 4 and 5), I note that the *related entities* were having negative balances in their respective demat accounts during the relevant years i.e. from FY 2009-10 to 2017-18. The SCN also proceeds to allege that these negative balances represented sale of shares by the *related entities* of *GSL* of which they were not the lawful owner. I have also not come across any justification or rebuttal or any objection supported by any tangible evidence from any of the *Noticees* including *Noticee no. 2* to dispute the fact that shares have been sold form the accounts of *related entities* which never belonged to them. None of the *related entities* of *GSL* has provided any evidence indicating the source and means of acquiring those shareholdings in their respective demat accounts which from the negative balances, appearing in their name undeniably prove that shares were sold during the relevant period from their demat accounts that did not belong to them. The records before me also show that the trading data between FY 2012-13 and FY 2017-18 reveals that in the cash segment at NSE, S K B Securities Ltd. *(Noticee no. 9)* bought about 2,93,00,775 shares and sold about 3,43,40,008 shares, thereby selling an excess of 50,39,233 shares. This finding also validates the fact that securities were being sold through S K B Securities Ltd. *(Noticee no. 9)* which did not belong to it. Further, there is also nothing on record contradicting the above allegations. On the contrary, MD of *GSL (Noticee no. 2*) has made categorical admission in his submissions that *GSL* was facing certain financial constraints which constrained him to sell the securities anticipating that with market moving in the direction he anticipated it would resolve the issue, however contrary to his expectations, market moved otherwise and his financial situation became worse. In this respect, some of the Directors of the *related entities* of *GSL,* while seeking exoneration from the proceedings, have submitted that they were not in control of the management of the affairs of the *related entities* of *GSL* and it was the *Noticee no. 2* who

directly / indirectly was controlling and taking decisions on behalf of those *related entities* of *GSL*. In view of the above findings, I find that the *Noticee no. 2* who had the entire control of the affairs of *GSL* and the *related entities* was primarily responsible for selling the securities of its clients without their knowledge or permission to serve its own interest and for the purpose of retaining some of their High Net worth clients who were given excessive exposure and leverage and yet the *Noticee no. 2* wanted to retain them at the cost of securities of other innocent clients whose shares it was allegedly selling for more than 7 years.

5.18. I find that the submissions made by *Noticee no. 2* were primarily of defensive in nature than containing anything worthwhile in rebutting the allegations, more so when he had candidly admitted of having sold the shares of his clients *albeit* of the defaulting client and was hoping to buy back those shares when the market turns positive to salvage the business of the *Company*. Although he has maintained a silence about the selling the shares of other clients through the accounts of *related entities* of *GSL*, the facts and evidences that can be strongly adduced from the aforesaid discussions including table no. 4 and 5, that he and his *Company* (*GSL*) have rampantly indulged in *inter-se* fund transactions with the *related entities* as well as transfer of shares of other clients to the account of the *related entities* of *GSL* which strongly underline / substantiate the allegation of sale of shares and misappropriation of the proceeds of sale of shares only to serve the interests of *GSL* and its *related entities* in his desperate attempt to retain HNI clients at the cost of sacrificing the shares of other clients behind their back. I also don't find justification for transfer of shares of innocent clients to the accounts of its *related entities* and later on effecting sell of such shares through the accounts of those *related entities*. The aforesaid acts albeit the submission of having good intent to salvage the business of *GSL* or the intent of retaining those big clients,

I see a clear fraudulent devise and scheme hatched to execute the plan over the good number of period. Under the circumstances and keeping the aforesaid factual matrix in view and practically no defense and lame excuse offered by the *Noticee no. 2* to justify the actions of the *Company* which was being managed by him, I am constrained to hold that the allegations made in the SCN against him, *GSL* pertaining to misappropriation of shares of other clients remain undisputed and established.

Allegation 3

GSL mis-reported/did not report data under the enhanced supervision regime to NSE

5.19. It has been alleged that *GSL* has mis-reported /did not reported data under enhanced supervision to NSE and such acts / omissions on part of *GSL* have resulted in violation of SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI circular no. CIR/HO/ MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

5.20. It is relevant to state that SEBI, with the intent of ensuring enhanced supervision of Stock Brokers/Depository Participants has issued SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. To serve the above intent, the said circular, *inter alia,* requires Stock Brokers to upload information regarding clients' funds and securities balances to the Stock Exchange System and onward transmission \ of the same to the clients for better transparency. Subsequently, by way of SEBI circular no. CIR/HO/ MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017, certain aspects regarding the enhanced supervision of Stock Brokers/Depository Participants was clarified for better clarity and effectiveness in its implementation. Thus, in view of the above circulars there existed a clear obligation on the part of the Stock Brokers to upload

information regarding clients' funds and securities balances to the Stock Exchange System on a regular basis.

5.21. The SCN records the asymmetry / discrepancy in submission of information by *GSL* under the framework of the enhanced supervision by the Stock Exchanges. It has been clearly brought out that the data pertaining to client wise securities balance reported by *GSL* to the Stock Exchanges did not match with the corresponding data as appearing in the security register of *GSL* for the month of March 2018. A comparative snapshot of the said discrepancies is presented below:

Table – 6

Client Name	**UCC**	**Security Balance**	**As per Enhanced Report to Exchange (A)**		**As per Security Register of *GSL* (B)**		**Variance (A-B)**	
			Total number of ISINs	**Total quantity of securities**	**Total number of ISINs**	**Total quantity of securities**	**Total number of ISINs**	**Total quantity of securities**
Prag India	P3731	Positive	482	33,56,607	41	20,69,100	441	12,87,507
Monotype India Limited	**M3900**	**Positive**	**359**	**72,28,931**	**8**	**8,92,978**	**351**	**63,35,953**
Macro Commodeal Pvt Ltd	M3921	Positive	228	1,62,33,824	103	28,63,871	125	1,33,69,953
Anil Kumar Bothra	A001	Positive	329	63,28,287	305	12,35,886	24	50,92,401
Shyam Sundar Chowkhani	S853	Positive	25	29,74,795	4	17,828	21	29,56,967
	S894	Positive	15	3,80,869	15	3,80,869	-	-

S K B Securities Ltd. *(Noticee no. 9)*		Negative	-	-	-662	- 1,12,65,017	662	1,12,65,017
Superfast Tours And Travels Pvt Ltd. *(Noticee no. 27)*	**S7517**	**Positive**	**9**	**2,73,148**	**9**	**2,73,148**	**-**	**-**
		Negative	**-**		**-667**	**- 1,14,33,360**	**667**	**1,14,33,360**

5.22. It can be seen from the table above that there is a great variance between the data reported by *GSL* in the enhanced supervision report as compared to the data maintained in the security register of *GSL*. For instance, as per the enhanced supervision report, client named Monotype India Limited was holding 72,28,931 of securities in 359 ISINs, however as per the security register maintained by *GSL*, the aforesaid client of *GSL* was holding 8,92,978 shares in 8 ISINs. Such mis-reporting on part of *GSL* shows a variance of 63,35,953 securities in 351 ISINs for the afore-stated client. Further, it can be seen from the above table that the *related entities* of *GSL* viz. S K B Securities Ltd. *(Noticee no. 9)* and Superfast Tours and Travels Pvt Ltd. *(Noticee no. 27)* had negative balances as per the security register, however, in the enhanced supervision report they were shown to be having positive balances. I also note that not only the data provided by *GSL* through the enhanced supervision report to the Stock Exchanges is at variance with the data as contained in the security register, there is great variance in the information provided in the enhanced supervision reports for different periods.

5.23. It has been contended by Mr. Kamal Kothari *(Noticee no. 2)* in his reply that *GSL* had not submitted the data on October 25, 2018 and NSE had fetched the required

data/report directly from the *Company's* back office server. There were certain discrepancies in the said report and accordingly, *GSL* had submitted updated data on November 19, 2018 after weeding out significant number of errors.

5.24. On the aforesaid defensive argument offered by *Noticee no. 2*, I note that the circulars referred to above pertaining to enhanced supervision specifically mandated the stock brokers to report funds and securities lying in the clients' accounts on a regular basis to Stock Exchanges in order to monitor and prevent misuse of the clients' funds and securities. The said requirement was further clarified vide circular dated and June 22, 2017 where under for a limited period (till March 31, 2018) the report was required to be made on monthly basis and post March 31, 2018, every stock broker was required to upload such data on a weekly basis. Keeping the above regulatory requirement in consideration, I do not find any evidence to suggest that the *Noticee no. 2* has taken any due care and steps for uploading the correct data requirement on weekly basis. Notwithstanding the same, it is also observed that the claim made on the part of the *Noticee no. 2* that discrepancies occurred due to "inadvertent errors", is patently hollow and by no stretch of adjustments, such grave discrepancies can be attributed to inadvertent errors. Further, the *Noticee no. 2* is not able to satisfactorily answer the question as to why a significant number of errors were there in the data uploaded by *GSL* in the first place.

5.25. Further, there is also an allegation that *GSL* had not uploaded the relevant data under the said enhanced supervision framework with respect to the following 16 clients while uploading client-wise month end balances of funds and securities for the date August 31, 2018. The details of such 16 clients are provided hereunder:

Table – 7

Sl. No.	Client Code	Client Name	Credit Balance Payable (INR)	Value of Securities Returnable (INR)
1	A4436	Aditya Saraf Huf	212,301.85	Not Provided
2	J508	Joydeep Roybarman	1,327	5,930
3	L258	Lalita Saraf	937,119.41	Not Provided
4	L284	Lars Securities Pvt Ltd	2,569,330	Not Provided
5	L285	Lasvin Finvest P Ltd	2,429,506	Not Provided
6	M2732	Mahendra Kumar Agarwal	-	Not Provided
7	N1060	Nathmal Sultania	-	1,439
8	N133	Naw Ratan Derasari	60,240	Not Provided
9	N426	Nayan Mani Derasari	-	44,195
10	P2840	Payal Saraf	-	Not Provided
11	R3710	Rajesh Shukla	27,722	11,454
12	R1948	Ram Krishna Saraf	-	Not Provided
13	R3325	Ram Krishna Saraf	-	Not Provided
14	S5212	Shree Tulsi Properties Pvt Ltd	6,715,755	8,073
15	S1299	Sunita Chowkhani	-	12,400
16	U555	Urmila Shastri	10,815	Not Provided
Total			**12,964,116**	**83,491**

5.26. Considering the materials on record and defence put forth by the *Noticee*, it is observed that *GSL* has defaulted not only in giving information that contained discrepancies but also is found to have not furnished the relevant data in respect of 16 such clients as is evident from the above table. For instance, as per the enhanced supervision data as on October 31, 2018 submitted by *GSL* to NSE two entities namely, Lasvin Finvest Private Ltd and Lars Securities Pvt Ltd owed funds to the tune of INR 6.49 crore to *GSL* and their securities balances together was around 9,35,083 shares.

On further analysis, it is noted that the two aforementioned entities namely Lasvin Finvest Private Ltd and Lars Securities Pvt Ltd had filed complaints against *GSL* and the matter was considered by the Investor Grievance Resolution Panel ("**IGRP**"). I note from the minutes of the IGRP dated November 05, 2018 that 2,04,453 shares across 11 scrips amounting to INR 20.48 crore had to be delivered by *GSL* to these entities, which had not been honoured by it earlier. This fact itself exposes the contradiction in the assertion of *GSL* in the enhanced supervision report submitted to the exchange stating therein that, as on October 31, 2018, the aforesaid 2 entities in fact owed money to *GSL* which is now proven to be wrong based on the facts narrated above. Curiously, in the enhanced supervision data as on August 31, 2018 submitted by *GSL* to NSE there is no mention of any of the above two entities. Moreover, the IGRP minutes record that the above noted two entities had not even traded through *GSL* since 2015. So, if the above noted two entities had not traded through *GSL* since 2015, then in no manner can the above noted 2 entities, owe any money payable to *GSL* as on October 31, 2018, as claimed by *GSL* through its monthly report to the Stock Exchange, more so when *GSL* has not submitted explanation in support of the above submission. Therefore, the reporting about the money receivable from the aforesaid 2 entities to the tune of INR 6.49 crore as on October 31, 2018, which was shown as 'NIL' as on August 31, 2018, clearly appears to be a claim made on false grounds. In this respect, I am of the view that the submission of the *Noticee no. 2* that the order of IGRP has been set aside by the Arbitral Tribunal and further appeal against the order of the Arbitral Tribunal is pending before the competent court is not material in determining the issue, which is primarily as to whether there was error in reporting of data under enhanced supervision report.

5.27. I note that in response to the above allegations of non-reporting data for 16 clients, *Noticee no. 2* has merely submitted that the funds and securities balances of 16 clients mentioned in the FAR had not been reported for the month of August 2018 owing to ongoing litigation. In this regard, it is pertinent to note that the afore-stated circulars providing guidance for uploading / reporting data of clients by the stock brokers for enhanced supervision does not envisage any exception from reporting / uploading the data on any ground. Further, the above claim of the *Noticee* is not supported by evidence / details of the ongoing litigations to further strengthen his argument.

5.28. In view of the observations recorded above, considering the fact that *GSL* has already been proved to have mishandled and misappropriated the securities lying in the demat accounts of its clients without their permission in an unlawful manner, the contentions of the *Noticee no. 2* taking various defences with respect to mis-reporting / non reporting of funds and securities balances of clients to the Stock Exchanges, cannot be lent any credibility. The findings from the FAR clearly brings out the facts of gross discrepancies in reporting as well as non-reporting of data with respect to various clients in gross violation of guidelines prescribed by SEBI under enhanced supervision framework with an objective to have robust monitoring of movement of funds and securities in the accounts of the clients. However, since *GSL* has already been found to have indulged in unauthorised transfer of securities and funds, it leads to a logical conclusion that the authenticity of the data reported by *GSL* under enhanced supervision framework cannot be held to be reliable given the findings brought out in the FAR.

5.29. Keeping in view of the above factual details and observations, I have to hold that *GSL* has not provided data and in certain cases misreported data, as required under the

enhanced supervision regime, thereby violating SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 and SEBI circular no. CIR/HO/ MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

Allegation 4

GSL falsified its books of account

5.30. It has been alleged that *GSL* falsified its books of account and has violated Rule 15 of Securities Contracts (Regulation) Rules, 1957 (for short ***"SCRR"***) and Regulation 17 of SEBI (Stock Brokers) Regulations, 1992. It is pertinent to mention here that Rule 15 (1) of *SCRR* mandates that a member of a Stock Exchange is required to maintain and preserve, for a period of five years, the following books of account and documents: (a) Register of transactions (*Sauda* book); (b) Clients' ledger; (c) General ledger; (d) Journals; (e) Cash book; (f) Bank pass-book and (g) Documents register showing full particulars of shares and securities received and delivered. Similarly, Rule 15 (2) of *SCRR* mandates that a Member of a Stock Exchange is required to maintain and preserve, for a period of two years, the following documents: (a) Member's contract books showing details of all contracts entered into by him with other members of the same exchange or counterfoils or duplicates of memos of confirmation issued to such other members; (b) Counterfoils or duplicates of contract notes issued to clients; (c) Written consent of clients in respect of contracts entered into as principals. It is stated here that as a precondition for operating as a Stock Broker, an entity is required to be a Member of a recognised Stock Exchange. Further, Regulation 17 of the Stock Brokers Regulations concomitantly requires a Stock Broker to adhere to obligations similar to ones mentioned above. Thus, there is a clear and evident obligation on the part of a Stock Broker to maintain and preserve its Books of Account.

5.31. It is emphasised that the obligation to maintain and preserve the books of account contains an inherent duty for the maintenance and preservation of such books in a true and correct manner. Various observations regarding falsification of books of account by *GSL* as observed during the examination are given in detail in the subsequent paragraphs of the Order.

Overstatement of assets and liabilities

5.32. The allegation in the SCN is that *GSL* had overstated liabilities in its audited financial statements by anywhere between 26 % to 50%. Similarly, it had overstated assets by anywhere between 3 % to 21 %. The above mentioned observation is based on the treatment of the same transaction/debt in the books of *GSL* and the books of the *related entities*. From the materials available on record, the variations in the accounting treatment of certain transactions were observed and it is noted that books of accounts of *GSL* were overstated. A comparative analysis of such overstatement of Assets and Liabilities in the books of accounts of *GSL* as observed during the examination is reproduced hereunder:

Table – 8

Company	**Nature of Balance as per *GSL* Books**	**Balance as per *GSL* Books (A)**	**Total Debtors/ Creditors as per the Financials of *related entities* (B)**	**Overstating of Liabilities/ Overstating of Assets (A-B)**	**Financial Year**
Param Commodities Pvt Ltd. *(Noticee no. 16)*	Creditors	14.07	3.54	10.53	2011-12
Param Commodities Pvt Ltd. *(Noticee no. 16)*	Debtors	3.38	0.10	3.28	2009-10

Miatru Agro Marketing Pvt Ltd	Creditors	10.56	-	10.56	2010-11
Paramarth Agro Marketing Pvt Ltd *(Noticee no. 19)*	Creditors	3.95	-	3.95	2010-11
Paramarth Agro Marketing Pvt Ltd *(Noticee no. 19)*	Debtors	27.12	7.97	19.15	2011-12
Paramarth Agro Marketing Pvt Ltd *(Noticee no. 19)*	Debtors	2.60	0.07	2.53	2012-13
S K B Securities Ltd. *(Noticee no. 9)*	Creditors	5.30	2.00	3.3	2012-13
S K B Securities Ltd. *(Noticee no. 9)*	Creditors	19.36	10.90	8.46	2014-15
Utkarsh Agro Agencies Pvt Ltd	Creditors	16.81	0.64	16.17	2011-12
Utkarsh Agro Agencies Pvt Ltd	Creditors	2.88	0.73	2.15	2012-13
Shri Vishnu Krupa Comm Pvt Ltd *(Noticee no. 30)*	Debtors	3.63	-	3.63	2009-10
Sangam Agro Agencies (P) Ltd	Debtors	3.11	0.81	2.3	2010-11

5.33. From the above table, I note various instances of variances in the books of accounts of *GSL* vis-à-vis books of accounts of its *related entities*. For example, *GSL* showed, in its Trial Balance, INR 5.30 crore and INR 19.36 crore as payable to S K B Securities Ltd. *(Noticee no. 9)* as on March 31, 2011 and March 31, 2015 respectively. So, these were liabilities of *GSL* vis-à-vis S K B Securities Ltd. *(Noticee no. 9)* and, and hence would be reflected as assets in the books of account of S K B Securities Ltd. *(Noticee no. 9)*. The audited financials of S K B Securities Ltd. *(Noticee no. 9)*, as on March 31, 2011 and March 31, 2015, however, show that the current assets of S K B Securities Ltd. *(Noticee no. 9)* at the end of those 2 FYs were only INR 2 crore and INR 10.90 crore respectively. If the amounts shown in the Trial Balance of *GSL* were accurate, such amounts also should have been reflected in the audited financials of S K B Securities Ltd. *(Noticee no. 9)*, which is not true in this case and the two entities i.e. *GSL* and S K B Securities Ltd., which are found to be related to each other, have not placed sufficient

justification for such discrepancies, which further become evident when it is seen that the *Noticee no. 2* was also influencing and managing the affairs of the *Noticee no. 9.*

5.34. Similarly, *GSL* showed, in its Trial Balance, INR 3.63 crore as receivable from Shri Vishnu Krupa Commodities Pvt Ltd *(Noticee no. 30)* as on March 31, 2010. Therefore, Shri Vishnu Krupa Commodities Pvt Ltd *(Noticee no. 30)* was a debtor of *GSL* and, as such, the same would mean that *GSL* would be reflected as a creditor in the books of account of Shri Vishnu Krupa Commodities Pvt Ltd *(Noticee no. 30)*. However, the total creditors as per the audited financials of Shri Vishnu Krupa Commodities Pvt Ltd. *(Noticee no. 30)* was "NIL". Again, if *GSL* was to be recover the aforesaid amount from Shri Vishnu Krupa Commodities Pvt Ltd *(Noticee no. 30)* as receivable, the same amount should have been reflected as payable to *GSL* in the liability side of the audited financial statements of Shri Vishnu Krupa Commodities Pvt Ltd. *(Noticee no. 30)*, which was not the case. Further, in this connection, one may observe that in case of such blatant discrepancies, the audited financials shall have more weightage especially in light of the fact that all the aforesaid 3 entities are *Noticees* in the present proceedings. There is no evidence on record to suggest that *GSL* had made any attempt to recover the said amount from its related entity.

5.35. On the basis of various instances of variances observed in the books of accounts of *GSL* vis-à-vis in the books of accounts of its *related entities*, the following table highlights the quantum of year-wise overstatement of assets and liabilities recorded in the books of accounts of *GSL*:

Table – 9

Financial Year	Debtors			Credit Balance of Customers		
	Overstatement	**Total Debtors as per *GSL* Financials**	**% of Overstatement**	**Overstatement**	**Total Credit Balance as per *GSL* Financials**	**% of Overstatement**
2009-10	6.91	51.59	13.39%	-	-	-
2010-11	2.30	71.95	3.20%	14.51	32.96	44.02%
2011-12	19.15	88.76	21.58%	26.70	53.07	50.31%
2012-13	2.53	63.29	4.00%	5.45	17.78	30.65%
2014-15	-	-	-	8.46	32.22	26.26%

5.36. Mr. Kamal Kothari *(Noticee no. 2)* has argued in this reply that the Trial Balance taken by NSE on October 25, 2018 from its office, did not account for various transactions resulting in discrepant entries as the accounts were still being maintained and final entries had not been made to reconcile their balances. He has stated that in a running business involving thousands of accounting transactions, human error creeps in and is required to be rectified before finalisation, and no action is merited for the incorrect entries, especially as the said data had not yet been audited.

5.37. Before dealing the contention of *Noticee* regarding the aforesaid allegation, it is to be noted that preparation of Trial Balance is an accounting process whereby all the debit and credit balances are extracted from various ledgers and are placed together. The intent is to see that the total of the debit balances and credit balances extracted from the ledger should in the end tally. This is so because every transaction, in accounting, has a dual effect with each debit having a corresponding credit and vice versa. Trial Balance, thus, is an Indicator of the arithmetic accuracy of the books of account and is a first step in the accounting process of closure of accounts. While the *Noticee* has not

denied the act of overstatement of its books of accounts, albeit, he has argued that while preparing such books of accounts involving thousands of accounting entries, running business involving thousands of accounting transactions, human error creeps in. While it may not be denied that accounting errors or mismatches can creep into a running account which is being maintained on a day to day basis, however, there cannot be any reason whatsoever, for any mismatches or overstatements / understatements of balances for past years for which the financial accounts are supposed to been completed, reconciled and closed. Surprisingly in this case, the FAR has revealed that there are substantial amounts of overstatements and understatements and mismatches in trial balances of *GSL* for various previous years i.e. 2009-10 to 2014-15 in 2018, which is something that cannot be accepted neither under any accounting principle / standard nor by any authority for the reasons of errors. Therefore, the arguments of the *Noticee* that no action is merited for the incorrect entries, is just a feeble attempt to evade an explanation which the *Noticee no. 2* owes to justify such discrepancy for the earlier financial years in respect of which the accounts are supposed to have been completed and audited.

Falsification of holding statement

5.38. It has also been alleged at paragraph 11 (d) (v) at page 16 of the SCN that there was falsification of the holding statement by *GSL*. As already brought out, *GSL* sold shares of clients in the name of its *related entities*. The shares of the clients having been sold, the same should have been duly reflected in the holding statement of the concerned client by way of a necessary debit entry. However, *GSL* instead of debiting securities from the respective client's holding statement has debited those securities in group companies' customer account. In the absence of verifiable justification coupled with

certain admitted positions, the above shows that *GSL* made an organised effort to misappropriate the securities of its clients and chose to conceal the true state of affairs.

5.39. Further, it is seen from the holding statements that certain group companies of *GSL* were holding shares in various scrips. The companies finding mention in the Holding Statements are Apurva Commodities Pvt. Ltd. *(Noticee no. 20)*, Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* and Chirayush Agro Marketing Pvt. Ltd. They had purportedly held shares of various companies between FY 09-10 and FY 17-18. The fact that these related companies were shown to be having shares in the holding statement means that the same should have been also reflected in the financial statements of the related companies. However, the same was not reflected in the audited financials of the group companies. I observe that despite being confronted by the aforesaid allegations, no satisfactory defence has been put forward, indicating that the said Noticees have nothing up the sleeve to defend their case. Thus, based on the above facts, I find that there is every reason to conclude that *GSL* was guilty of wilful falsification of holding statement with the intent of deceiving its own clients.

Overvaluation of current investment

5.40. The significant notes to accounts of audited financial statement of *GSL* provides that the, "*Current investment are carried at lower of cost and fair value determined on class of asset…*" This is a restatement of Accounting Standard 13 which deals with the accounting process to be followed with respect to investments. It essentially means that current investments are to be carried into the financial statements either at the investment's cost or its fair value, whichever is lower.

5.41. The FAR records that the current investments of *GSL* were carried at a value which was even higher than the prevailing market price. The details of the same are provided hereunder:

Table – 10 (INR Crores)

Current Investment	FY 2015-16			FY 2014-15			FY 2013-14		
	Valuation in BS (A)	**Market Value (B)**	**Over Valuation (A-B)**	**Valuation in BS (A)**	**Market Value (B)**	**Over Valuation (A-B)**	**Valuation in BS (A)**	**Market Value (B)**	**Over Valuation (A-B)**
Carewell Industries Limited	18.57	14.72	3.85	16.16	11.34	4.82	-	-	-
Eco Friendly Food Processing Park Ltd.	0.66	0.52	0.14	2.52	1.77	0.75	6.22	0.29	5.93
Encash Entertainment Limited	4.72	4.42	0.30	2.98	2.54	0.44	-	-	-
Esteem Bio Organic Food Processing Ltd.	1.71	1.71	-	17.56	9.55	8.01	23.25	1.60	21.65
HPC BIO	-	-	-	7.57	5.52	2.05	-	-	-
Jolly Plastic Ltd	-	-	-	-	-	-	60.39	11.38	49.01
Onesource Techmedia Limited	6.06	4.62	1.44	8.19	5.43	2.76	10.98	9.00	1.98
P. B. Films Limited	25.74	15.00	10.74	-	-	-	-	-	-

Polymac Thermoformers Limited	2.34	2.15	0.19	1.05	0.75	0.30	-	-	-
RCL Retail Limited	-	-	-	3.08	2.65	0.43	7.80	6.20	1.60
Sunstar Realty Development Limited	63.24	38.34	24.90	75.04	8.44	66.60	34.20	3.49	30.71
Tarini International Limited	74.69	33.28	41.41	125.94	55.18	70.76	-	-	-
Total	**197.73**	**114.76**	**82.97**	**260.09**	**103.17**	**156.92**	**142.84**	**31.96**	**110.88**

5.42. As may be seen from the table, there is a great deal of variances noticed in the values assigned to various investments in the Balance Sheet vis-a-vis their market values. For the FY 2015-16, the total value of the current investments was shown as INR 197.73 crore in the balance sheet of *GSL*, whereas the market value of those investments was assessed to be only INR 114.76 crore. Similarly, for the FY 2014-15, the total value of the current investments was shown as INR 260.09 crore in the balance sheet of *GSL*, whereas the market value of those investments was assessed to be only INR 103.17 crore, which is more than twice of the market value. Further, for the FY 2013-14, the total value of the current investments was shown as INR 142.84 crore in the balance sheet of *GSL*, whereas the market value of those investments was assessed to be only INR 103.17 crore. There is a clear pattern emerging from the above table of *GSL* overvaluing its investments in its Balance Sheet by showing inflated valuation vis-a-

vis its market value by more than two or three times, and thereby misleading its clients. Thus, it is clear that the Company has overvalued its current investments.

Mismatch in Trade Receivables and Trade Payables

5.43. It has been alleged in the SCN that the Trade Receivables arrived at in the Balance Sheet and Trial Balances of the *GSL* do not match. Similarly, the Trade Payables arrived at in the Balance Sheet and the Trial Balance do not match with each other.

5.44. Details with respect to the variances noticed in the Balance Sheet and Trial Balance are provided hereunder:

Table – 11 (INR Crores)

Financial Year	Trade receivables			Trade payables		
	Debtors as per Balance Sheet (A)	As per Client TB (B)	Variance (A-B)	Creditors as per Balance Sheet (A)	As per Client TB (B)	Variance (A-B)
2009-10	51.07	50.88	0.19	16.04	15.95	0.10
2010-11	71.66	71.56	0.10	32.92	31.35	1.57
2011-12	-	-	-	-	-	-
2012-13	62.74	57.21	5.53	17.72	15.40	2.32
2013-14	59.29	58.40	0.89	16.98	16.28	0.69
2014-15	74.03	73.89	0.14	32.11	31.20	0.91
2015-16	59.99	59.86	0.12	28.27	27.49	0.78
2016-17	76.48	76.31	0.17	27.07	26.18	0.89
2017-18	66.27	66.23	0.03	33.27	32.38	0.89

5.45. It may be seen from the table that there were discrepancies between trade receivables as well as the trade payables of the *Company* as per the Balance Sheet and those figures as per the Trial Balance. For instance, in the financial year 2012-13, the trade

receivables as per the balance sheet was INR 62.74 crore and as per the Trial Balance was INR 57.21, which shows a discrepancy of INR 5.53 crore. Similarly, in the financial year, 2012-13, the trade payables as per the balance sheet was INR 17.72 crore and the same as per the Trial Balance was INR 15.40, thereby displaying a variance of INR 2.32 crore. Confronted with these series of variation of figures in the balance sheet of *GSL* involving huge amounts causing thereby artificial over-statement of the balances/assets in the balance sheet of *GSL*, I have to come to this conclusion that *GSL* has falsified its books of accounts and in doing so has violated Rule 15 of SCRR and Regulation 17 of Stock Brokers Regulations.

Allegation 5

GSL lacked solvency

5.46. It has been alleged in the SCN that *GSL* has not complied with the requirement of continuous net worth and such acts of *GSL* has resulted in the violated Regulation 9 (g) of the Stock Brokers Regulations, 1992. The SCN records that as per the clients' ledger collected from *GSL*, there was a shortfall of funds to the extent of INR 1.97 crore and INR 8.96 crore as on August 31, 2018 and October 23, 2018 respectively, to cover payment of creditors. The said shortfalls are detailed out hereunder: -

Table – 12

S. No.	Particulars	As on 31-Aug-2018 (In INR)	As on 23-Oct-2018 (In INR)
A	Balances lying in Client & Settlement bank a/c (as per bank statement)	16,19,975.79/-	32,15,441.44/-
B	Balances lying with Clearing Corporations & Exchanges	4,70,75,108.37/-	3,82,00,108.37/-
C	Balances lying with Clearing members	23,27,05,687.24/-	16,06,11,274.51/-

D	**Total Funds available Client/Settlement banks and CC/CM (A+B+C)**	**28,14,00,771.40/-**	**22,89,13,465.79/-**
E	Total Credit Balance of all clients	30,11,43,465.99/-	31,85,59,602.61/-
F	**Funds unavailable to cover client payables (E-D)**	**1,97,42,694.59/-**	**8,96,46,136.82/-**

5.47. Regulation 9 (g) of the Stock Broker Regulations mandates that the stock broker be compliant with the continuous net worth criteria as stipulated in Schedule- VI of the said Regulations. Thus, from the above requirement, I note that *GSL* had to maintain certain networth on a continuous basis to comply with the Stock Brokers Regulations, 1992. However, as may be seen from the aforesaid table no. 12, that even after considering all the balances of *GSL* lying with banks, clearing corporations and the clearing member, there was a shortfall of funds to the extent of INR 1.97 crore and INR 8.96 crore as on August 31, 2018 and October 23, 2018 respectively to cover payables due to the clients. In this regard, I note that no submissions have been put forth by the *GSL* or its Directors to rebut the aforesaid findings and allegations made in the SCN. I also note that the requirement of maintaining minimum networth has to be complied with and duly supported by producing a certificate from a Chartered Accountant. However, nothing is brought on record before me that whether *GSL* had submitted the requisite certificate to Stock Exchange or not. Notwithstanding to the aforesaid factual details indicating that *GSL* was having shortfall in the amount payable to its clients and the fact that *GSL* has been declared a defaulter by the Stock Exchange can't be ignored that speaks volume on the issue itself.

Allegation 6

GSL has not settled the funds and securities of its clients

5.48. It has also been alleged in the SCN that *GSL* has not settled the funds and securities of its clients in the clients account within the stipulated time as prescribed by SEBI. In this regard, reference is made to Clause 12 of Annexure – A of SEBI Circular no. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 which reads as the follows:

> *"Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:*
>
> *a. The authorization shall be renewed at least once a year and shall be dated.*
>
> *b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.*
>
> *c. The authorization shall contain a clause that the Client may revoke the authorization at any time.*
>
> *d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.*
>
> *e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register*

of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.

g. Such periodic settlement of running account may not be necessary:

i. for clients availing margin trading facility as per SEBI circular

ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).

h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.

i. There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.

j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them."

5.49. Similarly, reference is made to Clause 8.1 of Annexure to SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which provides that the stock broker shall ensure that:

"8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.

8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.

8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.

8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled."

5.50. It is important to mention here that the last step involved in executing a transaction on the Stock Exchange is settlement of securities and funds. So, once the mutual obligations of the buyer and seller are determined, settlement happens whereby the buyer gets the purchased securities by paying-in the purchase value and the seller gets the pay-out as sales proceeds. In this regard, as the the above noted provisions provide, the settlement of funds/securities has to be done within 24 hours of the payout made to the Clearing Corporation, except for when a client specifically agrees for a longer time of settlement. So, once securities/funds are received pursuant to pay-out, the securities/funds should be transferred by the Stock Broker to the demat account or the bank account of the respective client, as the case maybe, within one working day of the pay-out by the exchange. However, as per the SEBI Report, wherein verification was carried out in respect of 23 out of 100 active clients of *GSL* for the FY 2017-18, it was found that in 37 out of 200 instances *GSL* had not done actual

settlement of funds and securities amounting to a total of INR 19.61 crore. The details of the same are provided hereunder:

Table – 13

SI. No.	Settlement Type (Month/ Quarter)	UCC	Client Name	Amount not settled (in INR)
1	Q1 (2017-18)	A001	ANIL KUMAR BOTHRA	28,663,819
2	Q2 (2017-18)	A001	ANIL KUMAR BOTHRA	24,352,049
3	Q3 (2017-18)	A003	ANIL KR. JALAN	11,077,849
4	Q3 (2017-18)	A2968	ABHAY LAKHOTIA	2,331,038
5	Q4 (2017-18)	A2968	ABHAY LAKHOTIA	2,282,025
6	Q4 (2017-18)	A6206	AGARWAL TRENDZ PRIVATE LIMITED	2,877,626
7	Q3 (2017-18)	G1447	INCREDIBLE FINESSE PRIVATE LIMITED	11,284,277
8	Q4 (2017-18)	G1447	INCREDIBLE FINESSE PRIVATE LIMITED	1,566,755
9	Q1 (2017-18)	G549	GOURAV MALOO	3,486,743
10	Q2 (2017-18)	G549	GOURAV MALOO	3,554,907
11	Q1 (2017-18)	G787	GAURI GANESH INFRAST. PVT LTD	5,140,238
12	02(2017-18)	G787	GAURI GANESH INFRAST. PVT LTD	4,365,220
13	Q1 (2017-18)	J769	JINDAL COMMERCIAL PRIVATE LIMITED	13,555,201
14	Q2 (2017-18)	J769	JINDAL COMMERCIAL PRIVATE LIMITED	10,813,768
15	Q1 (2017-18)	K1694	KOYELI MUKHERJEE	1,320,021
16	Q2 (2017-18)	K1694	KOYELI MUKHERJEE	1,336,233
17	Q1 (2017-18)	K2153	KAILASH BIHARI BHARDAWAJ	2,483,860
18	Q2 (2017-18)	K2153	KAILASH BIHARI BHARDAWAJ	2,638,548
19	Q3 (2017-18)	LOSS	LUPIN VINIMAY PRIVATE LTD.	3,581,061
20	Q1 (2017-18)	M1303	MANISH KUMAR JAIN	1,245,192
21	Q2 (2017-18)	M1303	MANISH KUMAR JAIN	849,137

22	Q3 (2017-18)	0151	OMKARA VINCOM PRIVATE LIMITED	2,532,033
23	Q3 (2017-18)	R4080	RAMVILAS GOSWAMI HUF	1,028,227
24	Q4 (2017-18)	R4080	RAMVILAS GOSWAMI HUF	887,798
25	Q2 (2017-18)	R538	RETS1NA MARKETING PVT. LTD	15,346,253
26	Q3 (2017-18)	S099	SANTOSH NAHATA	5,115,034
27	Q4 (2017-18)	S11285	SUNIRMAY VINIMAY PRIVATE LIMITED	2,854,737
28	Q3 (2017-18)	S4899	SAUGATA BISWAS	1,103,304
29	Q4 (2017-18)	S4899	SAUGATA BISWAS	723,746
30	Q3 (2017-18)	S6848	SANGITA SURANA	855,808
31	Q4 (2017-18)	S6848	SANGITA SURANA	855,808
32	Q1 (2017-18)	WW2495	VIJAY PARSHURAM CHUR1	3,114,307
33	Q1 (2017-18)	WW2959	SANTANU CHATTERJEE	734,160
34	Q3 (2017- 18)	WW3178	ABHIJIT ATMARAM RAUT	4,033,406
35	Q4 (2017- 18)	WW3178	ABHIJIT ATMARAM RAUT	3,756,128
36	Q3 (2017-18)	WW3704	KIRAN DEVI MOHTA	6,882,987
37	Q4 (2017-18)	WW3704	KIRAN DEVI MOHTA	7,498,075
Total				**196,127,381**

5.51. As may be seen from the table above, substantial amounts belonging to the clients remained to be settled by *GSL* during the FY 2017-18. For instance: in Q1 of 2017-18, an amount of INR 28,663,819 pertaining to a client namely Anil Kumar Bothra remained to be settled by *GSL*. Similarly, in Q2 of 2017-18, the amount pending for settlement to Retslna Marketing Pvt. Ltd remained by *GSL* was INR 15,346,253 and in Q3 of 2017-18, while the amount in respect of Incredible Finesse Private Limited remaining to be settled was INR 11,284,277. Further, the SEBI Report also records that

as on February 28, 2018, funds and securities in respect of 9646 inactive clients amounting to INR 6.82 crore had not been settled by *GSL*.

5.52. In this regard, it has been stated in the reply of Mr. Kamal Kothari (*Noticee no. 2*) that the actual settlement of funds and securities had been done in case of all the sample instances taken by the inspection team except for 37 instances. As regards the instances where settlement had not taken place, it has been submitted that a few of those clients including the HNIs did not trade on a daily basis, but used to do delivery-based transactions and were not regular in trading. *GSL* using its risk management Policy applied a haircut of 50% if the client was not trading frequently and was having continuous balance. He has further stated that in case of continuous debit balance, the *Company* had two options, i.e. either (i) to square off the holding to the amount of debit balance and release the excess funds or securities if any or (ii) to apply hair cut as per Value at Risk (VaR) on securities and release the balance stock at the time of actual settlement. So, *GSL* applied 50% haircut on those accounts which had continuous debit balance and that traded occasionally. He has also submitted that with respect to inactive accounts, the clients had authorised *GSL* to treat their securities as margin and did not require settlement of account, and as *GSL* was in financial trouble, the funds of inactive accounts have not been released on time.

5.53. I note that the *Noticee no. 2* has made an attempt to give justification for the violation and non-compliance committed by it of the SEBI guidelines. First of all, the number of 37 instances that have been observed by SEBI with respect to the 23 clients out of the 100 active clients of *GSL*, represents SEBI's observations based on a sample of 23%. Therefore, the possibility of increase in number of such instances of irregularity cannot be ruled out if more number of sample instances are taken up for examination.

Further, I would like to record here that a stock broker has to frame appropriate internal policies in accordance with the Circulars /Regulations framed by SEBI so as to ensure strict compliance with regulatory instructions. Adopting policies which are not in line with the legal requirements cannot be justified on any grounds whatsoever. Even in cases where clients would have specifically authorised *GSL* to maintain a running account or treat their securities as margin, I find that as per clause 8 of the SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, actual settlement of funds and securities was required to be done by *GSL*, at least once in a calendar quarter or a month, depending on the preference of the client, which has not been done in at least 37 instances. The said circular casts an obligation on the stock-broker and does not give any option to the client as has been claimed by the *Noticee*. Even the client has to choose to settle his account at least once in a calendar quarter or a month, this being prudential norms prescribed by SEBI in the interests of investors, so that funds or securities do not remain unsettled by Stock Brokers on any pretext. The non-settlement of clients' funds or securities is a serious irregularity and is not a mere technical lapse since the client remains in the dark about the state of affairs of his account, and the explanation furnished by the *Noticee* is completely beyond the laid down legal framework.

5.54. Therefore, it is evident from the above that actual settlement of securities/funds of the clients has not been done by *GSL* as per the extant circulars and instructions of SEBI, and no material has been provided by *GSL* to demonstrate that its clients had agreed for their funds/securities to be settled against their trades at a later date. Thus, *GSL* by not effecting actual settlement of securities/funds of the clients amounting to INR 26.43 crore, within the period prescribed, has clearly violated SEBI Circular

bearing no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 and SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Allegation 7

GSL provided further exposure to clients even though they had debit balances

5.55. I note that the SCN has alleged that *GSL* has granted further / additional exposure to the clients even when such clients had debit balances. The SEBI Report records that out of the 60 clients whose accounts were verified, 17 clients had been given exposure even though they had debit balances continuing beyond the 5th day from the date of pay-in. The details of the same are provided hereunder:

Table- 14

Sl. No.	Client Code	Client Name	Amt Funded (in INR)
1	M3921	Macro Commodeal Private Limited	199,731,107
2	A001	Anil Kumar Bothra	55,592,008
3	P3731	Prag India	44,765,714
4	WW2722	Devkant Synthetics I Pvt. Ltd.	21,865,293
5	M3381	Marshall Mercantiles P Ltd	19,626,565
6	P3900	Palak Bipin Shah	19,074,061
7	P1697	Page 3 Entertainment (I) Pvt.Ltd	15,762,543
8	S008	Sarita Bothra	10,812,367
9	A5169	Arihant International Limited	8,155,683
10	S10551	Sushil Kumar Damani	4,950,684
11	WW167	Vinod Kumar Sharma	4,396,558
12	R3997	Rifty Real Estate Private Limited	3,901,019

13	S11907	Sailesh Mishra Huf	3,512,724
14	J163	Jaiprakash Sethia	3,347,874
15	S10063	Syed Mohd Wasif	2,540,526
16	S5954	Surana Bros Pvt Ltd	1,571,509
17	D2426	Display Commercial Private Limited	702,486
		Total	**420,308,728**

5.56. In this regard, reference is made to Clause 2.6 of the Annexure to SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. The said provision states that "*Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in.*" It is noted that the above provision was later modified vide Clause 2(d) of SEBI Circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 and the same read as "*Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except, in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017 or as may be issued from time to time.*"

5.57. It has been stated in the reply of Mr. Kamal Kothari *(Noticee no. 2)* that the further exposure to clients with debit balance was granted in line with NSE Circular No. 232/2015 dated May 08, 2015 wherein NSE had clarified that further exposure may be granted to the extent of availability of excess of client's fully paid securities over his debit balance, deposited with the Member. He has further submitted that the

intent behind granting further trading exposure to the clients was to allow the clients to reduce their debit balance.

5.58. I note that *GSL* has placed reliance on a NSE circular issued in 2015 and has contended that NSE had clarified that further exposure could be granted to the extent of availability of excess of client's fully paid securities over his debit balance, deposited with the Member. It must be emphasised here that post 2015, SEBI through its Circular of 2016 already quoted above, had put a lid on giving further exposure to the clients when debit balances arise out of client's failure to pay the required amount and if such debit balances continue beyond the fifth trading day. Thus, reliance placed on a NSE circular issued in 2015 cannot be a justifiable reason to act in derogation of the norms prescribed by SEBI subsequently. In my opinion, it is just an afterthought exercise by the *Noticee no. 2* to take a shelter under the NSE circular so as to evade the outcome of this proceeding.

5.59. Thus, it is clear that by providing exposure to clients even though they had debit balances *GSL* had clearly violated SEBI Circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 read with SEBI Circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

Allegation 8

GSL has not redressed investor complaints

5.60. It has also been alleged in the SCN that *GSL* has not redressed the complaints of the investors. The SEBI Report records that as on October 30, 2018 there were ten complaints pending with *GSL*. The details of the same are provided hereunder:

Table- 15

Sl. No.	Investor Name	Claim Amount (in INR)
1	Lasvin Finvest Pvt Ltd	117,290,175
2	Lars Securities Pvt Ltd	83,426,631
3	Payal Saraf	5,796,000
4	Lalita Saraf	5,564,204
5	Sumit Mishra	4,921,129
6	Ramakrishna Saraf HUF	3,291,217
7	Ramakrishna Saraf	2,767,235
8	Aditya Saraf HUF	1,253,071
9	Vandana Doshi	1,250,000
10	Radha Krishna Binani	107,100
	Total	**22,56,66, 762**

5.61. The SEBI Report further records that a majority of the complaints pertained to non-receipt of funds and/or securities and were received by NSE between September 25, 2018 and October 19, 2018. I also note that out of the ten complaints mentioned above, three complaints i.e. complaints received from Lasvin Finvest Pvt Ltd, Lars Securities Pvt Ltd and Ramakrishna Saraf were considered by the IGRP of NSE on November 05, 2018 and it is seen from the minutes of the IGRP that –

a. Quarterly settlement with respect to the accounts of the complainants had not been done for long;

b. Statements were not sent to the complainants;

c. Repeatedly requesting the IGRP for adjournment in the matter by *GSL*; and

d. Avoiding meeting with the complainants and settlement of complainants' dues by *GSL*.

The SEBI Report also records that the said claims of the complainants which were admitted by the IGRP had not been reflected in the ledger and trial balances of the stock broker.

5.62. I note that Mr. Kamal Kothari *(Noticee no. 2)* has claimed that a total number of 24 complaints have been filed by the clients with NSE from April, 2018 till the passing of the *Interim Order*. Also, that *GSL* had resolved 14 of the said 24 complaints. Only 10 complaints were pending out of which 7 had been filed by the Saraf Group. Three complainants, namely, Ram Krishna Saraf, Lasvin Finvest Pvt. Ltd. and Lars Securities Pvt. Ltd. amounting to INR 20.83 crore were admitted by IGRP. It has further been submitted that the Order of the IGRP has been set aside by the Arbitral Tribunal of NSE by its Order dated August 26, 2109. The above named three complainants have filed appeals before the Commercial Division of the Calcutta High court. In the appeal filed by Lasvin Finvest Pvt. Ltd., the Hon'ble High Court has upheld the Order of the Arbitral Tribunal. The other two appeals are pending before the Hon'ble High Court for adjudication. As regards the remaining seven complaints, the IGRP proceedings have been cancelled at NSE vide letter dated November 06, 2018. The complainants have not taken any further action.

5.63. In this regard, a reference is made to Regulation 9 (e) of the Stock Brokers Regulations, 1992. The said provision requires a Stock Broker registered with SEBI to take adequate steps for redressal of grievances of the investors within a period of one month from the date of receipt of the complaint. I note that the *Noticee no. 2* has admitted that out of 24 complaints filed by the clients / investors, 10 complaints were

kept unresolved by *GSL*. I would like to emphasise that the agitation of the complaints at various forums and the outcomes of such litigation is unimportant for the limited purpose of Regulation 9(e) of SEBI (Stock Brokers) Regulations, 1992. Therefore, notwithstanding the proceedings of IGRD and or consequent appeals, it is an undisputed fact that *GSL* has not resolved 10 complaints within the prescribed period, as mandated under the provisions of *Stock Brokers Regulations, 1992* which certainly is not in consonance with the letter and spirit of regulation 9(e) of Stock Brokers Regulations, 1992.

Allegation 9

GSL has not furnished information as sought for by SEBI.

5.64. The SCN has alleged that *GSL* did not furnish the information that was sought by SEBI. It is recorded in the SEBI Report that inspection of *GSL* was scheduled to be carried out from November 12-16, 2018. However, *GSL* did not submit the complete data, as sought by SEBI vide letter dated July 24, 2018 despite reminders and telephonic calls.

5.65. Mr. Kamal Kothari *(Noticee no. 2)* in his reply has stated that *GSL* has always tried its best to furnish information to SEBI as and when required. The *Company* was in total disarray with the termination of trading rights and pronouncement of the *Interim Order*. *GSL* had missed out on some communication inadvertently due to the unwarranted situation.

5.66. I find that the reasons provided for the non-furnishing of information to SEBI are nothing but feeble and lame excuses and is an afterthought attempt by the *Noticee*. There does not appear to be any correlation of the *Interim Order*, etc. with the delinquent entity's further disobedient conduct. In fact, the overwhelming facts on

various aspects of its irregular business operations and violations of various statutory and regulatory provisions that have now emerged consequent to the conduct of a forensic audit and based on those facts on record the present proceedings have been initiated, speak volumes about the reasons as to why *GSL* was possibly avoiding SEBI's requisitions and was not willing to share information with SEBI. Considering the same, I find that *GSL* has failed to furnish documents/information to the inspection team and has thus violated regulation 21 of the *Stock Brokers Regulations, 1992*.

5.67. After making a holistic consideration of the above discussed factual findings which raise fingers at various violations and breaches committed by *GSL*, I conclude that *GSL* has misappropriated the securities of its client, diverted the proceeds from misappropriation of such securities to its *related entities* , mis-reported / not-reported data under enhanced supervision norms to NSE, falsified its books of account, did not settle the funds & securities of clients, provided further exposure to clients having debit balances, not addressed investor complaints and not furnished information sought by SEBI. Therefore, for the said acts of misconduct and irregularities as well as misappropriation of clients' securities in a fraudulent manner, I find *GSL* liable for the violation of the provisions of law as alleged in the SCN.

5.68. I also find that the *related entities* i.e. namely, S K B Securities Ltd. *(Noticee no. 9)*; Param Commodities Pvt. Ltd. *(Noticee no. 16)*; Paramarth Agro Marketing Private Limited *(Noticee no. 19)*; Apurva Commodities Pvt. Ltd. *(Noticee no. 20)*; Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)*; Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)*; Shri Vishnu Krupa Commodities Private Limited *(Noticee no. 30)*; and Pawantar Agro Agencies Pvt. Ltd. *(Noticee no. 31)* through which and with whose active or

passive collusive support the afore-discussed misappropriation of clients securities and diversion of the sales proceeds were carried out, have not been able to persuade me to show their innocence in all the acts, leading to the violations as alleged in the SCN. Thus, they all are equally liable for violation of Section 12 A read with Regulation 3 (d) and 4 (1) of the *PFUTP Regulations, 2003* along with *GSL*.

Issue II- Whether the Directors of GSL, namely, Kamal Kumar Kothari (Noticee no. 2), Dharmendra Kothari (Noticee no. 3), Soumen Chatterjee (Noticee no. 4), Deepak Parakh (Noticee no. 5), Shree Kumar Jhanwar (Noticee no. 6), Babulal Nolkha (Noticee no. 7) and Sunita Kothari (Noticee no. 8) can be held liable for the actions of the Company?

5.69. As stated earlier, the SCN proceeds on the allegations that the *Company* i.e. *GSL* has acted in violations of the various provisions of laws and circulars as stated in the SCN. Having recorded my observations with respect to those allegations, I proceed to examine as to whether or not, the afore noted *Noticees i.e. (Noticees no. 3 to 8)*, who were Directors of *GSL* during the relevant period can be held liable for the alleged violations committed by *GSL*.

Kamal Kothari (Noticee no. 2) and Dharmendra Kothari (Noticee no. 3)

5.70. The arguments advanced by Mr. Kamal Kothari *(Noticee no. 2)* state that no material has been specifically brought against him except for the bald allegations based on surmises and conjectures. According to him he has not indulged in any fraudulent or unfair trade practice, and has not engaged in any act, practice, course of business which operated or would operate as fraud or deceit upon any person. Further, it has been submitted by him that for the allegations made by SEBI for an offence involving fraud, it was essential that the accused had an 'intent' to commit such violation, and that for such a transaction to be termed fraudulent, as per the definition of 'fraud',

there has to be an allegation of causing 'inducement' but SEBI has not even alleged inducement in the SCN. Mr. Dharmendra Kothari *(Noticee no. 3)* has also made almost identical submissions in his defence. As regard to the submission of these two *Noticees* that intent and inducement are essential to allege an act of fraud against them, I have already dealt with this issue while dealing with the technical submissions advanced by the *Noticees* and held that given the facts & circumstances of this matter, such an argument of the *Noticees* does not hold on to its ground and is not tenable under law, hence I am not dealing with this claim of the *Noticees* again.

5.71. I can observe that the afore-named natural persons have been impleaded being a Director of *GSL* and have been allegedly held responsible as they were apparently in charge of and responsible for the conduct of the business of the Company (*GSL*). It is a settled principle of law that, though a company is a separate and distinct legal entity it has no mind of its own. Normally, it acts and performs its duties through Board of Directors which is the repository of wisdom and knowledge and has decision taking abilities to govern the affairs of the company in the manner it likes, unless person is alternatively specifically entrusted by the Board to perform all such work/duties specifically. In common parlance, 'corporate liability' or the liability of the corporations is governed by the principles either flowing specifically from statutes and/or from judicial pronouncements. Dealing with liability of a Director or a person in charge for managing the affaires of a company, the Hon'ble Supreme Court of India in the mater of *Sunil Bharti Mittal v. Central Bureau of Investigation (2014) 4 SCC 609* has held as follows:

> *"42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and*

action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction."

5.72. From the above, it is clear that where a statute provides for the doctrine of vicarious liability, by specifically incorporating such a provision, the liability of Director, manager or person in charge would have to be determined by the deeming fiction. In this respect, it is noted that similar to Section 141 of the NI Act, Section 27 of the *SEBI Act, 1992* also, *inter alia,* fastens persons who are in charge of or responsible for the conduct of business of a company with vicarious liability for the contraventions of the provisions of the *SEBI Act, 1992* and regulations made thereunder. On a plain reading of the said provision under Section 27 of the *SEBI Act, 1992*, it can be understood that if a person which commits any violation is a company, the company as well as every person in charge of and responsible for the affairs of such company at the time of the

alleged commission of violation, shall be deemed to be guilty of the said violation of provisions of law, rules and regulations as alleged against them. Having gone through the relevant provisions of law which fasten vicarious liability on a Director of a company who was at the helms of affairs at the time of the said alleged wrongdoing, I note that the *Noticee no. 2* was the Managing Director of *GSL* and is still continuing as its MD and the said fact has not been disputed. That being the case, reference is made to Section 2(54) of the Companies Act, 2013, defining Managing Director and as per Section 2(54) "*means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with* <u>*substantial powers of management*</u> *of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.*

Explanation. – For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management."

5.73. A Managing Director, thus, by the very nature of his position is entrusted with substantial powers of management of the affairs of the company. It has also been held in numerous judicial decisions that the Managing Director or joint Managing Director would be admittedly deemed to be in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company *ipso facto* become liable under the relevant provision creating liability through deeming fiction and by virtue of the office they hold as Managing Director

or joint Managing Director, these persons are assumed to be in charge of and responsible for the conduct of business of the company, unless they prove to the contrary by producing evidence in their defense. In the present case, from the materials on record and the replies submitted by the *Noticee* himself, it is observed that the said fact of he was performing as the Managing Director of the Company during the relevant period has not been disputed by the *Noticee no. 2*. On the contrary, while he has candidly accepted and owned up the business decisions taken by *GSL* during the relevant period on various aspects including selling and misappropriation of clients' securities, the said fact has also been corroborated by other *Noticee* Directors of *GSL* who have in their defence vehemently brought to my attention that it was the *Noticee no. 2,* who was instrumental in managing the affairs not only of *GSL* but was also taking all the decisions relating funds and securities transfer from and to the *related entities* that were effectively under control of the *Noticee no. 2*.

tt. As I have pointed out earlier, the *Company* i.e. *GSL* has not filed any written submission or produced any evidence to rebut the allegations made against it in the SCN. It is *Noticee no. 2* who has through various submissions tried to defend the actions and business decisions of *GSL* since, it is he, who was driving the affairs of *GSL* during the relevant period. However, from the submissions made by *Noticee no. 2*, I have not come across any forceful arguments being made by him with any tangible evidence to support his arguments to refute the allegations made in the SCN, be it the charges of *Misappropriation of Client Securities and diversion of proceeds to related entities, or those of funding to clients having debit balances by providing further exposure or Non-settlement of Funds etc.* The submissions made by *Noticee no. 2* have rather tried to point out arithmetic errors in some figures stated in the SCN or have tried to justify the acts committed by *GSL* by arguing that those acts and decisions were undertaken in the

interest of the *Company* and also to safeguard the interests of its defaulting clients in good faith. For instance, the *Noticee no. 2* in his justification has submitted "*GSL has decided to liquidate stocks of defaulter clients in related accounts to discharge exchange obligation without taking risk of clientele dispute with clear plan to buy back those securities when client will make payment or company will have idle funds.*" It has been further categorically admitted by *Noticee no. 2* that *GSL* had provided exposure to High Networth Individuals clients from whom *GSL* was getting good business but unfortunately those clients incurred huge losses, which ultimately converted into bad debts. It has been claimed that there was no *mala fide* on the part of *GSL* or the *Noticee* and they were not engaged in any fraudulent practices, but the reason for the grant of additional trading exposure was to allow these clients to trade so as to reduce their debit balance as those clients had made a commitment to reduce debit balance by selling of their stock. In case the *GSL* had not allowed exposure to the clients there would have been risk of disputes with clients which could have more cascading effects. It has further submitted that on account of some miscalculation the additional intraday exposure to the clients resulted in huge amount of bad debts due to market volatility and it became very tedious to run the day to day operations. Therefore, to meet the financial crisis, the *Company* pledged client's securities to raise funds and also on certain occasions *GSL* sold the securities of clients so that the *Company* could discharge its obligations on time.

uu. From the aforesaid submissions, I find that the *Noticee no. 2* has undisputedly admitted that he was instrumental in managing the affairs of the *GSL* and in his capacity as MD, he has knowingly taken certain decisions against the rule and regulations including dealing with securities of clients without their authority and in the process, has engaged in various acts of transacting in those securities through the *related entities* of

GSL to camouflage those transactions including unauthorised transfer and sale proceeds and securities of the clients. I have already dealt with and have come to a conclusion in the preceding paragraphs that no matter how much *Noticee no. 2* advances his arguments stating that his actions were taken in good faith in the interests of the clients and to meet the financial crises of the *Company*, the *Noticee no. 2* cannot defend the gross violations committed by *GSL* of various provisions of law and regulations of SEBI by taking shelter under his plea of "acting in good faith". The fact remains that the *Noticee no. 2* has acted in a very irresponsible, callous and by taking various actions in a pre-meditated manner has also committed fraud on its own clients whose interests he has claimed to have been trying to serve by taking such actions. Under no circumstances, any unauthorised transfer of shares from the demat account of the clients to the account of the *related entities* and selling those securities and mis-appropriating the proceeds can be justified under the pretext of any bonafide action in good faith. Similarly, the *Noticee no. 2* while steering the affairs of *GSL* has committed gross breaches of regulations and inspections of SEBI in the matter of mis-reporting and non-reporting information under enhanced supervision framework, manipulating the books of accounts to inflate the financials including holding statement of the clients, allowing excessive exposure to his some chosen HNI clients, thereby risking the business interest of the Company as well as putting the assets of other clients to a great risk as a result of which he had to resort to sell and misappropriate the proceeds of the shares of the his clients without their consent. Besides, *Noticee no. 2* by his various acts of omissions and commissions has not been able to redress the clients' complaints within the prescribed time nor has he extended the cooperation to the SEBI's inspecting team thereby impeding the inspection exercise conducted by SEBI. All the aforesaid acts of irregularities and misconduct have been

demonstrated with the support of factual information as brought out in detail in the FAR and have been found to be established. Under the circumstances, the submissions and explanations made by *Noticee no. 2* to defend his actions and in turn defend the actions of *GSL* to be justified on the ground of having been taken under good faith and in a bonafide manner falls on weak ground and cannot be held to be justifiable under any provisions of *SEBI Act, 1992* or regulations or the relevant circulars as were applicable to the *Noticee Company* (*GSL*) during the relevant period of time. Therefore, in my considered view, *Noticee no. 2* (Mr. Kamal Kothari) has to be held liable and responsible as well as accountable by virtue of both the Companies Act as well as *SEBI Act, 1992* and relevant regulations thereunder for conducting the affairs of *GSL* in a fraudulent manner in contraventions of provisions of SEBI *PFUTP Regulations, 2003*, as alleged in the SCN.

5.74. Moving on to the *Noticee no. 3* i.e. Mr. Dharmendra Kothari, who is a brother of Mr. Kamal Kothari *(Noticee no. 2)*, it is noted that he was a Director in the Company since April 23, 1998. Like his brother, he has also offered almost identical submissions in his defence. During the course of hearing, it was submitted by *Noticee no. 2* that the *Noticee no. 3* was looking after the administration, staff coordination and <u>development of franchisees</u> along with managing the Marketing function and Relation Managers/dealer of *GSL*, which had more than 50,000 clients and more than 150 staff members working in branches spread all across India. The said facts have not been disputed by the *Noticee no. 3*. Considering the length of his tenure as a Director of *GSL*, the close relation he enjoys with the *Noticee no. 2* and the active role he was playing in the affairs of *GSL* which included administration of various affairs of *GSL* including marketing and maintenance of the clients depositories accounts, I find that all the aforesaid discussions and my observations with respect to Mr. Kamal Kothari *(Noticee*

no. 2) equally apply to the role and position enjoyed by *Noticee no. 3* who was also occupying a pivotal position in managing the affairs of the Company and hence hold him equally liable for the alleged acts attributed to *GSL* in the SCN. In this regard, it would be relevant to place reliance on the decision of the Hon'ble Supreme Court in the matter of *Official Liquidator v. P.A.Tendolkar, [(1973)1SCC602]*, referred to in the case of *N.Narayanan Vs. Adjudicating Officer, SEBI, [AIR2013SC3191]*, wherein the Hon'ble Supreme Court held that "*It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so, he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company.*" (emphasis supplied)

5.75. In view of the above fact that Mr. Dharmendra Kothari *(Noticee no. 3)* was a Director of *GSL* since April 23, 1998 and he, along with his brother, Mr. Kamal Kothari *(Noticee no. 2)* was holding substantial shareholding in *GSL* and the fact that he has failed to draw my attention to any new or additional facts or arguments to the allegation made against him in the SCN or at least to suggest that the actions taken and the violations committed by *GSL* during his tenure of directorship were done without his

knowledge or his consent or connivance, gives me no scope to treat him differentially from his brother Mr. Kamal Kothari *(Noticee no. 2),* as far as his responsibility and accountability for good governance of *GSL* is concerned. Moreover, the *Noticee no. 3* has not also adduced any information or evidence before me to indicate that he had exercised all due diligence from his end to prevent the aforesaid commission of contraventions. Under the circumstances, *Noticee no. 3* being also part of the controlling team of *GSL*, I have no doubt about his complicity in perpetration of the violations alleged in the SCN.

5.76. In fact, from a comprehensive evaluation of the submissions made by Mr. Kamal Kothari *(Noticee no. 2)* and his brother Mr. Dharmendra Kothari *(Noticee no. 3)* and the way they had tried to justify the actions and violations and irregularities committed by *GSL*, it emerges that both these *Noticees* have been conducting the affairs of *GSL* not only in an irresponsible manner but also under a deliberate fully conceived design to unlawfully misappropriate the shares of various clients and also have deliberately displayed negligence to abide by various regulations and instructions of SEBI. Such acts of misconduct on their part continued for a prolonged period of time i.e. from 2009-10 to 2017-18 and had there not been a regulatory intervention and inspection, such detent violation would not have been noticed by SEBI or the Stock Exchanges. In view of the aforesaid, there cannot be two opinions that these 2 *Noticees* namely Mr. Kamal Kumar Kothari *(Noticee no. 2)* and Mr. Dharmendra Kothari *(Noticee no. 3)* were actively managing the affairs of *GSL*, were taking all the business decisions of behalf of *GSL* and therefore, are undeniably liable for all the violations as alleged in the SCN.

Soumen Chatterjee (Noticee no. 4), Deepak Parakh (Noticee no. 5), Shree Kumar Jhanwar (Noticee no. 6), Babulal Nolkha (Noticee no. 7) and Sunita Kothari (Noticee no. 8)

5.77. The allegations made against the above-named *Noticees* are the same as those allegations made against Mr. Kamal Kothari *(Noticee no. 2)* and Mr. Dharmendra Kothari *(Noticee no. 3)*, owing to their positions as directors in *GSL*. In this regard, the SCN has recorded the details of the directorships of the present *Noticees* and the same is reproduced hereunder:

Table- 16

Noticee	**Date of Appointment as Director**	**Date of Cessation as Director**
Soumen Chatterjee *(Noticee no. 4)*	December 29, 2015	-
Deepak Parakh *(Noticee no. 5)*	November 28, 2013	May 02, 2016
Shree Kumar Jhanwar *(Noticee no. 6)*	November 28, 2013	March 31, 2016
Babulal Nolkha *(Noticee no. 7)*	November 28, 2013	September 23, 2014
Sunita Kothari *(Noticee no. 8)*	August 07, 2000	September 05, 2012

5.78. Before attempting to give my observations on the roles played by the aforesaid *Noticees* in the affairs of *GSL*, it would be relevant here to mention that the Hon'ble SAT while dealing with the *Interim Order* and *Confirmatory Order* passed against *Noticee no. 4* has observed that considering the fact the above *Noticee*, who was an employee of *GSL* and later on promoted as director was under restrain *vide* the *Interim Order* which was passed on 19th December, 2018 and confirmed vide *Confirmatory*

Order dated on 31st July, 2019. Further considering the fact that the matter was under investigation, it was observed by the Hon'ble SAT that restrained imposed vide above order cannot be allowed to continue till further orders. Under the circumstances, vide order dated January 07, 2021, the Hon'ble Tribunal have quashed the restraint imposed upon him in those orders (I*nterim Order* and *Confirmatory Order*) by observing that a SCN could have been issued by SEBI to him if anything was found against him.

5.79. In this regard, it is stated that the SEBI Report, on which the *Interim Order* and the *Confirmatory Order* were based, was a preliminary fact-finding exercise to get an overview of the irregularities in the working of *GSL*. Once contents of the SEBI Report were seen, it was felt that a detailed Forensic Audit was required to get a complete and holistic picture of the contraventions. The FAR has brought out the specific quantum of the misappropriation of the securities of the clients on a year-by-year basis from FY 2009-10 to FY 2017-18. Similarly, the FAR has brought out as to how the proceeds from the misappropriation were diverted/cornered by *related entities* year-by-year from FY 2009-10 to FY 2017-18. While the SEBI Report was not containing/ quantifying the misappropriation and consequent diversion/cornering by *related entities* of *GSL*, the FAR has been able to break down the overall period into specific financial years and plotted the misappropriation and diversion in more granular detail. This gains salience as the specific years brought out in the FAR when misappropriation and diversion did in fact take place, coincide with the tenure of the present *Noticee* in *GSL*. I, therefore, find that there was a new set of information that was brought out in the FAR, which provided adequate basis for the issuance of the SCN to the *Noticees* asking the *Noticee* to respond as to why action be not taken in view of the findings unearthed in the course of FAR and examination by SEBI. It is also

worth mentioning that the SCN was not holding the *Noticee* guilty of the contravention of the provisions of law but only asking it to respond to the breach as alleged in the SCN, more particularly considering the quantum of misappropriation observed to be made during the tenure of this *Noticee* being a director of *GSL* Therefore, the argument of Mr. Soumen Chatterjee *(Noticee no. 4)* that no additional facts have been brought out in the SCN is factually incorrect and devoid of merit.

5.80. In response to the SCN, barring *Noticee no. 5*, all the other *Noticees* have filed their detailed responses. The replies have already been captured in the previous part of this Order and the same are not being repeated here. However, it shall suffice to say that the above-named *Noticees* have taken the essential ground that they did not have the knowledge of the contraventions of the *Company*, and that the contraventions, especially the "Misappropriation of clients' securities and diversion" had started before their joining and continued after they had left. In this regard, it has been submitted by Mr. Soumen Chatterjee *(Noticee no. 4)* that he was specifically brought in to be a Director of Research and as such his working was confined to his Department only. It has been submitted by Mr. Shree Kumar Jhanwar *(Noticee no. 6)* that he was concerned with the DP and by Mr. Babulal Nolkha *(Noticee no. 7)* that he was involved in business development and marketing. Similarly, Ms. Sunita Kothari *(Noticee no. 8)* has submitted that she was a housewife and as such she had been made a director by her in-laws and had no knowledge of the affairs of the business, and signed documents etc., as instructed by Mr. Kamal Kothari *(Noticee no. 2)* her husband and the Managing Director of *GSL*.

5.81. I also note that all the aforesaid 3 *Noticees* (*Noticees no. 4, 6* and *7*) have contended that the alleged mis-governance involving financial fraud and diversion of funds and

securities had already commenced much prior to their joining the *Company* as Directors and such diversions of funds / securities also continued even after they left the *Company* as Directors. They have also contended that maximum quantum of such mis-appropriation / diversion had taken place during the period when they were not Directors of *GSL* and have emphasised on the fact that it is Mr. Kamal Kothari *(Noticee no. 2)* who was actively managing the affairs of the *Company* and has himself admitted the said fact in his submissions. Under the circumstances, the afore-stated 3 *Noticee* Directors of *GSL* pleaded for exoneration from the charges made against them in the SCN.

5.82. Further, it has also been contended by Mr. Shree Kumar Jhanwar *(Noticee no. 6)* and Mr. Babulal Nolkha *(Noticee no. 7)* that the SCN has wrongly mentioned their directorship tenures at *GSL*. In this regard, it has been submitted by Mr. Shree Kumar Jhanwar *(Noticee no. 6)* that the correct period of his directorship in *GSL* was November 25, 2013 to November 20, 2015. Similarly, it has been submitted by Mr. Babulal Nolkha *(Noticee no. 7)* that the correct period of his directorship in *GSL* was November 25, 2013 to May 13, 2014. It is also noticed that one of the submissions of the above *Noticees* are that they had a limited tenure with *GSL* as Directors and they were not actively engaged in managing the affairs of *GSL*. Considering the same, before proceeding further, it is pertinent to have the record set right and in this regard, having perused the documents accessed from the MCA website and the available record, the tenures of the directorships of the above *Noticees* and the amount alleged to be misappropriated during the tenure are tabulated as under:

Table- 17

Noticee	**Date of Appointment as Director**	**Date of Cessation as Director**
Soumen Chatterjee *(Noticee no. 4)*	December 29, 2015	November 27, 2018
Deepak Parakh *(Noticee no. 5)*	November 25, 2013	May 02, 2016
Shree Kumar Jhanwar *(Noticee no. 6)*	November 25, 2013	December 31, 2015
Babulal Nolkha *(Noticee no. 7)*	November 25, 2013	May 13, 2014
Sunita Kothari *(Noticee no. 8)*	August 08, 2000	December 21, 2012

5.83. Now coming to the examination of the liability of the above-named *Noticees*, I note that out of the 9 allegations against the *Company*, a majority of them do fall beyond the period of directorship of the above-named *Noticees*; however, it is quite evident that the primary allegations relating to the misappropriation of securities and their diversion do fall within their directorship periods. As gathered from above, the principal defence offered by the said *Noticees* is that they had no knowledge and were not involved in the affairs of the *Company*. It is an established principle of law that Directors of a company have a fiduciary relationship with the company. It is on this principle that the duties and responsibilities of a Director have evolved which are crystallised in Section 166 of the Companies Act, 2013. One of the foremost duties of a Director is exercising due diligence and care in managing the affairs of the company. Further, Directors have a duty cast upon them to attend the board meetings. This principle finds resonance in Section 167 (1) (b) of the Companies Act, 2013 which

states that the failure to attend Board Meetings for a continuous period of one year would be a ground for the vacation of office by the concerned Director, regardless of leave of absence being given by the Board for the meetings held during the year.

5.84. The consideration of the liability of Directors, especially Executive Directors/ Whole time Directors has to be on the touchstone of the above duties. In this regard, reliance is placed on the case of *Re. City Equitable Fire Equitable Fire Insuarnce Co. (1925)*, which states,

> "*If directors act within their powers, if they act with such care as is reasonable expected of them having regard to their knowledge and experience and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as legal duty to the company.*"

Thus, for a Director to discharge his duty towards the company he must a) act with such care as is reasonably expected considering his knowledge and experience and b) act honestly for the benefit of the company. In the present case, it is noted that no reply has been filed by the *Noticee no. 5*, neither he availed the personal hearing. The other *Noticees* have simply stated that the matters pertained to other departments and as such they were unaware. This in my view cannot be the standard of care that is expected from Directors, especially those that have been enrolled to the board on their "professional" abilities. Further, what makes their assertion of lack of knowledge quite unusual, is the fact that Mr. Soumen Chatterjee *(Noticee no. 4)*, Mr. Shree Kumar Jhanwar *(Noticee no. 6)* and Mr. Babulal Nolkha *(Noticee no. 7)* were also employees Directors of *GSL*. Being employed with the *Company* and sitting on its Board, the argument of lack of knowledge does not pass muster. Similarly, the *Noticee no. 8* has stated that she is a house wife and accepted the post of directorship because of family

concern and she as a Director during her long association of 12 years did not remain engaged with the day to day affaires and conduct of business of *GSL*. In this respect also, the fact that she is the wife of the *Noticee no. 2* (MD of *GSL*) can't be ignored and brushed aside completely. It may not be proper also to accord complete exoneration on the sole ground that though an entity undeniably accepts to be a Director in a *Company*, however remain non active for considerable period and thereafter pleads clemency for the fraud having perpetrated during the relevant period. It will not be set a right precedent and would encourage people to become Director and remain non active and thereby become instrument at the hands of the active Directors. Considering the above, I find that the above-named *Noticees* have clearly not acted with the due-diligence and care that is required from a Director.

5.85. It is relevant to mention that the Companies (Specification of definitions details) Rules, 2014 defines an Executive Director as a whole time Director as defined in clause (94) of section 2 of the Companies Act, 2013. It is relevant to note that Mr. Soumen Chatterjee *(Noticee no. 4)*, Mr. Deepak Parakh *(Noticee no. 5)*, Mr. Shree Kumar Jhanwar *(Noticee no. 6)*, and Mr. Babulal Nolkha *(Noticee no. 7)* have all been shown as Executive Directors of *GSL*. So, all these Directors are whole-time Directors of the company. It must be mentioned that for the purposes of determining the officer who is in default Section 2, Clause 60 lists a Whole Time Director first on the list. Thus, it is evident that an Executive Director / Whole-time Director clearly has a higher onus of responsibility in a company.

5.86. It has already been stated that Directors have a duty cast upon them to attend the board meetings. The above-named *Noticees* have clearly failed on that count too. The *Noticees* having failed to carry out the duties cast upon them, have now claimed

benefit of such failure of duties by stating that they did not have any knowledge of the affairs of the *Company* and were ignorant about the "Misappropriation of clients' securities and diversion of the sale proceeds". This is a clear case of taking advantage of one's own wrongs, which is not permissible and recognised in law.

5.87. Lastly, considering the undisputed fact that the above *Noticees* were associated with *GSL* as Directors and therefore assumed to be in charge of the business and were responsible for the conduct of the business of the *Company*, in terms of deeming fiction created by the statute itself, unless the *Noticees* successfully prove with supporting evidence that the contravention was without his knowledge or they have exercised all due diligence to prevent the commission of such contravention. In the instant case, I find that materials on record sufficiently suggest that the present *Noticees* did not exercise due care or diligence squarely calls for the application of Section 27. Further, the present proceeding is in the nature of a civil proceeding, under Section 11B of the *SEBI Act, 1992* and as such, SEBI cannot be laden with the burden of presenting such proof, which would prove beyond reasonable doubt that the Director of a company was conscious of the specific affairs of the company. I view that the fact of the association of the *Noticees* with *GSL* as Executive Directors, during the relevant time, read with the surrounding circumstances are sufficient to draw the inference that they were aware of the activities of the Company.

5.88. Having observed that the above *Noticees* have failed to show that they were acting diligently and taken steps and measure to prevent the commission of the contraventions as alleged in the SCN, I also take note of the submission made by the *Noticee no. 2* stating that *Noticee no. 4* appointed as Research Analyst in the year 2010, was involved in giving advice to the clients and was later promoted as Director in the

year 2015. With respect to Mr. Deepak Parakh (*Noticee no. 5*), it has been stated that he was involved in the operations of *GSL* i.e., day-to-day securities pay-in and pay-out of exchange and clients, risk management etc. Also, he was the Compliance Officer and was responsible for the back office and also assisted SEBI/NSE/BSE in inspection. With respect to Mr. Shree Kumar Jhanwar (*Noticee no. 6*), it has been stated that he was the Head – Depository and looked after the entire pay-in and pay-out obligations of *GSL*. With respect to Mr. Babulal Nolkha (*Noticee no. 7*), it has been stated that he was the Marketing head of *GSL* and was primarily involved in the development of franchisee business and to take care of client grievances. With respect to Ms. Sunita Kothari (*Noticee no. 8*), it has been stated that she was only a house-wife and was not engaged in managing or controlling the business of *GSL* in any manner.

5.89. The above facts have not been denied in toto. Rather, the *Noticee no. 6* stated in his submission that the alleged activities were ongoing since 2009-10 and *GSL* was headed and managed by a Managing Director and the minutes of the meeting held on 24 June 2019 recorded that Mr. Kamal Kothari *(Noticee no. 2)* had admitted as having committed the irregularities to cover up for the losses sustained by *GSL* in the past. For the rest of the alleged violations, *Noticee no. 6* has submitted that he ceased to be a Director during the said period. Similarly, the *Noticee no. 7* has vehemently stated that *GSL* was headed and managed by a Managing Director, and he (MD) himself used to place all the compliance reports confirming all the compliances. He was neither a Director nor a shareholder in any of those *related entities* of *GSL* through whom various acts of contravention had been committed by *GSL*. He was a Director in Awadhoot *(Noticee no. 22)* between September 22, 2008 and February 18, 2014 and no adverse findings had been made against this entity in the Investigation Report or the FAR for the period of his directorship. However, at the same time, as regards the

diversion of funds it has been submitted that more than 90.43% of the total diversion were done when he was not associated with *GSL*. Similarly, during his tenure as a Director, the misappropriation was not so grave and apparent so as to put them at par with the MD and to hold him equally guilty for the same. Nothing on merit except that she was a house wife; has not attended office and derived any benefit from *GSL* has been advanced by the *Noticee no. 8*.

5.90. Having carefully considered the aforesaid submissions and the factual positions surrounding the role and functions performed by these *Noticees* in the affairs of the *Company* , I find that there is merit in the contentions and the arguments advanced by these *Noticees*, more so, when it is now clear that it is the *Noticee no. 2* and his brother *Noticee no. 3* who were actively running the business of *GSL* and *Noticee no. 2* has admittedly taken all those business and operational decisions that have resulted in serious contraventions of law and regulations, including contraventions of *PFUTP Regulations, 2003*. Under the circumstances, there is material on record to show omission and passive collusion or connivance by the *Noticee* Directors of *GSL* other than *Noticees no. 2* and *3* in the commissions of those offences and violations, and being designated as Director on the board of the *Company* and board of the Directors were expected to be the guiding body of the *Company*, therefore, it will be not fair to entirely exonerate these 3 *Noticee* Directors of *GSL* only on the basis of the fact that the *Noticee no. 2* was running the affairs of the *Company*. Notwithstanding the fact that these 3 *Noticee* Directors were engaged in different other activities which did not amount to running the affairs of *GSL* by being part of the board as Directors cast onerous duties on these *Noticees* to remain vigilant and adopt due diligence at all times to prevent the commissions of such contraventions which they are now very conveniently attributing to *Noticees no. 2* and *3*. Therefore, these *Noticees* cannot be

allowed to escape from their statutory responsibilities as Directors of the *Company* without explaining with sufficient evidence as what steps they had taken from their side to protect the interest of the clients or to ensure due compliance by the *Company* with various provisions of regulations and instructions issued by SEBI from time to time. Therefore, completely exonerating these *Noticees* from the charges levelled against them in the SCN will be against the basic cannons of law which expects these *Noticee* Directors to remain vigilant and take all preventive measures for good governance of the *Company*. Therefore, I hold that these 3 *Noticee* Directors have also erred in discharge of their duties as Director of *GSL* during the relevant period of time. Nevertheless, without prejudice to the observations made as aforesaid, considering the fact that these 3 *Noticee* Directors have already undergone debarment for more than 3 years, in my considered view, the said period of debarment constitutes a reasonable remedial measure proportionate to the extent of negligence and omissions by these *Noticees* in discharging their duties as Directors.

Issue III- Whether the Related Entities and Directors of the Related Entities can be held liable for the actions as alleged in the SCN (Noticees no. 9 to 31)?

5.91. It has already been established above that *GSL* had misappropriated the securities of the clients and cornered the proceeds with its *related entities*, namely, S K B Securities Ltd. (*Noticee no. 9*); Param Commodities Pvt. Ltd. (*Noticee no. 16*); Paramarth Agro Marketing Private Limited (*Noticee no. 19*); Apurva Commodities Pvt. Ltd. (*Noticee no. 20*); Awadhoot Marketing Pvt. Ltd. (*Noticee no. 22*); Superfast Tours and Travels Pvt. Ltd. (*Noticee no. 27*); Shri Vishnu Krupa Commodities Private Limited (*Noticee no. 30*); and Pawantar Agro Agencies Pvt. Ltd. (*Noticee no. 31*).

5.92. The SCN has alleged that *Noticees no. 10,11,12,13,14,15,17,18,21,23,24,25,26, 28* and *29*, being Directors of the entities related to *GSL*, have violated Section 12 A of the SEBI read with Regulation 3(d) and 4(1) of the SEBI *PFUTP Regulations, 2003* read with Section 27 of the *SEBI Act, 1992*.

5.93. As regard the allegations pertaining to the *related entities* are concern, I note that the allegations are primarily in the nature of aiding and abetting *GSL* in misappropriating client securities and in diversion of funds. The said issues have been dealt in length while dealing with the allegations made on *GSL*. However, I find it appropriate to record that none of the above *related entities* have chosen to file written response refuting the allegations made in the SCN nor anyone appeared on their behalf to advance arguments contradicting the allegations made in the SCN. In the absence of any record to the contrary, I find no reason and document available on record to hold contrary to the allegations made in the SCN. I find that no justification has been placed on record by the *related entities* justifying the receiving of securities in their demat account contrary to their respective holding statement. I also find that nothing has been brought on record to contradict the allegation made in respect of over statement of books of account by *GSL* showing respective debit and credit balances that *GSL* has entered into with the *related entities*. Before concluding, I like to refer to the decision of the Hon'ble SAT, in the case of *Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003, DoD-08/12/2006)* has *inter alia*, observed that "*.....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".*

5.94. Having held that based on the materials on record, the charges against the *related entities* are brought home, I proceed to examine the role and responsibilities of

Director of those *related entities*, who have been arrayed as *Noticee* in the instant proceedings. In the regard, as per SCN, the *related entities* and their respective Directors are enumerated hereunder:

Table- 18

Sl. No.	**Company**	**Director**
i.	S K B Securities Ltd. (*Noticee no. 9*)	Mr. Provat Mitra (*Noticee no. 10*) Mr. Somnath Bhattarcharjee (*Noticee no. 11*) Ms. Lipika Bhattarcharjee (*Noticee no. 12*) Mr. Hemant Kothari (*Noticee no. 13*) Mr. Krishna Maheswari (*Noticee no. 14*) Mr. Aman Mohan Kothari (*Noticee no. 15*) Mr. Ram Avtar Sharma (*Noticee no. 21*)
ii.	Param Commodities Pvt. Ltd. (*Noticee no. 16*)	Mr. Pawan Kumar Modi (*Noticee no. 17*) Mr. Murlidhar Sharma (*Noticee no. 18*)
iii.	Paramarth Agro Marketing Private Limited (*Noticee no. 19*)	Mr. Pawan Kumar Modi (*Noticee no. 17*) Mr. Murlidhar Sharma (*Noticee no. 18*)
iv.	Apurva Commodities Pvt. Ltd. (*Noticee no. 20*)	Mr. Pawan Kumar Modi (*Noticee no. 17*) Mr. Ram Avtar Sharma (*Noticee no. 21*)
v.	Awadhoot Marketing Pvt. Ltd. (*Noticee no. 22*)	Mr. Sudarshana Mitra (*Noticee no. 23*) Mr. Shyamal Mitra (*Noticee no. 24*) Mr. Kamal Kumar Kothari (*Noticee no. 2*) Mr. Babulal Nolkha (*Noticee no. 7*) Mr. Deepak Parakh (*Noticee no. 5*)

		Mr. Abhijit Pal (*Noticee no. 25*) Mr. Gaurav Choudhary (*Noticee no. 26*)
vi.	Superfast Tours and Travels Pvt. Ltd. (*Noticee no. 27*)	Mr. Mahabir Chand Jain (*Noticee no. 28*) Mr. Jayant Kumar Jain (*Noticee no. 29*)
vii.	Shri Vishnu Krupa Commodities Private Limited (*Noticee no. 30*)	Mr. Pawan Kumar Modi (*Noticee no. 17*)
viii.	Pawantar Agro Agencies Pvt. Ltd. (*Noticee no. 31*)	Mr. Pawan Kumar Modi (*Noticee no. 17*)

5.95. I have already elaborated upon the principles laid down in law that regulate the duties of a Director in a company at paragraph nos. 5.83 to 5.86, and the concomitant liability for derogation of those duties. Accordingly, it would be superfluous to reiterate the said principles here; however, the same shall guide my judgment in considering the individual liabilities of these Directors of the *related entities* of *GSL*.

Provat Mitra (Noticee no. 10), Somnath Bhattarcharjee (Noticee no. 11) and Lipika Bhattarcharjee (Noticee no. 12)

5.96. The SCN notes that Mr. Provat Mitra *(Noticee no. 10)*, Mr. Somnath Bhattarcharjee *(Noticee no. 11)* and Ms. Lipika Bhattarcharjee *(Noticee no. 12)* were Directors of S K B Securities Ltd. *(Noticee no. 9)* as on the date of the SCN i.e., October 29, 2021. It is seen from the Form 32 that the above three *Noticees* were appointed as Directors of S K B Securities Ltd. *(Noticee no. 9)* from July 07, 2012. Provat Mitra *(Noticee no. 10)* was appointed as an Executive Director, while Mr. Somnath Bhattarcharjee *(Noticee no. 11)* and Ms. Lipika Bhattarcharjee *(Noticee no. 12)* were appointed as Non-executive Directors.

5.97. It is noted that during the hearing in the matter on April 07, 2022, Mr. Somnath Bhattacharjee *(Noticee no. 11)* and Ms. Lipika Bhattacharjee *(Noticee no. 12)* submitted that they were overtaken by greed and took up the said directorship positions. It has been submitted by them that they were persuaded by the *Noticee no. 2* to become Directors in *Noticee no. 9* and during the period of his directorship, they used to receive instructions from Mr. Gaurav Choudhury (*Noticee no. 26*) for executing documents and signing of cheques etc. They have provided screenshots of his WhatsApp messages in support of the above submission of receiving instruction from the *Noticee no. 26*, perusal of which show that the same pertains to the period December 2018 to October 2019. Further, they have also submitted that while passing the *Confirmatory Order* on July 31, 2019, SEBI has dropped the proceedings against the independent Directors and/ non – executive Directors on the ground that they were not involved in the day to day functioning of *GSL*, hence, they being also non-executive Director deserve to be treated similarly. There is no dispute to the fact that they (*Noticees no. 11* and *12*) were Directors of *Noticee no. 9* when the "Misappropriation of the clients' securities and the consequent diversion of the sale proceeds" were undertaken by GSL through *Noticee no. 9*. Accordingly, I hold them (*Noticees no. 11* and *12*) the above liable for violated Section 12 A of the SEBI read with Regulation 3(d) and 4(1) of the SEBI *PFUTP Regulations, 2003* read with Section 27 of the *SEBI Act, 1992*. However, at the same time, I cannot ignore the fact that the materials on record not sufficiently establishes that the *Noticees no. 11 and 12* was managing the business of the *Noticee no. 9* and were actively involved in its affairs.

5.98. With regard to the role of *Noticee no. 10*, I note that that no reply has been filed by and on behalf of the *Noticee no. 10*, who has been associated with the *Noticee no. 9* as an executive Director. Thus, while seeking reliance on the law held by the Hon'ble

Tribunal in *Sanjay Kumar Tayal (supra) and considering the fact of him being the executive direction,* I am persuaded to conclude that he had knowledge of and acted in aid of the Misappropriation of the clients' securities and the consequent diversion of the sale proceeds perpetrated by *GSL*. Accordingly, I hold that the above liable for violated Section 12 A of the SEBI read with Regulation 3(d) and 4(1) of the SEBI *PFUTP Regulations, 2003* read with Section 27 of the *SEBI Act, 1992*. However, at the same time, the materials on record not sufficiently establishes that the *Noticee no. 10* was managing the business of the *Noticee no. 9*.

Hemant Kothari (Noticee no. 13)

5.99. By way of email dated April 04, 2022, it has been informed that Hemant Kothari *(Noticee no. 13)* passed away on March 31, 2022. A copy of the Death Certificate issued by the Kolkata Municipal Corporation has been submitted in support of the same. Owing to the above circumstance, the consideration of the individual liability of the said *Noticee* becomes superfluous. Accordingly, the present proceeding with respect to the said *Noticee* is disposed of without any direction.

Krishna Maheswari (Noticee no. 14)

5.100. The SCN notes that Mr. Krishna Maheswari *(Noticee no. 14)* was a Director in S K B Securities Ltd. *(Noticee no. 9)* for the period October 26, 2002 to June 01, 2012. The *Noticee* has filed no reply in response to the SCN. I note from the holding statement, as contained in the FAR, that negative balances with respect to S K B Securities Ltd. *(Noticee no. 9)* first appeared in the FY 2012-13. Similarly, fund movement between *GSL* and S K B Securities Ltd. *(Noticee no. 9)*, a payment of INR 2 crore by S K B Securities Ltd. *(Noticee no. 9)* to *GSL*, first appeared in the FY 2012-13. Having

considered the same, I cannot lose sight of the fact that the *Noticee* remained a Director in FY 2012-13 for only two months.

5.101. Thus, upon a careful weighing of facts on either side, I am inclined to give the benefit of doubt to Mr. Krishna Maheswari *(Noticee no. 14)*. However, at the same time it would be essential that he should be warn to be careful in future while associating with the securities market in any capacity.

Aman Mohan Kothari (Noticee no. 15)

5.102. Mr. Aman Mohan Kothari has been shown as a Director of S K B Securities Ltd. *(Noticee no. 9)* in the SCN during the Examination Period. Mr. Aman Mohan Kothari *(Noticee no. 15)* in his reply has submitted that he was a Non-Executive Director and served as a Director on the board of S K B Securities Ltd. *(Noticee no. 9)* from June 01, 2012 to July 10, 2012. A perusal of the forms, by way of which information regarding the appointment of the *Noticee* as a Director and the cessation of his directorship was intimated to the Ministry of Corporate Affairs, shows that Mr. Aman Mohan Kothari *(Noticee no. 15)* was in fact appointed on June 01, 2012 and ceased to be a Director on July 10, 2012. Thus, the *Noticee* was only a Director for forty days as claimed.

5.103. Further, I do not find anything on record to conclude that within the period of forty days the *Noticee* was instrumental in the running of the business or was managing the day-to-day affairs.

5.104. Considering the fact that the said *Noticee* had a very limited association of forty days with S K B Securities Ltd. *(Noticee no. 9)* and the lack of convincing proof on record to show that the *Noticee* was involved in the running of the business of S K B Securities Ltd. *(Noticee no. 9)*, I conclude that no reasons stand for the continuation of the *Interim Order* in respect of *Noticee no. 15* as well.

Pawan Kumar Modi (Noticee no. 17)

5.105. It is noted that Mr. Pawan Kumar Modi (Mr. Pawan) is shown in the SCN as a Director in Param Commodities Pvt. Ltd. (*Noticee no. 16*), Paramarth Agro Marketing Private Limited (*Noticee no. 19*), Apurva Commodities Pvt. Ltd. (*Noticee no. 20*) and Shri Vishnu Krupa Commodities Private Limited (*Noticee no. 30*). It is seen from the MCA website that Param Commodities Pvt. Ltd. (*Noticee no. 16*) and Paramarth Agro Marketing Private Limited (*Noticee no. 19*) were struck off on September 11, 2018 from the register of companies. It is also seen from the Form 32 submitted in respect of *Noticee no. 16* that *Noticee no. 17* was the Chairman of the company and was also one of the initial subscribers to the share capital of the company at the time of incorporation. As regards, *Noticee no. 19*, it is seen from the documents accessed from the MCA website that in this company also *Noticee no. 17* was the Chairman, and was one of the initial subscribers to the share capital of the company at the time of incorporation i.e. February 20, 2009. Further, with respect to *Noticee no. 20*, it is noticed from the documents accessed from the MCA website, it is seen that *Noticee no. 17* was listed as one of the original Directors and also one of the initial subscribers to the share capital of the company at the time of incorporation i.e. May 16, 2007. Lastly, with respect to *Noticee no. 30*, the Form 32 reveals that the present *Noticee no. 17* was the Chairman of the company and was categorised as a promoter. He was also listed as one of the original Directors of the company at the time of incorporation i.e. June 20, 2008.

5.106. I note from the record that no reply has been received from *Noticee no. 17* in response to the SCN. I have also observed that that no response has been received from the corporate entities, he was associated with as Chairman, Director and promoter. Also,

I have already given my findings on roles played by the *related entities* and have observed that violations alleged against the *related entities* were found established. Under the circumstances, in the absence of any oral or written submission from this *Noticee no. 17*, I see no reason to hold contrary to the allegations made in the SCN. So, considering the findings above, I have no doubt that the *Noticee no. 17* was deeply entrenched in the functioning of the above named four companies owing to his position and length of association. That being the case I am convinced that he had clear knowledge of and was complicit in the aid provided by the *related entities* companies, namely *Noticee no. 16*, *Noticee no. 19*, *Noticee no. 20* and *Noticee no. 30* in the Misappropriation of the securities of clients of *GSL* and the consequent diversion of the sale proceeds perpetrated by *GSL*. Accordingly, I find that *Noticee no. 17*, has violated Section 12 A of the SEBI read with Regulation 3(d) and 4(1) of the SEBI *PFUTP Regulations, 2003* read with Section 27 of the *SEBI Act, 1992.*

Murlidhar Sharma (Noticee no. 18)

5.107. Moving forward, it is noticed that Mr. Murlidhar Sharma (Mr. Murlidhar) is shown in the SCN as a Director in Param Commodities Pvt. Ltd. (*Noticee no. 16*) and Paramarth Agro Marketing Private Limited (*Noticee no. 19*). It is seen that his directorship coincided with the directorship of Mr. Pawan *(Noticee no. 17)* in the above two companies. It is seen from the Form 32 submitted in respect of Param Commodities Pvt. Ltd. *(Noticee no. 16)* that Mr. Murlidhar *(Noticee no. 18)* was categorised as a Non-executive Director of the company, even though with Mr. Pawan *(Noticee no. 17)*, he was the second original Director of the company at the time of incorporation i.e., February 20, 2009. As regards, Paramarth Agro Marketing Private Limited *(Noticee no. 19)*, it is seen from the Form 32 that Mr. Murlidhar *(Noticee no. 18)*

was categorised as a Non-executive Director of the company, and here also with Mr. Pawan *(Noticee no. 17)*, he was the second original Director of the company at the time of incorporation i.e. February 20, 2009.

5.108. Similar to Mr. Pawan *(Noticee no. 17)*, no reply has been received from Mr. Murlidhar *(Noticee no. 18)* in response to the SCN. From the findings I see that the *Noticee* was a Non-executive Director. However, I cannot ignore the fact that he was a Director in the above-named two companies right from the inception and continued till they were struck off. In this respect, I would like to rely on the rationale supplied by the Hon'ble Supreme Court in the case of *Official Liquidator vs. P.A.Tendolkar, [(1973)1SCC602] (supra)*. Accordingly, it would not be unusual to infer that the *Noticee* was quite involved in the functioning of the above named companies, owing to his association from the very inception of those and the length of such association. That being the case I am constrained to hold that he had knowledge and acted in aid of the Misappropriation of the clients' securities and the consequent diversion of the sale proceeds perpetrated by *GSL*. Accordingly, I find that Mr. Murlidhar, *Noticee no. 18*, has violated Section 12 A of the SEBI read with Regulation 3(d) and 4(1) of the SEBI *PFUTP Regulations, 2003* read with Section 27 of the *SEBI Act, 1992*.

Ram Avtar Sharma (Noticee no. 21)

5.109. The SCN proceeds that Mr. Ram Avtar Sharma (Mr. Ram Avtar) was associated as a Director of S K B Securities Ltd. *(Noticee no. 9)* and Apurva Commodities Pvt. Ltd. *(Noticee no. 20)* and his association as Director in S K B Securities Ltd. *(Noticee no. 9)* was from August 26, 2002 to July 04, 2012.

5.110. In this regard, it is stated that in response to the allegations made in the SCN, no reply has been received from the *Noticees*. In such a circumstance, I shall proceed with

the consideration of the allegations made in the SCN by relying on the material on record.

5.111. As already stated, the *Noticee* was a Director in S K B Securities Ltd. *(Noticee no. 9)* from August 26, 2002 to July 04, 2012. In this regard, reference is made to the "CONSTITUENT REGISTRATION ACCOUNT OPENING FORM" of S K B Securities Ltd. *(Noticee no. 9)* submitted by Mr. Aman Mohan Kothari *(Noticee no. 15)*, who was also a Director of S K B Securities Ltd. *(Noticee no. 9)*. The said form reads, "*I/We request you to register me/us as your Client/Constituent and enable me/us to trade in the Capital Market Segment (CM), Future and Options Segment (F&O) and Retail Debt Market Segment (RDM) pursuant to the Agreement entered with you. I/We have read the Rules, Byelaws and Regulations of the Exchanges pertaining to these segments and agree to abide by them. In this regard, I/we give the following information:*"

5.112. Upon a perusal of the said form, it is seen that in the part relating to Contact Person/ Authorised Representative, the name of Mr. Ram Avatar finds mention. Similarly, in the part relating to "CONSTITUTIENT DETAILS (INDIVIDUAL/KARTA/MANAGING PARTNER/DIRECTOR)", the name of Mr. Ram Avatar also finds mention. Lastly, the said form has been signed by Mr. Ram Avatar with the date being September 12, 2005. So, it appears to me that Mr. Ram Avatar was involved in the day to day affairs of S K B Securities Ltd. *(Noticee no. 9)*.

5.113. As regards, Apurva Commodities Pvt. Ltd. *(Noticee no. 20)*, it is seen from the documents accessed from the MCA website, it is seen that Mr. Ram Avatar was listed as one of the original Directors and also one of the initial subscribers to the share capital of the company at the time of incorporation i.e., May 16, 2007.

5.114. As stated above that no reply has been received from Ram Avatar Sharma in response to the SCN. So, considering the findings above, I have no doubt that the *Noticee* was deeply entrenched in the functioning of the above named two companies owing to his position and length of association. That being the case I am convinced that he had clear knowledge of and acted in aid of the Misappropriation of the clients' securities and the consequent diversion of the sale proceeds perpetrated by *GSL*. Accordingly, I find that Mr. Ram Avatar Sharma, *Noticee no. 21*, has violated Section 12 A of the SEBI read with Regulation 3(d) and 4(1) of the SEBI *PFUTP Regulations, 2003* read with Section 27 of the *SEBI Act, 1992*.

Sudarshana Mitra (Noticee no. 23), Shyamal Mitra (Noticee no. 24) and Abhijit Pal (Noticee no. 25)

5.115. It is noticed from the SCN that Mr. Sudarshana Mitra *(Noticee no. 23)*, Mr. Shyamal Mitra *(Noticee no. 24)* and Mr. Abhijit Pal *(Noticee no. 25)* have been issued notice as Directors of Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* and being Directors they are deemed to be liable for the acts and omission of the corporate entity, they were associated with during the relevant point in time. In this respect, it is further observed that the period of the directorship of Mr. Abhijit Pal *(Noticee no. 25)* is shown as September 22, 2008 to November 09, 2011. It is seen from the Form 32 that Abhjit Pal during the period of his directorship was a Non-Executive Director. Similarly, with respect Mr. Sudarshana Mitra *(Noticee no. 23)*, Mr. Shyamal Mitra *(Noticee no. 24)*, it is seen from the documents accessed from the MCA website that Mr. Sudarshana Mitra *(Noticee no. 23)* and Mr. Shyamal Mitra *(Noticee no. 24)* were both appointed as Non-Executive Directors on March 09, 2015. I note from the holding statement, as contained in the FAR, that between the FYs 2009-10 and 2017-18, balances with respect

to Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* appear positive during the FYs 2014-15 and 2015-16. The balances reflected in these two years were positive balances. Similarly, fund movement between *GSL* and Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* between the FYs 2009-10 and 2017-18 is seen during the four FYs, namely 2008-09, 2011-12, 2012-13 and 2015-16. In FY 2008-09, INR 0.11 crore was paid to *GSL* and the same amount was received from it. In FY 2011-12, a payment of INR 0.01 crore was made by Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* to *GSL*. In FY 2012-13, a payment of INR 0.01 crore was made and INR 0.03 crore was received between Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* and *GSL*. In FY 2015-16, an amount of INR 5.26 crore was received by Awadhoot *(Noticee no. 22)* from *GSL*.

5.116. From the above facts, I note that since Mr. Abhijit Pal *(Noticee no. 25)* had ceased to be a director by September 2011, the fund transactions that relate to him are the INR 1 lakh payment and receipt in FY 2008-09. I also note that Mr. Abhijit Pal *(Noticee no. 25)* was a Non-Executive Director. As regards, Mr. Sudarshana Mitra *(Noticee no. 23)* and Mr. Shyamal Mitra *(Noticee no. 24)* the only fund transaction that relate to them are the INR 5.26 crore received in FY 2015-16, since both of them joined as Directors in March of 2015. Also the balances that appear during the FYs 2014-15 and 2015-16 in the holding statement coincide with the directorships of Mr. Sudarshana Mitra *(Noticee no. 23)* and Mr. Shyamal Mitra *(Noticee no. 24)* were in fact positive balances. I also note that both these *Noticees* were Non-executive Directors.

5.117. Considering the tenure of their association and quantum of amount involved in the transaction with *GSL* and further upon a careful weighing of facts as have been brought out, I am inclined to give the benefit of doubt to the above three *Noticees*.

Gaurav Choudhary (Noticee no. 26)

5.118. Mr. Gaurav Choudhary (*Noticee no. 26*) is also shown in the SCN as a Director of Awadhoot Marketing Pvt. Ltd. (*Noticee no. 22*) having tenure of his directorship being from February 18, 2014 to April 30, 2015. In response to the allegations in the SCN, reply has been received from Mr. Gaurav Choudhary (*Noticee no. 26*).

5.119. The *Noticee* has principally submitted that –

a. he was initially appointed as an employee and thereafter appointed as a Director when one out of the two Directors resigned;

b. he was a Non-Executive Director and was neither authorised nor placed any instruction with *GSL* for the execution of trades on behalf of Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)*;

c. the SCN has shown the diversion of funds between the financial years 2008-09 and 2017-18 to be INR 5.26 crore, however there is no month/date-wise breakup of the same; and

d. no trades had been executed and no funds transferred from the account of *GSL* to the trading account of Awadhoot *(Noticee no. 22)* or vice-versa during the FY 2013-14, trades on 5 trading sessions, i.e. March 16, 2015, March 24, 2015, March 26, 2015, March 27, 2015 and March 31, 2015 were executed in the FY 2014-15 and trades on 6 trading sessions, i.e. April 01, 2015; April 09, 2015; April 16, 2015; April 21, 2015, April 22, 2015 and April 24, 2015 were executed in the FY 2015-16.

5.120. The *Noticee* has also submitted various documents in support of his submissions and also sought reliance on judicial decision to contend that considering his tenure of association with Awadhoot *(Noticee no. 22)* and that too in the capacity of a non-

executive Director, the allegations made in the SCN would not be sustained. It is also seen from the Form 32 submitted by the *Noticee* that he was Non-Executive Director in Awadhoot *(Noticee no. 22)*. The *Noticee* has also provided the "CONSTITUENT REGISTRATION ACCOUNT OPENING FORM" of Awadhoot Marketing Private Limited *(Noticee no. 22)* registering with *GSL* Limited. The said form reads, "*I/We request you to register me/us as your Client/Constituent and enable me/us to trade in the Capital Market Segment (CM), Future and Options Segment (F&O) and Retail Debt Market Segment (RDM) pursuant to the Agreement entered with you. I/We have read the Rules, Byelaws and Regulations of the Exchanges pertaining to these segments and agree to abide by them. In this regard, I/we give the following information*:" It is seen that in the part relating to Contact Person/ Authorised Representative, the name of Mr. Kamal Kumar Kothari *(Noticee no. 2)* finds mention in the form.

5.121. Further, the *Noticee* has provided a "MEMBER-CLIENT AGREEMENT for The Stock Exchange, Mumbai" signed between *GSL* Limited and Awadhoot Marketing Pvt. Ltd. *(Noticee no. 22)* dated March 11, 2006. A perusal of the same reveals that Annexure- C of the said agreement carries the details of Mr. Kamal Kumar Kothari *(Noticee no. 2)*. Furthermore, the said Agreement contains a copy of Board resolution dated March 08, 2006 whereby Mr. Kamal Kumar Kothari *(Noticee no. 2)* and Mr. Dharmendra Kothari *(Noticee no. 3)* were authorised to "sell, purchase, transfer, endorse, negotiate documents and/or otherwise deal through M/s Guiness Securities Ltd. on behalf of the company".

5.122. Having gone carefully the above records, it is observed that Mr. Gaurav Choudhary (*Noticee no. 26*) has been arraigned in the present matter as a Director of Awadhoot Marketing Pvt. Ltd. (*Noticee no. 22*), where he was a Director between February 18, 2014 to April 30, 2015. He was associated with the *Noticee no. 22* for a

brief period and that too in the capacity of a non-executive Director. Further, the materials on record are not sufficient to attach him responsible vicariously for the alleged act of the *Noticee no. 22*. The records submitted by him show that it was *Noticee no. 2* who was instrumental in managing the business of the *Noticee no. 22*, which further strengthen the allegation of *Noticees no. 1* and *22* being connected entities.

5.123. As regard to the submission of the *Noticees no. 11* and *12* that they used to received instruction from the *Noticee no. 26* and further submitting screen-shots of messages in support of the said submission, it is observed that same pertains to the time period, December 04, 2018 to October 14, 2019 and during that period, *Noticee no. 26* was ceased to a Director with the *Noticee no. 22*. Further, from the limited materials made available during the course of hearing, I am of the view that the same are not sufficient to hold the *Noticee no. 26* convincingly that he acted or omitted to act so as to fasten with liability under the relevant provisions as alleged in the SCN. Considering the above fact that Mr. Gaurav Chaudhary (*Noticee no. 26*) was only a non-executive Director and he was not authorised to effect sale or purchase of shares, I am inclined to give the benefit of doubt to the present *Noticee*.

***Mahabir Chand Jain* (Noticee no. 28) *and Jayant Kumar Jain* (Noticee no. 29)**

5.124. With respect to Mr. Mahabir Chand Jain *(Noticee no. 28)*, I see from the submissions of the *Noticee no. 29* (Mr. Jayant Jain) that Mr. Mahabir Jain *(Noticee no. 28)* passed away on May 06, 2021. A copy of the death certificate has been provided in support of the same. Owing to the above circumstance, the consideration of the individual liability of the said *Noticee* becomes superfluous. Accordingly, the present proceeding qua the *Noticee no. 28* is disposed of without any direction.

5.125. As regards to the allegations made in the SCN, it is noted that Mr. Jayant Kumar Jain *(Noticee no. 29)* is shown in the SCN as a Director of Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27) i*n his reply dated January 10, 2022, it has been submitted by him that he had been appointed as a Director in the company by his father. He has submitted that he was not involved in the business and that he was working as a salesman in a sari shop in Bangalore, and was not related or connected in any manner with *GSL*. However, he has in his reply claimed that whatever was done by Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)* was done by *GSL* as Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)* had been purchased by *GSL*. Though no additional information has been provided by him with respect to his claim that Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)* had been purchased by *GSL*, except the fact that he had found a handwritten note of his father in one of the old files. In this regard, it is seen from the Form 32 accessed from the MCA website that he joined Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)* as an Additional Director on April 30, 2007 and became an Executive Director from September 29, 2007. He was also categorised as a promoter in Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)*. These findings are in clear contradiction to his claim of having no knowledge and awareness of the business. Considering the above fact and involvement of Superfast Tours and Travels Pvt Ltd *(Noticee no. 27)* in misappropriation of client securities, as depicted in table 4 of this Order, I am of the view that *Noticee* is not successful in refuting the allegations made in the SCN and therefore, I conclude that the *Noticee* was adequately aware of the functioning of Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)*, being an Executive Director and a Promoter of Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)* had knowledge of the misappropriation of clients' shares and the diversion of

the proceeds done by *GSL* through Superfast Tours and Travels Pvt. Ltd. *(Noticee no. 27)*

5.126. Before summarising my aforesaid observations, I must note here that an entity which is granted registration as an intermediary, plays a crucial role in bridging the gap between the investment platforms such as Stock Exchanges and the investors. Its role is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of *SEBI Act, 1992* is the protection of interest of investors apart from promotion and development of the securities market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including stock brokers, depository participants, etc. which are not only required to act as an intermediary simplicitor i.e., a bridge or a connector between regulator and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors, as any deviation from the above noted objective could have a cascading adverse impact on the development of the securities market. In the present case, the *Noticee no. 1 (GSL)* who being a registered intermediary, was very much expected to stay compliant with all the directives of SEBI, both in letter and spirit, however, it has violated SEBI guidelines by misappropriating its clients' securities and diverting the funds through its *related entities* viz. *Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31* which played major role in in aiding and abetting *GSL* in mis-appropriating the securities of clients of *GSL* and further assisting *GSL* in diverting the proceeds from sale of such securities of the innocent clients. Therefore, in my considered view, such *related entities* (*Noticees no. 9, 16, 19, 20, 22, 27, 30* and *31)* also deserve an appropriate remedial direction to prevent

such wrong doings from recurring to the detriment of the interest of the securities market. I have also held in detail in this Order that *Noticees no. 2* and *3*, being the Managing Director and Executive Director of the *Company* respectively, were controlling the affairs of the *Company* and were actively involved in the omissions and commissions of the acts conducted by the *Company*. Both of these *Noticees* played the important and pivotal role in all the allegations levied against *GSL* and therefore, both of these *Noticees* viz. *Noticees no. 2* and *3* are liable for such violations committed by the *Company*. Thus, undisputedly *Noticee no. 1* and its Directors viz. *Noticees no. 2* and *3* were obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the securities market, however, they have clearly failed to do so. With regard to other *Noticee* Directors of *GSL* viz. *Noticees no. 4* to *8*, as already recorded above in this Order, considering the fact that *Noticees no. 4* to *8* have already undergone debarment for more than 3 years, in my considered view, the said period of debarment constitutes a reasonable remedial measure proportionate to the extent of negligence and omissions by these *Noticees* in discharging their duties as Directors of *GSL*. Regarding the role of the Directors of the *related entities* of *GSL* i.e. *Noticees no. 10,11,12,13,14,15,17,18,21,23,24,25,26, 28* and *29*, I have already recorded their role and my observations on such role in the earlier paragraphs of this Order. I also note that these entities have also undergone a debarment of more than 3 years since the passing of the *Interim Order*. Therefore, in my considered view, considering the peculiar facts of the matter, where it has been established that the *Noticees no. 2* and *3* were primarily and principally responsible for managing the affairs of not only the *Noticee no. 1* but were also exercising substantial influence in managing the business of the *related entities* and in the process, they have made these entities as dummy Directors in these

related entities who had no control over the functioning of those entities. Under the circumstances, I am of the view that the period of debarment already undergone by these *Noticees* who acted as mere dummy Directors, constitutes a reasonable remedial measure proportionate to the extent of negligence and omissions by these *Noticees* in discharging their duties as Directors of the *related entities* and the proceedings can be disposed of without any further direction in the matter.

5.127. Having made the observation qua the role and liability of the *Noticees*, it is also noticed that the instant proceedings also call upon for imposing of monetary penalty in terms of relevant provisions of laws for the violation alleged in the SCN.

5.128. Extracts of these penalty provisions are provided hereunder for facility:

Section 15HA of SEBI Act, 1992: *"Penalty for fraudulent and unfair trade practices. 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*

Section 23 D of the SCRA, 1956: *"Penalty for failure to segregate securities or moneys of client or clients. 23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."*

5.129. ***Section 15J of the SEBI Act, 1992***:

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

Similarly, I note that for the imposition of penalty under the provisions of SCRA, Section 23J of the SCRA provides as follows:

"Factors to be taken into account while adjudging quantum of penalty. 23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely: —

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

Explanation: —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section."

5.130. Upon a consideration of the above penalty provisions, I find that *GSL*, which was a stock broker has by misappropriating the securities of its clients and diverting the sale proceeds and other accompanying violations indulged in fraudulent and unfair trade practices thereby attracting penalty under Section 15 HA of the *SEBI Act, 1992*. I find

that *GSL*, which was a stock broker has failed to segregate securities/moneys of its clients and used the securities/ moneys of its clients for other client, thereby failed miserably in performing its fiduciary duties that it statutory owes towards the clients. The alleged acts on the part of the *Noticee no. 1* knowingly performed by the *Noticees no. 2* and *3* over a decade are so grave and serious in nature which, in my considered view deserve penalty under Section 23 D of the *SCRA, 1956*, not only as a consequence of the fraudulent acts perpetrated upon the investors of the securities market but also to send a proper message to the market to have a deterrent effect. The facts enumerated in this Order have adequately indicated that the gravity of violations have been committed repeatedly over a period of time, and such violations have caused loss to the investors.

5.131. As established above, the two Directors of *GSL (Noticees no. 2* and *3)* by virtue of Section 27 of the *SEBI Act, 1992* have violated the provisions as have been violated by *GSL*, and accordingly have indulged in fraudulent and unfair trade practices thereby attracting penalty under Section 15 HA of the *SEBI Act, 1992*. The *related entities* of *GSL* were used as conduits for misappropriation of the securities of clients and diversion of the sale proceeds and accordingly have indulged in fraudulent and unfair trade practices thereby attracting penalty under Section 15 HA of the *SEBI Act, 1992*. Further, as already dealt above, the *Noticees no. 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17 ,18, 21 ,23, 24, 25, 26, 28* and *29* have already undergone a debarment of more than 3 years. When considered with the fact that it was the *Noticee nos. 2 and 3* who were instrumental in managing and operating directly the affairs of *GSL* as well as the affairs of the *related entities*, I find that the aforesaid 3 years of debarment already undergone by these entities (*Noticees no. 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17 ,18, 21 ,23, 24, 25, 26, 28* and *29*), is sufficient as a remedial measure proportionate to the extent

of negligence and omissions made by these *Noticees* in discharging their duties as Directors of the *GSL* and the *related entities*. Therefore, no further directions for penalty are required against them.

6. Directions and Monetary Penalties -

6.1. Based on the above, I, in exercise of powers conferred upon me under sections 11(1), 11 (4) and 11B (1), 11 B (2), 11 D r/w Section 19 of the *SEBI Act, 1992* and Section 12 A (1) and 12 A (2) of the *SCRA 1956,* hereby pass the following directions:

a. The *Noticees*, as listed in the table below, are hereby restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner:

Table- 19

Noticee no.	**Name of the *Noticee***	**Whether debarred by the *Interim Order* or not ?**	**Period of Debarment**
1	Guiness Securities Limited	Yes	7 years
2	Kamal Kumar Kothari	Yes	7 years
3	Dharmendra Kothari	Yes	5 years
9	S K B Securities Ltd.	Yes	5 years
16	Param Commodities Pvt. Ltd.	Yes	5 years

19	Paramarth Agro Marketing Private Limited	Yes	5 years
20	Apurva Commodities Pvt. Ltd.	Yes	4 years
22	Awadhoot Marketing Pvt. Ltd.	Yes	4 years
27	Superfast Tours and Travels Pvt. Ltd.	Yes	5 years
30	Shri Vishnu Krupa Commodities Private Limited	No	5 years
31	Pawantar Agro Agencies Pvt. Ltd.	No	4 years

b. It is clarified that while calculating the period of debarment as directed above, the period already undergone by the respective *Noticees*, in pursuance of the *Interim Order* shall be taken into consideration and the same shall be set-off to give effect to the directions of restraint and prohibition, as directed above.

c. It is further clarified that during the period of restraint the existing holding of securities of the *Noticees*, including the units of mutual funds, shall remain under freeze.

d. Further, *Noticees no. 2* and *3* shall also be restrained from holding any position of Director or Key Managerial Personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the

public or any intermediary registered with SEBI for the respective periods as provided in the table no. 19 above.

e. The following *Noticees* are hereby imposed with, the monetary penalties, as specified hereunder:

Table- 20

Noticee no.	**Name of the *Noticee***	Provisions under which penalty imposed	Amount of Penalty (INR)
1	Guiness Securities Limited	Section 15 HA of the *SEBI Act, 1992*	1.5 crore
		Section 23 D of the SCRA	50 Lakhs
2	Kamal Kumar Kothari	Section 15 HA of the *SEBI Act, 1992*	1 crore
3	Dharmendra Kothari	Section 15 HA of the *SEBI Act, 1992*	75 Lakhs
9	S K B Securities Ltd.	Section 15 HA of the *SEBI Act, 1992*	10 Lakhs
16	Param Commodities Pvt. Ltd.	Section 15 HA of the *SEBI Act, 1992*	10 Lakhs
19	Paramarth Agro Marketing Private Limited	Section 15 HA of the *SEBI Act, 1992*	10 Lakhs
20	Apurva Commodities Pvt. Ltd.	Section 15 HA of the *SEBI Act, 1992*	5 Lakhs
22	Awadhoot Marketing Pvt. Ltd.	Section 15 HA of the *SEBI Act, 1992*	5 Lakhs
27	Superfast Tours and Travels Pvt. Ltd.	Section 15 HA of the *SEBI Act, 1992*	10 Lakhs
30	Shri Vishnu Krupa Commodities Private Limited	Section 15 HA of the *SEBI Act, 1992*	10 Lakhs

31	Pawantar Agro Agencies Pvt. Ltd.	Section 15 HA of the *SEBI Act, 1992*	5 Lakhs

f. The *Noticees* mentioned in the table no. 20 above shall remit/pay the said amount of penalties within 45 days from the date of receipt of this order. The *Noticees* shall remit / pay the said amount of penalties either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said *Noticees* may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	

Payment is made for : (like penalties / disgorgement /recovery/settlement amount/legal charges along with order details)	

g. *Noticees no. 1 to 3* are directed to not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets including money lying in bank accounts except with the prior permission of SEBI.

h. *Noticees no. 1 to 3* are directed to provide the Stock Exchanges an updated list of inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments as well as the details of any loans or advances, recoverable by them as on the date of this Order, immediately but not later than 10 working days from the date of receipt of these directions.

i. The Stock Exchanges shall deal with the claims of clients of *GSL* in accordance with their respective bye–laws and procedures, after adjusting the disbursements made through the Defaulters' Committee mechanism. Further, the funds, securities and assets of *Noticees no. 1 to 3* recovered by the Stock Exchanges shall be used for the payment of the clients of *GSL*, in precedence over all other resources available to Stock Exchanges under law. Further, *Noticees no. 1 to 3* are directed to fully cooperate with Stock Exchanges in ensuring the aforesaid direction including in liquidating the funds, securities, charge, recoverable dues, advances and other movable and immovable assets.

j. The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by the *Noticees no. 1 to 3* except for the purpose of compliance of direction stated at sub- paragraph (e) and (i) above.

k. The proceedings qua the *Noticees no. 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 21, 23, 24, 25, 26, 28* and *29* are disposed of with a cautionary advice to be careful while dealing on securities market, in view of the discussion in paragraph 5.126 and 5.131 of this Order. Consequently, the directions issued vide the *Interim Order* and the *Confirmatory Order* qua the *Noticees no. 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 21, 23, 24, 25, 26, 28* and *29* are hereby revoked.

6.2. The above directions shall come into force with immediate effect.

6.3. A copy of this order shall be served upon the *Noticees* immediately. A copy shall be served on the recognised Stock Exchanges, Banks, Registrar and Transfer Agents and Depositories for necessary action.

-Sd-

DATE: JUNE 30 , 2022 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA