SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTION 11(1), 11(4) 11(4A) AND SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

IN THE MATTER OF ADANI ENTERPRISES LIMITED, ADANI TRANSMISSION LIMITED, ADANI PORTS AND SPECIAL ECONOMIC ZONE LIMITED AND ADANI POWER LIMITED

In respect of:

***Noticee* no.**	**Name of the Entity**	**PAN / CIN**
1	**Mr. Vinod Adani**	**AASPA4935G**
2	**Mr. Nasser Ali Shaban Ahli**	**Not Available**
3	**Mr. Chang Chung-Ling**	**Not Available**
4	**Lingo Investment Ltd.**	**Not Available**
5	**Gulf Asia Trade & Investment Ltd.**	**Not Available**
6	**Gulf Arij Trading FZE**	**Not Available**
7	**Mr. Tejal Ramanlal Desai**	**AACPD1902E**
8	**Global Macro Asset Management**	**Not Available**
9	**Emerging India Focus Funds**	**AACCE0596N**
10	**Mr. Pranav Vora**	**ABJPV2936L**
11	**Mr. Dharmesh Parikh**	**AASPP2756N**
12	**Opal Investments Private Limited**	**AABFO4673N**
13	**Adani Enterprises Limited***	**L51100GJ1993PLC019067**

Noticee no.	Name of the Entity	PAN / CIN
14	Adani Power Limited*	L40100GJ1996PLC030533
15	Adani Ports and Special Economic Zone Limited*	L63090GJ1998PLC034182
16	Adani Transmission Limited*	L40300GJ2013PLC077803
17	Mr. Gautam S. Adani*	ABKPA0965H
18	Mr. Rajesh S. Adani*	ABKPA0962A
19	Mr. Devang S. Desai*	AACPD8157D
20	Mr. Vasant S. Adani*	AASPA4941N
21	Mr. Ameet H. Desai*	ADKPD8381N
22	Mr. Pranav Vinod Adani*	ABEPA1014B
23	Mr. Vinay Prakash*	AEOPP8022P
24	Mr. Vineet Jain*	AAMPJ4082D
25	Mr. Malay Mahadevia*	AELPM9382E
26	Mr. Rajeeva Ranjan Sinha*	AYKPS3072N
27	Mr. Sudipta Bhattacharya*	ABAPB4098C
28	Mr. Deepak Bhargava*	ACAPB5130C
29	Mr. Laxmi Narayana Mishra*	ADFPM5694J
30	Mr. Anil Kumar Sardana*	AAMPS0961N

(The proceedings qua Noticee no. 13-30 have been settled vide order dated [Insert Order date], passed under SEBI (Settlement Proceedings) Regulations, 2018. The numbers assigned to all the Noticees have been referred herein only for the sake of convenience and completion of the proceedings. The entities mentioned above are individually known by their respective names or Noticee no. and collectively referred to as "Noticees")

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A. BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") had received certain complaints during June and July 2020 alleging, *inter alia*, non-compliance with the minimum public shareholding ("**MPS**") requirements by certain listed companies in the Adani group. Based on the preliminary examination, the investigation was initiated on October 23, 2020 in respect of certain companies of Adani Group. This order considers the Show Cause Notice ("**SCN**") that relates to alleged MPS violation by four of such companies, i.e. Adani Enterprises Limited ("**AEL**"), Adani Power Limited ("**APL**"), Adani Ports and Special Economic Zone Limited ("**APSEZ**") and Adani Transmission Limited ("**ATL**"), now known as Adani Energy Solutions Limited (collectively referred to as "**Adani Group Companies**" for the purposes of this order).

2. Pursuant to completion of investigation, SEBI issued a SCN dated September 27, 2024 to *Noticees* under the provisions of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and the Securities Contracts (Regulation) Act, 1956 ("**SCRA**"), alleging violations relating to non-compliance with MPS requirements in Adani Group Companies. During the pendency of the proceedings, SEBI issued a supplementary Show Cause Notice ("**SSCN**") dated March 03, 2025 in continuation of the original SCN whereby SEBI, *inter alia*, placed on record additional material with respect to the said allegations. For the purposes of this order, the term "SCN" shall be deemed to include "SSCN" unless the context otherwise requires. A summary of allegations contained in the SCN is discussed in the ensuing paragraphs.

B. ALLEGATIONS CONTAINED IN THE SCN

3. The SCN explains the statutory framework governing MPS norms which require every listed company to maintain at least twenty-five per cent public shareholding. Since "public" excludes promoters and promoter group entities, the determination of whether a shareholder is genuinely independent or is, in substance, part of the promoter group assumes significance for determining compliance with Rule 19A of the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**"), Regulation 38 of the SEBI (Listing Obligations and Disclosure

Requirements) Regulations, 2015 ("**LODR Regulations**") and the corresponding provisions of the erstwhile Listing Agreement.

4. The SCN notes that after the MPS requirements became applicable, AEL and APSEZ undertook measures to increase their reported public shareholding. AEL carried out an Offer for Sale ("**OFS**") between December 2012 and May 2013, while APSEZ undertook an Institutional Placement Programme ("**IPP**") in June 2013. It is alleged that although these transactions resulted in the reported public shareholding reaching the prescribed threshold of twenty-five per cent, a part of the increase represented investments made by two foreign portfolio investors ("**FPIs**"), namely Emerging India Focus Funds ("**EIFF**") and EM Resurgent Fund ("**EMR**"), whose holdings were subsequently shown as public shareholding.

5. The principal allegation in the SCN is that the investments made by EIFF and EMR in the shares of AEL, APL, APSEZ and ATL were neither independent portfolio investments nor genuine public shareholding. These investments were held during the period from June, 2013 to June, 2018. After that period, EIFF and EMR were not found to be holding these shares. Thus, the allegation of MPS violation is only till this period. According to the allegation, the investments made by these FPIs were controlled by Mr. Vinod Adani, who is alleged to be a member of the promoter group of the Adani Group Companies. It is further alleged that the investments were funded by persons connected with Mr. Vinod Adani and were directed at his instance. Consequently, the shareholding held through the two FPIs is alleged to have represented promoter shareholding in substance, notwithstanding its disclosure as public shareholding. **It is seen that the investigation (and consequently SCN) does not allege that Mr. Vinod Adani is the beneficial owner of the investments made by EIFF and EMR in the Adani Group Companies. Hence, this aspect is not dealt with in the order.**

6. The SCN proceeds to describe the investment structure through which the acquisitions were allegedly made. It records that EIFF and EMR were the immediate investing FPIs. Global Opportunities Fund Limited ("GOFL") functioned as the participating redeemable shareholder of EIFF-Class J. GOFL was the sole investor of the Class J share of EIFF and it is alleged that all

investments made by EIFF in Adani Group Companies were made through EIFF-Class J. GOFL was also the participating redeemable shareholder of EMR. Mid-East Ocean Trade & Investment Pvt. Ltd. ("**Mid-East**"), Gulf Asia Trade & Investment Ltd. ("**Gulf Asia**"), Lingo Investment Ltd. ("**Lingo**") and Gulf Arij Trading FZE ("**Gulf Arij**") are alleged to have contributed substantially towards the investments made by GOFL in Adani Group Companies through EIFF and EMR. The SCN alleged that, although GOFL had hundreds of investors, almost the entirety of the investments in Adani Group Companies by the two FPIs originated from these four underlying investors. These four underlying investors are collectively referred to as "**Four Underlying Investors**" hereinafter.

7. The SCN alleges that Four Underlying Investors were not acting independently. According to the SCN, the investments of Gulf Asia, Lingo, Gulf Arij and Mid-East were ultimately funded by Mr. Nasser Ali Shaban Ahli through multiple layers of entities, while the investment advice for acquiring shares of the Adani Group Companies was provided by Excel Investment Advisory Services Limited ("**Excel**") which is alleged to be controlled by Mr. Vinod Adani. The SCN states that Excel had entered into an investment advisory agreement with Global Macro Asset Management Limited ("**GMAML**"), the investment manager of GOFL, under which Excel advised GMAML regarding investments relating to specified underlying investors. It is alleged that, in effect, GMAML merely implemented investment decisions communicated through Excel.

8. In a nutshell, the SCN alleges control of Mr. Vinod Adani over Excel and, through Excel, over the investments made by GOFL and the two FPIs in Adani Group Companies. The SCN records that Excel was a wholly-owned subsidiary of Assent Trade & Investment Pvt. Ltd. ("**Assent**"), which was held through Asankhya Resources Family Trust settled by Mr. Vinod Adani. The SCN further refers to the share register of Excel and other material to infer that Mr. Vinod Adani exercised control over Excel. Since the SCN alleges that Excel advised GMAML in relation to investments made on behalf of the Four Underlying Investors, it is alleged that the investment decisions relating to acquisitions of shares of the Adani Group Companies were effectively taken under the effective control of Mr. Vinod Adani.

9. The SCN further relies upon the funding arrangements of the four underlying investors. It is alleged that Gulf Asia, Lingo, Gulf Arij and Mid-East were funded by Mr. Nasser Ali Shaban Ahli through multiple layers of entities, thereby creating an appearance of arm's length transactions. The SCN also refers to the presence of Mr. Tejal Ramanlal Desai, an employee associated with the Adani Group, as the power of attorney holder for Gulf Asia and Lingo, as an additional circumstance demonstrating effective control over these entities. On the basis of these circumstances, the SCN alleges that the layering of entities served merely to disguise the true nature of the investments while preserving effective control with persons connected to the promoter group.

10. The SCN further analyses the pattern of acquisitions and disposals undertaken by the Four Underlying Investors through EIFF and EMR and records that the acquisitions were concentrated in the shares of AEL, APL, APSEZ and ATL during the relevant period. Detailed computations have been provided regarding investments, redemptions and profits earned by each underlying investor in each of the four listed companies. On the basis of these computations, the SCN arrives at an aggregate alleged wrongful gain of ₹19,83,97,01,571.51 earned through the investment structure.

11. Apart from the allegations concerning EIFF and EMR, the SCN also deals with the shareholding of Opal Investments Private Limited ("**Opal**") in APL. It is alleged that although Opal was disclosed as a public shareholder, its affairs were controlled by persons belonging to and / or connected with promoter group, including Mr. Pranav Vora, Mr. Nasser Ali Shaban Ahli, Mr. Chang Chung-Ling and Mr. Dharmesh Parikh. The SCN alleges that the non-exercise of voting rights by Opal and the continued control of promoter group over its shareholding resulted in promoter-controlled shareholding being disclosed as public shareholding, thereby creating a false appearance of compliance with the MPS requirements.

12. Based on the aforesaid factual allegations, the SCN alleges that the shareholding held through EIFF, EMR and Opal ought not to have been treated as public

shareholding since the entities concerned were allegedly under the control of persons forming part of the promoter group. Consequently, it is alleged that AEL, APL, APSEZ and ATL failed to maintain the minimum public shareholding prescribed under Rule 19A of the SCRR and made disclosures regarding promoter and public shareholding which did not reflect the true nature of such holdings. The SCN further alleges that the arrangement constituted a device to circumvent the MPS framework and created a misleading appearance of compliance with the statutory requirements. Accordingly, *Noticees* are alleged to have violated provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 ("**PFUTP Regulations**").

13. During the pendency of the proceedings, an SSCN was issued by SEBI to place on record additional material relating to Asankhya Resources Family Trust ("**ARFT**"), including the Trust Deed and the relevant provisions of the Cayman Islands Trust Law. The SSCN alleges that Mr. Vinod Adani was the settlor, enforcer and beneficiary of ARFT and that the powers available to him under the Trust Deed and the applicable law constitute additional evidence of his control over Excel.

14. The SSCN also revises certain data relating to the apportionment of investments made by Gulf Asia Trade & Investment Ltd. and Lingo Investment Ltd. through GOFL and EIFF. Consequently, Tables 3, 5, 7, 17, 18 and 23 contained in the SCN were revised insofar as they related to the allocation of investments, purchases, sales, redemptions and computation of wrongful gains. According to the SSCN, these revisions resulted only in minor changes in the individual computations, with the aggregate alleged wrongful gain being revised from ₹19,83,97,01,571.51 to ₹19,83,97,01,563.21. The SSCN clarifies that these revisions do not alter the substantive allegations contained in the earlier SCN but only supplement the evidentiary material and revise the supporting computations.

C. RELEVANT LEGAL PROVISIONS AND CASE LAWS

15. The allegations contained in the SCN can be broadly divided into two parts. The first part deals with allegation pertaining to violation of MPS norms and the second part deals with violation pertaining to PFUTP Regulations.

16. The relevant provisions of securities laws which deal with violation of MPS norms are discussed in the ensuing paragraphs and the provisions with respect to the allegation of fraud under the SEBI Act, SCRA and PFUTP Regulations are provided in **Annexure-A** to this order.

17. Regulation 38 of the LODR Regulations states that *"The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules,1957 in the manner as specified by the Board from time to time:"* Further, Clause 40A of the erstwhile Listing Agreement states that *"(i)The company agrees to comply with the requirements specified in Rule19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957".* Thus, listed companies are mandated to comply with Rule 19A of the SCRR in terms of the aforesaid provisions.

18. In terms of Rule 19A of the SCRR, with effect from June 04, 2010, every listed company is required to maintain public shareholding of at least 25%. In terms of the proviso to Rule 19A, as it stood in 2010, a listed company which had public shareholding below 25% as on June 04, 2010, was required to increase its public shareholding to at least 25% within a period of three years from commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010 on June 04, 2010, i.e., by June 03, 2013. Rule 19A (2) requires a listed company to bring its public shareholding back to 25% within 12 months of a fall below 25%.

19. The term "Public shareholding" is defined in Rule 2 (e) of the SCRR to mean "*equity shares of the company held by public including shares underlying the depository receipts if the holder of such depository receipts has the right to issue voting instruction and such depository receipts are listed on an international exchange in accordance with the Depository Receipts Scheme, 2014*". The term "Public" is defined in Rule 2 (d) to mean "*persons other than promoter and*

promoter group, subsidiaries and associates of the company". Hence, breach of MPS norm can be established if it is shown that equity shares of the company held by promoter and promoter group, subsidiaries and associates of the company exceeds the stipulated threshold.

20. The words "Promoter" and "Promoter group" are defined in Reg. 2(1) (za) and (zb) respectively of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**") as follows: -

"2 (1) (za) "promoter" includes:
(i) the person or persons who are in control of the issuer;
(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;
(iii) the person or persons named in the offer document as promoters:
Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:
Provided further that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person;
Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

2 (1) (zb) "promoter group" includes:
(i) the promoter;
(ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and
(iii) in case promoter is a body corporate:
(A) a subsidiary or holding company of such body corporate;
(B) any body corporate in which the promoter holds ten per cent. or more of the equity share capital or which holds ten per cent. or more of the equity share capital of the promoter;

(C) any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent. or more of the equity share capital in that body corporate also holds twenty per cent. or more of the equity share capital of the issuer; and

(iv) in case the promoter is an individual:

(A) any body corporate in which ten per cent. or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;

(B) any body corporate in which a body corporate as provided in (A) above holds ten per cent. or more, of the equity share capital;

(C) any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent. of the total; and

(v) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;"

21. The word "Subsidiary" was defined in the Companies Act, 1956 in Section 4 (1) in the following manner:-

"4 (1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if,-

a. *that other controls the composition of its Board of directors; or*
b. *that other –*

(i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity

shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

c. *the first-mentioned company is a subsidiary of any company which is that other's subsidiary."*

22. In the Companies Act, 2013, the word "Subsidiary" is defined in Section 2(87) to mean "*a company in which the holding company controls the composition of the Board of Directors; or exercises or controls more than one-half of the total share capital either at its own or with one or more of its subsidiary companies."*

23. The word "associate company" is defined in Section 2(6) of the Companies Act, 2013 as *"a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company."* Explanation to this definition states that "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement. Prior to 2013, while the term "associate" was not defined in the Companies Act, 1956, it was defined in Accounting Standard 23 on "Accounting for Investments in Associates in Consolidated Financial Statements" as "*an enterprise in which the investor has significant influence and which is neither a subsidiary nor a joint venture of the investor*". "Significant influence" was defined as "*power to participate in the financial and/ or operating policy decisions of the investee but not control over those policies*."

24. It is seen that, the substance of the allegations contained in the SCN revolve around establishing control of the *Noticee no. 1* over shareholding of two FPIs in Adani Group Companies. The SCN has relied upon the definition of the word "Control" as defined in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations**") in Reg. 2(1)(e) which states that "control" *includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their*

shareholding or management rights or shareholders agreements or voting agreements or in any other manner. Similar definition can be seen in Section 2(27) of the Companies Act, 2013.

25. Further, Regulation 2(1)(q) of the SAST Regulations defines "persons acting in concert" as follows

"*"*persons acting in concert" means, -

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(*2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—*

> *(i)a company, its holding company, subsidiary company and any company under the same management or control;*
>
> *(ii)a company, its directors, and any person entrusted with the management of the company;*
>
> *(iii)directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;*
>
> *(iv)promoters and members of the promoter group;*
>
> *(v)immediate relatives;*
>
> *(vi)a mutual fund, its sponsor, trustees, trustee company, and asset management company;*
>
> *(vii)a collective investment scheme and its collective investment management company, trustees and trustee company*
>
> *(viii)a venture capital fund and its sponsor, trustees, trustee company and asset management company;*
>
> *(viiia) an alternative investment fund and its sponsor, trustees, trustee company and manager;*
>
> *(ix) [omitted]*
>
> *(x) a merchant banker and its client, who is an acquirer;*
>
> *(xi)a portfolio manager and its client, who is an acquirer;*

(xii)banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual: Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

(xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board Explanation.—For the purposes of this clause "associate" of a person means,—(a) any immediate relative of such person; (b)trusts of which such person or his immediate relative is a trustee; (c) partnership firm in which such person or his immediate relative is a partner; and (d) members of Hindu undivided families of which such person is a coparcener;"

26. Apart from the aforesaid provisions pertaining to MPS requirement, Clause 35 of the erstwhile Listing Agreement and Regulation 31 of the LODR Regulations which pertain to disclosure of shareholding pattern including shareholding of promoter and promoter group as well as the public, are reproduced below for reference:

"Clause 35 of the Listing Agreement

"The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely: -

a. One day prior to listing of its securities on the stock exchanges.

b. On a quarterly basis, within 21 days from the end of each quarter.

c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital

(I) (a) Statement showing Shareholding Pattern…

…..

(I) (b) Statement showing holding of securities (including shares, warrants, convertible securities) of persons belonging to the category "Promoter and Promoter Group.

….

(I)(c) (i) Statement showing holding of securities (including shares, warrants, convertible securities) of persons belonging to the category "Public" and holding more than 1% of the total number of shares

(I) (c) (ii) Statement showing holding of securities (including shares, warrants, convertible securities) of persons (together with PAC) belonging to the category "Public" and holding more than 5% of the total number of shares of the company"

(II)(b) Statement showing holding of Depository Receipts (DRs), where underlying shares held by 'promoter/promoter group' are in excess of 1% of the total number of shares

(III) (a) Statement showing the voting pattern of shareholders, if more than one class of shares/securities is issued by the issuer…"

<u>Regulation 31 (1) of the LODR Regulations</u>

Holding of specified securities and shareholding pattern.

31. (1) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines -

(a) one day prior to listing of its securities on the stock exchange(s);

(b) on a quarterly basis, within twenty one days from the end of each quarter; and,

(c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:

Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year."

27. Having discussed the key provisions pertaining to MPS norms and the allegations made in the SCN, it can be inferred that definition of the word “control” assumes significance in order to establish the allegation of breach of MPS norms contained in the SCN. Before examining the evidences on record, it is necessary to determine the legal import of the expression “control”, which forms the foundation of the allegations in the present proceedings. It may be clarified again that the SCN alleges violation of MPS norms on the basis of *Noticee no. 1* having “control” of shareholding of the two FPIs in Adani Group Companies and not on the basis of the *Noticee* no 1 having “beneficial ownership” of such investment.

28. The word “control” is defined under various enactments and the definition is more or less similar in text and spirit. Section 2(27) of the Companies Act, 2013 and Regulation 2(1)(e) of the SAST Regulations define control to include (i) the right to appoint the majority of directors or (ii) to control the management or policy decisions of a company, directly or indirectly, by virtue of shareholding, management rights, shareholders’ agreements, voting agreements or in any other manner. Other SEBI Regulations like LODR Regulations, SEBI (Delisting of Equity Shares) Regulations, 2021 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 also take definition of “control” from the SAST Regulations. Since it is an inclusive definition, it is important to look at legal jurisprudence to understand the interpretation of “control” by the courts.

29. The scope of the expression “control” has been considered in several judicial pronouncements. In ***M/s Shubhkam Ventures (I) Private Limited vs. SEBI [(2010) 99 SCL 159 (SAT-Mum)]***, Hon’ble SAT held as follows:

    “*6 … Control, according to the definition, is a proactive and not a reactive power. It is a power by which an acquirer can command the target company to do what he wants it to do. Control really means creating or controlling a situation by taking the initiative. Power by which an acquirer can only prevent a company from doing what the latter wants to do is by itself not control. In that event, the acquirer is only reacting rather than taking the initiative<u>. It is a positive power and not a negative power. In a board managed company, it is the board of directors that is in control.</u> If an acquirer were to have power to appoint majority of directors, it is obvious that he would be in control of the company but that is* *not the only way to be in control. <u>If an acquirer were to control the management or policy decisions of a company, he would be in control. This could happen by virtue of his shareholding or management rights or by reason of shareholders agreements or voting agreements or in any other manner.</u> The test really is whether the acquirer is in the driving seat. To extend the metaphor further, the question would be whether he controls the steering, accelerator, the gears and the brakes. If the answer to these questions is in the affirmative, then alone would he be in control of the company. In other words, the question to be asked in each case would be whether the acquirer is the driving force behind the company and whether he is the one providing motion to the organization. If yes, he is in control but not otherwise. <u>In short control means effective control</u>.*"

(emphasis supplied)

30. In ***Universal Cables Ltd. vs. Arvind Kumar Newar, [2023 SCC OnLine Cal 4959]***, the Hon'ble High Court of Calcutta while interpreting the definition of "control" as defined under Section 2(27) of the Companies Act, 2013 placed reliance on the following:

"*132…In Chintalapati Srinivasa Raju the Hon'ble Supreme Court held that even though definition of "control" in 1997 Regulation is an inclusive one, yet the definition shows that control must mean a right to appoint majority of directors as a share holder or to control management or policy decisions by persons in any manner. Thus, to state that a person exercises control, the true meaning and colour to be given to the words in the definition of "control" in Section 2(27) should mean that there should a right and this would be the correct way of interpreting the meaning of the "control" as defined under Section 2(27) of the 2013 Act…*

….what is most important to note in the definition of the word "control" is that there must be a right to appoint majority of Directors or a right to control the management or policy decisions exercisable by a person or person acting individually or in concert directly or indirectly, including by virtue of their share holding or management rights or share holders' agreements or voting arrangements or in any other manner. Therefore, the word "right" as contained in Section 2(27) of the Act is of utmost importance and the definition of the word

"control" cannot be read to mean something de hors the existence of a right."

31. In ***ArcelorMittal India Pvt. Ltd. vs. Satish Kumar Gupta, [(2019) 2 SCC 1]***, the Hon'ble Supreme Court of India dealt with the meaning of "control" under Section 29(A)(c) of the Insolvency and Bankruptcy Code, 2016, the definition of which is similar to the definition of control under Section 2(27) of the Companies Act, 2013 and Regulation 2(1)(e) of the SAST Regulations. The relevant extract is reproduced below:

"49. The expression "control" is defined in Section 2(27) of the Companies Act, 2013 as follows: - 2(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

50. <u>The expression "control" is therefore defined in two parts. The first part refers to de jure control, which includes the right to appoint a majority of the directors of a company. The second part refers to de facto control. So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be "in control".</u> <u>A management decision is a decision to be taken as to how the corporate body is to be run in its day to day affairs. A policy decision would be a decision that would be beyond running day to day affairs, i.e., long term decisions.</u> So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist.

51. <u>Thus, the expression "control", in Section 29A(c), denotes only positive control, which means that the mere power to block special resolutions of a company cannot amount to control. "Control" here, as contrasted with "management", means de facto control of actual management or policy decisions that can be or are in fact taken</u>."

(emphasis supplied)

32. Based on the decision of Hon'ble Supreme Court in Arcelor Mittal case, it can be said that the definition of "control" can be divided into two parts. The first part i.e *"right to appoint majority of directors"* refers to ***de jure*** control. The second part

i.e. *"control of management and policy decisions"* refers to ***de facto*** control. The test for assessing ***de jure*** control is not the act but existence of the right. For ***de facto*** control, so long as a person, directly or indirectly, can positively influence in any manner, management or policy decisions of a company, it would be said to be in "control". For the purpose of this order, we would be dealing with ***de facto*** control since it has not been alleged that the *Noticee* no 1 had a right to appoint majority of directors of the two FPIs. However, in case of alleged control of Mr. Vinod Adani over ARFT, ***de jure*** control has also been dealt with. Further, it is clear that Hon'ble Supreme Court in *ArcelorMittal, inter alia,* affirmed the principle enunciated by the Hon'ble Securities Appellate Tribunal in *Shubhkam Ventures (supra)* wherein, while interpreting Regulation 2(1)(c) of the SAST Regulations, the Hon'ble Tribunal held that control is essentially a proactive power and not merely a reactive one. In fact, the interpretation of the term "control" as mentioned above, has been also relied upon by the Hon'ble SAT in a subsequent decision in the matter of ***Vishvapradhan Commercial Pvt. Ltd. vs. SEBI, [2022 SCC OnLine SAT 1128]*** wherein the Tribunal reiterated that the concept of control must be understood in the context of the ability to direct management or policy decisions. Thus, it was held that loan agreement alone cannot be taken as acquisition of control. Similarly, in the case of ***Chintalapati Srinivasa Raju v SEBI [(2018) 7 Supreme Court cases 443]***, it was held that where Executive Director stepped down and became non-executive director, the fact that he was earlier executive director or was co-brother of B. Ramalinga Raju would not establish that he was in control of Satyam Computer Services Ltd. directly or indirectly. From these judgements, it is clear that mere business association, commercial influence or funding arrangements are not sufficient to prove "control". What is required to be established is the ability to positively direct management or policy decision of entity alleged to be controlled.

33. Thus, in a nutshell, the Hon'ble courts and tribunals have held that for the second limb of the definition, control exists where a person is in a position to command the affairs of the company and/or positively direct its management and policy decisions. The distinction is illustrated by observing that a person exercising control is one who occupies the "driving seat" and possesses the power to steer the entity. The word "right" occurring in the definition of "control" in the first limb

assumes considerable significance and thus what is required is the existence of a legally enforceable right to appoint directors. While for the second limb what is required is ability to positively direct management or policy decisions and such decisions are in fact taken.

34. The cumulative effect of the aforesaid decisions is that “control” under the securities laws is a legal concept denoting effective and positive power over the management or policy decisions of an entity. Such control may be exercised directly or indirectly and need not necessarily arise from shareholding alone. However, the existence of such control must be demonstrated by objective material and evidences. As commonly understood, the allegation can be established based on preponderance of probability. However, analysis of all evidence/material/objective facts should give a finding that an ordinary person under similar circumstance would conclude that there is high probability of “control”.

35. Consequently, mere business relationships, historical commercial dealings, common directors, familial relationships, funding arrangements or longstanding associations, by themselves, do not necessarily establish “control” unless they are shown to confer, either in law or in fact, the ability to positively direct the management or policy decisions of the entity. Equally, while control may be inferred from circumstantial evidence, the circumstances relied upon must collectively establish, on a preponderance of probabilities, the existence of such positive and effective control.

36. It is in the light of the above legal position that the evidence relied upon in the SCN and the defence put forth by *Noticees* require examination.

37. Before examining the rival contentions, it is necessary to note that the present proceedings are quasi-judicial in nature. The findings recorded herein are based upon the material forming part of the record, the replies submitted by *Noticees* and the applicable standard of proof in proceedings under the SEBI Act. While the allegations are required to be examined in this case on the touchstone of

preponderance of probabilities, such probabilities must emerge from objective material capable of reasonably establishing the facts alleged.

D. SUBMISSION OF *NOTICEE*S AND PERSONAL HEARING

38. Pursuant to service of the SCN, it was learnt that *Noticee no. 6* was dissolved with effect from October 19, 2020 and the *Noticee no. 8* was dissolved with effect from August 9, 2021. All other *Noticees* (except *Noticee nos. 6 and 8)*, filed their written submissions and sought opportunity of personal hearing. The aforesaid *Noticees* were granted personal hearing and their authorised representatives appeared before me on June 24-25, 2026 and July 14, 2026. During the hearings, *Noticees* requested time to file further written submission pursuant to completion of hearing which was granted. Pursuant to hearing, *Noticees* filed further written submissions and clarifications.

39. The *Noticees* have made submission on preliminary and main issues which are discussed and dealt with in the forthcoming part of this Order.

E. CONSIDERATION OF PRELIMINARY ISSUES

40. Considering the nature of allegations, I note that the core allegation of the SCN is that the *Noticee no. 1*, being part of the Promoter Group of the Adani Group Companies, was allegedly controlling the entities who held shares in the Adani Group Companies as public shareholders and thus violated MPS norms using a manipulative scheme. The said violation allegedly resulted in violation of the PFUTP Regulations, thereby resulting in alleged unlawful gains. Therefore, the liability, if any, of *Noticees* other than the *Noticee no. 1* substantially depends upon whether the foundational allegation against the *Noticee no. 1* is established. Therefore, I deem it fit to deal with the submissions made by the *Noticee no. 1* before proceeding to submissions of other *Noticees*.

41. I have carefully considered the SCN, the SSCN, the written submissions filed by the *Noticee no. 1*, the oral submissions advanced during the course of hearing, the material relied upon by SEBI and the judicial precedents cited by the parties. Before examining the substantive allegations regarding control, collusion and alleged violation of MPS requirements, it is necessary to deal with the preliminary

objections raised by the *Noticee no. 1*. According to the *Noticee*, these objections go to the very root of the proceedings and, if accepted, would render any examination on merits unnecessary.

42. The issues arising out of the preliminary objections raised by the *Noticee no. 1* and certain other *Noticees* are similar in nature and may broadly be categorised as follows:
    I. Whether the proceedings are liable to be dropped on account of an inordinate and unexplained delay in issuance of the SCN;
    II. Whether SEBI failed to provide complete inspection and other relevant material in violation of the principles of natural justice;
    III. Whether the SCN is vague and does not adequately disclose either the factual basis of the allegations or the measures proposed to be taken under Sections 11 and 11B of the SEBI Act;
    IV. Whether the SSCN violates the right to privacy by circulating the ARFT Trust Deed amongst all *Noticees*; and
    V. Whether SEBI lacks jurisdiction since certain *Noticees* are foreign nationals and the alleged acts substantially occurred outside India.

43. Since each of the aforesaid objections concerns the maintainability or fairness of the proceedings themselves, I deem it fit to examine these before considering the allegations on merits.

E.1 Whether the proceedings are liable to be dropped on account of an inordinate and unexplained delay in issuance of the SCN?

44. It has been submitted that the SCN was issued after nearly ten years from the alleged events. According to the *Noticee*, such delay is wholly unexplained and is per se arbitrary. It was argued that proceedings initiated after such an extraordinary lapse of time are inherently unfair since several entities referred to in the SCN have since been dissolved, corporate records are no longer available and individuals connected with those entities have either resigned or are otherwise not traceable. The lapse of time has therefore caused irreversible prejudice which cannot now be remedied merely by granting inspection or hearing. It was further argued that although the SEBI Act does not provide a

statutory limitation period, every statutory authority is nevertheless required to act within a reasonable period and proceedings initiated after an unreasonable delay deserve to be quashed.

45. I have carefully considered the aforesaid submissions. It is a matter of fact that the transactions forming the subject matter of the present proceedings relate to a period considerably preceding issuance of the SCN. Equally, there is no dispute that the SEBI Act does not provide for any limitation period for initiation of proceedings. It is being introduced now in Securities Markets Code Bill, 2025 which is in public domain and is pending consideration before the Parliament. The absence of a statutory limitation, however, does not imply that proceedings may be initiated after any length of time irrespective of surrounding circumstances. The Hon'ble courts have held in various cases that SEBI is expected to exercise statutory powers within a reasonable period having regard to the nature of investigation, complexity of facts and overall fairness of the proceedings. At the same time, it is equally well settled that mere delay, howsoever long, does not by itself invalidate regulatory proceedings. The determinative question on whether the time taken was reasonable would depend upon the facts and circumstances of each case, nature of default, prejudice caused creation of third party right, etc. **(*SEBI vs. Bhavesh Pabari, [(2019) SCC Online SC 294]*).** The Hon'ble Courts have consistently distinguished between delay simpliciter and delay causing actual prejudice.

46. The allegations in the present case are not confined to isolated domestic transactions. The investigation concerns an alleged offshore investment structure involving trusts, investment advisers, multiple corporate entities incorporated in different jurisdictions, foreign portfolio investors and a series of financial arrangements extending across several years. Investigation into such matters necessarily requires collection, verification and correlation of material obtained from diverse sources, including foreign regulators and overseas entities. The complexity of such investigation is a relevant circumstance while assessing whether delay by itself renders the proceedings arbitrary. More importantly, the *Noticee* has not demonstrated actual prejudice in the manner required in law. The submissions merely state that certain entities have been dissolved and

records are allegedly unavailable. However, no attempt has been made to identify any specific document necessary for the defence or the manner in which such document has become unavailable solely because of the delay. The plea of prejudice, therefore, remains at the level of a general assertion.

47. Similarly, although it has been submitted that certain entities, namely *Noticee no*. 6, *Noticee no*. 8, Excel and EMR have been dissolved, the *Noticee* has not demonstrated that their dissolution has deprived him of access to evidence necessary for rebutting any relied upon material. On the contrary, the *Noticee* has filed an elaborate written reply dealing with each allegation in considerable detail, supported by legal submissions, documentary material and authorities. This itself indicates that the *Noticee* has been able to effectively understand and contest the allegations. I note that the ability of a *Noticee* to file a comprehensive defence does not by itself negate prejudice. However, it is a relevant circumstance while considering whether delay has actually impaired the defence.

48. I also note that the SCN principally relies upon documentary evidence such as trust deeds, corporate filings, shareholding records, banking information, investment advisory agreements, correspondence and other records. Such evidence, by its nature, is substantially documentary rather than dependent upon oral recollection of witnesses. Consequently, the possibility of prejudice arising merely because of lapse of time assumes comparatively lesser significance than in proceedings resting primarily upon oral testimony.

49. I also note that regulatory proceedings concerning serious allegations affecting market integrity stand on a different footing from ordinary civil disputes. The legislative objective underlying Sections 11 and 11B of the SEBI Act is protection of investors and preservation of the integrity of the securities market. Consequently, proceedings undertaken for such purposes cannot ordinarily be defeated merely because investigation has consumed considerable time, unless the delay has demonstrably resulted in failure of justice.

50. In the present case, the *Noticee* has failed to establish such failure of justice. I am therefore of the considered view that although the issuance of SCN has

undoubtedly taken considerable time, the delay by itself does not vitiate the proceedings in the absence of demonstrated prejudice affecting the fairness of adjudication. The preliminary objection based on delay is, accordingly, rejected.

E.2 Whether SEBI failed to provide complete inspection and other relevant material in violation of the principles of natural justice?

51. The second preliminary objection raised by the *Noticee no. 1* relates to the alleged denial of complete inspection of the material collected during investigation. At the time of filing written submissions, the *Noticee* stated that SEBI has proceeded in breach of the principles of natural justice by failing to furnish the complete investigation report as well as all documents collected during investigation, including material which may have supported the defence of the *Noticee*.

52. I note that pursuant to the written submissions, the *Noticee* was granted further inspection of documents wherein all material relevant to the current proceedings was provided to *Noticees*. During the personal hearing before me, the *Noticee no. 1* did not press this objection. In the absence of any surviving grievance regarding inspection, I am satisfied that adequate opportunity was afforded to *Noticees* to inspect the relied upon material and effectively defend the proceedings.

E.3 Whether the SCN is vague and does not adequately disclose either the factual basis of the allegations or the measures proposed to be taken under Sections 11 and 11B of the SEBI Act?

53. The third preliminary objection raised by the *Noticee no. 1* is that the SCN itself is fundamentally defective and that the allegations have been couched in broad and general expressions without clearly identifying the precise acts attributable to each *Noticee*. The *Noticee* contends that the SCN reproduces numerous facts, corporate structures and transactions but fails to clearly articulate how those facts individually or collectively establish the ingredients of the alleged violations. The *Noticee* further submitted that the SCN alleges that various entities were "controlled" without clearly specifying the factual foundation supporting each of those conclusions. It has also been argued that the SCN seeks directions under

Sections 11, 11(4) and 11B of the SEBI Act without indicating the precise nature of the regulatory measures proposed against each *Noticee*. On the aforesaid basis, it was contended that the SCN deserves to be quashed as being vague, uncertain and contrary to settled principles governing quasi-judicial proceedings.

54. I have carefully considered the submissions. There can be no dispute with the proposition that a show cause notice is the foundation of quasi-judicial proceedings. Fairness requires that the notice must communicate, with reasonable clarity, the allegations proposed to be examined so that the *Noticee* is placed in a position to effectively respond. At the same time, the adequacy of a show cause notice cannot be assessed by isolating individual paragraphs or by expecting the degree of specificity ordinarily associated with a final adjudicatory order. The test, therefore, is whether a reasonable person reading the notice as a whole would understand the allegations sought to be established and be able to effectively answer them.

55. Applying the aforesaid test to the present proceedings, I am unable to accept the contention that the SCN suffers from such vagueness as to render the proceedings unsustainable. The SCN identifies the statutory provisions alleged to have been violated, sets out the factual background, describes the investment structure under examination, identifies the various entities alleged to be interconnected, summarises the documentary material relied upon and specifies the legal conclusions proposed to be examined. More importantly, the SCN identifies the principal allegations against the *Noticee no. 1*, namely, that he exercised control over certain entities forming part of the offshore investment structure, that such entities were allegedly utilised for circumventing MPS requirements of the Adani Group Companies and that such conduct attracted the provisions of the PFUTP Regulations and the SEBI Act.

56. The argument that the SCN employs the expression "control" without sufficient particulars is likewise not persuasive. The expression does not occur in isolation and each of these allegations is referenced to the documents, transactions, relationships and circumstances from which the SCN proposes to draw the relevant inference. The correctness of those inferences is a matter for

adjudication on merits which is being dealt with in the later part of this order and cannot be conflated with the sufficiency of notice.

57. The *Noticee* also contended that the SCN fails to separately attribute individual acts to each *Noticee*. I find this assertion untenable since allegations contained in the SCN involve multiple entities operating through interconnected corporate and trust structures. Where the allegation itself concerns participation in a common arrangement, the factual narrative necessarily contains overlapping references to various *Noticees* and such overlap, by itself, does not render the SCN vague.

58. Further, the *Noticee no. 1* has made submissions on the legal concept of control, investment advisory arrangements, foreign portfolio investment regulations, alleged economic rationale of the transactions, PFUTP jurisprudence, the law governing minimum public shareholding, and numerous factual allegations contained in the SCN. The reply also addresses individual documents relied upon in the SCN, offers alternative interpretations of various communications and seeks to rebut specific factual inferences drawn by the investigating authority. Such detailed rebuttal would scarcely have been possible had the *Noticee* genuinely been unaware of the case he was required to meet. While the comprehensiveness of a reply cannot by itself validate an otherwise defective notice, it constitutes an important indicator in determining whether the notice effectively communicated the allegations.

59. The contention that the SCN ought to have specified the exact directions proposed under Sections 11 and 11B also does not merit acceptance since proceedings under the aforesaid provisions are preventive and remedial in character. The precise nature of regulatory directions necessarily depends upon the findings ultimately recorded after appreciation of evidence. At the stage of issuance of a SCN, it is sufficient if the statutory provisions invoked and the broad nature of possible regulatory action are disclosed. It would neither be practicable nor legally necessary for the regulator to predetermine the exact contents of the final directions before adjudication of the allegations.

60. I also find no substance in the contention that the SCN merely reproduces documents without disclosing the evidentiary basis of the allegations. The adequacy of evidence and the correctness of the inferences sought to be drawn therefrom are questions that fall for determination while examining the merits of the proceedings. They do not bear upon the legal validity of the notice itself.

61. Having examined the SCN in its entirety, I am satisfied that it clearly apprised the *Noticee no. 1* of the allegations proposed to be examined, the statutory provisions invoked, the factual basis relied upon and the material forming the foundation of those allegations. The *Noticee* was accordingly in a position to file an effective defence and avail a meaningful opportunity of hearing.

62. I therefore find no merit in the contention that the SCN is vague or that the proceedings are liable to be set aside on this ground. The preliminary objection challenging the validity of the SCN is, accordingly, rejected.

E.4 Whether the SSCN violates the right to privacy by circulating the ARFT Trust Deed amongst all *Noticees*?

63. The fourth preliminary objection raised by the *Noticee no. 1* pertains to the disclosure by SEBI of the ARFT Trust Deed to all *Noticees* during the course of these proceedings. It has been submitted that the Trust Deed was obtained by SEBI during investigation and contained confidential information concerning the constitution of the trust, its beneficiaries, powers of the trustee, succession arrangements and other private family matters. According to the *Noticee*, while SEBI may have been entitled to examine the document for purposes of investigation, there existed no legal necessity to circulate the complete Trust Deed amongst all *Noticees*, many of whom had no proprietary or beneficial interest in the trust. The *Noticee* therefore submitted that the proceedings stand vitiated on account of such violation of privacy.

64. I have carefully considered the submissions. There can be little disagreement with the proposition that documents obtained during regulatory investigations may, depending upon their nature, contain confidential commercial or personal information. Equally, the right to privacy recognised under Article 21 extends to

informational privacy and protects individuals against arbitrary dissemination of personal information. However, like every other constitutional right, the right to privacy is not absolute. Disclosure of otherwise confidential material may be justified where authorised by law, supported by a legitimate regulatory purpose and proportionate to the object sought to be achieved.

65. It is a well settled principle of natural justice that if SEBI relies upon a particular document as forming part of the evidentiary basis of the allegations, all *Noticees* affected by such evidence must be afforded access to such material so as to effectively contest the allegations. The present case concerns allegations relating, *inter alia*, to the control of certain FPIs and ARFT Trust Deed constitutes one of the documents relied upon by SEBI in support of the allegations concerning the legal relationships between certain entities and individuals. Consequently, the document cannot be viewed merely as a private family instrument unconnected from the issues arising in these proceedings. To the extent SEBI seeks to rely upon the Trust Deed for drawing inferences material to the allegations, the affected *Noticees* are entitled to know the evidentiary basis on which such allegations rest.

66. The relevant question in the present proceedings, however, is not whether a different procedural course could possibly have been adopted, but whether the disclosure that actually took place has vitiated the proceedings. In my considered view, the answer is in the negative. Firstly, *Noticee no. 1* has not demonstrated that the alleged disclosure has impaired his ability to defend the proceedings or has otherwise affected the fairness of adjudication. The objection essentially concerns the propriety of disclosure rather than the legality of the adjudicatory process itself. Secondly, no material has been placed before me to demonstrate that SEBI disclosed the Trust Deed for any collateral or extraneous purpose unrelated to the present proceedings. The disclosure took place within the confines of an ongoing quasi-judicial proceeding in which the document itself forms part of the evidentiary record relied upon by SEBI.

67. The purpose of procedural rules is to secure fairness in adjudication. Unless the alleged procedural irregularity has resulted in prejudice affecting the decision-

making process or has occasioned failure of justice, the entire proceedings cannot ordinarily be invalidated. In the present case, I find no such prejudice and thus the objection based upon alleged violation of privacy is therefore not found to be tenable.

E.5 Whether SEBI lacks jurisdiction since certain *Noticees* are foreign nationals and the alleged acts substantially occurred outside India?

68. The final preliminary objection relates to the territorial jurisdiction of SEBI. The *Noticee* submitted that several entities referred to in the SCN are incorporated outside India, the ARFT trust is governed by foreign law, the investment vehicles are located overseas and several transactions were executed outside Indian territory. It has therefore been argued that SEBI lacks jurisdiction to regulate such foreign entities or to adjudicate transactions occurring outside India merely because they are alleged to possess some indirect connection with Indian listed companies.

69. According to the *Noticee*, the SEBI Act cannot be construed as having unlimited extraterritorial application in the absence of clear legislative mandate. It was further submitted that permitting SEBI to exercise jurisdiction over offshore trusts and foreign entities would amount to an impermissible extension of Indian regulatory authority beyond territorial limits.

70. I have carefully considered the submissions. The objection proceeds on the premise that the present proceedings seek to regulate foreign entities solely because they are incorporated outside India. In my view, that premise does not correctly reflect either the allegations contained in the SCN or the statutory framework under the SEBI Act. The present proceedings do not concern regulation of foreign entities merely by reason of their foreign incorporation. The focus of the enquiry is not the geographical location of the entities but the alleged impact of their conduct upon the Indian securities market and the regulatory regime established under the SEBI Act.

71. The SEBI Act is enacted to protect the interests of investors in securities and to regulate the securities market in India. Where conduct occurring partly outside

India is alleged to produce consequences within the Indian securities market or to affect compliance with obligations imposed under Indian securities law, SEBI cannot be rendered powerless merely because certain constituent acts occurred beyond Indian territory. The Hon'ble Supreme Court has also held in ***SEBI vs. Pan Asia Advisors Ltd. [(2015) 14 SCC 71]*** that SEBI has extraterritorial jurisdiction if foreign transactions cause an adverse impact or consequence within the Indian securities market. By invoking the "effects doctrine", the Hon'ble Court established that a regulator's jurisdiction is determined by the economic impact of a fraudulent act rather than the physical territory where the act was committed.

72. Acceptance of the *Noticee's* contention would substantially undermine the efficacy of securities regulation where sophisticated market arrangements could evade regulatory scrutiny merely by routing portions of the transaction through FPIs. In my view, such an interpretation would defeat the object and purpose of the SEBI Act.

73. Whether the evidence ultimately establishes the alleged nexus between the FPIs and the companies listed in Indian securities market is a question that falls for consideration while adjudicating the merits of the allegations. That question is distinct from the preliminary issue of jurisdiction raised by the *Noticee*. At the jurisdictional stage, it is sufficient that the SCN alleges conduct having a direct and substantial nexus with securities listed and traded in India and with compliance obligations arising under Indian securities laws. In the present case, such nexus is expressly alleged in the SCN. Accordingly, I do not find merit in the contention that SEBI lacked jurisdiction to initiate the present proceedings.

74. In view of the foregoing discussion, I find no merit in any of the preliminary objections raised by *Noticees*. I find that the proceedings are maintainable in law and accordingly require examination on their merits. I shall therefore proceed to examine the substantive allegations contained in the SCN.

F. CONSIDERATION OF ISSUES ON MERITS

75. Having rejected the preliminary objections, I now proceed to examine the substantive allegations contained in the SCN. I have carefully considered the allegations contained in the SCN and the written submissions and the oral submissions advanced during the course of hearing. The main allegation is about violation of MPS requirement of minimum 25% public shareholding held by the public during the period from June 2013 to June 2018. It is alleged that the investment of EIFF and EMR in Adani Group of Companies during this period were controlled by the *Noticee* no 1. During this period, the maximum aggregate investment by these two FPIs in the four Adani Group of Companies were 3.38% in the case of AEL, 3.90% in the case of APL, 2.99% in the case of APSEZ and 3.77% in the case of ATL. There was no shareholding of these two FPIs in these four Adani Group Companies post June 2018, hence there is no allegation after this period. Additionally, there is allegation that MPS requirement is also violated in case of investment of Opal in APL. The issues arising out of the SCN and submissions made by the *Noticee no. 1* on merits may broadly be categorised as follows:

I. Whether the *Noticee no. 1* exercised direct or indirect control over the two FPIs notwithstanding the legal ownership structure.
II. Whether the allegations relating to Opal are established.
III. Whether the shareholding held through the two FPIs and Opal was liable to be treated as promoter shareholding, resulting in non-compliance with the MPS requirements under Rule 19A of the SCRR and the LODR Regulations.
IV. Whether the alleged structuring and use of the FPIs and Opal, coupled with the disclosures made to SEBI, stock exchanges and investors, constituted a fraudulent or deceptive device in violation of Regulations 3 and 4 of the PFUTP Regulations.

76. I will now proceed to examine all the aforesaid issues on merits in the ensuing paragraphs.

F.1 Whether the *Noticee no. 1* exercised direct or indirect control over the two FPIs who had invested in Adani Group Companies.

77. The foundational fact alleged in the SCN is that the *Noticee no. 1* exercised control over the two FPIs notwithstanding the fact that such entities were ostensibly owned or managed by other entities. According to the SCN, the existence of such control constitutes the central connecting link from which the remaining allegations concerning maintenance of minimum public shareholding, fraudulent conduct and use of front entities necessarily follow. Thus, before examining whether the FPIs were utilised for maintaining minimum public shareholding, it becomes necessary to determine whether the *Noticee no. 1* exercised control over those entities.

78. The issue also assumes considerable significance because the remaining allegations substantially proceed on the premise that the FPIs merely represented extensions of the *Noticee no. 1* himself. If that premise is not established, several consequential allegations may not survive.

79. The interpretation of the term "control" has been discussed in detail in earlier part of the order. Without reiterating the applicable law and judicial precedents, it is sufficient to say that mere commercial influence, longstanding business association or familial relationship cannot, by themselves, constitute control. Further, the existence of contractual rights or advisory functions does not automatically imply control unless such rights confer the ability to determine the composition of Board of Directors or positively direct the management or policy decisions of the concerned entity and evidence of exercise thereof is established.

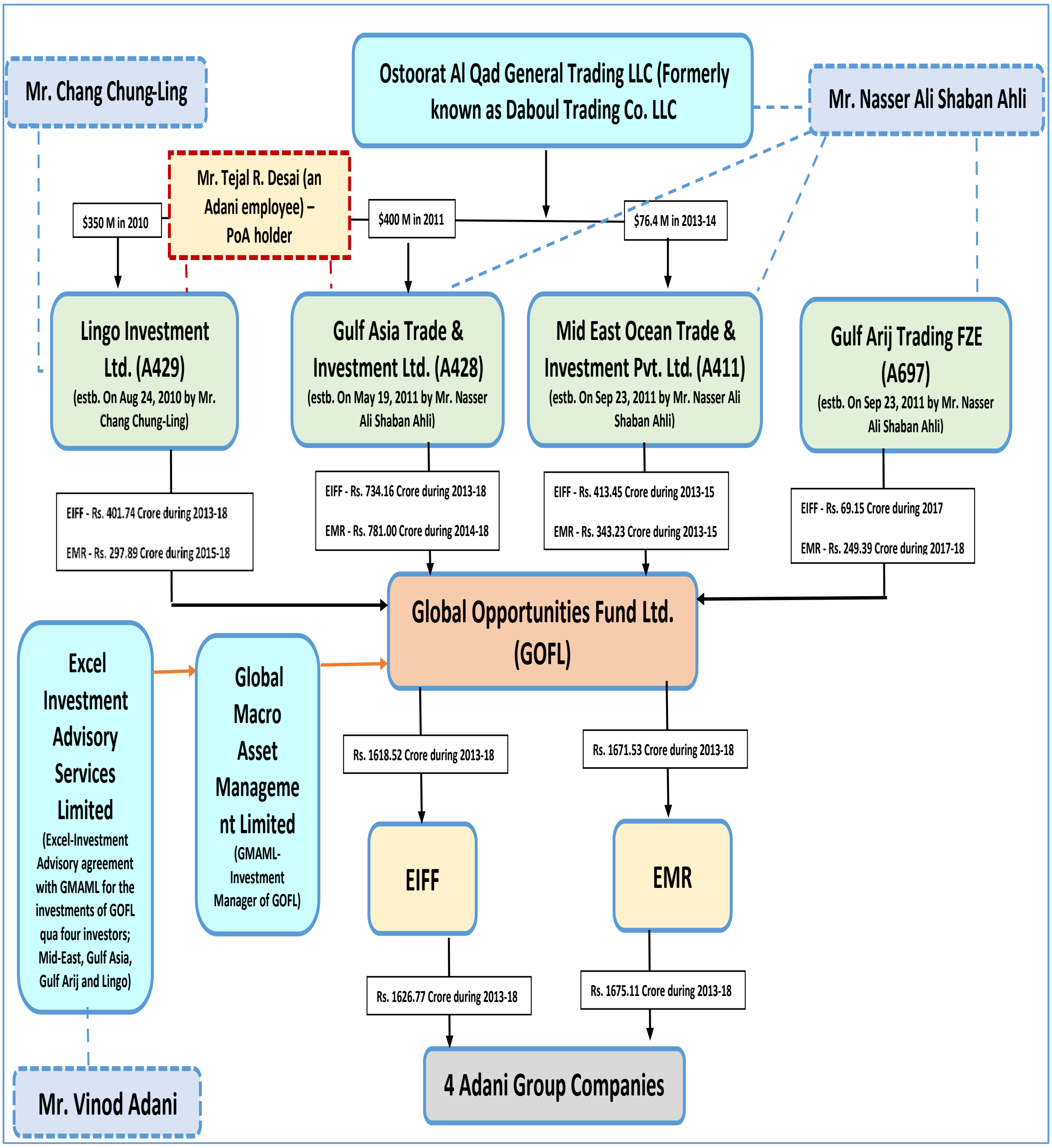
80. The Hon'ble Supreme Court as well as the Securities Appellate Tribunal have consistently recognised that "control" under the securities laws is a legal concept denoting effective and positive power over the management or policy decisions of an entity. Such control may be exercised directly or indirectly and need not necessarily arise from shareholding alone. However, the existence of such control must be demonstrated by objective material evidencing ability to positively direct the management or policy decisions of the entity concerned. The circumstances relied upon to establish control must collectively lead to a clear

and convincing inference, crossing the threshold of preponderance of probability, that the alleged controller possessed the real ability to positively direct the management or policy decisions of the concerned entity. The determination of control therefore necessarily depends on facts and circumstances of each case.

81. A pictorial representation of the whole structure for executing the transaction is provided below:

Figure 1

Structure of alleged control and transactions



82. The allegations contained in the SCN are based on the following factual matrix:

I. The two FPIs i.e. EIFF and EMR, had invested in Adani Group Companies. Both the FPIs had GOFL as its common economic interest shareholder.
II. GOFL had 478 economic interest shareholders and as per allegation more than 99.49% of the entire funds invested by EIFF and 99.79% of the entire funds invested by EMR in Adani Group Companies came from Four Underlying Investors.
III. The Four Underlying Investors were connected to Mr. Nasser Ali Shaban Ahli and Mr. Chang Chung-Ling. Mr. Nasser Ali Shaban Ahli was the beneficial owner of Mid East, Gulf Asia and Gulf Arij and Mr. Chang Chung-Ling was the beneficial owner of Lingo. Mid East, Gulf Asia and Lingo had received funds from Daboul Trading Co. LLC (“Daboul”) which was owned by Mr. Nasser Ali Shaban Ahli. These funds were allegedly used to make investments in GOFL through the Four Underlying Investors.
IV. Mr. Nasser Ali Shaban Ahli and Mr. Chang Chung-Ling had close business and financial connection with Mr. Vinod Adani.
V. Further, GOFL had appointed GMAML as its investment manager, and GMAML in turn had entered into an investment advisory agreement with Excel, which was a wholly-owned subsidiary of Assent. Assent was owned by ARFT and Mr. Vinod Adani was the settlor, enforcer and beneficiary of ARFT.

83. Based on the aforesaid facts, the SCN alleges that Excel was hired by GMAML to provide advice tailored to the unique requirements of the Four Underlying Investors for their investment in Adani Group Companies. The SCN further alleges that Excel was the one making the investment decisions in respect of GOFL’s investments in Adani Group Companies through the two FPIs, and that these investments were directed by Mr. Vinod Adani through Excel.

84. A substantial part of the defence of the *Noticee no. 1* rests upon disproving the chain of control as alleged in the SCN. The *Noticee* has rebutted each leg of

control between various layers of entities between the *Noticee no. 1* to the two FPIs who were ultimately investing in the Adani Group Companies.

F.1.1 Whether Mr. Vinod Adani controlled ARFT and Excel?

85. Firstly, the *Noticee* contends that Excel cannot be said to have been controlled by the *Noticee* since allegation of control proceeds upon an incorrect understanding of the trust law and erroneously equates economic interest with legal control. According to the *Noticee*, as per ARFT Trust Deed, ARFT is a 'special trust' under the Cayman Islands Trust Law and Barclays Private Bank & Trust (Cayman) Limited is the trustee, and Mr. Vinod Adani is the beneficiary, settlor as well as the enforcer of ARFT. It has been submitted that in Cayman Islands Trust Law as well as Indian law in relation to a trust, it is the trustees who are in charge of the administration and management of trust property and the settlor and beneficiary do not possess legal ownership over the trust assets. In this respect, *Noticees* have relied on judgement of Hon'ble High Court of Karnataka in ***Chirstopher Karkada and Others vs. Church of South India, [2011 SCC OnLine Kar 2075]***, wherein, it was held that where property is vested in a trustee, the "owner" must be the trustee and the beneficiaries' rights extend to enforcing a trust and ensuring that trustees manage assets according to the terms of the trust deed.

86. The *Noticee* further submitted that the ARFT Trust Deed clearly states that the management of subsidiary companies of ARFT solely resides with the board of directors or other managing board or committee of the respective subsidiary company and that Assent and Excel were independently managed companies. Since control can only be stated to exist if any person has effective control as a consequence of a legal right vested in him, in absence of any evidence in the SCN to demonstrate that the *Noticee* had effective control of Excel, and that there existed any legal right demonstrating such effective control, it cannot be said that the *Noticee* "controlled" ARFT or its subsidiary companies, including Excel.

87. I have carefully considered the submissions and examined the ARFT Trust Deed. At the outset, it is necessary to distinguish between the legal architecture of the trust and the factual exercise of control. The former concerns the legal rights and

obligations created by the Trust Deed under the governing law, whereas the latter concerns the manner in which those legal arrangements may have actually operated in practice. The present proceedings do not involve adjudication upon the validity of the Trust Deed under Cayman Islands law. Nor has SEBI alleged that the trust itself is legally void or sham in the sense recognised by trust law. The issue before me is considerably narrower, namely, whether the evidence demonstrates that notwithstanding the formal legal structure, the *Noticee no. 1* retained the ability to direct or control the affairs of the FPIs.

88. I accept the submission of the *Noticee* that, as a matter of law governing trust, legal ownership of trust assets ordinarily vests in the trustee and not in the settlor or beneficiaries. However, the existence of a formally valid trust does not, by itself, preclude a possibility that a particular individual exercised control over the manner in which the trust or related investment entities functioned. Courts and regulators are required to examine the actual operation of the structure rather than stopping at its formal legal description. For this, the detailed examination of the Trust Deed is required. The judgement of Hon'ble Karnataka High Court in *Chirstopher Karkada*, which is relied upon by the *Noticee*, is distinguishable from the facts of the present case since the question for determination in that matter was whether the trust was private or public in nature and not whether who holds effective control over the trust assets. Further, while determining the nature of trust, the Hon'ble court has held that it is the intention of the author of the trust which has to be gathered from the provisions of the trust deed, which is to be primarily looked into to determine questions relating of operation of trust. Thus, even though the judgement in *Chirstopher Karkada* is distinguishable, the principle of law enunciated in the said case leads to an inference that the rights and obligations of a trustee or beneficiary can also be gathered from the provision of the trust deed.

89. The SCN relies upon various provisions contained in the ARFT Trust Deed to contend that the *Noticee no. 1*, who was the settlor, enforcer and beneficiary of the ARFT Trust, retained effective control over the functioning of the trust, including the power vested in the *Noticee no. 1* to appoint or remove the Trustee.

An illustrative list of clauses from the ARFT Trust Deed which grant various powers to the *Noticee no. 1* is reproduced below:

> *"1. The Enforcer may by instrument in writing delivered to the Trustees remove any Trustee [Ref. Clause 3(a) in First Schedule].*
>
> *2. The statutory powers of appointment shall be exercisable by the Enforcer [Ref. Clause 3(b) in First Schedule].*
>
> *3. The Enforcer would be the concluding authority for determining the remuneration of the Trustees [Ref. Clause 6(a) in First Schedule]."*

90. From the aforesaid clauses of the ARFT Trust Deed, it can be seen that the *Noticee no. 1*, as Enforcer of ARFT, had the power to remove any Trustee, appoint any Trustee and determine remuneration of a Trustee. These provisions undoubtedly confer significant governance rights upon the *Noticee no. 1* in relation to the administration of the Trust. Although such provisions do not, by themselves, establish direct control over every subsidiary entity of the trust, they constitute sufficient material to infer that the *Noticee no. 1* possessed the ability to influence the management or policy decisions exercisable by ARFT and entities wholly owned by it, including Assent and Excel. In this regard, I would like to draw reference to the definition of "control" under the Companies Act and SAST Regulations which, inter alia, includes a person having right to appoint majority of the directors on board of a company or to control the management or policy decisions exercisable by a person in any manner. Same principle can be applied to determine "control" of Trusts. For this purpose, an equivalence can be drawn between Board of Directors, who is the brain of the company and Trustees, who is the brain of the Trust. Since the Noticee no.1 has right to appoint or change the Trustee, he can be said to be in *de jure* control of ARFT.

91. In view of the above, **I hold that the *Noticee* no. 1 was in de *jure* control of ARFT and since Assent and Excel were wholly owned subsidiary companies of ARFT, ARFT was also in *de jure* control of Excel.**

F.1.2 Whether Mr. Vinod Adani controlled GMAML/GOFL through Excel?

92. Having concluded that Mr. Vinod Adani effectively controlled Excel, I now proceed to examine whether Mr. Vinod Adani controlled GMAML and GOFL through Excel.

93. The SCN alleges that the investment decisions of GMAML were directed by Mr. Vinod Adani through Excel, and GMAML was merely implementing all the directions of Mr. Vinod Adani in respect of the acquisitions by the Four Underlying Investors. The SCN, inter alia, states that GMAML entered into an investment advisory agreement with Excel with effect from April 01, 2012 for providing investment advisory services for the funds for which GMAML was acting as a fund manager. The SCN alleges that as per clauses 4.1.1-4.1.2 of the said investment advisory agreement, Excel was to advise GMAML for implementing overall investment objective of GOFL and regarding opportunities for possible investments by GOFL, and the advice by Excel was for three specified investors, namely, Mid-East, Gulf Asia and Lingo. Thus, the SCN considers it evident that shares of Adani Group Companies purchased on behalf of the underlying investors by GOFL were based on the advice of Excel, which was owned and controlled by Mr. Vinod Adani.

94. In this regard, the *Noticee no. 1* has submitted that he had not given any directions in respect of the acquisitions made by GOFL or the Four Underlying Investors through Excel. Without prejudice to the same, the *Noticee* has submitted that even as per investment advisory agreement, any advice provided by Excel (advisor) to GMAML (Company) was non-binding and only recommendatory in nature and the ultimate decision of investment of funds of GOFL was with GOFL/ GMAML. Thus, as per the *Noticee* the allegation that investments were controlled/ directed at the instance of the *Noticee* is not tenable. The relevant clauses of the investment advisory agreement between Excel (advisor) and GMAML (Company) are reproduced below:

WHEREAS:

A. Advisor is incorporated at the Ras Al Khaimah Free Trade Zone in UAE under the perception and the seal of the Ras Al Khaimah Free Trade Zone Authority as an International Company on July 4th, 2011 to carry out investment advisory. (Registration No. .IC20110726).

B. The Company is the Investment Manager of Global Opportunities Funds Limited (GOF), a Bermuda based Investment Fund Company & the Company is to be an exempted company as defined by the Companies Act 1981; and

C. The Company desires to engage the Advisor for providing discretionary, non-binding and non-exclusive investment advisory services in relation to the investments of GOF subject to such investment restrictions as specified in Annexure A, and the Advisor is desirous of providing such discretionary and non-binding advice and recommendations pertaining to investment opportunities in India in accordance with the terms and conditions set forth in Annexure A.

D. The Advisor and the Company hereby accord their mutual understanding and their common intention in the manner as hereinafter provided.

4.2 Advisor shall be solely acting as an advisor to the Company and shall not be responsible for the investment / divestment of securities and / or any administrative activities of the Company in respect of the Fund. The advisory services provided by Advisor shall be non-binding and recommendatory in nature and Advisor shall not be deemed to be authorized to manage the affairs of, act in the name of or on behalf of, or bind the Company. All final investment decisions in respect of the Fund shall be at the sole and exclusive discretion of the Company. The Company shall be entitled to accept or reject the advice of Advisor in its sole discretion.

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11. **SERVICES OF ADVISOR NEED NOT BE EXCLUSIVE**

Whilst this Agreement continues, the services of Advisor to the Company hereunder shall not be required to be exclusive and Advisor shall be free to render similar services to others. Advisor shall not be deemed to be affected with notice of or to be under a duty to disclose to the Company any fact or thing which comes to the notice of Advisor or any servant or agent of Advisor in the course of its business or in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

The Company acknowledges and understands that Advisor and its affiliates may engage in investment advisory business apart from providing advisory services to the Company. This may create conflicts of interest. Advisor and its affiliates will attempt to resolve all such conflicts in a manner that is generally fair to all of their clients. The Company confirms that Advisor and its affiliates may give advice and take action with respect to any of their other clients that may differ from advice given or the timing or nature of action taken with respect to the Fund so long as it is Advisor's and its affiliates' policy. Further, the Company acknowledges and understands that Advisor will not provide any advice on listed or unlisted companies within its Group or to whom it is associated with/to.

95. I have pursued the agreement. There is no clause in the Agreement which suggests that Mr. Vinod Adani having any right to direct the decision of the two FPIs to invest in Adani Group of Companies. In fact, clause 11 of the agreement states that company (GMAML) acknowledges and understands that Advisor (Excel) will not provide any advice on listed or unlisted companies within its Group or to whom it is associated with/to. Further clause 4.2 clearly establishes non-

binding nature of advice with the final decision resting with GMAML to invest or not invest. Once there is an agreement, it needs to be read completely and one cannot ignore some relevant and important clauses to arrive at a judicious decision. Investigation has not rebutted these clauses in its report. If it was investigation case that these clauses are only on paper and in practice these clauses were ignored, they needed to bring evidence to put forward such argument. Investigation has not discussed these clauses in its report. I note that the SCN does not bring on record any instance to prove that Excel actually advised GOFL to invest in Adani Group Companies and that advice was binding on GOFL. I am of the view that merely because an entity proposes non-binding investment advice to another entity, that does not by itself mean that it controls decision making of such entity. If this proposition were to be accepted, it would have serious regulatory ramifications since it would effectively render every investment adviser in control of the investment of funds to which the advice is rendered, irrespective of whether the fund manager retained independent discretion. Such an interpretation would be inconsistent with both commercial reality and the legal distinction between advisory and decision-making functions.

96. Considering the above, **I hold that the *Noticee* no 1 cannot be said to be in control of decision making of GMAML and GOFL through Excel.**

F.1.3 Whether Mr. Vinod Adani controlled the two FPIs which invested in Adani Group Companies.

97. Having found that Mr. Vinod Adani through Excel cannot be said to be in control of GMAML and GOFL, the alleged chain of control substantially breaks at this stage. Nevertheless, since both sides addressed the remaining circumstances in considerable detail and the SCN also relies upon them, I proceed to examine those circumstances for completeness.

98. I note that the SCN relies upon the investment pattern adopted by the FPIs/ Four Underlying Investors which shows concentration of investments in shares of Adani Group Companies to demonstrate that the FPIs could not have been acting independently. I am unable to accept such proposition as a strict rule. Concentrated investment in a particular business group may arise for several

legitimate commercial reasons including long term investment strategy, perception of a particular group, etc.

99. At the same time, where concentrated investments are accompanied by evidence demonstrating coordinated decision-making, undisclosed influence over investment choices or absence of independent commercial judgment, such circumstances may acquire evidentiary significance. Therefore, the investment pattern must be evaluated together with the surrounding documentary evidence rather than in isolation. I have gone through the allegations and material on record. There is neither any allegation to this effect nor any material suggesting the same. While it has been earlier held that Mr. Vinod Adani cannot be said to be in control of decision making of GMAML and GOFL through Excel, there is also no footprint of him being involved in the decision of the two FPIs to invest into the Adani Group Companies.

100. **Accordingly, I hold that none of these circumstances are sufficient to hold that two FPIs invested in Adani Group Companies due to exercise of control by Mr. Vinod Adani.** Even when the aforesaid circumstances are viewed cumulatively rather than in isolation, they fall short of establishing, on a preponderance of probabilities, that *Noticee no. 1* possessed the legal right or actual authority to direct the investment decisions of the two FPIs.

F.1.4 Whether the funding arrangements and other factors involving the Four Underlying Investors establish that these investments were funded or controlled by the *Noticee no. 1*.

101. Apart from the investment advisory arrangement involving Excel, the SCN also seeks to establish the alleged control by the *Noticee no. 1* by relying upon the funding arrangements of the Four Underlying Investors and other factors. The SCN alleges that the investments made by the Four Underlying Investors were ultimately financed through entities associated with Mr. Nasser Ali Shaban Ahli and Mr. Chang Chung-Ling, both of whom are alleged to have longstanding business and financial associations with the *Noticee no. 1*. The SCN contends that these relationships, when viewed together with the overall investment

structure, demonstrate that the funds invested through the Four Underlying Investors were, in substance, deployed at the instance of the *Noticee no. 1*.

102. In support of the aforesaid allegation, the SCN relies upon material indicating that Mr. Nasser Ali Shaban Ahli was the beneficial owner of Mid East, Gulf Asia and Gulf Arij and Mr. Chang Chung-Ling was the beneficial owner of Lingo. Mid East, Gulf Asia and Lingo had received funds from Daboul Trading Co. LLC ("Daboul") which was owned by Mr. Nasser Ali Shaban Ahli. The SCN alleges that Mr. Nasser Ali Shaban Ahli was the BO and shareholder of Daboul and that Daboul had lent funds to Mid East (USD 77Million in 2013-14), Gulf Asia (USD 400 Million on May 25, 2011) and Lingo (USD 350 Million on September 01, 2010). Also, that Gulf Arij extended a related party loan of USD 50,000 to Mid-East in 2016-17. The SCN alleges that these funds were used to make investments in the Adani Group Companies. The SCN further refers to various historical business associations between these individuals and entities connected with the *Noticee no. 1*, including common business ventures and commercial dealings, to contend that the apparent independence of the Four Underlying Investors was questionable. The SCN alleges that Mr. Chang Chung-Ling and Mr. Vinod Adani were directors of Adani Global Limited for several years together (1997-2008); Mr. Ahli and thereafter Mr. Chang were shareholders of Electrogen Infra Holding ("**EIH**"), which subsequently came to be held by Mr. Vinod Adani, and its subsidiary Electrogen Infra FZE ("**EIF**") had substantial business dealings with an Adani Group company. Similarly, Krunal Trade & Investments Pvt. Ltd. ("**Krunal**") had successive shareholding/directorship links involving Mr. Vinod Adani, Mr. Tejal Desai and persons connected with Mr. Chang, while also receiving funding from entities associated with Mr. Ahli and Mr. Chang. The SCN further refers to overlapping associations in Resource Asia Trade & Investment Ltd. ("**Resource Asia**") and the common involvement of persons such as Mr. Tejal Desai with entities associated with the Adani Group as well as with entities connected with Mr. Ahli. According to the SCN, these overlapping and successive relationships, extending over a considerable period and involving common companies, directors, shareholders, financing arrangements and business dealings, demonstrate the historical and business proximity amongst the said *Noticees* and the entities associated with them.

103. The *Noticee no. 1* has disputed these allegations and submitted that neither Mr. Nasser Ali Shaban Ahli nor Mr. Chang Chung-Ling acted as nominees or agents of the *Noticee no. 1*. According to the *Noticee no. 1*, the SCN merely establishes historical commercial relationships between the aforesaid *Noticees* who engaged in various ventures over several years and such commercial association, even if longstanding, does not establish that one person controls the financial affairs or investment decisions of another. The *Noticee* further contends that the SCN has failed to identify any documentary evidence demonstrating that the *Noticee no. 1* directly or indirectly financed the investments made by the Four Underlying Investors or exercised any authority over the deployment of their funds.

104. It is also submitted that serious allegations of "fraud" cannot be based on surmises and conjectures. During hearing, Senior Advocate Shri Darius Khambata appearing for the *Noticee* no 1 submitted an example and asked whether his having a substantial financial dealing with his best friend (a director of company XYZ), would make him controlling the company XYZ? He also questioned if being director together in a company in the past would make the *Noticee* controlling the financial transactions of the other director in future? He also questioned can control be established just because one person takes loan from another? He also pointed out that the time period of loan also did not match with the time of investment of four underlying investors. Similarly, he questioned every assertion in the SCN, where based on financial or business relation, control was sought to be established.

105. At the outset it is clarified that it is not alleged in the SCN that the investment in Adani Group Companies by the two FPIs is beneficially owned by the *Noticee no.*1. The allegation is only with respect to control of that investment by *Noticee no.*1 based on preponderance of probabilities due to financial and business relationship of *Noticee no.*1 with Mr. Nasser Ali Shaban Ahli and Mr. Chang Chung-Ling and financing of those investments by Ahli and Ling. I note that the material relied upon by the SCN demonstrates commercial and financial relationships amongst the *Noticee no. 1*, Mr. Nasser Ali Shaban Ahli and Mr. Chang Chung-Ling. However, mere existence of longstanding business

associations cannot by itself justify the inference that funds standing in the name of one businessman actually belonged to or were controlled by another. Commercial relationships frequently involve loans, joint ventures, investments and reciprocal business arrangements, none of which necessarily establish control over each other's assets. One may be director in a company along with another person. This does not establish that one controls the other. One may have taken a loan from another person to invest, but it does not establish that the another person controls first one. It is seen that in this case, period of financing of the Underlying Investors by Mr. Ahli and Mr. Chang do not exactly match with the time of investment into Adani Group Companies. Thus the allegation of financing also fails on this account. Further, the ownership of a company may have changed from one person to another. But this in itself, does not establish that one person controls the other. All these even if taken together would only establish close business and financial relationship. To establish "control", as decided by Hon'ble Courts in various cases discussed earlier, investigation would have to prove that one positively directs business or policy decisions of others. The burden lay upon investigation to establish this on the basis of sufficient evidences.

106. There is no allegation in the SCN or in the investigation report of direct funding by the *Noticee* No 1, circular movement of funds, contractual arrangements conferring decision-making authority, contemporaneous communications directing deployment of funds, or other objective material establishing that the apparent source of funding did not reflect the true economic reality. While the investigation traces the movement of funds through various entities connected with Mr. Nasser Ali Shaban Ahli and Mr. Chang Chung-Ling, and also identifies business relationship with them, it does not provide evidence that the *Noticee No. 1* was the ultimate source of those funds or possessed any legal or contractual right to determine the manner in which such funds were to be invested. The allegation of investigation required evidence at both the stages; control of Mr. Ahli and Mr. Ling by Mr. Vinod Adani and then control of two FPIs by Ahli/Ling. The investigation has not been able to provide sufficient evidences even at one of these two stages. If investigation had shown any evidence that source of funding of the two FPIs in the Adani Group Companies is from Mr.

Vinod Adani, these two stages of control could have been established with other substantiating evidences or in the alternative, it could have been alleged that Mr. Vinod Adani is the beneficial owner of the investment of two FPIs in the Adani Group Companies. There is no such allegation in the SCN. Therefore, I find that the conclusions sought to be drawn by the SCN without sufficient evidences do not hold.

107. I also find that the allegation of funding substantially overlaps with the allegation of direct control of two FPIs by Mr. Vinod Adani already examined in the preceding paragraphs. Once it has been held that the material on record does not establish that the *Noticee no. 1* exercised control over GMAML, GOFL or the two FPIs, the existence of non-contemporaneous business relationships with financing of certain underlying investors, without actual evidence of control, cannot bridge the evidentiary gap in the chain of control. The circumstances relied upon by the SCN may legitimately give rise to suspicion warranting further examination. However, suspicion alone cannot establish violation. Even if we apply the test of preponderance of probability, it would not be possible to infer that *Noticee no.* 1 controlled investments as alleged in the SCN.

108. The SCN has also relied upon the presence of Mr. Tejal Ramanlal Desai as a PoA holder of Gulf Asia and Lingo as a circumstance evidencing effective control of the promoters of the Adani Group Companies over the shareholding of the two FPIs. It is alleged that Mr. Desai had been employed with Adani Global FZE during the 2000s, thereafter with Daboul for about six to seven years, and subsequently joined Adani Global Pte. Ltd. in 2018. The SCN has further noted that, in the case of Gulf Asia, the PoA authorised Mr. Desai to operate bank accounts and seek finance facilities, while in the case of Lingo he was one of its legal representatives/PoA holders. I have considered the submissions that the PoA was limited in scope and that there is no evidence showing that Mr. Desai exercised any authority in relation to the investment decisions of the underlying investors or the voting rights attached to the shares held by the FPIs. I have noted that there is no allegation that delegator delegating the authority is in substance delegate only. I have also noted that at the time Mr. Desai was only ex-employee of the Adani group and not promoter group itself.

109. I note that the authority to operate bank accounts and seek finance facilities cannot, by itself, be equated with "control" over the company or ownership of the securities held by the two FPIs in which Gulf Asia is investing. In a company there are employees who are delegated the responsibility of operating an account but in absence of any further evidence that does not establish that they are controlling the management or policy decision of that company. They may be said to be controlling that particular bank account at that moment to the extent of delegation, but that has a remote relationship with allegation of controlling investment decision of the two FPIs in Adani Group Companies. The Power of Attorney Act, 1882, only empowers the POA holder to act for and in the name of POA grantor. Thus, the delegated authority is to enable execution of specific authority delegated. An authorised signatory merely operates an account on behalf of the person authorising him. It does not divest the delegating authority of the original right. Under section 207 of the Indian Contract Act, 1872 if the principal does the act himself, the authority of the agent for that act ends automatically. As per the example given under that section, if A empowers B to sell A's house and afterwards A sells it himself. This is an implied revocation of B's authority. This demonstrates that delegation of an authority does not mean relinquishing "control" in favour of delegatee.

110. In my view, the mere existence of a PoA to an employee, particularly one whose demonstrated functions relate to banking and financial facilities, cannot, without more evidence, establish that the holder exercised control over the investment decisions of the concerned entity, much less establish that such authority was exercised at the instance of Mr. Vinod Adani or any member of the promoter group. The SCN does not identify any specific instance in which Mr. Desai exercised the PoA to direct the acquisition, disposal or voting of shares held by the FPIs, nor does it bring material establishing that the PoA was conferred upon him as a means of enabling the promoter group to control such investments. His past and subsequent employment associations may establish an association but, without any further evidence, it will not establish the exercise of a positive right of control over the relevant investment decisions.

111. The SCN has further relied upon the alleged voting pattern of EIFF and EMR during 2013–2020, observing that the two FPIs voted in tandem with the promoter group on certain important resolutions, including resolutions relating to related party transactions, re-appointment of promoter directors and approval of financial statements. The SCN connects this voting pattern with Clause 4.1.4 of the Investment Advisory Agreement between GMAML and Excel, under which Excel was to advise, when requested in writing, "whether and in what manner the rights conferred by the investments shall be exercised". The *Noticees* have submitted that there is no evidence of any such written request by GMAML, any advice actually being given by Excel, or any direction by Mr. Vinod Adani in relation to the voting decisions of the FPIs. They have also relied upon the terms of the Investment Advisory Agreement, which expressly characterised Excel's services as discretionary, non-binding and recommendatory and reserved the final investment decisions to GMAML.

112. I find merit in the submission to the extent that a provision contemplating the furnishing of investment advice, without evidence of its actual exercise and without evidence that such advice was binding upon the decision-maker, cannot by itself establish control over the voting rights of the FPIs. I have also discussed this issue earlier where it has been highlighted how the same agreement which is relied upon by the investigation states clearly that advice is non-binding (clause 4.2 of the agreement) and would not be relating to listed or unlisted companies within the group of advisor (Excel) or with whom it is associated with (clause 11 of the agreement). More importantly, the SCN does not identify any communication, instruction, voting direction or other contemporaneous material demonstrating that the voting decisions of EIFF or EMR were actually taken pursuant to directions issued by Mr. Vinod Adani or Excel. The fact that the two FPIs voted in favour of resolutions supported by the promoter group, or that their voting pattern was allegedly in tandem with the promoter group, may constitute a circumstance requiring examination, but voting alignment, in the absence of evidence establishing the source of the voting decision or directing of such decision, cannot by itself establish control. The submission of the *Noticee* no 1 that the votes of the FPIs did not alter the outcome of the resolutions is also a relevant circumstance in assessing the alleged impact of such voting.

Accordingly, I do not find that either PoA or voting arrangement, considered individually or in the manner alleged in the SCN, establishes that Mr. Vinod Adani or the promoter group possessed or exercised a positive right to direct the investment or voting decisions of EIFF and EMR.

113. Case laws discussed earlier clearly establish that *de facto* "control" as in the second limb of the definition cannot be established merely on the basis of business relationship or financing arrangements. There needs to be credible evidences demonstrating positively directing of management or policy decision, which is not present in this case.

114. In view of the above and on the touchstone of preponderance of probabilities**, I do not find that the investments made by the Four Underlying Investors represented funds provided by, or deployed under the directions of, the *Noticee no. 1* or that the *Noticee no. 1* exercised effective control over the investments made by the two FPIs in Adani Group Companies through the Four Underlying Investors**.

F.2 Whether the allegations relating to Opal are established?

115. The SCN alleges that Opal, a foreign investor, held 8.91% of the paid-up share capital of Adani Power Ltd., and that such shareholding, though classified as public shareholding, was in substance under the control of the promoter/promoter group of APL and therefore formed part of the promoter shareholding for purposes of the MPS requirement. The SCN states that Opal was incorporated in 2005 and that its shareholding changed hands over time, including to Mr. Pranav Vora (admitted promotor group member) in 2006, Mrs. Tammy Lee and Mr. Chang Chung-Ling in 2010, and Mr. Nasser Ali Shaban Ahli in 2016, with the latter continuing as shareholder until 2020. Opal incorporated its wholly owned subsidiary, Growmore Trade & Investment Pvt. Ltd. ("**Growmore**"), in September 2010, which acquired 26% of Adani Power Maharashtra Ltd., an unlisted subsidiary of APL. Pursuant to the scheme of amalgamation sanctioned by the Hon'ble Gujarat High Court on September 18, 2012, Growmore was amalgamated with APL and, consequently, 21,32,36,910 equity shares of APL,

representing 8.91% of APL's paid-up capital, were allotted to Opal. The SCN further alleges that the acquisition was funded through an unsecured, interest-free loan from Daboul, an entity allegedly owned/controlled by Mr. Nasser Ali Shaban Ahli, and that the continued presence of persons connected with the Adani promoter group as shareholders and authorised signatories of Opal's demat account indicated continuing control over its APL shareholding. In particular, the SCN relies upon Mr. Pranav Vora continuing as an authorised signatory even after ceasing to be a shareholder, and his removal only in 2020, when the shareholding of Mr. Chang Chung-Ling and Mr. Nasser Ali Shaban Ahli also ceased; it further notes that, by a written resolution dated June 12, 2020, Mr. Dharmesh Parikh was authorised to operate Opal's trading/demat account with Monarch Networth Capital Ltd. On this basis, read with the alleged business and financial connections amongst Mr. Vinod Adani, Mr. Vora, Mr. Chang Chung-Ling, Mr. Ahli and the entities associated with them, the SCN alleges that Opal's shareholding in APL was effectively controlled by the promoter/promoter group and was structured as a device to circumvent the MPS requirements.

116. Accordingly, the SCN alleges that Opal, though disclosed as a public shareholder of APL, was in reality under the effective control of the promoter group of the Adani Group Companies. The allegation is founded principally on the facts that (i) Mr. Pranav Vora, an admitted promoter group member, continued to remain an authorised signatory to Opal's demat account even after he ceased to be its shareholder; (ii) Mr. Dharmesh Parikh also continued as an authorised signatory; (iii) Opal acquired its investment through funds borrowed from Daboul Trading Co. LLC, an entity alleged to be connected with Mr. Nasser Ali Shaban Ahli; and (iv) Opal did not exercise voting rights attached to its shareholding in APL. According to the SCN, these circumstances establish that Opal's shareholding constituted promoter shareholding disguised as public shareholding.

117. I have carefully considered the aforesaid allegations in light of the material placed on record. At the outset, it is observed that the continuance of Mr. Pranav Vora and Mr. Dharmesh Parikh as authorised signatories of Opal's demat account warrants examination. However, the authority to operate a demat account cannot, by itself, be equated with "control" over the company or ownership of the

securities held by it. In a company, there are employees who are delegated the responsibility of operating an account but in absence of any further evidence that does not mean that they are controlling the management or policy decision of that company. An authorised signatory merely operates an account on behalf of the person authorising him. It does not divest the delegating authority of the original right. Further, as already discussed in the earlier part of this order, under section 207 of the Contract Act, 1872, if the principal does the act himself, the authority of the agent for that act ends automatically. This demonstrates that delegation of an authority does not mean relinquishing “control” in favour of delegatee. Further, this is required to be seen along with the fact that there has been no evidence or allegation by investigation that this authority was actually exercised by Mr. Pranav Vora and Mr. Dharmesh Parikh after change of ownership.

118. The *Noticees* have submitted that Mr. Pranav Vora and Mr. Dharmesh Parikh did not operate the said accounts after change in ownership of Opal and the instrument of authorised signatory continued as an oversight on their part without any intent to exercise effective control. I also note that the SCN has not placed on record any contemporaneous evidence demonstrating that Mr. Pranav Vora or Mr. Dharmesh Parikh independently exercised voting rights, directing the investment decisions of Opal or otherwise controlling the affairs of the company after Mr. Pranav Vora ceased to be its shareholder. No board resolutions, correspondence, instructions, banking records or other material have been relied upon to establish that the subsequent shareholders merely acted as name lenders or that the authorised signatories exercised de facto control over Opal. In fact, the investigation/SCN has not alleged that authority delegated was actually exercised post change of ownership. The allegation is based only on existence of such authority. In these circumstances, I find that the existence of authority to operate the demat account, though capable of giving rise to suspicion, cannot by itself establish the allegation of effective control without there being any evidence of such exercise. Reliance is also placed on judgment of Hon’ble Supreme Court in the case of Arcelor Mittal India Pvt Ltd (supra) where, it is held that in second limb of the definition, “Control” means ***de facto*** control of actual management or policy decisions that can be or are in fact taken.

Thus, in the absence of any evidence of any exercise of power under the delegation it cannot be held that there is de facto control, particularly when continuation of such authority appears to be due to oversight.

119. The SCN has further relied upon the fact that Opal's investment was financed through an unsecured interest-free loan extended by Daboul Trading Co. LLC. While the terms of such financing may legitimately invite closer regulatory scrutiny, the mere existence of an interest-free unsecured loan does not, in law, establish that the borrower thereby becomes controlled by the lender. The SCN has not produced any agreement or material demonstrating that the loan conferred upon the lender any right to control the management or policy decision of Opal. Further, the timing of loan does not match with the time of actual investment. Thus, the financing arrangement in this case cannot be taken as evidence of control. Reliance is placed on Hon'ble Supreme Court decision in the case of *Vishwapradhan Commercial Private Limited (supra).*

120. Considerable reliance has also been placed on the fact that Opal did not exercise voting rights attached to its shareholding in APL. In my view, mere non-exercise of voting rights is not sufficient to establish that the shareholding was effectively controlled by the promoters. A shareholder may choose not to vote for a variety of commercial or strategic reasons. There are many shareholders who do not vote in General Body Meeting. Based on this fact, no logical conclusion can be drawn that this abstention means that the absentee shareholders are controlling decision of that company. Unless there is evidence that such abstention resulted from directions issued by the promoters or formed part of an agreed arrangement, no logical inference can reasonably be drawn that the promoters thereby exercised control over the shareholding. The SCN has not brought on record any material demonstrating such an arrangement. There is very small probability that promoters controlling a third party shareholding would ask that third party to abstain from vote instead of asking that third party to vote in favour.

121. The allegations against Opal must ultimately satisfy the same legal standard applicable throughout the present proceedings, namely, whether the material on record establishes, on the touchstone of preponderance of probabilities, that Mr.

Vinod Adani or any other promoter or promoter group exercised effective control over the management or policy decision taken by Opal. While the circumstances relied upon by the SCN may give rise to starting point for investigation, it is for investigation to collect further evidence to establish such a presumption. In my view, investigation has not been able to show any evidence to establish violation based on preponderance of probability. Reliance is also placed on various Judicial precedents as discussed earlier where it is clearly held that the second limb of the definition of "Control" is *de facto* control which requires evidence to establish *de facto* control of actual management or policy decision that can be or are in fact taken. Thus, **it is held that there is no evidence to support the allegation that Mr. Vinod Adani or any other promoter or promoter group exercised effective control over the management or policy decision taken by Opal.**

F.3 Whether the shareholding held through the FPIs was liable to be treated as promoter shareholding, resulting in non-compliance with the MPS requirements under Rule 19A of the SCRR and the LODR Regulations.

122. Having considered the issue of control, I now proceed to examine the allegations relating to violation of the MPS requirements which constitutes the regulatory consequence flowing from the case made out in the SCN. The SCN alleges that although the shareholding of the listed companies formally reflected compliance with the statutory requirement of minimum public shareholding, the apparent public shareholding was, in substance, not genuinely public. It is alleged that, the two FPIs i.e. EIFF and EMR, though disclosed as members of the public category, were in reality acting for, on behalf of, or under the influence or control of the promoter group. Consequently, their shareholding ought to have been treated as promoter shareholding and excluded from the computation of public shareholding. If this allegation is established, the listed companies would have failed to maintain the minimum public shareholding prescribed under the SCRR, SCRA, and the LODR Regulations, as applicable during the relevant period.

123. The aforesaid allegation has been disputed in its entirety by *Noticees*. It has been submitted that the promoter group had no control over the aforesaid FPIs and that the FPIs were independent foreign portfolio investors. It was further

submitted that these FPIs made investments in accordance with applicable laws, and that neither their legal ownership nor their beneficial ownership vested with the promoter group.

124. I have already discussed the law relating to control and minimum public shareholding in the previous part of this order. I note that the requirement relating to minimum public shareholding occupies an important place in the regulatory architecture of the Indian securities market. The object underlying the MPS framework is to ensure adequate public float in listed companies, promote price discovery through market participation, improve liquidity and reduce the possibility of concentrated ownership affecting market integrity. Rule 19A of the SCRR mandates that every listed company shall maintain the prescribed percentage of public shareholding and promoter shareholding is explicitly excluded from the computation of public shareholding because promoters cannot simultaneously constitute both the controlling shareholders and the investing public.

125. I note that the allegation in the SCN relating to MPS is intrinsically linked with the issue of control examined in the preceding part of this order. If the FPIs are not found to have been controlled by the promoter or promoter group, the legal consequence would ordinarily follow that their shareholding was validly disclosed as public shareholding.

126. I note that where shares are disclosed as belonging to the public category, the burden lies upon investigation to establish that the apparent legal position does not reflect the true economic reality. Such burden cannot be discharged merely by pointing to family relationships, commercial associations or concentrated investment. Investigation must establish, on the basis of reliable evidence or preponderance of probabilities, that the FPIs were not acting as independent investors but were, in substance, extensions of the promoter or promoter group. As held by various judgement of Hon’ble courts, it is a well settled legal principle that mere existence of commercial proximity with the promoters or long-standing investment relationships does not establish “control” in law.

127. Investigation has not alleged that investments made by two FPIs were beneficially owned by promoter or promoter group. The allegation is only with respect to Mr. Vinod Adani having control of investment by two FPIs in Adani Group of Companies. Investigation has not been able to produce sufficient evidences demonstrating that Mr. Vinod Adani positively directed management or policy decision of the two FPIs (in this case directing decision of two FPIs to invest in Adani Group of Companies). As discussed earlier, investment advisory agreement between Excel and GMAML, relied upon by investigation, supports the contention of the *Noticee* no 1 that the agreement only demonstrates non-binding investment advisory service and not what is alleged in the SCN.

128. Having examined the allegations contained in the SCN and the submissions made by *Noticees*, in view of my finding that the allegation of control has not been established, **the allegation relating to violation of the minimum public shareholding requirements also fails**.

129. I now proceed to examine the consequential allegations under the PFUTP Regulations, namely, whether the alleged structuring of the FPIs and the consequent disclosure of shareholding amounted to a fraudulent or deceptive device employed in connection with the securities market.

F.4 Whether the alleged structuring and use of the FPIs, coupled with the disclosures made to SEBI, stock exchanges and investors, constituted a fraudulent or deceptive device in violation of Regulations 3 and 4 of the PFUTP Regulations.

130. The SCN alleges that the offshore structure employed by *Noticees* constituted a fraudulent device designed to create an appearance of regulatory compliance while concealing the true nature of the promoter shareholding. According to the SCN, the creation and operation of multiple FPIs, the alleged concealment of effective control and the continued disclosure of such entities as public shareholders collectively amounted to a deceptive arrangement prohibited by Regulations 3 and 4 of the PFUTP Regulations.

131. The *Noticees* have broadly submitted that the existence of "dealing in securities" and "fraud" in securities has not been established by SEBI, that no "inducement" or "intent" with respect to the violation have been established and that no illegal profits were earned by *Noticees*. The *Noticees* submit that every investment was undertaken through legally recognised entities, that all applicable regulatory registrations were obtained, that disclosures were made in accordance with applicable law and that no fraudulent intent or deceptive device has been established.

132. Having found that the core allegation relating to violation of MPS norms does not stand established, I note that the consequent charge of violation of PFUTP Regulations also fails and therefore, does not require detailed scrutiny. However, since the SCN levels charges pertaining to violation of the PFUTP Regulations, the submissions of *Noticees* are briefly examined hereinafter.

133. I note that Regulations 3 and 4 of the PFUTP Regulations are intended to prohibit not merely completed acts of deception but also schemes, arrangements and devices which operate as a fraud upon investors or undermine the fairness and transparency of the securities market. The definition of fraud under the PFUTP Regulations is deliberately expansive. It is intended to capture conduct whereby deceit, concealment, misrepresentation or any manipulative device is employed in connection with dealings in securities.

134. In this context, I note that in the matter of ***Reliance Industries Limited and others vs. SEBI (2026 INSC 585)***, the Hon'ble Supreme Court of India, *inter alia*, held that a finding of fraud cannot automatically follow from every regulatory violation and independent satisfaction of the ingredients of fraud remains necessary. The Hon'ble Supreme Court reconciled various judgements on this issue and laid down a clear guideline for classifying a violation as fraud. The relevant extract is as under:

> *"175. ………………… We find it apposite to purposively interpret Regulation 2(1)(c). In our considered view, both intention and act cannot be made into irrelevant factors for deciding fraud. Therefore, we may outline the following scenarios:*

i. in situations where injury due to wrongful act is established, i.e, inducement to deal in securities has caused the other person to be adversely affected and allowed the party accused of fraud to gain unlawful profits or avert ordinary losses at the former's expense, there would be no requirement on the respondent authority to prove deceitful intention. In other words, where injury is impossible to be proved, the requirement of wrongful intention becomes mandatory.

ii. Secondly, similarly, in situations where deceitful or mala fide intention to defraud and manipulate the securities market is clear from the blatant misconduct or attending circumstances that cogently establish wrongful intention, then injury would not be required."

135. Thus, in this *judgement*, Hon'ble Supreme Court has laid down thresholds to determine "fraud" before holding a person liable under the PFUTP Regulations. Either the inducement to deal in securities or **injury** due to wrongful act is established or mala fide **intention** to defraud and manipulate the securities market is established. Thus, even assuming that MPS violations stood established in the present matter (for the argument sake), that itself is not sufficient to prove the violation of the PFUTP Regulations and the said violation is required to be separately established.

136. Hon'ble Supreme Court has clearly held that violation of securities laws does not automatically lead to invocation of PFUTP Regulations. The relevant extract is as under

"195.In ***Rakhi Trading*** *(supra) this Court held in paragraph 78 thereof that in cases where the factum of inducement is not separately established, if the respondent authority proves the factum of manipulation then it will necessarily follow that the investors in the market have been induced to buy or sell in such a manipulated market. Therefore, further proof of inducement would not be required. However, the factum of manipulation still needs to be established,*

which can be garnered only from the effects of the actions by the person alleged to have defrauded or manipulated the market price or induced the other party.

196. The aforesaid is as clear as a noon day in its implication that where the respondent authority is unable to show and prove inducement of third parties to deal in securities as a result of the alleged fraud played on the market, it is necessary that the device or tactic which the respondent authority deems to be manipulative must be such that there could be no other explanation but that of fraud. To our mind, the observations in Rakhi Trading (supra) place a higher burden of proof on the respondent authority to establish manipulation in cases where inducement is not being proved.

197. Therefore, in the present matter, it was incumbent upon the respondent to cogently and sufficiently establish a separate act of price manipulation besides cornering. This is because cornering by itself did not lead to further inducement of other people to deal in the future segment. To take forward its submission that the appellant no 1 violated Regulations 3 and 4 of the PFUTP Regulations, the respondent must prove whether price manipulation was at play in terms of Regulation 4(2)(e)."

137. In RIL case, the violation was approximately 40% open interest (cornering). Here the alleged violation is MPS requirement. Thus, even if MPS violation is established (which in this case has not been established), as per the above judgement, it was incumbent upon the investigation to cogently and sufficiently establish a separate act of violation of the PFUTP Regulations besides MPS violation. This is because MPS violation by itself would not have led to further inducement of other people to deal in the securities. Having alleged that MPS requirement is not met, further investigation was needed to see how using this lack of MPS requirement, market manipulation was carried out. Apparently no such manipulation was found in the instant case.

138. Accordingly, it is necessary to distinguish between a statutory contravention and a fraudulent market practice. A company may fail to comply with a regulatory requirement due to erroneous interpretation, inadvertent omission or other

circumstances. Such violations may attract the consequences specifically provided under the applicable regulatory framework. However, to establish fraud, an additional element needs to be established as laid down in *RIL judgement*. Therefore, before recording a finding under the PFUTP Regulations, it must be established that the impugned conduct was not merely technically inconsistent with regulatory requirements but also satisfied at least one of the two thresholds (intent of manipulation or injury to investor) discussed in the above mentioned RIL judgment.

139. In this particular case, relying on RIL judgement, it should be understood that violation of MPS does not automatically result in applicability of the PFUTP Regulations. Just like in RIL case, where Hon'ble Supreme Court held that violation of the PFUTP Regulations needed to be proven over and above the primary violation, in this case too, investigation was required to prove the elements of fraud (by crossing the threshold of intent of manipulation or injury to investor) in addition to alleged MPS violation before invoking the PFUTP Regulations. However, this aspect has not been brought out in the investigation/SCN.

140. Accordingly, I hold that the allegations levelled in the SCN do not establish any foundational facts or circumstances which can be considered to be fraudulent in nature even if there was any MPS violation for the sake of argument (though it is held that there is no MPS violation). Thus, the investigation has not been able to establish MPS violation and it has also erroneously invoked the PFUTP Regulations without crossing the necessary threshold required for proving such violations. Consequently, the wrongful gains alleged to be made by *Noticees* also do not stand established.

141. **In view of the above, I hold that allegations pertaining to the violation of the PFUTP Regulations against the *Noticee* do not stand established.**

G. SUBMISSIONS OF OTHER *NOTICEES* AND FINDINGS

142. The submissions made by *Noticees* apart from *Noticee no.* 1, to the extent material for determination of the issues arising in the present proceedings, are recorded herein. It is noted at the outset that several of the *Noticees* have raised submissions which are substantially overlapping in nature. The common submissions relate to the alleged delay in initiation of proceedings, jurisdiction of SEBI in respect of foreign *Noticees* and offshore transactions, the absence of evidence establishing control over the relevant entities or investments, the independent nature of the investments made by the FPIs, the absence of any fraudulent or manipulative scheme and the absence of a basis for disgorgement or monetary penalty.

G.1 Submissions of *Noticee* Nos. 2 to 9

143. *Noticee* Nos. 2 to 9 (excluding noticee nos 6 and 8 who stand dissolved), namely Mr. Nasser Ali Shaban Ahli, Mr. Chang Chung-Ling, Lingo Investment Ltd., Gulf Asia Trade & Investment Ltd., Mr. Tejal Ramanlal Desai, and EIFF, have, in substance, denied that they were part of any arrangement or scheme to circumvent the MPS requirements of the Adani Group Companies. They have submitted that the SCN proceeds substantially on the basis of associations, past business relationships, funding arrangements, powers of attorney and the investment advisory arrangement between GMAML and Excel, none of which, either individually or cumulatively, establishes the exercise of effective or positive control over the investments in the Adani Group Companies.

144. *Noticee* Nos. 2, 4, and 5 have submitted that the fact that certain underlying investors received funding from Daboul or that Mr. Nasser Ali Shaban Ahli was associated with or beneficially owned certain of those entities does not establish that he exercised control over the investment decisions subsequently taken by GOFL, EIFF or EMR. It has been submitted that the Four Underlying Investors were separate legal entities and that the funding arrangements did not confer upon Mr. Ahli any right to direct the investments made through GOFL or the two FPIs. It has further been submitted that a past business or financial relationship with *Noticee no.* 1 cannot, by itself, establish collusion or control.

145. *Noticee* Nos. 2 and 5 have submitted that the existence of a power of attorney in favour of *Noticee no.* 7, Mr. Tejal Desai, in respect of Gulf Asia and Lingo does not establish that the promoters of the Adani Group Companies exercised control over those entities. It has been argued that the SCN does not identify any particular act by *Noticee no.* 7 pursuant to which he exercised control over Gulf Asia, Lingo, GOFL, GMAML or the investments made by the FPIs, nor does it establish that he acted at the direction or instance of *Noticee no.* 1.

146. *Noticee no.* 3, Mr. Chang Chung-Ling, has, *inter alia*, disputed the allegations concerning his relationship with *Noticee no.* 1 and *Noticee no.* 2 and the allegation that he was involved in any arrangement concerning the investment in the Adani Group Companies. He has also challenged the allegation that he provided incomplete, misleading or false information during investigation. In relation to Opal, he has submitted that the relevant shareholding and investment decisions cannot be attributed to him merely on account of his historical shareholding or association with Opal. The *Noticee* has also raised objections concerning the applicability of SEBI's jurisdiction to foreign persons and offshore transactions.

147. *Noticee* Nos. 2, 3, 4, and 5 have further submitted that the relevant transactions and entities were situated outside India and that SEBI cannot assume jurisdiction merely on the basis of an indirect or consequential connection with the Indian securities market. It has been submitted that the relevant offshore transactions were governed by the laws of the respective foreign jurisdictions and that there is no demonstrated direct nexus between the acts attributed to these *Noticees* and the Indian securities market.

148. *Noticee no.* 7, Mr. Tejal Ramanlal Desai, has submitted that the proceedings against him are also vitiated by considerable delay. He has emphasised that the relevant powers of attorney and other documents relied upon by SEBI are more than a decade old and that his alleged association with certain entities dates back several years. He has submitted that, owing to the passage of time, he does not recall the circumstances surrounding the historical documents and transactions relied upon by SEBI. He has also denied that his role as a power-of-attorney

holder establishes control over the underlying investors or the investments made by the FPIs.

149. *Noticee no.* 9, EIFF, has disputed the allegation that its shareholding in the Adani Group Companies was controlled by the promoters or promoter group. It has relied upon its status as a regulated FPI and the disclosures made in relation to its beneficial ownership. It has also referred to the regulatory framework governing beneficial ownership and the observations contained in the Report of the Expert Committee dated May 06, 2023, including the observations concerning disclosures made by the relevant overseas entities to the reporting authorities and SEBI. It has submitted that there is no demonstrated basis for disregarding the beneficial ownership disclosed by the FPI or treating the shareholding as promoter-group shareholding.

150. The *Noticees* have further submitted that the mere fact that a substantial proportion of the investments of EIFF and EMR originated from certain underlying investors of GOFL does not establish that the investments were not independently made. It has been submitted that the underlying investors, GOFL, GMAML and the FPIs constituted distinct legal entities and that the evidentiary chain relied upon by SEBI does not establish the exercise of positive and effective control by *Noticee no.* 1 or by any of the *Noticees* over the relevant investments.

G.2 Submissions relating to Opal – *Noticee* Nos. 2, 3, 10, 11 and 12

151. *Noticee* Nos. 2, 3, 10, 11 and 12, insofar as the allegations concerning Opal are concerned, have disputed the allegation that the shareholding of Opal in Adani Power Limited was effectively controlled by the promoter group. Their submissions principally concern the historical ownership of Opal, the status of Mr. Pranav Vora as an erstwhile shareholder/director, the authorisation relating to Opal's demat and trading accounts, and the funding of Opal's investment in APL.

152. *Noticee no.* 10, Mr. Pranav Vora, has submitted that his shareholding and directorship in Opal had ceased in 2010 and that he had no continuing beneficial

interest or control over Opal thereafter and has relied upon, *inter alia*, the Board Resolution of Opal and extracts from the relevant prospectuses to contend that his authorisation in relation to Opal's demat account had ceased and that he did not authorise any transaction in the demat account during the relevant period. He has submitted that, even assuming that his name continued to appear as an authorised signatory due to an oversight, such circumstance could not establish continuing control over Opal or its shareholding in APL.

153. *Noticee no.* 10 has further submitted that the authorisation of *Noticee no.* 11, Mr. Dharmesh Parikh, to operate a trading account of Opal in 2020 cannot be attributed to him or relied upon to establish his continuing interest or control, particularly when he had ceased to be a shareholder/director of Opal much earlier. He has also relied upon the principle that mere proximity or relationship, without foundational facts establishing the alleged conduct, cannot sustain an inference of violation of securities laws.

154. *Noticee no.* 11, Mr. Dharmesh Parikh, has disputed the inference sought to be drawn from his role as an authorised signatory of Opal's demat/trading accounts. He has submitted that his role was professional and administrative in nature and did not confer upon him control over Opal or its investment decisions. He has further submitted that the SCN does not identify any transaction undertaken by him which demonstrates that he exercised control over Opal's shareholding in APL. The *Noticee* has also relied upon the separate legal personality of Opal and has disputed the attribution of the acts of Opal to him merely on the basis of his role as an authorised signatory.

155. *Noticee no.* 12, Opal, has submitted that it is a separate and distinct legal entity from its shareholders and that the ownership of its shares changed over time. It has disputed the allegation that its APL shareholding was under the control of any member of the promoter group. It has further contended that the absence of voting by Opal, or the identity of persons authorised to operate its bank, demat or trading accounts, cannot by itself establish that the promoters of APL exercised effective control over its shareholding.

156. In relation to the funding of Opal's APL investment, the *Noticees* have disputed the inference that the loan allegedly provided by Daboul or an entity associated with *Noticee no.* 2 established promoter control over the subsequent investment. It has been submitted that a financing relationship, without evidence of a corresponding right to direct investment decisions, cannot be equated with control.

157. All these submissions, other than under section 11C have already been dealt with by me with reference to the *Noticee* no 1 and it has been held that there is no violation of MPS requirement and that there is no justification of invoking the PFUTP Regulations. Similarly, **I hold that there is no violation of MPS requirement in the cases of other *Noticees* and there is no justification of invocation of the PFUTP Regulations against them**.

G.3 Submission on failure to furnish correct and complete information

158. SCN alleges that *Noticee no.* 2, Mr. Nasser Ali Shaban Ahli, failed to respond to summons issued by SEBI and thereby violated Section 11C(3) read with Section 15A(a) of the SEBI Act. In respect of *Noticee no.* 3, Mr. Chang Chung-Ling, the SCN alleges that he furnished incomplete and misleading/false information regarding his connection with Mr. Vinod Adani and *Noticee no.* 2, as well as the source of funds of Opal, and thereby violated Sections 11(2)(ia) and 11(2)(ib) read with Section 15A(a) of the SEBI Act. In respect of *Noticee no.* 7, Mr. Tejal Ramanlal Desai, the SCN alleges that, despite being shown the loan agreement signed by him on behalf of Lingo, he did not provide the information sought by the Investigating Authority and stated that he did not remember the same and thereby violated Section 11C(5) read with Section 15A(a) of the SEBI Act. Accordingly, the SCN calls upon *Noticee* Nos. 2, 3 and 7 to show cause as to why penalty under Section 11(B) (2) read with Section 15A(a) be not imposed upon them for the violations alleged against them.

159. Section 15A(a) of the SEBI Act, *inter alia*, provides for penalty where a person, who is required under the Act or the rules or regulations made thereunder to furnish any document, return or report to the Board, fails to furnish the same, or

furnishes or files false, incorrect or incomplete information, return, report, books or other documents.

160. The *Noticees* have made following submissions in their defense with respect to the aforesaid violation, namely:

I. The *Noticee no.* 2 submits that the applicability of Section 11C(3) itself to him is in question since it applies to persons “associated with the securities market in any manner” and contends that he, being an offshore beneficial owner and a foreign national, whose transactions were undertaken outside India and governed by foreign law, was not associated with the Indian securities market in the manner contemplated by the provision. He further submits that he never personally purchased, sold or dealt in Indian securities and that the transactions attributed to him were undertaken offshore. On this basis, he submits that he could not be treated as a person associated with the Indian securities market for the purposes of Section 11C(3), and consequently could not be proceeded against under Section 15A(a).

II. *Noticee no.* 3 submits that he did respond to the queries raised by SEBI and that the information sought related to events which had occurred several years earlier and that, in his response, he stated that he did not have records relating to the acquisition of Opal and provided information based on his knowledge and recollection. With regard to the investment in Growmore, he submitted that, to the best of his knowledge, Growmore was advised by professionals regarding prospective investments in emerging markets and that the investment was made under the guidance and funding of the shareholders. He also submitted that he had no relationship, association or connection with the Adani Group Companies or their promoters. The *Noticee no.* 3 further submits that he did not provide details of the alleged source of funds because the events were more than a decade old and that the SCN’s allegations regarding his business and financial connections with Mr. Vinod Adani and *Noticee no.* 2 are themselves disputed. He also challenges the underlying findings regarding his alleged role and control, including the allegation that his responses to SEBI were incomplete or false.

III. The *Noticee no.* 7 submits that the allegation under Section 11C(5) read with Section 15A(a) is misconceived because it equates inability to recall historical events with wilful non-cooperation. He submits that he complied with the summons, appeared before the Investigating Authority on the scheduled date and had his statement recorded. He states that he neither withheld information nor refused to cooperate with the investigation. He submits that the matters in respect of which information was sought related to events approximately 15 to 24 years old and it was not unreasonable for him to be unable to recollect specific details of such old transactions. He relies, *inter alia*, on the observation of the Hon'ble SAT in ***HB Stockholdings Limited vs. SEBI*** *(Appeal No. 114 of 2012)* that "*human memory has a short shelf life*". He therefore submits that his inability to recall the transaction cannot be treated as non-compliance with the summons.

161. I have considered the submissions made by aforesaid *Noticees* in this regard. The preliminary issue with respect to jurisdiction has been dealt with at length in the earlier part of the order and therefore the contention of the *Noticee no.* 2 that he could not be treated as person associated with the Indian securities markets is not tenable. The material on record, as discussed in detail in the preceding portions of this order, establishes that *Noticee no.* 2 was not a remote or unrelated person to the transactions under investigation. The investigation was specifically concerned with the source and movement of funds into the investment structure, the persons controlling or beneficially owning the entities forming part of that structure, and therefore the information sought from *Noticee no.* 2 was directly connected with the subject matter of the investigation. Accordingly, I find that by not providing the requisite information sought by SEBI, *Noticee no.* 2 violated Section 11C(3) read with Section 15A(a) of the SEBI Act.

162. With respect to submissions of *Noticee no.* 3, I note that merely because he responded to the queries is not, by itself, sufficient to discharge the allegation under Section 15A(a). The question is whether the information furnished by him was complete and correct. The information sought from *Noticee no.* 3 included, *inter alia*, details of his directorships, the source of funds for acquisition of shares of Opal, the rationale and source of funds for Growmore's investment, and his connection with the Adani Group and its promoters. As regards the source of funds, *Noticee no.* 3 did not furnish the information sought. Further, as regards his relationship with Mr. Vinod Adani and *Noticee no.* 2, *Noticee no.* 3 stated that he had no relationship, association or connection with the Adani Group Companies, their promoters or *Noticee no.* 2. However, I have already considered, in the preceding portions of this order, the material concerning the business and financial relationships between *Noticee no.* 3, Mr. Vinod Adani and *Noticee no.* 2. In these circumstances, the categorical denial of any relationship or connection, coupled with the failure to furnish the source of funds specifically sought by SEBI, cannot be regarded as a complete and accurate response to the queries raised during the investigation. The submission that the events were old and that the response was based on his recollection may be tenable with respect to documentary evidence but categorical denial of business/financial relationships Mr. Vinod Adani and *Noticee no.* 2 points towards deliberate attempt to mislead investigation. Accordingly, I find that *Noticee no.* 3 furnished incomplete and misleading/incorrect information in response to the queries raised by SEBI and thereby violated Sections 11(2)(ia) read with Section 15A(a) of the SEBI Act.

163. With respect to *Noticee no.* 7, the allegation is that when the copy of the loan agreement signed by him on behalf of Lingo was shown to him and he was questioned in that regard, he did not provide the information sought and stated that he did not remember the transaction. I note that the information sought from the *Noticee no.* 7 were executed 10-15 years ago and it is not the case that he failed to physically appear before SEBI or that he gave false or incorrect information. Further, in compliance of summons issued under 11C(5) of the SEBI Act, the *Noticee* was required to appear before the Investigating Authority and he complied with the same. Therefore, I find that no case is made out for non-

compliance of section 11C(5) and that *Noticee no.* 7 did not violate Section 11C(5) read with Section 15A(a) of the SEBI Act.

164. In view of the foregoing discussion, **I hold that *Noticees no.* 2 and 3 have violated Section 11C(3) read with Section 15A(a) of the SEBI Act and Sections 11(2)(ia) read with Section 15A(a) of the SEBI Act, respectively**. Section 15A(a) provides that if any person, who is required to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, such person shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. Having adjudged the violations levelled in the SCN and finding the aforesaid *Noticees* liable, I hold that the present matter is a fit case for imposition of monetary penalty against *Noticees no.* 2 and 3.

165. As regards imposition of monetary penalty, I note that Section 15J of the SEBI Act lays down the factors which shall be given due regard while adjudging the quantum of the penalty. Section 15J reads as under:

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

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

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

(c) the repetitive nature of the default.

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

166. In the instant matter, the facts do not point towards any disproportionate gain or unfair advantage made by *Noticee* nos. 2 and 3 as a result of the default. Further,

there is no material on record to suggest loss caused to the investors or group of investors as a result of the default or that the violation is repetitive in nature. However, I note that information sought form the *Noticees* were crucial and relevant to the investigation. The cooperation from the *Noticees* could have expedited the investigation and could have also helped in finding more information. Accordingly, while imposing the monetary penalty these facts have been considered and given due weightage.

G.4 Settlement by Notice Nos. 13-30

167. *Noticee* Nos. 13 to 16, have denied the allegation that they failed to maintain the prescribed MPS. *Noticee* Nos. 17 to 30, being the individual directors against whom liability has been alleged under Section 27(1) of the SEBI Act read with Section 24(1) of the SCRA and Section 149(12) of the Companies Act, 2013, have principally disputed the allegation that they were persons in charge of and responsible for the conduct of the business of the respective companies in relation to the matters forming the subject matter of the SCN.

168. These are *Noticees* against whom there is no allegations under the PFUTP Regulation in the SCN. Violation alleged against them only pertains to MPS violations. All these *Noticees* applied for settlement which were approved by Panel of WTMs and the settlement amount as determined (collectively INR 1,48,20,000) has been paid by all of them on August 26, 2026. Settlement order has already been passed in their cases today before passing of this order. Though MPS violation does not stand established, it was decided to allow the settlement to attain finality before passing of this order since these *Noticees* voluntarily decided to settle the allegation against them (without admission of guilt).

169. Settlement of proceeding at sufficiently higher settlement price, without admission of guilt, serves important purpose of reducing litigation. While higher settlement price acts as a deterrent for future, early closure of proceedings still saves precious resources which can be concentrated on more egregious cases. There are a number of cases in SEBI where after rejection or withdrawal of settlement application, exoneration orders were passed by quasi-judicial

authority. There are also cases where exoneration orders were passed in case of remaining Noticees when some Noticees decided to settle. Recently in case of Max Financial Services Ltd. too, SEBI had issued SCN to 25 entities, out of which 13 entities (who were Non-Executive/ Independent Directors of MFSL), filed settlement applications without admission of guilt, which were pending at the time the final order was passed. Since the settlement applications of 13 entities had not been disposed of, final order qua them was not passed and exoneration order was passed against the other entities who had not filed for settlement. This shows the independence of quasi-judicial functions in SEBI which is essential for any organisation which performs both investigation and quasi-judicial role.

170. **In view of settlement orders, accepting settlement, having been already passed in the cases of *Noticees* no. 13-30, there is no requirement of passing final order in their cases**.

H. SUMMARY OF DECISIONS

171. The main allegation in this case has been the violation of MPS requirement which mandates minimum 25% public shareholdings. It has been alleged that the investments made by two FPIs EIFF and EMR in the shares of AEL, APL, APSEZ and ATL, and Opal in the share of APL were made at the direction of Mr. Vinod Adani and was controlled by him.

172. MPS violation is established when it is shown that promoter or promoter group are beneficial owner or in control of the shares held by public, which if counted in their holding, would reduce public shareholding to below 25%. In this case there is no allegation that promoter or promoter group are beneficial owners of shares in the name of two FPIs or Opal. The allegation is only with respect to that Mr. Vinod Adani controls these shares as these investments were made at his direction.

173. To adjudicate these allegations, the definition of control as in various acts/regulations and its judicial interpretations have been examined. Mostly

"control" is defined in two parts, first being *de jure* and second being *de facto*. The same is as under:

"Control" *includes*

(i) *the right to appoint majority of the directors; or*

(ii) *to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner*

174. The definition can be divided into two parts. The first part i.e *"right to appoint majority of directors"* refers to ***de jure*** control. The second part i.e. *"control of management and policy decisions"* refers to ***de facto*** control. The test for assessing ***de jure*** control is not the act but existence of the right. For ***de facto*** control, so long as a person, directly or indirectly, can positively influence in any manner, management or policy decisions of a company, it would be said to be in "control". For the purpose of this order it has been examined if ***de facto*** control exists since it has not been alleged that the *Noticee* no 1 had a right to appoint majority of directors of two FPIs or Opal.

175. Based on analysis of various judicial pronouncements, including that of Hon'ble Supreme Court where it has been held that *de facto* control must be demonstrated with evidence of positively directing management or policy decisions and should not be based on suspicion or business/financial relation alone, facts of this case have been examined.

176. The first issue that was examined was of advisory agreement between Excel (under control of Mr. Vinod Adani) and GMAML (taking investment decisions for two FPIs). While allegation was merely based on existence of the agreement, it was seen that there are specific clauses in the advisory agreement which states that advices are non-binding and would not relate to group companies of Excel. Investigation also did not produce any evidence of any advice given by Excel contrary to these clauses. Further, it has been held that there is no evidence to demonstrate involvement of Mr. Vinod Adani in decision making process of

investments of the two FPIs in Adani Group Companies. Thus it has been held that the investigation has not been able to prove that Mr. Vinod Adani controlled the decision of investment of two FPIs in Adani Group of Companies through Excel.

177. The SCN also alleged control of Mr. Vinod Adani through his business relation with Mr. Nasser Ali Shaban Ahli and Mr. Chang Chung Ling and further Mr. Ahli and Mr. Ling providing financing to four underlying investors who invested in Adani Group Companies through two FPIs (at a different timeline). An ex-employee was also found to be having POA to sign cheques. Relying on various judgments of Hon'ble Courts, it has been held that no evidence has been produced which can show that Mr. Vinod Adani controlled Mr. Ahli or Mr. Ling and through them the investment decisions of Four Underlying Investors. Merely based on business or financial relationship, it cannot be held that Mr. Vinod Adani is in control of all of them. Any such conclusion would have unintended consequences for implementation of various securities laws in the capital market. "Control" is used in the ICDR Regulations to define "promoter" and "promoter group" who then have various responsibilities. The existence of "control" based on business and financial relationship alone would exponentially expand the definition of "promoter" and "promoter group" which will have unintended consequences beyond the intention behind such regulations. Similar unintended consequences would happen in the SAST Regulations as well. Such an interpretation would also not be in line with various decisions of Hon'ble Supreme Court as discussed in the order. Thus it has been held that there are no evidences of Mr. Vinod Adani positively directing management or policy decisions of the two FPIs. Similar finding has been recorded with respect to investment of Opal in APL. It is also observed that there is no allegation that source of financing of investments in the Adani Group Companies was Mr. Vinod Adani. If that had been the allegation and there were evidences to prove the same, the situation could have been different.

178. Since the foundational allegation of effective control over the FPIs as well as Opal has not been established, the consequential allegation relating to violation of the minimum public shareholding requirements has not been upheld. Thus, it has

been held that violation of MPS requirement is not established for the lack of adequate evidences of positively directing management or policy decision of investors in Adani Group Companies.

179. Once the allegation of MPS violation fails, the subsequent allegation invoking the PFUTP Regulations also does not survive. Notwithstanding, it has further been discussed how the invocation of the PFUTP Regulations was not in line with the judgment of Hon'ble Supreme Court in the case of RIL.

180. It has also been discussed that *Noticees* no 13 to 30 have already settled their cases by paying the settlement amount. This order is passed after passing settlement order in their cases. Thus, their settlement is not impacted by this order and the directions in this order do not cover them. Final order is, therefore, issued for *Noticees no.* 1 to 12 only.

I. DIRECTION

181. I, therefore, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with sections 11(1), 11(4) and 11B of the SEBI Act, 1992, hereby dispose of the instant proceedings as under:

    I. The allegations regarding violation of MPS norms and PFUTP Regulations contained in the SCN have not been established against *Noticees no. 1 to 12*. Therefore, directions under Sections 11 (1), 11 (4) and 11B read with Section 15HA of the SEBI Act are not warranted.

    II. The allegations regarding failure to furnish correct and complete information stand established against *Noticees no.* 2 and 3 only and not against Noticee no. 7. Therefore, I hereby impose the following monetary penalties under Section 11B(2) read with Section 15A(a) of the SEBI Act upon *Noticees no.* 2 and 3 :

Name of the *Noticee*	**Penalty Amount (in ₹)**
Mr. Nasser Ali Shaban Ahli	20,00,000
Mr. Chang Chung-Ling	20,00,000

182. The *Noticees*, mentioned in above table shall pay the penalty within a period of forty-five (45) days from the date of receipt of this order.

183. The *Noticees* shall pay the monetary penalty by online payment through following path on the SEBI website: www.sebi.gov.in/ENFORCEMENT→ Orders → Orders of Chairperson/ Members → Click on PAY NOW. In case of any difficulties in payment of penalties, the *Noticee* may contact the support at portalhelp@sebi.gov.in.

184. *Noticees* shall forward details of the online payment made in compliance with the directions contained in this Order to the “Division Chief, IVD, SEBI, SEBI Bhavan II, Plot no. C-7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051” and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of the Payee	
Date of Payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	

185. This Order shall come into force with immediate effect.

186. A copy of this Order shall be served on all the *Noticees*.

KAMLESH CHANDRA VARSHNEY

Digitally signed by KAMLESH CHANDRA VARSHNEY
Date: 2026.09.28 19:37:37 +05'30'

PLACE: MUMBAI

DATE: SEPTEMBER 28, 2026

KAMLESH CHANDRA VARSHNEY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

ANNEXURE – A

RELEVANT LEGAL PROVISIONS

"SEBI Act

11. Functions of the Board

(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

…..

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

…

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;

….

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e)attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

11B. Power to issue directions and levy penalty

(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation. —For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

11C Investigation.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

No person shall directly or indirectly—

- a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

15A. Penalty for failure to furnish information, return, etc.

If any person, who is required under this Act or any rules or regulations made thereunder, —

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents,

…..

he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

15HA. Penalty for fraudulent and unfair trade practices.

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.

15HB. Penalty for contravention where no separate penalty has been provided.

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.

15J. Factors to be taken into account while adjudging quantum of penalty.

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

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

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

(c) the repetitive nature of the default.

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

19. Delegation.

The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

SCRA

12A. Power to issue directions

(1) If, after making or causing to be made an inquiry, the Securities and Exchange Board of India is satisfied that it is necessary—

(a) in the interest of investors, or orderly development of securities market; or

(b) to prevent the affairs of any recognised stock exchange or clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or

(c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

it may issue such directions,

(i) to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or

(ii) to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and the securities market.

Explanation. — For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23Hafter holding an inquiry in the prescribed manner.

23H. Penalty for contravention where no separate penalty has been provided.

Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.*

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Explanation. –For the removal of doubts, it is clarified that-

(i) any act of diversion, misutilization or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company, or

(ii) transactions through mule accounts for indulging in manipulative, fraudulent and unfair trade practice shall be and shall always be deemed to have been included in sub-regulation (1).”