**QJA/SS/CFID/CFID-SEC1/32508/2026-27**

**SECURITIES AND EXCHANGE BOARD OF INDIA**
**ORDER**

**UNDER SECTIONS 11(1), 11(4), 11(4A), 11B(1), 11B(2), 15A(b), 15HA OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, SECTION 23A(a) OF THE SECURITIES CONTRACTS REGULATION ACT, 1956 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES 1995, AND RULE 5 OF THE SECURITIES CONTRACTS REGULATIONS (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 IN THE MATTER OF HEXA TRADEX LIMITED**

**In respect of :**

| Noticee No | Name of the Noticee | Pan of the Noticee |
|---|---|---|
| 1 | M/s Hexa Tradex Limited | AACCH5334B |
| 2 | Mr. Prithvi Raj Jindal | AALPJ2120R |
| 3 | Ms. Sminu Jindal | AAGPJ1586N |
| 4 | Mr. Pravesh Srivastava | BFLPS9954Q |
| 5 | Ms. Arti Jindal | ACYPJ7504Q |
| 6 | Mr. Raj Kamal Aggarwal | AAAPA4978M |
| 7 | Mr. Kuldip Bhargava | AAEPB2425L |
| 8 | M/s Virtuous Tradecorp Private Limited | AAECV7088E |
| 9 | M/s OPJ Trading Private Limited | AABCO9632N |
| 10 | M/s Sahyog Holdings Private Limited | AAUCS2300N |
| 11 | M/s Siddeshwari Tradex Private Limited | AATCS0974M |
| 12 | Mr. Sajjan Jindal | AADPJ5110D |
| 13 | Mr. Naveen Jindal | AALPJ2123N |
| 14 | Ms. Shallu Jindal | AFPPJ9014B |
| 15 | Mr. Ratan Jindal | AASPJ0852D |

*(The abovementioned Noticees are hereinafter individually referred to by their respective names or the respective Noticee number and collectively as the "Noticees")*

**BACKGROUND.**

1. Pursuant to an order dated December 16, 2025 passed by Hon'ble Securities Appellate Tribunal (SAT), this matter had been assigned on December 18,2025. The said order was passed by Hon'ble SAT in the Appeal No. 290 of 2025 filed by the Noticees challenging communications dated April 29, 2025 and May 29, 2025. By the said order dated December 16, 2025, Hon'ble SAT, disposed of the said Appeal and provided as under: -

    *"After arguing the matter at substantial length of time, learned Senior Advocates on both sides agreed that in peculiar facts of this case with consent of parties, SEBI shall consider and pass <u>a reasoned order disposing of the application dated April 24, 2025 within an outer limit of eight weeks from today</u>. <u>**All contentions of both parties are kept open including the question of maintainability.**</u>*

    *2. This order having been passed in the peculiar facts of this case upon request made by the learned Senior Advocates on both sides, it is clarified that it will not be treated as precedent.*

    *3. Appeal stands disposed of accordingly."*

    *(emphasis supplied)*

2. It was noted that the case the crux of the matter leading to examination, investigation and re-examination in this case is the realignment and reorganisation of investments held by Hexa Tradex Limited (***hereafter referred to as 'HTL' or 'Noticee No 1'***) in Hexa Securities and Finance Company Limited (hereinafter referred to as '**HSFCL'**) to the promoter group private companies, namely (i) Danta Enterprises Private Limited ((hereinafter referred to as '**DEPL'**)/ DEPL merged with Siddeshwari Tradex Private Limited (STPL) on February 10, 2021)), (ii) Virtuous Tradecorp Private Limited (**VTPL**) (iii) OPJ Trading Private Limited (**OTPL**) and (iv) Sahyog Tradecorp Private Limited (renamed as 'Sahyog Holdings Private Limited (**SHPL**) in the year 2014) (*hereinafter, referred to as DEPL, SHPL, OTPL,VTPL respectively and together referred as ' private companies/ Emerging Companies*').

3. The SCN was issued based on a *prima facie* opinion that investments held by HTL through its subsidiary were divested into other private entities during the fiscal year 2013-14 without following the due procedures and laws governing the divestment, consequently the financials of the Noticee No. 1 were not representing true and correct picture to the

detriment of investors in the Company in violation of the various provisions of the SEBI Act, SCRA, PFTUP Regulations, LODR Regulations and the PIT Regulations.

4. The Noticees had filed their replies dated June 24, 2024 to the SCN on merits. Subsequently, obtaining copies of documents from records, the Noticees had filed a supplementary reply dated April 24, 2025 raising preliminary objections on maintainability of SCN and asked for a personal hearing. In view of the peculiarities and considering the change in the quasi-judicial authority, in line with principles of natural justice and as requested in the representation of the Noticees, an opportunity of personal hearing was granted to the Noticees before me on January 09, 2026 when their legal/authorized representatives (ARs) appeared and made submissions explaining the reasons for decision on preliminary issue first. The Ld. AR made submissions also countering allegations on merits but pressed for decision on the preliminary issues first. Vide their letter dated January 16, 2026, the Noticees filed their additional written submissions. It was noted that the representations and submissions in the said application was broadly on preliminary issues but based on foundational facts constituting merits of the case.

*Pendency of Settlement proposal and implications of implementation of above order of Hon'ble SAT during pendency of Settlement Applications: -*

5. It was noted from an order dated 09th December 2024 passed by Hon'ble Bombay High Court in a Writ Petition no. 5080 of 2024 filed by Nalwa Sons Investments Ltd. (NSIL) challenging a show cause notice dated 20th August 2024 (identical in many particulars as in this case) issued to it, that SEBI had informed Hon'ble Bombay High Court that a settlement proposal under the Settlement Regulations was pending.

6. In view of the same, it was noted that in the eventuality of deciding the case during pendency of Settlement Application, the whole case would be disposed of but such approach would be in contravention of provisions of sub- regulation (1) of Regulation 8 of the SEBI (Settlement Proceedings) Regulations, 2018 which constraints from doing so till the disposal of the settlement applications. And, if the determination of preliminary issue as *'rite of passage first'* goes in favour of the Noticees the entire SCN would get disposed of on such determination of technical grounds alone. This would also be hit by sub-regulation (1) of Regulation 8 of the SEBI (Settlement Proceedings) Regulations, 2018. It was also noted that SAT has stated in Order dated December 16, 2025 "*All contentions of both parties are kept open including the question of maintainability.*"

Accordingly, it was noted that passing of order on the application, in terms of order dated December 16, 2025, may not be in line with Settlement Regulations.

7. SEBI filed Miscellaneous Application No. 149 of 2026 in Appeal No. 290 of 2025, *inter alia*, seeking extension of time for passing order on the application of Noticees after disposal of their Settlement Applications. Accordingly, Hon'ble SAT, while disposing of the said Miscellaneous Application No. 149 of 2026, vide its Order dated February 17, 2026 granted eight (8) weeks' time, from the disposal of the Settlement Application, to pass reasoned orders. It was, subsequently, informed that the Noticees withdrew their settlement applications on June 1, 2026 as the settlement terms proposed by SEBI was not acceptable to them.

**Final Hearing.**

8. Since, Noticees had filed replies on merits on June 24,2024, the matter had been lingering in litigation on one or more grounds ,delay have been noted as concern by Hon'ble Bombay High Court and noted by SEBI and that more than 5 months had elapsed since the last hearing in the matter; another opportunity of hearing was granted to the Noticees on June 18, 2026 when the authorized/legal representatives from Cyril Amarchand Mangaldas, Advocates and Solicitors, i.e Mr. Vishwanathan, Mr. Indranil Deshmukh, Ms.Vasudha Goenka, Mr. Darshan Furia, Mr. Arnav Misra and Mr. Kushal Tekriwal appeared in person on behalf of all the Noticees. Certain other representatives of the Noticees also attended the hearing online through the Webex. Referring to the following dates and events as gathered from the documents provided by SEBI to them and replies dated June 24, 2024 and April 24,2025 they made submissions: -

| Date | Particulars / Relevant details |
|---|---|
| March 2014 (2014 Reorganisation) | Reorganization of the O.P. Jindal Group ("Group") was effected whereby the business of the Group was segregated into four verticals.<br><br>Disclosures in relation to the same were made in the annual report/ financial statements for FY 2013-14 of Hexa Tradex Limited ("Hexa"), Nalwa Sons Investments Limited ("Nalwa"), as well as with SEBI and stock exchanges by the relevant entities. |
| August 12, 2014 (2014 Complaint) | SEBI received complaints from Mr. Anil Arya and Ms. Vaishalli Arya (shareholders of Nalwa) in relation to 2014 Reorganization, *inter alia*, involving Hexa and Nalwa. |

| Date | Particulars / Relevant details |
|---|---|
| | The 2014 Complaint was forwarded by SEBI to NSE. |
| February 11, 2015 | NSE invited comments/ clarifications in response to the 2014 Complaint from Nalwa. SEBI itself also registered the 2014 Complaint on the SCORES platform. |
| March 07, 2015 (Response to 2014 complaint) | Nalwa submitted a response to the 2014 Complaint and addressed all concerns raised in relation to the 2014 Reorganization in the said complaint. |
| March 10, 2015 (Closure of 2014 complaint) | NSE closed the 2014 Complaint and issued a communication to the complainant stating that "*the explanation furnished clarifies the issue raised*".<br><br>SEBI also closed the complaint on the SCORES Platform in terms of Para 12 of the SEBI Circular dated December 18, 2014, for redressal of grievances through SCORES |
| 2019 (2019 complaint) | Shareholders of Hexa raised complaints with SEBI regarding the 2014 Reorganization. Hexa responded to the said complaints directly as also through stock exchanges. |
| 2021-2022 (1st IR) | July 05, 2021: SEBI's Corporation Finance Investigation Department ("CFID") initiated an investigation in the matter of Hexa and appointed an Investigating Authority ("IA").<br><br>July 2021 - October 2022: IA conducted a detailed investigation; summons were issued and statements were recorded of various employees / directors of Hexa. An Investigation Report was placed before Executive Director ("ED") of SEBI – who is the delegatee empowered by SEBI to direct enforcement action / no action after consideration of the investigation report by the IA.<br><br>Oct 12, 2022: LAD Legal Opinion on matters referred is for violations beyond 8 years, SEBI may only take up the matter if it has a market wide impact or caused losses to large number of investors or affected the integrity of the securities market.<br><br>Oct 27, 2022: ED concluded that no need for initiating any enforcement action and held that:<br>(i) 2014 Reorganization did not cause any economic loss to the shareholders of Hexa and it was in compliance with the applicable laws in force.<br>(ii) Hexa has not misstated its financial statements.<br>(iii) All disclosures have been made to the shareholders.<br>(iv) It appears that IA has taken an extreme bias view. |

| Date | Particulars / Relevant details |
|---|---|
| | (v) The transaction is more than 8 years old; did not affect market integrity; nor had market wide impact. Accordingly, as per legal opinion of SEBI's legal affairs department it was not even a fit case to initiate investigation.<br><br>Note: As per SEBI (Delegation of Statutory and Financial Powers) Order, 2019 (as applicable at the relevant time), the ED was the delegatee empowered to order an investigation into a matter, as also direct no action/ administrative action after submission of the investigation report by the IA.<br><br>Accordingly, on Oct 27, 2022, the matter was closed by SEBI after a detailed investigation. |
| August 19, 2022 (2022 Complaint) | SEBI received a complaint from a shareholder of Nalwa. The facts and subject matter of the 2022 Complaint were similar to the 2014 Complaint. |
| October 31, 2022 | SEBI Corporation Finance Department ("CFD") was considering Hexa's delisting application. While reviewing the file in relation to the First Investigation, the Whole Time Member ("WTM") of CFD noted the disagreement between IA and ED of CFID and recommended placing the file before the WTM of CFID.<br><br>On the same day, the file was placed before the WTM of CFID, who made the following noting: *"There is another case of another group company, Nalwa Sons Investments that sold securities using same modus operandi. To my mind, this matter should have been discussed informally / put up to me as is the practice. Concerned investigation team to put up detailed note on what has been written by ED (NP). Delisting case should in the meanwhile be put on hold"*.<br><br>Note: When the above noting was made, the investigation into the matter of Nalwa had not even commenced. |
| December 01, 2022 (Department notings) | CFID notings disagreeing with ED notings:<br>(i) Investigation was conducted in an impartial/ non-biased manner.<br>(ii) Conclusions/ recommendations were made based on facts/ findings/ statement recordings/ submissions made by entities and evidence gathered during the investigation.<br>(iii) LAD's legal opinion is not applicable as it is only applicable to matters referred by external agencies to SEBI.<br>(iv) Matter has only come into SEBI's notice in 2019 through investor complaints, hence delay of 8 years is not appropriate. |

| Date | Particulars / Relevant details |
| --- | --- |
| | (v) Directors of Hexa failed to act in their fiduciary capacity on behalf of shareholders and benefitted themselves from transferring HSFCL investments at the expense of shareholders to their private entities.<br>(vi) Actions of HSFCL were not independent of Hexa and Hexa was required to take approval of its shareholders to transfer HSFCL investments. |
| January 2023 - March 2023 (Second Investigation In Hexa) | Jan 18, 2023: SEBI appointed the same IA, as Investigating Authority, whom the erstwhile ED found to have an extreme bias view, for fresh investigation in the matter of Hexa.<br><br>Jan-March 2023: Second investigation conducted. No documents or information were sought from the noticees during the second investigation.<br><br>March 23, 2023: Second Investigation Report submitted. |
| May 15, 2023 | SEBI appointed the same IA, as Investigating Authority for investigation in the matter of Nalwa. |
| March 18, 2024 (Hexa SCN) | After an inordinate and unexplained delay and laches of 10 years, SEBI issued show cause notice *inter alia* alleging that:<br>(i) Hexa transferred its substantial undertaking without obtaining shareholders consent in violation of Section 180(1)(a) of the Companies Act, 2013;<br>(ii) Transfer of an undertaking is a price sensitive information required to be disclosed under PIT Regulations, however, Hexa did not make necessary disclosures;<br>(iii) 2014 Reorganization was a fraudulent scheme devised to divert and misappropriate HSFCL Investments; etc.<br><br>Note: Hexa SCN does not refer to the 2014 Complaint, 2022 Complaint, SEBI's First Investigation and closure of all. |
| August 20, 2024<br><br>(NALWA SCN) | After an inordinate and unexplained delay and laches of 10 years, SEBI issued show cause notice *inter alia* alleging that:<br>(i) Nalwa has transferred its substantial undertaking (i.e. 23.14%), without obtaining shareholders consent in violation of Section 180(1)(a) of the Companies Act, 2013;<br>(ii) Transfer of an undertaking is a price sensitive information required to be disclosed under PIT Regulations, however, Nalwa did not make necessary disclosures;<br>(iii) 2014 Reorganization was a fraudulent scheme devised to divert and misappropriate JHL & JSAL Investments; etc. |

| Date | Particulars / Relevant details |
|---|---|
| | Note: The subject matter that constituted the basis for the Nalwa SCN is identical to the Hexa SCN (viz. 2014 Reorganisation). Majority of the noticees are identical. Nalwa SCN does not refer to the 2014 Complaint, 2022 Complaint, SEBI's First Investigation in Hexa and closure of all. |

9. Ld. Advocate for the Noticees submitted, *inter alia* , as following:-

(a) That the foundational facts in the preliminary issue are undisputed and can be decided as question of law w.r.t delay and laches, *res judicata*, proceedings being biased and pre-determined, decisions pre- meditated, no power of review and SCN being vague and ambiguous and non- compliance with the principles of natural justice;

(b) the transaction / reorganizations was a family arrangement done after following due compliances, fair valuation, board / shareholders' approval and was not a fraudulent scheme as alleged. Disclosure was also made in the annual reports at the relevant time. Further, SEBI was also aware of this transaction / reorganization in 2014 / 2015 itself when the complaint was filed and the matter was closed without any action. He also pressed upon the contention that the provisions of Section 180 of the Companies Act, 2013 are not applicable in this and no economic loss has been caused to the shareholders of HTL. During the hearing the Ld. Advocate, also put forth views on the merits of the matter in detail to further buttress his arguments on preliminary issues. The Noticees also filed their additional written submissions vide their letter dated June 30, 2026.

10. During hearing a clarification was sought from the Ld. Advocate that in view of the observations of Hon'ble SAT in the order dated December 16,2025, how the matter of maintainability of SCN alone could be decided first when replies and submissions are made based on merits of the case and maintainability of SCN has to be kept open. To this, Ld. Advocate submitted that the "maintainability" (of SCN) as mentioned in said order of Hon'ble SAT - "*relate to the objection taken by SEBI to the maintainability of the appeals preferred by the Noticees and do not in any way come in the way of the present Ld. Quasi-Judicial Authority from considering and disposing of the Application.*" However, from the order dated December 16, 2025 it is noted that Appeal filed in the matter was disposed of by the said order.

*Whether it is now practicable to delineate the decision on all the Preliminary issues as* as '*rite of passage first.*

11. With regard to maintainability and validity of the SCN in view of the preliminary issues as '*rite of passage first'*, the case has reached to an obfuscated situation in view of the following: -

(a) The Noticees had initially filed reply to the SCN vide letters dated June 24, 2024 making detailed submissions on merits of the case. Later, after obtaining documents in subsequent inspections they filed a supplementary reply dated April 24, 2025 raising preliminary objections and insisting for decision on merits first. While making submissions on preliminary submissions detailed submissions have been made on merits to demonstrate foundational facts and *bona fide.*

(b) Admittedly, the preliminary issues raised in this case are identical to the preliminary issues raised in NSIL case. Majority of the Noticees herein are also noticees under the NSIL show cause notice and the Noticees have relied upon the SLP Order in support of their case. I note that the SLP Order has upheld the order of Bombay High Court dated December 9, 2024 in the writ petition filed by NSIL. It is noted that the show cause notice was challenged by NSIL in the above Writ Petition on same technical grounds as raised in this case i.e. the grounds: -

(i) Of delay and laches in the issuance of impugned SCN;

(ii) That SEBI cannot review or revisit its earlier decisions, and such review or revisiting amounts to double jeopardy or attracts the bar of *res judicata*;

(iii) That the impugned SCN is vitiated by non-application of mind for failure to consider relevant material and non-furnishing of relevant documents.

(c) The argument of NSIL was predominantly that the show cause notice of this nature should be nipped in the bud and not be allowed to proceed. While dismissing the above writ petition, Hon'ble Bombay High Court vide its order dated December 9, 2024 left the above issues to be decided by SEBI and allowed furnishing of certain documents to NSIL and grant of some additional time to **<u>it to respond to the impugned SCN</u>**. It was, thus, for parties to first to file response to the SCN within time extended by SEBI and it was left open for SEBI to decide of preliminary issue on receipt of response to

SCN i.e. reply on merits also. In fact, while considering the pleas of the NSIL, Hon'ble Bombay High Court noted (in para 31 of its order) that *"... we are satisfied that the Petitioners have not made out any case for quashing the impugned show cause notice or for not responding to the impugned show cause notice and participating in the adjudication of the same".* SEBI was party in this writ petition.

(d) In the SLP (SEBI is shown as respondent in SLP Order) filed by NSIL challenging the said order of Bombay High Court, Hon'ble Supreme Court has, while dismissing the SLP, permitted the Noticees to raise all pleas and contentions before SEBI with a liberty to pray that "*some pleas and contentions may be treated as preliminary issue(s)."* Hon'ble Supreme Court has not agreed with claim of NSIL that all the preliminary issues should be decided first. However, in the appeal before Hon'ble SAT as evident from email of SEBI dated December 17,.2025 that SEBI had conceded before the SAT that *"SEBI is willing to decide the Applications made by the Appellants raising Preliminary issues, by passing an (?) reasoned order."* Such concession is further evident from the order dated December 16, 2025 passed by Hon'ble SAT wherein it has been recorded Advocate of SEBI agreed that *'with consent of parties'*… '*SEBI shall consider and pass reasoned order disposing the Application dated April 24, 2025…'.*

(e) It is noted from the replies and submissions that submissions and arguments on foundational facts have been made both on technical grounds and merits both in this case. In the peculiar facts and circumstances of this case, the decision, if goes in favour of Noticees based on technical issues, 'maintainability' will become infructuous and in order to keep maintainability open, the only decision could be to reject the submissions on technical grounds without giving findings on foundational facts, which will militate against principles of natural justice being without application of mind.

(f) Further, the Noticees have pleaded to consider the instant case on the lines of ***SEBI's Order dated August 29, 2025 in the matter of Bengal Artisan Craft Company Limited.*** I note that in the *Bengal Artisan* case the preliminary issues on the plea of *res judicata,* delay, etc. were considered a mixed question of law and fact and the matter was decided on preliminary issues and merits both by a common order. It is also noted that Hon'ble SAT also clarified in the order dated December 16, 2025 that- "*This order having been passed in the peculiar facts of this case upon request made by the learned Senior Advocates on both sides, it is clarified that it will not be treated as precedent.*

12. In view of the above peculiar facts and circumstances of this case, I proceed to decide the preliminary issues while taking into account the merits of the case where required by law.

**A. <u>Delay and Laches.</u>**

13. Noticees have contended that the SCN is barred by inordinate, unexplained and inexcusable delay and laches of over 10 years. The SCN was issued on March 18, 2024. This is almost ten years after the 2014 Reorganisation was undertaken. It is more than ten years after SEBI formally received and registered the 2014 Complaint on SCORES. It is almost nine years after SEBI closed the 2014 Complaint on SCORES. The SCN offers no explanation whatsoever for this delay. The Noticees have referred to various case laws to support their defence *viz;* ***Govt. of India v. Citedal Fine Pharmaceuticals, (1989) 3 SCC 483, SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643, SEBI v. Bhavesh Pabari, (2019) SCC OnLine SC 294. Ashok Shivlal Rupani v. SEBI, 2019 SCC OnLine SAT 169 and Ashlesh Gunvantbhai Shah v. SEBI, 2020 SCC OnLine SAT 30.***

14. Indisputably, the SCN has been issued after 10 years from the 2014 Reorganization which was in knowledge of SEBI and in public domain in 2014 itself. There is no prescription in law or regulations to provide for limitation for SEBI's actions. The rule of laches, is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Thus, in my view, the legal opinion has no value for decision making in accordance with law and not based on individual perceptions. For the above purpose, I deem it apposite to refer to judicial pronouncements with regard to delay in taking actions by SEBI. In the case of *BRD Securities Ltd. and Others vs. SEBI (2023 SCC OnLine SAT 1182)* Hon'ble SAT held and SEBI accepted following position: -

> *"12. The first private allotment was made on October 06, 2001 and the last allotment was made on November 25, 2010. The show cause notice issued on April 05, 2019 after more than 18 years from the date of the first allotment and 9 years from the date of last allotment. The private placements are part of the record which is in the public domain and which is reflected in the annual reports, etc. before RoC, Dividends are being paid by the Company to the shareholders year to year, and therefore, in our opinion there has been an undue delay in issuance of the show cause notice for refund of the allotment of money in terms of Section 73(2) of the*

*Companies Act. <u>The contention that SEBI only came of the irregularities only in 2017 cannot be accepted when everything was in the public domain.</u>*

*<u>13. This Tribunal in a catena of cases over the past 15 years have held that proceedings must be initiated in a timely manner and that proceedings are liable to be set aside only on the ground of undue delay in the initiation of proceedings"</u>*

15. In ***Ravi Mohan & Ors. v. SEBI*** decided on August 08, 2013, Hon'ble SAT, Mumbai while referring to its own decision in ***HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012)*** decided on August 27, 2013 and decision of Hon'ble Supreme Court in **Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.),** observed that *"...Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (supra) it was contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) (supra) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....".*

16. In the matter of *Adjudicating Officer, SEBI vs Bhavesh Pabari (2019) SCC Online SC 294*, the Hon'ble Supreme Court observed as under:

*"35. The appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. <u>There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time.</u> <u>What would be reasonable time, would depend upon the facts and</u>*

*circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc.*"

17. Further, in *SEBI vs. Sunil Krishna Khaitan*, Hon'ble Supreme Court emphatically cautioned SEBI and held as under: -

*"93. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment."*

18. In its judgment in ***Ram Kishori Gupta Vs. SEBI***, Hon'ble Supreme Court reaffirmed that decision should be taken within reasonable time and made following observations with somewhat anguish and dismay where the SCN was issued after two years of requiring the examination by SEBI:

*"30. In this regard, we may also note the unconscionable delay on the part of SEBI. Though the WTM of SEBI passed the order on 01.04.2016, requiring an examination afresh and initiation of disgorgement proceedings, it was only on 19.01.2018 that SEBI got around to issuing a show-cause notice proposing disgorgement and then passed an*

*order seven months later. <u>This laidback and indolent approach on the part of SEBI in dealing with the matter needs mention as it does not augur well for a statutory body enjoined with the duty of protecting investors and regulating the securities market which, by its very nature, is volatile, to drag its feet and indulge in unwarranted and unjustified delays."</u>*

19. Thus, the legal position as settled by Courts/tribunal are that: -

(a) SCN should be issued within a reasonable time. The reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc.;

(b) SEBI should justify the time taken by it;

(c) delay *per se* is not a reason to drop the SCN unless unreasonableness with regard time is shown by the Noticee;

(d) delay, although avoidable, it does not create infirmity in the proceedings unless prejudice is caused to the Noticee;

(e) pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party.

20. It is worth mentioning that Hon'ble Bombay High Court, in its above mentioned order dated December 9, 2024 permitted NSIL '*to respond to the show cause notice and raise this plea, which will have to be considered in accordance with law by the SEBI."* While doing so, Hon'ble Bombay High Court also observed that pleas of delay involve investigation into factual matters and considerations of prejudice. Laches is not mere physical running of time. Referring to the Judgement of Hon'ble Supreme Court in ***M/s Dehri Rohtas Light Railway Company Limited Vs District Board, Bhojpur and Others***[1], it observed that *each case depends upon its own facts. It will all depend on what the breach of the right and the remedy claimed are and how the delay arose*. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay should not be disturbed unless there is a reasonable explanation for the delay. The real test to determine the delay in such cases is

[1] *(1992) 2 SCC 598*

that the jurisdiction is invoked before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. *The test is not a physical running of time. Where the circumstances justifying the conduct exist, the manifest illegality cannot be sustained on the sole ground of laches.*

21. Therefore, it is necessary to examine facts of each case rather than expressing an individual perception to find out whether delay was justifiable or it occurred due to negligence of SEBI. In this case, the investigation under SEBI Act was instituted in 2021 when the complaint was received in the year 2019 (dated October 14, 2019 and October 25, 2019). The first Investigation was concluded in October 2022 and the second investigation (re-examination) was concluded in March 2023. I do not find any negligence on the part of SEBI contributing to the time taken in investigation of the complaint received in 2019.

22. As regards, possible prejudice caused to the Noticees they have claimed that the delay has caused grave prejudice to them as they are no longer able to trace and locate all material and resources that may have been available to them had the SCN been issued in time. I note that no material is lost with regard to the impugned transactions because of time taken by SEBI. All the documents that have been relied and relevant have been provided alongwith the SCN as well as during the inspection of documents. Further, the information which is not available to Noticees in general course or as a matter of public records is not relied upon in the present proceedings in respect of the Noticees. Noticees have also filed their reply on merits. Therefore, in my view, Noticees had sufficient material to defend their case and not prejudice has been caused upon them. I, therefore, find that no prejudice has been caused to the Noticees nor have they been able to make out a case of prejudice due to the alleged delay in initiation of proceedings.

## B. Principles of *Res* Judicata and *Issue Estoppel*

23. Before dealing with other preliminary issues, it is germane to briefly refer to the factual matrix as admitted in this case.

**2014 Reorganisation/ Transaction.**

(a) HTL was incorporated on October 25, 2010, with the object of vesting the investment undertaking of Jindal Saw Limited ("JSL") pursuant to a scheme of arrangement and demerger approved by the Hon'ble High Court of Allahabad vide an order dated October 11, 2011, which became effective on November 05, 2011 ("Scheme").

(b) HSFCL is an investment non-banking financial company (Investment NBFC), registered with the Reserve Bank of India, and its primary business is to make investments in the securities of other companies, including listed companies within the Group. HSFCL, being a part of the promoter group of various Group companies, pledged its investments/ shareholding in various Group companies, from time to time.

(c) Pursuant to the Scheme, equity shares of HSFCL were transferred from JSL to the Company. The shares of the Company were listed on NSE and BSE on April 20, 2012.

(d) The Company is part of the Group, a large industrial conglomerate having interest in steel, power, cement and other businesses. (Late) Shri O.P. Jindal has four sons namely Mr. Prithvi Raj Jindal, Mr. Sajjan Jindal, Mr. Naveen Jindal and Mr. Ratan Jindal.

(e) In 2014, the Group decided to segregate the business into four verticals with the management of every group / vertical lying with one of the brothers respectively whilst at the same time ensuring that all brothers continue to be shareholders and part of the Promoter Group of each group / vertical. The four verticals for management are follows:

   (i) Jindal Saw Limited and the Company lying with Mr. Prithvi Raj Jindal (Noticee 2),
   (ii) JSW Steel Limited with Mr.Sajjan Jindal (Noticee 12),
   (iii) Jindal Steel and Power Limited with Naveen Jindal (Noticee 13) and
   (iv) Jindal Stainless Limited with Ratan Jindal (Noticee 15).

(f) In the above background the *four private companies viz; DEPL, SHPL, OTPL and VTL* were incorporated, with the Company as one of the subscribers to its memorandum of association. Accordingly, the Company subscribed to 1,000 shares of each of the *four private companies.*

(g) The 2014 Reorganisation was disclosed in the Annual Report of HTL for FY 2013-14.

*Complaints with regard to 2014 Reorganisation*

(h) 2014-SEBI received complaints from two shareholders of NSIL in relation to the 2014 Reorganisation on its SCORES platform. This Compliant was closed after due examination by NSE and SEBI in SCORES.

(i) 2019- SEBI received two complaints against the Company on its SCORES platform on October 14,2019 and October 25, 2019. SEBI forwarded these complaints to BSE which recommended detailed investigation. Then SEBI conducted investigation and issued the SCN.

(j) 2022- Later, SEBI received Complaint in 2022 also which reiterated the contents in the 2014 complaint and 2019 complaint.

24. The Noticees have contended that the information about 2014 Reorganisation was in public domain and also SEBI was formally and actually aware of the 2014 Reorganisation from August 2014. SEBI examined NSIL's response to the 2014 Complaint and closed it on the SCORES platform in March 2015, without any adverse finding or enforcement action. It attained finality then itself in terms of Para 12 of the SEBI Circular dated December 18, 2014, for redressal of grievances through SCORES. Thus, the investigation, re-examination and SCN are barred by *res judicata*. According to them;

a) The allegations in the SCN are precisely the same allegations that were made in the 2014 Complaint, the 2019 Complaint and the 2022 Complaint. The 2019 Complaint did not produce any new facts or disclose any new material.

b) All the above Complaints and the SCN all arise from the same 2014 Reorganisation. These Complaints and the SCN are near-identical in subject matter, cause of action and allegations. There is no new fact, no new material and no new cause of action in the 2019 Complaint that is not already present in the 2014 Complaint.

c) The first prior determination i.e. the closure of the 2014 complaint on SCORES is a final determination as per Clause 12 of SEBI's Circular dated December 18, 2014 which provides in express terms: *"A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered* *intermediary with respect to a complaint will not mean that the complaint is not pending against them."*

d) SEBI and NSE are deemed to have examined all the facts, evidence and material on record relating to the 2014 Reorganisation before closing the 2014 Complaint. The closure followed NSIL's substantive response addressing all three core allegations. It reflects an application of mind to the merits of the complaint. Hon'ble SAT has directly held that the communication of closure on the SCORES platform, even though it may be in the form of a computer-generated communication, constitutes an order. In ***Ashok Dayabhai Shah v. SEBI, 2019 SCC OnLine SAT 248***, the Hon'ble SAT held at Para 15: *"We are further of the opinion that the computer generated communication by the respondent on the SCORES platform, even though it may be an administrative communication is nonetheless an order since it disposes of the lis between the parties and disposes of the complaint and the issues raised by the complainants. The said communication/order as the case may be, in our opinion, is appealable."* The SCORES closure therefore disposes of the *lis* and constitutes an order that is final and binding. As a consequence, once the complaint has been closed by SEBI on SCORES upon application of mind, it is not open to SEBI to reopen the same matter. In ***Urban Infrastructure Trustees Limited and Anr. v. SEBI, 2023 SCC OnLine SAT 1853***, the Hon'ble SAT held at Para 36: "*SEBI accepted the response given by the appellant and treated the complaint as closed. Once the complaint has been treated as closed by SEBI itself, it is no longer open to the WTM to take a different view.*"

25. I note that although the present quasi-judicial proceedings are not governed by the Code of Civil Procedure, 1908 ("**CPC**"), it is well settled that the underlying principles of the CPC and the principles of natural justice are applicable to such proceedings. In ***SEBI v. Ram Kishori Gupta and Anr., 2025 SCC OnLine SC 748***, the Hon'ble Supreme Court expressly held that SEBI cannot claim exemption from the applicability of the principle of *res judicata*.

26. In *The Jamia Masjid v. KV Rudrappa, 2021 SCC OnLine SC 792, decided on 23.09.2021*[2], Hon'ble Supreme Court held that the issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. It held as under: -

[2] *Decided by the 3-judge bench of Dr. DY Chandrachud*, Vikram Nath and Hima Kohli, JJ*

*"Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it."*

27. The Courts have encouraged the *"Best method" to decide the question of res judicata as:*

    (a) determine first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative,

    (b) determine if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of *res judicata* would be inapplicable.

28. It is settled position that no plea of *res judicata* can be properly determined without examining the earlier decision. Courts have consistently held that to decide if a matter is barred by *res judicata*, the deciding authority must examine the pleadings, the framed issues, and the judgment/decree of the former suit to see exactly what was finally decided in the earlier proceedings. (Hon'ble Supreme Court in *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors Civil Appeal No 4665 2021 arising out of SLP (C) No.3899 of 2021 decided on August 09, 2021).* Hon'ble Supreme Court went on to further hold that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings.

29. In support of their contest based on preliminary issues, the Noticees have also made submissions on foundational facts which are leading to contest on merits also as some of the technical issues particularly applicability of *res judicata*, bias etc. are interlinked as mixed questions of law and facts both in this case.

30. In view of the above, in order to determine the contention of applicability of *res judicata* it becomes incumbent to find out to see what was finally decided by the same authority in the initial examination and is it the same issue in the instant investigation and the SCN. In this regard, the guiding principle applicable to a plaint in a suit under Section 11 of the

Code of Civil Procedures will apply. Thus, it is necessary to identify precisely what the *"same subject matter"* and the *"same allegations"* are and whether same issues were determined in 2015. This requires a comparison of the 2014 Complaint, the 2019 Complaint, the 2022 Complaint filed by another shareholder of NSIL and the SCN.

31. It is noted that the subject matter of all the Complaints as inferred from record are identical. Based on the detailed factual matrix as raised in the Complaints and the SCN the allegations rest largely on three basis, *viz*;

    i) Shareholders' approval of the listed company was required but not obtained before the 2014 Reorganisation;

    ii) the disclosures made by the companies in relation to the 2014 Reorganisation were inadequate; and

    iii) the 2014 Reorganisation resulted in loss of value to minority shareholders of the listed companies.

32. All the Complaints have raised issues about realignment and re-organization where the investments held by HTL were divested into other four private companies during FY 2013-14. When 2014 Complaint was received:-

    i. SEBI forwarded the complaint to NSE for examination and itself registered the Complaint on the SCORES platform;
    ii. After examining the response to the said Complaint NSE closed the Complaint and issued a communication to the complainant;
    iii. Thereafter, SEBI also closed the complaint.

33. While the 2014 Complaint was referred to NSE, the 2019 Complaints were forwarded to BSE for comments. The NSE examined in detail the 2014 Complaint, found Company's explanations satisfactory and stated that "*the explanation furnished clarifies the issue raised.* Accordingly, SEBI also agreed with it and closed the Complaint and did not find the allegation fit for any independent investigation. However, after 5 years, when 2019 Complaints were received, SEBI forwarded the 2019 Complaint to BSE which recommended to SEBI a detailed investigation into the matter and SEBI conducted investigation / re- investigation.

34. I note that only difference in allegations is that in 2014 Complaint, the Complainant had requested investigation in additional allegation of non- disclosure of related party transactions, and valuation for transactions and if appropriate valuation is not proved, then annul the impugned gift transactions. All the requests of the Complainant including this request was closed in 2015 by NSE/SEBI. The 2022 Complaint requested for reversal of gift. The SCN, does not deal with these issues and it is inferred that these requests are not considered.

35. It is further noted that after the First Investigation Report was submitted to competent authority on October 21, 2022, the competent authority took a final decision to close the matter and informed his decision to CFD on October 27, 2022 for processing of delisting application of the Company. This was a final decision as per Delegation of Power (DoP). Be that as it may, it is established that the same subject matter was examined and decided in 2015.

## C. SEBI has no power to reopen / reinvestigate / review concluded matter- likelihood of bias and pre-determination.

36. I note that based on same factual matrix, the Noticees have raised two preliminary issues *viz*; (a) SEBI has no power to reopen / reinvestigate / review concluded matter; and (b) that the SCN is vitiated by likelihood of bias and pre-determination. I note that both these issues are inter connected and intertwined and are based on same arguments. I, therefore, deem it appropriate to deal with them with common findings. The Noticees have contended that:

    (a) There is no provision in SEBI Act, the SEBI DoP, or any other statute or regulation that confers on SEBI the power to reopen and reinvestigate a matter that has been conclusively determined by its own delegatee. It is a settled law that the power of '*review'* is a creation of statute and can only be exercised if the statute provides for it. As per the DoP at the relevant time, the competent authority for approval of actions after submission of investigation report was the Executive Director of SEBI where there was no action or administrative action.

    (b) In October 2022, the Executive Director of SEBI, who was the delegatee empowered under the DoP after a formal investigation into the HTL matter relating to the same 2014 Reorganisation, examined the Investigation Report and, vide file notings dated October 27, 2022, concluded that no investigation or enforcement action was warranted on merits and also found that the transaction was *"more than 8 years old*.

Thus, the issue whether the case is made out and whether it should proceed with initiating enforcement action was examined, investigated and closed by the delegate of SEBI -the 'competent authority'- empowered under the DoP.

(c) Once the Executive Director, who was the competent delegatee of SEBI, formally determined on October 27, 2022 that no enforcement action was warranted after a full investigation, the WTM noting of October 31, 2022 and the CFID departmental notings of December 01, 2022 purportedly override the ED's determination, do not cite any statutory power of review. The SCN itself does not identify or rely upon any statutory basis for reopening the matter after the Executive Director's closure. When an authority has taken a decision as a delegatee under Section 19 of the SEBI Act read with the Delegation Orders, he steps into the shoes of the Board of SEBI for such purposes. His decision cannot be overruled by an officer albeit senior in designation.

(d) The notings of the WTM were made while considering the delisting application of HTL in collateral proceedings and cannot affect the findings on the investigation conducted by SEBI in relation to the 2014 Reorganisation. In fact, neither WTM nor the new Executive Director disturbs the earlier decisions taken by SEBI in 2014 and 2022. A fresh investigation is ordered in order to circumvent the finality attached to the earlier decisions. It is well settled that what cannot be done directly equally cannot be done indirectly. Since it was not open for SEBI to review its earlier decisions, equally, SEBI did not have the power to order a fresh investigation on the same cause of action.

(e) The ED in his file notings has recorded that the IA has taken an extreme bias view by ignoring various submissions, documents, information submitted by the Company during the investigation and statement recording. Despite the Executive Director's findings that the IA had taken "*an extreme bias view",* the same IA was appointed to conduct the second investigation in the matter in January 2023 (January 18,3023) and to investigate NSIL in May 2023. Both the appointments were made by the same department based on recommendation of same IA who had disagreed with the Executive Director's notings of October 27, 2022.

(f) The WTM's noting of October 31, 2022 was made four days after the Executive Director's closure and before any investigation into NSIL had commenced. The notings of officers of CFID- SEBI of December 01, 2022 then disagreed with the

Executive Director's (since retired) findings and Executive Director (who came in charge) recommended fresh investigation in January 2023 to same WTM categorically admitting that the "competent authority" had already decided and stating emphatically as-*"….Since the **Competent Authority** has already concluded the matter w.r.t. Investigation Report submitted, it may be appropriate to reappoint IA in the said matter and order submission of an Investigation Report."*

(g) The same IA who had been found by the Executive Director earlier to have taken *"an extreme bias view"* was appointed to conduct the second investigation in Hexa in January 2023, and to investigate NSIL in May 2023. No documents or information were sought from the Noticees during the second investigation in Hexa.

(h) It is settled law that the power of review is a creature of statute. A quasi-judicial authority has no inherent power of review and cannot review its own order unless that power is expressly conferred by the statute under which it derives its jurisdiction. The Noticees have submitted the case laws to support their defence i..e ***Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437*** to support that *unless statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders* **, *Naresh Kumar v. State (NCT of Delhi), (2019) 9 SCC 416*** to demonstrate that power of review can be exercised only with the statute provides for the same and cannot be exercised by the authority concerned ***and Kuntesh Gupta v. Hindu Kanya Mahavidyalaya, (1987) 4 SCC 525*** to demonstrate that a quasi - judicial authority cannot review its own order unless the power of review is expressly conferred on it by statute under which it derives its jurisdiction.

(i) Under the SEBI Act, the SEBI's power to re-consider and review a decision taken is limited in terms of Section 15I (3) of the SEBI Act which provides for a narrow power to re-consider a decision taken by an Adjudicating Officer in certain circumstances. The provisions of Section 15I (3) of the SEBI Act are wholly inapplicable to the facts of the present case. In the present case, both the prior determinations are of SEBI and not the Adjudicating Officer and the SEBI Act does not confer any power on SEBI to review its decisions.

(j) On October 31, 2022, four days after the Executive Director's closure and before any investigation into NSIL had commenced, the WTM (CFID) made a noting that "*There is another case of another group company Nalwa Sons Investments that sold securities* *using the same modus operandi."* At the time the noting was made, no investigation into NSIL had commenced. No documents relating to NSIL had been examined and no statements had been recorded. The WTM had no material before him relating to NSIL whatsoever. Yet on the basis of the deliberations relating to HTL alone the WTM concluded that NSIL has sold securities using the same modus operandi. This is pre-determination of the conclusion of an investigation that had not yet begun.

(k) The same WTM, subsequently, recused from the present matter, for reason given on note, which is itself an acknowledgement that a conflict existed.

(l) No documents or information was sought from the Noticees during the second investigation in HTL, which is the investigation that directly formed the basis of the HTL SCN and indirectly for the Nalwa SCN.

(m) The Noticees have referred to various judgements i.e ***State of Punjab v. Davinder Pal Singh Bhular, (2011) 14 SCC 770, Ranjit Thakur v. Union of India, (1987) 4 SCC 611, Punit Goenka v. SEBI, Appeal No. 492 of 2023, Chanda Kochhar v. SEBI, Appeal No. 147 of 2025*** and have vehemently contended that it is a settled law that a mere appearance of bias and not actual bias is sufficient to vitiate proceedings. The test is the reasonableness of the apprehension of bias in the mind of the party and not whether the adjudicator believers himself to be unbiased.

37. I note that at relevant time, the DoP had delegated the power to Executive Director as *'competent authority"* to approve the investigation report for no action or administrative action. To address such concerns, the DoP was later amended w.e.f. 03.08.2023 and a new Para XXI Corporation Finance Investigation Department was inserted vide the Securities and Exchange Board of India (Delegation of Statutory and Financial Powers) (Fourth Amendment) Order, 2023 as following:-

| *Sr.No.* | *Nature of Delegation* | *Delegatee* |
|---|---|---|
| *2.* | *Approval of actions after submission of Investigation Report:*<br>*(a) No action/administrative action consistent with recommendation of the Investigating Authority.* | *(a) ED*<br><br>*(aa) WTM* |

| | | |
|---|---|---|
| | *(aa) No action/ administrative action inconsistent with recommendation of the Investigating Authority* | |

38. It is also admitted position, on record, that the Executive Director (in charge at that time) categorically confirmed in his noting of January 2023 that the matter *w.r.t. 'Investigation Report submitted'* was concluded by the '*competent authority'* but for this reason only he went ahead to recommend appointment of same IA who had earlier submitted the Investigation Report that was rejected by the then Executive Director. Such recommendation was made on the basis, *inter alia*, the point-wise response of the said IA to the observations and findings of the said Executive Director and was made to same WTM who had expressed disagreement with then Executive Director.

39. The "*likelihood*" of bias is normally determined using two primary objective standards:

    a. *The Real Likelihood Test:* entails evaluation of the probabilities, examining whether there is a substantial possibility (not just a mere suspicion) that the decision-maker was biased.

    b. *The Reasonable Suspicion Test:* This asks whether a reasonable, fair-minded, and fully informed observer would suspect that the decision-maker might be influenced by factors other than the merits of the case.

40. I find that in this case, the matter was referred to the WTM of CFID by the WTM – CFD who was concerned for delisting matter of the Company at the relevant time. SEBI considered both matters to be interlinked. Since there was *"serious disagreement"* between IA and Executive Director, WTM-CFD referred the matter to WTM-CFID in October 2022 *to read the notes and offer his comments*, before CFD considers delisting proposal of the Company. WTM- CFID, asked the CFID officer to put up detailed note on what was written by Executive Director in his observations and stated that delisting proposal to be kept on hold. It was later, based on Executive Director's recommendation, that reinvestigation was approved by WTM-CFID. In my view, there is nothing to suggest any "*likelihood*" of bias on the part of WTM-CFID or Executive Director who recommended reinvestigation. The administrative function of WTM-CFID, as in this case, was part of internal executive functioning which was subject to his hierarchical control and supervision and the authority. He himself did not direct re-investigation but asked for

detailed note which could be given by team of officers not connected with earlier investigation report before any decision to reinvestigate or not could be taken.

41. In my view, though the power may have been irregularly exercised, yet, the decision is not vitiated by any likelihood of bias and pre-determination. Yet, the matter is hit by principle of estoppel in view of expressed notings of two Executive Directors on October 27, 2022 and January 18, 2023, respectively. Further, the facts and circumstances show possibility of partisan view of the IA when same officer gave counterview to the observations and findings of a superior authority and based on such counter view same officer was appointed as IA to reinvestigate that too with admitted reason that Executive Director being competent authority had already concluded the matter earlier. Partisan decision-making by even only one officer is not a trivial matter. The ill effects are greatly compounded when more than one officers of same department regularly deliberate about, and decide, cases in a partisan way. After all, we strongly believe in avoidance of conflict of interest, transparency and arm's length distance in all activities. The perils of partisan decision making may seem rather abstract and theoretical, its consequences are serious when actions are likely to impact large corporations having responsibility towards larger populations or conversely harming the interests of stakeholders by illegality attached with such actions.

42. For the preliminary issue of *res judicata* and "*likelihood*" of bias it is also necessary to examine the merits of the case taking into account the submissions of the Noticees. Both these issues involve mixed questions of law and fact both in the peculiar facts and circumstances of this case. It is noted that when, on January 18, 2023, the ED – in charge of CFID recommended, based on point –wise counter response of IA to the observations of the competent authority, re- investigation and appointment of same IA; he also suggested following additional issues for investigation: -

(a) Whether transfer of investment by HFSCL would fall under price sensitive information under SEBI (Prohibition of Insider Trading) Regulations;
(b) Whether transfer of investment by HFSCL and receipt of shares in four private companies can be categorised as gift? Had HFSCL paid gift tax as per the provisions of the Income Tax Act on the transfer?
(c) The shareholding of promoters increased from 46% at the end of FU 2013-14 to 63.12% at the end of FY 2021-22. Had the promoter group of HTL made disclosures under SEBI (SAST) Regulations and SEBI PIT Regulations?

(d) For considering the HFSCL as undertaking under Section 180(1)(a) of the Companies Act ,2013, while considering the value of networth i.e. standalone or consolidated , has been taken?

(e) Has memorandum of Association and Article of Association of HTL/HFSCL allowed gifting of shares?

(f) Since some of the allegations/observations fall under the domain of other regulators, should they be referred to concerned sectoral regulators?

(g) Examination/Analysis on disclosing incorrect number of shares of four transferee companies by HTL in its financial statements of FY 2013-14?

43. The Second Investigation Report submitted by the same IA to the third Executive Director (who later came in charge of CFID), she made proposal for enforcement action to the same WTM, but he recused on May 02, 2023. It is noted from record that the second Investigation Report (signed but undated) was submitted by the IA on March 31,2023 stating that- *"..comprehensive report incorporating examination on additional areas as advised have been put up. The proposed action matrix includes findings and violations of the earlier IR & note 21 October 2022, and findings and violations noted during examination of additional areas advised by ED (Shri.....) i.e. PIT Regulations…"* Thus, it is inferred that First Investigation Report has been substituted with the Second Investigation Report which is materially the same as First Investigation Report except with regard to change in action matrix and examination of above additional issues. No inquiry, whatsoever, has been brought on record to show any further investigation. Therefore, technically, the decision taken by the competent authority on First Investigation Report was proposed to be over ruled based on counter observations of IA.

44. It is also noted that on October 11, 2023, it has been decided that "*no allegation of misrepresentation of true and fair picture has been made."* The above mentioned three limbs of allegations are based on the following observations: -

(a) On January 01, 2014, HTL held 1000 shares in each of the *four private companies* viz DEPL, SHPL, OTPL and VTIP. In its board meetings held on January 30, 2014 and March 05, 2014 the board of HTL resolved to purchase 7,189 equity shares in each of the four private companies and for which shares were purchased from Noticee No. 2, Noticee No. 12, Noticee No. 5, Noticee No. 15, Mrs. Savitri Devi Jindal, Ms. Deepika Jindal and Noticee No. 13. The board of HTL appointed M/s Haribhakti & Co

(Haribhakti) to provide valuation report and fairness opinion. M/s Ernst & Young LLP (E&Y) was also appointed to provide a valuation report. On March 12 and 14, 2014, the E&Y and Haribhakti, respectively submitted their reports to HTL.

(b) The above board meeting of the HTL was chaired by Noticee No.2 and was attended by Noticee No.3, Noticee No.6 and Noticee No.7.

(c) Till FY 2012-13, HTL held 100% shares in HSFCL. In its board meeting held on March 18, 2014, HFSCL approved to transfer its investments in four listed companies by way of gift to four private companies and for the purpose called for an Extra-Ordinary General Meeting (EGM) on March 20, 2014. HTL had received the notice of EGM of HSFCL on March 19, 2014.

(d) The investments held in the listed companies by HSFCL were transferred/gifted to the four private companies held and controlled by the family of promoters of HTL.

(e) The consolidated net worth of HTL was Rs. 257.85 Cr (Share Capital : 11.04 Cr + Reserves and Surplus : 246.81 Cr). The book value of the gifted/ transferred investments in consolidated financial statements was shown at Rs. 57.85 Cr. The said investments account for 22.43% of the consolidated net worth of HTL's at book value Rs. 57.85 Cr /Rs. 257.85 Cr. The market value of these investments as on March 18, 2014 i.e., one day prior to the appointment of authorized personnel to HSFCL, EGM, was Rs. 1251.03 Cr accounting to 485.17% of consolidated net worth of HTL. Since the value of the said investments was more than 20% at book value, it is noted that Board of Directors has discussed the transfer of holdings of HSFCL investments by way of gift to the four private companies and conversion of HSFCL loan into equity in the following Board meetings: is a substantial undertaking as per Section 180(1)(a) of Companies Act, 2013.

(f) Section 180 of the Companies Act, detailed the restrictions on the powers of Board of Directors for certain transactions and mandated the consent of the company by way of special resolution, for effecting the transfer by way of sell, lease or otherwise or disposing of the whole or substantially the whole of the undertaking of the company where investment of the company exceeds twenty per cent of its net worth.

(g) The above disposal/gift of the investments accounts for disposal of substantial undertaking, requires the consent of the company by way of special resolution. However, HTL did not obtain shareholders' consent before appointing authorized personnel to vote on the resolution to gift HSFCL investments/holdings in four listed companies to four private companies.

(h) The MOA or AOA of HTL did not and cannot delegate absolute powers to board of HTL, overriding the statutory restrictions provided under Section 180 of the Companies Act,2013 for disposal of substantial undertaking exceeding 20% of its net worth. The above transfer of holdings in four listed companies by HTL through its wholly owned subsidiary (HSFCL) to four private companies are not in compliance with law and procedure provided under Section 180 of the Companies Act, 2013.

(i) HTL through its directors, particularly the Noticees Nos. 2 and 3 have disposed the substantial undertaking by way of gift/transfer without the consent of the shareholders of HTL. It is also noted that at the time of the gift, approximately 43% of HTL holdings was held by public shareholders.

(j) In terms of Section 180(1)(a) of the Companies Act, 2013, HTL or its directors (Noticee No. 2 & 3) was required to obtain the consent of the shareholders to dispose of a substantial undertaking. However, Noticee No. 1 neither conducted an EGM to obtain shareholders' consent nor made any disclosures about the gift of HSFCL investments to four private companies. Hence, it is alleged that the said act of the HTL amount to the denial of the rights of shareholders and was not in the interest of shareholders.

(k) Dividend Loss: Subsequent to the transfer of holdings of HSFCL in listed companies in favour of the four private companies, there were declaration of dividend by these companies comprising in the transferred holding and due to the above transfer of investments, there was loss of opportunity to the investors of Noticee No. 1 (HTL) to avail the benefit of declaration of dividend by the listed companies. The investigation has noticed that during the period, dividend to the tune of Rs. 23.68 Cr was declared, which instead of having got credited in the account of HTL through HSFCL went to the account of the four unlisted private companies as given below:-

| FY of dividend declaration date based on Ex-Date/ Listed Company | Jindal Steel & Power Limited (during the F.Y. 2015-16 & 2020-21) | JSW Steel Limited (during the F.Y. 2014-15 to 2022-23) |
|---|---|---|
| No. of Shares transferred | 3,94,49,460 | 21,28,915 |
| Total Dividend issued per share | 2.50 | 64.90 |
| Total Loss of Hexa [No. of Shares x Total Dividend] | 9,86,23,650/- | 13,81,66,584/- |
| TOTAL | 23,67,90,234 | |

(l) The transfer of investments from HSFCL resulted a decrease in the value of HSFCL by 97.75% which in monetary terms got reduced from Rs. 1283.92 Cr to Rs. 28.81 Cr. HTL had extended a loan of Rs. 195.88 Cr, over a period of time, to its subsidiary HSFCL and subsequent to the transfer of investments, in FY 2014-15, the value and net worth of HSFCL reduced to Rs. 28.81 Cr. Consequently, HSFCL defaulted in repaying its debt of Rs.195.88 to HTL. The board of HTL, in its meeting held on November 13, 2015, converted the said loan into additional equity shares of HSFCL. Due to non-compliance of Section 180(1)(a) of Companies Act, 2013, shareholders of HTL remained unaware of the cause of decline of the net worth.

(m) Out of total investments transferred, valued at Rs. 1251.03 Cr as on March 18, 2014, DEPL was recipient of investment valued at Rs. 1235.50 Cr (98.76% of investments) and the remaining Rs. 15.53 Cr (1.24% of the investments) was received by remaining three private companies i.e. namely SHPL, OTPL, VTPL. Further, DEPL received investments pertaining to shares in three listed companies and subsequent to receipt of holdings of the listed companies, DEPL has entered into 252 pledge requests and 287 pledge closure requests relating to the shares received in gift from the subsidiary of HTL, during March 28, 2014 to June 30, 2022. An analysis of the pledging and de-pledging of shares received in gift by DEPL is as under:

| Listed Entity | No. of shares Received from HSFCL | Total No. of shares received by DEPL from all entities including HSFCL | Status of the shares |
|---|---|---|---|
| Jindal Steel & Power Limited | 3,94,49,460 | 6,22,38,816 | During March 28, 2014 to June 30, 2022, DEPL entered into 99 pledge requests and 109 pledge closure requests in the scrip of Jindal Steel & Power Limited. DEPL entered into first pledge transactions during July 11, 2016 to July 18, 2017, pledging 6,22,37,043 shares of Jindal Steel & Power Limited. |
| JSW Steel Limited | 21,28,915 | 60,36,825 | During March 28, 2014 to June 30, 2022, DEPL entered into 145 pledge requests and 172 pledge closure requests in the scrip of JSW Steel Limited. DEPL entered into first pledge transactions on December 28, 2015, pledging 34,81,781 shares of JSW Steel Limited. |
| JSW Holdings Limited | 94,214 | 8,22,672 | During March 28, 2014 to June 30, 2022, DEPL entered into 8 pledge requests and 6 pledge closure requests in the scrip of JSW Holdings Limited. DEPL entered into first pledge transactions on March 01, 2021, pledging 21,000 shares of JSW Holdings Limited. |

(n) DEPL has entered into numerous pledge transactions. The pledge transactions entered by DEPL (FIFO approach), post receipt of the shares from HSFCL, in the respective scrips are analysed and the findings are as under:

<table>
<tr><th>S. No.</th><th>Date</th><th>Scrip Name</th><th>Order No.</th><th>Quantity</th><th>Pledgee</th><th>Purpose of Pledge</th></tr>
<tr><td>1</td><td>06-Jul-17</td><td>Jindal Steel & Power Limited</td><td>10000000078016</td><td>58,46,787</td><td>AXIS Bank Limited</td><td>-</td></tr>
<tr><td>2</td><td>10-Jul-17</td><td>Jindal Steel & Power Limited</td><td>10000000078046</td><td>43,23,308</td><td>Bajaj Finance Limited</td><td>The shares were pledged to Bajaj Finance Limited as a security against the loan to sanctioned to Danta Enterprises Private Limited for an amount of Rs. 50 Cr.</td></tr>
<tr><td>3</td><td>11-Jul-16</td><td>Jindal Steel & Power Limited</td><td>10000000065831</td><td>86,17,988</td><td>Indus Ind Bank Limited</td><td rowspan="2">The shares were pledged to IndusInd Bank as a security against the loan sanctioned to Jindal ITF Limited for an amount up to Rs. 500 Cr.</td></tr>
<tr><td>4</td><td>23-Sep-16</td><td>Jindal Steel & Power Limited</td><td>10000000068600</td><td>3,40,48,960</td><td>Indus Ind Bank Limited</td></tr>
<tr><td colspan="4">Total</td><td>4,69,90,256</td><td>-</td><td>-</td></tr>
<tr><td>5</td><td>24-Dec-15</td><td>JSW Steel Limited</td><td>10000000060773</td><td>34,81,781</td><td>Indus Ind Bank Limited</td><td>The shares were pledged to IndusInd Bank as a security against the loan sanctioned to Jindal ITF Limited for an amount up to Rs. 500 Cr.</td></tr>
<tr><td colspan="7"></td></tr>
<tr><td>6</td><td>01-Mar-21</td><td>JSW Holdings Limited</td><td>10000000101867</td><td>21,000</td><td>Arka Fincap Limited</td><td>The shares were pledged to Arka Fincap Limited as a security against the loan to sanctioned to Jindal Rail Infrastructure</td></tr>
</table>

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | | Limited for an amount of Rs. 20 Cr. |
| 7 | 03-Mar-21 | JSW Holdings Limited | 10000000101941 | 2,20,000 | Axis Finance Limited | The shares were pledged to Axis Finance Limited as a security against the loan to sanctioned to Jindal Rail Infrastructure Limited for an amount of Rs. 60 Cr. |
| **Total** | | | | **2,41,000** | - | - |

(o) From the above, it is seen that DEPL has pledged the shares received in gift from the subsidiary of HTL to obtain credit facilities for itself, Jindal ITF Limited, and Jindal Rail Infrastructure Limited.

(p) It is also noted that Noticee No. 2 and Noticee No. 3 apart from being directors of DEPL (Now STPL), are also directors of Jindal ITF Limited. As of March 31, 2016, M/s Jindal SAW Limited held 2,75,21,777 shares (99.99%) of Jindal ITF Limited. Similarly, Noticee No. 2 is the director of Jindal Rail Infrastructure Limited. As of March 31, 2015, Jindal ITF Limited held 3,05,93,803 shares of Jindal Rail Infrastructure Limited, as per MCA filings. Furthermore, Noticee No. 2 (Prithvi Raj Jindal) is the Non-Executive-Non-Independent Director-Chairperson of Jindal SAW Limited.

(q) DEPL (now STPL- Noticee No. 11) had pledged 3,13,47,408 shares of Jindal Steel and Power Limited, 3,67,39,242 shares of JSW Steel Limited, and 3,05,000 shares of JSW Holdings Limited to 14 different financial institutions as collateral for availing loans by the company/group companies.

(r) The transfer was effected through gift and for effecting the gift, HSFCL conducted its EGM on March 20, 2014, which was attended by these six entities (i) Mr. Prithvi Raj

Jindal (Noticee No.2), (ii) Ms. Arti Jindal (Noticee No.5) (iii) M/s P R Jindal HUF, (iv) Mr. Pravesh Srivastava (authorized representative of Noticee No. 1 (HTL) - Noticee No.4), (v) Mr. Balraj Aggarwal (authorized representative of Abhinandan Investments Limited – Nominee shareholder of Noticee No. 1 (HTL)), and (vi) Mr. Brij Mohan Nautiyal (authorized representative of Jindal Equipment Leasing & Consultancy Limited – Nominee shareholder of Noticee No. 1 (HTL)). As per copy of voting pattern submitted by CEO&CFO of Noticee No.1 (HTL), all attendees voted in favour of the resolution.

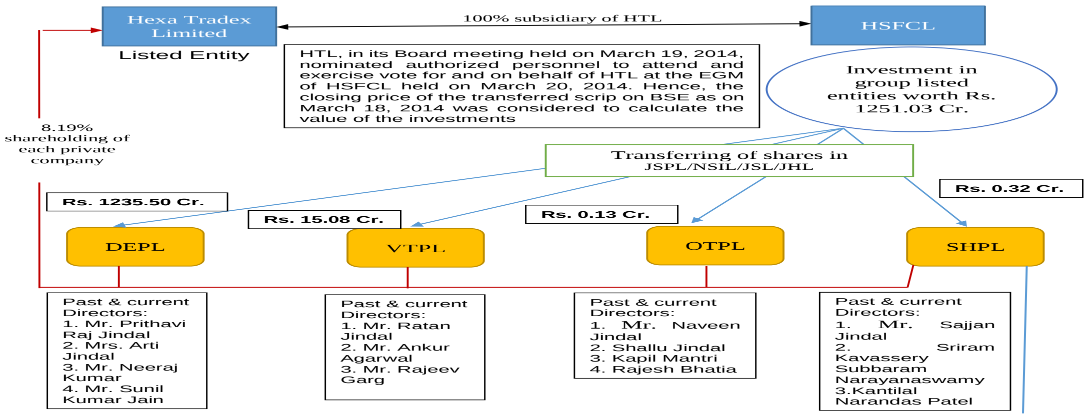
(s) Noticee No. 2 voted on behalf of himself as well as M/s P R Jindal HUF (being a Karta of HUF), and Noticee No.5, spouse of Noticee No.2 also voted in favour of the resolution. Mr. Balraj Aggarwal was an employee of Jindal SAW Limited where Noticee No. 2 was a director. Mr. Balraj Aggarwal was also a director in Jindal Equipment Leasing & Consultancy Limited. Noticee No. 4, compliance officer of Noticee No.1 (HTL), in which Noticee No. 2 is the promoter director.

(t) At the EGM, all the six entities including Noticee No. 2, Noticee No.5 and Noticee No. 4 resolved to gift the holdings/investment in four listed companies in favour of four private entities and authorized directors of HSFCL to do all such acts. HSFCL has also filed form *MGT 14 – 'Filing of Resolutions and agreements to the Registrar'* to MCA.

(u) On March 28, 2014, HSFCL transferred its investments by way of a gift to the *four private companies*. The other Transferor Companies also transferred their investments to the *four private companies*. The reorganization was completed before March 31, 2014.

(v) From the above, it was alleged that HTL devised a scheme to transfer the investment in HSFCL.

45. The above transaction of holdings between HTL and HFSCL and four private companies, is pictorially illustrated as following:




*JSPL – Jindal Steel & Power Limited; NSIL – Nalwa Sons Investments Limited, JSL – JSW Steel Limited; JHL – JSW Holdings Limited

46. I note that despite closure of the First Investigation Report by the competent authority, the IA has again incorporated the same allegation and violations stated therein. This approach of investigation is improper in the eyes of law and, technically, only new allegations and charges, if any, could be part of the SCN. The Second Investigation Report has examined as following:-

(a) Instead of standalone networth of HTL, it incorporated consolidated networth
(b) Applicability of Income Tax Act on gift is examined and no adverse inference was drawn
(c) No adverse observation with regard to disclosures under SEBI(SAST) Regulations/ PIT Regulations by HTL
(d) No examination of MoA/AoA of HFSCL despite direction of Executive Director;

and the following allegations with regard to disclosure related obligations.

**DISCLOSURE RELATED ADDITIONAL ALLEGATIONS (as per the SCN and Second Investigation Report).**

47. The Second Investigation Report makes following additional allegations after re-investigation: -

(a) The intimations made to stock exchange after the board meetings only reflected the disclosure of financial statements and did not contain any information regarding the gifting of valuable material investments of its subsidiary, subscription to the shares of four private companies, except for a small note in the financial statements as following:

*"Pursuant to an internal reorganisation/realignment within the OP Jindal Group, certain shares of OP Jindal Group companies held by its subsidiary company (Hexa Securities and Finance Company Ltd.) are now held by other companies of OP Jindal Group, in each of which Hexa Tradex Ltd. holds 8.2% shareholding such that the economic interest remains unchanged. The carrying value of such investments has been adjusted from Reserves and Surplus".*

(b) Regulation 2(ha) of SEBI PIT Regulations, 1992 defined price sensitive information as follows:

*(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. Explanation.—The following shall be deemed to be price sensitive information:—*

*……………..*

***(vi) disposal of the whole or substantial part of the undertaking;***

(c) HTL has transferred its material holdings in four listed companies through its subsidiary HSFCL and the said act is a price sensitive information. The Company, HTL had not made any disclosure to the public about the substantial and material transfer of its holdings in the listed companies to private companies controlled and owned by the promoters. In this regard, in terms of Clause 2 of Schedule II – Code of Corporate Disclosure Practices for prevention of Insider Trading' of SEBI PIT Regulations, 1992, listed companies were required to make requisite disclosures to the general public through stock exchanges. However, HTL had not made any disclosure on gifting/transfer of HSFCL investments.

(d) The number of shares held in four private companies was incorrectly disclosed viz., (7,189 shares instead of 8198 shares) in the Annual Report of HTL for FY 2013-14 and 2014-15.

(e) The HTL and its directors Noticee No. 2 and Noticee No. 3 and Company Secretary and Compliance Officer, Noticee No. 4 did not disclose the information on (i) gifting/transfer of investments held by HTL through HSFCL, (ii) subscription/purchase of four private companies, (iii) conversion of loan receivable from HSFCL into additional equity, despite being discussed at various Board meetings held on January 21 & 30, 2014, March 05 & 19, 2014 and November 13, 2015.

(f) The SCN has also alleged that Noticee No. 6 being independent director of HTL and HSFCL participated in all the board meetings of HTL where the gifting/transfer of HSFCL investments, conversion of loan given by HTL to HSFCL into equity in HSFCL were discussed and accorded his approval without any questions. Hence, he was aware of the fraudulent scheme devised to divert HSFCL investments and its misappropriation. Despite being aware, he did not oppose the resolutions at board meetings held on January 21 and 30, 2014, March 05 and 19, 2014 relating to transfer of HSFCL investments and November 13, 2015 relating to conversion of loan given to HSFCL into equity but thereby alleged to have failed in performing his duties of an Independent Director by according his approval without raising any questions and thereby failed to perform in protecting interest of the public shareholders. Further, it is also alleged that, he being an audit committee member, failed to fulfill his responsibilities to oversee HTL in making disclosures to shareholders of HTL through Stock Exchanges. It is also alleged that Noticee No. 6 failed to maintain ethical standards and to take into the account the interests of the public shareholders.

(g) The SCN has also alleged that Noticee No. 7 was an independent director of HTL. Being an Independent director, he participated in all the Board meetings of HTL where the gifting/transfer of HSFCL investments were discussed and accorded his approval. Noticee No. 7 was aware of the fraudulent scheme devised to divert HSFCL investments and its misappropriation. Despite being aware, he accorded his approval without taking the interest of the public shareholders into consideration at Board meetings held on January 21 and 30, 2014, March 05 and19, 2014 relating to transfer of HSFCL investments. Being an audit committee member, he failed to fulfill his responsibilities to oversee HTL in making disclosures to shareholders of Noticee No.

HTL through Stock Exchanges. It is also alleged that Noticee No. 7 failed to maintain ethical standards and to take into the account the interests of the public shareholders.

(h) Hence, Noticees 6 and 7 are alleged to be in violation of Clause 22 (d), 36 and 49(II)(D) of the Listing Agreement r/w Regulation 103 of the LODR Regulations read with Section 21 of the SCRA Act, 1956.

48. Based on the above *prima facie* observations, it has been alleged in the SCN that the Noticees have violated the provisions as given in the following table:-

**Table: Provisions of law alleged**

| Noticee No. | Violations as per SCN |
|---|---|
| 1 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) and (d) and Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 for devising a fraudulent scheme.<br><br>Clause 22(d), & 36 of Listing Agreement read with Regulation 103 of SEBI LODR Regulations read with Section 21 of Securities Contracts (Regulation) Act, 1956 for disclosure related violations.<br><br>Clause 2 of Schedule II – Code of Corporate Disclosure Practices for prevention of Insider Trading' of SEBI PIT Regulations, 1992 read with Regulation 12 of SEBI PIT Regulations 2015 for disclosure related violations. |
| 2 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme.<br>Clause 22(d), & 36 of Listing Agreement read with Regulation 103 of SEBI LODR Regulations read with Section 21 of Securities Contracts (Regulation) Act, 1956 for disclosure related violations. |
| 3 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 for devising a fraudulent scheme.<br>Clause 22(d), & 36 of Listing Agreement read with Regulation 103 of SEBI LODR Regulations read with Section 21 of Securities Contracts (Regulation) Act, 1956 for disclosure related violations. |
| 4 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 for devising a fraudulent scheme. |

| | |
|---|---|
| | Clause 22(d), and 36 of Listing Agreement read with Regulation 103 of SEBI LODR Regulations read with Section 21 of Securities Contracts (Regulation) Act, 1956 for disclosure related violations. |
| 5 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 6 | Clause 22(d), 36 & 49(II)(D) of the Listing Agreement read with Regulation 103 of SEBI LODR Regulations read with Section 21 of Securities Contracts (Regulation) Act, 1956. |
| 7 | Violation of Clause 22(d), 36 and 49(II)(D) of the Listing Agreement read with Regulation 103 of SEBI LODR Regulations read with Section 21 of Securities Contracts (Regulation) Act, 1956. |
| 8 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 9 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 10 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 11 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 12 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 13 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 14 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) and(d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |
| 15 | Section 12A (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) and (d) and Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. |

49. It is admitted position that the objective of the realignment and reorganisation was a family arrangement in Jindal Group. It was for streamlining of the holding of four brothers in their respective flagship companies while also holding certain shares in each other's companies such that they would remain close knit. However, the four verticals continue to remain under the umbrella of the Group.

*Shareholders' approval under Section 180(1)(a) of the Companies Act, 2013;*

50. The SCN alleges that the act of the HTL amount to the denial of the rights of shareholders and was not in their interest. In terms of Section 180(1)(a) of the Companies Act, 2013, HTL or its directors (Noticee No. 2 & 3) was required to obtain the consent of the shareholders to dispose of *a substantial undertaking*. However, Noticee No. 1 neither conducted an EGM to obtain shareholders' consent nor made any disclosures about the gift of HSFCL investments to four private companies. Hence, it is alleged that the said act of the HTL amount to the denial of the rights of shareholders and was not in the interest of shareholders.

51. With regard to this basis the Noticees have, *inter alia*, contended that:-

    (a) Provisions of Section 180(1)(a) do not apply to transfer of investment of HTL in HFSCL to the four private companies as the said investments does not amount to an "*undertaking*" as contemplated in the said Section 180(1)(a). The Noticees have argued that the transfer by way of gift of investments by HFSCL does not constitute disposal of the whole or substantially the whole of the undertaking of Company under Section 180 of the Companies Act, 2013.

    (b) Shares of a company cannot be equated to mean an *'undertaking'* and therefore sale of shares held by a company in another entity will not attract the requirement of obtaining the shareholders' approval under Section 180(1)(a) of the Companies Act,2013. Further, the Company has not transferred any of its undertaking (wholly or substantially the whole) such that the provisions of Section 180 of the 2013 Act are attracted. HSFCL has effected the transfer after obtaining the consent of its shareholders by way of a special resolution.

(c) The Company's investment in HSFCL did not constitute twenty percent of its networth. Admittedly as recorded in paragraph 9 at page 25 of the first IR basis the audited balance sheet of the Company for F.Y. 2012-13, the Company's networth was Rs.216.64 crores, whereas the book value of the Company's investment in HSFCL was Rs.25.50 crores i.e. HTL's investment in HSFCL constituted about 11.77 percent of its networth.

(d) The Noticees submit that instead of comparing (a) Company's investment in HSFCL as per the Company's audited financial statements for the F.Y. 2012-13 (Rs. 25.50 crores) with (b) Company's networth for the F.Y. 2012-13 (Rs. 216.64 crores), SEBI has erroneously compared (a) book value of HSFCL investments from the audited financial statements of HSFCL for F.Y 2012-13 (Rs. 57.85 crore) with (b) Company's networth as per company's audited financial statements for the F.Y. 2012-13 (Rs.216.64 crores).

(e) Had SEBI considered the value of Company's investment in HSFCL as per the Company's audited financial statements for F.Y. 2012-13 which is required to be do as per the Explanation provided under Section 180, it would become apparent that HSFCL did not even constitute 20% or more of the company's networth for it to constitute an undertaking.

(f) Similarly, SEBI has erroneously compared the market value of HSFCL investments at the time of gift which was Rs.1251.03 crore to company's networth as per company's audited financial statements for F.Y. 2012-13 which was Rs.216.64 crores. The market value is irrelevant for the purpose of Section 180 of the Companies Act, 2013 and the value of investments and networth has to be calculated basis book value as recorded in the audited balance sheet of the preceding financial year.

(g) Assuming but not admitting that the HSFCL Investments constitutes disposal of the whole or substantially the whole of the undertaking(s) of HSFCL, approval of the shareholder of HSFCL was duly obtained, in addition to approval of the board of HSFCL. Apart from the above authorization from/ consent of the shareholder of

HSFCL, the Companies Act and the SEBI Act and regulations made thereunder do not prescribe any additional/ further requirement to go a step further and obtain approval from the shareholders of such shareholder i.e., the public shareholders of the Company.

52. The present matter deals mainly with the administration of Section 180(1) of the Companies Act which is not delegated to SEBI and falls under the regulatory jurisdiction of the Ministry of Corporate Affairs (MCA) and for non- compliance of this provisions SEBI has no jurisdiction under the Companies Act, 2013 or SEBI Act. However, if non-compliance of this section is used as device or plan to commit fraudulent and unfair trade practices relating to securities market as enunciated in Sections 11(2)(e) and 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations, SEBI can enforce these provisions of SEBI Act and PFUTP Regulations.

53. The Hon'ble Supreme Court in ***Vodafone International Holdings B.V. vs. Union of India*** reported in (2012) 6 SCC 613 has held as that "101. *A company is a separate legal persona and the fact that all its shares are owned by one person or by the parent company has nothing to do with its separate legal existence. If the owned company is wound up, the liquidator, and not its parent company, would get hold of the assets of the subsidiary. In none of the authorities have the assets of the subsidiary been held to be those of the parent unless it is acting as an agent. Thus, even though a subsidiary may normally comply with the request of a parent company it is not just a puppet of the parent company. The difference is between having power or having a persuasive position. Though it may be advantageous for parent and subsidiary companies to work as a group, each subsidiary will look to see whether there are separate commercial interests which should be guarded...*

*103. The directors of the subsidiary under their Articles are the managers of the companies. If new directors are appointed even at the request of the parent company and even if such directors were removable by the parent company, such directors of the subsidiary will owe their duty to their companies (subsidiaries). They are not to be dictated by the parent company if it is not in the interests of those companies (subsidiaries). The [fact that the parent company exercises shareholder's influence on its subsidiaries cannot* *obliterate the decision-making power or authority of its (subsidiary's) directors. They cannot be reduced to be puppets. The decisive criteria is whether the parent company's management has such steering interference with the subsidiary 's core activities that subsidiary can no longer be regarded to perform those activities on the authority of its own executive directors."*

54. Section 180(1)(a) of the Companies Act, 2013, a company is required to obtain consent of its shareholders by way of a special resolution only in cases of transfer of the whole or substantially the whole of the *undertaking* of the company. Section 180(1)(a) provides that the board of directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely —

    *(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings, only with the consent of the company by a special resolution.*

55. The term '*undertaking'* used in the explanation to Section 180(1)(a) is explained to mean an '*undertaking'* in which investment of the company exceeds twenty percent of its net worth as per the audited balance sheet of the preceding financial year or an '*undertaking'* which generates twenty percent of the total income of the company during the previous financial year. Since the explanation to Section 180(1)(a) only explains the *undertaking* with reference to the percentage of the company's net worth the company invests in the *undertaking*, or the percentage of the total income of the company such *undertaking* generates, so as to bring such '*undertaking'* within the applicability of the provision of Section 180, one is required to look at the concept of *undertaking.* As such, the primary requirement for a sale/lease/disposal to fall within the ambit of Section 180(1)(a) is that it has to be an '*undertaking'* in the first place. The word "*undertaking*" must, thus, pass the muster within the concept adopted for the companies under the Companies Act.

56. It is noted that Section 293 of the Companies Act, 1956 (*pari materia* Section 180 of the Companies Act, 2013), put similar restriction on the board of directors of a company. In the context of such restriction, the courts have expressed that the word '*undertaking'* means the entire organization as a going concern with all its rights, liabilities and assets,

as distinct from the various rights and assets which compose it[3]. With respect to the sale of shares held by a company in another entity, it has been held[4] that such a sale of shares (irrespective of the number of shares), cannot be equated to the sale of any part of the "*undertaking*" so as to come within the ambit of Section 293 of the 1956 Act even if it amounts to a transfer of the controlling interest of such latter company.[5] Further, in ***P.S. Offshore Inter Land Services v. Bombay Offshore Suppliers and Others***[6] Hon'ble Bombay High Court noted that if the question arises as to whether a major capital asset of the company constitutes the *undertaking* of the company, the test to be applied would be to see whether the business of the company could be carried on effectively even after disposal of the assets or whether the mere husk of the *undertaking* would remain after the disposal of the assets. The Company Law Board in ***Tracstar Investments Limited v. Gordon Woodroffe Limited and Others***[7] noted that where the main business of the company was not to engage in investing in shares and the consequent disposal of shares would not bring the business of the company to a standstill it would not be regarded as an *undertaking* for the purposes of Section 293 of the 1956 Act and thereby would not require shareholders' approval. This view was later affirmed by the Hon'ble Madras High Court in ***Shoe Specialities Ltd. v. Tracstar Investments Ltd.***[8]

57. The view in *Brooke Bond case ( Supra)* has been affirmed by the Hon'ble Bombay High Court in ***CDS Financial Services (Mauritius) Ltd. Vs. BPL Communications Ltd. and Ors***[9] wherein it was held that "*. ... whenever an undertaking is owned by the subsidiary, the section contemplates that a resolution shall be passed in the general meeting of the subsidiary company. The legislature in enacting section 293 has taken note of the situation where there would be a holding company and also subsidiary company. It is obvious from the language of the section that company which owns the undertaking has to pass the resolution in general meeting.*"

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[3] *Hon'ble Supreme Court in Rustom Cavasjee Cooper v. Union of India 1970 AIR 564*
[4] *Hon'ble Bombay High Court in Brooke Bond India v. U.B. Ltd. And Ors. 11992 (2) BomCR429*
*5 CDS Financial Services v. BPL Communications Limited, (2004) 121 CompCas 374 (Bom)*
[6] *41992 75 CompCas 583 (Bom)*
[7] *(1996) 87 CompCas 941 CLB*
[8] *(1997) 88 CompCas 471 (Mad-DB)*
[9] *3(2005)10C ompLJ127(Bom)*

58. In view of the above guidance from judicial pronouncements, I hold that HSFCL has effected the transfer after obtaining consent of its shareholders by way of a special resolution passed at the EGM. I find that the case does not involve any sale of *undertaking* of HTL. The investment of HTL in HFSCL cannot be treated as undertaking of HTL, much less a *substantial undertaking* as alleged based on individual perception rather than any backing of law. Similarly, an *undertaking* of HSFCL, which is a separate legal entity, cannot be considered as *undertaking* of its shareholders i.e. the Company and there was no non- compliance by the Company or the Noticees of the Section 180(1)(a) of Companies Act, 2013.

59. It is also pertinent to mention that Section 191 of the Companies Act, 2013 (Payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares) uses the terms '*undertaking'*, '*property'* and '*shares'* separately. Further, the term 'shares' has been used wherever the intention of the legislature was to refer to 'shares', such as in Sections 28, 90, 191, 235, 238, etc. Similarly, the term 'investment' has been used wherever the intention of the legislature was to refer to "investment" such as in Sections 134, 186, 187, etc. As such, the legislature has used the suitable terms in the relevant provisions throughout, in order to convey its intention. Had the intention of the legislature been to include an '*investment'* within the meaning of the term 'undertaking', this would have been provided in the explanation itself. The separate usage of the aforesaid terms implies that where the legislature wanted to use the term '*shares'* as distinguished from '*undertakings'*. The shares / investments held by a company cannot be equated to an '*undertaking'*.

60. It is also relevant to mention that in the context of the applicability of Section 293 of the 1956 Act and Section 180 of the Companies Bill, 2012 (later enacted as the 2013 Act), SEBI issued a Consultative Paper on Review of Corporate Governance Norms in India, dated January 4, 2013 ("SEBI Consultative Paper"), in which SEBI recognised that Section 293 of the 1956 Act required shareholders' approval for selling of an *undertaking* but did not contain a requirement requiring shareholders' approval for sale/divesting of shares in a subsidiary. It also recognised that this gap remained in the Companies Bill, 2012. In order to plug this gap, SEBI provided in Regulation 24(5) of the LODR Regulations that

"*a listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except <u>in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal".</u>* The fact that SEBI has recognised this gap and incorporated additional provisions in relation to listed companies, adds further credibility to the fact that the provisions of Section 180(1)(a) do not apply to shares held by one holding company in its subsidiary. It is only through the amendment to the LODR Regulations that SEBI has included the requirement for a special resolution for transfer of shares by a listed company in its material subsidiary. This Regulation also is limited to a specific situation i.e. where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal (or under a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016[10])

61. In the present matter, at relevant time Regulation 24(5) of LODR Regulations was not applicable, still, the Company has not reduced its shareholding in HSFCL such that the provisions of Regulation 24(5) of the LODR Regulations could be applied even if is so conceived. The Company has not transferred any of its undertaking (whole or substantially the whole) such that the provisions of Section 180 of the Companies Act, 2013 are attracted.

*Networth calculation*

62. The SCN has based the allegation that the consolidated net worth of HTL was Rs. 257.85 Cr. The book value of the gifted/ transferred investments in consolidated financial statements was at Rs. 57.85 Cr. The said investments account for 22.43% of the consolidated net worth of HTL's at book value Rs. 57.85 Cr /Rs. 257.85 Cr. The market value of these investments as on March 18, 2014 i.e., one day prior to the appointment of authorized personnel to HSFCL, EGM, was Rs. 1251.03 Cr accounting to 485.17% of consolidated net worth of HTL.

[10] *W.e.f. 31.05.2018*

63. From the explanation to Section 180(1)(a) it is clear that *'undertaking' shall mean an undertaking in which the investment of the company exceeds twenty percent of its networth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty percent of the total income of the company during the previous financial year."* Thus, I find merits in submissions that instead of comparing (a) Company's investment in HSFCL as per the Company's audited balance sheet for the F.Y. 2012-13 (Rs. 25.50 crores) with (b) Company's networth for the F.Y. 2012-13 (Rs. 216.64 crores), The Investigation Report and the SCN have erroneously compared (a) book value of HSFCL investments from the audited financial statements of HSFCL for F.Y 2012-13 (Rs. 57.85 crore) with (b) Company's networth as per company's audited financial statements for the F.Y. 2012-13 (Rs.216.64 crores). Accordingly, value of Company's investment in HSFCL as per the Company's audited financial statements for F.Y. 2012-13 as required under the Explanation to Section 180(1)(a) did not even constitute 20% or more of the Company's networth for it to constitute an undertaking. I also agree with submissions that IA has erroneously compared the market value (Rs.1251.03 crore) of HSCL investments at the time of gift which was to company's networth as per company's audited financial statements for F.Y. 2012-13 which was actually Rs.216.64 crores. The market value is irrelevant for the purpose of Section 180 of the Companies Act, 2013.

64. I also find that the idea of calculating networth on consolidated basis was also misconceived. To make assessment for this case one has to reverse the clock back and sit in the year 2014 when the Accounting Standards were evolving after commencement of the Companies Act, 2013. The years 2013 to 2015 were the period when several changes were happening in Indian Accounting Standards (Ind AS). Even though the Companies Act, 2013 mandated companies with subsidiaries to prepare Consolidated Financial Statements for reporting purposes, statutory net worth thresholds (such as those used for determining Ind AS applicability) were assessed exclusively on the company's standalone financial results. In the year 2015, Companies (Indian Accounting Standards) Rules, 2015 were notified and Ind AS were notified by Ministry of Corporate Affairs (MCA), converging with International Financial Reporting Standards (IFRS). The attempt was aligning the standards of different standard setters with a certain rate of compromise, by

adopting the requirements of the standards either fully or partially. Thus, under the Companies Act, 2013, a company's net worth for FY 2013-14 and FY 2014-2015 was to be determined strictly on a standalone basis. Consolidated financial statements are not to be used for the computation of networth in this case.

*Necessary Approvals.*

65. It is noted that HFSCL in its board meeting held on March 18, 2014 approved the proposal to gifts its investments in the equity of the four listed companies to the four private companies. Further, the EGM of HSFCL was held on March 20, 2014 wherein its shareholders unanimously resolved to gift the HSFCL investments to the four private companies. Besides, the board of HTL (Noticee 1) took note on the gifting of HSFCL investments i.e. shares of the four listed companies and the Company directly holding 8.19% of shares in each of the four private companies in its board meeting on May 17, 2014. Hence, it is observed that the approval of shareholders of HFSCL for gifting the investments was taken by HFSCL. Further, under Clause 49 (II) of the Listing Agreement, which was applicable at the time, the Company was required to bring to the attention of its board all significant transactions and arrangements entered into by HSFCL. This requirement was duly complied with by the Company during its board meeting held on May 17, 2014. I, therefore, find that necessary approvals of board or shareholders, as the case may be were taken.

*Memorandum of Association of HTL.*

66. The SCN also alleges that the MOA and AOA of the Company did not contain any provision allowing it to gift/transfer its assets without following due procedure of law. The Noticees have denied this basis and have submitted that this finding is flawed and *ex facie* baseless as there was no requirement for HTL's' MOA or AOA to allow it to gift and since the gifting in this case was by HFSCL, and such gifting was permitted in its MoA.

67. It is true that the instant case does not involve gift of shares by HTL. Clause III(B)37 of the MOA of HSFCL *inter alia* allows HSFCL. "*to transfer by <u>way of sale, gift, exchange</u> or otherwise part with, give up or alienate in any manner with or without any*

*consideration any shares, stock, debentures, debenture-stock, bonds, participative units, mutual fund units, obligations or security or any other asset or property including rights, claims or interest there in acquired by original subscription on otherwise*." I, therefore, find that the gifting/ transfer of shares by HFSCL was not without its authority.

68. The assumption the MOA or AOA of HTL did not and cannot delegate absolute powers to board of HTL, overriding the statutory restrictions provided under Section 180 of the Companies Act, 2013 for disposal of substantial undertaking exceeding 20% of its net worth. Firstly, because, the MoA being fundamental document of the company gives authority to its board/ members. The shares held by the company can be gifted by it pursuant to a formal resolution of the board of directors approving the share transfer by way of gift. If MoA or AoA bans the company from gifting its assets or transferring shares, then it cannot do so. And, Secondly, the provisions of Section 180(1)(a) do not apply to this case.

69. The SCN also alleges that till FY 2012-13, Noticee No. 1 (HTL) held 100% shares in HSFCL During February 3, 2014 to March 20, 2014, HTL transferred total 300 shares of its holding in HSFCL to 6 Nominee holders and sold additional 130 shares to 14 Jindal family members including Noticee No. 2 and his spouse i.e. Noticee No. 5. Noticee No. 2 chaired the said board meetings.

70. In this regard, the Noticees have submitted that out of the 430 shares that were transferred, the shareholders of 300 equity shares were nominees of the Company as the HSFCL needed to meet the criteria of minimum number of shareholders under the Companies Act,1956. Accordingly, on dematerialization, these shares were transferred to the nominees, however, the Company continued to be the beneficial owner for these 300 shares. The balance transfer of 130 shares was undertaken in due compliance with applicable laws after obtaining approval of the Board.

71. I find that this transfer was for a negligible number of shares and did not result in any change in ownership or control of HSFCL. It is observed that the board of HSFCL has granted the approval for the said transfer of shares and HSFCL continues to be a subsidiary

of the Company and hence no negative inference can be drawn. I further find that when main basis has fallen flat, such small issues can be not of any help for levelling a serious charge of fraudulent scheme.

*Loss of economic interest -Valuation.*

72. According to the Noticees that the exchange of listed shares for 8.19% stake in the private companies was based on the valuations conducted and approved by reputed firms i.e. E&Y and DHC Consultants thereby ensuring the preservation of economic interest of the Company's shareholders. The Noticees have further submitted, *inter alia*, that E&Y carried out the fair valuation by applying the various approaches/methods viz. Market Approach (Market Price method, Comparable Companies' multiples (Quoted) multiples method), Income Approach (Discounted Cash Flows method, Price Earning Capitalization Value method and Cost Approach (Net Assets Value method/ Replacement cost method). Further, in order to ensure that fair valuation, which is in the interest of public shareholders, has been done, the Company appointed DHC Consultants to comment on the report provided by E&Y for the calculation of effective shareholding in the Emerging Companies (Fairness Opinion Letter). Basis thorough and independent evaluation, DHC Consultants concluded that the valuation provided by E&Y was fair and the economic interest of the public shareholders would be maintained before and after the Transaction.

73. Therefore, the transfer of investments held by the Company through its subsidiary HSFCL was compensated by acquisition of shares of equal economic value (i.e., 8.19%) in each of the Emerging Companies/ four private companies. Basis the valuation certified by E&Y, the Company computed the investment value schedule which confirms the value of Rs. 1406.32 crores before reorganization and Rs. 1407.01 crores after reorganization. In view thereof, there is no decrease in the value for HSFCL and the Company and accordingly the question of loss caused to HSFCL and the Company's shareholders does not arise.

74. The Noticees have stated that the economic interest of the shareholders has not only been preserved but has also enhanced after the reorganization, since the four private companies have a more diversified portfolio of shares as compared to the portfolio held previously by HSFCL. This is evidenced from a comparison of the current value of the HSFCL

transferred investments as against current value of 8.19% shareholding held by the Company in each of the four private companies as given in following table:-

(*approx. values in Rs. Crores)*

| Value of HSFCL transferred investments as on March 20, 2014 | Value of HSFCL transferred investments as on May 31, 2024 | Value of HTL's 8.19% shareholding in Emerging Companies as on May 31, 2024 |
|---|---|---|
| 1247.03 | 6082.24 | 6950.53 |

75. It is observed that the SCN has alleged that HTL appointed agencies to provide valuation reports in March 2014. The SCN, however, does not allege that the gifting of investments was made without prior valuation nor does it bring out any fault w.r.t the valuation / fairness reports themselves. In fact, the Company had provided reports from E&Y, DHC Consultants who have opined and reaffirmed that economic interest of the public shareholders was protected, yet the IR has not examined these reports to assess its veracity so as to allege loss caused to the public shareholders. Further, the approach adopted in *Linde India* Case, could have given real and correct picture if fault was found with valuation report and fairness opinion of experts E&Y and DHC Consultants. In this case merely making bald allegations without examining valuations given by experts cannot suffice and bring home the charge. By not examining the valuation reports of experts, Investigation has given tacit acquiescence to the valuation given by them. Therefore, it cannot be substantiated that there was economic loss to the investors of HTL. The economic interest of the shareholders of the company was safeguarded which is summarised as follows: -

**<u>Table : Investment Value schedule of Hexa Tradex Limited</u>**

| **Name of the company** | **Before Reorganistaion** | | | **After Reorganisation** | | |
|---|---|---|---|---|---|---|
| | **No. of shares** | **Fair value per share** | **Value (Rs. Crores)** | **No. of shares** | **Fair value per share** | **Value (Rs. Crores)** |
| Hexa Securities and Finance Company Limited | 2,55,00,000 | 503.50 | 1,203.93 | 2,55,00,000 | 11.30 | 28.82 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Rohit Tower Building Ltd. | 2,400 | 3,80,211.40 | 91.25 | 2,400 | 3,77,268.90 | 90.54 |
| Sona Bheel Tea Ltd. | 96,025 | 3,619.70 | 31.14 | 86,025 | 3,280.20 | 11.01 |
| Danta Enterprises Pvt. Ltd. | 8,189 | 0.05 | 0 | 8,189 | 3,22,033.44 | 263.71 |
| OPJ Trading Pvt. Ltd. | 8,189 | (10.19) | (0.01) | 8,189 | 5,26,409.80 | 431.08 |
| Sahyog Tradecorp Pvt. Ltd. | 8,189 | 7.18 | 0.01 | 8,189 | 3,99,276.25 | 326.97 |
| Virtuous Tradecorp Pvt. Ltd. | 8,189 | 7.41 | 0.01 | 8,189 | 3,11,252.58 | 254.88 |
| **Total** | | | **1,400.32** | | | **1407.01** |

76. As seen in the above table, the investment value at the level of the Company was maintained before and after reorganization. It is reiterated that the *four private companies* received shares from a number of Transferor Companies (including HSFCL) and the value per share of these *Emerging Companies* / *four private companies* was calculated accordingly. Ultimately, the investment value of the Company and the interest of its shareholders was adequately protected.

77. The SCN also alleges that the shares were transferred to the *four private companies* for the purpose of drawing personal benefits. The Noticees have contended that the *four private companies* utilized the HSFCL transferred investments, by way of pledge, for securing the loans that were availed by the Group companies. The HSFCL transferred securities were even previously pledged by HSFCL for enabling various group companies to avail loans. The decision taken in this regard, was by the respective company and their board of directors who are the best judges of the interest of their shareholders. It was primarily a business decision which the Transferee Companies/ four private companies took and as such, no fault can be found in such business decisions as the same were taken in the interest of the respective company and the Group and not for drawing any personal benefits. It was primarily a business decision which the Transferee Companies/ four private companies took, and SEBI cannot substitute its own views for the respective companies. This view has been held in *D-Link (India) Limited v. SEBI, Appeal No. 120 of2007, Judgment dated July 14, 2008.*

78. It is noted that the pledging of shares is a normal business activity. In ***Taneja Aerospace and Aviation Limited – SEBI Order dated January 11, 2016*** SEBI has held that

"*business decisions of board of directors normally cannot be found fault by regulator unless such decision is found fraudulent*". It is also noted that the SCN fails to establish how the pledge transactions were fraudulent or were undertaken to draw personal benefits. Further, in no case there has been a default leading to invocation of the pledges. In fact, in most cases the loans have been repaid and pledges have been released from time to time. In view thereof, the allegations of utilization of HFSCL Investments by the Transferee Companies/ four private companies for drawing personal benefit is also unfounded.

79. Another basis is that there was a dividend loss caused to the Company to the tune of INR 23.68 crore, which instead of being credited to account of HTL through HFSCL went to the account of the four private companies. According to the Noticees, HTL has, in fact, benefitted from the dividend income generated by the diversified portfolio of equity shares held by the four private companies. These four private companies have earned dividend income not only on HSFCL investments, but also on the equity shares received from other Transferor Companies. It is pertinent to note that from April 1, 2014, to May 31, 2024, the dividend benefit accrued to the Company would have been much lower had the reorganization not taken place, since a majority of HSFCL investments have not yielded any dividend since 2015.

80. In this regard it is noted that although the SCN alleges that there is a loss of dividend to the tune of INR 23.68 crore due to the transfer of investments to the said four private companies, however, the value of dividend accrued to the benefit of the Company (due to its 8.19% shareholding in the four private companies each) is INR 174.42 crores. Further, the financial statements and filings of these four private companies are available with the concerned Registrar of Companies and accessible to the shareholders. Investigation has not looked into them. Since, the economic value of HTL was preserved and maintained by acquiring the shares in the private companies, no adverse inference can be drawn.

81. It is noted that all the above basis of allegations were examined and closed by SEBI in 2015 then again by the competent authority of SEBI in 2022. Thus, the making allegation on the same basis will be hit by estoppel and *res judicata*. However, the Second Investigation Report has also made additional allegations as discussed hereinabove. Those

issues are not barred on the basis of this preliminary issue. Some of those additional allegations could also be interlinked with issues already decided. I proceed to examine those aspects hereinafter.

82. Before dealing with those allegations I deem it apposite to look into the provisions alleged to have been violated. The SCN has made the allegations without specifying which provision is violated by which act and has provided the list of provisions in the SCN. The text of the charged provisions as per SCN are as follows: -

**SEBI Act, 1992**

*12A. No person shall directly or indirectly—*

*(a) …………..*

*(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;*

***[163][Contravention by companies.]***

*27. (1) Where [164][a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company, every person who at the time the [165][contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [166][contravention] and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the [167][contravention] was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such [168][contravention].*

*(2) Notwithstanding anything contained in sub-section (1), where an [169][contravention] under this Act has been committed by a company and it is proved that the [170][contravention] has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the [171][contravention] and shall be liable to be proceeded against and punished accordingly.*

*Explanation : For the purposes of this section,—*

*(a) "company" means any body corporate and includes a firm or other association of individuals; and*

*(b) "director", in relation to a firm, means a partner in the firm.*

*[163] Substituted for the words "Offences by companies." by the Finance Act, 2018 w.e.f. 08-03-2019.*

***SEBI (PFUTP) Regulations, 2003***

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

**SCRA, 1956**

*Conditions for listing.*

*21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

**Listing Agreement**

*Clause 22*

*The Company will, immediately on the date of the meeting of its Board of Directors held to consider or decide the same, intimate to the Exchange within 15 minutes of the closure of the Board Meetings by Letter/fax (or, if the meeting be held outside the City of Mumbai, by fax/ telegram)*

*(d) any other information necessary to enable the holders of the listed securities of the Company to appraise its position and to avoid the establishment of a false market in such listed securities*

*Clause 36:*

*36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power* *cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:*

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

*i) Issue of any class of securities.*

*ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement,*

*spin off or selling divisions of the company, etc.*

*iii) Change in market lot of the company's shares, sub-division of equity shares of company.*

*iv) Voluntary delisting by the company from the stock exchange(s).*

*v) Forfeiture of shares.*

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

*vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.*

*viii) Cancellation of dividend/rights/bonus, etc.*

*The above information should be made public immediately.*

*49. CORPORATE GOVERNANCE*

*I. The company agrees to comply with the provisions of Clause 49 which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below. In case of any ambiguity, the said provisions shall be interpreted and applied in alignment with the principles.*

*……………………………*
*…………………………………*
*D. Responsibilities of the Board*

*1. Disclosure of Information*
*a. Members of the Board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.*

*b. The Board and top management should conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture for good decision-making.*

*2. Key functions of the Board*

*The board should fulfill certain key functions, including:*
*a. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestments.*
*b. Monitoring the effectiveness of the company's governance practices and making changes as needed.*
*c. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.*
*d. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.*
*e. Ensuring a transparent board nomination process with the diversity of thought, experience, knowledge, perspective and gender in the Board.*
*f. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.*
*g. Ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in*

*particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.*

*h. Overseeing the process of disclosure and communications.*

*i. Monitoring and reviewing Board Evaluation framework.*

*3. Other responsibilities*

*a. The Board should provide the strategic guidance to the company, ensure effective monitoring of the management and should be accountable to the company and the shareholders.*

*b. The Board should set a corporate culture and the values by which executives throughout a group will behave.*

*c. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.*

*d. The Board should encourage continuing directors training to ensure that the Board members are kept up to date.*

*e. Where Board decisions may affect different shareholder groups differently, the Board should treat all shareholders fairly.*

*f. The Board should apply high ethical standards. It should take into account the interests of stakeholders.*

*g. The Board should be able to exercise objective independent judgement on corporate affairs.*

*h. Boards should consider assigning a sufficient number of non-executive Board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest.*

*i. The Board should ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the company to excessive risk.*

*j. The Board should have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the company's focus.*

*k. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.*

*l. Board members should be able to commit themselves effectively to their responsibilities.*

*m. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.*

*n. The Board and senior management should facilitate the Independent Directors to perform their role effectively as a Board member and also a member of a committee.*

**LODR 2015**

*Repeal and Savings*

*103. (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.*

*(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.*

83. The aforesaid provision prohibits *"dealing in securities"* in a fraudulent manner and further prohibits employment of schemes to defraud or engage in acts or practices which operate as fraud/ deceit, in connection with *"issue or dealing in securities"* listed or proposed to be listed. The PFUTP Regulations define fraud as any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss. Further, the prerequisites for any liability to accrue under the said provisions are (a) wilful intent and knowledge; (b) active inducement; and (c) dealing in securities.

84. Further, the Order dated August 09, 2023 of the Hon'ble SAT in ***National Stock Exchange and Others v. SEBI*** (AppealNo. 334 of2019) has held: -

*"From the aforesaid decisions and on a reading of the provisions of Section 124 of the SEBI Act and Regulation 3 & 4 of PFUTP Regulations, it is apparently clear that the object of Section 12A & PFUTP Regulations is to curb "market manipulations". The manipulative and deceptive devices must be in relation to "securities" and must be by a person "dealing in securities". The Supreme Court has enlarged the scope of "fraud" under the PFUIP Regulations to cover an action or omission even without deceit if such act or omission had the effect of inducing another person to deal in securities. Thus. "inducement" became more significant where 'fraud' was required to be proved."*

85. The Hon'ble Supreme Court in Civil Appeal No. 4015 of 2020 which was decided on May 29, 2026 in the matter of ***Reliance Industries Limited & Ors v SEBI*** has held;

"*219……… Even though inducement has been held to be the necessary ingredient for establishing fraud in Kanhaiyalal Baldevbhai Patel (supra), yet in Rakhi Trading (supra), this Court has held that inducement need not be proved if the factum of manipulation is sufficiently and cogently established. This makes it all the more necessary for the respondent authority to prove deceitful intention from the beginning that would lead to a pre-planned act or omission.*

*220. We have taken this forward by discussing the definition of fraud under Regulation 2(1)(c) of the PFUTP Regulations and making the following courses of action necessary in certain situations. The definition of fraud under the PFUTP Regulations uses the word 'act' and not 'entry'. Though the definition is wide, it does not mean every expression, omission or concealment under the sky. This is because the expression 'inducement' as used in the provision is sine qua non to bring a transaction within the ambit of a fraudulent activity. In our opinion, it cannot be the intention of the PFUTP Regulations to give unfettered powers to decide the question of fraud. 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:*

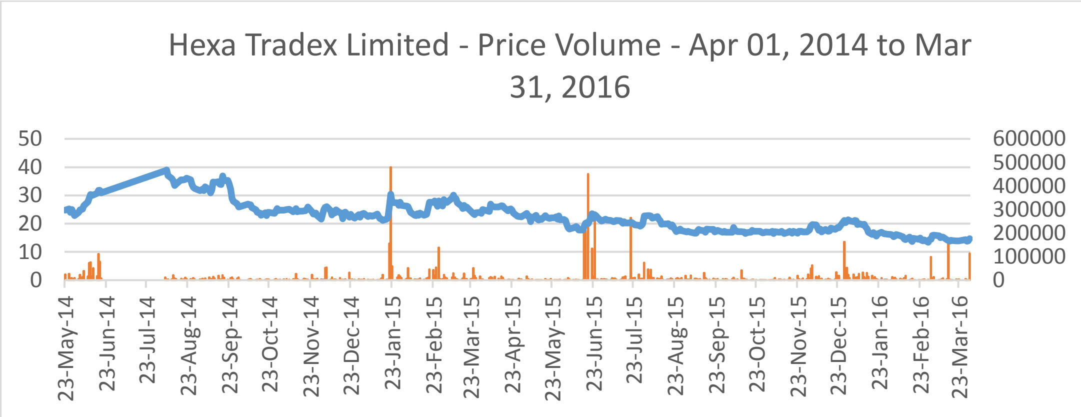
*i. in situations where injury due to wrongful act is established, i.e, inducement to deal in securities has caused the other person to be adversely affected and allowed the party accused of fraud to gain unlawful profits or avert ordinary losses at the former's expense, there would be no requirement 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."*

86. As per judgement of Hon'ble Supreme Court in *Shri Kanaiyalal Baldevbhai Patel (2017) 15 SCC 753* , the definition of *'fraud'*, is an inclusive, broad and expansive definition and contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "*induce*". Further, for scrutinizing the cases mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient.

87. The scope of regulation 4(1) was clarified by adding an Explanation according to which indulging in diversion, misutilisation or siphoning off of assets or earnings of a listed company that would directly or indirectly manipulate the price of securities of that company would fall within the scope of Regulation 4(1). Accordingly, it is necessary to allege that the acts specifically listed in Regulation 4(1) directly or indirectly impact the price of securities of the concerned company. In this case there is not even a whisper whether the Noticees diverted the funds and if so, it directly or indirectly manipulate the price of securities of that company. The SCN, nowhere, brings out the impact on price due to this transaction or its disclosure/ non-disclosure. It has merely attempted to place a price movement charge for the period April 1, 2014 to March 31, 2026. It further states that during the period April 01, 2014 to March 31, 2016, the share price of the scrip had

decreased from Rs. 25.00 to Rs. 13.85 and would have been adversely impacted if HTL would have informed about the gifting of HSFCL investments to its shareholders. The price chart is as follows: -




88. If seen closely, the above chart does not show any price movement much less a price manipulation in the scrip during the transaction in question. Yet, in Para 49 of the SCN it has been alleged that had the Noticee No. 1 (HTL) disclosed the information about the gifting of HSFCL investments to its shareholders, the price of the scrip would have reflected this information and may have impacted adversely. Failure of Noticee No. 1 (HTL) and its directors, Noticee No. 2 (Mr. Prithvi Raj Jindal) and Noticee No. 3 (Ms. Sminu Jindal), in concealing the disclosure of the material could have had a significant impact on the decision-making process of all stakeholders, including minority shareholders of Noticee No. 1 (HTL). I note that such narration is merely recital and without any sound basis. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided.

89. There is no allegation in the SCN that the Noticees have induced any person to *'deal in securities'* during the Investigation Period. The charge is not only closed but is vague and unsustainable in view of the facts and circumstances mentioned hereinabove from records available to Noticees too. The observations of Hon'ble SAT in the case of ***DLF Ltd. & Ors. V SEBI*** (2015) SCC Online SAT 54 has observed as follows:-

"*106. We have minutely looked into Sections 12(a), (b) and (c) of SEBI Act, 1992, along with Regulations 3(a), (Bb), (c), (d); 4(1), 4(2)(f) and (k) of PFUTP Regulations as well as the definition of fraud. First of all we note that a person could be held guilty of fraud only if he has done an act or omission with a view to induce another person to deal in securities. The Respondent has not been able to attribute any such conduct to the Appellant anywhere in the Impugned Order. Similarly, no false statement has been made by the Appellant in the Offer Documents or the Prospectus. In any event, fraud would mean "a false statement made without reasonable ground for believing it to be true." Similarly, a representation has to be* made *recklessly and carelessly to investors with the potential of inducing the investors to invest on the basis of such a representation before it can amount to a fraud. A promise made with the intention of not performing it is also said to be a fraud within the meaning of Regulation 3(c)(4). Therefore, an act to be termed as 'fraud' within the meaning of PFUTP Regulation should have an element of some motive or ill-conceived idea or design. Such an element is completely lacking in the present case… The Impugned Order is absolutely ambiguous in applying facts as to which specific act of the Appellant allegedly fits into the parameters of fraud prescribed by a particular sub-regulation or regulation of the PFUTP Regulations or that of Section 12 of the SEBI Act, 1992. The charge in the SCN as well as the findings in this regard in the impugned order are, therefore, totally vague and unsustainable in the eyes of law and on fact."*

90. Further, it has been alleged that the Noticees 1 to 5 and 8 to 15 have violated Section 12A (b) & (c) of the SEBI Act, 1992 and Regulations 3 (a), (c) & (d) & Regulations 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for devising a fraudulent scheme/aiding and facilitating the scheme. Section 27 of the SEBI Act as prevailing in 2014 applied only to 'offences' i.e where SEBI has launched criminal proceedings and does not apply to proceedings involving civil monetary penalties. The Finance Act, 2018 amended Section 27 of the SEBI Act w.e.f. March 8, 2019. Hence these Noticees cannot be held vicariously responsible alongwith the Noticee 1 for the said violation. In the *Mukesh D Ambani v.SEBI (Appeal No. 87 of 2021 decided on December 4, 2023)*, the Hon'ble SAT in the context of Section 27 of the SEBI Act has held that :

*"46. Thus, the term "offence" prior to the amendment in Section 27 related to criminal proceedings. Until March 07, 2019 Section 27 operated in cases of commission of an "offence" within the meaning of the SEBI Act which is dealt with under Section 24 of the SEBI Act and is tried before a Special Court established for this purpose. On a plain reading of Section 27, as it stood on the date of the transaction in question, makes it clear that Section 27 of the SEBI Act did not include within its scope the levy of civil penalties for the alleged violation of the provisions of the SEBI Act and the PFUTP Regulations. The pre-amendment Section 27 specifically restricted the imposition of vicarious liability for commission of offences by companies to cases involving offences by companies.*

*…*

*48. We are thus of the view, that Section 27 prior to the amendment i.e. prior to March 08, 2019 had no application to civil liability and only after the amendment w.e.f. March 08, 2019 that Section 27 provided for vicarious liability on both criminal and civil liability for contravention of the SEBI Act, Rules and Regulations."*

91. Prevention of market abuse and preservation of market integrity is the hallmark of securities law. Section 12A read with Regulations 3 and 4 of the PFUTP Regulations essentially intended to preserve "market integrity" and to prevent "market abuse"[11]. Accordingly, I proceed to deal with additional allegations to examine whether there was any active concealment of information, misrepresentation, misleading disclosures?

92. The Noticees i.e. 2, 3, 4, 6 and 7 have contended that violation of Clause 22(d) and 36 of Listing Agreement read with Regulation 103 of the LODR Regulations read with Section 21 of SCRA does not apply to them. The Company submits that all disclosures required to be made by it were adequately made. Further, in the interest of complete transparency, adequate disclosures regarding the transfer of investments were made in the annual report / financial statements of the HTL and HSFCL for F.Y. 2013-14.

[11] *N. Narayanan v. SEBI Judgment dated 26.04.2013 -. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality*

93. The Noticees have also submitted that information regarding gifting/transfer of investments held by the Company through HSFCL, subscription of shares of four private companies, and conversion of loan receivable from HSFCL into additional equity, is not necessary to enable holders of listed securities of the company to appraise their position and to avoid establishment of false markets. The internal realignment/ reorganization within the Group was done in a manner such that the economic interest of the shareholders of the Company remained unchanged. The gifting/transfer and subscription of shares by the Company in the Emerging Companies was a part of the internal reorganisation process. It did not have the potential to impact the economic interests of the shareholders. The said information is not of the nature that would be necessary to enable the Company's shareholders in the appraisal of their positions. Further, the information is also not such that non-disclosure of it would have led to establishment of a false market. Thus, there was no requirement to disclose the same to the stock exchange under Clause 22 (d) of the Listing Agreement.

94. On careful examination of provisions of Clause 22(d) of the Listing Agreement, I note that under this Clause a company is obligated to intimate, within 15 minutes, to the Exchange any information necessary to enable the holders of the listed securities of the Company to appraise its position and to avoid the establishment of a false market in such listed securities. Thus, the discretion to make assessment of quality of information under this clause is given to the Company. The basis of allegation in the SCN is that during the period April 01, 2014, to March 31, 2016, the share price of the scrip had decreased from Rs. 25.00 to Rs. 13.85. The price fall is after a period of two years and can not be related to information relating to impugned transaction. There is no correlation between the decrease in the share price of the scrip in March 2016 and the receipt of the HSFCL investments in the form of transfer by way of gifts in March 2014. Since there is no plausible correlation between the two, the basis of allegation that the shareholders of the Company taking this into account or being affected by the same also does not sustain.

95. Under Clause 36 of the Listing Agreement, information that would affect the performance or operations of the Company was required to be communicated to the stock exchange and

disseminated on a continuous and immediate basis. The said information pertains to a transfer by way of gift of shares within the Group pursuant to an internal reorganization done pursuant to extensive external reviews conducted by E&Y and DHC Consultants. There is no nexus between the said information and the performance of operations of the Company. The Company's operations or performance could not have been and were not impacted by gifting/ transfer of shares by HSFCL to the four private companies or by conversion of the loan receivable by HSFCL into additional equity. Moreover, the SCN also does not bring out any material to show that that performance or operations of the Company was affected in any way and how in such circumstances, the other Noticees were obligated to report the said information.

96. Clause 2, Schedule II of PIT 1992, also require for price sensitive information to be disseminated on a continuous and immediate basis to stock exchanges. The information are not contingencies that can impact the price of the scrip to begin with. The reduction in share price of the scrip is an entirely unrelated and independent occurrence. In light of Section 180 of the Companies Act, 2013 and the jurisprudence surrounding it, the same cannot be considered as disposal of substantial of the whole of the undertaking of the Company. Further, since the economic interest of the company was adequately protected, reliance on the fact that HSFCL investments constituted 22.43% of consolidated net worth of the Company as per book value and 485.17% as per market value of the Company, is irrelevant.

97. In this regard it is relevant to refer to order of Hon'ble SAT in the matter of ***Gujarat NRE Mineral Resources Ltd. v. SEBI*** reported in 2011 SCC OnLine SAT 186, wherein it observed that: -

*"4. ... FCGL is an investment company whose business is only to make investments in the securities of other companies. It earns income by <u>buying and selling securities held by it as investments</u>. This being the normal activity of an investment company, every <u>decision 'undertaking' by it to buy or sell its investments would have no effect</u>. <u>much less material, on the price of its own securities</u>. If that were so then no investment company would be able to function because every time it would buy or sell securities held as investments, it*

*would have to make disclosures to the stock exchange(s) where its securities are listed. Such decisions of an investment company, in our opinion, do not affect the price of its securities. The explanation to the definition has seven clauses and information in regard to all those matters is treated as price sensitive. The adjudicating officer has placed strong reliance on clause (vi) there of which deals with "disposal* of the whole or substantial part *of the undertaking". These words would mean when a company decides to dispose of the whole or substantial part of its business activity or project in which it is engaged. The word cannot possibly mean investments held by an investment company which are its stock-in-trade. To illustrate, if a manufacturing company were to dispose of the whole or a substantial part of its manufacturing unit, it would be an event which would materially affect the price of its securities and according to the explanation it would be price sensitive requiring the company to make the necessary disclosures at the earliest. On the other hand, if a manufacturing company were to sell its products or buy raw materials, it would be a part of its normal business activity which would not be price sensitive and not required to be disclosed. In our opinion, the adjudicating officer has completely misdirected himself in placing reliance on clause (vi) of the explanation to hold that the decision of FCGL to dispose of a part of its investment in the Coke company was price sensitive in nature."*

98. It is also noted that disclosures regarding the transfer by way of gift of HSFCL investments to the four private companies were made in the annual report / financial statements of the HTL and HSFCL for F.Y. 2013-14. Note 34 in the Notes to the Consolidated Financial Statements of the HTL for F.Y. 2013-14 states as following:

"*Pursuant to an internal realignment/ reorganization within the O. P. Jindal Group, certain shares as depicted in the investment schedule are now held by other companies of the O. P. Jindal Group in each of which the Hexa Tradex Limited holds 8.2% of shareholding the economic interest of the shareholders such that of the* Company *remained unchanged. The carrying value of such investments has been adjusted in surplus in Statement of Profit and Loss under the Reserves and Surplus.".*

99. A similar disclosure was made under Note 22 in the Notes to Financial Statements of HSFCL for F.Y. 2013-14. Hence the question of non-disclosure of information on

transfer/ gift of HSFCL investments, subscription to the shares of the four private companies, conversion of loan into equity on the stock exchange platform does not arise. Moreover, the conversion of loan into equity was also disclosed in the annual report for F.Y. 2015-16. The relevant portion of Note 26 in the Notes to the Financial Statements of the Company for F.Y. 2015-2016 is as following: -

*26. Related Party Disclosure*
*…*
*Transactions* *(Rupee in lacs)*

| ***S.No.*** | ***Particulars*** | ***Subsidiary*** | |
|---|---|---|---|
| | | *Year ended 31st March 2016* | *Year ended 31st March 2015* |
| *A1* | *Transactions*<br>*Loan converted into Investment*<br>*Hexa Securities and Finance Company Ltd.* | *19,588.15* | - |

100.In this case admittedly, adequate disclosures regarding the transfer of investments were made in the annual report/financial statements of the Company and HSFCL for FY 2013-2014. Hence, the information was already in the public domain during much of the period from April 01, 2014, to March 31, 2016. Further, the information was also available to SEBI, at least, when first complaint was received in 2014 wherein the complainant shareholder had categorically said that in his complaint that - in the first week of April, 2014, all the listed companies (except JSL) filed with the exchanges several disclosures under Regulation 13 of SEBI (Prohibition of Insider Trading) Regulations, 1992, about gift of shares during March 2014. been given "gifts" on March 28, 2014. Separately, disclosures were made under Regulation 29(1) of SEBI (SAST) Regulations, 2011 disclosing that certain entities belonging to the promoter group, had received as a gift, shares of the listed companies, through off-market transfers. On a meticulous perusal of all such filings, he came to know about the impugned transactions. Based on this he had filed complaint that was examined and closed by SEBI in 2015.

101.I find merit in submission that the error in not publishing the correct number of shares held by HTL in the four private companies was inadvertent and a bona fide mistake and an inadvertent error which also appeared in the annual report for F.Y 2013-14 and F.Y. 2014-

15. The said error has not adversely impacted any of the stakeholder or the interests of shareholders or the interests of shareholders of the Company. Further, the same has also not resulted in any gain to the Company or led to any loss being inflicted on the shareholders. Further, it is evident that the same was an oversight as the Note 34 in the Notes to the Consolidated Financial Statements of the Company for FY 2013 2014, which is cited above states the correct percentage (8.2%) of the Company's shareholding in the Emerging Companies. The said information is not necessary to enable holders of listed securities of the Company to appraise their position and avoid establishment of false markets. Moreover, the information is also not of a nature that it can affect the performance/ operation of the Company or be classified as price sensitive information.

102. Noticees 6 and 7 being independent directors and members of the audit committee have also contended that the SCN erroneously seeks to impose obligations upon the members of the audit committee to oversee the Company in making disclosures to shareholders of the company through the stock exchange. They have further submitted that as independent directors have acted diligently after acquiring knowledge about the reorganisation / realignment. This is evidenced from the fact that the Board appointed experts like — E&Y and DHC Consultants, *inter-alia,* to independently evaluate the percentage of shareholding to be allotted to the Company in the Emerging Companies, in exchange for the transfer by way of gift of the investments of HSFCL to the Emerging Companies, in such a manner that the economic interest of the shareholders (including public shareholders) is maintained. After considering the reports received from the experts, they accorded their approval for the reorganisation / realignment. Further, no allegation of connivance has been made against them in the SCN. They ensured that the interest of the public shareholders was sufficiently protected and they have fulfilled their duties and responsibilities as independent directors of the company.

103. I note that the provisions of Clause 49(II)(D) of the listing agreement does not require the audit committee to investigate commercial decisions nor disclosure to the shareholders through the stock exchanges as alleged. The independent directors are neither expected to set out on an independent probe of the factual assertions made to them by the management or expected to suspect every assertion or representation made by the management of the

company. SEBI has vide its Order dated July 14, 2022 in the matter of ***Dish TV Limited*** disposed of the proceedings against the independent directors stating that matters pertaining to disclosure are to be overseen mainly by the company secretary and by the whole time directors.

104. It is also matter of record that in their certificate dated January 3, 2020, the Legal Advisor i.e. Shardul Amarchand Mangaldas & Co. also confirmed that requisite disclosures including disclosures under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015 pertaining to the reorganization were made by the Company, HSFCL and its transferee companies were in receipt of the necessary approvals and fulfilled their respective disclosure obligations as stipulated under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and other applicable laws.

105. Although the case alleged in the SCN is not made out on any counts, for the sake of guidance and reference, I deem it appropriate to read the ***Order No. WTM/AB/IVD-ID19/12937/2021-22 dated August 06, 2021*** in similar case of ***Jaisukh Dealers Limited,*** wherein speaking through its WTM, SEBI found that the company misrepresented its financial statements and violated Para 15 of Ind AS 1 and Para 16 of Ind AS 1 and thereby violated provisions of Regulation 33(1)(c) and Regulation 48 of LODR Regulations. The company also violated LODR Regulations on other failures apart from above finding of misrepresentation in its financial statement. Also, the company did not cooperate with forensic auditor. However, in similar circumstances, in the said order SEBI held that, since the essential ingredients of *"dealing in securities*[12]", "*inducement*"; "*to induce others to deal in securities'* , price manipulation, trading by others, etc. are absent in the SCN, the allegations of violation of Section 12A(a), (b) and (c) of the SEBI Act and provisions of PFUTP Regulations is not tenable. WTM gave liberty to SEBI to issue fresh SCN to pursue violations of PFUTP Regulations by bringing out specific case/ingredients under PFUTP Regulations, which SEBI did not do further. WTM also

[12] *The definition of dealing in securities has been amended w.e.f. from February 1,2019*

held that: -*"Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities."*

**D. <u>The SCN and the proceedings are in grave violation of the principles of natural justice</u>**

106. Relying upon various judgements such as ***Kanwar Natwar Singh v. Director of Enforcement, (2010) 13 SCC 255, Chanda Kochhar v. SEBI,*** **Appeal No. 147 of 2025** in respect of their defence that nothing should be used against a person which has not been brought to his notice. According to the Noticees,

(a) The SCN places selective reliance on the part of the material on record while ignoring material that is directly relevant and forms part of SEBI's own record.

(b) The ED's file notings dated October 27, 2022 wherein the ED himself found the entire investigation has been built on incomplete and biased reading of the material, ignoring all submissions, documents and information provided by the entities during the investigation and during the recording of statements. The SCN does not refer to the ED's notings, 2014 complaint or its closure, 2019 complaint, the first investigation or its closure by ED. These are material and relevant facts which, if considered, would show that the subject matter of the SCN had already been examined and treated as lawful on two prior occasions and that the investigation which is forming part of the SCN was itself found by SEBI's own senior officer to have been biased.

(c) The closure of the prior complaint and investigation on the same subject matter created a vested right in favour of the Noticees. Without prejudice to the contention that SEBI did not have the power to direct a fresh investigation, it is submitted that the appointment of the IA to reinvestigate the same matter, without providing any opportunity of hearing to the Noticees before the second investigation was initiated, constitutes a serious violation of the principles of natural justice. The Noticees were never informed that the ED's closure was being reopened, were never called upon to make any submissions on the question of whether the matter ought to be reopened, and were never heard before the second investigation was initiated.

107. Relying upon the judgements of ***Gorkha Security Services v. Govt. of NCT of Delhi and Ors., (2014) 9 SCC 105 and Royal Twinkle Star Club Pvt. Ltd. v. SEBI, 2016 SCC Online SAT 16,*** the Noticces have contended that , the SCN is vague and ambiguous. It does not specify the measures that SEBI proposes to take against the Noticees. The absence of this information has materially prejudiced the ability of the Noticees to understand the case they have to meet and to respond to the SCN.

108. It is to be noted that re-investigation in the present matter has been conducted based on material collected by the IA and the SCN dated March 18, 2024 has been issued on the basis of such material. I note that the SCN makes out a specific and categorical allegations and spell out alleged provisions of law and possibility of actions as per law. In my view, the reliance upon the judgment of the Hon'ble Supreme Court, in the case of Gorkha Security (supra), by the Noticee is unfounded on facts of this case.

**Conclusion.**

109. Not only on probability but on merits also, the case in hand falls on all counts and wrong appreciation of fact and law both and ignoring what was on record.

110. The business decisions were undertaken in good faith with required disclosures. Merely labelling actions as "*fraud*," without substantiating these claims with detailed reasoning or cogent evidence is insufficient to meet the burden of proof required under the law. The onus to discharge this responsibility is on SEBI. The Approach should not be of rigid technicalities rather than of holistic problem-solving. SEBI must establish fraudulent intent in the actions of Noticees and substantiate allegations of fraud with concrete findings of fact, supported by unequivocal evidence. In *Balram Garg v. SEBI (2022 9 SCC 425),* the Supreme Court held that regulatory authorities cannot shift the burden onto the accused to refute claims that lack proper substantiation. In *DLF Ltd. v. SEBI, 2015 SCC OnLine SAT 54*, Hon'ble SAT emphasized the need for conclusions supported by evidence. In

*Price Waterhouse & Co. v. SEBI, (2019) SCC OnLine SAT 165* to emphasize that the threshold for proving fraud under SEBI regulations requires specific and compelling evidence. In *Ess Ess Intermediaries v. SEBI*, 2013 *SCC OnLine SAT 24,* Hon’be SAT held that allegations of fraud or misconduct must be grounded in "*clear and unambiguous evidence*." Merely, probablising or endeavouring to prove the *fraud* or mere suspicion of intention of making undue profit or avoidance of loss is not sufficient to make good the charge of fraudulent plan or device or artifice in connection with issue, purchase or sale of or dealing in securities as required in Section 12A and regulation 3 of the PFUTP Regulations.

111. It is not out of place to mention that such approaches, many a times, invite wrath from Judiciary when the settled jurisprudence is ignored while enforcing the Regulations. In ***Reliance Industries Limited & ors. Vs SEBI* (*CIVIL APPEAL NO. 4015 OF 2020)*** ¸Hon’ble Supreme Court, vide its judgement dated 29th May, 2026 held that :-

> *“The definition of fraud under the PFUTP Regulations uses the word ‘act’ and not ‘entry’. Though the definition is wide, it does not mean every expression, omission or concealment under the sky. This is because the expression ‘inducement’ as used in the provision is sine qua non to bring a transaction within the ambit of a fraudulent activity. In our opinion, it cannot be the intention of the PFUTP Regulations to give unfettered powers to decide the question of fraud. 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.”*

112. As brought out in the preceding paragraphs, the allegations made in the SCN fall on the grounds of few preliminary issues and none of the allegations stand on merits and law both as discussed hereinabove.

113. Accordingly, the SCN dated March 18, 2024 and Application dated April 24, 2025 are disposed of without any directions or penalty.

114. In terms of Rule 6 of Adjudication Rules, copies of this order are sent to all the Noticees and also to SEBI.

SANTOSHKUMAR SHUKLA

Digitally signed by SANTOSHKUMAR SHUKLA
Date: 2026.07.24 18:57:37 +05'30'

**Date: July 24, 2026**
**Place: Mumbai**

**SANTOSH SHUKLA**
**QUASI JUDICIAL AUTHORITY**
**SECURITIES AND EXCHANGE BOARD OF INDIA**