WTM/GM/EFD/ 99 / 2017-18

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In respect of Show Cause Notice dated September 19, 2016 in the matter of Zenith Infotech Ltd. (ZIL)

In respect of:

Sr. No.	Noticees	PAN
1.	Zenith Infotech Ltd.	AAACZ0401B
2.	Rajkumar Saraf	AURPS4374C
3.	Akash Rajkumar Saraf	AAFPS8849C
4.	Vipin Shah	AAHPS8417J
5.	Vijay Ramchandra Mukhi	N.A
6.	Devita Rajkumar Saraf	AAFPS8848D
7.	Vijayrani Rajkumar Saraf	AMTPS0851J
8.	Zenith Technologies Pvt. Ltd.	AAACZ2074L
9.	Vu Technologies Pvt. Ltd.	AACCV1663P

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

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1. Zenith Infotech Limited (hereinafter referred to as "**ZIL**"/"**the company**") is a public limited company having its shares listed on the Bombay Stock Exchange Ltd. (hereinafter referred to as "**BSE**") and the National Stock Exchange Ltd. (hereinafter referred to as "**NSE**").

2. Based on a preliminary examination into the sudden change in price of the scrip of ZIL, an ad interim ex -parte order dated March 25, 2013, was passed, restraining the promoters of the company from accessing the securities market and prohibiting them from buying, selling or dealing in securities in any manner whatsoever, till further directions. Further, the board of directors of ZIL was directed to furnish, within 30 days from the date of the interim order, bank guarantee(s) of a minimum tenure of one year, for USD 33.93 million (i.e. the amount of sale proceeds of MSD Division that allegedly had been diverted), in the name of Securities and Exchange Board of India, without using the funds of ZIL or creating any charge on assets of ZIL.

3. ZIL appealed before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"), impugning the said interim order of SEBI. The Hon'ble SAT set aside the interim order, vide its order dated July 23, 2013. This order of the Hon'ble SAT was challenged by SEBI in an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated August 27, 2013 granted stay of the operation of the said SAT order. Subsequently, the Hon'ble Supreme Court vide its order dated September 10, 2013, extended the time period for furnishing the bank guarantee from 30 days to 40 days. While the appeal was pending, as directed by the Hon'ble Supreme Court, an opportunity of personal hearing was granted to the Noticees on March 06, 2014. Subsequently, SEBI vide its order dated April 11, 2014 (hereinafter referred to as "**the confirmatory order**"), confirmed the directions issued vide its interim order dated March 25, 2013.

4. Subsequently, the promoters/directors of ZIL filed an appeal before the Hon'ble SAT against the confirmatory order. The appeal against the interim order which was already pending before the Hon'ble Supreme Court was heard and was disposed off by order dated August 19, 2014 on the ground that the appeal had become infructuous since SEBI had passed the confirmatory order on April 11, 2014 which was again in appeal before SAT. In the meanwhile, detailed investigation was conducted in the matter pursuant to which a Notice dated September 19, 2016 (hereinafter referred to as "**the SCN**") was issued to the noticees asking them to show cause why suitable directions under Sections 11B and 11(4) of the SEBI Act, 1992 including disgorgement of ill-gotten gains should not be issued against the noticees, for the alleged violations of Section 12 A (b) and (c) of the SEBI Act, 1992, Regulations 3 (a), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, Clauses 36 and 21 of the Listing Agreement, read with Section 21 of the Securities Contracts (Regulation) Act, 1956 and Clause 2.1 read with Clause 7.0 (ii) of the Code of Corporate Disclosure Practices for Prevention of Insider Trading provided in Schedule II read with regulation 12 (2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

5. Relevant facts of the case in brief, as described in the show cause notice, are discussed in the following paragraphs.

FACTS OF THE CASE IN BRIEF

6. On September 15, 2006, ZIL offered USD 33 million 3.0% convertible bonds due for repayment/redemption on September 21, 2011. Subsequently, on August 14, 2007, ZIL offered USD 50 million 3.0% convertible bonds due for redemption in August 2012. On December 27, 2010, ZIL announced to BSE/NSE that its Board of Directors had resolved to raise funds for re-payment/redemption of FCCBs and for this purpose ZIL was calling an Extraordinary General Meeting (EGM) to obtain shareholders' approval to augment funds through borrowing or sale of assets, divisions, subsidiaries etc. A resolution was passed by the shareholders of ZIL at its EGM held on January 29, 2011, approving and authorizing its Board of Directors to raise money for repayment/redemption of FCCBs in one or more of the following methods:

> *"1. To borrow moneys from Domestic markets and/or through External Commercial Borrowings up to an amount not exceeding Rs. 1500 crores.*
>
> *2. To sell and /or lease the business and/or divisions including the subsidiaries (wholly and partly) of the company and for that purpose to issue debt securities/ bonds, etc, in the domestic or international markets, as permitted by law so as to redeem/ re-pay the outstanding Foreign Currency Convertible Bonds which would come for re-payment / redemption in August, 2011 and August 2012."*

7. On the maturity date for the first set of bonds i.e. September 21, 2011, ZIL failed to make the repayment. The two series of FCCBs issued by ZIL due for redemption in September 2011 and August 2012 had terms of cross default stipulating that default in redemption of FCCBs due in September 2011 would entitle the bondholders to accelerate repayment obligation on the other series of FCCBs otherwise due for redemption in August 2012. Accordingly, the bondholders issued an event of default notice dated September 27, 2011 to ZIL and also issued a notice dated September 30, 2011 for acceleration of the 2012 bonds, declaring the 2012 bonds as due and payable.

8. On September 26, 2011, ZIL informed BSE that *"the Company have spun-off one Division of its Business known as MSD Division to M/s. Zenith Monitoring Services Pvt. Ltd., Mumbai, which will be a subsidiary of Zenith RMM LLC, by way of an Asset Purchase Agreement. However, Zenith Infotech Ltd., is going to be a major shareholder."*

9. It is gathered from a press release dated September 28, 2011, available on the website of Continnuum Managed Service, www.continuum.net, which was earlier known as Zenith RMM LLC (hereinafter referred to as Zenith RMM), Summit Partners, a private

equity fund made a sizable growth equity investment for creation of a separate company by the name Zenith RMM. Zenith RMM, appears to have been purportedly set up to acquire the MSD business of ZIL, with ZIL continuing to be its major shareholder and Mr. Akash Saraf as a member of the Board of Directors of Zenith RMM.

10. ZIL vide their letters dated October 13, 2011 to BSE/NSE and December 10, 2011 to SEBI, informed that they were in negotiations with the FCCB holders to extend the time for redemption of FCCBs while the trustees on behalf of the FCCB holders filed a suit against ZIL for recovery on October 21, 2011 and also filed a winding up petition against ZIL on December 21, 2011. ZIL had also made disclosures to BSE on October 13, 2011, that they planned to utilise sale proceeds of MSD Division for partial repayment of FCCBs. The extract of the aforesaid disclosure to the Exchanges are as follows:

> *"1. The Company has defaulted on its US$33mn FCCB which was due on September 21, 2011 and the Company was and in negotiations with the bondholders to extend the time for repayment.*
>
> *2. As informed to BSE earlier vide letter dated September 24, 2011, we have received all monies due from Zenith RMM, LLC except for the amount to be held in escrow, part of which the Company plans to utilize for partial repayment of FCCBs.*
>
> *3....."*

11. ZIL had received a total consideration of USD 54.7 million from the sale of MSD business, out of which an amount of USD 6 million was kept in the Escrow account. Of the remaining amount of USD 48,712,391 received, USD 21,712,411 was received in the Citibank EEFC a/c No. 0350609288 of ZIL and USD 26,999,980 was received in the Standard Chartered account No. 01-2069905-01 of Zenith Infotech (FZE), Dubai (hereinafter referred to as "**Zenith Dubai**"), a wholly owned subsidiary of ZIL, based in Dubai, on September 27, 2011. The announcement made by ZIL to the exchanges did not provide any information on the fact that Zenith Dubai owned a part of the MSD business and that a major portion of the sale proceeds would be transferred to Zenith Dubai.

12. On analysis of the Asset Purchase Agreement (APA) dated September 23, 2011, entered between ZIL, Zenith Dubai and Zenith RMM LLC (Annexure 10), it is observed that disclosure schedule to the APA, providing the list of various assets transferred

indicates that the SAAZ software was an important intellectual property forming the backbone of the service delivery from the network operations centre in Mumbai. Hence, the SAAZ software appeared to be owned by ZIL and there is no mention of Zenith Dubai having any ownership, therefore there appears to be no apparent reason on the part of ZIL for having transferred a major part of the sale proceeds of the MSD business to Zenith Dubai.

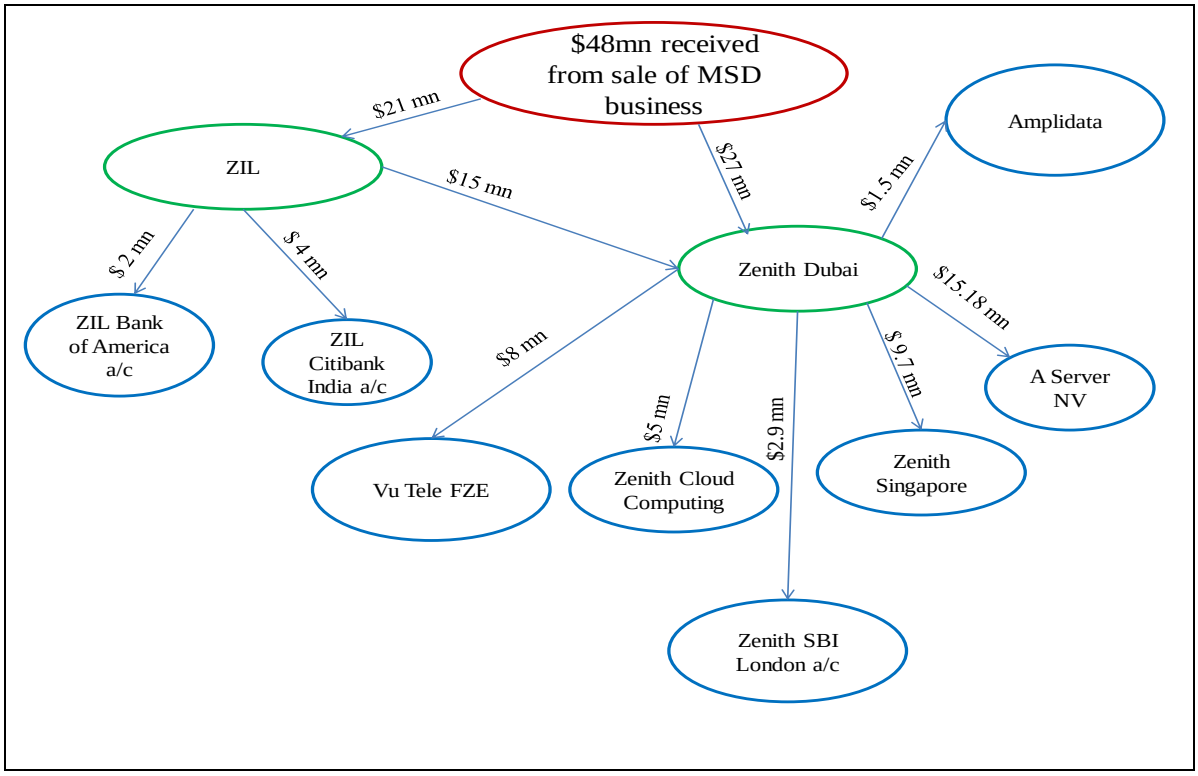
13. As per submissions made by ZIL vide their letter dated March 11, 2014, the sale proceeds received had been utilised in the manner as indicated in the following table:

TABLE 1

S.No.	Particulars	Amount in Millions (USD)
1	Transferred to Zenith Singapore for payment to be made to Standard Chartered Bank in respect of a secured working capital loan obtained by Zenith Singapore from Standard Chartered Bank	10.40
2	Payment of Advance Tax (Estimated Capital Gain Tax on sale of MSD Division)	5.80
3	Payments made to business creditors of Zenith Infotech	6.00
4	Purchase of capital goods for Zenith Infotech	4.53
5	Investment in Zenith Cloud Computing FZC	5.00
6	Investment in VU Telepresence FZC	8.00
7	Further payment to Standard Chartered Bank to completely repay working capital loan	2.20
6	Amounts not utilised and lying with ZIL	6.07
	TOTAL	48.70

14. The bank statements of ZIL, Zenith Dubai and Zenith Singapore were obtained and analysed to ascertain the claims made by ZIL, vide their letter dated March 11, 2014, with respect to transfer of funds to Zenith Dubai and Zenith Singapore. On analysis of the bank statements of ZIL and Zenith Dubai, it was observed that on September 27, 2011, ZIL received approx USD 21 million in its bank a/c no. 0350609288 with Citibank and Zenith Dubai received approx USD 27 million in its a/c no. 01-2069905-01 with Standard Chartered Bank. The payment made to Zenith Dubai was not mentioned by ZIL in any of their replies or at the time of personal hearing before the WTM.

15. The flow of funds as observed from the examination of bank statements of ZIL, Zenith Dubai and Zenith Singapore is depicted in the chart below:



16. While ZIL has claimed that out of the sale proceeds, an amount of USD 6 million was paid to business creditors of ZIL from its Bank of America a/c, it is observed that out of the sale proceeds only USD 2 million has been transferred to the said a/c, which has been subsequently transferred to various business creditors. From the documents available, it may be inferred that though an amount of approx USD 6 million has been paid to various entities claimed to be creditors of ZIL, the entire payments have not been made only out of the sale proceeds, as only USD 2 million has been transferred to the Bank of America account, from which the payments were shown to have been made to the creditors. Therefore it would appear that the balance of USD 4 million has not been sourced from the sale proceeds as claimed by ZIL. It was also observed that of the total payment made to the various business creditors, payment of an amount totalling USD 347004.19 was made prior to the receipt of the sale proceeds in the Bank of America account. ZIL submitted proof of having made a payment of USD 3 million from the said Bank of America account, which again could not have been made out of the sale proceeds, as only USD 2 million has been transferred to the Bank of America account, out of the sale proceeds.

17. It was observed that Zenith Dubai had transferred funds to other subsidiaries of ZIL, namely Vu Telepresence FZC, Zenith Cloud Computing FZC and Zenith Singapore, out of the sale proceeds. For ascertaining the reason for the investment made in Vu Telepresence FZC and Zenith Cloud Computing FZC, ZIL was vide various letters and summons dated March 28, 2014 and August 26, 2014 advised to submit the following documents,:

- Copy of valuation report of VU Telepresence FZC and Zenith Cloud Computing FZC, for making investment in these companies.
- Board Resolution for investing in VU Telepresence FZC and Zenith Cloud Computing FZC.
- Annual Report of VU Telepresence FZC and Zenith Cloud Computing FZC for the financial years 2009-10, 2010-11 and 2011-12.
- Bank statements of all the subsidiaries of ZIL for the period 01/01/2011-31/12/2011.
- Bank Reconciliation statement of all the subsidiaries of ZIL as on 30/09/2011.

However, the documents sought were not provided by ZIL. Thus it was alleged that, ZIL has not made any submissions as to the reasons for making an investment of USD 13 million in its subsidiaries out of the sale proceeds which was meant for repaying the FCCB holders.

18. On examination of the bank statements and the documents submitted by ZIL, it was observed that Zenith Singapore, which as per the information available in the Annual Report of ZIL for the year Oct 1, 2011 to Sep 30, 2012 is a subsidiary of ZIL, received an amount of USD 12.6 million from the sale proceeds of the MSD business. The amount so received was claimed to have been utilised for settlement of working loan/ over draft facility availed by Zenith Singapore from Standard Chartered Bank.

19. Zenith Dubai was found to have transferred an amount of USD 1.5 million to Amplidata and an amount of USD 15 million was to A Server NV. ZIL submitted copies of letters from Amplidata stating that they have received USD 1.53 million from Zenith Dubai for purchase of Amplidata Dispersed Storage System under the OEM and software purchase agreement. However, ZIL had neither mentioned about their dealings with AServer NV in any of their correspondence with respect to the utilisation of the sale proceeds nor had they provided the reason for transfer of a substantial

portion of the sale proceeds to the said entity, in any of their submissions. It was seen that ZIL was connected to AServer NV and Amplidata.

20. On the basis of the aforesaid facts, the allegations laid out in the SCN, in short, were as follows:

(i) ZIL not only failed in its duty to make timely disclosure of price sensitive information on the exchange but also misrepresented material facts of default of redemption in the disclosures made pursuant to the clarification sought by BSE.

(ii) The announcement made by ZIL to the exchanges with respect to the sale of MSD business did not provide any information on the fact that Zenith Dubai owned a part of the MSD business and that a major portion of the sale proceeds would be transferred to Zenith Dubai.

(iii) ZIL had not made any submission on the reasons that compelled them to utilise the monies realised from the sale of MSD Division for purposes other than redemption of FCCBs. ZIL failed to provide the documents sought and thus was unable to justify the reason for said distribution of the sale proceeds.

(iv) ZIL also failed to fulfil its obligation to notify the exchanges at least 21 days in advance, the redemption date and the amount payable on redemption of FCCBs and simultaneously issue cheques to the FCCB holders so as to reach them before the date of redemption.

(v) ZIL concealed material price sensitive information, which obligated ZIL to disclose the default in redemption of FCCBs and the pending litigations, since they were price sensitive information.

(vi) ZIL and its promoters/directors through their decision and announcement dated December 27, 2010 made a promise to the shareholders without intending to perform the same and the promoters/directors of ZIL stripped the assets of ZIL for the benefit/interest of companies/entities controlled by them in a fraudulent and deceitful manner. ZIL and its promoters/directors not only failed to use the sale proceeds of MSD business for the purpose authorised by the shareholders but have also taken away the assets of ZIL either for their own benefit or for that of the entities owned and controlled by them without authority of shareholders and in blatant disregard of their approval.

(vii) The submissions made by ZIL with respect to the utilisation of funds did not corroborate with the findings of the investigation.

(viii) The fact that ZIL provided false and misleading disclosures to the exchanges further strengthens the inference that the conduct of the promoters/directors

in not utilising the sale proceeds of MSD business in accordance with the shareholders' approval was malafide.

REPLY OF THE NOTICEES

21. Pursuant to the issuance of the SCN, as per the request of the noticees, inspection of all documents collected during the investigation was granted on September 12, 2017. Additional documents sought by the Noticees were provided as enclosures to SEBI's letter dated October 11, 2017. Subsequently, the Noticees submitted replies on the following dates:

Noticee No.	Noticee name	Date of Reply
1	ZIL	NIL
2	Rajkumar Saraf	27.12.2017
3	Akash Saraf	20.11.2017 and 26.12.2017
4	Vipin Shah	NIL
5	Vijay Ramchandra Mukhi	22.12.2017
6	Devita Saraf	19.12.2017
7	Vijayrani Saraf	NIL
8	Zenith Technologies (Pvt.) Ltd.	27.12.2017
9	Vu Technologies Pvt. Ltd.	20.11.2017

22. An opportunity of personal hearing was granted to the noticees on February 01, 2018. Noticee Nos. 2 to 9 were represented by Shri Ravi Kadam, Senior Advocate, Advocates Shri Nirav Shah and Shri Nausher Kohli from DSK Legal and Advocate Shri KRCV Seshachalam. Noticee No.1 was represented by Shri Sanoop M.S. on behalf of the Official Liquidator, High Court of Bombay. Pursuant to the said hearing, the noticees filed further submissions with SEBI on February 15, 2018.

23. Submissions of the noticees, in brief, are narrated in the following paragraphs.

23.1 Noticee Nos. 2 and 3 - Rajkumar Saraf and Akash Rajkumar Saraf

(i) There are multiple inconsistencies between the interim order passed by SEBI on March 25, 2013, subsequent confirmatory order passed by SEBI on April 11, 2014 and the SCN, significant among them being that while the interim and

confirmatory orders alleged that the promoters/directors of ZIL caused losses to ZIL, the SCN includes ZIL as one of the noticees alleged to have perpetrated fraud on the company.

(ii) While the SCN makes no mention of furnishing of any bank guarantee, it still makes an unsubstantiated demand of disgorgement without setting out the exact amount that is required to be disgorged. There is no explanation provided by SEBI as to which particular transaction or acts have resulted in such an order of disgorgement.

(iii) SCN is silent on how the promoters or directors of ZIL have benefited from the purported ill-gotten gains on account of application of the sale proceeds from the sale of the MSD Business.

(iv) The default in redemption of FCCBs is a dispute inter se between the trustees of the bondholders and ZIL which is sub-judice before the Hon'ble Bombay High Court. Further, the corporate announcement of shareholders decision cannot be treated as a promise made to any third person in law. If there is a failure to comply with the decision, Company law provides for remedies to the persons aggrieved and SEBI has no jurisdiction whatsoever to enforce shareholders resolutions. Similarly, the realisation and investment of funds from MSD Business is a matter of rights of shareholders against ZIL and this is adequately covered in the provisions of Companies Act and the shareholders have remedies available under the Companies Act if their resolutions are not implemented. The dispute regarding the defaults in repaying FCCB Bond is a subject matter of civil suit No. 2865 of 2011. The purported defaults to pay FCCBs is also a subject matter of a winding up petition being Company Petition No. 28 of 2012 filed by the FCCB Holders, which petition contained all these allegations of defaults and the Hon'ble Bombay High Court had ordered winding up of ZIL by its order dated December 13, 2013 and the said order has been challenged before the appeal bench of the Hon'ble Bombay High Court and the same has been dismissed. An appeal against the order of the appeal bench of the Hon'ble Bombay High Court is pending before the Hon'ble Supreme Court of India. Therefore, the FCCB holders have got adequate protection from the Hon'ble Bombay High Court and SEBI need not interfere in the matter at all.

(v) The main allegations levelled against the noticees is violation of SEBI (PFUTP Regulations), 2003. In order to prove fraud under the said regulations, "dealing in securities" must necessarily be demonstrated. On a plain perusal of the shareholding pattern disclosed by the promoters or directors of ZIL to Bombay Stock Exchange and to National Stock Exchange for the period January 2010 — December 2014, it is abundantly clear that there has been no change in shareholding of or any "dealing in securities" by any of the promoters or directors of ZIL.

(vi) As on the date of the EGM, the amount due to the Bondholders was not crystallized as the bonds were fully or partly convertible at the sole option of the FCCB bondholders. Had the FCCB bondholders elected to convert in full or in part, then the amount of bonds to be redeemed would be different than what actually became due on September 21, 2011. Hence, the explanatory statement specifically stipulated that one of the objectives (and not the sole objective) of sale proceeds of MSD Business was to repay the FCCB bondholders. While the sale proceeds of MSD Business were good enough to pay the 2006 FCCBs, the same were grossly insufficient to repay both the 2006 FCCBs and 2007 FCCBs. Officials of ZIL were in continuous negotiations with representatives of instructing bondholders viz., Mr. Mickey Commar and Mr. Prabhjot Commar (to make a part payment and extend the maturity date for the rest of the amounts) from September 21, 2011 and other bondholders till the time BNYM filed the recovery suit before the Hon'ble Bombay High Court. During the course of negotiations, the trustees representing majority bondholders viz., BNYM had already accelerated 2007 FCCBs and demanded repayment of both 2006 FCCBs as well as 2007 FCCBs. BNYM filed Suit No. 2865 of 2011 on October 21, 2011 and Company Petition No. 28 of 2012 on December 21, 2011, both before the Hon'ble Bombay High Court. Various orders were passed in the Suit from time to time. Between September 27, 2011 to October 12, 2011 ZIL had meetings and phone discussions with M/S QVT Financial LP, who as per affidavits filed in the Hon'ble Bombay High Court owned a majority of the 2011 and 2012 bonds. Though there were multiple meetings and discussions between representatives of ZIL and those of various bondholders, the offer to make part payment towards both the 2006 and 2007 FCCBs were consistently rejected. In any case, ZIL was always ready and willing to repay the 2006 FCCBs. When ZIL was making preparations for clearing the 2006 FCCBs, in view of the cross default clause, there was an unusual demand to repay both 2006 and 2007 FCCBs even though

the 2007 FCCBs were not due at that time. In December 2011, ZIL appointed M/S ISM Capital, LLP, a London based investment and debt advisory firm to assist/advise it in its efforts to negotiate a settlement and repayment schedule with the FCCB holders. This effort went on from early 2012 to June 2012. Between August 2012 to October 2012, there were settlement negotiations attempted by the law firm representing ZIL (M/S Doijode Associates), the trusteee for the FCCB holders (M/S AZB & Partners) and QVT Financial LP (M/S Juris Corp). The non-payment was merely a technical default on the part of ZIL and not a deliberate act of default by ZIL in defaulting on repayment of the FCCBs. Since the bondholders were unwilling to negotiate the terms of the repayment, available funds were transferred for other purposes of the company, which is now characterized as "diversion".

(vii) During the hearing before the Whole Time Member of SEBI on March 6, 2014, the minutes and notice of the AGM held on March 28, 2013 was brought on record, wherein, 94 members present in person and 4 members present by proxy unanimously passed the following resolution: *"RESOLVED THAT the Profit and Loss Account for the year ended 30th September, 2012 and the Balance Sheet as at that date and the Reports of the Directors and the Auditors thereon be and are hereby received and adopted".* Though it was argued that shareholders of ZIL had ratified the sale of MSD Business, SEBI disregarded the same on the ground that that there was neither a discussion nor a specific resolution by the shareholders of ZIL to ratify the transfer of the sale proceeds of the MSD Business for purposes other than those promised to the shareholders in the EGM dated January 29, 2011. Post the conclusion of the hearing before the Whole Time Member of SEBI on March 6, 2014, at the AGM held on March 29, 2014 (wherein 102 members of ZIL were present in person and 6 members present by proxy) the following resolution was passed unanimously:

> *"RESOLVED THAT consequent upon the Special and Ordinary Resolutions passed by the Shareholders in the Extraordinary General Meeting held on 29th January, 2011, that:*
>
> *(1) The Shareholders of the Company hereby re-confirm / re-ratify the sale of the Managed Services Business and the consideration received therefor by the Company and its subsidiaries, and*
>
> *(2) The Shareholders of the Company also hereby re-confirm / re-ratify the application of the sale consideration so received towards / for re-payment of loans, payment to creditors, towards capital goods, payment*

of taxes and investments in subsidiaries as per the Consolidated Balance Sheet and the Consolidated Profit & Loss Account for the year ended 30th September, 2012 and that the Audited Balance Sheet As At 30th September, 2013 and the Audited Profit and Loss Account for the financial year ended on that date and the Reports of the Directors and the Auditors thereon be and are hereby received and adopted."

(viii) The sale of MSD division involved the following agreements/arrangements:

(a) U.S. Asset Purchase Agreement dated September 23, 2011 was entered into between ZIL, Zenith Dubai, Akash Saraf, Rajkumar Saraf and Zenith RMM LLC (now known as Continuum Managed Services LLC) ("U.S. APA"). This agreement was the substantive agreement covering the sale of the MSD Business for a consideration of USD 54 Million in Cash out of which, USD 6 Million was to be held in Escrow and equity in Zenith RMM LLC now known as Continuum Managed Services LLC) worth USD 7.4 Million. The U.S. APA envisaged a payment of USD 27 million to ZIL (USD 21 million to be paid immediately and USD 6 million in escrow) and approximately USD 34.4 million to Zenith Dubai (USD 27 million to be paid immediately in cash and the balance via a 15% stake in Continuum Managed Services, then known as Zenith RMM).

(b) Indian Asset Purchase Agreement dated September 23, 2011 was entered into between ZIL and Zenith Monitoring Services [a wholly owned subsidiary of Zenith RMM LLC (now known as Continuum Managed Services LLC)] ("Indian APA"). This agreement covered the sale of the movable assets located in India and forming part of the MSD Business for a consideration of USD 1,40,000/-).

(c) Escrow Agreement dated September 23, 2011 was entered into between ZIL and Zenith RMM LLC (now known as Continuum Managed Services LLC) for an amount of USD 6 Million. This agreement dealt with the terms of the amount to be held in Escrow under the U.S. Asset Purchase Agreement.

(d) Transition Services Agreement dated September 23, 2011 was entered into between ZIL and Zenith RMM, LLC (now known as Continuum Managed Services, LLC). This agreement dealt with transitory period post the sale of the MSD Business.

(e) Share Purchase Agreement dated September 23, 2011 was entered into between Zenith RMM LLC (now known as Continuum Managed Services LLC) and ZIL, Akash Saraf and Rajkumar Saraf for the sale of shares of

Zenith Monitoring Services Private Limited (now known as Continuum India)

(f) Zenith Monitoring Services Private Limited was set up to transfer the India based employees of the MSD Business of ZIL once the sale of the MSD Business was completed.

(ix) The SEBI Order was passed ex-parte on March 25, 2013 almost 1 1/2 years after the FCCB default.

(x) Payments to Creditors: Payment of USD 6 million was made to over 40 business creditors / suppliers that ZIL had regular business. Documents including copies of cheques, wire-transfer receipts etc submitted to SEBI, evidence that the promoters/directors of ZIL were not beneficiaries of this payment of USD 6 million.

(xi) Repayment of Zenith Singapore's loan: A working capital loan availed by Zenith Singapore from Standard Chartered Bank Singapore, amounting to USD 12.65 Million was repaid by ZIL using funds received from Zenith Infotech FZE. Zenith Singapore is a subsidiary of ZIL since 1999. The loan taken by Zenith Singapore was guaranteed via standby letters of credit (SBLCs) issued by Standard Chartered Bank India, which in turn were secured by the land and building assets of ZIL.

(xii) Purchase of Capital Goods of USD 4.53 million: Capital goods were purchased from various suppliers ZIL has been doing business with for years. USD 1.53 million was used towards purchase of the Dispersed Storage System under the OEM and software purchase agreement. Amplidata storage system was a critical software component used for ZIL's cloud computing business. The net amount paid to AServer NV was Euro 2.1 million (approximately USD 3.2 million). AServer was a distributor of Zenith's backup and recovery products for European markets. Further, AServer did develop software that did form a part of ZIL's cloud computing as well as backup and disaster recovery product lines and had its engineers providing advanced technical support services for its cloud computing and BDR services. Given the strategic nature of the relationship and how quickly the cloud computing business was growing there were discussions with the management of AServer for Zenith Dubai to make an investment in AServer.

(xiii) Investment in VU Telepresence FZC by Zenith Dubai of USD 8 million: VU Telepresence FZC is a 93.58% subsidiary of Zenith Dubai. Zenith Dubai made a direct investment in VU Telepresence FZC and was issued new / fresh equity shares at par value. VU Telepresence FZC was into the business of high-end video conferencing systems. This was an Investment made given the strong growth prospects in this business and the market for video conferencing systems worldwide is over USD 8 billion (approximately Rs. 52,000 Crore) annually.

(xiv) Investment in Zenith Cloud Computing FZC by Zenith Dubai of USD 5 million: Zenith Cloud Computing FZC is a 99.2% subsidiary of Zenith Dubai. Zenith Dubai made a direct Investment in Zenith Cloud Computing FZC and was issued new / fresh equity shares at par value. Subsequently this subsidiary has been closed and the entire money was repaid to Zenith Dubai, which in turn used it to make a payment to ZIL in April 2013 as per the order of the Hon'ble Bombay High Court. As Zenith Cloud Computing FZC had no creditors, upon its closure (voluntary liquidation), the money was repaid to its shareholder being Zenith Dubai.

(xv) Fluctuations in share prices of ZIL is not in the hands of the promoters/directors of ZIL alone and the same cannot be attributed to the ZIL's actions or inactions and the entire market conditions have to be taken into account.

(xvi) It is a coincidence that the notice of acceleration was received on the evening of October 12, 2011 and the letter from the BSE seeking clarifications was received in the morning of October 13, 2011, giving the impression that ZIL made its disclosure only when the BSE sought clarifications. With respect to the allegation that Clause 21 of the Listing Agreement was not complied with, on a plain reading it is apparent that the same applies to cases where cheques are to be paid for redemption money, inter alia, of bonds which are payable at par at centre agreed between exchange and the company and which shall be collected at par in any bank in the country at centres other than the centre agreed between the exchange and the company as such it has no application whatsoever to the redemptions of foreign bonds such as the present issue of FCCBs. The redemption of FCCBs does not happen by companies sending cheques to the bondholders. These payments are made via a funds transfer (wire transfer) done by the Authorized Dealer and the question of issuing cheques does not arise.

(xvii) ZIL did not transfer a major part of the sale proceeds of the MSD Business to Zenith Dubai. The asset purchase agreement envisaged a payment of USD 27 million to ZIL (USD 21 million to be paid immediately and USD 6 million in escrow) and approximately USD 34.4 million to Zenith Dubai (USD 27 million to be paid immediately in cash and the balance via a 15% stake in Continuum Managed Services, then known as Zenith RMM). A mere perusal of Article 2.7 and 3.1 of the Asset Purchase Agreement and the Bill of Sale forming a part of the Asset Purchase Agreement clearly show that the allocation of the purchase price between ZIL and Zenith Dubai was arrived at post negotiations with the purchaser. SEBI has not come to any finding that the purchaser under the Asset Purchase Agreement was in collusion with the directors of ZIL. Zenith Dubai was a 100% subsidiary of ZIL at that time. Hence, Zenith Dubai receiving a portion of the consideration did not deprive ZIL or its shareholders of any part of the consideration in anyway whatsoever. The overseas offices and subsidiaries of ZIL employed over 200 people and had over 4000 customers out of which more than a 100 employees were for the MSD Business. Hence, it is incorrect to state that the MSD Business was an exclusive property only from India. Zenith Dubai was a party to the asset purchase agreement and received funds directly from the purchaser. Given these circumstances and the fact that Zenith Dubai was a 100% subsidiary of ZIL it was not necessary to state that Zenith Dubai also received a portion of the consideration. ZIL operated a branch office in the United States of America. This branch office had its bank account with Bank of America. Hence, the above transfer was purely a movement of funds from one bank account of ZIL to another. A/C No. 0350609288 held with Citibank belonged to ZIL. Hence, this is not an application of the proceeds from the sale of the MSD Business but just the movement of money from one bank account held by ZIL to another.

23.2 Noticee No. 6 - Devita Rajkumar Saraf

(i) The Show Cause Notice is devoid of any specifics or details with regard to my involvement in the affairs of ZIL.

(ii) I have been included in the current proceedings and the Show Cause Notice for the sole reason that I am the daughter of the Chairman and sister of the Managing Director of ZIL. I am a only a shareholder of ZIL holding 5,21,224 equity shares constituting 4.11% of the paid up share capital

(iii) I was neither a Director nor an Officer of ZIL I was not privy to the dealings of ZIL with any of its payees in any capacity and I never had any role to play in

the decision making or implementation of those decisions as I was never a director or officer of ZIL or had any role to play in the management or affairs of ZIL. I have never received any payment or compensation from ZIL.

(iv) I had not received any funds from Zenith Dubai, either directly or indirectly.

(v) I had not dealt in securities of ZIL since May 2010 (the purchase of which was disclosed by ZIL) nor had induced anyone to deal in securities.

23.3 Noticee No. 8 - VU Technologies Pvt. Ltd. (VUTP)

(i) VUTP is an independent corporate entity and manufactures televisions and display products for consumers and corporations in India. The company was incorporated in 2005, its majority shareholder being Devita Saraf, who holds more than 90% of the issued shares of the company. Zenith Infotech Limited and/or its subsidiaries have never held any shares in VUTP.

(ii) VUTP is a only a shareholder of ZIL holding a total of 265,077 shares (approximately 2.09% of the paid up capital of ZIL). The said shares were acquired from the market in December 2008.

(iii) VUTP never had any board representation on ZIL or was never involved with the management of ZIL and/or the subject matter of the Show Cause Notice.

(iv) Though VUTP has been referred to as Promoter of ZIL, the same is denied. It has been stated as part of the 'promoter group' since as the majority shareholder of the Noticee, Ms. Devita Saraf, is the daughter of Mr. Rajkumar Saraf who is the promoter of ZIL.

(v) VUTP has not received any funds from ZIL from the proceeds of sale of MSD division.

23.4 Noticee No. 9 - Zenith Technologies Pvt. Ltd. (ZTPL)

(i) ZTPL is a only a shareholder of Zenith Infotech Limited ("ZIL") holding a total of 15,00,000 shares (approximately 11 .83% of the paid up capital of ZIL). It neither had any representation on the Board of ZIL nor was involved in the management of the affairs of ZIL.

(ii) ZTPL had no role to play in the disbursement of any funds by ZIL or Zenith Dubai.

24. Two of the shareholders of ZIL - QVT Mauritius West Fund and Quintessence Mauritius, who claim to hold 0.2438% of ZIL's equity share capital and whose affiliates i.e. QVT Fund LP and Quintessence Fund LP hold approximately 75.6% of the 2011 FCCBs and approximately 57% of the 2012 FCCBs issued by ZIL, sent a

letter dated February 26, 2018 to SEBI. The said letter contained submissions/grievances with respect to the alleged fraudulent device executed by ZIL and its promoters/directors. The submissions therein have been taken on record and have been considered, in addition to the facts and evidence on record, for the purpose of passing this Order.

25. Based on the facts and allegations stated in the show cause notice and replies received from the Noticees, the issues for determination in the instant case are listed as follows:

I. Whether the Noticees failed to make disclosures as mandated by Listing Agreement and the SEBI (Prohibition of Insider Trading) Regulations, 1992?
II. Whether the conduct of ZIL and its directors/promoters in the given facts and circumstances constitute a violation of the SEBI (PFUTP) Regulations, 2003?
III. Whether post-facto shareholder ratification of the ZIL's actions which were contrary to earlier shareholder decision, negates the allegation of violation of the SEBI (PFUTP) Regulations, 2003?
IV. Whether the preliminary objections of the Noticees on jurisdiction will apply to the given set of facts?

All the aforesaid issues are discussed separately in the following paragraphs.

FAILURE TO MAKE DISCLOSURES

26. Clauses 21 and 36 of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 *inter alia* read as follows:

> *"21. The Company will fix and notify the Exchange at least twenty-one days in advance of the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds will be payable and will issue simultaneously the interest warrants and cheques for redemption money of redeemable shares or of debentures and bonds, which shall be payable at par at such centres as may be agreed to between the Exchange and the Company and which shall be collected at par, with collection charges, if any, being borne by the Company, in any bank in the country at centres other than the centres agreed to between the Exchange and the Company, so as to reach the holders of shares, debentures or bonds on or before the date fixed for interest on debentures or bonds or redemption money, as the case may be."*
>
> *"36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation*

of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

(1) Change in the general character or nature of business:

...

(2) Disruption of operations due to natural calamity.

.....

(3) Commencement of Commercial Production/Commercial Operations

.....

(4) Developments with respect to pricing/realisation arising out of change in the regulatory framework.

....

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

.....

(6) Revision in Ratings

...

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;

...

vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.

...

The above information should be made public immediately."

27. Clauses 2.1 and 7.0 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading provided in Schedule II of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**PIT Regulations**") are as follows:

"2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

...

7.0 Medium of disclosure/dissemination: ...

(ii) Corporates shall ensure that disclosure to stock exchanges is made promptly."

28. The allegation of failure to comply with Clause 21 of the Listing Agreement is in relation to the alleged failure of ZIL to disclose to the exchange, its default in its obligation to repay the FCCB holders. The first set of FCCBs were due for repayment on September 21, 2011. In terms of the SCN, ZIL would have had to had make disclosure under Clause 21 of the Listing Agreement, 21 days before the FCCBs were due for repayment and simultaneously issue cheques to them so as to reach them before the date of redemption. The Noticees have contended that Clause 21 does not apply to FCCBs since the manner of redemption in the case of FCCBs is different. The redemption of FCCBs does not happen by companies sending cheques to the bondholders. These payments are made via fund transfer (wire transfer) done by the Authorized Dealer and the question of issuing cheques does not arise.

29. I have considered this submission but do not find merit in the same. The reference to 'debentures' and 'bonds' in Clause 21 of the Listing Agreement is generic and does not provide any exclusion for any specific type of bonds. In any case, clause 21 includes within itself two different obligations - one being that of disclosure and the other being the manner of redemption or repayment. Admittedly, FCCBs in the instant case have not been repaid and what concerns this Order is the non-disclosure under Clause 21. It is also not disputed that ZIL has not made any disclosure with respect to its maturity date for redemption/repayment of the 2011 bonds. I note that the essence of the disclosure insisted in Clause 21 is a notification of the redemption of bonds, 21 days in advance of the date on and from which the interest on bonds and redemption amount of bonds will be payable. This specific disclosure has not been made to the Stock exchange. Clearly therefore ZIL, being a listed company, has defaulted in its obligation to make disclosures under Clause 21 of the Listing Agreement.

30. The allegation of failure to comply with Clause 36 of the Listing Agreement is in relation to the alleged failure of ZIL to make disclosures relating to material events surrounding the non-redemption of FCCBs including pending litigations which were price sensitive in nature. It was also alleged that disclosures were not made to the effect that MSD business of ZIL was partly owned by Zenith Dubai *(which purportedly was the reason for transfer of proceeds arising from sale of MSD, to Zenith Dubai)*.

31. With respect to non-disclosure of material events, while I note that ZIL had made certain corporate announcements with respect to sale of MSD business and proposals for repayment to FCCB holders, the same cannot be said with respect to pending litigations. I note that mainly there were three sets of litigations in respect of the non-redemption of FCCBs - Suit filed by bondholders in City Civil Court on October 14, 2011, Suit filed by trustees of bondholders in Bombay High Court on October 22, 2011 and Winding up petition before the Bombay High Court on December 21, 2011. All of these litigations were clearly material and price sensitive since they related to large financial burden borne by the company and therefore were required to be promptly disclosed to the stock exchange under Clause 36 of the Listing Agreement. I have perused the corporate announcements made by ZIL on BSE during the period between October 2011 and January 2013 and note that ZIL had made no corporate announcements with respect to the said litigations. While the Noticees have made submissions with respect to compliance of Clause 36 of the Listing Agreement by referring to those corporate announcements made in respect of attempts to make repayment of FCCBs there are no justifications provided as to why ZIL did not provide full disclosure in respect of ongoing legal disputes with the bondholders. Similarly, sub-clause (7)((vi) of clause 36 of the Listing Agreement mandates that any action resulting in alteration of the terms of redemption of securities issued by the company must be disclosed promptly. Such disclosures not having been made, it is clear that ZIL is in violation of Clause 36 of the Listing Agreement.

32. The Noticees have contended that substantial portion of the proceeds from the sale of MSD business was received by Zenith Dubai since the MSD business was partly owned by it. Consequently according to them there was nothing illegal or improper about ZIL not having received the whole proceeds from the sale of the MSD business and cannot be treated as diversion, siphoning off or stripping of ZIL's assets. In their reply, Noticee Nos. 2 and 3 have also stated that there was no requirement for ZIL to state that part of the sale proceeds would be received by Zenith Dubai since some of the assets were owned by it. The Noticees have also contended that since Zenith Dubai was a 100% subsidiary of ZIL, the former having received a portion of the consideration did not deprive ZIL or its shareholders, as alleged.

33. I do not find any merit in the aforesaid argument of ZIL. While the ownership of MSD business may have been apparent to the management of ZIL or obvious by virtue of the Asset Purchase Agreements entered into between ZIL, Zenith Dubai and

Zenith RMM LLC, no submissions have been made by the Noticees as to whether Zenith Dubai's part ownership of the MSD business was ever disclosed to the shareholders in any filing of ZIL. Even assuming such disclosure had been made in the past, the corporate announcements made by ZIL relating to its proposal to raise money inter alia through sale of its subsidiaries and the corporate announcement post the sale of the MSD business did not make any reference to the purported part ownership of MSD business by Zenith Dubai. Any reasonable person examining the corporate announcements would have simply come to the conclusion that the divisions which were sold were owned by ZIL and thereby any proceeds thereof were due to ZIL. The argument that Zenith Dubai was a wholly owned subsidiary and therefore part of the sale proceeds were bound to be transferred to it as well is clearly without merit. If, as submitted by the Noticee, part of the sale proceeds was also due to Zenith Dubai, by implication it means that Zenith Dubai also owned the Division, a fact which was not supported by any corporate announcement prior to or after the sale. The purported ownership of MSD business by Zenith Dubai was material information in the context of the sale of the MSD business with the purported objective of repaying the FCCB Bondholders. Had the same been disclosed, the shareholders would have a clear understanding as to whether or not the FCCB holders would be repaid and evaluate the possible repercussions to the company's future. This was material information that was required to be disclosed under Clause 36 of the Listing Agreement, and failure to disclose the same constitutes a violation of the said clause.

34. Clause 2.1 read with Clause 7.0 of Schedule II of the PIT Regulations also mandate that price sensitive information must be disclosed promptly to the stock exchanges. The size of the FCCB issue and the claim of the creditors certainly had a significant bearing on the financial condition of the company. The suits and petitions filed by the bondholders claiming settlement of such large financial obligations, which the company found difficult to discharge, were therefore material and price sensitive enough to be disclosed promptly to the stock exchange. Thus, I find that ZIL was also in violation of Clause 2.1 read with Clause 7.0 of Schedule II of the PIT Regulations.

FRAUDULENT DEVICE

35. With respect to the allegation of fraud, the SCN alleges that the noticees have violated Section 12A(b) and (c) of the SEBI Act, 1992 and regulations 3(a), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to

Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). The said legal provisions are reproduced below for ease in reference:

Section 12A, SEBI Act

*"**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;

Regulation 3, PFUTP Regulations

Prohibition of certain dealings in securities
***3.** No person shall directly or indirectly—*
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) ...
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

36. The allegation of fraud committed by the Noticees is based on the following:

- ZIL, in its corporate announcements and explanatory statement to the Shareholder meeting, proposed to raise funds for repayment of the dues to FCCB holders, inter alia through sale of its assets/businesses.
- Post sale of its MSD business, disclosures were made stating the intent of repaying FCCB holders using sale proceeds.
- Contrary to the disclosed intention of using the sale proceeds for repayment of FCCB holders, the sale proceeds were diverted for benefit of ZIL, its promoters/directors or for the entities owned or controlled by them
- The diversion of funds was contrary to shareholder approval
- The alleged fraudulent device is supported by the omission to make disclosures and misrepresentations in the disclosures made by ZIL

37. I note from the facts on record that on December 20, 2010 and December 27, 2010, ZIL had made corporate announcements on BSE stating that it would be holding Board meeting and Shareholders EGM for obtaining approval to raise funds upto Rs 1500 crore for the anticipated repayment/redemption of FCCBs due in August 2011 and August 2012. On January 06, 2011, corporate announcement was made informing that EGM would be held on January 29, 2011 to seek shareholders approval for borrowing monies to the extent of Rs 1500 crore and/or sell or lease the businesses, divisions, subsidiaries of the company upto an amount not exceeding Rs 1000 crore. The Explanatory Statement attached to the notice for the shareholder meeting *(in relation to which corporate announcement was made)* also clarified that the aforesaid augmentation of funds was proposed in order to meet the requirements of anticipated repayment/redemption of FCCBs in August 2011 and August 2012. These disclosures would, normally convey to a public shareholder that ZIL intended to ensure that dues to FCCB holders would be satisfied based on the proposed augmentation of funds. The EGM held on January 29, 2011 unanimously approved the special resolution to borrow monies to the extent of Rs 1500 crore and unanimously approved the ordinary resolution to sell the company's business, divisions, subsidiaries upto an amount not exceeding Rs 1000 crore as the Board may decide in its absolute discretion. The Explanatory Statement to the notice convening the EGM provides the intent behind the resolution i.e. to repay the FCCB holders. To this specific point, Noticee Nos. 2 and 3 in their reply dated February 14, 2018 stated the following:

> *"At the outset, the Noticees submit that the* ***explanatory statement to the notice addressed to the shareholders of ZIL is just that i.e. it explains the reasons why a particular resolution is required to be passed. Once the shareholders pass a resolution, it is only the resolution that can be looked at and nothing else. The Noticees submit that on January 29, 2011 neither ZIL nor the Noticees had any idea whether the bondholders would convert their bonds into equity shares of ZIL or would redeem the bonds.*** *According to the Offering Circular and the Trust Deed, the bondholders had the option of deciding when to convert their bonds (in part of full) into equity shares or redeem the same. In view of this, it was impossible for ZIL or the Noticees to have known on December 27, 2010 (when the notice to shareholders along with explanatory statement was sent to all the shareholders of ZIL) or January 29, 2011 (when the resolution as passed in the EGM of ZIL) that the bondholders were likely to redeem their bonds as a result of which, ZIL would have had to repay the amounts due to the bondholders.* ***In the absence of ZIL or the Noticees having any knowledge in December, 2010 or January, 2011, it is inconceivable to contend that either ZIL or the Noticees were aware that the bondholders would call upon ZIL to redeem the***

bonds. Moreover, at that point there was no decision made to sell the MSD Business. *Rather the shareholders of ZIL gave its Board of Directors to raise funds via various means. Hence, to allege that there was a conspiracy back in December 2010 to sell the MSD business and apply the proceeds in contravention to the explanatory statement is erroneous and misconceived."* (emphasis supplied)

38. I find this argument to be unconvincing and appears to be an afterthought. As pointed out above, there were at least three different corporate announcements made around 7 months prior to the FCCB default stating ZIL's intent to make repayment of FCCBs and the need to raise funds for the said purpose. This is clearly in anticipation of the FCCB holders seeking repayment/redemption of the bonds they held. Also, though the Asset Purchase Agreements along with four other related agreements (LLC Agreement, Escrow Agreement, Transitory Services Agreement and Share Purchase Agreement) for sale of the MSD business were signed on September 23, 2011, the entire transaction could not possibly have been executed in a short time frame. The suspicion of fraudulent intent gets intensified since the Asset Purchase Agreements envisaged transfer of a substantial portion of the sale proceeds of MSD business to Zenith Dubai, when there were no corporate announcements disclosing that Zenith Dubai was a part owner of the MSD Business. It is also doubtful whether the shareholders and the FCCB Holders were aware that Zenith Dubai would be entitled to the said sale proceeds. On September 26, 2011, ZIL made a corporate announcement to the Exchange disclosing that it had sold its MSD Division to *"Zenith Monitoring Services Pvt. Ltd. Mumbai which will be a Subsidiary of Zenith RMM LLC by way of an Asset Purchase Agreement."* This disclosure was itself incomplete since as stated by the Noticee Nos. 2 and 3 in their reply dated February 14, 2018, the agreement with Zenith Monitoring Services Pvt. Ltd. only dealt with the sale of the movable assets located in India forming part of the MSD business. The aforesaid facts and circumstances compel me to conclude that ZIL and its promoters/directors did convey the message that there was an intent to use augmented funds for repayment of FCCB holders, got shareholder approval for the same and then reneged on the said decision by diverting the funds to Zenith Dubai at the stage of sale itself. This asset sale having been done without the knowledge and consent of the shareholders to the effect that the proceeds would be transferred to Zenith Dubai amounts to fraud. Further, there is absolutely no merit in the contention that there was no prior knowledge to the extent of conversion of FCCBs by the bondholders as any prudent company is expected to provide for the entire redemption without assuming any part conversion.

39. The other legs of this fraudulent device also laid out in the SCN in respect of which I find the Noticees defence to be inadequate, are brought out below:

(i) On November 14, 2011, $15 million was transferred from ZIL to Zenith Dubai A/c No. 01-2069905-01 with Standard Chartered Bank. On October 12, 2011 and March 07, 2012 $4.3 million and $5.45 million, respectively were transferred to Zenith Singapore from Zenith Dubai. On October 17, 2011 $2.9 million were transferred from ZIL's account with SBI, London to Zenith Singapore. The noticees have claimed that funds were transferred from ZIL and Zenith Dubai to Zenith Singapore was used to repay working capital loan availed of by Zenith Singapore from Standard Chartered Bank. Along with the reply filed by Noticee Nos. 2 and 3, documents have been filed to support their claim that the transfer of funds were for repayment of the working capital loan. SEBI had also verified the same by writing to the Monetary Authority of Singapore (MAS) which has confirmed that Zenith Singapore had made a repayment of working capital loan availed of from the Singapore branch of Standard Chartered Bank. During the personal hearing granted on February 01, 2018, the Noticees were asked whether this loan had been due for repayment or whether Zenith Singapore had reneged on the loan necessitating the guarantor i.e. ZIL, to arrange funds for repayment to Standard Chartered Bank. This was answered in the negative. Therefore while the genuineness of the working capital loan is not in question, it is suspect why ZIL felt it necessary to use the funds available in its Dubai Subsidiary (Zenith Dubai) to repay the working capital loan of Zenith Singapore during the same period, while it was purportedly engaged in negotiations for repayment to FCCB holders.

(ii) Out of the $54.7 million arising from sale of MSD Division of ZIL, around $27 million was received by Zenith Dubai. Also, as noted above, ZIL had transferred $15 million to Zenith Dubai on November 14, 2011. On November 24, 2011 Zenith Dubai transferred $1.53 million to a company named Amplidata and on November 28, 2011 Zenith Dubai transferred $ 15 million to a company named AServer NV. On October 12, 2011 sums of $8 million and $5 million, respectively was transferred from Zenith Dubai to VU Telepresence FZC and Zenith Cloud Computing FZC, respectively. Noticee Nos. 2 and 3 have justified the transfer of funds from Zenith Dubai to the aforesaid four entities as being in the nature of investment. Further in the case of AServer NA

Noticee Nos. 2 and 3 have submitted that approximately $11.8 million was subsequently refunded to Zenith Dubai. While these transaction would have otherwise been innocuous, the timing and size of the investment/proposed investments lends credence to the allegation that ZIL actively sought to avoid adherence to the resolution passed by ZIL's shareholders. The urgency for the investments in ZIL's subsidiaries, coming close on the heels of default on FCCB repayment soon after the default, is suspect especially when ZIL had made corporate announcements suggesting that the FCCB holders would be repaid. What is in question is not the genuineness of ZIL's investments but the circumstances and manner in which such investments were made post the sale of MSD.

(iii) Regarding payment to operational creditors (business creditors) and purchase of capital goods, on a broad perusal of the documents submitted by ZIL, the timing *(most of the transactions involving large amounts took place soon after the default in repayment/redemption)* and circumstances behind the transactions lead one to infer that they were part of a plan to consciously avoid repayment of the FCCB holders, for which the shareholder approval had been taken. Though voluminous documents were produced to prove the genuineness of the business transactions, these by themselves do not adequately address the underlying charge of fraudulent diversion.

40. Equally important in this artifice is the role of ZIL's misrepresentations and omission to make disclosures. The failure to make disclosures in pursuance of Clause 21 and 36 of the Listing Agreement has already been discussed earlier in this Order. In addition, the SCN has alleged that the disclosure made by ZIL to BSE stating that they planned to utilise the sale proceeds of MSD Division for partial repayment of FCCBs was false since the proceeds were not used for the stated purpose. Further, the omission to make disclosure of Zenith Dubai owning part of the MSD business could also be construed as being a misrepresentation of facts. As stated earlier in this Order the corporate announcements made by ZIL neither indicated that Zenith Dubai owned part of the MSD Division of ZIL nor did they suggest prior to or after the diversion that sale proceeds had in fact been received by Zenith Dubai as well. In fact a larger proportion of the proceeds arising from the MSD Division of ZIL went to Zenith Dubai, a fact which was never disclosed to ZIL's shareholders. These omissions and misrepresentations when seen as a whole appear to be an attempt towards concealing the true state of affairs in the company. It would

seem that the shareholders and FCCB holders were given the impression that the company had sufficient funds to discharge its debt obligations and that ZIL's operations would continue. This turned out to be incorrect.

41. The Noticees had submitted, during the course of the personal hearing granted to them on February 01, 2018 that they would provide information evidencing the negotiations with the FCCB holders and details of the reasons for which the negotiations broke down. This was in the context of their repeated assertion that the non-adherence to the shareholder resolution and the diversion of funds was solely attributable to the FCCB holders refusal to negotiate the terms of the repayment. In the reply filed on February 15, 2018, the noticees have annexed copies of emails and draft settlement terms exchanged between Noticee No. 3 (the MD of ZIL) and a consultant (appointed to assist the negotiation process) and the lawyers of ZIL and the bondholders. All of the communication appended pertain to a period commencing from December 2011. These do not relate to the period immediately before or after the sale of MSD and diversion of sale proceeds. Clearly the diversion of funds took place prior to December 2011. Therefore the emails and documents appended do not substantiate the noticees' case. In any case, it is not SEBI's case that the noticees did not make efforts to negotiate repayment. The factum or need to make repayment was well known to the company and its management. The MSD Division was infact sold on the purported ground that its proceeds would be used to repay the FCCB holders. But the subsequent actions of the company and its management ran counter to its stated intent.

42. In view of the aforesaid facts and attendant circumstances, I am of the view that ZIL and its directors had engaged in a device or artifice intended to defraud the shareholders and bondholders of ZIL and the securities market in general.

SHAREHOLDER RATIFICATION OF ZIL'S ACTIONS

43. One of the pillars of the allegation against the noticees was the company's non-adherence to the shareholder resolution on January 29, 2011. The Noticees have contended that the failure to comply with the shareholder resolution is now only academic since the contrary decisions of the Board of the company were subsequently ratified by ZIL's shareholders on two separate occasions- one, prior to the hearing before the WTM and the other, after the hearing. The noticees contend that the ratification renders the decision of the board as being valid and it cannot be said that

ZIL committed fraud on its shareholders since it did not adhere to the same. In support of its submissions, the Noticees have relied primarily on three decisions of the Hon'ble Supreme Court i.e. *Shri Parmeshwari Prasad Gupta vs. The Union of India reported in (1973) 2 SCC 543*, *Maharashtra State Mining Corporation vs. Sunil S/o Pundikaro Pathak reported in 2006 5 SCC 96* and *National Institute of Technology and Ors. vs. Pannalal Choudhuiy and Ors. reported in AIR 2015 SC 2846*. I have perused the extracts of the decisions reproduced by the Noticees in their reply and find that the decisions therein do not advance their case. The decisions reiterate the principle that ratification of a decision by the Board/Chairman, takes effect from the date of the original decision. It must be noted at this point that it is not the case of SEBI that mere non-compliance with the EGM Resolution constitutes fraud. Rather the blatant non-adherence to the said resolution and related disclosures, along with other surrounding circumstances, is what lead SEBI to take a prima facie view that a fraudulent device had been executed. The very fact that two separate ratifications were attempted after initiation of quasi-judicial proceedings by SEBI lend credence to SEBI's case that the non-adherence to the EGM resolution formed part of the fraudulent device perpetrated on the shareholders and the securities market. Post-facto ratification of board's decisions by shareholders is not alien to corporate law and practice. This is because the board of directors are entrusted with the day to day functioning of the company and it may so happen that dynamic circumstances require directors to take decisions which, either lack shareholder approval or is contrary to shareholder approval. Such ratification validates the board's decision. Normally, ratification is of acts that are committed without proper authorisation due to exigencies and not for deviations from the original resolutions which ultimately has the effect of rescinding the original resolution and substituting it afresh with new proposals. It is also trite law that in cases of *ultra vires* transactions and illegal transactions, shareholders cannot ratify board decisions. The decision of the Hon'ble Supreme Court in the case of *Laxmanaswami Mudaliar and Ors, v. LIC (AIR 1963 SC 1185)* is a decision often quoted in connection with *ultra vires* transactions, wherein the Court held that an *ultra vires* action of the company could not be ratified even if all the shareholders agreed to do so. In the instant case, both the purported general ratification of the board's decision in March 2013 (i.e. 2 years after the diversion of sale proceeds contrary to the EGM resolution) and the specific ratification by the shareholders in March 2014 (i.e. 3 years after the diversion of sale proceeds contrary to the EGM resolution), only add to the suspicion as to whether the ratification was spurred by the genuine desire to validate the board's decision or by the need to avoid regulatory process. To sum up, while the shareholder ratification may validate the

board's decision thereby making the contracts entered into by ZIL as legal and authorised, it would still not diminish the relevance of the resolution and related disclosures to the fraudulent device adopted in the instant case. The Noticees have, time and again, in their replies focussed on non adherence to the EGM resolution as being central to SEBI's case. It appears that it is in this context that the defence of ratification by shareholders has been put forth. However I note that non adherence to the EGM resolution is only one aspect of the alleged fraudulent conduct. The other circumstances such as non-disclosures and false disclosures are equally important parts of the fraudulent device. Therefore merely singling out the instance of non-compliance with EGM resolution and seeking to rectify the same through post facto ratification cannot be accepted as a valid defence to the whole artifice perpetrated by ZIL and its promoters/directors.

JURISDICTION OF SEBI TO ISSUE DIRECTIONS

44. By way of preliminary submissions, Noticee Nos. 2 and 3 have primarily raised three issues - that SEBI does not have regulatory jurisdiction in the instant case since it deals with FCCBs; that since High Court is already seized of the matter SEBI should desist from proceeding in the matter and that the alleged violations do not stand the test of 'dealing in securities' which is necessary to provide fraud under the SEBI (PFUTP) Regulations, 2003. Each of these issues are separately discussed below.

45. Noticee Nos. 2 and 3 have contended that SEBI lacks jurisdiction in respect of FCCBs. They have placed substantial reliance on SEBI's affidavit dated August 20, 2015 filed before the Hon'ble Bombay High Court the matter of *HDFC Bank Ltd and Ors v. Geodesic Ltd.* to claim that it is SEBI's own stated position that it has no jurisdiction to investigate the non-redemption of FCCBs and siphoning of FCCB proceeds. Consequently, according to the submissions, SEBI could not have arrived at any conclusion about the purported diversion of funds with regard to the overseas subsidiaries.

46. At this point, it needs to be noted that adjudication in the quasi-judicial proceedings before me is dependent on the facts and legal provisions laid out in the SCN issued to the Noticees. It would be outside my remit as a quasi-judicial authority in the instant proceedings to examine different affidavits filed by SEBI or its decisions in other cases which may be based on the facts specific to each case. The entire gamut of facts involved in the *Geodesic matter* are not before me. Notwithstanding

the limitation in addressing the facts specific to that case, I have perused the order of the Hon'ble Bombay High Court and the Affidavit filed by SEBI. I note that in the *Geodesic matter*, the Hon'ble Bombay High Court had directed an investigation by SEBI into the loans or investments of overseas subsidiaries of Geodesic Ltd. and trace out the trail of the investments or loans from the overseas subsidiaries till the present holder of such loans or investments. The said directions were passed by the Hon'ble High Court in a Company Petition filed by the Trustee of FCCBs claiming redemption. Such an investigation, as directed by the High Court would necessitate an enquiry into the financials and accounts of overseas entities and detection of the trail of funds from the initial source till the current holder. It was in this background that SEBI had filed the subject affidavit before the Bombay High Court, in Geodesic. Effectively, the limitations in the powers to conduct investigation with respect to the trail of funds from overseas subsidiaries of Indian companies was submitted before the Bombay High Court. In the instant case too, the focus of investigation was with respect to the diversion of sale proceeds from ZIL to its subsidiary overseas. I do not find that the scope of investigation was to ascertain the ultimate beneficiary of the funds abroad. It is reiterated that non-redemption of FCCB holders is not the thrust of the charges in the SCN as sought to be made out by the Noticees. On the other hand, the issue in the instant case is of the Noticee directors/promoters of ZIL obtaining shareholder approval for sale of assets stating the object of FCCB redemption and not honouring the same after the sale. The SCN's focus is not on non-redemption by ZIL of the FCCB holders but in respect of the structured fraudulent conduct and device citing the FCCB liability as a part of the design to divert asset sale proceeds to its subsidiaries abroad. This kind of conduct by a listed company certainly is reproachable and cannot be lost sight of, amidst the circuitous defence set up by the Noticees so as to divert the focus from the main allegation of fraud.

47. More importantly, SEBI's case against ZIL and its promoters/directors is not dependant solely on the end use of the funds diverted by ZIL. As articulated by SEBI in its Confirmatory Order dated April 11, 2014, the case is directed against the fraudulent device orchestrated by ZIL and its promoters/directors. The fraudulent device is alleged to have involved diversion of funds to entities related to promoters, contrary to the publicly stated intent of repayment of FCCB holders. Such diversion of funds along with corporate announcements or omissions to make disclosures, dents public confidence in the securities market. An investor in equity looks to listed companies to perform their contractual promises and to ensure sufficient

transparency so that he can take appropriate decisions with regard to his investment. I therefore do not find any merit in the submission with regard to jurisdiction.

48. With respect to the noticees contention that "dealing in securities" is *sine qua non* to prove fraud under the FUTP regulations, I consider it appropriate to rely on and concur with the relevant conclusions drawn in the Confirmatory Order. Relevant extracts of the same are reproduced below for ease in reference:

> *"I further find that the definition of 'fraud' in regulation 2(1)(c) of the PFUTP Regulations is an inclusive one. It is inclusive with respect to act, expression, omission or concealment committed by any person whether in deceitful manner or not, while dealing in securities in order to induce another person. The definition is also inclusive with respect to 'knowing misrepresentation', 'concealment of material fact', 'suggestion to an untrue fact', 'active concealment of fact with knowledge', 'promise without intention to perform', 'reckless and careless representations', 'deceptive behaviour', 'false statement', etc. as listed in points (1) to (8) of regulation 2(1) (c). The 'dealing in securities' by a person to induce another person to deal in securities is not sine qua non for the fraudulent activities listed in regulation 2(1)(c) (1) to (8).... note that the provisions of section 12A of the SEBI Act and regulation 3 (c) and (d) of the PFUTP Regulations prohibit employment of any 'device', 'scheme' or 'artifice' to defraud 'in connection with dealing in securities'; and engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person 'in connection with dealing in securities'. .... The expression 'in connection with dealing in securities' in section 12A (b) and (c) of the SEBI Act and regulation 3(c) and (d) of the PFUTP Regulations does not signify that the person employing the device, etc. and engaging in act, practice, etc. should actually buy or sell or deal securities. In my view, the words 'in connection with dealing in securities' for this purpose will include any fraudulent, manipulative or deceptive device, e.g. false corporate announcements, false disclosures, promises without intending to perform, active concealment of a fact, knowing misrepresentation, reckless representations, etc. I, therefore, find that the acts, omissions and conduct of the noticees alleged in the interim order are covered within the scope of the expressions "device" or "artifice" or "scheme" to defraud in connection with dealing in securities'. In my view, any fraudulent or deceptive device, scheme, act, practice which has the potential to induce sale or purchase of or dealing in securities or to influence the investment decisions of the investors would be covered in the prohibitions of section 12A (b) and (c) of the SEBI Act and regulation 3(c) and (d) of the PFUTP Regulations."*

49. Also, with respect to the contention in the reply, that SEBI should not pass directions since the Hon'ble Bombay High Court is seized off the matter, I note that the proceedings against ZIL before the High Court are two fold- a Suit filed by some of the bondholders for recovery of their monies and liquidation proceedings filed by the

trustees of the bondholders. These proceedings are in relation to the creditors (bondholders) claims against ZIL. The current proceedings on the other hand are quasi judicial proceedings against ZIL and its promoters/directors with respect to the allegations of fraud and misconduct in the securities market. The two sets of proceedings are therefore independent of each other. It is however noted that even the Hon'ble Bombay High Court has made extensive remarks against the alleged fraudulent conduct of the promoters and directors of ZIL. These remarks were made in the order of winding up passed by the Single Bench of the High Court as well as by the Appellate Bench of the High Court. Relevant extracts of the order of the Hon'ble High Court's Appellate Bench dated April 23, 2014 are reproduced below:

> *"50. We will presume that the payment of tax dues despite the representations does not constitute a fraudulent payment as the tax dues, in any event, would have a priority over those of the respondent for the bonds that were unsecured. There is, however, no justification for the payments to non- statutory persons and bodies, including to vendors and banks in view of the representations to the contrary viz. that the proceeds were to be used to redeem the said bonds.* ***By making false representations, the appellant succeeded in lulling the respondent into a state of inaction.*** *Had such a misrepresentation not been made, the respondent may well have considered adopting proceedings to restrain the appellant from disposing off its assets, both movable and immovable and, in any event, to ensure that any disposal of the assets was genuine and in accordance with law.* ***The facts, seen as a whole, lead to an inescapable conclusion that the appellant's aim was to ensure that the sale of the MSD business is not objected to and the diversion of funds thereafter is complete without any hindrance from the bondholders.*** *This aim was achieved by misrepresenting that the sale was only with a view to paying the bondholders.* ***This was strengthened by the misrepresentation having been made not only to the bondholders and shareholders****, but even to the Bombay Stock Exchange and the National Stock Exchange and even to the Bombay City Civil Court.*
>
> *...*
>
> *50.* ***That the entire exercise was a preplanned, preconceived strategy to deceive and defraud the respondent is evident from the fact that within fifteen days of the receipt of US$ 48 million under the Asset Purchase Agreement, the appellant and Zenith Dubai "utilized" US$ 44 million without informing any party concerned about the proposed "utilization" of the funds. All this surely could not have been thought of, decided upon and implemented in a few days.***
>
> *....*
>
> *A payment for a legitimate purpose is, however, not necessarily legitimate. Payment, even for a legitimate purpose, with somebody else's money is not legitimate. The "investment" in the subsidiaries was not even a payment for a legitimate purpose.*
>
> *...*
>
> *73. Absent anything else, it is reasonable for a company Court to presume that the directors were responsible for the acts found to be dishonest and mala fide. The learned Judge has indeed passed strictures against the company and its promoters and directors. There is, however, no particular director or promoter against whom the adverse remarks have been made."*

...
95. We do not intend expressing any opinion in this regard. We have considered the matter afresh and independent of these judgments. ***Our judgment is not based on the observations of the Division Bench. Nor is it based on the observation of the learned single Judge. It is certainly not based on the observations of the order of the SEBI. At the appellant's instance, we went into the matter in great detail de novo, afresh and have come to the conclusions on our own, independent of the findings recorded in the earlier orders.***

(emphasis supplied)

DIRECTIONS

50. In view of the facts and circumstances stated and for the reasons elaborated in this Order, I find that ZIL and its directors have violated Section 12 A (b) and (c) of the SEBI Act, 1992, Regulations 3 (a), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, Clause 36 and Clause 21 of the Listing Agreement, read with Section 21 of the Securities Contracts (Regulation) Act, 1956 and Clause 2.1 read with Clause 7.0 (ii) of Code of Corporate Disclosure Practices for Prevention of Insider Trading provided in Schedule II read with regulation 12 (2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

51. I am convinced that the allegations made in the SCN stand proven in the given facts and circumstances against the company and its directors. However, there is inadequate evidence to implicate the promoters of the company i.e. Noticee Nos. 6,7,8 and 9. Therefore I find it appropriate to dispose off the current proceedings with respect to Noticee Nos. 6, 7 *(now deceased)*, 8 and 9 with no further directions. Further it was informed that Noticee Nos. 4, 5 and 7 passed away while the proceedings were underway, i.e. on March 28, 2017, January 09, 2018 and May 28, 2015, respectively. Death certificates to this effect have been produced by Noticee Nos. 2 and 3. Accordingly, proceedings against Noticee Nos. 4, 5 and 7 stand abated.

52. It is clear that Noticee No.1 i.e ZIL's omission to make disclosures and perpetration of fraud in the securities market was orchestrated and assisted by Noticee Nos. 2 and 3 who were Chairman and Managing Director of ZIL, respectively. They are therefore liable for directions under sections 11B and 11(4) of the SEBI Act, 1992. However though the investigation report and the SCN have brought out, to some extent, the trail of funds, it is not clear whether these funds had moved to entities exclusively owned by the promoters or directors. Given that SEBI's powers to seek information from foreign entities are limited, the details as to the exact use of

such funds by the overseas subsidiaries or other recipients of the funds transferred from ZIL or Zenith Dubai are scanty. Further investigation into the end-use of diverted funds at this stage may lead to added delays in conclusion of the quasi-judicial proceedings without any guarantee of a concrete finding and would not be desirable in the interest of expeditious dispensation of justice. I note that in the interim and confirmatory orders, ZIL was not a noticee and bank guarantee was ordered to be furnished in favour of SEBI with the intent stated in the confirmatory order as follows: "...*The direction in para 25(ii) of the interim order envisages that the bank guarantee may be invoked should any adverse inference is drawn by SEBI in its final order with regard to the actions of the promoters/board of directors of ZIL in diverting the sale proceeds of MSD business and* ***SEBI deems it necessary to compensate ZIL****. Thus, it is very clear that the interim order has not sought to compensate FCCB holders as contended by the noticees..."* (emphasis supplied) However the SCN issued post the confirmatory order has included ZIL also in the list of noticees based on the allegation that the company along with its directors and promoters perpetrated fraud on the investors and the securities market. Further the SCN has also proposed to issue disgorgement orders against the noticees including ZIL.

53. As discussed above, the instant proceedings focus on the liabilities of the directors and the company to honour shareholder approval and adhere to the underlying promises made during the shareholders' meeting. The case is thus of misuse or fraudulent deviation from such promises resulting in a plunge in the market price of the securities thereby adversely affecting the investors. However, proof of illegal gains made by the Noticees cannot be quantified, based on the evidence available. In view of the above, I do not find it appropriate to issue any direction of disgorgement against Noticee Nos. 1, 2 and 3. Consequently, the question of invoking bank guarantee as proposed earlier, does not arise. I also note that the Hon'ble Bombay High Court has ordered winding up of ZIL and has appointed the Official Liquidator for the purpose of ZIL's liquidation.

54. In view of the above, I in exercise of the powers conferred on me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby direct, with immediate effect, that -

(i) Noticee Nos. 1, 2 and 3 i.e. Zenith Infotech Ltd., Rajkumar Saraf and Akash Rajkumar Saraf, shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of

2 years from the date of this order. With respect to Noticee No. 1 this direction shall be subject to the orders of the Hon'ble High Court of Bombay;

(ii) Noticee Nos. 2 and 3 i.e. Rajkumar Saraf and Akash Rajkumar Saraf shall not associate themselves with any listed company or company intending to raise money from the public, or any registered intermediary, in the capacity of a director, key management personnel or partner (in the case of a partnership firm), for a period of 2 years, from the date of this order.

55. In view of the findings in this Order, the interim directions against the other Noticees i.e. Noticee Nos. 4, 5, 6, 7, 8 and 9 shall stand vacated with immediate effect.

56. A copy of this Order shall be forwarded to the recognised stock exchanges and registered depositories for necessary compliance with the above directions.

DATE: March 14, 2018
PLACE: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA