

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MC/HP/2021-2022/15372-15392]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of –

1. **BCL Employees Benefits Trust (PAN: AABTB1288J)** having address at - Block A, Wing 2, Level 6, Cyber Gateway Hitech City, Madhapur, Hyderabad, Telangana, 500081
2. **Bodhtree Consulting Ltd. (PAN: AABCB3103D)** having address at - Block A, Wing 2, Level 6, Cyber Gateway Hitech City, Madhapur, Hyderabad, Telangana, 500081
3. **Hassan Ali (PAN: ABJPH6864K)** having address at - H N 5 9 207/110, Jamuna Mansion ABIDS, Hyderabad, 500001
4. **Katragadda Rajesh (PAN: AKVPK3486B)** having address at - Flat No 501, Sravanthi Encl, Madinaguda,, Hyderabad, Andhra Pradesh, India, 500050
5. **Kepler Information Systems Pvt. Ltd. (PAN: AAECK5818R)** having address at - No 6-1-279/10/5/101, Walker Town Behind Sapthagiri Apartment, Padmarao Nagar, Secunderabad, Telangana, India, 500025
6. **Kommineni Srinivas Rao (PAN: DUUPK0652M)** having address at - 4-22-84/b, Koretapadu Goutamin Nagar, 4th Line, Chandramouli Nagar, Guntur Andhra Pradesh India, 522007
7. **Krishna Jayaraman (PAN: DUUPK3943N)** having address at - 1769, Oenoke Ridge, New Canaan, CT-USA
8. **L Muneashwari (PAN: ABWPL2445F)** having address at - Ramky Towers, E Block, Flat 1301, Hyderabad, Telangana, India, 500032

9. **L Naga Rama Krishna (PAN: ADRPL5494M)** having address at - Ramky Towers E Block Flat 1301, Gachibowli, Hyderabad, Andhra Pradesh, India, 500032
10. **L Naga Visweswara Rao (PAN: ABCPL5568P)** having address at - Svr Sri Nilayam Padmarac, Nr 6- 1279/ 34, flat 101, Padmarao Nr Secunderabad, Himmatnagar Hyderabad, 500025 **and**
Hno 6-1-279/10/5, Anand Vihar Aprt, Padmara Nagar, Secunderabad, Andhra Pradesh, 500025
11. **Muninder Raja Arram (PAN: AFRPA0759A)** having address at - 257 Ramnagar Hanamkonda, Warangal, 257 Ramnagar Telangana, India, 506001
12. **Muthukrishnan Swaminathan (PAN: AAJPM4805C)** having address at - A 31/1, 3rd Floor, Radial Road, Sainikpuri, Secunderabad, Andhra Pradesh, India, 500094 **and**
935, 69th Street, 11th Sector, K K Nagar, Chennai, 600078
13. **N Sriram (PAN: AARPN3722F)** having address at - H No 40-5-10/1, Phakirugudem Vijayawada, Andhra Pradesh, India, 520010
14. **Palaniappan Natarajan (PAN: AOQPP2235L)** having address at - No 16/112, Venkatesa Nagar, 2nd Main Road, Virugambakkam, Chennai, Tamil Nadu, India, 600092
15. **Prabhakar Rao Kallur (PAN: AQUPP3810B)** having address at - Flat No 302, Plot No.204 205, 3rd Floor, Sadgur Nivas, Addaguta Near Western Hills Soc, Tirumalagiri, Hyderabad, Andhra Pradesh, India, 500072
16. **Ramanujam Kuppusamy (PAN: APSPK6504N)** having address at - 565b, East Coast Road, Singapore, 429080 **and**
H 32/11, Gangai Street, H B Colony, Besant Nagar, Chennai – 600090, Tamil Nadu
17. **Sanjiv Gupta (PAN: AEFPG3769R)** having address at - 8 2 402/c/11, Road No 5, Banjara Hills, Hyderabad, Andhra Pradesh, India, 500034

18. **Shankaraiah Arram (PAN: ACHPA5551D)** having address at - H No 2 5 7 opp. Head Post Office Lane, Hanamkonda, Warangal, Andhra Pradesh, India, 506001
19. **Sreedhar Karanam (PAN: ACDPS8671G)** having address at - Plot No. 158, Flat No. 103, Swastik Towers, Mothi Nagar Balanagar Moosapet, Hyderabad, Andhra Pradesh, India, 500018
20. **Sudheer Koppineni (PAN: ARLPK3143Q)** having address at - Flat No. 301, Plot No 180, Gomathi Enclave, Moti Nagar, Hyderabad - 500018
21. **Sunitha Arram (PAN: AFFPA0880C)** having address at - 11-3-366/1/2, Flat No 203, Prasanna Sai Enclave, Secunderabad, Hyderabad 500061

In the matter of Bodhtree Consulting Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, '**SEBI**') initiated adjudication proceedings against, BCL Employees Benefits Trust (Noticee 1/Trust), Bodhtree Consulting Ltd. (Noticee 2/Company/BCL), Hassan Ali (Noticee 3), Katragadda Rajesh (Noticee 4), Kepler Information Systems Pvt. Ltd. (Noticee 5), Kommineni Srinivas Rao (Noticee 6), Krishnan Jayaraman (Noticee 7), L Munieswhari (Noticee 8), L Naga Ramakrishna (Noticee 9), L Naga Visweswara Rao (Noticee 10), Muninder Raja Arram (Noticee 11), Muthukrishnan Swaminathan (Noticee 12), N Sriram (Noticee 13), Palaniappan Natarajan (Noticee 14), Prabhakar Rao Kallur (Noticee 15), Ramanujam Kuppusamy (Noticee 16), Sanjiv Gupta (Noticee 17), Shankaraiah Arram (Noticee 18), Sreedhar Karanam (Noticee 19), Sudheer Koppineni (Noticee 20) and Sunitha Arram (Noticee 21) pursuant to investigation in the matter of Bodhtree Consulting Limited. The Noticees 1 to 21 are collectively referred to as '**Noticees/You**'.

Adjudication Order in the matter of Bodhtree Consulting Limited

2. Adjudication proceedings were initiated against,
- a) Noticee 2, 4, 6, 7, 8, 9, 12, 13, 14, 16 and 17 under section 15HB of SEBI Act, 1992, (hereinafter referred to as, '**SEBI Act**') for alleged violations of Regulation 3(4) of SEBI (Share Based Employees Benefit) Regulations, 2014 (hereinafter referred to as, '**SBEB Regulations**') read with Section 27(2) of SEBI Act.
 - b) Noticee 2, 9, 13, 14 and 18 under section 15HB of SEBI Act for alleged violations of SEBI (ESOPS & ESPS) Guidelines, 1999 (hereinafter referred to as, '**ESOPS & ESPS Guidelines**') and paragraph 4 of SEBI Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with paragraph 2 and 3 *ibid* and Section 31 of SBEB Regulations and Section 27(2) of SEBI Act.
 - c) Noticee 2 and 9 under section 15HB of SEBI Act for alleged violations of Regulation 5, 6 and 13 of SBEB Regulations read with Section 27(1) of SEBI Act.
 - d) Noticee 2 under section 15HB of SEBI Act for alleged violations of Regulation 3(9), 15 and 22(1) of SBEB Regulations read with Section 27(1) of SEBI Act.
 - e) Noticee 2 under section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, '**SCRA**') for alleged violations of Clause 5, 6(i) and 6(ii) of SEBI Circular no. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with Circulars dated May 13, 2013, November 29, 2013 and June 27, 2014 read with Clause 35C of Listing Agreement read with Section 21 of SCRA.
 - f) Noticee 14 under section 23H SCRA read with section 24(1) *ibid* for alleged violations of Clause 5 and 6(i) of SEBI Circular no. CIR/CFD/DIL/3/2013

dated January 17, 2013 read with Circulars dated May 13, 2013, November 29, 2013 and June 27, 2014 read with Clause 35C of Listing Agreement read with Section 21 of SCRA.

- g) Noticee 9 under section 23H SCRA read with section 24(1) *ibid* for alleged violations of Clause 6(i) and 6(ii) of SEBI Circular no. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with Circulars dated May 13, 2013, November 29, 2013 and June 27, 2014 read with Clause 35C of Listing Agreement read with Section 21 of SCRA.
- h) Noticee 2 and 9 under section 15HA of SEBI Act for alleged violations of Regulation 3(a),(b),(c),(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as, '**PFUTP Regulations**') read with Section 12A(b),(c) of SEBI Act.
- i) Noticee 1, 4, 9, 15 and 19 under section 15HB of SEBI Act for alleged violations of Regulation 3(6) of SBEB Regulations read with Section 27(2) of SEBI Act.
- j) Noticee 1, 3, 4, 5, 8, 9, 10, 11, 15, 19, 20 and 21 under section 15HA of SEBI Act for alleged violations of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

- 3. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and under Section 23-I of Securities Contracts (Regulation) Act, 1956 read with Rule 3 of

Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter be referred to as the '**Adjudication Rules**'), vide order dated June 29, 2020 to inquire into and adjudge under section 15HA and 15HB of the SEBI Act and Section 23E and 23H of SCRA the aforesaid alleged violations against the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD5/MC/HP/19269/2020 dated November 12, 2020 (hereinafter be referred to as, the "SCN") was served upon the Noticees under Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees under Section 15HA and 15HB of SEBI Act and Section 23E and 23H of SCRA for the aforesaid alleged violations.
5. The allegations levelled against the Noticees in the SCN are summarized as below:
6. SEBI conducted an investigation in the matter for the period from March 02, 2017 to March 26, 2018 (**Investigation Period**).

Background of the Company:

7. BCL was incorporated under the name of Anant Resources Limited on July 16, 1982. BCL was listed on Madras Stock Exchange Ltd (MSE) with effect from June 04, 1996. The previous name of BCL was changed to the current name on January 11, 2002. Consequent on exit of the Regional Stock Exchanges, BCL had listed its shares on BSE on May 04, 2015. BCL is in the business of providing consultancy in software, cloud, analytics and digital solutions, enterprise applications, integrating applications with their IT infrastructure and maintaining them.

Board of Directors of BCL from the year 2012-13 till 2018-19

8. The following are the details of the Board of directors during the investigation period and the extended period:

Sr. No.	Name of the Director	Date of Appointment	Date of Cessation
1	Sanjiv Gupta	03/11/1999	--
2	Palaniappan Natarajan	05/09/2011	24/01/2015
3	SankaraiahArram	24/12/2012	28/05/2014
4	RamanujamKuppusamy	24/12/2012	05/08/2015
5	Aruna Rani Elimineti	06/05/2011	10/11/2012
6	Muktesh Sharma	31.08.2002	28/09/2012
7	Rajesh Katragadda	10/05/2013	--
8	Durga Venkata Vara Prasad Rao Chadalawada	05/09/2011	02/04/2013
9	L N Ramakrishna	24/01/2015	--
10	Mrs. MuneashwariLakkimsetti	14/11/2015	--
11	Muthukrishnan Swaminathan	30/05/2015	21/11/2018
12	Krishnan Jayaraman	17/09/2015	11/05/2017
13	Srinivasa Rao Kommineni	14/11/2016	25/05/2017
14	Nimmagadda Sriram	19/02/2011	02/11//2016
15	Muninder Raja Arram	14/11/2018	--
16	Srinivas Reddy Mallayagari	16/02/2019	--

Promoter Shareholding

Statement showing shareholding pattern of the Promoter and Promoter Group											
Sr No	Name	March-2017		June- 2017		Sept – 2017		Dec – 2017		Mar – 2018	
		No of shares	Shareholding as a % of total no. of shares	No of shares	Shareholding as a % of total no. of shares	No of shares	Shareholding as a % of total no. of shares	No of shares	Shareholding as a % of total no. of shares	No of shares	Shareholding as a % of total no. of shares
1	Sanjiv Gupta	2134500	11.83	2134500	10.69	2134500	10.69	2134500	10.69	2134500	10.69
2	Monica Gupta	60100	0.33	60100	0.30	60100	0.30	60100	0.30	60100	0.30
3	MAS Trading and Investments Pvt. Ltd.*	167000	0.93	167000	0.84	167000	0.84	167000	0.84	167000	0.84
4	Bodhtree Solutions Inc.	8000000	44.33	8000000	40.08	8000000	40.08	8000000	40.08	8000000	40.08
Grand Total		10361600	57.42	10361600	51.91	10361600	51.91	10361600	51.91	10361600	51.91

* The Directors in the above company are Mr. Sanjiv Gupta and Ms. Monica Gupta

Background of the case

- SEBI received an alert that Noticee 3 had traded in the scrip of BCL in large volume and value. It was observed that Noticee 3 sold 94,000 shares worth Rs.88.67 lakhs on February 07, 2018 and had significant contribution in exchange volume in the scrip of BCL on that day. It was also observed that the said quantity sold was transferred to the demat account of Noticee 3 through an off market transfer on February 22, 2017 from Noticee 1 (Trust formed by BCL to extend share based employee benefits to its employees). Prior to aforesaid trade, Noticee 3 had not traded for a considerable period of time and had

suddenly executed the aforementioned high value transaction caused suspicion on trading behaviour of Noticee 3.

10. SEBI sought clarification from Noticee 1 and 2 with respect to aforesaid transfer of shares to Noticee 3 by Noticee 1 and other information of the Trust.
11. It was observed from the reply of the Noticee 1 that the trust was formed in the year 2003 by BCL for the welfare of its employees and the beneficiaries of the Trust are employees of BCL. Further, the Trust was allotted 6,51,333 equity shares of BCL in tranches prior to the direct listing of BCL in BSE on May 04, 2015. The shareholding of the Trust as on February 20, 2017 was 6,51,333 shares. Noticee 1 stated in its reply that Regulation 12 of the SBEB Regulations stipulates to dispose of the shares of the Trust not backed by ESOP scheme within a period of five years from the date of notification of the said Regulations. Noticee 1 had transferred 1,70,000 shares to the below mentioned employees of BCL:

Sr. No.	Name of the Person	No. of shares allotted	Date of Transfer
1	Guru Prasad Budhavarthi	50,000	20.02.2017
2	Hassan Ali (Noticee 3)	1,00,000	22.02.2017
3	Anil Grandhi	20,000	22.02.2017
Total		1,70,000	

12. It was observed from reply of BCL that the Trust was formed in the year 2003 by BCL for the welfare of its employees and that the current Trustees are (a) L Naga Rama Krishna (Noticee 9), Managing Director of BCL, (b) Prabhakar Rao Kallur (Noticee 15), CFO of BCL and (c) Sudheer Koppineni (Noticee 20), VP-HR of BCL. Noticee 3 was one of the oldest employees of BCL whose date of joining was November 20, 2002, and Noticee 3 was given 1,00,000 equity shares on February 22, 2017 free of cost as per the terms of his appointment.

There was no specific employee benefit Scheme floated under the supervision and administration of the Trust and no specific fund corpus was created for the Trust.

13. BCL did not furnish any details of in-principle approvals obtained from the stock exchanges, approvals of the shareholders for the employee benefit scheme, details of the scheme, terms and conditions of the scheme and particulars of employees benefited by the scheme, nor any information on disclosures made to the exchanges regarding the existence of the Trust, number of shares of BCL held by the Trust, transfer of shares to the employees of BCL under any employee benefit scheme and the instances of transfer made to certain employees. BCL submitted that there was no transfer effected by it for the employee benefit scheme and it has allotted 6,51,333 shares of BCL to the Trust prior to the direct listing of its shares with BSE on May 04, 2015.

14. NSDL informed that 7,95,700 shares of BCL were transferred to Noticee 1 from the demat accounts of Mr.Sanjay Verma and his spouse Ritu Verma. The details are as given below:

Target Client ID	Target Client Name	Source Client ID	Source Client Name	Execution Date	No of Securities
41157552	BCL Employees Benefit Trust	11971575	RITU VERMA	04-Dec-02	75,100
41157552	BCL Employees Benefit Trust	11971769	SANJAY VERMA	05-Dec-02	720,600

15. SEBI sought clarification from Mr. Sanjay Verma with respect to aforesaid transfer of shares in demat account of Noticee 1. *Vide* email dated June 25, 2019, Sanjay Verma submitted that,

- a) He was one of the co-founder / promoters of BCL and also was Chief Technical Officer of BCL. He was allotted 7,95,700 shares and these shares were part of primary allotment as co-promoter and bonus shares;
 - b) He had registered 75,100 shares in the name of his spouse Ms. Ritu Verma and the remaining 7,20,600 shares in his name;
 - c) Due to professional differences, he had quit the company. He did not want to be associated with the company in any capacity either directly or indirectly and offered to transfer all his shares back to the company;
 - d) The company had directed him to transfer all his shares and that of his spouse to an entity namely BCL Employees Benefit Trust. Accordingly, he had transferred the shares and he does not have nor he had any knowledge of this entity and since then he or his spouse do not hold any shares of the company;
 - e) He and his spouse did not get any compensation for the transfer of these shares.
16. However, as per bank statement of account with HDFC bank of Noticee 1 for the period January 28, 2003 to December 31, 2003 that a total sum of Rs.7,52,000/- was paid by the Noticee 1 and Rs. 43,700/- was paid by Mr. Sanjiv Gupta, then Managing Director and CEO of BCL, in the form of Manager's cheques in tranches to both Sanjay Verma and Ritu Verma as per the details given below:

Payee Name	Manager's Cheque No.	Manager's Cheque Date	Drawee Bank/ Branch	Amount
Sanjay Verma	115555	04.06.2003	HDFC Bank, Banjara Hill Branch	20,600

Sanjay Verma	115556	04.06.2003	---- do ----	1,00,000
Sanjay Verma	115557	04.06.2003	---- do ----	1,00,000
Sanjay Verma	115558	04.06.2003	---- do ----	1,00,000
Sanjay Verma	115559	04.06.2003	---- do ----	1,00,000
Sanjay Verma	115560	04.06.2003	---- do ----	1,00,000
Sanjay Verma	115561	04.06.2003	---- do ----	1,00,000
Sanjay Verma	115562	04.06.2003	---- do ----	1,00,000
Ritu Verma	93460	19.02.2003	---- do ----	31,400
Ritu Verma	93458	19.02.2003	---- do ----	43,700*
Total				7,95,700

(*Amount paid by Mr Sanjiv Gupta)

17. It was observed from DIS Nos. 120290051 and 120290052 dated December 04, 2002 obtained from M/s Karvy Securities Ltd.(Depository Participant) that Sanjay Verma and Ritu Verma had transferred the shares of BCL to the demat account of Noticee 1, evidencing transfer of shares by them to Noticee 1 for a consideration as mentioned in above paragraph. Further, Sanjay Verma and Ritu Verma had acknowledged the receipt of the money by way of issuing an acknowledgement of receipt signed over a revenue stamp. Further, BCL also had confirmed the payment of consideration by Noticee 1 to Sanjay Verma and Ritu Verma.
18. It was further observed that Noticee 2 has funded Noticee 1 to the extent of Rs.7,52,000 to meet the payment obligation to Sanjay Verma and Ritu Verma as consideration for transfer of shares. Transaction details from the HDFC bank of Noticee 2 are as given below:

Transaction Date	Narration	Cheque No	Debit Amount	Balance
	Opening Balance			1,211,715.43
17/02/2003	Chq Paid - Inward Clearing	80839	650.00	1,434,455.00
17/02/2003	Chq Paid - Inward Clearing	80826	8360.00	1,426,095.00
17/02/2003	Chq Paid - Inward Clearing	80865	10119.00	1,415,976.00
18/02/2003	Chq Paid - Inward Clearing	80868	959.00	1,415,017.00
19/02/2003	CHQ PAID -BANJARAHILL,HYD	36128	10000.00	1,405,017.00
19/02/2003	Funds trfd to BCL Employees Benefit Trust, Banjara Hill, Hyderabad Branch	36127	752000.00	653,017.00

19. Noticee 1 had transferred the said amount to HDFC Bank on February 19, 2003 and issued an instruction to the bank to issue Manager's cheques to Sanjay Verma and Ritu Verma. Subsequently, on June 04, 2003 Manager's Cheque no. 093459 dated February 19, 2003 returned with a request of cancelling the same and further instructions were issued to the Bank to issue 7 Manager's Cheques of Rs.1,00,000/- each and 1 Manager's Cheque of Rs.20,600/- in favour of Sanjay Verma. Transaction details from the HDFC bank account no. 05211000032097 of Noticee 1 are as given below:

Date	Particulars	Cheque no.	Debit	Credit	Balance
28/01/2003	NEW SB A/C - BCL EMPLOYEES BENEFIT TRUST	0		10,000.00	10,000.00
19/02/2003	FUNDS TRAN- BANJARAHILL,HYD- 5212320000404	36127		752,000.00	762,000.00
19/02/2003	<u>Banker's Cheques</u> <u>Sanjy Verma – 7,20,600/-</u> <u>Ritu Verma – 31,400/-</u>	0	752,000.00		10,000.00
01/04/2003	CREDIT INTEREST CAPITALIZED			60.41	10,060.41
04/06/2003	MC CANCEL -BANJARAHILL,HYD	93459		720,600.00	730,660.41
04/06/2003	FUNDS TRAN- BANJARAHILL,HYD- 5212990000032	0	720,600.00		10,060.41

20. By providing funds to the tune of Rs.7,52,000 to Noticee 1 to meet the consideration requirement for 7,95,700 shares received by Noticee 1 through off market transfer from Sanjay Verma and Ritu Verma, Noticee 2 had actually paid the consideration for the shares transferred in the demat account of Noticee 1.
21. SEBI sought further specific information vide its letter dated May 22, 2019. In reply, vide letter dated June 08, 2019, Noticee 2 *inter-alia* submitted that,
- a) At the time of seeking listing approval from MSE, the capital of the company was only 2,40,000 shares of Rs.10 each and the Trust was formed much later in the year 2003 and therefore no reservations were made for the Trust for allotment of shares of the company;
- b) Mr. Sanjay Verma, ex-employee of the company and his wife Ms. Ritu Verma had respectively transferred 7,20,600 and 75,100 shares to the Trust at a consideration of Rs.1/- per share and thereafter there were transfer of shares from the Trust during the period from the year 2005 to 2010. Details of such transfers are provided as under:

Sr N o	Date	Credit	Debit	Transferer DP ID/ Client ID	Description	Cumulative Holding	Relations hip
1	17-Oct-2003	795,700		11409752	Trfd from Karvy Consultants A/c transfer	795,700	
2	09-Aug-2005		12,250	IN300685_1 0424027	Venu Ahluwalia	783,450	Non- employee
3	23-Dec-2005		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	763,450	Employee

Sr N o	Date	Credit	Debit	Transferer DP ID/ Client ID	Description	Cumulative Holding	Relations hip
4	06-Jan-2006		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	743,450	Employee
5	28-Feb-2006		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	723,450	Employee
6	11-Jul-2006		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	703,450	Employee
7	14-Jul-2006		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	683,450	Employee
8	19-Jul-2006		7,004	IN300183_1 1517634	S Raghavendra Prasad	676,446	Employee
9	21-Aug-2006		2,500	IN300476_4 0786059	Raghavan V RangaMadaB hushi	673,946	Employee
10	11-Sep-2006		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	653,946	Employee
11	26-Sep-2006		200,000	IN302734_1 0037925		453,946	
12	18-Dec-2006		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	433,946	Employee
13	19-Jan-2007		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	413,946	Employee
14	06-Feb-2007		20,000	IN302679_3 0555294	V Jai Kumar and Akila Jai Kumar	393,946	Employee
15	24-Jul-	200,000		IN302734_1		593,946	

Sr N o	Date	Credit	Debit	Transferer DP ID/ Client ID	Description	Cumulative Holding	Relations hip
	2008			0037925			
16	14-Oct- 2008		200,000	IN301022_2 1329734	Asad Latif	393,946	
17	01-Jul- 2009	250,000		IN300685_1 0424027	Venu Ahluwalia	643,946	Non- employee
18	08-Oct- 2010		563	IN302679_5 1720574	D Srinivas Rao	643,383	Employee
19	08-Oct- 2010		1,050	IN302679_5 2903945	Hasan Ali	642,333	Employee

- c) Since October 31, 2010 the demat account of the Trust had balance of 6,42,333 shares in demat mode and 9,000 shares in physical mode. Further, 1,70,000 shares had been transferred to three employees viz: Hassan Ali, B.Guruprasad and Anil Grandhion February 22, 2017, and as on date the holding of the Trust stands at 4,72,333 shares in demat form and 9000 shares in physical form;
- d) Decisions was made to distribute the shares held in the Trust to the permanent employees of the company to reward their performance, during the year 2014 and the same was considered by the Trustees in their meeting held in year 2015 and the commitment was fulfilled by transferring 1,70,000 shares to the employees on February 22, 2017 during the tenure of Mr. L.N. Ramakrishna;
- e) The company decides upon the list of beneficiaries on the basis of employee's experience, rating, contribution, performance, designation, sign-on condition, tenure, criticality of the need for such a resource and the same is recommended to the Trust for their consideration. Subsequently, decision was taken for approval the allotment of shares in the meeting of Trustees.

- f) Regarding allotment of shares to Hassan Ali and two other employees, the share allotment meeting of the trustees of Noticee 1 was held during the year 2015 based on the criteria mentioned above under the leadership of Pal Natarajan and L. N. Ramakrishna. The Trustees had approved unanimously that the shares shall be credited to the designated employees of the company viz. Hassan Ali, Guru Prasad B and Anil Grandhi anytime while they are in the organisation or relieved from their duties. The said commitment was given to the designated employees and accordingly the shares were credited;
- g) Regarding alignment of the share based employee benefit schemes existing prior to SBEB Regulations coming into force, the company has taken note of the Regulations and would work towards the compliance of the same;
22. Effective from June 19, 1999, extension of share based employee benefits by the listed companies were governed by ESOPS and ESPS Guidelines. It was observed that when the aforesaid guidelines was in force, Noticee 2 had formed the Trust to extend various employee benefit schemes. Further, Noticee 2 also had allotted the shares to various employees by transferring the shares through the Trust during the period from 2005 to 2010.
23. SEBI vide circular No. CIR/ CFD/DIL/3/2013 dated January 17, 2013 had amended the provisions of ESOPS and ESPS Guidelines for the reasons stated in paragraph 2 and 3 *ibid*. Extract of the said circular is as under:
1. *“SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (“SEBI (ESOPS & ESPS) Guidelines”) were issued to enable listed entities to reward their employees through stock option schemes and stock purchase schemes and to ensure that such schemes introduced by the companies are within the regulated framework.*

2. It has come to the notice of SEBI that some listed entities have been framing their own employees benefit schemes wherein Trusts have been set up to deal in their own securities in the secondary market, which was not envisaged within the purview of SEBI (ESOPS and ESPS) Guidelines 1999.

3. It is apprehended that some entities may frame such schemes with the purpose of dealing in its own securities with the object of inflating, depressing, maintaining or causing fluctuation in the price of the securities by engaging in fraudulent and unfair trade practices. Such dealing in the company's shares by the Trusts may also raise regulatory concerns regarding compliance with SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 and SEBI (Prohibition of Insider Trading) Regulations, 1992.

4. In order to address the concerns over acquisition of shares by employee welfare Trusts from the secondary market, it has been decided to prohibit the listed entities from framing any employee benefit schemes involving acquisition of own securities from the secondary market.

5. In order to implement the above decision, certain listing conditions are hereby specified by way of inserting Clause 35C in the Equity Listing Agreement as given in Annexure I.

6. In respect of those companies, which have already framed and implemented before the date of this circular any employee benefit schemes involving dealing in the securities of the company, which are not in accordance with SEBI (ESOPS and ESPS) Guidelines, it has been decided that:-

(i) such companies will be required to inform the details of their schemes to the Stock Exchanges within 30 days from date of this circular, in the format provided in Annexure II to this circular and to disseminate the said information on their website.

(ii) such companies shall align any existing employee benefit schemes with SEBI (ESOPS and ESPS) Guidelines on or before June 30, 2013

7. In view of the above, it has also been decided to amend the SEBI (ESOPS and ESPS) Guidelines 1999 as provided in Annexure III. The amendments made vide this circular shall come into force with immediate effect.....”

24. In terms of the aforesaid circular, if the listed companies are to extend any share based employee benefits, the same can be done only in accordance with ESOPS and ESPS Guidelines. Further, the SEBI circular No.CIR/CFD/DIL/3/2013 dated January 17, 2013 stipulates three actions to be taken by the listed companies having employee benefit schemes involving dealing in their own securities in the secondary market, which are as under:

- a) listed entities shall not frame any employee benefit schemes involving acquisition of own securities from the secondary market henceforth; i.e. effective from the date of the circular;*
- b) listed entities shall make a disclosure of the details of all employee benefit schemes which have already been framed prior to the said circular which are not in accordance with SEBI(ESOPS and ESPS) Guidelines, to the Stock Exchanges in which the companies are listed, within 30 days from the date of the circular;*
- c) Listed entities existing employee benefit schemes which are not in alignment with any of the schemes of SEBI (ESOPS and ESPS) Guidelines, 1999 to be aligned with the schemes of the Guidelines on or before June 30, 2013;*

25. The time line of June 30, 2013 stipulated for alignment of the existing schemes was extended to December 30, 2013 *vide* SEBI circular dated May 13, 2013 and extended further to June 30, 2014 *vide* SEBI circular dated November 29, 2013 and *vide* SEBI circular dated June 27, 2014 till the time new regulations for share based employee benefit schemes is notified. Extension of time was granted for alignment of the existing schemes, however, the prohibition to

frame any new schemes outside the purview of the ESOPS and ESPS guidelines continued and the timelines for disclosure of the past schemes to the exchanges as stated in paragraph 6(i) of circular dated January 17, 2013 was not changed. Followed by issuance of the said circulars, SEBI notified the SBEB Regulations on October 28, 2014 repealing ESOPS and ESPS Guidelines.

Observations with respect to transfer of 1,70,000 shares from Noticee 1 to three employees of the company

26. Noticee 2 vide its letter dated July 19, 2019 stated that 1,70,000 shares transferred were part of the incentive given to the employees to reward their performance and long term association with the Company and the Committee along with the Trust rewards the employees with performance linked shares which are not guided/governed by the SEBI Rules and Regulations associated with the Share based Employees Benefits. Further, the company vide its letter dated May 07, 2019 also has stated that there was no specific employee benefit scheme floated under the supervision and administration of the Trust.
27. However, the company is governed by the provisions of SEBI circular dated January 17, 2013 and therefore required to be compliant with the said circular requirements. Further, the act of transfer of 1,70,000 shares of the company to three employees of the company was part of a scheme even though the company has not assigned any specific name as ESOPS or ESPS to the process, as specified in ESOPS and ESPS Guidelines. The applicability of the provisions of SEBI circular dated January 17, 2013 have been clarified in SEBI circular dated May 13, 2013 stating that circular is applicable if any of the following conditions are satisfied,
 - a) *if the company has set up the scheme or the trust / agency managing the scheme; or*

- b) if the company has direct or indirect control over the affairs of the scheme or the trust / agency managing the scheme; or*
- c) if the company has extended any direct or indirect financial assistance to the employee benefit schemes or the Trust/agency managing such schemes*

28. The company satisfies all the three conditions mentioned above whereby the company is governed by the provisions of SEBI Circular dated January 17, 2013 and other subsequent circulars dated May 13, 2013, November 29, 2013 and June 27, 2014.
29. It was observed from the decision of the Remuneration committee in its meeting dated May 28, 2014 that the committee had proposed to provide share based employee benefits to the employees of the company as incentive for performance excellence by transfer of shares through the Trust which was holding the shares for such benefit of the employees. The committee had further authorised the Trustees of the Trust to create a plan or a system to consider, decide and approve the list of employees and the number of shares to be granted to the employees based on their performance and other determining factors to execute its proposal. Further, the Committee authorized the Trustees of the Trust to consider, decide and approve the list of employees and the number of shares to be granted to them based on their performance and other determining factors and the Trustees in turn in their meetings held on January 13, 2015 and March 06, 2015 to discuss and decide on the criterion/ factors to be considered to determine the list of employees to whom such shares can be granted.
30. Therefore, it was observed that the decision of the Remuneration Committee and subsequent action by the Trust as mentioned above is nothing but a share based employee benefit scheme involving dealing in the own securities of the company extended to certain employees of the company as employee benefit,

irrespective of whether the company had assigned any specific name for the said scheme of transfer of shares or not.

31. Subsequent to the said SEBI circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 coming into force, if a company had extended a share based employee benefit as remuneration or reward or incentive as the case may be involving dealing in its securities which are not in accordance with the said guidelines, the same amounts to non-compliance with the provisions of the said guidelines.
32. In the instant matter, though the scheme of transfer of shares proposed by the company subsequent to the issuance of the said circular did not involve acquisition of shares from the secondary market, but the scheme of transfer involved dealing in the own securities of the company and such transfer is not within the regulatory framework of either ESOPS or ESPS as provided in the ESOPS and ESPS Guidelines and the same was admitted by the company in its letter dated July 19, 2019.
33. It is observed from the resolution dated May 28, 2014 passed by members of the Remuneration committee of the Board of directors of the company, the committee had decided to reward the qualified permanent employees on rolls of the company by transferring the company shares from the Trust to their personal demat accounts and further authorised the Trustees of the Trust to consider, decide and approve the list of employees and the number of shares to be granted to the employees based on their performance and other determining factors.
34. In view of the above, it was alleged that by deciding to provide shares of the company to qualified permanent employees of the company by transferring the company's shares from the Trust to the personal demat account of the employees, which are not governed under the regulatory framework of ESOPS

and ESPS Guidelines, Noticee 2 and the members of the Remuneration committee of the Board of Directors viz. Noticee 9, 13, 14 and 18 have violated the provisions of Paragraph 4 of SEBI Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with Paragraph 2 and 3 ibid read with ESOPS and ESPS Guidelines and Section 31 of SBEB Regulations and Section 27(2) of SEBI Act.

35. Regulation 1(4) of SBEB Regulations stipulates that the said Regulations shall apply to any company whose shares are listed on a recognised stock exchange in India and has a scheme:
- a) for direct or indirect benefit of employees;
 - b) involving dealing in or subscribing to or purchasing securities of the company directly or indirectly;
36. The term “dealing” in securities also include “transfer” of shares. Regarding the stipulation in the Regulation that the company should have a scheme, Regulation 2 (1) (zb) of the SBEB Regulations defines the term “Scheme”. Accordingly, the term “Scheme” would have two components viz: (i) a proposal to provide share based benefits to its employees (ii) and the proposal to be implemented and administered either directly by the company or indirectly through a Trust in accordance with the Regulations.
37. It was observed that, in the instant matter there is a clear proposal made by the Chairman of the Remuneration committee in its meeting held on May 28, 2014 to reward the qualified permanent employees on rolls of the company by transferring the company shares from the Trust and further had authorized the Trust to consider, decide and approve the list of employees and the number of shares to be granted based on their performance and other determining factors. Subsequently, the Trust after deciding on the modalities of implementation in its meeting held on January 13, 2015 had implemented the same in February 2017. The proposal made by the Remuneration committee,

authorizing the Trust to implement its decision and implementation by the Trust are two constituents of the term “Scheme” as defined in the Regulations.

38. The Trust had complied with the decision of the Remuneration Committee in deciding to transfer 1,70,000 to three employees of the company on March 26, 2015 i.e. after a delay of more than nine months and actual transfer was executed in February 2017 i.e. after a delay of nearly three years from the date of decision of the Remuneration Committee. The Trust had not taken into account the prevailing provisions of the SEBI Circulars dated January 17, 2013, May 13, 2013, November 29, 2013 and June 27, 2014 and also the provisions of SBEB Regulations, even though the Committee had categorically resolved that approval and consent is granted by the committee for the proposal pursuant to the provisions of Companies Act, MOA of the Company, SEBI Regulations and subject to other approvals, permissions and sanctions as may be necessary.
39. In terms of SEBI circular No. CIR/CFD/POLICY CELL/3/2014 dated June 27, 2014, time line stipulated for alignment of all the existing employee benefit schemes with ESOPS and ESPS Guidelines was till the date of notification of the new Regulation i.e. SBEB Regulations i.e. October 28, 2014. Further, in terms of Regulation 31(2) (b), all listed companies having existing schemes to which the Regulations apply are required to comply with the Regulations in their entirety within one year of the Regulations coming into effect i.e. on or before October 28, 2015. Therefore, the proposed decision of transfer of 170000 shares of the company to three employees taken on March 06, 2015 should have also been aligned with SBEB Regulations before its implementation in February 2017. It was observed that Noticee 9, Managing Director of the company was also the Chief Trustee of the Trust. Instead of taking necessary remedial action to ensure that the proposed transfer of 170000 shares are aligned with any of the schemes prescribed under SBEB Regulations, Noticee 2 and 9 allowed the Trust to go ahead with the transfer of

shares in February 2017 thereby keeping the whole scheme of transfer of shares outside the purview of the said Regulations.

40. Regulation 3(6) of SBEB Regulations stipulates that the Trustee should ensure that the appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s).
41. The Trust, while implementing the decision of the Remuneration Committee, was duty bound to ensure that the implementation is done in accordance with the SEBI Rules and Regulations governing the matter prevailing then i.e. for the purpose of transfer of shares to the employees as decided by the Remuneration Committee i.e. it should have ensured that it framed a scheme and implemented the same in accordance with SBEB Regulations.
42. The attendance sheet of the meeting of the Remuneration committee held on May 28, 2014 reveals that Noticee 9 had also attended the meeting of the Committee and had signed therein. Therefore, by virtue of being a Managing Director should have pointed out to the Committee about the provisions of ESOPS and ESPS Guidelines and also about the provisions of SEBI Circulars dated January 17, 2013, May 13, 2013, November 29, 2013 when the committee decided on making a proposal for extending share based employee benefits based on performance excellence of the employees. As Chief Trustee in the Trust, Noticee 9 should have ensured that the scheme formulated for implementation of the decision of the Committee was in accordance with the provisions of SBEB Regulations. Noticee 9 by virtue of being the MD of the Company and having represented himself both in the Committee and Trustees meeting had failed to ensure the same. Therefore, the act of the Noticee 1 and its Trustees in implementing the decision of the Remuneration Committee and dealing in the securities of the company in transfer of 170000 shares of the company to three of its employees without conforming to any of the five

schemes as listed in Regulation 1(3) of SBEB Regulations had contravened the provisions of the said Regulations.

43. In terms of Regulation 2(1)(h) of SBEB Regulations, “Employee Stock Purchase Scheme” or ESPS” means a scheme under which a company offers shares to employees as part of public issue or otherwise, or through a Trust where the Trust may undertake secondary acquisition for the purposes of the scheme. As per the aforesaid Regulation, for a share based employee benefit scheme extended to the employees by a company to qualify as a Employees Share Purchase Scheme or ESPS, it should satisfy any of the following:

- a) There should be offer of shares to employees under a scheme;
- b) Shares so offered can either be as part of public issue or by any other means;
- c) Shares so offered can be either through a Trust where Trust may undertake secondary market acquisition for the purpose of the scheme;

44. In the instant matter, the Company formed a Trust *vide* a Trust Deed dated January 20, 2003 which was subsequently reconstituted *vide* Trust Deed dated April 26, 2017. Proposal and decision of the Remuneration committee to extend share based employee benefit for employees on performance excellence and the Trust formulating the scheme to implement the decision and thereafter by transferring shares free of cost to three employees of the company satisfied the definition of ESPS and therefore in the absence of explicit admission by the Company, considering the various facts provided by the Company, the act of transfer of shares to three employees of the company to the extent of 170000 shares have to be termed as shares issued under ESPS scheme as defined under Regulation 2(1)(h) of SBEB Regulations by the company. Therefore, it was alleged that the company and the Trustees have not framed the plan of transfer of shares as an ESPS as defined in Regulation 2(1)(h) of SBEB Regulations while implementing the decision of the Remuneration Committee dated May 28, 2014 in February 2017, and also have not complied with various

other provisions of the Regulations in connection with issuance of shares under ESPS schemes and thereby contravened provisions of SBEB Regulations as given below.

45. Contravention of SBEB Regulations in Composition of the Trustees of the Trust:

- a) In terms of Regulation 3(4) of SBEB Regulations, a person shall not be appointed as a trustee, if he-
- i. is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or
 - ii. Beneficially holds ten percent or more of the paid-up share capital of the company.
- b) As per the extract of Board Resolution dated January 24, 2015, the Board of the Trust was reconstituted in supersession of resolutions passed earlier and the details of the reconstituted Board of Trustees are as under:
- 1. Mr. Rama Krishna L N - Managing Director
 - 2. Mr. K Rajesh - Independent Director
 - 3. Mr. Prabhakar Rao Kallur - Finance Manager
 - 4. Mr. Sreedhar Karanam - Group Manager
- c) Hence, the Managing Director and one of the Independent Directors of the company were appointed as Trustees of the Trust in contravention of the provisions of Regulation 3(4) of SBEB Regulations.
- d) The following are the details of the Board of Directors who had attended the meeting of the Board and passed Resolution for reconstitution of the Trust on

January 24, 2015 whereby the reconstitution of the Board of Trustees is in contravention of Regulation 3(4) of SBEB Regulations:

1. Mr. P Natarajan, Managing Director
2. Mr. K Rajesh, Chairman
3. Mr. Sanjiv Gupta, Director
4. Mr. N Sriram, Director
5. Mr. Ramanujam Kuppusamy

- e) It was observed from the letter dated June 11, 2018 of the Company that the aforesaid Board of Trustees of the Trust had again been reconstituted.
- f) The Board of Directors in its meeting held on January 19, 2017 had once again reconstituted the Board of Trustees of the Trust and the details of the reconstituted Board of Trustees are as under:
1. Mr. Rama Krishna L N - Managing Director
 2. Mr. Sudheer Koppineni - HR Manager
 3. Mr. Prabhakar Rao Kallur - CFO
- g) The reconstitution of the board of Trustees was done on January 19, 2017 without adhering to the provisions of Regulation 3(4) of SBEB Regulations including the Managing Director and other Key managerial personnel of the company as trustees of the Trust.
- h) Further, the Trust Deed changed to incorporate the aforesaid changes in the Trustees *vide* the re-written Trust Deed dated April 26, 2017 and clause 5 of the Trust Deed specifically lists out the names of the said three executives of the company as the first Trustees and further Clause 6 *ibid, inter-alia* states that the Nominees of the Trust will include the Managing Director of the company, Human Resource Manager of the company and Chief Financial officer of the company. *Vide* email dated September 05, 2018 the company has confirmed that Mr. L Naga Ramakrishna is the Managing Director and the

other two individuals viz. Mr. Sudheer Koppineni and Mr. Prabhakar Rao Kallurare part of the Key Managerial Personnel of the company.

- i) The following are the details of the Board of Directors who had attended the meeting of the Board and passed Resolution for reconstitution of the Board of Trustees in contravention of Regulation 3(4) of SBEB Regulations :

1. Mr L N Ramakrishna, Managing Director
2. Mr K Rajesh, Director
3. Mr Sanjiv Gupta, Director
4. Mr Muthukrishnan Swaminathan, Director
5. Mr Krishnan Jayaraman, Director
6. Smt. L Muneashwari, Director
7. Shri K Srinivas Rao, Director(through conference)

- j) It is observed from the above that the Company has reconstituted the Board of Trustees twice on January 24, 2015 and January 19, 2017 subsequent to October 28, 2014 i.e. the date on which SBEB Regulations had come into force. On both the occasions, the company and its Board of Directors had not complied with the provisions of Regulation 3(4) of SBEB Regulations in nominating the Managing Director and the Key managerial personnel of the company as Trustees of the Trust.

- k) In view of the above, **it was alleged that Noticee 2, 4, 6, 7, 8, 9, 12, 13, 14, 16 and 17 have violated the provisions of Regulation 3(4) of SBEB Regulations read with Section 27(2) of SEBI Act.**

46. Non formation of Compensation Committee or designating any other committee for administering and superintendence of the ESPS scheme

- a) It was observed that the Company neither constituted a Compensation Committee for administration and superintendence of the ESPS nor had it

designated any other committee and more particularly the Remuneration committee consisting of Board of Directors as provided under Section 178 of the Companies Act, 2013 as stated in its annual report for the FY 2015-16.

- b) Further, the “Remuneration Committee” which had decided the policy of share based employee benefit cannot be considered as the Compensation committee for the purpose of compliance with the Regulations by the company; because the said committee had met and decided on the scheme on May 28, 2014 much before the provisions of SBEB Regulations had come into force. Nor the act of the committee was subsequently ratified by the Board of Directors.
- c) While implementing a scheme for transfer of 170000 shares of the company to three employees of the Company, which are akin to Employee share purchase scheme as provided in SBEB Regulations, the company and its Board of Directors have failed to form a Compensation committee (i) for administration, implementation and superintendence of the scheme of said transfer of 1,70,000 shares to its 3 employees, (ii) to formulate the criteria, terms and conditions for the scheme for implementation of the scheme and (iii) to frame suitable policies and procedures to ensure that there is no violation of securities laws, including SEBI (PIT) Regulations, PFUTP Regulations by the Trust, the company and its employees as applicable. Further, the company and its Board of Directors failed to designate any other Committee to do the functions of the Compensation committee in the absence of formation of a compensation committee.
- d) In view of the above, it was alleged that, by failing to constitute a Compensation Committee and further, in the absence of formation of a Compensation Committee, by failure to designate any other Committee to do the functions of the Compensation committee, **Noticee 2 and 9 have**

violated the provisions of Regulation 5 of the SBEB Regulations read with Section 27(1) of SEBI Act.

47. Non obtaining of approval of Shareholders for implementation of ESPS

- a) In terms of Regulation 6 of SBEB Regulations, no scheme shall be offered to the employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.
- b) It was observed that the act of transfer of 170000 shares of the company to three employees of the company is akin to Employee Share Purchase Scheme as defined in Regulation 2(1) (h) of SBEB Regulations.
- c) SEBI sought information from the company regarding the level at which the approvals have been obtained by the company for issuance of the shares under ESPS, including the approvals if any from the Shareholders. The company *vide* its reply dated May 07, 2019 *inter-alia* stated that there are no schemes administered by the Trust. Further, *vide* its email dated June 08, 2019, the company has admitted that the Remuneration Committee had taken the decision for issuance of shares to employees for performance excellence and upon authorization by the Committee, Trustees had unanimously decided to transfer 170000 shares to three employees and approved that the shares shall be credited to the selected employees. The company *vide* its reply dated August 30, 2019, has reiterated that no prior approval had been obtained from the shareholders for the said issuance of shares as the same was not required/mandated.
- d) In view of the above, it was alleged that by providing 170000 shares of the company to three employees under ESPS without obtaining the prior approval of the shareholders by means of a special resolution, **Noticee 2 and 9 have**

violated the provisions of Regulation 6 of SBEB Regulations read with Section 27(1) of SEBI Act.

48. Failure of the Trustees to ensure obtaining of share holders approval to implement the ESPS scheme by them

- a) In terms of Regulation 3(6) of SBEB Regulations, the Trustee should ensure that appropriate approval from the shareholders have been obtained by the company in order to enable the Trust to implement the scheme(s).
- b) *Vide* minutes of the meeting of the Remuneration committee held on May 28, 2014, the Committee had decided to extend share based employee benefits and it had authorized the Trust to consider, decide and approve the list of employees and the number of shares to be granted based on their performance and other determining factors. While authorizing the Trust to carry out all such acts and deeds in implementing the decision, the Committee has also *inter-alia* stated that its decision is pursuant to the provisions of SEBI Regulations and subject to such other approvals, permissions and sanctions as may be necessary. Further the Committee had also resolved that for giving effect to its resolution, it had authorised the Trust to do all such acts as may be necessary. Such authorisation includes compliance with Regulatory requirements for implementation of its decision.
- c) It was observed that the Trustees have not stated nor is any recording available in the minutes of the two meetings of the Trustees held on January 13, 2015 and March 06, 2015 with respect to efforts made by them to verify or to ensure whether shareholders' approval have been obtained by the company for the implementation of the said decision of the Remuneration committee. Therefore, the trustees of Noticee 1 who were holding the office during the two meetings held on January 13, 2015 and March 06, 2015 and the trustees who were holding office in February 20 and 22, 2017 have failed

to ensure that appropriate approval from the shareholders have been obtained by the company in order to enable the Trust to implement the scheme of ESPS extended by the company to its employees either as on date of deciding on the scheme or as on date of implementation of the scheme. Therefore, it was alleged that **Noticee 1, 4, 9, 15, 19 have violated the provisions of Regulation 3(6) of SBEB Regulations read with Section 27(2) of SEBI Act.** The list of Trustees for relevant period is given below:

<u>Trustees for the period 24.01.2015 to 18.01.2017</u>			<u>Trustees for the period 19.01.2017 to 25.04.2017</u>		
Sl. No	Name	Designation	Sl. No	Name	Designation
1.	Mr L N Ramakrishna	Managing Director	1	Mr L N Ramakrishna	Managing Director
2	Mr K Rajesh	Independent Director	2	Mr Prabhakar Rao Kallur	Finance Manager
3	Mr Prabhakar Rao Kallur	Finance Manager	3	Mr Sreedhar Karanam	Group Manager
4.	Mr Sreedhar Karanam	Group Manager			

49. Non-placing of certificate of compliance of the schemes as per regulations from Auditors in the AGM

- a) In terms of Regulation 13 of SBEB Regulations, in case of every company that had passed a resolution for the schemes under the Regulations, the Board of Directors at each AGM place before the shareholders a Certificate from the Auditors of the company that the schemes have been implemented in accordance with the Regulations and in accordance with the resolutions of the company in the General Meeting.
- b) The company in its letter dated June 08, 2019 stated that it is only the Trust which had granted unanimous approval for transfer of 170000 shares to three employees of the company and as is evident from the reply, no approval has

been obtained from the shareholders for the said transfer and therefore placing of Auditor's certificate before the shareholders in the subsequent General meeting have also not been complied with.

- c) In view of the above, by failing to place an Auditor's certificate before the shareholders in the General meeting confirming the implementation of the ESPS scheme in accordance with the Regulations and in accordance with the resolution of the company in general meeting consequent on not obtaining prior approval of the shareholders for implementation of the ESPS under Regulation 6 *ibid*, **Noticee 2 and 9 were alleged to have violated the provisions of Regulation 13 of SBEB Regulations read with Section 27(1) of SEBI Act.**

50. Non-following of prescribed Accounting Standards for extending share based schemes

- a) In terms of Regulation 15 and sub-regulations (1) and (2) thereunder of SBEB Regulations, any company implementing any of the share based schemes shall follow the requirements of the "guidance Note on Accounting for employee share-based Payments" or Accounting Standards as may be prescribed by the Institute of Chartered Accountant of India (ICAI) from time to time including the disclosure requirements prescribed therein. Where such accounting treatment or disclosure requirements for any of the schemes under the Regulations have not been prescribed in the Guidance Note or Accounting Standard, then the company shall follow the relevant Accounting Standard as may be prescribed by the ICAI from time to time.
- b) It was observed that the annual audit report of the company for the FY 2014-15, the year in which the decision to implement ESPS was taken and for the FY 2016-17, the year in which the actual transfer of shares under ESPS had taken place, do not reflect nor state the aforesaid accounting treatment followed by the company in respect of the ESPS implemented. The company

has confirmed that it had not followed the prescribed accounting standards as the shares were given only as part of performance linked incentives.

- c) By failing to adopt the accounting treatment as prescribed for implementation of the ESPS, **Noticee 2 was alleged to have violated the provisions of Regulation 15 of SBEB Regulations read with Section 27(1) of SEBI Act.**

51. Fixing up of share price for issuance to employees without adhering to the Accounting Standards

- a) In terms of Regulation 22(1) of SBEB Regulations, the company can determine the price of the shares to be issued under an ESPS provided they conform to the provisions of accounting policies under Regulation 15 of SBEB Regulations.
- b) In the instant case, *vide* the decision in the meeting of the Trustees dated March 06, 2014, it had been decided to transfer the shares to three employees free of cost. It was observed that the company had not followed the Accounting Standards as prescribed under Regulation 15 of SBEB Regulations for the shares issued under ESPS.
- c) By determining the consideration price as “free of Cost” for issuance of shares to the employees under employee benefit scheme without following the prescribed Accounting Standards, **Noticee 2 was alleged to have violated the provisions of Regulation 22(1) of SBEB Regulations read with Section 27(1) of SEBI Act.**

52. Wrong classification and disclosure of shareholding by the Trust to BSE

- a) Clause 3(9) of SBEB Regulations stipulates that for the purposes of disclosures to the stock exchange, the shareholding of the Trust shall be

shown as 'non-promoter and non-public' shareholding. However, it is observed from the BSE website that the company has shown the 4,72,333 shares held by the Trust under Public Shareholding.

- b) Therefore, by wrongly classifying the shares of the company held by the Trust as a Public Shareholder instead of classifying the same as non-public and non-promoter shareholder, **Noticee 2 was alleged to have contravened the provisions of Clause 3(9) of the SBEB Regulations and Section 27(1) of SEBI Act.**

53. Violations in respect of disclosures to be made to the Stock Exchanges by the company

- a) It was *inter-alia* observed from the reply of the Trust dated May 06, 2018 and the letter of Noticee 9 dated June 11, 2018 that:
- i. BCL had formed a Trust in the name of BCL Employees Benefit Trust in the year 2003 for the welfare of the employees of BCL;
 - ii. The Trust is in existence even before the direct listing of the scrip of the company in BSE on May 04, 2015;
 - iii. The Trust is holding shares of BCL which are not backed by ESOPS scheme;
 - iv. The MD and two other senior management officers of BCL in the level of CFO and Sr. VP-HR are presently the Trustees of the Trust;
 - v. The Trust has 6,51,333 shares of the company and had transferred 1,70,000 shares to three employees of BCL which includes transfer of 1,00,000 shares of BCL to Mr. Hassan Ali an employee of the company, free of cost.
 - vi. The Trust and two of its Trustees viz: K. Sudheer and Lakimsetty Naga Ramakrishna who is also the MD of BCL and by virtue of such position in BCL, the BCL are all aware of the provisions of SBEB Regulations.

- b) BCL *vide* its letter dated June 08, 2019 has also confirmed that prior to the date of transfer of 170000 shares to 3 employees i.e. as on February 20, 2017 and February 22, 2017, the Trust was holding 642333 shares in its demat account and 9000 shares in physical form.
- c) The Trust, formed by the company, having directors and employees as trustees, was holding the shares of the company as on January 17, 2013, even after notification of SBEB Regulations. Clause V of the Trust Deed states that the Trust is formed to formulate reward schemes for the employees in the form of Stock Purchases, Stock Options and other schemes to enable them to invest in the securities of the company. SEBI Circular dated January 17, 2013 states that companies, which have already framed and implemented before the date of this circular any employee benefit schemes involving dealing in the securities of the company, which are not in accordance with ESOPS and ESPS Guidelines, will be required to inform the details of their schemes to the Stock Exchanges within 30 days from date of this circular, in the format provided in Annexure to this circular and to disseminate the said information on their website.
- d) The company was required to disclose the details of the existence of the Trust and its residual holding of the shares of the company after the series of transfers to its employees, in the format prescribed in Annexure II to the said SEBI Circular on or before February 17, 2013 which was extended up to June 30, 2013 *vide* SEBI circular dated May 13, 2013. Further, the company was also bound to amend its listing agreement with the Exchanges in which it was listed then to include a Clause 35C as specified in the said Circular dated January 17, 2013 and the said Clause 35C reads as under:

“35C (i) The issuer agrees that all the employee benefit schemes involving the securities of the company shall be in compliance with SEBI (Employee Stock Option Schemes and Employees Stock Purchase Schemes)

Guidelines, 1999 and any other guidelines, regulations etc. framed by SEBI in this regard.

(ii) The issuer further agrees that all the employee benefit schemes already framed and implemented by the company involving dealing in the securities of the company before the insertion of this clause shall be aligned with and made to conform to SEBI (ESOPS and ESPS) Guidelines, 1999 by June 30, 2013”

- e) As on date of the said SEBI circular dated January 17, 2013, the company was listed on Hyderabad Stock Exchange (HSE) and MSE *vide* the listing agreement dated March 18, 2015 executed with HSE and listing approval granted *vide* letter dated June 4, 1996 of MSE. Both the Exchanges exited only subsequent to issuance of the said SEBI circular dated January 17, 2013 *vide* Exit Orders of SEBI dated January 25, 2013 and May 14, 2015 respectively. It was observed that HSE had exited in less than ten days from the date of issuance of SEBI circular dated January 17, 2013 and MSE had exited after two years from the date of issuance of the said circular. SEBI circular dated January 17, 2013 prescribed the requirement for:
- i. Amendment to Listing agreement for insertion of Clause 35C of the Listing agreement;
 - ii. Disclosure to the stock Exchanges of details of the employees benefit trust, shares of the company dealt with by the Trust etc.
- f) In view of the above, as long as both the Exchanges were in existence as on date of the SEBI Circular dated January 17, 2013, the company should have amended its Listing agreement with the said two Stock Exchanges by insertion of Clause 35C as stipulated in paragraph 5 of the said Circular and further the Company should have disclosed to both the Exchanges of the particulars specified in paragraph 6(i) of the said SEBI Circular read with SEBI circular dated May 13, 2013 on or before June 30, 2013.

- g) Therefore, the company by virtue of its Listing Agreement with MSE as stated above, should have complied with the aforesaid requirements of amendments to Listing Agreement by insertion of Clause 35C to it and disclosure of the formation of Trust, dealing in the securities of the company by holding and transfer of its shares to the employees of the company as employee welfare benefits as stipulated in SEBI Circular dated January 17, 2013.
- h) However, the erstwhile MSE now named as MSE Enterprises existing in the Registered office address of its Subsidiary company MSEFSL (SEBI Registered Stock Broker) at No. 25, Abhirama puram 3rd Street, Chennai – 600018, *vide* email dated August 19, 2019 stated that BCL had not provided any disclosure required under paragraph 6(i) of SEBI circular dated January 17, 2013 nor had amended the Listing Agreement by inserting clause 35C to its Listing agreement. **Therefore, BCL had not complied with the provisions of paragraph 5 and paragraph 6(i) of SEBI circular dated January 17, 2013 in respect of its listing agreement executed with erstwhile MSE.**
- i) Consequent to exit of HSE and MSE in which the company was previously listed, BCL had applied for direct listing in BSE *vide* its application dated March 13, 2015 and obtained listing approval from BSE *vide* its letter dated April 29, 2015 and the scrip of BCL was listed on May 04, 2015. It was observed from the listing agreement executed by the company with BSE, that the company has incorporated clause 35C. However, BSE *vide* its email dated August 16, 2019 stated that BCL has not made any disclosure about the existence of the Trust, the dealing in shares of the company by the Trust towards extending of share based employee benefits to its employees as required under paragraph 6(i) of SEBI Circular dated January 17, 2013 read with SEBI Circular dated May 13, 2013.

- j) It was observed that the company was aware of the SEBI Circular No.CIR/CFD/DIL/3/2013 dated January 17, 2013 being in force and had partially complied with the provisions of paragraph 5 of the said circular but had failed to provide disclosure to BSE about the existence of the Trust and the shares of the company being held by the Trust as stipulated in Paragraph 6(i) of the said circular.
- k) In terms of Section 24(1) of SCRA (prior to amendment by the Finance Act, 2018), where an offence is committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly. Further, in terms of Section 2(54) of companies Act, 1956, a Managing Director means a director who by virtue of the articles of the company or an agreement with the company or a resolution passed in its general meeting or by its Board of Directors is entrusted with substantial powers of the management of the affairs of the company and includes a director occupying the position of managing director by whatever name called.
- l) During the period from September 05, 2011 to January 24, 2015 when the aforesaid SEBI circular dated January 17, 2013 had come into force, Shri. Palaniappan Natarajan (Noticee 14), was the Managing Director of the Company. Therefore by virtue of Section 2(54) of the Companies Act, 1956 read with Section 24(1) of SCRA, he is also deemed to be responsible for the non-compliance by the company of the provisions of paragraph 5 and paragraph 6(i) of SEBI circular dated January 17, 2013.
- m) Similarly, during the period from January 24, 2015 till date, Shri. L Naga Ramakrishna (Noticee 9) was the Managing Director of the Company. By virtue of being the Managing director of the company, in terms of Section

2(54) of Companies Act, 1956 read with Section 24(1) of SCRA as stated above, he is deemed to be responsible for the non-compliance by the company of provisions of paragraph 6(i) of SEBI circular dated January 17, 2013.

- n) Hence, by not amending the listing agreement executed with MSE to incorporate a clause 35C as stipulated in paragraph 5 of SEBI Circular dated January 17, 2013 and by not disclosing the details of any employee benefit schemes involving dealing in the securities of the company which are not in accordance ESOPS and ESPS guidelines within 30 days as stipulated in paragraph 6(i) *ibid* read with the provisions of SEBI circulars dated May 13, 2013, November 29, 2013 and June 27, 2014, **Noticee 2 and 14 were alleged to have violated clause 5 and 6 (i) of SEBI Circular dated January 17, 2013 read with read with the provisions of SEBI circulars dated May 13, 2013, November 29, 2013 and June 27, 2014 read with provisions of Clause 35C of Listing Agreement entered into with MSE read with Section 21 of SCRA and Section 24(1) of SCRA respectively.**
- o) Further, by not disclosing the details of employee benefit schemes involving dealing in the securities of the company which are not in accordance with ESOPS and ESPS Guidelines within 30 days as stipulated in paragraph 6(i) of SEBI Circular dated January 17, 2013 read with the provisions of SEBI circulars dated May 13, 2013, November 29, 2013 and June 27, 2014, with BSE in which the company was listed, **Noticee 2 and 9 were alleged to have not complied with the provisions of paragraph 6(i) of the SEBI Circular dated January 17, 2013 read with SEBI circulars dated May 13, 2013, November 29, 2013 and June 27, 2014 and thereby alleged to have violated the provisions of Clause 35C of Listing Agreement entered into with BSE read with Section 21 and Section 24(1) of SCRA respectively.**

54. **Routing of Sale proceeds of shares to Noticee 5:**

- a) It was observed that the Trust had transferred 170000 equity shares of BCL to three employees of the company. Transaction statement of the demat account of the Trust issued by NSDL in this regard is as under:

Date	Order No.	Description	Opening Balance	Debit	Credit	Closing Balance
20-Feb-2017	10000002983856	To Sharekhan Ltd/14151143 (B Guruprasad)	642333	50000	0.00	592333
20-Feb-2017	10000002988006	To ICICI Bank Ltd./52903945 (Hassan Ali)	592333	100000	0.00	492333
20-Feb-2017	10000002988007	To HDFC Bank Ltd./54933921 (Anil Grandhi)	492333	20000	0.00	472333

- b) Subsequent to receipt of the shares of BCL as mentioned above, Noticee 3 and Mr. Guru Prasad Budhavarthi had sold their shares in the market as per the details mentioned below:

Name	Date of Transaction	Quantity Sold	Average Price at which sold
Hassan Ali (Noticee 3)	07.02.2018	94,000	94.35
Guru Prasad B	11.01.2018	20,000	94.45
Guru Prasad B	15.01.2018	10,000	105.00

- c) Noticee 3 had sold the shares of BCL on February 07, 2018 almost after one year from the date of its receipt on February 22, 2017 and that too after cessation of his employment with BCL.
- d) Before executing the sale transaction, Noticee 3 transferred 6,000 shares of BCL to Noticee 5 on January 30, 2018 through an off market transaction as per the details given below:

Date	Order No	Description	Opening Balance	Debit	Credit	Closing Balance
------	----------	-------------	-----------------	-------	--------	-----------------

22-Feb-2017	81000000 495938	By HDFC BANK LTD / 41157552	1,050	0	100,000	101,050
30-Jan-2018	10000000 106964	To CDS / 1301440001497451 (Transferred to Noticee 5)	101,050	6,000	0	95,050
07-Feb-2018	1000001 5639024	To CM ICICI SECURITIES LIMITED, ROLLING MKT LOT / 1718215	95,050	94,000	0	1,050

e) The market value of 6,000 shares as on the date of transfer was Rs.5,49,000/- (calculated at the opening price of the day Rs.91.50). The consideration for this transfer was stated as gift as per the Delivery Instruction Slip no. 501420322 dated January 30, 2018 issued by Noticee 3 to his Depository Participant. However, on specific query regarding the transfer, Noticee 3 vide email dated October 26, 2018 stated that he had received the consideration by cash.

f) It was observed on examination of the fund trail subsequent to receipt of the sale proceeds of 94,000 shares of BCL that, Noticee 3 has realized the net amount of Rs.87,69,473.66 from his Trading Member (TM) and the same was credited to his Bank Account on February 09, 2018 by TM. The bank account entries mentioned below shows that the said amount was the only substantial quantum of funds credited to his bank account during the investigation period:

DATE	MODE	PARTICULAR	DEPOSITS	WITHDRAWALS	BALANCE
01/01/2018		B/F			241985.6
08/02/2018	ICICI Direct	EBA/NSDL CDSL Chg_080218/20180208065114		5.32	241980.28
09/02/2018	ICICI Direct	EBA/BSE N201718215/20180209081855	8769473.66		9011453.94
15/02/2018		ACH/NTPC LIMITED/00000000000000000000000553807	311.22		9011765.16
15/02/2018		Drcard Reissue Charges		200.00	9011565.16
15/02/2018		IGST20180215326921238		36.00	9011529.16
15/02/2018		ACH/POWERGRID CORPORATIO/23455952	245.00		9011774.16
20/02/2018	79390	TRFR TO:L NAGA VISWESWARA RAO		1700000.00	7311774.16
20/02/2018	79391	TRFR TO:SUNITHA ARRAM		2000000.00	5311774.16

Adjudication Order in the matter of Bodhtree Consulting Limited

DATE	MODE	PARTICULAR	DEPOSITS	WITHDRAWALS	BALANCE
21/02/2018	79384	TRFR TO:L NAGA VISWESWARA RAO		500000.00	4811774.16
21/02/2018	79385	TRFR TO:SUNITHA ARRAM		1500000.00	3311774.16
21/02/2018	79386	TRFR TO:MUNINDER RAJA ARRAM		2500000.00	811774.16
23/02/2018		DCARDFEE7696FEB18-JAN19+GST		177.00	811597.16

- g) It is observed from the above table that Noticee 3 had transferred the amount received as proceeds from the sale of shares of BCL to Noticee 10, 11 and 21 as mentioned below:

Date	Cheque No.	Name of the transferee	Amount
20.02.2018	79390	L Naga Visweswara Rao (Noticee 10)	1,700,000
20.02.2018	79391	Sunitha Arram (Noticee 21)	2,000,000
21.02.2018	79384	L Naga Visweswara Rao (Noticee 10)	500,000
21.02.2018	79385	Sunitha Arram (Noticee 21)	1,500,000
21.02.2018	79386	Muninder Raja Arram (Noticee 11)	2,500,000
		Total	82,00,000.00

- h) Noticees 3, *vide* email dated October 26, 2018 stated that the said transactions are personal in nature and are loans given to the said transferees. He further stated that the said transferees are his friends and it is verbally agreed upon to repay the amount in 2-3 years' time frame. In support of this Noticee 3 had produced copies of Promissory Notes received from the Noticee 10, 11 and 21.
- i) It is observed from the bank statements of Noticee 10, 11 and 21, that subsequent to receipt of funds from Noticee 3, they have transferred the funds to Noticee 5 and the details of such transfers are as under:

Transferee	Particulars of receipt of funds by transferees from Noticee 3		Particulars of in turn Transfer of funds to Noticee 5 by the transferees	
	Date of Receipt	Amount Received	Date of Transfer	Amount Transferred
Noticee 10	20.02.2018	17,00,000	20.02.18	9,00,000
	21.02.2018	5,00,000	21.02.18	2,50,000
Noticee 21	20.02.2018	20,00,000	22/23.02.18	35,00,000
	21.02.2018	15,00,000		
Noticee 11	21.02.2018	25,00,000	22.02.18	25,00,000
Total		82,00,000		71,50,000

- j) It is observed that in addition to transferring a part of fund to Noticee 5, the Noticee 10 had transferred the balance amount to Mr. Mahesh Arram (spouse of Noticee 21 and the cousin of Noticee 8) as mentioned below:

Transferee	Particulars of receipt of funds by Noticee 10 from Noticee 3		Particulars of in turn Transfer of funds by Noticee 10 to Noticee 5		Particulars of in turn Transfer of funds by Noticee 10 to Mahesh Arram	
	Date of Receipt	Amount Received	Date of Transfer	Amount Transferred	Date of Transfer	Amount Transferred
Noticee 10	20.02.2018	17,00,000	20.02.2018	9,00,000	20.02.18	8,00,000
	21.02.2018	5,00,000	21.02.2018	2,50,000	21.02.18	2,50,000

- k) On examination of the UCC details, KYC details, PAN Card and address proof, it was observed that Noticee 10, 11 and 21 are related to Noticee 9

(Managing Director of BCL) and his spouse Noticee 8 (Non independent and Non executive Director of BCL) as detailed below:

Sl. No.	Transferee	MD/Director of BCL to whom related with	Nature of relationship
1.	Noticee 10	Noticee 9	Brother
2.	Noticee 11	Noticee 8	Brother
		Noticee 9	Brother-in-law
3.	Noticee 21	Noticee 8	Spouse of Cousin
	(spouse of Mahesh Arram)	Noticee 9	Related through Noticee 8

- i) Further, Noticee 21, the other transferee holds a familial relationship with Noticee 8 being the spouse of Mr. Mahesh Arram (the cousin of Noticee 8). Further, Mr. Mahesh Arram is connected to Noticee 10 through financial transactions as mentioned above.

55. It was observed that Noticee 10, 11 and 21 *vide* their emails dated March 11, 2019 have uniformly stated that, Noticee 3 is their family friend and they had availed a loan from him and since Noticee 5 has been requesting them to provide a loan to meet its difficulties, these three Noticees have given the loan to Noticee 5. However, Noticee 10, 11 and 21 have not substantiated the said statements with documentary evidence such as loan agreement with Noticee 5, except a copy of the Promissory Notes executed by them in favour of Noticee 3. It was also observed that the transfer of funds by Noticee 3 to Noticee 10, 11 and 21 have taken place more or less on the same dates and in turn transfer of the funds to Noticee 5 on more or less the same dates. The financial status of Noticee 5 in terms of net profits after tax for the three financial Years 2015-16, 2016-17 and 2017-18 as per its audited financial statements are as under:

Kepler Information Systems Pvt. Ltd.			
	Financial Year		
	2017-18	2016-17	2015-16
Total Revenue	226,349,101	56,882,010	37,487,209
Expenses	218,100,466	52,235,028	32,980,980
Profit before tax	8,248,635	4,646,982	4,506,229
Tax Expenses	5,799,263	1,571,564	245,348
Profit after tax	2,449,372	3,075,418	4,260,881

56. The uniform reply of Noticee 10, 11 and 21 with respect to Noticee 3 and almost same dates of transfer of funds as stated above, shows that the aforesaid transactions were pre-determined.

57. It is informed by Noticee 5 *vide* email dated June 26, 2019 that Noticee 9 and 10 are the two promoters of Noticee 5 with each holding 50% of the total shareholding as on date of incorporation of it. As per email of Noticee 5 dated September 30, 2019, the details of shareholding of Noticee 5 as on March 31, 2019 is as given below:

Name of Share holder	Type of shares	Total no. of shares held	Paid up value	Total paid up value	% of shares held to total share holding
Noticee 9	Equity	385000	10	38,50,000	55.00
Noticee 10	Equity	1000	10	10,000	0.14
Noticee 8	Equity	312000	10	31,20,000	44.57
Dronamraju Vindhya	Equity	2000	10	20,000	0.29
		7,00,000		70,00,000	100.00

58. As per clause 29 of the Articles of Association of Noticee 5, Noticee 8 and 9 are the first Directors of the Noticee 5. Further, during the period of aforesaid transfer of shares and funds, Noticee 8 was one of the directors of the Noticee 5. The details of the directors as per information provided by Noticee 5 are as under:

Sr. No.	Name of the Director	PAN
1	LakkimsettiMuneashwari (Noticee 8)	ABWPL2445F
2	Venkata Ravi Bandy	BJXPB7801F
3	TanikellaVisalakshi	
4	Erram Bhargavi	

59. The entire 1,00,000 shares of BCL provided to Noticee 3 by BCL have been returned indirectly to Noticee 9 and 10 as given below:

- a) Rs.82 lacs out of the sale proceeds of Rs.87.69 lacs realized on sale of 94,000 shares by Noticee 3 have been transferred to Noticee 10, 11 and 21 and all the three of whom have in turn transferred the funds so received, to the extent of Rs.72.50 lacs to Noticee 5;
- b) 6000 shares of BCL were transferred to the demat account of Noticee 5, the value of shares transferred calculated as Rs.5.49 lacs (calculated based on opening price of Rs.91.50 of the scrip of BCL on the date of transfer);
- c) Rs.10.50 lacs were transferred by Noticee 10 to Mr. Mahesh Arram, the spouse of Noticee 21 and the cousin of Noticee 8.
- d) As already mentioned in earlier paragraphs, Noticee 5 is an entity promoted by Noticee 9 and 10. Further, Noticee 8 and 9 together held 99.57% of the total shareholding of the Noticee 5.

60. It is allegedly highly improbable that a monthly salaried ex-employee of the company would provide an interest free loan to the tune of Rs.82 lacs to three close relatives of the MD of his employer company and also gift 6000 shares of his company worth Rs.5.49 lacs to a company promoted by the MD of his employer company and the borrowers would in-turn transfer the funds so received to an entity promoted by the MD of the company, at the same time as

a loan to the entity without executing any loan document or specifying other terms and conditions of repayment, interest etc.

61. In view of the above, it was alleged that the whole act of transfer of shares to Noticee 3 by the company, its subsequent sale by Noticee 3 and transfer of the sale proceeds and balance of shares to Noticee 5 routed through three individuals who are relatives of Noticee 9 and his spouse Noticee 8, was pre-determined /pre-decided act / transaction done for undue benefit of Noticee 8 and 9.
62. Hence, it was alleged that Noticee 3, one of the three beneficiary employees of BCL who had received 1,00,000 shares of BCL from the Trust, by indirectly returning the sale proceeds of 94,000 shares sold by him in the market and 6,000 shares in demat form to Noticee 9 through Noticee 5, committed a fraud as defined in Regulation 2(1)(c) in violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act;
63. Further, Noticee 10, 11 and 21 who all individually hold a close family relationship with Noticee 8 and 9, by acting as a conduit in transferring the funds received from Noticee 3 to Noticee 5, wherein both Noticee 8 and 9 together hold 98% of the shareholding of Noticee 5 allegedly aided and abetted the scheme and artifice of Noticee 9. Thereby **Noticee 10, 11 and 21 were alleged to have committed a fraud as defined in Regulation 2(1)(c) in violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(b)(c) of SEBI Act;**
64. It was alleged that Noticee 8 by virtue of being the spouse of Noticee 9, the Managing Director of BCL and also being a non-independent non-executive Director of BCL and further by virtue of being the Director of Noticee 5 and also by virtue of being the second largest shareholder of Noticee 5 and further by

virtue of holding close familial relationship with three transferors of funds to Noticee 5 viz: Noticee 10, 11 and 21, thereby was the other beneficiary of the undue benefits received indirectly by Noticee 9. Thereby, **Noticee 8 was alleged to have committed a fraud as defined in Regulation 2(1)(c) in violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act;**

65. Noticee 5 is promoted by Noticee 9 and 10. Noticee 8 and 9 together hold 99.57% of the total shareholding of Noticee 5. By virtue of being the final recipient of the funds and securities of BCL transferred by Noticee 3 as part of the scheme and artifice of Noticee 9, **Noticee 5 was alleged to have committed a fraud as defined in Regulation 2(1)(c) in violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act;**
66. The resolution of the Remuneration committee dated May 28, 2014 while proposing to provide the shares to employees based on performance excellence does not in any way mention or state that the shares are to be transferred as part of the terms of appointment of the employees. Even in the minutes of subsequent meetings of the Trust held on January 13, 2015 and March 16, 2015 chaired by Noticee 9, as Chief Trustee to carry out the decision of the Remuneration committee, no specific mention has been made for allotment of shares to the eligible/selected employees as per the terms of their appointment.
67. Also, in terms of Clause 4 of the Trust Deed dated January 20, 2003, the income of the Trust property shall be applied for any or all of the purposes mentioned therein and not for any other purpose. The purposes specified in the Trust Deed does not include allotment of shares to employees as performance based incentives as part of their terms of appointment not backed by any of the schemes provided in clause V therein.

68. Further, the purpose of the resolution dated May 28, 2014 of the Remuneration committee to transfer shares is to attract and retain the key talents working with the company. However, the Trust has rewarded the employee B. Guruprasad who had ceased to be in employment with the company as on date of transfer of shares i.e. transfer of shares to the employee took place on February 20, 2017 whereas the employee had already resigned on April 30, 2016. The resignation was duly accepted and he was relieved from the services of the company on June 04, 2016. In case of Noticee 3, allotment took place on February 22, 2017 whereas the employee resigned with effect from May 31, 2017, and had ceased to be in employment within three months subsequent to transfer of the shares of BCL.
69. The company has not provided the reason for the huge time gap of over 3 years between the date of decision to provide the shares to the employees of the company and its actual date of implementation. It is during this time period, that providing share based employee benefits to the employees outside the existing regulatory frame work had been prohibited and new regulations were evolving.
70. The Board of Directors in its meeting held on January 19, 2017 had reconstituted the Board of Trustees to comprise of three Trustees viz: Noticee 4, 9 and 15. The said meeting was attended by both Noticee 8 and 9 and they had also signed the attendance sheet. The matter of reconstitution of the Trust had been discussed as agenda item 17(h) in the Minutes book.
71. BSE confirmed vide email dated August 16, 2019 that no disclosure about the Trust or the shares of the company held by the Trust as part of employee benefit scheme have been made by the company and the company's website also does not disclose any such information as on date. Therefore, the company merely complied with paragraph 5 of the circular No.

Cir/CFD/DIL/3/2013 dated January 17, 2013 c regarding insertion of Clause 35C to the listing agreement. BCL has not disclosed to BSE, the details of transfers of shares of the company to the employees as employee benefit and also about its decision dated May 28, 2014 for introducing an unnamed scheme to transfer shares of the company to its employees through the Trust. This amounts to concealment of material fact by BCL to BSE while seeking approval for listing of its scrip in the Exchange.

72. It was alleged that the company had adopted a deceptive device for its decision of transfer of shares to its employees using a “Remuneration Committee” of Board of Directors of the company to decide on floating of an unnamed scheme for transfer of shares from the Trust to employees on their performance excellence basis. This was done so as to make Remuneration Committee appear like that of Compensation Committee as stated in paragraph 5 of ESOPS and ESPS Guidelines. In terms of paragraph 5.1 of SEBI ESOPS and ESPS Guidelines, formation of “compensation committee” for administration and superintendence of the scheme is essential only for ESOPS and not for ESPS.
73. Further, it was observed from the reply of the Trust to SEBI vide its letter dated May 16, 2018 that the Trust was very much aware of the existence and provisions of SBEB Regulations. Therefore, before implementing the decision of the “Remuneration Committee” a duty is cast on the Trust under Regulation 6 of SBEB Regulations to ensure that the company has obtained the prior approval of its shareholders for implementation of the scheme. The act of the Trust in implementation of the decision of the Remuneration committee allegedly amounts to continuing with the deceptive act committed by BCL.
74. Hence, it was alleged that the whole scheme of transfer of shares of BCL to certain employees of the company including Noticee 3, who had received 1,00,000 shares of the company, his subsequent disposal of 94000 shares in

the market and transferring the proceeds of sale of Rs.82 lacs back to the three immediate and close relatives of the Managing Director of the Company and his spouse who is also a non-independent and non-executive director of the company and the said three individuals in turn transferring the funds to Noticee 5, an entity promoted and controlled by the said MD and his spouse and also Noticee 3 transferring the balance of 6000 shares of the company to Noticee 5 as a gift, are nothing but a pre-determined / pre-decided act and therefore an act of fraud committed on its shareholders in a deceitful manner for the sole direct or indirect benefit of the Managing Director and his spouse who is also an non-independent and non-executive director of the company.

75. Therefore, it was alleged that though having knowledge of the fact of existence of the Trust and its act of transfer of shares of BCL to the employees of BCL, by not disclosing the same to BSE while executing the Listing agreement with BSE by the company, **Noticee 2 and its Managing Director Noticee 9 by active concealment of the said fact from BSE committed a fraud as defined in Regulation 2(1)(c)(3) read in violation of with provisions of Regulation 3(a) (b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(b),(c) of SEBI Act.**
76. It was also alleged that Noticee 9 while functioning as Managing Director of BCL and also as a Chief Trustee of the Trust through a scheme and artifice executed said scheme without adhering to the provisions of SBEB Regulations for scheme. Noticee 9 received back indirectly from one of the transferees' viz. Noticee 3 the sale proceeds of 94,000 shares sold in the market and 6,000 shares of BCL through Noticee 5 and hence acquired undue benefits thereon. **Therefore, Noticee 9 was alleged to have committed a fraud as defined under Regulation 2(1)(c) in violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act.**

77. It was alleged that Noticee 1 and its Trustees Noticee 4, 15, 19 and 20, where Noticee 15, 19 and 20 were functioning as Key managerial personnel of BCL and Noticee 4 was an independent director of BCL, by executing the transfer of 170000 shares of BCL to three employees of the company aided and abetted the scheme and artifice of the Managing Director of the company whereby the Managing director had received indirectly undue benefits. **Thereby, Noticee 1, 4, 15, 19 and 20 were alleged to have committed a fraud as defined in Regulation 2 (1) (c) in violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act.**
78. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15HA and 15HB of the SEBI Act and Section 23E and 23H of SCRA.
79. SCN was duly served to the Noticees. All the Noticees except Noticees 6 and 7 filed their reply to the SCN.
80. The key submissions of the Noticees are summarised below:

Noticees 1, 15 and 20:

- a) Noticees 1, 15 and 20 submitted that merely for an alleged procedural requirement of obtaining shareholders' approval which doesn't even apply in the instant case as the Trust never floated an ESOP scheme, the serious charges of "Fraud" has been fastened upon them without any plausible justification, necessary elements of fraud are not present in the present nor is there any observation in the SCN that such elements exist. The charge of "Fraud" is made without any cogent evidence or even strong preponderance of probabilities.
- b) The trust was formed with an intent to provide various benefits not merely limited to the employees benefits but also for the maintenance and

education of employee's children, healthcare of the employees and their families, organizing training programs for the employees etc. The trust so formed was an independent entity from the BCL and the same was formed for having larger objectives of general benefit of the employees and their families as well. The said trust was not formed for purpose of giving ESOP or ESPS, nor floated any scheme for said purpose. Reward of BCL's shares to the employees was not forbidden under law and hence such reward was bestowed upon the performing and dedicated employees of the BCL who rendered long years of continued service.

- c) On 28th May 2014, the Remuneration Committee in its meeting passed the Resolution to reward the qualified permanent employees on rolls of the company. Further, the Committee authorized the Trustees of the Trust to consider, decide and approve the list of employees and the number of shares to be granted to the employees based on their performance and other determining factors. Thereafter, on 13th January 2015, the trustees in their meetings held to discuss and decide on the criterion/ factors to be considered to determine the list of employees to whom such shares can be granted. The trustees further discussed the matter and shortlisted a few employees, the performance of whom shall be subject to further review and rating to decide upon the final list. The trustees were to take the decision to transfer the shares to the final list of employees at the next meeting of Trustees in the upcoming quarter. On 24th January 2015, the Board of the Trust was reconstituted in supersession of resolutions passed earlier. In the next meeting of trustees held on 06th March 2015, Trustees after due consideration of applications independently decided to allocate the shares to three employees. Trustees also decided that the shares will be allocated based on the completion of formalities and it can be anytime while the employees are in the organization or outside the organization. This fact itself shows that the Trust was not implementing any scheme of ESOP or ESPS, at least they were under bonafide impression that the transaction was different than an ESOP or ESPS transaction. The Board of Directors in

its meeting held on January 19, 2017 had once again reconstituted the Board of Trustees of the Trust. The shares of BCL Trust were administered under the supervision of the Trustees of the BCL trust and had no connection with any ESOP Scheme. The shares lying in BCL Trust were not a part of any Scheme of ESOP or ESPS.

- d) The execution of transfer took place in the year 2017 i.e., after 2 years from the trust meetings where the decision of transfer was taken by the trustees. The aforesaid facts substantiate our contention that the said transfers made by trust were independent and cannot be termed as Scheme formulated by the Company.
- e) SEBI'S Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 was formed with an intent to make a blanket prohibition on listed companies to devise any employee benefit schemes involving acquisition of its own securities from secondary market. They submitted that in the instant case there was no secondary market acquisition. Furthermore, the transfer in question was decided by the trust and trustees independently without any interference of the Company.
- f) With respect to allegation of violation of PFUTP Regulations, they submitted that there is no observation in the SCN to depict any concerted action between them and Mr. Hassan Ali. Further, the shares were sold by him during February, 2018 i.e. after 9 months from his disassociation from the Company. There is no observation in the SCN also to depict any concerted action between them and Mr. Hassan Ali.
- g) Noticee 20 was made one of the trustees only during January, 2017. As stated above, the decisions of transfer of shares to Mr. Hassan Ali along with 2 other employees were taken long back in trust meetings held in 2015. Therefore, alleging Noticee 20 in the capacity of Trustee w.r.t the decision of transfer taken much before his tenure as Trustee is not tenable.

Notices 2, 8 and 9:

- a) Notices 2, 8 and 9 stated that each and every alleged provision/regulations requires the implementation of a 'scheme' for the distribution of share-based benefits to employees either under an employee stock option scheme (ESOS) or an employee stock purchase scheme (ESPS); both of which are defined in the SBEB Regulations themselves.
- b) Reg. 2(1)(g) defines "employee stock option scheme or ESOS" as a scheme under which a company grants employees stock options directly, or through a trust. The term 'option' is self-evident, it means that employees are granted an option to buy the shares of a Company at a set rate and a later date, regardless of their price on the open or secondary market. Employees have the option of purchasing these shares within a finite period. Similarly, Reg. 2(1)(h) defines "employee stock purchase scheme or ESPS" as a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme. Once again, this evidently implies a right granted to and a purchase made by the employees during the public issue of the company's shares, a choice on the part of the employee to exercise, and acquire these shares for some subsidized consideration.
- c) Analysis of both of the aforesaid options reveals two things; a) That these are standardized or widely available options to most of the employees of the Company, which is what necessitates their regulation on a wider scale, and b) that the existence of a scheme, or plan, or some kind of scheme for giving employees these options.
- d) However, in the present matter no such scheme, plan, or option has been implemented within the Company through BCL Trust. There was no scheme or plan to offer employees options or secondary purchase of the shares of the Company; indeed, no such option was available to employees on a large scale at all, and no option or purchase was given to

the three employees in question. There was no consideration, or choice, from the employees involved (including Noticee 3), none of the ingredients of a share-based scheme at all. The Oxford Dictionary defines a scheme as "a large-scale systematic plan or arrangement or attaining a particular object or putting a particular idea into Act." As evident, a large scale is a necessary requirement for something to be considered a scheme.

- e) The shares so granted to the three employees were granted directly to three employees in question ex-gratia for their long-standing and committed contribution to the growth of the Company, uninvolved with any options of public issue of shares and not in lieu of their ordinary payment as employees of the Company. They were granted in addition to the salary the three employees drew in exchange for their services, as a reward for exemplary service, and as per the terms of the appointment while keeping in mind their instrumental contributions to the Company which is not per se forbidden in the law. This phenomenon did not reoccur with other employees, nor has the same been stated or even posited by the SCN, and there are slim grounds for alleging that the Company had come up with a 'scheme' for the distribution of their own shares. It was just a one-time reward granted to three exemplary employees out of many employed at that point of time in the Company. Given this, the application of all the allegations listed above (indeed, the application of the erstwhile SBEB Regulations themselves) do not apply in the present matter, as they all require the existence of 'an ESPS or ESOS scheme' to be applicable in this case.
- f) With regard to alleged violation of SEBI Circular dated 17.01.2013, they submitted that the Company/Trust would have to be dealing in their own securities via the secondary market, to attract any of the situation envisaged in the circular; however, BCL had not then, and has not now, ever dealt in its own shares on the secondary market. The provisions of the Circular are rendered inapplicable to the present matter, as the entire purpose of the circular was envisaged to prevent Companies from dealing

- in their own shares on the secondary market, so that they may not manipulate the price of their own shares. Indeed, such accusations have not even been made in the SCN.
- g) SEBI's allegation of the violation of clause 35C of the listing Agreement do not find any basis as it mandated that the issuer of securities agrees that employee share-based benefit schemes are to be in compliance with the SBEB guidelines, and that any such schemes already implemented are to ensure compliance by June 30, 2013. Noticees 2 and 9 are blameless of the accusations alleged on them by the SCN.
 - h) With regard to Noticee 8, the SCN alleges that by virtue of being the spouse of Noticee 9, by being a non-executive non-independent director of the Company, by being a director of Noticee 5, and by holding a familial relationship with the transferors of funds to Noticee 5 viz. Noticees 10, 11 and 21, has been the beneficiary of the funds loaned to Noticee 5 by Noticees 10, 11 and 21, along-with Noticee 9.
 - i) It is alleged upon Noticee 2 and by extension Noticee 9 that the whole scheme of transfer of shares to Noticee 3, his personal disposal of the shares, the indirect transfer of funds to Noticee 5 were a pre-plotted, pre-determined master plan spanning over several years to perpetrate "an act of fraud upon the shareholders in deceitful manner, for the sole benefit or indirect benefit of the Managing Director and his spouse", and they failed to disclose these facts to the BSE.
 - j) Noticee 9 is alleged to have committed a fraud "through scheme and artifice" by executing a long-term transfer of funds which were purportedly routed back to himself and acquiring "undue benefits" thereon.
 - k) The SCN alleges undue benefit by Noticees 8 and 9, and alleges that the funds acquired by Noticee 3 through his sale of the shares rightfully owned by him have been routed back Noticees 8 and 9. The SCN fails to acknowledge that this evidence is circumstantial at best, no actual proof has been furnished by the SCN, only the vague and paranoid construction of a chain of events that is contrived at best. The alleged undue benefit

acquired by the MD and his spouse has not been explained at all. No details, the extent of said alleged undue benefit, or any evidence whatsoever has been furnished with the SCN. Such assumption in any case is against the very principle of corporate veil well settled by the courts across the globe. If functioning companies are to be assumed as mere extension of their shareholders/directors then the entire concept of 'corporate structure' and 'separate legal entity' would fall on its face. Most certainly, in the case of family run businesses, as even legit transactions between family, friends and relatives would be seen and punished as fraud. The aftereffects of such an assumption would be draconian, as the very jurisprudential fabric behind principle of corporate veil, which in itself is a beneficent principle would be deeply disrupted.

- I) That Noticee 3 had received some amount of money upon his rightful sale of the shares he had been gifted upon the end of his employment. As Noticees 10, 11, and 21 were close family friends, and Mr. Ali, had a surplus amount available in his bank account from his sale, upon request from the above-mentioned Noticees he provided a loan of Rs. 82,00,000 split between Noticees 10, 11 and 21. They have merely made certain private financial transactions in the nature of loans extended towards the purpose of supporting a facet of the family business, being Noticee 5. In India around 70% businesses are family run and there are hundreds and thousands of corporate entities, where the Regulator would find Relatives providing financial support to the Company, particularly in form of 'loan repayable at demand', in hard times, to keep businesses alive, families have to borrow money and infuse that in Company. In BCL certainly the leadership is credible, Mr. L Rama Krishna is an IT Sector veteran having around 30 years of experience. Merely the relation/connection between the parties engaged in a financial transaction should not be rendered as a securities fraud. A securities fraud is an act which is per se manipulative/fraudulent and contravenes the text of the provisions of

PFUTP Regulations. Significantly, in the present case there are no observation of fraud or manipulation, in the scrip of the BCL.

- m) Noticee 8 is one of two directors of Kepler, and Noticee 9 has no role to play in the Company's day to day affairs, besides having shareholding within it. Neither of these factors assume that they are getting the funds provided to Noticee 5 and disclosed in its accounts. The SCN has not displayed any proof whatsoever as to how the same has happened. The allegations of fraud require positive proof to be adduced by the person complaining of fraud, so that charges of fraud are not alleged casually, as in law it is well settled that the negative cannot be proven. Merely relying on an arbitrary chain of financial transactions which did not even have any imputation on the securities market.
- n) The SCN attempts to allege fraudulent action purely on the basis of a familial connection of Noticees 8 and 9 with the Relatives, this connection is firstly, predicated on lifting the corporate veil, for which none of the standard requirements are met in this case; and secondly, that the money so sent was utilized purely for business purposes, as Noticee 5 needed money for business purposes to facilitate its own proper functioning. Money lent for such purposes does not constitute securities fraud.
- o) The money was never routed to Noticees 8 and 9 as alleged, but rather to Noticee 5, for legitimate business purposes.
- p) The Noticees shall still, as a matter of abundant caution, solemnly undertake to be more cautious and careful in future, as they were not aware innocuous and private financial transactions can prove the basis for securities fraud.

Noticee 3:

- a) Noticee 3 submitted that he is not a regular trader in the market, the only basis for alleging heinous charges of market fraud upon the Noticee 3 is the sale of his rightfully earned shares and the subsequent loan he

provided to close friends with said money. Regarding sale of such shares there is no allegation of it being synchronized or falling under any other category of illegal/manipulative form of trades. Further, w.r.t. the loan transaction in question, the conduct of the Noticee 3 speaks volumes about the nature of the loan granted to provide financial support to close friends and also to earn interest income on the Noticee 3's surplus funds in the process.

- b) The loan was initially advanced as a short term loan but subsequently, when repayment could not be made within a shorter period, on the basis of mutual discussion the repayment was postponed and secured through the issuance of promissory notes in favour of the Noticee 3, which are also available on record. Thus, the accusations levelled in the SCN against the Noticee 3 hold no water.
- c) The present SCN would not even have been issued against the Noticee 3, had his conduct and the relevant facts of the present matter been properly considered. However, unfortunately, the Noticee 3 and his actions have been highly misunderstood owing to the analysis being made in hindsight, and which remains unsubstantiated both in law and also by the particular facts of the present case.
- d) Noticee 3 was one of the oldest employees of BCL and was working in the company since November 20, 2002 to May 31, 2017. In his tenure of almost 15 years, the Noticee 3 played a crucial role in the growth of the organization and had rendered his services with absolute diligence and dedication, thus proving to have a long term association with BCL. To honor the hard work of over many years by the Noticee 3, BCL Employees Benefits Trust vested 1, 00,000 shares of BCL on the Noticee 3 on February 22, 2017, *ex-gratia* as per the terms of employment of the Noticee 3.
- e) The 1,00,000 shares of BCL so transferred to the Noticee 3 from the trust on February 22, 2017 was merely 0.5% of the total share capital of the Company during quarter ending March, 2017 which has not found any

mention or consideration in the SCN. The Noticee 3 had held the aforesaid shares of BCL for a period of almost 1 year from the date of receipt before selling them on market.

- f) Noticee 3 had obtained a loan of Rs. 6,00,000 from Kepler Information Systems Limited ("Kepler") prior to the present matter, during the period of Jun-2016 and Jan-2017. After acquiring said shares, the Noticee 3 had then approached Kepler to settle the aforesaid loan against 6,000 shares of BCL. Thus, Noticee 3 transferred 6,000 shares (off-market) to Kepler on January 30, 2018, in the interests of freeing himself of his existing financial liability. No further transfers were made to Noticee 5, nor was any consideration received by the Noticee 3.
- g) The fact that the shares transferred to Kepler were against the loan is also substantiated from the delivery instruction slip of the transaction which mentions the consideration as "gift". Since admittedly, there was no exchange of cash/cheque during the execution of the transaction, as it was both convenient and beneficial for the Noticee 3 to settle his existing debt to Kepler by transferring shares of BCL which he had received in lieu of over 15 years of continuous service. The fact that the aforesaid transfer was merely to settle the already pending loan in the simplest manner possible displays that there was no ulterior motive behind such transaction. Noticee 3 submitted that the transfer of shares by way of off-market transaction is not a violation of any regulation or an offence under law. He relied upon the case of **Jatin Manubhai Shah & Ors. vs Securities and Exchange Board of India** in Appeal No. 16 of 2010 decided on March 1, 2011 it was held by Hon'ble Securities Appellate Tribunal that *"off market transactions are not illegal and if any such transactions are made by one party to others what others do with those shares is not within the control of the party transferring shares"*. Also, in the case of **Vipul Mohan Joshi v. SEBI**, Appeal No. 105 of 2019, decided on November 11, 2019, the Hon'ble SAT held that *"off- market transaction is not a violation of any regulation and is perfectly legal"*.

- h) Such 1,00,000 shares transferred to the Noticee 3 was never misused or used to manipulate the securities market as a whole; neither by the broker, the Noticee 3 himself, nor any other entity to whom such transfer was made. Noticee 3 was not employed with BCL at the time of sale of such shares and therefore he was not in any position so as to be a beneficiary of the company, the Noticee 3 was an ex-employee who was just provided shares on February 22, 2017, as a reward for the services he rendered during the course of his employment on the basis of the Noticee 3's experience, rating, performance, designation, tenure, contribution, etc.; these facts are not even in dispute, and can be confirmed from the Company.
- i) During the receipt of the shares, the market price of the scrip of BCL was approximately Rs. 38.9/- which gradually increased. After almost a year of receipt, the price was near about Rs. 90-95 per share. Noticee 3 believed that it was a perfect time to sell the shares to ensure a good profit. Thereafter, the Noticee 3 sold the balance of 94,000 shares in the open market on February 07, 2018, at an average price of Rs. 94.35 after a healthy amount of waiting, as the shares of BCL had displayed growth and it seemed an apt time to cash in. Noticee 3 received an amount of Rs. 87,69,437.66/- upon the sale of 94,000 shares of BCL. As the Noticee 3 was somewhat financially aware and had such a huge surplus amount available in his bank account, upon request he provided loan of Rs. 82,00,000 to Noticee 10, 11 and 21, to aid his close friends and also to earn good interest income on the surplus funds available with him. The loan was initially advanced for a short period of time, but as certain exigencies arose the Noticee 3, upon mutual discussion and agreement, extended the period of repayment, which was secured through issuance of promissory notes in favour of the Noticee 3. The SCN completely ignores this fact that the loan so provided to Noticee 10, 11 and 21 was with a prudent economic rationale i.e., bearing an interest rate of 10% p.a. and was duly backed by Promissory Notes securing the loan, all according to

procedure recognized under law. Moreover, the loan provided by the Noticee 3 was through legitimate banking channels and the Noticee 3 had no malafide intent to execute any fraudulent activity in the securities market whatsoever, only looking to secure his own finances to the best of his ability while also assisting his friends.

- j) The SCN has no negative observations with respect to the trading of the Noticee 3 in the scrip of BCL, nor any imputations with respect to Noticee 3 at all aside from the loan proffered by him. There is no observation that the trades of the Noticee 3 had any impact upon the price/volume of BCL scrip or that he had executed any benami/fraudulent transaction or that the scrip of BCL was rigged either in volume or price. Nothing of that sort is even alleged in the entire SCN. Therefore, the facts of the present case clearly delineate why the trades of the Noticee 3 in the scrip of BCL were genuine and had no association at all with any fraudulent scheme as alleged in the SCN. Noticee 3 has not even been employed in BCL since the June of 2017; it is ludicrous to suggest any involvement on the Noticee 3's part with any happening at the Company.
- k) The allegations made against Noticee 3 are completely erroneous (out of misunderstanding in hindsight) made in blanket association with others without any reasoning or basis, thus standing vitiated. It is alleged that Noticee 3 has committed fraud by selling off his shares and transferring a miniscule quantity of shares by way of off market transaction; merely to settle the pending loan obligation. The SCN is unusual and one of its kind it alleges charges of PFUTP when there is no allegation of securities manipulation of any kind. The SCN is also unusual, as it has never been mandated anywhere in law that one cannot transfer shares to settle his loan payment obligations. Moreover, off market transactions are also permissible as per the SEBI laws. The SCN presumes that the Noticee 3 has contrived a chain of events so as to give back what was the product and reward of his hard work and dedication of over 15 years without even putting forward a logical basis for the same. Further, BCL had rewarded

other employees also with its shares and there is no question on the other employees, and just on the Noticee 3, merely because he had some independent financial transactions (which are otherwise perfectly legal and in compliance with law) with some of his close friends (at a later point in time) the charges of fraud are sought to be fastened on him. If at all there was a fraudulent scheme at play, SEBI would have found some kind of common pattern across the employees who were vested with the shares of BCL, but nothing of that sort has been observed by SEBI. In these circumstances, the Noticee 3 fails to understand how his independent financial transactions out of the legitimate/tax-paid money can possibly be interpreted as market fraud, there is no basis in the existing law for doing so. If done, it would turn upside down the very jurisprudence on securities fraud. Had the Noticee 3 wanted to commit any fraud or any other illegal action, Noticee 3 would have not transferred miniscule quantity of shares to Noticee 5 (which was done for offsetting the loan), nor taken any promissory note for the loan he proffered to his close friends. The facts of the case has either been entirely misunderstood or ignored and an attempt has been made to connect dots in the hindsight to reach to the conclusion of holding the Noticee 3 as securities fraudster, without taking into account the vital facts and circumstances as well as considering the fundamental premise of the provisions of PFUTP Regulations.

- I) There is no finding in the SCN which alleges any relationship or liability of Noticee 3 towards BCL or any of its KMPs; at the relevant point of time Noticee 3 was independent and not an employee of BCL, nor was he under the control or supervision of BCL or anybody else. He took his own decisions backed by prudent economic rationale of a reasonable man. This goes on to support the stand-point of the Noticee 3, that the sale and transfer of the shares of BCL were all independent of each other as opposed to the alleged design vaguely asserted in the SCN. Noticee 3 has a demonstrated track record of clean antecedents and cooperating/assisting the Regulators and Authorities, with all the deference.

In the present matter, the Noticee 3 had rendered all possible diligence while trading in Securities market, there is no allegation that the transactions executed by Noticee 3 did not comply with the requirements of law. Conduct of Noticee 3 must be seen as a whole, in light of the facts & circumstances of the matter, and not by a simple part or in hindsight.

- m) The Hon' ble Supreme Court of India, Securities Appellate Tribunal and several High Courts, in a catena of decisions, have observed that a higher degree of evidence is required to establish charges of fraud or fraudulent activity, this is very much lacking in the present case. The submissions, although made on the basis of limited information available with the Noticee 3 in connection to an extremely old matter, are sufficient enough to substantiate that Noticee 3 had not done any act which is detrimental to the Indian securities market. Noticee 3 acted in the normal course, and conducted himself through proper channels and with supporting documentation. Amidst the facts & circumstances of the case at hand, regulatory intervention is unwarranted, as Noticee 3 has conducted his actions diligently and in accordance with the law.
- n) The SCN does not make any allegations of manipulative trading like synchronized/reversal trading or contribution to LTP, or that the Noticee 3 attempted to increase or decrease the price of the shares. It is patently irrational to then assume that the Noticee 3 had in any way executed any kind of fraudulent action pertaining to the securities market, given that the core ingredients for such violations are all missing.
- o) Noticee 3 submitted that he sold 94,000 shares in open market as the price of the scrip seemed to be lucrative and he would have earned good amount of money through such selling of shares. He sold the shares only due to rise in price of the scrip, he was not in need of money. But, as a huge amount of money was deposited into the bank account, he had no knowledge of what needs to be done with this amount so received. Subsequently, Noticee 10, 11 and 21 of the present SCN who were very close friends of the Noticee 3 approached for loan for a short period of

time. He had all faith and respect for them and thereby provided them with a loan of Rs. 82,00,000/- as described above. He submitted that the money advanced to Noticee 10, 11 and 21 falls in the category of loan and the same can be substantiated by promissory notes received from Noticee 10, 11 and 21. Section 4 of the Negotiable Instruments Act, 1881 defines a promissory note as: *"4. A 'promissory note' is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument"*. Also, in the case of **P. Palniappan v. A Natarajan, Appeal No. 479 of 2017**, the Hon'ble Madras High Court in its judgement dated December 12, 2019, held that *"As far as promissory note is concerned, once the plaintiff/respondent had established the execution of the promissory notes, then it is to be considered, as the same is a valid document, for the purpose of considering the relief sought for in the plaint"*. Thus, the promissory note constitutes a valid loan document, fully representing the intention of repayment as explained above.

- p) He submitted that when the loan was advanced, he was not the employee of the BCL and neither of the Noticees herein held any position in BCL. There is no restriction under any law for advancement of loan to other person for legitimate purposes. Further, no material has been brought on record as to how the Noticee 3 has made personal illegitimate gains by entering into this loan agreement, nor through any other independent actions taken by him.
- q) The SCN does not explain or posit how the sale proceeds utilized to provide a loan to Noticee 10, 11 and 21 were in any way obtained from manipulation of securities market or later on used to manipulate the securities market at any point of time; bring harm to investor interests, or resulted in any undue advantage to Noticee 3. While the Noticee 3 has been accused of aiding and abetting the fraudulent scheme executed by Managing Director of BCL, the SCN fails to establish how his trade and the

sale proceeds which were used to advance a loan of a personal nature to his personal contacts, has provided any undue benefit to the Company or the Managing Director or aided them to defeat the mechanism of securities market. There is no such observation or explanation in the SCN; thus, the allegation stands as vague as it can possibly be, also being erroneous, hence it is not tenable.

- r) There has not been a whisper in the SCN speaking to the ill-intention of forethought or planning of the Noticee 3 to commit the alleged acts, which is a crucial and determining factor for levelling the serious charges of indulging in manipulative, fraudulent or deceptive transactions or schemes as alleged.
- s) The trades undertaken by the Noticee 3 were genuine and not manipulative/fraudulent in nature. The core parameters and indicators of fraudulent trading are not present in the instant matter. In this regard, Noticee 3 relied up on the Order of Hon'ble SAT in the matter of **Ketan Parekh vs. Securities and Exchange Board of India**.
- t) The materiality of allegations made have to be substantiated by evidence on record. The SCN, apart from mere surmises and conjecture, has not furnished any cogent material to support the allegations of fraudulent trade practices against the Noticee 3. The SCN claims that the Noticee 3 had a pre-determined plan to route the sale proceeds of the shares to the ultimate beneficiaries; however, the off-market transaction was for the purposes of settling the loan obligation, and the sale proceeds provided to the Noticee 10,11 and 21 was in the form of an independent loan extended to personal contacts/friends which will be duly paid back by them to the Noticee 3 along-with interest. The SCN neither explains securities manipulation or the supposed fraud in the transactions carried out by the Noticee 3, nor discussed the impact that the alleged manipulative transactions had on investors or the market. Noticee 3 also relied up on certain judgments of Hon'ble SAT.

Noticee 4:

- a) Noticee 4 submitted that he was appointed as the Independent Director of BCL only on May 10, 2013. Being a non-executive independent director he had very limited role in the management of the Company.
- b) He was also simultaneously offered to be appointed as Trustee of a Trust namely BCL Employee Benefits Trust. He was also informed that the said Trust is an independent trust formed with objectives of general benefit of not only the employees but also their families as well. He was also informed that the Company does not have any Scheme for the Employee Benefits and this Trust is independent authorized to deal with and decide as to the benefits and assistances to be given to Employees and their Families. Based upon the facts that the Company had no Employee Benefit Scheme and that the Trust is an Independent Trust, he was appointed a Trustee of the BCL Trust w.e.f. May 16, 2013.
- c) He was not part of Remuneration Committee since his joining as Director and was only appointed as Committee member as on May 28, 2014. He was not part of the Remuneration Committee nor the attendee of the meeting dated May 28, 2014. Therefore, no adverse inference should be drawn against him for any decisions taken by the Committee in the said meeting.
- d) From the bare perusal of the minutes of the meeting dated May 28, 2014 of the Remuneration Committee, it is apparent that the Trust has been acting independently and had power to decide upon the qualified employees, terms and conditions of transfer, execution of the transfer etc.
- e) The SCN also refers to two trust meetings held on January 13, 2015 and March 06, 2015. He did not attend the Trustee meeting held on January 13, 2015. Hence, no adverse inference can be drawn against him owing to any decision taken in the said meeting.
- f) As far as the Trustee meeting dated March 06, 2015 is concerned, the same was only a follow up meeting wherein the Trustees out of the

shortlisted employees decided to allocate number of shares to be transferred to each shortlisted employees. The minutes in itself evidences that the decision of the Trustees had been independent and based upon their own discussion.

- g) On January 19, 2017 he ceased to be part of Trustees and during his tenure as Trustee, no action was taken by the Trust in pursuance of the discussions held in earlier meetings for allotment/transfer of shares.
- h) The observation made in the SCN that the trust during February 20-22, 2017 transferred 1,70,000 shares to three employees viz. Hassan Ali, B. Guruprasad and Anil Grandhi - He was no longer the Trustee of the BCL Trust during the respective period and that no negative inference can be drawn against him for the act which has happened post his cessation of office.
- i) The provisions of SBEB Regulations had not been applicable to the BCL Trust and in absence of applicability of the provisions of SBEB Regulations, it is at the first place erroneous to allege him for violating the said provisions.
- j) The shareholders approvals are required for the implementation of the scheme and for acquisition of shares in the secondary market. In the instance case, there was in the first place no scheme, secondly the decision to transfer shares to the shortlisted employees was not implemented during his tenure as Trustee. The shares were property of Trust during the period and were freely transferrable and he being the Independent Director in BCL during the period under consideration also cannot be alleged for violation of provisions of SBEB Regulations, the transfers being independent actions of Trust and needed no approval of Company. Further, no acquisitions were made by the BCL Trust of the shares of the Company from secondary market during the period under consideration.
- k) Being an independent director he had very limited role in the management decisions of the Company. He had been discharging his duties based upon

the available information to him. By virtue of his designation, his role in the operations of the Company was very limited and thus cannot be held liable for any alleged violation of the Company. Section 27 of SEBI Act, 1992 fixes the extent of liability upon the director/manager for the contravention on part of the Company. The relevant extract of Section 27 of SEBI Act, 1992 is reproduced herein below:

“27. (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

In the present case, he ceased to be trustee prior to the share being transferred to or sold by Hasan Ali. Also, he was merely an Independent director in the Company and was not involved in day to day affairs and there is nothing contrary to this in the SCN. In this regard, he relied upon

Order of Hon'ble Supreme Court in the case of **SEBI & Ors. vs. Gaurav Varshney, (2016) 14 SCC 430.**

- l) The Resolutions for reconstitution of trustees were approved due to the reason that he was informed that BCL Trust is an independent trust having multiple objectives and he was under the bona-fide belief that BCL Trust is a separate trust holding certain BCL Shares which can be used for various purposes as stated in the object clause of Trust Deed. Further, he was under the bona-fide belief that the BCL Trust was not require to comply with SBEB Regulations and the reconstitution was not in violation of SBEB Regulations at all.
- m) He has been alleged for violation of PFUTP merely for the reason that he was the Trustee and for executing the transfer of 170000 shares of BCL to three employees of the company, thereby he aided and abetted the scheme and artifice of the Managing Director of the company whereby the Managing director had received indirectly undue benefits.
- n) He was appointed as the Trustee of BCL Trust for a brief period of January 2015 to January 2017. During his tenure as Trustee not even a single transfer took place from the BCL Trust. The transfer of shares was executed during February 2017 and he was not the part of board of trustees after January 19, 2017.
- o) There is no allegation in the SCN that he has traded in the scrip of BCL in fraudulent manner or have somehow manipulated price/volume of the BCL shares or have misrepresented any fact/information or have any fund transfers with any of the parties alleged. In absence of aforesaid allegations/observations, the allegation of "Fraud "raised against him is merely based on conjectures and surmises and there is no evidence on record to show that merely by discharging his duties as Trustee, he acted in a fraudulent manner to manipulate the securities market in any manner.

- p) SEBI has followed a very selective approach and has completely ignored the holistic picture which clearly substantiates that he had no association with the alleged sale or participated in any fraudulent scheme.
- q) The allegations raised in the SCN are based upon mere conjecture and surmises and do not establish as to how by merely discharging duties as Trustee or as Independent directors comes under the purview of PFUTP Regulations. In this regard, he relied up on several judgments of Hon'ble SAT.
- r) In additional submissions he submitted that being a professional with total 18 years' of experience he has served as an Independent Director for 4 years in diversified companies. He has also served as Manager/Senior Manager of reputed companies. Having held such positions of utmost respect and responsibility, he has always been a law-abiding citizen with clean records.
- s) He has been alleged for violation of provisions of PFUTP Regulations, without having dealt in any shares, and there have been no alleged fund transfers during the tenure of him as director.

Noticee 5:

- a) Noticee 5 submitted that it was incorporated on October 12, 2011 as a private limited company under the provisions of Companies Act, 1956 and is primarily engaged in providing high-end IT services. It has 24 employees and till now served to 11 clients.
- b) During the investigation period it was expanding its business into prestigious institutions for works like C-DAC. For the same it was in need of funds which were sourced through Bank Borrowings as well as loans from friends/family of Promoter Directors. It had obtained a loan of Rs.1 crore from Indusind Bank. The amount of Rs.72.50 lakhs received from Noticee 10, 11 and 21 was also in the form of Loan. The same is substantiated from the Balance Sheet of the Company for the period 2017-18 reflecting the

aforesaid amount as loan/debt payable. Interest to the tune of Rs.16,06,836/- is also accrued on the loan amount and reflected in the balance sheet.

- c) The loan amounts obtained from the Bank as well as close associates (in the present case Noticee 10, 11 and 21) were deployed in operation and the same has resulted in the improved performance of the Company and increase in its profits 2017-18 Rs.24,49,372 (PAT) 2018-19 Rs.96,96,010/- (PAT) 2019-20 Rs.34,45,633 (PAT).
- d) It has been alleged for violation of PFUTP Regulations mainly for the reason that it received 6000 shares from Noticee 3 as on January 30, 2018 and received Rs.71,50,000/- from Notice 10, 11 and 21 during February 2018.
- e) With regard to receipt of 6000 shares form Noticee 3 it submitted that the delivery instruction slip mentions the consideration as "gift" since there was no exchange of cash/cheque during the execution of the transaction. Noticee 3 has obtained a loan of Rs. 6,00,000/- from Noticee 5. The said loan was outstanding and as against the said pending loan, Notice 3 approached it to adjust the same as settlement of loan. During the discussion with Noticee 3, it was agreed that the loan can be settled as against the exchange of 6000 shares of BCL which were held by Noticee 3 and who was otherwise also willing to sell the same in open market. The adjustment of loan amount as against the consideration of 6000 shares so received was genuine and without any malafide intent. The Email dated October 26, 2018 of Noticee 3 stating that the transaction was against cash is true to the extent that transaction was in nature of cash adjustment and not via exchange of cash at the time transaction. More importantly, the said fact can further be substantiated from the Balance sheet of the Noticee Company for the period 2017-18. wherein the said loan amount stand settled.
- f) With respect to the transactions and receipts of funds from Noticee 10, 11 and 21, it submitted that the same had been loan taken from them and it

- can be substantiated from the books of accounts and balance sheet. The Company was in expansion mode and was in need of funds. The partial amount has been repaid and the balance amount is repayable with interest and the Company plans to refund the same within 2 years time.
- g) There is no allegation upon it of any fraudulent trading or mis-utilization of funds or manipulating the securities market. The only observation in the SCN is that it received certain funds from the Notice 10, 11 and 21. There is no observation in the SCN that the said funds were utilized by the Company to defraud any investor, manipulate the price/volume of BCL scrip or hamper the integrity of securities market in any manner.
 - h) Allegation as "Fraud or "Market Manipulations" should be supported with cogent evidence and should not be based on mere conjecture and surmises. In this regard, it relied upon several judgment of Hon'ble SAT.
 - i) The funds were not in any way routed back or used to trade in the securities market or to manipulate the market in any manner. It has been accused of aiding and abetting the fraudulent scheme executed by Managing Director of BCL but how merely by being a recipient of fund have provided any undue benefit to the Company or the Managing Director or aided them to defeat the mechanism of securities market is not observed or explained in the SCN thus the allegation again is erroneous and not tenable.
 - j) In additional submissions it submitted that the investigation report on which the instant SCN is based has also not been brought on record, nor been provided by SEBI. Thus, it has not had the opportunity to examine or comment upon the investigation conducted by SEBI.
 - k) The transfer of shares between Noticee 3 and 5 was obviously made off-market, as this is standard for a share transaction between two private parties. The transaction itself was off-market does not automatically make said transaction suspicious. Off market transfers are recognized under law and all criteria of a valid off-market transaction has been met in the present

case. There is not even an allegation that the transaction did not conform to the legal requirements under the securities laws.

- l) A partial amount has been repaid (approximately 80% of one of the loans has been repaid) and the Company fully intends to clear the remaining balance within the time of two years, given that the country appears to finally have partially escaped from the looming doom of COVID. It had no intention to keep this loan transaction as a liability in its books of accounts and accrue interest which is also substantiated from the fact that 80% of one of the loan has been repaid; it was only due to the ongoing proceedings it found it suitable to not make the repayments until the proceedings gets concluded to avoid any unnecessary negative repercussion on the present proceedings.
- m) The SCN for tying the innocuous transactions of the Company to heinous charges of fraud is a simple, small matter of connection that Noticee 9 to this case, the M.D. of BCL. However, merely this small point of connection is insufficient to prove any kind of wrongdoing, particularly when no such wrongdoing exists in the first place. While charges of fraud have been levelled, no evidence has been adduced as to how or where these funds were used to manipulate, cheat, or otherwise impact the securities market.
- n) Noticee 9 is not a Director of the Company and does not hold any commanding influence over the Company's decisions. Noticee 9 and his wife, Noticee 8 have not been on the Board of Directors of the Company since 2013, 6 years prior to when the transactions took place. The Directors of the Company are completely unrelated to the present matter and hold no connection to Notice 9 nor has such connection been alleged.

Noticee 10, 11 and 21:

- a) Noticees 10, 11 and 21 submitted that they have not carried out any trading in the scrip of BCL nor any observation in this regard exist in the SCN; thus, question of any fraudulent, manipulative, or other compromised

trades does not even arise. The involvement of issue, sale, or purchase of securities, or manipulative devices used while dealing with securities, are absolutely necessary components to level allegations of fraud; components which are completely missing in the present case.

- b) With regards to the loan transactions with Noticee 3 and 5, they submitted that they were involved in a family-run business, and loans made between members of that family and friend circle to facilitate the smooth running of their family-run businesses are extremely common in the country like India—where over 70% of the businesses are family-run and such inter-se loan transactions are considered of normal course.
- c) While the loan was initially advanced as a short-term loan; subsequently, when repayment could not be made within a shorter period due to exigent reasons, mostly due to the problems caused by the pandemic, on the basis of mutual discussion and consent the repayment was postponed.
- d) The repayments to be made are in process, and are reflected in the books of Noticee 5, the interest earned on the loans, and the status of repayment. As and when the repayment is completed, the loans taken from Noticee 3 shall be repaid, loans which are secured by promissory notes.
- e) It has never been mandated anywhere that one cannot transfer funds amongst each other within a family to support a business. Moreover, SEBI holds no dominion over private financial transactions, particularly when these transactions have no impact over the securities market. Most importantly, no such connection has even been alleged in the SCN.
- f) They are unrelated with the affairs of BCL and have not been employed at BCL, nor have they ever been KMPs. They are not even traders, and do not have active involvement in the securities market. They have not received any shares of BCL, nor has any involvement with the securities market even been alleged by SEBI.
- g) The present SCN has been issued against them merely due to the fact that they are related to the Managing Director (MD) of BCL, without any further substantiation as to how this relationship led to any securities fraud being

committed as per the terms of the PFUTP Regulations. Further, there is no allegation of reversal trades, synchronized trades, LTP contribution, artificial volume manipulation, or other such PFUTP violations have been made.

- h) With regard loan from the Noticee 3, it has been alleged that they have only received the money to be routed back to Noticees 8 and 9. However, had this been the case, such loans would never have been substantiated by documents or paper trails, let alone accrue interest.
- i) The funds accrued by them were loaned to Noticee 5. The money was transferred to Noticee 5 in the nature of a loan, to assist it with its business, which is a family-run business. The loan amounts are reflected in the books of Noticee 5, with interest accruing on them at a rate of 12% p.a., which shall be payable to them as and when payable by the family business. Noticee 5 had been expanding to capitalize on the software boom the country was experiencing in recent years; thus, the loans taken were for the purpose of facilitating the company's business, not for any other purposes. Moreover, as the coronavirus pandemic had devastated the country and most businesses within it, the loans were also taken to help it get back on its feet.
- j) These loans are in the nature of financial transactions between two private parties, made in utter bona fide, with no involvement whatsoever in the securities market. The loans were made through legitimate banking channels and are of course duly recorded. No benefit has accrued to the company vide these loans; rather, these loans are liabilities to Noticee 5, with interest constantly accruing on the amounts that remain unpaid. These liabilities are reflected in the books of the company as well. A partial amount has been repaid (approximately 80% of once of the loans has been repaid) and the company fully intends to clear the remaining balance within the time of two years, given that the country appears to finally have partially escaped from the looming doom of COVID.

- k) The businesses under consideration are all operating businesses and not shell entities, it is not even the case of SEBI that either BCL or Kepler are shell companies. No case of tax evasion or vicarious company shareholder liability has been made out here; even the allegations of fraud are based on circumstantial presumptions at best, with no substantiating evidence adduced along side them.
- l) The SCN claims that they had a pre-determined plan to route the sale proceeds of the shares from Noticee 3 to the ultimate beneficiaries; however, the off-market transaction was for the purposes of settling the loan obligation, and the sale proceeds of shares provided to them by Noticee 3 was in the form of a loan. They relied up on case of Sheela Sharma v. Mahendra Pal (CRL. L. P. 559/2015) decided in the High Court of Delhi. It was held that if loan transaction cannot be evidenced by documentary evidence, they can also be substantiated by acknowledgement of the other party, or through an independent credible witness. As Noticee 5 fully acknowledges the loan transaction in its books, and the loans taken from Noticee 3 are already substantiated through promissory notes, the validity of the loans themselves cannot be questioned.
- m) The SCN neither proved the intent to manipulate, nor discussed the impact that the alleged manipulative transactions had on investors or the market. In this regard, they relied up on SAT Order in the matter of **R.S. Agarwal Vs. SEBI (Appeal No. 63 of 2018) decided on 13.03.2019.**
- n) They stated that allegations made in the SCN are based on mere conjecture, and false premises with no cogent evidence to prove charges against them. In this regard, they relied upon the Order of SAT dated 30.09.2003 in the case of **KSL & Industries Ltd v. SEBI and Price Waterhouse & Co. & Ors. V. Securities and Exchange Board of India, Appeal No. 6 of 2018, dated September 09, 2019.**

Noticee 12:

- a) Noticee 12 submitted that he became an independent director of the Company on May 30, 2015 and resigned from the company with effect from November 21, 2018. Hence, he is not responsible for all the acts of the company prior to this period.
- b) As per Para 48(b) of the SCN, the ESOP Trust was reconstituted on January 24, 2015 and since he was not a director at that time, he has not attended the Board Meeting and hence he is not responsible for this reconstitution and also not a party to the allegations in Para 48(c) and (d) of the SCN.
- c) As per Para 48(e), the ESOP Trust was once again reconstituted with effect from January 19, 2017. The allegation is that the Trust comprises of employees of the Company and the Managing Director, which is in violation of provisions of Regulation 3(4) of SBEB Regulations, 2014. It is alleged that since he had attended the meeting, he is also a party to the decision of the Board Meeting and he has violated the provisions of Regulation 3(4) of the SBEB Regulations, 2014. He submitted that since the earlier board of trustees of the ESOP Trust also comprised of employees and directors of the company, he was under the mistaken impression that employees and directors could be Trustees for an ESOP Trust. Further, the Company Secretary, who had sent in the agenda papers had also not pointed out the requirement under the regulations. Further the other directors both independent and non-independent also did not raise any objection during the discussions regarding the appointment of the Trustees. Hence, this was only a lapse due to ignorance and with no malafide intention. Further, He has not made any gain due to this decision and has also resigned from the company with effect from November 21, 2018.

Noticee 13:

- a) Noticee 13 submitted that he was acting as the independent director of the company from February 19, 2011 and resigned as independent director of the Company in the year November 2, 2016.
- b) SBEB Regulations came into effect in the year 2014 and he was not well versed with the regulations of the same at that time and neither the management of the Company nor the KMP educated them on the same.
- c) He accepted that he should have been aware of the regulations which have been notified by SEBI but he was not aware nor been educated on this by the Company.
- d) He was never an independent director of any other company except BCL and he assumed that the company was in compliance of the laws and regulations which are applicable to the Company.
- e) He resigned from the company in the year 2016 and was never associated with the company or management of the company in any manner from then on.
- f) After receiving this SCN he tried reaching the officials of the company but was unsuccessful. Even the Company officials have not made any attempt to return to him.
- g) He is a common man doing some odd jobs and his job being contractual in nature, He is not having any work due to the impact of COVID. He is the only bread earner of his home. He and his family are able to meet the ends with lots of difficulties. The COVID situation has further worsened his financial position.
- h) He submitted that he has not been in any way benefited by attending the meeting and his attendance in the meeting was a mere formality. If he had been aware about the regulations, he would have not attended the same.

Noticee 14:

- a) Noticee 14 submitted that he is a person of Indian origin and a citizen of the USA. During the period from September 5, 2011 to January 24, 2015, he was the Managing Director of Bodhtree.
- b) He is a technical person and played a minimum role in managing the day to day affairs of the Company and in respect of legal compliances by the company he relied upon the Company Secretary employed in the Company and who is a Compliance Officer. He was never a part of the management of the BCL Employees Trust.
- c) During his tenure, the Remuneration Committee at its meeting held on May 28, 2014, has made only a policy decision for rewarding deserving employees of the Company and there was no follow up action taken during his tenure in the company. There was no ESOP Scheme framed during his tenure in the company.
- d) Since no employee was given any shares during his tenure as MD of the company, consequently he has not contravened Regulation 3(4) of Share Based Employee Benefit Scheme and ESOPS & ESPS Guidelines, 1999. As pointed out in para 42 of the SCN which is reproduced below:

"As on date of decision to implement the recommendation of the Remuneration Committee by the Trust i.e. March 06, 2015, the SBEB Regulations had already come into force i.e. with effect from October 28, 2014 In terms of SEBI circular No. CIR/CFD/POLICY CELL/3/2014 dated June 27, 2014, time line stipulated for alignment of all the existing employee benefit schemes with ESOPS and ESPS Guidelines was till the date of notification of the new Regulation i.e. SBEB Regulations. Further, in terms of Regulation 31(2) (b), all listed companies, having existing schemes to which the Regulations apply are required to comply with the Regulations in their entirety within one year of the Regulations coming into effect i.e. on or before October 28, 2015. Therefore, by October 28, 2015, BCL should have ensured alignment of all its employee benefit schemes in

line with SBEB Regulations Therefore, the proposed decision of transfer of 170000 shares of the company to three employees taken on March 06, 2015 should have also been aligned with SBEB Regulations before its implementation in February 2017."

He was Managing Director of the company till 24.01.2015 only and the time available to the company for compliance is 28.10.2015 on which date he was not associated with the company and the Trust in any capacity.

- e) He submitted that there is no monetary benefit in these transactions to him. No unfair gain or advantage has occurred to him and also no harm or loss has been caused.

Noticee 16:

- a) Noticee 16 submitted that he is retired and has been severely unwell. He was appointed as a Board director of Bodhtree Consulting Limited to assist with growing business in Singapore via BCL's affiliated company, Bodhtree Solutions Pte. Ltd.
- b) As a foreign based director, he was invited to participate in BCL's Board meeting in Hyderabad as he was informed he was obliged to attend at least one meeting per year. It so happened he had attended that one meeting where those resolutions were passed. He was presented with information which appeared to be genuine and above board and followed the decision made by the other attendees, as he had nothing to gain nor lose, and merely wanted to participate for record purposes that he'd been able to attend one meeting.
- c) It was more as a formality since he happened to be visiting India at that time and he was not privy to the decision making process involving the resolution(s) passed at the meeting.

Noticee 17:

- a) Noticees 17 submitted that originally he has been the promoter of the company, and he has been a Non-Executive director of the company till his resignation on August 12, 2021. He redesignated as Non-Executive Director of the company ever since February 19, 2011 and from then on, he was never on any of the decision making activities of the company nor he was dealing in any of the day-to-day activities of the company. Rudimentary and high level basic information was shared during the Board Meetings.
- b) SBEB Regulations came into effect in the year 2014 and he is not well versed with the Regulations of the same at the time, and neither did the Management of the Company nor the KMP educate them on the same. Being non executive, they were only exposed to basic information, that too, only on some of the companies activities.
- c) He accepted that he should have been aware of the regulations which are brought by SEBI but he was not aware nor been educated on this by the Company.
- d) He was never Director of any other listed Company except to that of BCL and he assumed that the company was in compliance of the laws and regulations which are applicable to the Company. At no stage they were informed of any deviations or irregular/delayed activities, including any non-compliances.
- e) After receiving this SCN they have discussed this in one of the Board meetings, wherein the management assured and promised to provide a detailed explanation of the same. It was never provided. He tried reaching the company officials innumerable times (orally as well as in writing) but have not received any support. Also, the Company officials have not made any attempt to reach him by any means even after so much follow-ups.
- f) Totally frustrated being unable to get any status on the SCN or replies/updates to any of his queries etc. he applied to the Board for the

reclassification as Non-Promoter of the company, as alongwith his associates, they were jointly holding only 1.14% of the stake of the present capital of the company. In fact, he don't have any shares in his own name. The reclassification request also has strangely been continuously ignored, even as on date, over multiple board meetings, for reasons completely unknown. Even after continuous follow-up, the Company has not undertaken any steps towards reclassifying as non-promoters.

- g) Considering the continued non-cooperation from the board of the company he tendered his resignation on Aug 12, 2021 and the same was accepted by the board.
- h) He submitted that except for attending of that ill-fated remuneration committee meeting on May 28, 2014, his involvement in the mentioned SCN is not there at all. He requested to consider the same sympathetically and on humanitarian grounds. He also requested to condone his violation considering that to be his first and last default which actually is more of an ignorant oversight and his complete helplessness. Additionally, in no way did he benefit in any way whatsoever by any decision taken in that meeting.

Noticee 18:

- a) Noticee 18 submitted that the present SCN came after 6 years of his disassociation from BCL. He was only associated with the Company in the capacity of an Independent Director from December 24, 2012 to May 28, 2014 having no role in the day to day affairs of the Company.
- b) It is more than 6 years since his disassociation with the company and as on date, he has no documents/information in possession and the submissions made herein are out of his memory only and based upon limited documents/information received through the SCN. Therefore, for the sake of principles of natural justice no reliance may be placed on any document or information not provided to him.

- c) He was Non-executive Independent Director of the Company only for the short period of less than two years (only for 17 months to be precise). After a period of 2 months from his appointment, he was appointed as the member of Remuneration Committee of BCL w.e.f. February 14, 2013 in the capacity of Non-executive Independent Director only. During his tenure in the Company he was an Independent Director and had no role in the day to day affairs of the Company. His role was limited to attending the Board Meetings and Remuneration Committee meeting and act according to the data and information provided to him before the meetings as part of Agenda items and discussion notes. During his tenure as Director, there was no allotment of shares by the Company to anyone. Also, there was no information/documents produced to him to show or reflect or suspect that there is any Employee benefit Scheme in place or any plan in the nature of ESOP/ESPS etc. to employees or even any allotment by Company to any Employee. There was nothing produced before him to indicate that the existence of the Trust nor the Trust was discussed in any of the meeting other than the meeting dated May 28, 2014, in which he tendered his resignation and ceased to be director.
- d) As far as discussions and decisions taken in the Board and Committee Meeting dated May 28, 2014, he had no records or other information available with him as on date. Further, as he gather from his memory and also on perusal of the minutes enclosed as annexure 7 of the SCN, in the said meeting it was "informed" that equity based compensation is considered to be an integral part of employee compensation across sectors with similar business and it was further merely proposed and discussed that it is 'believed" that equity compensation for rewarding its employees may be a good motivating factor for the employees of the Company to work hard towards the organizational goals in sync with their personal goals. It was further discussed that the Remuneration Committee merely "intends" and "proposes" to reward the qualified Permanent Employees onrolls of the Company as per industry practice across sectors, employees should be

incentivized in form of equity allocation to align their personal goals along with the organizational goals and it was further proposed that all further actions in this regard have to be taken in compliance with the provisions of SEBI laws and Company law. The resolution so approved is reproduced herein below: *“Resolved that pursuant to the provisions of the Companies Act, 1956, and rules framed there under, the Memorandum and Articles of Association of the Company, Securities and Exchange Board of India Regulations and subject to such other approvals, permissions and sanctions as may be necessary, approvals and consent of the Committee be and is hereby accorded to the proposal of rewarding the qualified Permanent Employees on rolls of the Company by transferring the Company Shares from the BCL Employees Benefit Trust to their personnel Demat accounts at such terms and conditions, as may be determined in compliance with the applicable laws and regulations.”*

- e) Further in the said meeting only, it was for the first time discussed before him of the BCL Trust and further authorization to Trustees to decide upon the criteria e.g. List of employees and the number of securities based on various factors as employee's experience, rating, contribution, performance etc. The resolution so approved is reproduced herein below:

“Resolved that the BCL Employees Benefit Trust be and is hereby authorized to determine the list of employees and the number of securities based on various factors as employee's experience, rating, contribution, performance designation, sign-on conditions, tenure, criticality of the need for such a resource and do all such acts, deeds, matters and things as may be necessary, proper, expedient or incidental thereto for the purpose of giving effect to this resolution.”

- f) As evident from the aforesaid resolution so approved in the meetings, it was only decided to proceed to incentivize employees as per market practice, it was decided that the same to be executed in compliance with applicable laws and nothing discussed in the meeting indicates or infer the existence of any scheme as on date of the said meeting. He had already

tendered his resignation and the aforementioned meeting was his last meeting.

- g) After May 28, 2014, he was no longer the director of the Company and the execution of aforesaid decision (if any) happened subsequent to his disassociation from the Company. It was the responsibility of the Company to comply with the applicable provisions to execute the same; therefore, he cannot be held liable for any action taken by the Company after May 28, 2014.
- h) He submitted that during his tenure of 2 years in BCL, there is nothing on record produced to reflect that there was any sort of scheme existing and running in the Company. Also, during his tenure, there were no transfers or allotment of BCL Shares to any of its employees (thereby substantiating that there was no scheme existing or running during his tenure). As gathered from his memory, in any of the meetings he attended during the period, there was no discussion w.r.t. any ESOP or ESPS Scheme existing in the Company. Further, he does not possess any of the minutes or related documents w.r.t. meeting held in BCL 6 years back other than the copy of certified resolution of Remuneration Committee received along with the Annexures to the SCN.
- i) It was alleged that he being one of the member of Remuneration Committee have violated Paragraph 4 of SEBI Circular dated January 17, 2013. The aforesaid allegation made against him is completely erroneous and without any basis. As submitted hereinabove, Remuneration Committee on 28th May 2014 merely discussed and intended to provide equity based compensation to the employees of BCL. The aforesaid resolution was passed with the condition that the said benefits will be provided to employees subject to the compliance of applicable laws. The relevant text of the Resolution is already re-produced herein above for reference. The aforesaid discussion was the only discussion held during his tenure and on the day of his resignation wherein the discussion was merely a preliminary discussion and the same was required to be carried out by

the Company thereafter. After his resignation from BCL, how the Company has carried out the proposal was not his obligation and alleging him for the actions of Company after his resignation is erroneous and unfair.

- j) W.r.t. allegation of violating ESOP and ESPS Guidelines in Para 2(b) of the SCN, he submitted that in the said Para, he has been alleged for violating the provisions of ESOP and ESPS guidelines but it is not mentioned in the SCN which specific provision is being alleged to be violated by him. In absence of which, he will not be able to make any effective and convincing submissions vis-a-vis allegation of violating ESOP and ESPS Guidelines. If it is proposed to proceed against him with the allegation that he has violated provisions of ESOP and ESPS Guidelines, having due regard to the principles of natural justice, let him know specifically as to which of the provision of said guidelines he is being alleged to have violated. During his tenure in the Company only the ESOP and ESPS Guidelines was in effect. In the said guidelines, the term "Scheme" was not defined at all. Moreover, the guidelines only prescribed the definition of "employee stock option scheme (ESOS)", "employee stock purchase scheme (ESPS)" and "employee stock option" which was governed by ESOP and ESPS Guidelines. The relevant extract of the aforesaid definitions is provided herein below:

(2A) "employee stock option" means the option given to the whole-time Directors, Officers or employees of a company which gives such Directors, Officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a predetermined price.

3. "employee stock option scheme (ESOS)" means a scheme under which a company grants employee stock option.

4. "employee stock purchase scheme (ESPS)" means a scheme under which the company offers shares to employees as part of a public issue or otherwise.

As observed from the aforesaid definition, for a Scheme to fall under ESOP/ESPS Guidelines the same should have been in the nature of

Employee Stock Option. Although, in the present case the discussion of rewarding the employees by Remuneration Committee was in the nature of perquisite and merely a preliminary discussion happened in the meeting dated May 28, 2014. It was clearly mentioned in the resolution that the same has to be in compliance with applicable laws. During his tenure, there is nothing on record to show that was any scheme in the nature of ESOP/ESPS such as providing shares to employees with "Right to purchase/subscribe" at a future date or the securities were offered at predetermined price as provided in the definition of Employee Stock Option". Neither the shares were transferred as part of public issue, therefore the same cannot be covered under ESPS as well.

- k) The Responsibility of complying with the Circular was upon the Company and not the "Independent Director". There was no violation of SEBI Circular or ESOP/ESPS Guidelines, as provisions of the aforesaid circular are applicable upon the listed entities, thus the allegation of non-compliance of the said provisions should have been raised against the Company not upon an Independent Director in his individual capacity.
- l) Even presuming that there was non-compliance of provisions of SEBI Circular, he resigned from the Company on May 28, 2014 and it was the responsibility of the Company to comply with the applicable laws and receive necessary approvals for implementing the discussions held in that meeting. When he was no longer associated with the Company post 28th May 2014, he cannot be held liable for the actions of the Company. The Managing Directors, Whole time Directors, Executive Directors, CEOs are in-charge of day to day business operations and management and hence, they are responsible for any action of the company. However, an Independent Directors and Non-Executive Director can be held liable if following conditions are satisfied:

Acts of omission or commission by a company which had occurred with their knowledge; and With their consent or connivance or where he had not acted diligently.

m) As submitted hereinabove, there is nothing on record to show that during his tenure there was any scheme in existence or running. When there is no Scheme in existence, compliance with ESOP/ESPS Guidelines and subsequent SEBI Circular was not required. Hence, with the information available with him, he has acted diligently and there was no omission on his part. The aforesaid contention can further be substantiated from recent observation of SEBI in the matter of ABL Biotechnologies Ltd. (Adjudication Order No. EAD/BJD/NJMR/1-5/2018-19, SEBI) –

65. "I am of the opinion that the Noticee 4 being the independent director cannot be made liable for the violations committed by the Company and its Managing Director, unless he is aware of the manipulative and deceptive scheme devised by the ABL and its Managing Director. I note that the Noticee 4 apart from attending board meetings of ABL and various decisions taken therein, he was not actively involved in any of the subsequent acts in terms of signing any of the documents, correspondence made with ABL, BANCO & Clifford However, considering the submissions made by the Noticee 4 and that there is nothing on record which establishes connivance with the Company, prior knowledge of the manipulative and deceptive scheme devised by ABL and its Managing Director, I am inclined to give benefit of doubt to the Noticee 4. Therefore, the charge against the Noticee 4 does not stand established."

He submitted that he cannot be held liable for acts of the Company for a discussions taken back in the year 2014 and there is nothing on record to show that he had any sort of connivance with the company or any other director or had any benefit due to such discussions taken by the Remuneration Committee. The act of alleged transfer was executed after his cessation of tenure as Independent Director in the Company and thus, he should not be held liable for the non-compliance of the Company (if any).

n) Noticee relied upon Order of Hon'ble Supreme Court in the case of SEBI & Ors. vs. Gaurav Varshney, (2016) 14 SCC 430 wherein the Court held that:

Adjudication Order in the matter of Bodhtree Consulting Limited

"...the Appellant-Director was in charge, and was responsible to the company, for the conduct of its business. It was not possible to accept, that the Appellant-Director's activities concerning M/s. Accord Plantation Ltd., were confined to tendering advice with reference to its agricultural activities alone. The Appellant-Director was liable to shoulder the responsibilities of the company relatable to its business activities, and therefore, was justifiably proceeded against, under Section 27 of the Act."

Therefore, as per the SEBI Act, in case there is a contravention of any provision of the SEBI Act, rules, regulations, directions etc. the liability is on such director manager, secretary or other officer who is in charge of and responsible for the conduct of the business of the Company. But as submitted hereinabove, being Non-executive Independent Director he cannot be held liable for the acts of the Company implemented after his cessation of tenure solely because he attended the Remuneration Committee on May 28, 2014.

- o) The cause of action pertains to 2014 (i.e. 6 years back) and there had been an enormous inordinate delay in the initiation of the proceedings which is causing undue mental pressure and grave injustice to him. Since his resignation in 2014 itself, he had no association with the Company and issuance of the present SCN after so many years has caused unwarranted agony and pressure of legal hassle upon him. He could not properly recall the facts and circumstances of the case at this point and has to go through all the difficulties in collating the necessary documents/information to represent the matter to avoid any imposition of monetary penalty. In this regard, he relied upon several Orders of Hon'ble Supreme Court and SAT.
- p) In additional submission he submitted that as an Independent Non-Executive Director in Nomination and Remuneration Committee his role was limited to determining remuneration levels of Executive Directors, Key Managerial Persons and senior management and have a say in appointment and removal of such persons if required. In pursuance of fulfilling his duties, he used to rely upon the documents/data and

information provided to him as part of agenda items and discussion notes at the time of Board Meetings and Remuneration Committee meetings itself and act accordingly.

- q) He also resigned on the same day (i.e. on May 28, 2014). The aforesaid discussion was the only discussion held during his tenure and on the day of his resignation wherein the discussion was merely a preliminary discussion and the same was required to be carried out by the Company thereafter. After his resignation from BCL, how the Company has carried out the proposal was not his obligation and alleging him for the actions of Company after his resignation is erroneous and unfair.
- r) No specific provision of ESOP/ESPS Guidelines specified in the SCN. It have been alleged that there is a violation of the provisions of ESOP and ESPS guidelines, but it is not mentioned in the SCN which specific provision is being alleged to have been violated by him. In absence of which, he will not be able to make his effective and convincing submissions vis-a-vis allegation of violating ESOP and ESPS Guidelines.
- s) A Person cannot be held liable merely for being a part of resolution. Time and again Hon'ble SAT and SEBI itself have exonerated entities stating that a director cannot be penalized merely being a party to the resolution until there is any violation of law during the relevant period. In this regard, he relied up on certain judgements of Hon'ble SAT and SEBI.

Noticee 19:

- a) Noticees 19 submitted that he had already resigned from the Trust and held no position therein at the time when said Scheme was implemented. This entire SCN against him is founded upon misunderstanding.
- b) With regard to charges of fraud he submitted following:
 - i. *"Firstly, I was merely in a Senior Manager position in IT (Technical) Department of the Company and was not a key Managerial Person ("KMP") in BCL, as is wrongly stated in the SCN.*

Adjudication Order in the matter of Bodhtree Consulting Limited

- ii. Secondly, there was no Scheme of ESOP/ESPS which existed within the BCL Trust. Although even assuming that there was a requirement to take the shareholders' approval before implementation of such transfer, I would like to remark upon the fact that the execution of such transfer took place after my cessation of service as a Trustee. Thus, the charges of non-compliance with Regulation 3(6) of the SBEB Regulations stands unproven.
 - iii. Thirdly, as I understand said transfer was executed in the normal course of business for BCL and it contained none of the features of ESOP/ESPS as the discussion was only with regard to the transfer of shares from the Trust to 3 of BCL's employees under a private arrangement.
 - iv. Fourthly, there is no observation with regard to charges of fraud w.r.t. the other two employees, which shows that there was no mala-fide intention behind such transaction, and that basis on which 'fraud' is alleged on Noticee 3 is contrived, at best.
 - v. Fifthly, merely because I have been designated a Trustee, I am being punished for not complying with an alleged procedural requirement, without considering that I was not even a trustee at the time when such procedural requirement (if at all it was applicable) arose. I have been also alleged for the charges of "fraud" even though I have not even dealt in the scrip of BCL."
- c) He submitted that he has done his graduation in B. Tech in Electronics and Communications and had also held many consulting positions in several large information technology and software firms as IBM, Infosys and TCS and has an experience of more than 24 years in the IT Sector. Therefore, he had been a person of primarily technical background, and had negligible legal acumen.
 - d) He was appointed as a Senior Manager in BCL on 16th May, 2013 and continued till 19th January, 2017. He was merely a senior employee and

was not part of Management as a “KMP” which is also substantiated from the extracts of Annual Reports from the year ending 2013-14 to 2016-2017 which does not reflect his name in the Management Column.

- e) During his tenure of employment in BCL, he was also appointed as a trustee of the independent trust formed way back in the year 2003 (under the old management) with objectives of general benefit of the employees and their families by the Company, namely BCL Employee Benefits Trust. He is purely from IT background and for the whole tenure of his career he worked in the IT Sector; before this, he had never acted/ appointed as trustee of any trust.
- f) The said trust was completely an independent trust incorporated for the general benefits of the employees and their families (as mentioned in the objects of the Trust Deed) and not specifically for the purpose of issuing of ESOP/ESPS Schemes to employees as claimed in the SCN. In simple words Trust was created for broader object of Employees’ welfare and Benefit. Moreover, as per the information available to him no scheme for ESOP/ESPS in BCL were floated under this BCL Trust.
- g) He was effectively appointed as a trustee from May 16, 2013 and continued till January 19, 2017. During his Period of Service as a trustee neither was any scheme was implemented, nor was any secondary market acquisition done by the trust. Moreover, the proposed grant of shares does not even qualify to come under the umbrella of Employee Stock Option or Employee Stock Purchase as there was no option/right that was granted to employee for exercising at future date, but there was direct transfer of shares from the Trust to the selected employees as a reward for exemplary service. The arrangement was very different from that of an ESOP. Be that as it may, the crux is that said transfer of shares occurred after his Service Period/his tenure as trustee.
- h) Trustees including him in their meeting held on January 13, 2015 only discussed and decided the criterion/ factors to be considered to determine the list of employees to whom such shares may be transferred as a

potential reward. The trustees further discussed and shortlisted a few employees as likely candidates, the performance of whom shall be subject to further review and rating to decide upon the final list. During the discussions of January 13, 2015, it was not decided how many shares would be given as reward and who shall be the employees these decisions were yet to be taken.

- i) He ceased to be part of Board of Trustees on January 19, 2017 and the execution of aforesaid transfers took place (after finalization of the criteria) on February 22, 2017 i.e., after the cessation of his tenure as trustee; that is, after more than one month from date of resignation. During his period of Service, the scheme of rewarding employees was merely discussed, determination of the employees and number of shares to be transferred to them was done later on. Therefore, he cannot be held responsible for not taking Shareholders' Approval for the implementation of any such alleged transaction, as he was not even associated with the BCL Trust when the transfer of shares to the employees took place. He never even had any idea or knowledge that there was pre-requisite before execution of such transaction.
- j) Further, the basis of charging him with "Fraud" is made on incorrect facts: -
 - a) That he was KMP of the Company b) That he had a role in executing the transfer. The Hon'ble SAT in its many judgements has settled that a person cannot be held liable merely by being part of any meeting/discussion, especially cannot be charged for the serious charge of "Fraud". He relied upon few such Orders of Hon'ble SAT.
- k) The initiation of the present proceedings is merely on the basis that Mr. Hassan Ali has sold the shares. Therefore, there is no way in which he can be held liable for the action of a third party (i.e. Hassan Ali in the present case) on whom he had no control or influence. He being charged with serious allegations like fraud and manipulation despite the fact that he had not even dealt in a single share of the Company, nor had any sort of fund transaction with any of the parties to the SCN.

- l) At one place the SCN is making allegations for a mere procedural lapse and without any other substantiating observations, the SCN is accusing him of a very serious charge of “Fraud” merely because he was earlier holding a position as a trustee in the BCL Trust.
- m) The allegation made against him for aiding and abetting of fraudulent Scheme is completely erroneous and baseless as neither was he the KMP nor the execution of Transfer took place during his tenure as Trustee. As a trustee, he was merely acting in the professional capacity and the charges of “Fraud” cannot be attributed against him without any convincing facts pointing out that way. Allegation of “Fraud” raised against him is merely based on conjectures and surmises and there is no evidence on record to show that merely by discharging his duties as Trustee, he has acted in a fraudulent manner to manipulate the securities market in any manner.
- n) SEBI has followed a very selective approach and has completely ignored the holistic picture which clearly substantiates that he had no association with the alleged sale or have participated in any fraudulent scheme, instead cherry-picking and contriving a chain of association to implicate people.
- o) Hon’ble SAT in various judgments held that to prove wild allegation as “Fraud” or “Market Manipulations” the same should be supported by cogent evidence and should not be based on mere conjecture and surmises. He relied upon few such judgments of Hon’ble SAT.

Additional Submissions by Noticees 1, 2, 3, 5, 8, 9, 10, 11, 15, 19, 20 and 21:

- a) Noticees submitted that the root of the matter goes back to a number of shares which had been lying with Noticee 1 (the Trust) since 2003 due to the fact that one, Mr. Sanjay Verma, and his spouse Ms. Ritu Verma, had left the Company due to certain disputes & differences they had with the then promoters, and abandoned their shares in the process. Due to being one of the co-founders of the Company, Mr. Verma had been allotted

7,20,600 shares of the Company, and he had registered a further 75,100 shares in the name of his wife, Ms. Ritu Verma. Upon leaving the Company, Mr. Verma did not want to be associated with the Company in any capacity whatsoever; thus, he abandoned his shareholding of the Company, which then vested with Noticee 1 in 2003. Admittedly, Mr. Verma or his wife did not receive any consideration for these shares, it was simple abandonment which led to those shares lying with Noticee 1, as has been admitted by Mr. Verma by himself, as well as in the SCN itself.

- b) They submitted that the Company or Trust had never purchased these shares or acquired them of its own accord rather the shares were abandoned by the Verma Couple who admittedly left the Company due to disputes. Monies paid by the Company to Vermas was toward outstanding compensation for settling their dues of employment/consultancy at the Company, not for the shares which were abandoned as can also be confirmed from the statement of Mr. Verma. In view of the admitted positions taken by Mr. Verma no adverse inference should be taken against the Company that the payments made were towards shares of Vermas.
- c) Noticee 9 only became the Managing Director of BCL in 2015; to hold him liable for actions taken and contracts accepted by the Company in a period more than 10 years back runs contrary to all principles of fairness, equity, and natural justice.
- d) The Company, having an employee welfare trust made for the general well-being of the employees of the Company and their families, kept the shares within said trust itself. The Company itself could not have taken these shares in accordance with law, while in individual hands the shares would have resulted in taxes; thus, from what can be gathered from the time period of 2002-2003, the shares vested with Noticee 1. At this juncture, none of the present management was employed at the Company and did not have any role to play in these matters; no adverse inference should be taken against the Noticees in this regard, as the preceding submissions are

made on the basis of whatever evidence and documents could be gathered from that time.

- e) Current employees of the Company have not been given any shares whatsoever, nor is any facility in place for the disbursal of shares as part of any stock option or stock purchase scheme. It is only three past, long-standing employees (whose contractual terms expressly included award of shares much before the regulations of the day were even enacted, back then such giving of shares was not forbidden in law) which have been given shares. The Company had a contractual obligation to award these employees with shares upon the conclusion of their employment under the private law i.e., their employment contracts; if the same had not been awarded, it would have been a violation of contract law and left the Company open to liability. As such, there was no other option than to award the shares to the three employees involved in the matter. Further, the other two employees (Mr. Anil Grandhi and Mr. Guru Prasad Budhavarti) have not even been impugned in the present SCN; thus, it is not the transfer of shares itself considered problematic by SEBI.
- f) This transfer of shares was made in accordance with the employment terms of the three employees made above; it was not made in the nature of any ESPS, ESOS, or ESOP scheme. Even upon perusal of the applicable SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 ("Guidelines"), as well as the SBEB guidelines, the transfer of shares in question does not fall into any of the definitions provided. Indeed, Clause 2 of the SEBI Circular dated 17.01.2013 expressly admits that this kind of transfer was not even envisioned within the 1999 Guidelines. Nor do the SBEB Regulations, promulgated in 2014, provide a definition within which the present transfer of shares falls; the definitions provided within the SBEB Regulations are *pari materia* with the 1999 Guidelines. The definition of "Employee Stock Option" and "Employee Stock Purchase" as per Guidelines and SBEB Regulations is provided herein below for reference:

Adjudication Order in the matter of Bodhtree Consulting Limited

Particulars	Guidelines	SBEB Regulations	Submissions
Employee Stock option	"employee stock option" means the option given to the whole-time Directors, Officers or employees of a company which gives such Directors, Officers or employees, the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a predetermined price,	employee stock option scheme or ESOS means a scheme under which a company grants employee stock option directly or through a trust;	In the present case, none of the factors of an "ESOP" applies: - There is no option given or granted; the shares were transferred on account of contractual obligation that had arisen before these guidelines/regulations came into effect. -No benefit/Right provided to purchase at a future date; there was direct transfer to the concerned employee as per contractual terms. - Securities were not offered at a pre-determined price- Shares were transferred without any consideration out of above-said contractual obligation. -The Trust already possessed the disposed shares by ex-promoter and the same were not transferred by the Company directly or indirectly.
Employee Stock Purchase	Employee stock purchase scheme (ESPS)" means a scheme under which the company offers shares to employees as part of a public issue or otherwise.	employee stock purchase scheme or ESPS means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme;	- Company did not offer shares to employees as a part of "public issue" or "otherwise"- It is to be noted that there was no public issue and or any other kind of issue by the Company. That "otherwise" should be read in context with "public issue" as per general interpretation rule of law -The Trust had not undertaken any "secondary acquisition" for the purpose of Scheme; There was no scheme under the Trust, the shares lying in trust were disposed by the ex-promoters Mr. Verma and his wife which were transferred to three old employees out of contractual obligations.

g) Thus, it cannot be said that the present transfer of shares is a 'scheme' as envisioned within the 1999 Guidelines, nor the SBEB Regulations themselves, more so because the liability of transferring these shares had fallen/arisen on the Company much prior to the promulgation of the SEBI

Adjudication Order in the matter of Bodhtree Consulting Limited

regulations on ESOP. The new management just honored such contractual terms which had been concluded in the past, not doing so would have resulted in litigation by such employees. Hence, the action of giving shares ex-gratia (i.e., in honour of the employment contract) was taken in bonafide by the current management.

- h) Noticees 1, 15 and 20 submitted that former management of BCL had formed an independent Trust vide Trust Deed dated January 20, 2003 named as BCL Employees Benefit Trust and has former trustees namely Mr. Sanjiv Gupta, Mr. N Sudhakar and Mr. D Srinivas Rao. Referring to the records and documents still available, the above mentioned trust was formed with an intent to provide various benefits not merely limited to the employees' benefits but also for the maintenance and education of employee's children, healthcare of the employees and their families, organizing training programs for the employees etc. Said trust was not formed for purpose of giving ESOP or ESPS, nor floated any scheme for said purpose, reward in the nature of shares to certain employees was not forbidden (admittedly, not even envisioned as per 2013 circular of SEBI as referred above) under the law of that time and hence such reward was bestowed upon the performing and dedicated employees of the BCL, who rendered long years of continued service, in accordance with their contracts. Thus, the shares of the BCL Trust were administered under the supervision of the Trustees at the time, and had no connection with any larger ESOP, ESOS, or ESPS scheme.
- i) Noticee 19 submitted that he was in a senior management position within the Company and was not a Key Managerial Personnel ("KMP") as alleged in the SCN. The execution of the transfer of shares from Noticee 1 to the three exemplary employees (including Noticee 3) took place after the cessation of Noticee 19's service as a Trustee i.e. the tenure of Noticee 19 as a Trustee expired on 19.01.2017, where the transfer of shares took place on 20.02.2017, a full month afterwards. As the period of Noticee 19's trusteeship had expired before the transfer of shares took place, he was

- never a KMP in the first place, and as the decision was an isolated, independent decision of the Trust and not under any ESOP, ESPS, or ESOS, scheme, any question of Noticee 19's alleged liability cannot arise.
- j) Noticees submitted that upon receipt of the shares by Noticee 3, they were his personal property and he was the legal owner of those shares, and he was free to do with them as wanted to. As Noticees 10, 11, and 21 were close family friends, and Noticee 3 had a surplus amount available in his bank account from his sale, and upon request from the above mentioned Noticees he provided a loan of Rs. 82, 00,000 split between Noticees 10, 11 and 21("Relatives") to aid his close friends and also to earn good interest income on the surplus funds available with him. The loan was initially advanced for a short period of time, but as certain exigencies arose the Relatives, upon mutual discussion and agreement with Noticee 3 extended the period of repayment (notably, the repayment is at demand of the lender i.e., Noticee 3), which was secured through issuance of promissory notes in favour of Noticees 3, which are already available on record. Thus, a legitimate loan transaction was carried out.
- k) Further, the transfer of 6000 shares of BCL was carried out by Noticee 3 to Noticee 5 was for the purposes of repayment of loan, due to the fact that Noticee 3 had taken a loan from Noticee 5 prior to the current set of events surrounding the matter. This loan amount had been outstanding, so when Noticee 3 approached Noticee 5 in order to adjust these outstanding loan amount, Noticee 5 agreed to receive the BCL shares against the outstanding amount. Balance sheets of the Company substantiating the same have already been furnished in the reply which has been filed.
- l) This transfer was obviously made off-market, as this is standard for a share transaction between two private parties. The fact that the transaction itself was off-market does not automatically make said transaction suspicious. Other criteria must be present for deeming a transaction to be suspicious. This adjustment of shares against the loan taken by Noticee 3 was made in complete bona fide, to facilitate the interests of both parties, and with no

malicious intent whatsoever. Nor has it been alleged in the SCN that these shares were used for nefarious or illegal purposes.

- m) Noticees 10, 11, and 21 as impugned in this matter are unrelated with the affairs of BCL and have not been employed at the Company, nor have they ever been KMPs. The Noticees are infrequent traders at best (did not trade in the scrip of BCL), and do not have active involvement in the securities market. They have not received any shares of BCL, nor has any involvement with the securities market even been alleged by SEBI. With regards to the loan transaction provided by Noticees 10, 11, and 21 to Noticee 5, the facts remain very similar; the money was transferred to Noticee 5 in the nature of a loan, to assist Noticee 5 with its business. The amounts are reflected in the audited financials statements/books of Kepler as loans, with interest accruing on them, which shall be payable to Noticees 10, 11, and 21 as and when repayment is demanded. The Company had been expanding to capitalize on the software boom, the country was experiencing in recent years; thus, the loans taken were for the purpose of facilitating the Company's business, not for any other purposes. The books of the Company for the relevant period have been provided in the reply of Noticee 5 as well.
- n) Noticees 10, 11, and 21 have been impugned merely due to the fact that they are related to Noticee 9 of BCL, without any further substantiation as to how this relationship led to fraud being committed as per the terms of the PFUTP Regulations, or even that fraud itself, has been committed. These Noticees have merely made certain private financial transactions in the nature of loans extended towards the purpose of supporting a facet of the family business, being Noticee 5; the proceeds have been used by Noticee 5 itself, towards legitimate business interests. And yet, despite the fact that these transactions have been made for legitimate purposes in bona fide, that they are substantiated externally by evidence and are attracting interest, and that repayment has already been started on the latter end of

the transaction, the present SCN has been issued based purely on a familial relationship with no further evidence.

- o) Noticees 8 and 9 have no substantial control over Noticee 5. Noticee 8 is one of two directors of Noticee 5, and Noticee 9 has no role to play in the Company at all, besides having shareholding within it. Neither of these factors allows these Noticees to gain substantive control of the funds provided to Noticee 5. The same has in fact not happened nor has the SCN displayed any proof whatsoever as to how the same happened, or any specific evidence proving the same. While the SCN attempts to allege fraudulent action purely on the basis of a familial connection of Noticees 8 and 9 with the Relatives, this connection is firstly, predicated on lifting the corporate veil, for which none of the standard requirements are met in this case; and secondly, that the money so sent was utilized purely for business purposes, as Noticee 5 needed money for business purposes to facilitate its own proper functioning. Money lent for such purposes (and reflected as such in the books of Noticees 5, along-with showing the loan transaction and repayment status) does not constitute securities fraud. The SCN has presumed to lift the corporate veil with no substantiation or justification whatsoever provided, and relies on this family connection to raise flimsy grounds of fraud.
- p) The Hon'ble Supreme Court of India, the Securities Appellate Tribunal, and several High Courts, in a catena of decisions, have observed that a higher degree of evidence is required to establish charges of fraud or fraudulent activity; this is very much lacking in the present case, as are the ingredients of fraud itself. No allegations of synchronized trading, circular trading, price manipulation, misrepresentation or any kind of trading in the scrips of the Company; key ingredients for fraud under the PFUTP Regulations have even been made out; the PFUTP charges cannot stand valid.
- q) They submitted that the money was never routed to Noticees 8 and 9 as alleged, but rather remained with and was utilized by Noticee 5, for

legitimate business purposes; nor did the Noticees commit any such act which is detrimental and harmful for the securities market as a whole; the loans taken and provided by the Noticees are substantiated from the audited financials and were used for legitimate purposes and are duly accounted in the books as per Accounting Standards. Thus, the SCN should be disposed of without any adverse action against the Noticees.

81. Opportunity of hearing was provided to the Noticees through video conferencing and Authorized Representatives (AR) attended the hearing on behalf of Noticees 1, 2, 3, 4, 5, 8 to 21. Ms. Nikita Vijay appeared for the hearing on February 15, 2022 as AR of the Noticee 4. Mr. Ravi Prakash and Ms. Nikita Vijay appeared for the hearing on December 06, 2021 as AR of the Noticee 2, 3, 8 and 9. Mr. Ravi Prakash and Ms. Nikita Vijay appeared for the hearing on December 07, 2021 as AR of the Noticee 1, 10, 11, 15, 19, 20 and 21. Mr. Ravi Prakash appeared for the hearing on October 08, 2021 as AR of the Noticee 5. Mr. Rajen Gada and Ms. N. Vanitha appeared for the hearing on December 06, 2021 as AR of the Noticee 17. Mr. Rajen Gada and Ms. N. Vanitha appeared for the hearing on December 06, 2021 as AR of the Noticee 13. Ms. Nikita Vijay appeared for the hearing on September 21, 2021 as AR of the Noticee 18. Mr. P.A. Prabhakaran appeared for the hearing on January 14, 2021 as AR of the Noticee 14. Ms. Shailashri Bhaskar appeared for the hearing on January 14, 2021 as AR of the Noticee 12. Noticee 16 filed his reply vide email dated December 16, 2020, however, he did not appear for the hearing scheduled on January 14, 2021.
82. The SCN has been duly served to Noticee 6 and 7 on their respective addresses available on record. The SCN has been delivered to Noticee 6 by SPAD on November 23, 2020 and also through email dated November 12, 2020. Acknowledgement of service dated November 23, 2020 is available on record. The SCN has been sent to Noticee 7 by SPAD on November 12, 2020, it is not returned undelivered. After sufficient time was provided to the Noticee 6

and 7 to reply to the SCN, an opportunity of personal hearing through video conferencing was given to the Noticee 6 on January 15, 2021 vide email dated December 08, 2020 and to Noticee 7 on January 14, 2021 vide hearing notice dated December 16, 2020. However, Noticee 6 and 7 neither appeared on the scheduled date of personal hearing nor any reply was received from them.

83. I note that, through the SCN and the hearing notices, Noticees 6 and 7 were advised to furnish their reply, if any, within stipulated time, failing which, it shall be presumed that they have no reply to submit and the matter will be proceeded on the basis of the material available on record.
84. As sufficient opportunity was given to the Noticees 6 and 7 to submit reply and appear for hearing and no response was received from them, the adjudication proceeding against the Noticees 6 and 7 is undertaken ex-parte on the basis of material available on record.
85. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticees and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

86. Before going into the merits of the case, I note the contention of the Noticee 18 that the cause of action pertains to 2014 (i.e. 6 years back) and there had been an enormous inordinate delay in the initiation of the proceedings which is causing undue mental pressure and grave injustice to him. In this regard, I note that the investigation in the matter of BCL was initiated in year 2019, and the investigation was completed in April 2019. The AO was appointed in June 2020 and the SCN was issued on November 12, 2020. I further note that no limitation is prescribed in SEBI Act or Regulations for issuance of SCN or for completion

of the Adjudication proceedings. Hence, I note that there is no inordinate delay in completion of investigation or initiation of the instant proceedings.

87. The issues that arise for consideration in the instant matter are:

Issue No. I Whether

- a) Noticees 2, 9, 13, 14 and 18 have violated ESOPS & ESPS Guidelines and paragraph 4 of SEBI Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with paragraph 2 and 3 *ibid* and Section 31 of SBEB Regulations and Section 27(2) of SEBI Act.
- b) Noticees 2, 4, 6, 7, 8, 9, 12, 13, 14, 16 and 17 have violated Regulation 3(4) of SBEB Regulations read with Section 27(2) of SEBI Act.
- c) Noticees 2 and 9 have violated Regulation 5, 6 and 13 of SBEB Regulations read with Section 27(1) of SEBI Act.
- d) Noticee 2 has violated Regulation 3(9), 15 and 22(1) of SBEB Regulations read with Section 27(1) of SEBI Act.
- e) Noticees 2 and 14 have violated Clause 5 and Noticees 2, 9 and 14 have violated Clause 6(i) of SEBI Circular no. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with Circulars dated May 13, 2013, November 29, 2013 and June 27, 2014 read with Clause 35C of Listing Agreement read with Section 21 of SCRA.
- f) Noticees 1, 4, 9, 15 and 19 have violated Regulation 3(6) of SBEB Regulations read with Section 27(2) of SEBI Act.
- g) Noticees 2 and 9 have violated Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(b),(c) of SEBI Act.

h) Noticees 1, 3, 4, 5, 8, 9, 10, 11, 15, 19, 20 and 21 have violated Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act.

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA and 15HB of the SEBI Act and Section 23E and 23H of SCRA?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA read with Rule 5(2) of the Adjudication Rules?

Issue No. I Whether the Noticees have violated the aforesaid Regulations

88. The allegations against the Noticees emanate from the activity in the BCL Employees Benefit Trust (Noticee 1) which was set up in the year 2003 by BCL for the welfare of its employees. Noticee 1 held a total of 7,95,700 shares of BCL which were transferred to it by its co-founders Sanjay Verma and Ritu Verma in December 2002 after they decided to dissociate from the company. While records show that a total sum of Rs.7,95,700 was paid to the 2 co-founders on 19.02.2003 and 04.06.2003, the co-founders as well as Noticee 2 have stated that no consideration was made to the co-founders for transferring the shares to the Trust, and that money paid by the Company to Vermas was toward outstanding compensation for settling their dues of employment/consultancy at the Company, not for the shares which were abandoned as can also be confirmed from the statement of Mr. Verma. However, considering that the sum given is exactly equal to the number of shares transferred to the Trust, it is highly probable that the amount was a payment at the rate of Rs.1 per share for the shares transferred by the co-founders.

89. The Companies Act 1956, in Section 77(2) prohibits companies from providing directly or indirectly any financial assistance for purchase of its shares with certain exceptions including for purchase of shares by trustees for the benefit of employees of the company. The provisions are reproduced below:

77(2) No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company: Provided that nothing in this sub-section shall be taken to prohibit-

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company;

90. In view of the aforesaid provision, the payment made by Noticee 2 towards acquisition of shares by Noticee 1 falls within the exception provided under Section 77(b) of Companies Act, 1956 as the shares towards which payment was made were acquired by a Trust set up for benefit of employees. I note that at the time of formation of the Trust, there was no prohibition for formation of such a trust under the ESOPS & ESPS Guidelines. I also note that the Trust was formed for the general welfare of employees along with rewarding employees through employee stock options or stock purchase schemes.

a. Whether Noticees 2, 9, 13, 14 and 18 have violated ESOPS & ESPS Guidelines and paragraph 4 of SEBI Circular No. CIR/CFD/DIL/3/2013 dated

January 17, 2013 read with paragraph 2 and 3 ibid and Section 31 of SBEB Regulations and Section 27(2) of SEBI Act.

91. The 17.01.2013 circular issued by SEBI noted that *“some listed entities have been framing their own employees benefit schemes wherein Trusts have been set up to deal in their own securities in the secondary market.... some entities may frame such schemes with the purpose of dealing in its own securities with the object of inflating, depressing, maintaining or causing fluctuation in the price of the securities by engaging in fraudulent and unfair trade practices”*. In order to address the concerns over acquisition of shares by employee welfare Trusts from the secondary market, SEBI prohibited listed entities from framing any employee benefit schemes involving acquisition of own securities from the secondary market by inserting Clause 35C in the Listing Agreement, as reproduced below:

“35C.(i) The issuer agrees that all the employee benefit schemes involving the securities of the company shall be in compliance with SEBI (Employee Stock Option Schemes and Employee Stock Purchase Schemes) Guidelines, 1999 and any other guidelines, regulations etc. framed by SEBI in this regard. (ii) (ii) The issuer further agrees that all the employee benefit schemes already framed and implemented by the company involving dealing in the securities of the company, before the insertion of this clause shall be aligned with and made to conform to SEBI (Employee Stock Option Schemes and Employee Stock Purchase Schemes) Guidelines, 1999 by June 30, 2013.”

92. Companies were required to furnish details of schemes, which were already framed and implemented before date of circular, to Stock Exchanges within 30 days of the circular. Noticee 2 has argued that the transfer of shares by Noticee 1 to three employees was not a 'scheme' as envisioned within the 1999 ESOP and ESPS Guidelines, nor the SBEB Regulations, more so because the liability

of transferring these shares had fallen/arisen on the Company much prior to the promulgation of the SEBI regulations on ESOP, and that the transfer of shares was neither an option to buy stock nor a scheme for acquisition of shares in IPO or from secondary market. Noticee 2 contended that the transfer of shares was made in accordance with the employment terms of the three employees and that BCL had a contractual obligation to award these employees. However, the company was unable to produce the nature of contractual obligation or any document in evidence of such contractual obligation.

93. I note that SEBI Circular No. CIR/CFD/DIL/7/2013 dated May 13, 2013 clarified that the provisions of its earlier circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 is applicable if any of the following conditions are satisfied,

- a. if the company has set up the scheme or the trust / agency managing the scheme; or
- b. if the company has direct or indirect control over the affairs of the scheme or the trust / agency managing the scheme; or
- c. if the company has extended any direct or indirect financial assistance to the employee benefit schemes or the Trust/agency managing such schemes

94. On perusal of the Trust Deed of Noticee 1, I note that as per Clause 4 (v), the corpus of the Trust was to be used *“To formulate reward schemes for excellence in performance of the employees of the company in the form of stock purchases, stock options or other schemes to enable them to invest in the stocks and securities of the company as well as other corporates”*. Thus, one of the purposes of the Trust was to formulate schemes in the form of stock options. Clause 8 (ii) of the Trust Deed empowers the Trustees to invest money of the Trust in securities of the company and sell the securities of the Company.

95. From the foregoing, I note that the Trust was set up to *inter alia* formulate schemes for rewarding employees and was also empowered to deal in the securities of the company. Further, the company had direct control over the affairs of the Trust as in terms of Clause 6 of the Trust Deed, the nominees of the Trust included the MD of the company, one independent director of the company and an employee nominated by the company. The Company had also extended financial assistance to the Trust to acquire shares of the company. Thus, I find that the circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 and Circular No. CIR/CFD/DIL/7/2013 dated May 13, 2013 were squarely applicable to the Trust constituted by the company.
96. As the aforesaid two circulars were applicable to the company, Noticee 2 was required to ensure that all the employee benefit schemes already framed and implemented by the company involving dealing in the securities of the company, before the insertion of this clause shall be aligned with and made to conform to SEBI (Employee Stock Option Schemes and Employee Stock Purchase Schemes) Guidelines, 1999.
97. It follows that the company was required to align existing schemes with the ESOP and ESPS Guidelines. Here I note that as of date of issue of the said circulars, there appear to be no schemes existing. Noticees in their reply have said that no such schemes were formulated by the Trust. Noticees have also submitted that the transfer of shares to three employees was in the nature of contractual obligations under which shares were rewarded to three employees. However, Noticee 2 has been unable to bring on record any details or evidence of such contractual obligations. It is their submission that the reward was included as part of their terms of service, even though no records have been provided to substantiate the same. The first evidence of any kind of scheme comes up when on 28th May 2014, the Remuneration Committee of Noticee 2, in its meeting passed the Resolution to reward the qualified permanent employees on rolls of the company. While accepting the contention of the

Noticee 2 that shares lying in BCL Trust were not a part of any Scheme of ESOP or ESPS, taking note of the fact that as a listed company, Noticee 2 was required to align any scheme with the ESOP and ESPS Guidelines, any decision to reward employees through the Trust, was required to be done in conformity with the said Guidelines. The time line of June 30, 2013 stipulated for alignment of the existing schemes in the original circular was extended to December 30, 2013 *vide* SEBI circular dated May 13, 2013 and extended further to June 30, 2014 *vide* SEBI circular dated November 29, 2013 and *vide* SEBI circular dated June 27, 2014 till the time new regulations for share based employee benefit schemes is notified. SEBI notified the SBEB Regulations on October 28, 2014 repealing ESOPS and ESPS Guidelines.

98. The Remuneration Committee of Noticee 2 in its meeting held on May 28, 2014 proposed to provide share based employee benefits to the employees of the company as incentive for performance excellence by transfer of shares through the Trust. The committee had further authorised the Trustees of the Trust to create a plan or a system to consider, decide and approve the list of employees and the number of shares to be granted to the employees based on their performance and other determining factors to execute its proposal. The Trustees held meetings on January 13, 2015 and March 06, 2015 to discuss and decide on the criterion/ factors to be considered to determine the list of employees to whom such shares can be granted. Noticee 1 transferred 1,70,000 shares to three employees namely Noticee 3, Guru Prasad Budhavarthi and Anil Gandhi on 22 February 2017.
99. After going through the submissions by the Noticees, I find that other than stating that the transfer of shares was as a reward in terms of contractual obligations, no detail has been submitted by the Noticees regarding terms of contract or criteria for selecting the employees and the rewards by way of shares. In view of the submissions by Noticees, I am inclined to hold that the transfer of shares to employees was in the nature of a scheme to reward

employees and in the context of SEBI circular issued in January 2013, Noticee 1 and 2 were required to ensure that any scheme to reward employees was in conformity with the said Guidelines.

100. In view of the above, by awarding shares held by Noticee 1 to three employees without confirming to provisions of ESOPS and ESPS Guidelines, Noticee 2 failed to comply with provisions of para 6 (ii) of the SEBI Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with ESOPS and ESPS Guidelines and Section 31 of SBEB Regulations.

101. The Remuneration Committee in its meeting on May 28, 2014 passed the following resolution:

“Resolved that pursuant to the provisions of the Companies Act, 1956, and rules framed there under, the Memorandum and Articles of Association of the Company, Securities and Exchange Board of India Regulations and subject to such other approvals, permissions and sanctions as may be necessary, approvals and consent of the Committee be and is hereby accorded to the proposal of rewarding the qualified Permanent Employees on rolls of the Company by transferring the Company Shares from the BCL Employees Benefit Trust to their personnel Demat accounts at such terms and conditions, as may be determined in compliance with the applicable laws and regulations.”

“Resolved that the BCL Employees Benefit Trust be and is hereby authorized to determine the list of employees and the number of securities based on various factors as employee's experience, rating, contribution, performance designation, sign-on conditions, tenure, criticality of the need for such a resource and do all such acts, deeds, matters and things as may be necessary, proper, expedient or incidental thereto for the purpose of giving effect to this resolution.”

102. From a perusal of the resolution of the Remuneration committee, I find that the committee authorized reward of qualified employees at such terms and conditions as may be determined in compliance with applicable laws and regulations, while referring to provision of Companies Act as well as SEBI Regulations. The actions of the Remuneration Committee were hence not in violation of applicable SEBI Regulations. The Committee left it to the BCL Trust, i.e. Noticee 1 to implement the reward scheme. I note that Noticee 1 made a decision to reward 3 employees on 26 March 2015, after 9 months of the remuneration committee resolution.

103. In view of the above, allegation of violation by Remuneration committee of Noticee 2, i.e. Noticee 9, 13, 14 and 18 of provisions of SEBI Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with ESOPS and ESPS Guidelines and Section 31 of SBEB Regulations and Section 27(2) of SEBI Act is not established.

b. Whether Noticees 2, 4, 6, 7, 8, 9, 12, 13, 14, 16 and 17 have violated Regulation 3(4) of SBEB Regulations read with Section 27(2) of SEBI Act.

104. I note from the above paragraphs that the trust was formed for managing the Employee Benefit Scheme and the beneficiaries of the Trust are employees of BCL. It has also been established that pursuant to the resolution by Remuneration Committee of Noticee 2, any scheme to reward employees through the Noticee 1 should have been made in terms of ESOPS and ESPS Guidelines which were replaced by the SBEB Regulations on October 28, 2014. Therefore, the Trust, i.e. Noticee was required to have been reconstituted in terms of SBEB Regulations prior to implementing any scheme to reward employees.

105. The Board of the trust was reconstituted on January 24, 2015. On January 24, 2015, Noticee 9 (Managing Director of BCL) and Noticee 4 (one of the

Independent Directors of BCL) were appointed as Trustees of the Trust which was in contravention of the provisions of Regulation 3(4) of SBEB Regulations. Regulation 3(4) of SBEB Regulations states that, *“A person shall not be appointed as a trustee, if he - is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter;”*

106. The Board of the trust was again reconstituted on January 19, 2017. This time again Noticee 9 (Managing Director of BCL) and Noticee 15 and 20 (both are Key Managerial Personnel in BCL) were appointed as Trustees of the Trust in contravention of the provisions of Regulation 3(4) of SBEB Regulations. *Vide* email dated September 05, 2018 the company has confirmed that Noticee 9 is the Managing Director and the other two trustees Noticee 15 and 20 are part of the KMP's of the company.
107. In view of the above, I find that Noticee 2 failed to ensure compliance with Regulation 3(4) of SBEB Regulations while appointing Trustees of Noticee 1.
108. As per minutes of the Board Meetings on record, the meetings on January 24, 2015 and January 19, 2017 where resolution for reconstituting the Trust was passed, were attended by Noticees 4, 6, 7, 8, 9, 12, 13, 14, 16 and 17.
109. Noticee 4 has submitted that non-executive independent director and he had very limited role in the management of the Company and was not involved in day to day affairs. He was appointed as the Trustee of BCL Trust for a brief period of January 2015 to January 2017. During his tenure as Trustee not even a single transfer took place from the BCL Trust. The transfer of shares was executed during February 2017 and he was not the part of board of trustees after January 19, 2017.

110. Noticee 6 and 7 have not responded to the SCN. Noticee 8 is spouse of Noticee 9 and non-executive non-independent director of the Company. Noticee 9 became the Managing Director of BCL in 2015.
111. Noticee 12 submitted that he became an independent director of the Company on May 30, 2015 and resigned from the company with effect from November 21, 2018. The ESOP Trust was reconstituted on January 24, 2015 and since he was not a director at that time, he has not attended the Board Meeting and hence he is not responsible for this reconstitution. He submitted that since the earlier board of trustees of the ESOP Trust also comprised of employees and directors of the company, he was under the mistaken impression that employees and directors could be Trustees for an ESOP Trust. Further, the Company Secretary, who had sent in the agenda papers had also not pointed out the requirement under the regulations. Further the other directors both independent and non-independent also did not raise any objection during the discussions regarding the appointment of the Trustees. Hence, this was only a lapse due to ignorance and with no malafide intention.
112. Noticee 13 submitted that he was acting as the independent director of the company from February 19, 2011 and resigned as independent director of the Company in the year November 2, 2016. He accepted that he should have been aware of the regulations which have been notified by SEBI but he was not aware nor been educated on this by the Company.
113. Noticee 14 submitted that he is a person of Indian origin and a citizen of the USA. During the period from September 5, 2011 to January 24, 2015, he was the Managing Director of Bodhtree. The time available to the company for compliance was till 28.10.2015 on which date he was not associated with the company and the Trust in any capacity. Since no employee was given any shares during his tenure as MD of the company, consequently he has not contravened Regulation 3(4) of SBEB Regulations.

114. Noticee 16 submitted that he was appointed as a Board director of Bodhtree Consulting Limited to assist with growing business in Singapore via BCL's affiliated company, Bodhtree Solutions Pte. Ltd. As a foreign based director, he was invited to participate in BCL's Board meeting in Hyderabad as he was informed he was obliged to attend at least one meeting per year. It so happened he had attended that one meeting on January 24, 2015 where those resolutions were passed.
115. Noticees 17 submitted that originally he has been the promoter of the company, and he has been a Non-Executive director of the company till his resignation on August 12, 2021. He submitted that except for attending of that ill-fated remuneration committee meeting on May 28, 2014, his involvement in the mentioned SCN is not there at all.
116. I have examined the replies of the Noticees and take note of the contention by Noticee 14 that the company had time to comply with the SBEB Regulations till 28.10.2015. I note that Noticees 13 and 16 were non-executive independent directors who were not managing day to day affairs of the company, and had only attended the meeting of the Board on January 24, 2015, at which stage there was time for compliance with the SBEB Regulations till 28 Oct 2015. Noticee 14 was Managing Director only till January 24, 2015. Hence, considering this it cannot be held that violation of Regulation 3(4) of SBEB Regulations by Noticee 2 is attributable to consent, connivance or neglect by Noticees 13, 14 and 16 in terms of Section 27(2) of SEBI Act.
117. Noticee 4, independent director, Noticee 17, non-executive director were present in both meetings of the Board on January 24, 2015 and January 19, 2017. Noticees 6, 7, 8 and 12, non-executive directors, were present in the January 19, 2017 meeting when Resolution for reconstitution of the Board of Trustees was done a second time in violation of Regulation 3(4) of SBEB

Regulations. While some of the Noticees have pleaded ignorance of relevant provisions while approving reconstitution, the question which is relevant is whether such ignorance amounts to consent, connivance or neglect on the part of such directors in the violation by Noticee 2. Lack of knowledge of law, and failure on the part of the directors to enquire from the company on basics such as whether all legal requirements have been met with, and acting on assumption that it must have been complied with, amounts to neglect on the part of such directors in performing duties.

118. Hence I find that Noticees 4, 6, 7, 8, 9, 12 and 17 have violated Regulation 3(4) of SBEB Regulations read with Section 27(2) of SEBI Act.

c. Whether Noticees 2 and 9 have violated Regulation 5, 6 and 13 of SBEB Regulations read with Section 27(1) of SEBI Act.

d. Whether Noticees 2 has violated Regulation 3(9), 15 and 22(1) of SBEB Regulations.

119. The allegation against the company and the Managing Director is based on the fact that in allowing the scheme to operate as provided under the SBEB Regulations, the Noticee 2 and 9 failed to comply with relevant provisions of the SBEB Regulations relating to having a compensation committee, taking shareholder approval and placing certificate of compliance of the schemes as per regulations in the AGM.

120. Further, it is also alleged that the company failed to comply with requirements that shareholding of the Trust shall be shown as 'non-promoter and non-public' shareholding for the purpose of disclosures to the stock exchange, requirements to follow the "Guidance Note on Accounting for employee share-based Payments" or Accounting Standards or the relevant Accounting Standard as may be prescribed by the Institute of Chartered Accountant of India, and requirement that company can determine the price of the shares to be issued

under an ESPS provided they conform to the provisions of accounting policies under Regulation 15 of SBEB Regulations.

121. It has been established in the preceding paras that the company was required to have aligned the scheme for reward of employees as per SBEB Regulations, which they failed to do. Material on record has also established that in rewarding the employees in the manner done, Noticee 2 and 9 failed to comply with the aforesaid requirements of SBEB Regulations. By stating that this was not a scheme as per SBEB Regulations and hence it was not required to follow the aforesaid stipulations, Noticee 2 and 9 have admittedly not complied with said provisions.

122. Hence, it is established that Noticee 2 and 9 violated Regulation 5, 6 and 13 of SBEB Regulations read with Section 27(1) of SEBI Act and Noticee 2 violated Regulation 3(9), 15 and 22(1) of SBEB Regulations.

e. Whether Noticees 2 and 14 have violated Clause 5 and Noticees 2, 9 and 14 have violated Clause 6(i) of SEBI Circular no. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with Circulars dated May 13, 2013, November 29, 2013 and June 27, 2014 read with Clause 35C of Listing Agreement read with Section 21 of SCRA.

123. As per para 6(i) of SEBI Circular dated January 17, 2013 the companies which have already framed and implemented before the date of this circular any employee benefit schemes involving dealing in the securities of the company, which are not in accordance with ESOPS and ESPS Guidelines were required to inform the details of their schemes to the Stock Exchanges within 30 days from date of this circular, in the format provided in Annexure to this circular and to disseminate the said information on their website on or before February 17, 2013 as stipulated therein which was extended up to June 30, 2013 *vide* SEBI

circular dated May 13, 2013. It is alleged that the company failed to make required disclosures.

124. In respect of this allegation, I note that, while Noticee 2 had formed a Trust to *inter alia* formulate schemes for rewarding employees and was also empowered to deal in the securities of the company, no such scheme was in existence as of January 17, 2013 or even May 13, 2013. Hence, there was nothing for the company to disclose on said dates. The scheme for rewarding the three employees was formulated much later after decision by the remuneration committee of Noticee 2 on May 28, 2014.

125. It is also alleged that Noticee 2 had not amended the Listing Agreement by inserting clause 35C to its Listing agreement thereby not complying with para 5 of January 17, 2013 circular. In this regard, I note that amendments to listing agreement are notified by exchanges as and when made and relevant bye-laws of exchange provide that listed companies shall comply with Listing Agreement as prescribed by exchange from time to time. Hence, there was no requirement for the listed company, i.e. Noticee 2 to amend the listing agreement at its end.

126. In view of the above, I find that violations by the Noticee 2 of the provisions of paragraph 5 and paragraph 6(i) of SEBI circular dated January 17, 2013 is not established. Consequently, said violations by the Managing Directors i.e. Noticee 14 and 9 are also not established.

f. Whether Noticees 1, 4, 9, 15 and 19 have violated Regulation 3(6) of SBEB Regulations read with Section 27(2) of SEBI Act.

127. Regulation 3(6) of SBEB Regulations states that “*The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).*”

128. I note from the material available on record that the Trust took a decision to implement the reward scheme in two meetings held on January 13, 2015 and March 06, 2015. It has been established that the reward scheme was required to be in compliance with SBEB Regulations. The trustees failed to ensure necessary compliance of Regulation 3(6). Noticee 1, 4, 15 and 19 were the trustees at the time when the 2 meetings were held.
129. The main contention of Noticee 1 and 15 are based on their view that the shares of BCL Trust were administered under the supervision of the Trustees of the BCL trust and had no connection with any ESOP Scheme. Noticee 4 submitted that he was informed that the said Trust is an independent trust formed with objectives of general benefit of not only the employees but also their families as well. He was also informed that the Company does not have any Scheme for the Employee Benefits. Noticees 19 submitted that he had already resigned from the Trust and held no position therein at the time when said Scheme was implemented he had been a person of primarily technical background, and had negligible legal acumen He was appointed as a Senior Manager in BCL on 16th May, 2013 and continued till 19th January, 2017. He was merely a senior employee and was not part of Management as a "KMP" Moreover, as per the information available to him no scheme for ESOP/ESPS in BCL were floated under this BCL Trust. said transfer of shares occurred after his Service Period/his tenure as trustee
130. I have gone through the replies of the Noticees and find that the Trust deed clearly empowered them to deal in shares of the company for the purpose of grant to ESOPS and ESPS. The trustees cannot plead ignorance of contents of the trust deed. Following the January 17, 2013 circular and subsequent implementation of the SBEB Regulations, the trustees were required to ensure due compliance and cannot take the plea that the reward scheme was not ESOP or ESPS.

131. Therefore, Trustees who were holding the office during the two meetings held on January 13, 2015 and March 06, 2015 and in February 20 and 22, 2017 have failed to ensure that appropriate approval from the shareholders were obtained by the company in order to enable the Trust to implement the scheme extended by the company to its employees either as on date of deciding on the scheme or as on date of implementation of the scheme. I note that the Trust acts through its Trustees and hence, the trustees are liable for the actions of Noticee 1.

132. In view of the above, I find that Noticees 4, 9, 15, 19 have violated the provisions of Regulation 3(6) of SBEB Regulations read with Section 27(2) of SEBI Act.

g. Whether Noticees 2 and 9 have violated Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(b),(c) of SEBI Act.

h. Whether Noticees 1, 3, 4, 5, 8, 9, 10, 11, 15, 19, 20 and 21 have violated Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act.

133. The allegations of fraud against the Noticees are based on the fact that Noticee 3 sold 94,000 shares allotted to him by Noticee 1 on market on February 07, 2018 and received the proceeds of Rs.87,69,473.66/-. Noticee 3 then transferred Rs.82,00,000/- out of the said proceeds to Noticees 10, 11 and 21 on February 20 and 21, 2018. Subsequently, Noticees 10, 11 and 21 transferred around Rs.72 lacs to Noticee 5. Further, Noticee 3 has transferred 6,000 shares to Noticee 5 through off-market transaction January 30, 2018. It has been alleged that the whole act of transfer of shares to Noticee 3 by the company, its subsequent sale by Noticee 3 and transfer of the sale proceeds and balance of shares to Noticee 5 routed through three individuals who are

relatives of Noticee 9 and his spouse Noticee 8, was pre-determined /pre-decided act / transaction done for undue benefit of Noticee 8 and 9 and was a fraud.

134. It is also alleged that Noticee 2 and 9 fraudulently concealed information of the scheme for employee benefit by not disclosing the same to BSE under listing agreement. As far as allegation of concealment of scheme by Noticee is concerned, it has been established in preceding paras that violations by the Noticee 2 of the provisions of paragraph 5 and paragraph 6(i) of SEBI circular dated January 17, 2013 is not established.
135. Material on record has established that Noticee 2 decided to reward three of its employees by transferring 1,70,000 shares held by Noticee 1 to them on February 20, 2017. 50,000 shares were transferred to Guruprasad, 20,000 to Anil Gandhi and 1,00,000 shares to Hassan Ali i.e. Noticee 3. It is also established that this reward scheme was in violation of the SBEB Regulations.
136. It is established that Noticee 3, after a gap of one year on February 07, 2018 sold the shares on the market and received the proceeds of Rs.87,69,473.66. There is nothing on record about the remaining 70,000 shares transferred to Guruprasad and Anil Gandhi. The share price at the time of transfer was around Rs. 38.9, and when the sale took place was Rs. 90-95. Noticee 3 has submitted that as he was somewhat financially aware and had such a huge surplus amount available in his bank account, upon request he provided loan of Rs. 82,00,000 to Noticee 10, 11 and 21, to aid his close friends and also to earn good interest income on the surplus funds available with him. The loan was initially advanced for a short period of time, but as certain exigencies arose, upon mutual discussion and agreement, loan period was extended and secured through issuance of promissory notes in favour of the Noticee 3. The loan was bearing an interest rate of 10% p.a. and was duly backed by Promissory Notes securing the loan, according to procedure recognized under law. The loan

provided by the Noticee 3 was through legitimate banking channels and the Noticee 3 had no malafide intent to execute any fraudulent activity in the securities market whatsoever, only looking to secure his own finances to the best of his ability while also assisting his friends. Noticee 3 also submitted that the loan was independent financial transactions out of the legitimate/tax-paid money. However, on enquiring from Noticee 3, it emerged that the loan is still outstanding and has not been repaid, and no proof of any interest payments made was given. No proof of taxes paid by Noticee 3 was given.

137. Noticees 10 is brother of Noticee 9 (MD). Noticee 11 is the brother of Noticee 8 (wife of MD). Noticee 21 is spouse of Mahesh Arram, who is cousin of Noticee 8. Thus, Noticees 10, 11 and 21 are close relatives of Noticees 8 and 9. Noticees 10, 11 and 21 in turn transferred Rs.72.50 lacs to Noticee 5. The said transfers have not been disputed by the Noticees, who have contended that the transfers were loan transactions. It is pertinent to note that Noticee 8 and 9 together held 99.57% of the total shareholding of the Noticee 5. Hence, Noticee 5 was a private limited company almost wholly owned by Noticees 8 and 9.
138. There was also an off-market transfer of 6,000 shares of BCL between Noticee 3 and Noticee 5 which was stated by them to be a settlement (repayment) of loan obtained by Noticee 3 from Noticee 5. However, no proof of any loan made was given.
139. I have examined the replies submitted by the Noticees whose main contentions are that the said fund transfers and off market transactions were nothing but the loan transactions between Noticee 3, 5, 10, 11 and 21. Noticee 3 provided the amount of Rs. 82 lacs as a loan to Noticees 10, 11 and 21. Further, Noticee 5 was in need of funds for its business expansion, hence Noticee 10, 11 and 21 transferred the amount of Rs. 72 lacs to Noticee 5 as another loan.

140. Noticees contended that the money received by Noticee 5 in aforesaid transaction was never routed back to Noticee 8 and 9 as alleged in the SCN. They further contended that Noticee 9 never had substantial control over Noticee 5. I note that Noticee 5 is an entity promoted by Noticee 9 and 10. Noticee 8 and 9 together held 99.57% of the total shareholding of the Noticee 5. Further, at the time of aforesaid fund transfer and off-market transfer Noticee 8 was the director of Noticee 5.
141. When considering the sequence of events starting from transfer of shares to certain employees, I find that Noticee 9 created a scheme to reward employees which was in contravention to SBEB Regulations. Through this scheme, shares held in the BCL Trust, which were funded by the company, were moved out of the Trust, and through Noticee 3, upon being sold in the market, almost entire consideration for 94,000 shares, along with 6000 shares were transferred to a Noticee 5, which was privately owned by Noticees 8 and 9. Thus, the wealth of shareholders of the listed entity was transferred to a private entity owned by the MD and his wife, in a fraudulent and deceptive manner.
142. I note that Noticee 9 being Managing Director and as a chief trustee of BCL Trust with the active involvement of BCL Trust and other trustees of the Trust i.e. Noticees 4, 15, 19 and 20 in deceitful manner transferred the shares of BCL which was held in the BCL trust to Noticee 3 in the guise of Employee Benefit Scheme. BCL Trust has transferred these shares to Noticee 3 free of cost. Further, Noticees 3, 5, 10, 11 and 21 aided and abetted Noticee 8 and 9 in routing back the sale proceeds out of those shares for benefit of their privately owned company. I note that the Trust acts through its Trustees and hence, the trustees are liable for the actions of Noticee 1.

143. In view of the above, I find that Noticees 3, 4, 5, 8, 9, 10, 11, 15, 19, 20 and 21 have violated Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act.

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA and 15HB of the SEBI Act?

And

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

144. Since it is established that

- a) Noticee 2 failed to comply with provisions of para 6 (ii) of the SEBI Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with ESOPS and ESPS Guidelines and Section 31 of SBEB Regulations; ensure compliance with Regulation 3(4) of SBEB Regulations while appointing Trustees of Noticee 1; violated Regulation 3(4), 3(9), 5, 6 and 13, 15 and 22(1) of SBEB Regulations;
- b) Noticee 9 violated Regulation 3(4), 3(6), 5, 6 and 13 of SBEB Regulations read with Section 27(1) of SEBI Act;
- c) Noticees 4, 6, 7, 8, 12 and 17 violated Regulation 3(4) of SBEB Regulations read with Section 27(2) of SEBI Act;
- d) Noticees 4, 15, 19 have violated the provisions of Regulation 3(6) of SBEB Regulations read with Section 27(2) of SEBI Act;

the aforesaid Noticees are liable for monetary penalty under Section 15HB of SEBI Act

145. Since, it is established that Noticees 3, 4, 5, 8, 9, 10, 11, 15, 19, 20 and 21 have violated Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read

with Section 12A(a)(b)(c) of SEBI Act, the aforesaid Noticees are liable for monetary penalty under Section 15HA of SEBI Act.

SEBI Act:

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

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

146. While determining the quantum of penalty under Section 15HA and 15HB of SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

Factors to be taken into account by the adjudicating officer

15J. While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

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

147. I note that the material on record has established a scheme whereby monetary gains of at least Rs.72.5 lakhs was transferred to privately owned company of

Noticees 8 and 9, at the cost of retail shareholders of Noticee 2, through the mechanism of a reward scheme for employees, which itself was in contravention of the SBEB Regulations. In the scheme, Noticees 8 and 9, the main beneficiaries being owners of Noticee 5, were aided and abetted by the other Noticees. In view of the above, taking into account the facts and circumstances of this matter, I find that a penalty of Rs.90,00,000/- (Rupees Ninety Lakh only) under Section 15HA to be paid jointly and severally by Noticees 5, 8 and 9 and Rs.10,00,000/- (Rupees Ten Lakh only) on Noticees 3, 4, 10, 11, 15, 19, 20 and 21 to be paid jointly and severally for violation of Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act, and penalty of Rs. 8,00,000/- (Rupees Eight Lakh only) on Noticee 2, Rs. 5,00,000/- (Rupees Five Lakh only) on Noticee 9, and Rs. 1,00,000/- (Rupees One Lakh only) each on Noticees 4, 6, 7, 8, 12, 15, 17 and 19 under Section 15HB of the SEBI Act for violation of SBEB Regulations will be commensurate with the violations committed .

ORDER

148. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticees as below:

Sl. No.	Name of the Noticee	Penalty
1.	L Naga Rama Krishna (Noticee 9), L Muneashwari (Noticee 8) and Kepler Information Systems Pvt. Ltd. (Noticee 5)	Rs. 90,00,000 (Rupees Ninety Lakh only) under Section 15HA of the SEBI Act for violation of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act.

Adjudication Order in the matter of Bodhtree Consulting Limited

		(payable jointly and severally)
2.	Hassan Ali (Noticee 3), Katragadda Rajesh (Noticee 4), L Naga Visweswara Rao (Noticee 10), Muninder Raja Arram (Noticee 11), Prabhakar Rao Kallur (Noticee 15), Sreedhar Karanam (Noticee 19), Sudheer Koppineni (Noticee 20) and Sunitha Arram (Noticee 21)	Rs. 10,00,000 (Rupees Ten Lakh only) under Section 15HA of the SEBI Act for violation of Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with Section 12A(a)(b)(c) of SEBI Act. (payable jointly and severally)
3.	Bodhtree Consulting Ltd. (Noticee 2)	Rs. 8,00,000 (Rupees Eight Lakh only) under Section 15HB of the SEBI Act for violation of provisions of para 6 (ii) of the SEBI Circular No. CIR/CFD/DIL/3/2013 dated January 17, 2013 read with ESOPS and ESPS Guidelines and Section 31 of SBEB Regulations and Regulations 3(4), 3(9), 5, 6, 13, 15 and 22(1) of SBEB Regulations
4.	L Naga Ramakrishna (Noticee 9)	Rs. 5,00,000 (Rupees Five Lakh only) under Section 15HB of the SEBI Act for violation of Regulations 3(4), 3(6), 5, 6 and 13 of SBEB Regulations read with Section 27(1) of SEBI Act
5	Katragadda Rajesh (Noticee 4)	Rs. 1,00,000 (Rupees One Lakh only) under Section 15HB of the SEBI Act for violation of Regulation 3(4) and 3(6) of SBEB Regulations read

		with Section 27(2) of SEBI Act
6	Kommineni Srinivas Rao (Noticee 6), Krishnan Jayaraman (Noticee 7), L Munieswhari (Noticee 8), Muthukrishnan Swaminathan (Noticee 12) and Sanjiv Gupta (Noticee 17)	Rs. 1,00,000 (Rupees One Lakh only) each under Section 15HB of the SEBI Act for violation of Regulation 3(4) of SBEB Regulations read with Section 27(2) of SEBI Act
7.	Prabhakar Rao Kallur (Noticee 15) and Sreedhar Karanam (Noticee 19)	Rs. 1,00,000 (Rupees One Lakh only) each under Section 15HB of the SEBI Act for violation of Regulation 3(6) of SBEB Regulations read with Section 27(2) of SEBI Act
TOTAL PENALTY		Rs. 1,21,00,000/- (Rupees One Crore Twenty One Lakh only)

149. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

150. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – V of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:

- Name and PAN of the entity (Noticee)
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number

Adjudication Order in the matter of Bodhtree Consulting Limited

e) Transaction Number

151. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: March 15, 2022

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER