

Circular No.: NSDL/POLICY/2021/0071

July 14, 2021

Subject: SEBI Order under Section 11B of the Securities and Exchange Board of India Act, 1992.

Attention of Participants is invited to the Order No. WTM/ AB /EFD-1/DRA4/16/2021-22 dated June 18, 2021 passed by SEBI (order copy enclosed) prohibiting Jayant V Kolapkar & Co. (PAN- ACDPK5389H) from directly or indirectly issuing any certificate related to audit of listed companies, compliance obligations of listed companies and intermediaries registered with SEBI and the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, those provisions of the Companies Act 2013 which are administered by SEBI under section 24 thereof and the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI, for a period of one (1) year, from the date of coming into force of the said order.

Participants are hereby advised to take note of the same while appointing an auditor for their depository operations.

For and on behalf of

National Securities Depository Limited
Chirag Shah
Senior Manager

Enclosed: One

FORTHCOMING COMPLIANCE

Particulars	Deadline	Manner of sending	Reference
Investor Grievance Report (Monthly)	By 10th of the following month.	Through e-PASS	Circular No. NSDL/POLICY/2015/0096 dated October 29, 2015
Internal/ Concurrent Audit Report (October 2020 – March 2021)	July 31, 2021.	Through e-PASS	1. Circular No. NSDL/POLICY/2021/0041 dated May 04, 2021 2. Circular No NSDL/POLICY/2021/0048 dated May 11, 2021
Compliance Certificate (January - June)	July 31st every year	Through e-PASS	Circular No. NSDL/POLICY/2019/0088 dated December 17, 2019.
Artificial Intelligence I/Machine Learning Reporting Form (if offering or using such technologies as defined) (Quarterly)	July 31, 2021	By email at Participant-Interface@nsdl.co.in	1. Circular No. NSDL/POLICY/2019/0016 dated March 27, 2019 2. Circular No. NSDL/ POLICY/2020/0056 dated April 29, 2020 3. Circular No. NSDL/POLICY/2021/0041 dated May 04, 2021
Cyber Security & Cyber Resilience framework of Depository Participants (Quarterly)	By 15th of the following month.	Through e-PASS	1. Circular No. NSDL/POLICY/2019/0039 dated July 9, 2019. 2. Circular no. NSDL/POLICY/2020/0069 dated May 15, 2020.
Risk based Supervision of Participants (October 2020 – March 2021)	July 31, 2021	Through e-PASS	1. Circular No. NSDL/POLICY/2018/0050 dated September 25, 2018 2. Circular No.: NSDL/ POLICY/2020/0082 dated June 16, 2020 3. Circular No. NSDL/POLICY/2021/0041 dated May 04, 2021
Annual System Audit Report for the period ended March 2021	July 31, 2021	Through e-PASS	1. Circular No. NSDL/ POLICY/2020/0056 dated April 29, 2020 2. Circular No. NSDL/POLICY/2020/0071 dated May 19, 2020 3. Circular No. NSDL/POLICY/2020/0106 dated July 31, 2020 4. Circular No. NSDL/POLICY/2021/0041 dated May 04, 2021

WTM/ AB /EFD-1/DRA4/16/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), and 11B of the Securities and Exchange Board of India Act, 1992

Noticee No.	Name of Noticees	PAN
1.	Blue Bird (India) Limited	AADCA0162D
2.	Nitin P. Sontakke	ACGPS5819K
3.	Asha Padmakar Sontakke	Not available
4.	Shri Harbhagwandas S. Arora	Not available
5.	Ms. Vidya N. Sontakke	AJQPS6208K
6.	Shri Apoorv N. Sontakke	AQZPS1675G
7.	Shri Satish D. Bhagwat	Not available
8.	Shri David P. Kunder	ABJPK3185E
9.	Shri Santosh Dankude	APIPD4685B
10.	Jayant V Kolapkar & Co.	ACDPK5389H
11.	Shashank Patki & Associates	ABQPP4867P

In the matter of Blue Bird (India) Ltd.

(Aforesaid entities are hereinafter individually referred to by their respective name or Noticee number and collectively as “the Noticees”.)

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1. The present proceeding emanates from a show cause notice dated October 24, 2018 (hereinafter referred to as “**SCN**”) issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees asking them to show cause as to why

suitable directions be not issued under Sections 11(1), 11(4), and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) against them including but not limited to the following:

- a) to restrain Noticee No. 1 to 9 from accessing the securities market for a period as deemed appropriate; and
- b) to ban Noticee No. 10 and 11 from certification of listed entities and intermediaries.

The SCN alleges that the Noticees have violated Section 12A (a),(b) &(c) of the SEBI Act, 1992, Regulations 3 (b), (c) & (d), 4(1) and 4(2)(a),(e),(f),(k) & (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the “**PFUTP Regulations, 2003**”) and Clauses 41(I)(a), 41(I)(h), 41(II)(a), 41(IV)(g), 41(IV)(h), 49(IV)(B), 49(IV)(F)(ii), 49(V) and 50 of the Listing Agreement.

2. The brief facts of the case, as mentioned in the SCN, are as follows:

- 2.1. SEBI had received a letter dated February 3, 2015 from Central Bureau of Investigation (hereinafter referred to as “**CBI**”) in the matter of Blue Bird (India) Limited (hereinafter also referred to as “**BBIL**”/ “**the company**”), informing that a criminal case was registered on September 03, 2013 against Shri Nitin Sontakke, Chairman and Managing Director (hereinafter also referred to as “**CMD**”) of BBIL and others on the allegations of cheating banks on the basis of manipulated financial credentials. It was further stated that BBIL, through its CMD, had manipulated data of sale and purchase in the balance sheets for the financial years 2004-05 and 2005-06 for coming out with its Initial Public Offer (IPO) in 2006.
- 2.2. SEBI initiated an investigation to examine the utilization of proceeds of Initial Public Offering made by BBIL in November 2006 and related disclosures made in the offer documents. The investigation was undertaken for the period 2004-05 till 2011-12.

2.3. The following is the composition of the Board of directors of the BBIL over the years:

Name of the director	Designation	Period
Nitin P. Sontakke	Chairman & Managing Director	2004-05 to 2010-11
Rameshwar Manmath Karajkhede	Executive Director (ED)	2004-05 to 2005-06
Harbhagwandas S. Arora	Joint Managing Director (ED)	2004-05 to June 2008
David P. Kunder	Director (Finance) (ED)	2004-05 to 2010-11
Vidya N. Sontakke	Director (Administration) (ED)	2004-05 to Feb 2007
Apoorv N. Sontakke	Director (Marketing & Exports) (ED)	2004-05 to Aug 2009
Satish D. Bhagwat	Director(Technical) (ED)	2004-05 to 2010-11
Santosh Dankude	Director Production (ED)	2007-08 to 2010-11
Nandkishor Lohti	Independent Director (NED)	2007-08 to 2010-11
Sudhir Daphtardar	Independent Director (NED)	2007-08
Madhusudan S. Vaidya	Independent Director (NED)	2005-06 to June 2008
Brigadier HSN Sastry (Retd.)	Independent Director (NED)	2005-06 to June 2008
Dr.Vikas Govind Pai	Independent Director (NED)	2005-06 to Aug 2009
Anil C. Agashe	Independent Director (NED)	2004-05 to 2010-11
Girish H. Inamdar	Independent Director (NED)	2006-07 to 2007-08
Dr.Vitthal M. Bachal	Independent Director (NED)	2006-07 to April 2010
Niranjan Phadke	Independent Director (NED)	2008-09 to 2010-11

2.4. Noticee No. 2, Shri Nitin P. Sontakke was the Chairman and Managing Director and Noticee No. 8, David P. Kunder was the Director, Finance of the company during the entire period of investigation.

2.5. The shareholding pattern of the company as well as Promoter and Promoter group as taken from the stock exchange websites is as under:

Annual Shareholding pattern of the company

Shareholding pattern as per BSE website							
Qtr. ending	Dec 2006- Sept 2008	Dec 2008- Sept 2009	Dec-09	Mar-10	Jun-10	Sep-10	Dec-2010 to Mar-2012

	No of shares	%	%	%	%	%	%	%
Promoter	18400000	52.57	52.6	52.61	49.75	48.03	45.75	44.86
Public	16600000	47.43	47.4	47.39	50.25	51.97	54.25	55.14
Total	35000000	100	100	100	100	100	100	100

Shareholding of "Promoter and Promoter Group" of the company

Promoter % shareholding as per BSE website							
Qtr ending	Dec 2006 - Sept 2008	Dec 2008- Sept 2009	Dec-09	Mar-10	Jun-10	Sep-10	Dec-2010 - Mar-2012
Name of the shareholder	% shareholding						
Asha Padmakar Sontakke	2.57	2.57	2.57	2.57	2.29	--	--
Apporv Nitin Sontakke	4.29	4.29	4.29	1.47	--	--	--
Vidya Nitin Sontakke	22.86	22.86	22.86	22.86	22.86	22.86	22
Nitin P Sontakke	22.86	22.86	22.86	22.86	22.86	22.86	22.86
Nitin Padmakar Sontakke	--	0.03	0.03	0.03	0.03	0.03	--
Total	52.57	52.6	52.61	49.75	48.03	45.75	44.86

2.6. The financial performance of the company from the Annual Financial Statements, as disclosed to the Exchanges and Banks and submitted by the auditors, is as under:

(Figures in Rs. in Crores)

Period Ending	31-Mar-12	31-Mar-11	31-Mar-10	31-Mar-09	31-Mar-08	31-Mar-07	31-Mar-06	31-Mar-05
Financial Year	2011-12	2010-11	2009-10	2008-09	2007-08	2006-07	2005-06	2004-05
Net Sales / Interest Earned / Operating Income	10.22	10.63	428.03	502.22	458.71	453.83	400.92	330.79
Other Income	0.22	0.06	2.57	2.25	2.04	1.1	0.78	0.91
Total Income	10.44	10.7	430.6	504.47	460.75	454.93	401.7	331.7
Expenditure	-	-	-	-	-	-	-	-
	122.87	142.97	425.71	409.94	386.65	397.54	348.75	296.81

Operating Profit	- 112.42	- 132.28	4.89	94.53	74.1	57.39	52.95	34.89
Interest	- 107.26	-88.17	-77.82	-64.54	-34.33	-11.45	-10.36	-6.28
Profit Before Depreciation and Tax	- 219.68	- 220.44	-72.93	29.99	39.77	45.94	42.58	28.61
Depreciation	-7.52	-7.52	-7.47	-6.82	-5.19	-4.21	-3.33	-1.08
Profit before Tax	-227.2	- 227.96	-80.4	23.17	34.58	41.73	39.25	27.53
Tax	0	0	27.42	-8.47	-11.99	-14.78	14.14	9.87
Net Profit	-504.3	- 414.98	-52.99	14.7	22.59	26.94	25.11	17.66

- 2.7. Upon examination of the above table it is *inter alia* observed as under-
- 2.8. The net sales which was showing an increasing trend from financial year 2004-05 (₹ 330.79 crore) onwards till financial year 2008-09 (₹ 502.22 crore), fell to ₹428.02 crore for Financial Year 2010-11. Thereafter it further plunged to ₹ 10.6 crore for the financial year 2010-11 and ₹ 10.22 crore for Financial Year 2011-12.
- 2.9. The company which had an increasing net profit for the financial years 2004-05, 2005-06 and 2006-07, showed a decrease in the net profit for the years 2007-08 and 2008-09. It is observed that from financial year 2010-11 onwards, the company has made losses. It is further observed that the loss has increased eight fold in 2010-11 and tenfold in 2011-12 when compared to the loss for financial year 2009-10.
- 2.10. The company last showed an operating profit for the financial year 2009-10.
- 2.11. It is observed that BBIL was listed on BSE and NSE on December 11, 2006. The Red Herring Prospectus (RHP) and Prospectus dated November 24, 2006 (hereinafter collectively referred to as 'the prospectus') of BBIL were perused. Further, BBIL had issued 87,75,000 equity shares of ₹10/- each at a price of ₹105/- per equity share, resulting into aggregate issue size of ₹ 92.14 crores through 100% book building.
- 2.12. Further, the means of Finance is observed as under-

Sr. No.	Particulars	Amount (in ₹ Crore)
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1	Net Proceeds of the Issue	82.218
2	Pre-IPO Placement	12.005
3	Internal Accruals	40.863
Total		135.086

2.13. The fund requirement and the year wise schedule of deployment of funds as mentioned in the Prospectus is as follows:

Sl. No	Particulars	For the year ending March 31, Amount (in ₹ Crore)			
		2007	2008	2009	Total
1	Setting up and expansion of manufacturing facilities in India	19.86	51.63	-	71.48
2	Replenishing the internal accruals of the company used for purchase of factory land located at Pune	0.37	-	-	0.37
3	Purchase of existing office premises presently on lease and license	4	-	-	4
4	Capital expenditure for setting up of new regional sales office as per the plans	2.5	5	2.5	10
5	Repayment of existing long term debts	19.24	-	-	19.24
6	Augmentation of long term working capital	-	10	20	30
	Total	45.96	66.63	22.5	135.09

2.14. It is further observed that BBIL availed double-finance through IPO and also through Term loan, citing the same objects to the issue that were cited in the draft offer document to the IPO. The following table provides details of the same:

Fund raised from IPO & term loan for same projects:

S.N.	Description	IPO (2006)	Loan (2007-08)
		(Source : Prospectus) (₹ cr.)	(Source: Indian Bank) (₹ cr.)
1	Setting up and expansion of manufacturing facilities in India		

	a.Setting up of new manufacturing facilities in south India	45.4	26.68
	b. Expansion of existing manufacturing facility at Pune	26.07	6.12
	Total	71.48	32.8
2	Setting up of new regional sales offices as per the plans	10	5.46

2.15. From the above, it is alleged that the company has shown same purpose for raising funds through the IPO process as well as for availing loans from to the concerned bank. The company, on page 20 of the Prospectus, has disclosed as under:

"In case of any variation in the actual utilisation of funds earmarked for the above activities, increased fund deployment for a particular activity will be met from our internal accruals."

2.16. It is also further disclosed as under:

"The objects of the issue are proposed to be financed entirely through the proceeds of the issue less the issue expenses and including proceeds of pre-IPO placement. The shortfall shall be financed through internal accruals"

2.17. The following is also mentioned in the annual reports of the company:

2.18. Projections and utilisation of issue proceeds:

Actual Deployment of Fund (As per annual reports 2006-07 to 2008-09)					
Sl. No.	Particulars	Proposed fund deployment during financial year 2006-07 to 2008-08	Deployment during Financial Year (Accumulative)		
			2006-07	2007-08	2008-09
1	Setting up and expansion of manufacturing facilities in India	71.482	8.017	19.903	36.176
2	Replenishing the internal accruals of the company used for purchase of factory land located at Pune	0.368	0.368	0.368	0.368
3	Purchase of existing office premises presently on lease and license	4	4.213	4.213	4
4	Capital expenditure for setting up of new regional sales office as per the plans	10		0.321	0.447
5	Repayment of existing long term debts	19.236	19.236	19.236	19.236

6	Augmentation of long term working capital	30	30	30	30
	Total	135.09	61.834	74.04	90.2278

2.19. From the Annual Reports, it is observed that the money utilised in setting up the plant is within the estimates mentioned in the Prospectus. Thus, the need to raise bank finance for the same does not arise. The fact of the company raising bank finance for the objects to the issue has also not been disclosed in the Annual Report.

2.20. It is observed that Indian Bank had conducted an investigation into the sanction and conduct of the BBIL account and the following is the analysis and the gist of the report of Indian Bank's vigilance department to its Head office :

i. Availing Double finance:

BBIL managed to avail double-finance for the company's expansion projects and also convinced the consortium of banks to increase working capital limits. In addition, the company also issued unsecured NCDs for ₹100 crore to LIC Mutual Fund (LICMF).

ii. Non utilization of loan proceeds:

The company did not use the term loan proceeds to expand the manufacturing facilities as per plan outlined in its term loan application, nor were the enhanced working capital funds used properly to improve the performance of the company. The company forayed into real estate projects and diverted substantial part of loan funds into those projects. The company reported a loss in the year ended March 31, 2010 and approached the DCR cell, RBI for restructuring its debt.

The auditors, in their remarks in the financials of the company for the Financial Years 2008-09, 2009-10 and 2010-11, have also stated that the term loans availed in the earlier years have not been utilized for the purpose for which they were sanctioned.

iii. Purchase of second hand machinery:

Second-hand machinery were purchased for Bangalore plant though term loan was availed for purchase of new machineries. As per the fixed asset valuation report obtained in Sept 2009, most of the machinery for purchase of which the

company proposed to use the term loan proceeds were not purchased and the available machineries at Bangalore factory were all used-machineries. On an examination of the Annual reports of the company for the Financial Years 2007-08 and 2008-09, there does not seem to be any remark made by the company as to whether the machinery is first or second hand. The company appears to have bought second-hand machinery and assigned a realizable value of ₹ 71.97 lacs in September 2009.

iv. Non/Wrong disclosure of information in the Balance Sheet:

The NCDs of the company were subscribed by LICMF, thereby raising ₹ 100 crore in April 2008. However, while the company claims that they repaid in 2008-09, the company has shown to have repaid the same only to avail the credit again. The company ventured into real estate in 2008 and invested the aforementioned fund, by its own admission vide letter dated March 18, 2009 to Indian Bank, in quite a few properties. However, from an examination of the financial results of the company, it can be seen that the real estate properties i.e. addition to Fixed Assets (Land) during 2006-07 and later, purchased by the company, were not brought into the books of the company.

v. Winding up orders:

LICMF and Barclays Bank (not consortium members) have already obtained an order of winding up of BBIL. Another company, Ambica Cotton Mills Ltd, has also obtained a winding up order from the civil court in a suit filed against the company under Sec.138 of the Negotiable Instruments Act, 1881.

vi. Sales tax demand and fudged sales:

There is a Sales Tax demand notice for Rs. 44 Crore for the period from 2006-2010 and this indicates that the company deliberately reported higher sales to misguide the bankers and the investors including its shareholders but reported actual lower sales to the Sales-Tax authorities and paid lower sales-tax. But Sales-Tax authorities have raised supplemental demands on the basis of balance-sheet sales figures. The company has provided for the above tax demand on the basis of balance-sheet as at 31-03-2011 increasing the net loss.

vii. Write off of debts without assigning reason:

There was a provision for bad debts amounting to Rs. 25 Crore during the year ending March 31, 2010. There was further write off of bad debts amounting to Rs. 142.89 cr. in 2010-11. No details were furnished by the company as the basis on which the provision was finalized and branch's letters seeking details of debtors whose debts were written off were not responded to by the company. The company in its annual report for the year 2010-11, has mentioned that it has written off debtors worth the said amount in addition to provisions made in the previous year. They have concluded that due to such write off, the company's entire net worth has eroded. This is ostensibly to get themselves included as a sick company under the Board for Industrial and Financial Reconstruction (BIFR). However, the BIFR has rejected the company's proposal.

viii. Write off of stocks without assigning reason:

In the Balance sheet as at March 31, 2011, stocks have been written down Rs. 128.70 cr. based on the technical report by Director (Technical & Production), but the said report has not been shared with the consortium banks. It can be seen from the Annual report of the company for the Financial Year 2010-11 that the following disclosure appears:

"the management, in order to depict the factual position of the company and on the basis of the reports of the technical and production director has reduced realizable value of the finished goods at 40% of the net realizable value and raw materials, components and spares are valued at 60% of purchase price."

This is again ostensibly to get themselves included as a sick company under the BIFR. However, the BIFR has rejected the company's proposal.

It is of note that the auditors have not made any specific comment on the aforesaid writing off of stocks and debtors.

ix. Resignation of independent directors:

Quite a few independent directors resigned from the Board during 2008-09 and 2009-10. Some of them resigned within six months of their appointment. Both the statutory auditors of the company also resigned one after the other in 2009-10 and

2010-11. These stand testimony to the steady deterioration evidenced in the affairs of the company.

2.21. Indian Bank has, in its report, classified the loan account of Noticee No. 1 as 'fraud' for the following reasons:

- a. The company has fudged its balance sheet figures in collusion with its auditors. The inconsistencies noticed in the monthly operational data submitted by the company corroborate the fudging indulged in by the company.
- b. The company availed double-finance for its project at Bangalore and Pune
- c. The company though availed 80% of term loan sanctioned, did not implement even 20% of its expansion project
- d. The company diverted substantial part of loan funds to purposes which were not approved by lenders.
- e. There is a strong possibility that the company inflated its sales, book debts figures to mislead the bankers. Sales-tax demand of Rs. 44 cr served on the company for the period 2005-10 by Maharashtra Sales Tax authorities indicates that the company earlier reported lower sales and accordingly paid lower sales tax and sales tax authorities have raised a supplemental demand on the basis of sales reported in balance-sheet of the company during the period from 2005-10.
- f. Real estate assets created by diversion of loan funds were not brought into the books of the company.
- g. Company has declined to give the full details of its debtors (it has refused to cooperate for a special investigative audit commissioned by the lending consortium) and it is a strong possibility that its book debts are not backed by genuine commercial transactions and exist in its books only to avail finance from the lending banks.

2.22. The statements of certain key personnel of BBIL and others, as mentioned below, were recorded by SEBI.

- a. Shri Akhilesh Soni, former Company Secretary (joined in August 2007)

- b. Shri David Kunder, former CFO (joined in 1999)
- c. Shri Jayant Vasantryao Kolapkar (Auditor)
- d. Shri Shashank Divakar Patki (Auditor)
- e. Shri Manoj B Nair, owner of N R Distributors Private Limited
- f. Shri Raju Nair, owner of Nairs Distributors Private Limited
- g. Shri Purushottam Rajaram Moghe, owner of Dhanashree Enterprises

2.23. During investigation by SEBI, it was *inter alia* observed that Mr. Nitin Sontakke & others have used following entities to show fictitious purchase and sales transactions:

- a. Nairs Distributors Private Limited
- b. N.R. Distributors Private Limited
- c. M/s Dhanashree Enterprises
- d. Laukik Paper Industries Private Limited
- e. Sailab Marketing Services Private Limited
- f. Swapnil Distributors Private Limited
- g. JPK Trading (I) Private Limited
- h. Ostwal Trading Co. Private Limited
- i. New Planet Trading Co. Private Limited
- j. Capetown Mercantile Private Limited
- k. Faststone Trading Co. Private Limited
- l. Riddhi Siddhi Multi trade private limited
- m. Natasha Enterprises
- n. Mohit International
- o. Kush International

2.24. Out of the above, statements were recorded of persons in control of entities mentioned at (a), (b) and (c) above. In their statements, the persons have *inter-alia* stated that the entities mentioned at (a) to (o) above were directly or indirectly controlled by Mr. Nitin Sontakke & others.

2.25. On Analysis of bank statements, Ledger accounts and statement of recordings of some of the controlled entities, the following was allegedly ascertained regarding the entities-

2.26. Nairs Distributors Private Limited

- i. Mr. Nitin Sontakke & others used Nairs Distributors Private Limited to allegedly show fake purchase for BBIL & diverting the funds. This entity was shown as creditor in the books of BBIL. It is observed that Shri Jayant Vasantrao Kolapkar, auditor of BBIL, was also the auditor of this company.
- ii. The following table indicates the alleged fake purchases done by BBIL from this entity over the years.

Fake purchase(in crores) by BBIL during Financial Year					
2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
1.10	43.62	97.97	14.21	--	6.12

- iii. It is alleged that Mr. Nitin Sontakke and others used to submit the pre-assigned invoices, pre-signed delivery challans and pre-signed letterheads to the entity banks for discounting the bills. After the credit of the payment against Letter of Credit (LC) facility sanctioned to BBIL, Mr. Nitin Sontakke and others used to withdraw the amounts in the cash through pre-signed cheques.

2.27. M/s Dhanashree Enterprises

- i. Mr. Nitin Sontakke & others used this entity to show fake purchase for BBIL & diverting the funds. This entity was shown as creditor in the books of BBIL. It may be noted that Sh. Jayant Vasantrao Kolapkar was auditor of the firm.
- ii. The following table indicates the fake purchases done by BBIL from this entity over the years (Based on statements recorded).

Fake purchase(in crores) by BBIL during Financial Year					
2004-05	2005-06	2006-07	2007-8	2008-09	2009-10
21.71	66.94	32.75	--	--	--

- iii. Mr. Nitin Sontakke and others used to submit the pre-assigned invoices, pre-signed delivery challans and pre-signed letterheads to the entity banks for discounting the bills. After the credit of the payment against LC facility sanctioned to BBIL, Mr. Nitin Sontakke and others used to withdraw the amounts in the cash through pre-signed cheques.

2.28. N.R. Distributors Private Limited

- i. Mr. Nitin Sontakke & others used this entity to inflate the sales of BBIL & diverting the funds. This entity was shown as debtor in the books of BBIL. It may be noted that Sh. Jayant Vasantrao Kolapkar was auditor of the firm.
- ii. The following table indicates the fake sales from BBIL by this entity over the years.

Fake Sales (in crores) from BBIL during Financial Year				
2004-05	2005-06	2006-07	2007-8	2008-09
28.27	41.42	127.66	31.97	--

- iii. For making the payment for these sales, the amount was arranged from other controlled entities. Then the money were transferred to BBIL.

2.29. Similar transactions can also be seen in the Chargesheet filed by CBI.

2.30. The modus operandi of such transactions is given below:

- a. BBIL opens a facility for letter of credit with Banks.
- b. Fake purchases are recorded from the controlled entities (as having sold to BBIL)
- c. Based on the amounts recorded as purchases(which are fictitious) to the controlled entities, BBIL, either directly or by discounting a letter of credit, transfers money to the bank accounts of these controlled entities.
- d. Since Mr. Nitin Sontakke and Shri David Kunder can operate the bank account of the controlled entities, he:
 - Withdraws some part/all of the money directly in the cash from the accounts and
 - Transfers the remaining money in the bank account to another controlled entity.

- Makes the other controlled entity transfer such remaining money to BBIL, which shows it as sales revenue.

2.31. The whole modus operandi allegedly was to defraud the bank of the money raised through working capital loans, letters of credit and cash credits.

2.32. It is alleged that the fraud was perpetrated from Financial Year 2004-05 to Financial Year 2009-10. Based on these fake transactions, BBIL has manipulated its financial statements, showing a more than healthy picture of its profit and loss account and balance sheet.

2.33. Recourse is taken to the CBI Chargesheet, to portray the extent of manipulation in the financial statements of BBIL, for the following reasons -

- The CBI has collected all original documents from the company;
- The CMD of the company, Mr.Nitin Sontakke has not co-operated with the investigation;
- There is no filing of balance sheet or profit and loss account after the Financial Year 2011-12;
- The company is not operating since the past few years;
- Many of the persons associated with the company are not contactable and
- Annual reports of the company are not available for the past five years,

2.34. Accordingly, the following tables and Statement of records have been taken from the CBI Chargesheet to provide a comparison of the actual sales/purchases with recorded sales and purchases.

Sales and Purchase Data as per CBI documents

Description	Year ended March ,31 (in Millions)							
	As per FS	Actual	As per FS	Actual	As per FS	Actual	As per FS	Actual
	2004-05	2004-05	2005-06	2005-06	2006-07	2006-07	2007-08	2007-08
Domestic sales	328.24	284.44	393.04	349.11	448.49	133.25	449.68	419.46
Purchases	330.61	76.16	343.83	31.89	450.59	27.69	408.32	362.54

*FS= Financial statements

- 2.35. It is alleged that based on these manipulated statements, BBIL got listed on stock exchange in 2006. Further in Financial Year 2007-08 and 2008-09, BBIL availed finances for the projects for which it has already raised the money from public issue. Based on these manipulated annual statements, it got good credit rating from CARE Ratings Limited (CARE). Such acts cause serious prejudice to integrity of the securities market. The actual financial results remained within knowledge and possession of the Mr. Nitin Sontakke but the false and misleading financial results were published.
- 2.36. It is observed that on July 16, 2014, the firm's Managing Director Shri Nitin Sontakke and Financial Director Shri David Kunder, who were arrested on July 16, were remanded in judicial custody till August 2 on the basis of a complaint from the CBI's Economic Offences Wing for allegedly duping Indian Bank, Pune, to the tune of Rs. 74 crore.
- 2.37. It is further observed that the auditors, in their remarks in the financials of the company for the Financial Years 2008-09, 2009-10 and 2010-11, have stated that the term loans availed in the earlier years have not been utilized for the purpose for which they were sanctioned.
- 2.38. It is observed that summons were issued to Shri Nitin Sontakke. The following table provides the details of the summons and non-compliance:

Date of SEBI letter	Date of deposition	Result
September 30, 2016	October 7, 2016	Did not appear
October 13, 2016	October 21, 2016	Did not appear
December 30, 2016	January 5, 2017	Did not appear
January 09, 2017	January 18, 2017	Did not appear
January 20, 2017	February 3, 2017	Did not appear
January 27, 2017	February 15, 2017	Did not appear

- 2.39. It is further observed that in the letter dated January 27, 2017, SEBI had intimated Mr. Sontakke that this would be the last opportunity afforded to him and in case of non-compliance, SEBI would proceed on the basis of documents available on record, including action for non-compliance. But, he failed to depose each time citing one or

other reason. Even though he was afforded sufficient opportunity to depose, he chose not to appear thereby not complying with the SEBI directions and consequently, not co-operating with the investigation.

2.40. Further, the findings of the Report of the Disciplinary Committee, The Institute of Chartered Accountants of India (ICAI), is as under-

- A. Shri Jayant Vasant Rao Kolapkar, CA, one of the Auditors (“Respondent”) had issued a certificate on June 04, 2009 certifying that M/s Blue Bird (India) Ltd has incurred capital expenditure for a sum of Rs. 90.49 Crore as on March 31, 2009. However, on cross verification of the above figures with the audited balance sheet of the company for Financial Year 2008-09, it is observed that the above certified figures do not match with the figures appearing in Scheduled V of the balance sheet. Shri Jayant Vasant Rao Kolapkar, in his defence, submitted that the company while finalising the accounts at March 31, 2009, had taken cognizance of cancellation of work orders and receiving back of the cheques given as advance. This is the cause of the difference between the amount shown in the certificate and Audited balance sheet for Financial Year 2008-09.
- B. In the matter, the committee opined that the Respondent had wrongly included the amount of advance as expenditure incurred on Plant & Machinery without verifying details of encashment of cheques. The Respondent was required to show the advance separately in the certificate so as to enable its user to take note of the same for a logical decision. Further being aware of cancellation of cheques, the Respondent should have included a reference of the same in his audit report. Hence the committee observed that the Respondent did not exercise due diligence while certifying certificate in respect of capital expenditure by including a subjective disclosure and did not take care to adequately qualify the same in the audit report. The committee observed the Respondent is guilty of professional misconduct within the meaning of Clause (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as amended from time to time.

- 2.41. It is further observed that Shri Jayant Vasant Rao Kolpkar, CA, Auditor of BBIL had been the statutory auditor for controlled entities viz. N.R Distributors Private Limited, Sailab Marketing Services Private Limited etc. during relevant period. Therefore, it is clear that Shri Nitin Sontakke and Shri David Kunder, with the help of Shri Jayant Vasant Rao Kolpkar, has committed a white collar financial fraud with pre-meditated and well thought of plan and deliberate design for personal gains and to the detriment of the company and investors in its securities. Such acts cause serious prejudice to integrity of the securities market. The actual financial results remained within knowledge and possession of the Shri Nitin Sontakke, Shri David Kunder and Shri Jayant Vasant Rao Kolpkar, but the false and misleading financial results were published.
- 2.42. It is observed that there was a provision for bad debts amounting to Rs. 25 Crore during the year ending March 31, 2010. There was further write off of bad debts amounting to Rs. 142.89 Crore in 2010-11. No details were furnished by the company as the basis on which the provision was finalized and branch's letters seeking details of debtors whose debts were written off, were not responded to by the company. The company in its annual report for the year 2010-11, has mentioned that it has written off debtors worth the said amount in addition to provisions made in the previous year. They have concluded that due to such write off, the company's entire net worth has eroded. This is allegedly to get themselves included as a sick company under the BIFR. However, the BIFR has rejected the company's proposal.
- 2.43. It is observed that in the Balance sheet as at March 31, 2011, stocks have been written down by Rs. 128.70 cr. Based on the technical report by Director (Technical & Production) but the report has not been shared with the consortium banks. It can be seen from the Annual report of the company for the Financial Year 2010-11 that the following disclosure appears:

"the management, in order to depict the factual position of the company and on the basis of the reports of the technical and production director has reduced realizable value of the finished goods at 40% of the net realizable

value and raw materials, components and spares are valued at 60% of purchase price."

- 2.44. This is again allegedly to get themselves included as a sick company under the BIFR. However, the BIFR has rejected the company's proposal. It is noteworthy that the auditors have not made any specific comment on the aforesaid writing off of stocks and debtors.
- 2.45. It is observed that there is a Sales Tax demand notice for Rs. 44 crores for the period from 2006-2010 and this indicates that the company deliberately reported higher sales to misguide the bankers and the investors including its shareholders but reported actual lower sales to the Sales-Tax authorities and paid lower sales-tax. But Sales-Tax authorities have raised supplemental demands on the basis of balance-sheet sales figures. The company has provided for the above tax demand on the basis of balance-sheet as at 31-03-2011 thereby increasing the net loss.
- 2.46. Further, it is seen that the company availed double-finance for its projects at Bangalore and Pune, as alleged by Indian Bank in its findings, but the auditors had not commented on the same.
- 2.47. Attention is drawn to the fact that in the year 2005-06, there was a phenomenal increase in the turnover of the Company. The issue was raised by the Merchant Bankers. The Company explained the reasons for the increase in business volume. In support of their explanations, the Company had produced a Market Survey report by AC Nielsen ORG Marg who had substantiated the Company's claims of the business share. The auditors, in their statements have mentioned that till 2007-08, they did not have any suspicion / doubt about the genuineness of the transactions. Hence, placing reliance on a market survey instead of verifying it first-hand, being the auditors of the company having access to records, raises doubts on the genuineness of the audit.
- 2.48. It is alleged that the executive directors have colluded in ensuring that the company's financials are misstated, thereby defrauding investors. Further, Noticee No. 2 to 9, as such were responsible for the affairs of the company. Noticee No. 10 and 11, as such

were responsible for negligence in certification of accounts of listed company and lack of professional skepticism in audit.

- 2.49. In view of the above, it is alleged that the Noticees have engaged in dubious accounting practices to defraud the investors by manipulating the financial statements, thereby violating provisions of Section 12A (a),(b) &(c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act, 1992) and Regulations 3 (b), (c) and (d) and Regulations 4(1) and 4(2)(a),(e),(f),(k), and (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the PFUTP Regulations, 2003), Clauses 41(I)(a), 41(I)(h), 41(II)(a), 41(IV)(g), 41(IV)(h), 49(IV)(B), 49(IV)(F)(ii), 49(V) and 50 of the Listing Agreement.

3. The following annexures were provided with the SCN:

Annexure No.	Particulars
1.	Letter dated February 3, 2015 of Central Bureau of Investigation (CBI)
2.	Annual reports for FY 2004-05 to FY 2010-11
3.	Red Hearing Prospectus and Prospectus dated November 24, 2006
4.	Investigation Report of Indian Bank
5.	Company's letter dated March 18,2009 to Indian Bank
6.	Statements of the following individuals- a. Sh. Akhilesh Soni, former Company Secretary (joined in August 2007) b. Sh. David Kunder, former CFO (joined in 1999) c. Shri Jayant Vasant Rao Kolapkar (Auditor) d. Shri Shashank Divakar Patki (Auditor) e. Shri Manoj B Nair, owner of N R Distributors Private Limited f. Shri Raju Nair, owner of Nairs Distributors Private Limited g. Shri Purushottam Rajaram Moghe, owner of Dhanashree Enterprises
7.	Summary of Statements recorded by SEBI
8.	Bank Statements of Controlled entities
9.	Ledger Accounts of entities
10.	CBI Charge Sheet and documents
11.	Provisions of law alleged to have been violated by the Noticees

4. The SCN was served on all the Noticees by Speed Post Acknowledgement due except for Noticee no.4, with respect to whom the SCN was affixed at the last known address.

A reply dated December 31, 2018, was received from Noticee no.11. Noticee no.10 submitted reply dated January 13, 2019, and Noticee no. 1 and 6 submitted common reply dated June 28, 2019. The said reply informed that Noticee nos. 3 and 5 were deceased.

5. Vide a letter dated December 31, 2018, Noticee no.11 submitted as follows:
- i. The matters referred to by Indian Bank in the said complaint were in fact, based on the adverse comments of the Noticee in the published Audit Report of the Company around three years earlier to the said complaint. It is pertinent to note that in the CBI charge-sheet, the Noticee has never been accused in any of the matter since it was not involved.
 - ii. Audit is carried out with reference to the books of account and all the relevant documents produced for the auditor's verification. The said statement is also made in the Independent's Auditor Report to the members, that it is verification of books of account and other records to form an opinion and cannot be an assurance of non-existence of fraud.
 - iii. In the documents submitted to us there was nothing to arouse, *prima facie*, suspicion.
 - iv. Purchase bills were supported by Goods Received Note (GRN) and entries in the stores ledger. These documents are the basic evidence of the receipt of the material by the Company. The purchase bills were under Letter of Credit (L/C) issued by the bankers of the Company, and they were stamped by the banks. It may please be noted that the Company had been availing LC facility from the consortium of banks continuously for quite a long time. It is the normal banking practice prevalent in India that the genuineness of the suppliers is vetted before sanction of such L/C limits. Further, while issuing and satisfying the claims of L/C payment, receipt of materials confirmed by the banks from the documents produced by the Company. In the given case, it goes without saying that the

- banks must have verified the genuineness of bills and more particularly of the suppliers.
- v. It may not be out of place to mention that audit is usually a post facto exercise whereas discounting and acceptance of LC is a continuous and concurrent process earned out as and when purchases under LC is carried out.
 - vi. Further, in case of sales, bills were raised on customers and delivery challans were also prepared. There were certain cash sales which were supported by cash bills. Payment was also being received in the customers' accounts.
 - vii. During the course of audit, we had verified the purchases with reference to the bills and supporting documents and payment against LC and sales with reference to sale bills and supporting documents and realization thereof. Since, all the documents, prima facie, were prepared in normal course of business and after examination thereof, we did not have any suspicion thereabout.
 - viii. Further, it may be noted that debtors, creditors and stocks arise in view of the recording of purchases and sales, rather they are the end-results of recording of purchases and sales. If purchases and sales are fictitious, naturally the debtors, creditors and stocks would also be fictitious. There had been periodical stock audits carried out by independent Chartered Accountants appointed by Banks as well as there had been periodical joint inspections by consortium of Banks, every year. In any of these reports, it is worthwhile to note that any of these external agencies have not raised any issue alarming the stated irregularities. As such, even there were no warning signals from any other external agencies including banks which would have warranted auditors' suspicion about the transactions
 - ix. As understood, IPO proceeds, reportedly were treated as own margin for availing term loans. The proposal for term loans was prepared by the company management on its own and was submitted to the consortium of banks. In fact Indian Bank was a member of consortium and incidentally the 'monitoring agency to the IPO'. If at all, it was the double finance (as now alleged by Indian

- Bank), the fact could have been better understood by Indian Bank itself while not only appraising but at the time of disbursement of term loan also.
- x. As far as 2007-08 is concerned the banks disbursed major term loans by credit to cash credit account of the company. In our opinion, the banks could have disbursed the term loans by direct payment to third parties (supplying the assets/ rendering the services as envisaged in their sanction letters as is the normal accepted banking practice. The Auditors have mentioned in para 16 of Annexure to their Audit Report for the said year that *“Since the Company availed the Term Loans in the last Quarter of the year, as per information and explanations given to us, it was in the process of utilization thereof as on the date of Balance Sheet. Application towards the projected uses till the date of Balance Sheet has been out of the Term Loans.”*
 - xi. The Auditors have mentioned in their Audit Report for FY 2008-09 and 2009-10 that *“Term Loans availed have not been fully utilized for the purpose for which they were sanctioned.”* This was a blatant qualification attracting the eyes of any reader of the report. The Bank could have taken immediate action then itself.
 - xii. Regarding non-reporting of real estate assets, assets purchased by making payments through company bank accounts were shown in fixed Assets wherever they were for the own use by the company. Company had started construction activity by following appropriate procedures and by obtaining various sanctions. Properties purchased for the said construction activity, by making payments through company bank accounts, were rightly shown as purchases of that division and carried to Balance-sheet as Stock In trade and/or WIP of construction activity. This is the standard accounting procedure followed in respect of any construction activity. This can be verified from the audited final accounts of the Company. As such, it is incorrect to state that the books of account had been misstated.
 - xiii. In FY 2009-10 stock audit was carried out by independent firm of Chartered Accountants appointed by consortium of Banks. Stock audit report stating the

value of stocks and debtors was shown to the Noticee by the Company. Further, minutes of the consortium of banks were shown to the Noticee wherein the then manager of Indian Bank had commented as to the genuineness of debtors. However, since the amounts were outstanding for long the Noticee thought that a portion of debtors was doubtful which could not be quantified. In view of this, as a prudent accounting and auditing practice, an ad-hoc provision of Rs. 25 crores was made in the accounts giving disclosures of the said fact. Provision for doubtful debts is altogether distinct from actual write off. The provision for doubtful debts is a prudent provision to take care of future events of some of the debts becoming bad in future. As far as the write off of debtors in FY 2010-11 is concerned, the Noticee is unable to make any comment thereon since they were not the auditors of the Company for the said year.

- xiv. In 2009-10, the Noticee had stated that stock has been taken as certified by stock auditors. It is a usual procedure to rely upon the work of other external agencies and in fact the disclosure as to the effect was also made. Actual write off was in 2010-11 when the Noticee was not the auditors and as such are unable to comment on the said write off.
- xv. The Noticee had already qualified its audit reports for three years about the non-utilisation of the term loans for the purpose for which they were sanctioned.
- xvi. As mentioned herein above, the due diligence was carried out by M/s Amarchand Mangaldas, a leading firm of attorneys. The Merchant Bankers, DSP- Meryl Lynch also conducted a detailed study of the proposal of the Company for its IPO. After all these formalities, the SEBI allowed the company to get listed on stock exchange. SEBI must have followed their own stringent procedures before allowing the company to get listed. As such, it may not be correct to say that the listing was based only on the purported manipulated statements.
- xvii. If we look at the process of credit rating agencies, it will be understood that a due diligence is carried out, the bank accounts, transactions and annual accounts are verified and ratings are given based upon various parameters.

From the paragraph in the said letter, it seems that the ratings were carried out only on the basis of annual statements (purportedly manipulated). This statement is undermining the process of credit rating of all the licensed credit rating agencies in India. If such is the case, whether action has also been taken against CARE, since mere reliance on annual accounts is not a case of good governance.

xviii. The Noticee was never a part of any collusion and was never in cahoots with the company's management. The documents and records along with the information and explanations supported by inquiries and external confirmations did not give rise to any alerts. Alert reports or reports citing frauds were not given by bankers, stock debtor auditors and other external agencies (market surveys, credit rating agencies, legal due diligence authorities etc.) at any time during the Noticee's audit tenure.

6. Vide his reply dated February 13, 2019, Noticee no. 10 has made the following submissions related to alleged manipulation of financial statements of BBIL:

- i. JVK has been the auditor of BBIL only till the accounting period 2008-09. From the year 2009-10 onwards there were other audit firms employed and JVK cannot offer explanations in respect of issues raised for period beyond 2008-09.
- ii. Being Chartered Accountant in practice, he is subject to the jurisdiction of Institute of Chartered Accountants of India (hereinafter referred to as "ICAI") for any alleged act or omission in the performance of the audit/certification and not the jurisdiction of SEBI. ICAI have already passed an order in respect of certain alleged certification of few items of capital expenditure and has only reprimanded him. A charge sheet has been issued to JVK in a separate Pune Court proceeding by CBI and the matter is pending in the Court. Proceedings by SEBI would not only mean multiplicity of proceedings by the different authorities for certain actions or omissions in the exercise of the profession and may be a proceeding involving again the same offence.

- iii. SEBI have exceeded the grounds given by the CBI vide their letter dated 03.02.2015. The letter from CBI only included the aspect of fudged data of sales and purchases in the balance sheet for 2004-05 and 2005-06 for the purpose of IPO. In respect of other extra grounds raised now by SEBI, separate proceedings in the court and with ICAI have been already initiated.
- iv. JVK as an auditor is not connected with the fund raising activity by BBIL.
- v. An audit is altogether different than an investigation. Auditor should not be made liable for tracking down ingenious and carefully laid schemes of fraud when there is nothing to arouse their suspicion and when those frauds are perpetrated by the trained servants of the company.
- vi. Even the Indian Bank has said in their report that the diversion of funds if any would be found out only after carrying out an investigation by a professional forensic auditor.
- vii. JVK as auditors were not aware about any wrongful activity if any, undertaken by the management of the BBIL. Also, JVK have not consented to the undertaking of any wrongful activity like fake sales or purchases. There is no evidence to show that JVK as auditors have any mens rea or knowledge of the alleged fraud, if any and the auditors had not connived in the commission of the alleged fraud, if any.
- viii. There are statements from various parties that the wrongful actions about fake bills, purchases, LC discounting etc. were perpetrated by the CMD and CFO i.e. the senior management of BBIL itself.
- ix. No evidence is available to prove the involvement of JVK as auditors in the falsification or fabrication the accounts, if any. There is no involvement of the auditors in the alleged fraud, if any in the ways such as intention, knowledge, complicity, mens rea, connivance, collusion etc. JVK was also not likely to benefit from any wrongful disclosure. There were also no intentional or willful omission or lapses, by the auditors and hence SEBI cannot issue any -directions as contemplated

- x. The auditors while certifying the Financial Statements of BBIL have properly discharged the duties and responsibilities cast upon them as auditors. The auditors had taken into consideration the applicable laws and the relevant accounting and auditing and assurance standards of ICAI while certifying the Financial statements. They had exercised all due care and diligence as per the prevalent norms and have not been negligent at all. The auditors have not certified any future projections and have certified only the actual results.
- xi. The auditors have in fact given the qualifications in their audit report for 2008-09 about non- utilization of the full amount of term loans. The term loans were disbursed by banks based on projected capital expenditure and were not based on the certificates from the auditors which were only showing the end use.
- xii. The sales tax demand was in 2010-11 when JVK was not the auditor. Real estate activities have been fully properly disclosed as a separate segment in the financial statements.
- xiii. JVK have explained that out of the 15 entities claimed to have been involved in the alleged fake purchases and sales, he has been the auditor of only two entities and not the others. Also, these parties have stated in their statements that all the documents like invoices, LRs, delivery challans and bank transfers were made available in support of the transactions and further that the banks also had discounted the same under the letters of credit after due verification thereof. They have confirmed that the *modus operandi* was designed and implemented by the CMD and the CFO of BBIL. In case all the transactions of sales and purchases with all these parties are ignored as claimed by SEBI in item no.28 of the notice it will show a ridiculous position of reflecting much higher gross profit than what is presently shown, and therefore, it will indicate that there was no necessity of such transactions to be included in the books and hence, consequently no manipulation or collusion. There have not been any cash transaction by BBIL with two entities audited by JVK. Similarly, there are a few major figures wrongly indicated by SEBI.

- xiv. The fund-raising activity normally involves the pre-feasibility study of the project which covers the technical analysis, market analysis, estimating the costs of the project, deciding the means of finances like promoters share, IPO, Term Loan etc. and preparation of projected financial statements for the future periods. Further the lending institution does the complete appraisal of the project by studying the reports of independent professionals who have undertaken abovesaid activities and given reports.
- xv. Normally an auditor's certificate is obtained as an End Use Certificate where he certifies the actual cost incurred and not the projections. Such an End Use Certificate cannot be the basis for loan disbursement which is supposed to be based on verification of bills and records by the lending institution before disbursement.
- xvi. The basic responsibility of maintenance of proper books of accounts rests with company management. The management is also expected to design and implement appropriate Internal Control Systems in respect of operations including receipts, issues and stocks of goods and funds. The statutory auditors do test check the transactions by selecting few samples and judge whether the internal controls are functioning. The reporting of the statutory auditors therefore talks about the true and fair position of the profits and assets. An audit is not expected to be a full-fledged investigation into the affairs of the company. Even though the accounts are audited by statutory auditors, it does not indicate that there are no identification of all types of frauds if any perpetrated by the management or their employees or their outside associates. In the instant case the auditors' report states all the above facts and there were no findings of any abnormal transactions arousing any suspicion of fraud.
- xvii. It is wrong to say that BBIL obtained double finance through IPO and also through Term Loans citing the same objects as IPO. The need for the additional funds through term loans has been established by BBIL. JVK is not concerned with credit facilities granted by the banks or the NCDs by LIC MF for the purposes of working capital needs of BBIL. The IPO shows fund requirement for

Pune for Land as well as plant & machinery while Term Loan shown the fund requirement for Pune project for only additional plant and machinery and not land. Similarly, the IPO shows the fund requirement for expansion in South India to tap the market in south. While in term loan a specific project for Bangalore unit including all costs has been considered. The projected assets requirements considered by the Indian Bank in the assessed proposal shows the total Plant & Machinery of Rs.195 crores as on March 2009 which takes into account both the assets formation values from the IPO as well as the term loan. Thus, there is no requirement for double finance in respect of the plan given in the term loan proposal which has been assessed by the Indian bank and others. Hence it would be out of place to presume any manipulative/deceptive artifice to defraud anyone.

- xviii. During 2008 proposal, the projected assets as of March 2009 were considered at 193.40 and the loans were considered at 97.02 crores. During the proposal for working capital limit during June 2009, the BBIL has considered the asset level to be 177.43 crores but loans were considered at 79.84 crores only.
- xix. As explained earlier above the company's plan (BBIL) for expenditure on expansion project and assessed by the bank in the proposal was sufficient to take care of both funds from IPO and the term loan. It is to be noted that the entire loans of Rs.83.58 crores as on March 2009 were actually disbursed before 31st March 2008 itself . Indian Bank and Federal Bank have subsequently taken over the share from ICICI Bank.
- xx. NCDs from LIC MF were issued for the purpose of Working Capital requirements. BBIL had started real estate property business by following the proper legal requirements and therefore, the funds from NCD from LIC MF were also used for that activity of acquiring the real estate properties as stock in trade. JVK has given separately the details of expenditure incurred on the real estate properties. The auditors have not certified the figures in the CMA format or other documents if any submitted by BBIL to the banks for granting the Working Capital facilities.

- xxi. As far as the allegation that the Real estate properties during 2006-07,2007-08,2008-09 and 2010-11 purchased and not brought into books of the company are concerned, JVK has to point out that the books of accounts have not been misstated. JVK has enclosed a separate schedule showing that all the expenditure on account of real estate assets has been properly accounted for in the books of accounts and in the annual accounts. The purchase of real estate properties has been accounted for either in the fixed assets or partly in the inventories depending upon their use either as fixed assets or as stock in trade. The acquisition of real estate properties amounted to Rs.98.54 crores during the years 2006-07 to 2008-09. There is no documentary evidence to prove that any real estate assets purchased but have not been accounted for in the books of accounts.
- xxii. The CFO confirms the sales had increased due to opening of many new branch offices and that the financial statements reported in RHP for IPO were true and correct.
- xxiii. It was also revealed that the transactions were made on the basis of Letters of Credit transactions with Banks. The payments were actually made to the concerned entities through cheques/ RTGS and as such, the documents could not be doubted. It was impossible from the records to identify the fake transactions, if any, from the genuine transactions.
- xxiv. The relevant extract of the final order of ICAI only giving a reprimand to the auditor is given below. They have categorically held that the disbursement of loan was not based on the certificate of auditors.

"Keeping in view the facts and circumstances of the case as aforesaid, the material on record and also the written and oral submissions of the Respondent, the Committee was of the view that although looking to the facts of the case, the misconduct on the part of the Respondent has been established, yet taking into consideration the fact that the loan was not sanctioned based on information given in the certificates and the difference has arisen only due to non-encashment of cheque on

balance sheet date, the professional misconduct on the part of the Respondent does not qualify for a severe sentence and ends of justice shall be met if a lighter punishment is awarded to the Respondent. Accordingly, this Committee orders that the Respondent i.e. C.A. Jayant Vasantrao Kolapkar (M.No.044878) be reprimanded."

- xxv. The various disputed parties in question were not related parties either under the Companies Act or AS 18.
- xxvi. JVK categorically confirms that he was the auditors of N.R. Distributors Pvt Ltd and Sailab Marketing Services Private Limited. He has not been the auditor of any of the other 13 concerns mentioned in item no.19 of your notice.
- xxvii. N R Distributors Pvt Ltd.

The sales were supported by proper invoices, delivery challans etc. and money was also received by bank transfers. Hence the auditors had no suspicion about such transactions. The sales could not be doubted because the due VAT taxes were also paid by N.R. Distributors. There were no transactions in cash with BBIL of Rs.132.03 Crores as claimed . All these transactions are by bank transfers only. Similarly the amounts paid to Parties like Laukik paper industries Pvt Ltd, Nairs Distributors Pvt Ltd, Dhanshree Enterprises, Swamil Distributors Pvt Ltd and Sailab marketing Services Pvt Ltd were by bank transfers and had been outstanding till part of 2008-09. In 2008-09 the accounts of Dhanshree Enterprises, Nairs Distributors Pvt Ltd and Sailab marketing Services Pvt Ltd are closed fully with receipts through bank only. Other two parties namely Laukik paper industries Pvt Ltd and Swapnil Distributors Pvt Ltd had been partly cleared through receipts through bank transfers and partly were still outstanding as of March 2009. There were no purchase or sales transactions during 2006-07 to 2008-09. In fact, the amount of Rs.10.20 Crores shown against Sailab marketing Services Pvt Ltd is wrong and it is only Rs.0.10 Crores.

7. Vide reply dated June 28, 2019 the Noticee no. 2, on behalf of himself and Noticee no. 6 submitted as follows:
- 7.1. At the outset, he denied allegations, mentioned in the SCN.
 - 7.2. Noticee No. 3, Asha Padmakar Sontakke (mother) died on or about May 13, 2017 and Noticee No. 5, Mrs. Vidya Nitin Sontakke (wife) died on or about February 19, 2017. Copies of the Death Certificates were enclosed with the reply.
 - 7.3. Mr. Apoorv Nitin Sontakke being Noticee No. 6 was appointed as Marketing Director on or about April 25, 2005 and subsequently he resigned on February 01, 2007. Again he was appointed as Marketing Director on September 26, 2008 and subsequently he resigned on August 03, 2009.
 - 7.4. The present SCN is barred by the law of limitation. The contents of the SCN under reply is subject matter of the criminal proceedings and the matter is sub-judice. Accordingly, SEBI does not have jurisdiction to investigate into the present matter.
 - 7.5. On or about September 12, 2013 the CBI conducted its raid on the Company and seized several records and documents of the Company.
 - 7.6. By an Order dated June 23, 2011 the Company Blue Bird (India) Ltd was ordered to be wound up by the Hon'ble High Court in Company Petition No. 49 of 2011.
 - 7.7. The Company Blue Bird (India) Ltd. filed a prospectus dated November 24, 2006 before SEBI. The Company has disclosed all the details as per norms, rules and regulations. It was duly verified and approved by SEBI. Accordingly, Indian Bank Deccan Gymkhana Branch being the leader of the consortium of banks was appointed as the Monitoring Agency for using of funds raised to this issue. Public issue offered by the said Company was of 8,775,000 Equity shares of Rs. 10/- each and price band of Rs. 90 to Rs. 105 per share during the period November 16 -November 22, 2006. The said subscription was completely and clearly being monitored by Indian Bank at every stage. The said Indian Bank being Monitoring Agency was in complete knowledge of pay outs after duly verifying the bills, chalans, memos etc. According to the procedure, the said Indian Bank being the Monitoring Agency was under obligation and duty bound to submit half yearly report to SEBI. It is learnt that according to Indian Bank by their various letters

dated January 27, 2007, July 27, 2007, January 31, 2008, July 31, 2008 and January 31, 2009 has submitted complete detailed report of the funds raised by the Company in liquidation through IPO and further utilization of the said funds which is duly approved, verified and certified by the Indian Bank itself.

- 7.8. It is pertinent to state herein that the very same bank had initiated criminal proceedings against the Company and its Directors in spite of the fact that the entire fund movement has been controlled by them.
- 7.9. The false and frivolous grounds and/or allegation against the company in liquidation and its directors at this stage for double financing as raised in the notice under reply is therefore wholly untenable. As a matter of records, the said IPO funds collection was maintained by very same bank.
- 7.10. It is apparent that Indbank Merchant Banking Services Ltd. who is also a subsidiary of Indian Bank was appointed as a co-manager to the issue under IPO. The said Indbank Merchant Banking Services Ltd. has also charged the company for the services provided and has received the same.
- 7.11. The Company raised various loans under the caption Working Capital and Term Loan and accordingly the said Company used to file audited financial reports.
- 7.12. In the year 2011 winding up petition came to be filed in the High Court at Bombay and by an Order dated June 23, 2011 the Company was ordered to be wound up and the Official Liquidator was appointed in respect of the assets of the company in liquidation. In the meanwhile, the Company approached the banks for restructuring of the loan and accordingly Corporate Debt Restructuring Cell approved Restructuring Proposal approved by the Lenders. It is further submitted that the said Restructuring of loan account was approved by most of the banks and financial institutions in view of the company's financial condition.
- 7.13. Furthermore, in view of the liabilities exceeding the assets of the Company, the Company approached the Hon'ble BIFR on or about July 07, 2011 and filed a Scheme under Section 15 of SICA. In the meantime, Indian Bank consortium leader issued Notice under Section 13 (2) of SARFAESI Act and took further steps under Section 13 (4) of the said Act. Pursuant to the amendment to SICA under

Section 15 (1) the proceedings before BIFR stood abated. By an Order dated June 04, 2012 the Hon'ble BIFR was pleased to pass order stating that the Scheme under Section 15 (1) cannot be proceeded in view of the action taken under Section 13(2) of SARFAESI Act and hence the proceedings stands abated before BIFR and thus the reference was dismissed as not maintainable. Being aggrieved by the said Order the Company filed an appeal before the Appellate Authority being Appeal No. 150 of 2012. In the judgment order dated October 22, 2012 the Hon'ble Appellate Tribunal observed in Paragraph 8 of the said Order which state as: "we find that the Appellant has challenged the validity of the action of the Indian Bank taken under Section 13(4) of the SARFAESI Act before the DRT. Therefore, if the DRT finds the action under Section 13(4) of the SARFAESI Act as invalid, the reference of the company will stand automatically revived." Thus, the statements made in the said notice that the reference was rejected is untrue.

7.14. Based on the report of the statutory auditors and by his letter dated June 22, 2011, the Board of Director accepted the writing off of book debts and accordingly the book debts were written off. It also becomes relevant that the company has taken steps to recover their outstanding dues by filing suits before the Civil Court at Pune. The said outstanding dues as of date would be Rs. 300 crores and odd. It appears that all the suits have been dismissed by Order dated November 02, 2016 as no steps were taken by the Liquidator and thus, the suit was dismissed as "dismissed in default".

8. Vide letter dated July 08, 2019, Noticee no. 8 submitted his reply making similar submissions as Noticee no.2.

9. The Noticees were granted an opportunity of hearing on February 26, 2020. On the said date Noticee nos. 10 and 11 appeared and made submissions. An authorized Representative of the Official Liquidator of the Hon'ble High Court of Bombay appeared for Noticee no. 1 and submitted that liquidation proceedings had been initiated against Noticee no.1. Letters were received from Noticee no.2 on behalf of Noticee nos. 2, 6

and 8 seeking adjournment and attaching copies of death certificates of Noticee nos. 3 and 5 who have expired in 2017. Due to the outbreak of COVID -19 pandemic and since the postal services were not functioning due to nation-wide lockdown and the email address of the remaining Noticees were not available with SEBI, therefore the next date of hearing was granted on August 12, 2020 and the hearing notices were issued, however status of service could not be known. A further date of hearing was granted to Noticee nos. 2, 4, 6, 7, 8 and 9, on October 23, 2020. Since the hearing notices could not be delivered, for Noticee nos. 2,4,6,7, 8 and 9 the same were published in the Pune edition of the Times of India on October 09, 2020. None of the Noticees appeared for the hearing. A further opportunity of hearing was granted to these Noticees on December 18, 2020. On the date of the hearing, Mr. Nitin Sontakke (Noticee no. 2) who was also the Authorized Representative of Noticee no.6 and 8 handed over letters date December 18, 2020 stating that due to the pandemic the CBI Court in Pune was not functioning and all the papers related to the matter was in the custody of the said court and thus these Noticees were unable to file a suitable reply to the SCN. Noticee no.2 sought copies of all documents relied upon by SEBI. On the request of Noticee no. 2 copy of the SCN along with copies of the Annexure to the SCN were provided to Noticee no. 2 and he was directed to file a reply within 15 days. Noticee nos. 2, 6 and 8 were also granted an opportunity of hearing on February 05, 2021. On February 05, 2021, Noticee no. 2 who was also the Authorized Representative of Noticee no. 6 and 8 appeared before me and sought further time to file replies stating that he still did not have access to papers which were in the custody of the Pune court. A further opportunity of hearing was granted to these Noticees on March 09, 2021. On the said date, Noticee no. 6 sought adjournment citing health reasons of his father, Noticee no. 2. Noticee no. 8 also sought adjournment citing health reasons. In view of the numerous adjournments already granted in the proceedings, their requests were not acceded to and they were directed to file a further reply, if any, within ten days. These Noticees did not file any further reply.

Consideration of submissions and findings:

10. I have considered the SCN, replies received, and submissions made by the Noticees during the personal hearing granted to them. The SCN alleges the violation of the following provisions of law by the Noticees:

Relevant extract of the provisions of SEBI Act, 1992:

12A No person shall directly or indirectly-

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

Relevant extract of the provisions of PFUTP Regulations 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a)
- (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 fraudulent or an unfair trade practice in securities
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

- (a) indulging in an act which creates false or misleading appearance of trading in the securities market;
.....
- (e) any act or omission amounting to manipulation of the price of a security;
- (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
.....
- (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;
.....
- (r) planting false or misleading news which may induce sale or purchase of securities.
.....

Relevant extract of the provisions of Listing Agreement:

Clause 41. The company agrees to comply with the following provisions:

(I) Preparation and Submission of Financial Results

a. The financial results filed and published in compliance with this clause shall be prepared on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods.

h. The company shall ensure that the limited review/audit reports submitted to the stock exchanges on a quarterly/annual basis shall be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India (ICAI) and holds a valid certificate issued by the Peer Review Board of the ICAI.

II) Manner of approval and authentication of the financial results

a. The quarterly financial results submitted under sub-clause (I) shall be approved by the Board of Directors of the company or by a committee thereof, other than the audit committee.

Provided that when the quarterly financial results are approved by the Committee they shall be placed before the Board at its next meeting:

Provided further than while placing the financial results before the Board, the Chief Executive Officer and Chief Financial Officer of the company, by whatever name called, shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

IV) Other requirements as to financial results

g) All items of income and expenditure arising out of transactions of exceptional nature shall be disclosed.

h) Extraordinary items, if any, shall be disclosed in accordance with Accounting Standard 5 (AS 5 – Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies) issued by ICAI / Company (Accounting Standards) Rules, 2006, whichever is applicable.

Clause 49. Corporate Governance

The company agrees to comply with the following provisions:

IV. Disclosures

(B) Disclosure of Accounting Treatment

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

(F) Management

(ii) Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

Explanation: For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding the Board of Directors). This would also include all members of management one level below the executive directors including all functional heads.

V. CEO/CFO certification

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

(a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

(i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(ii) these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

(b) There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.

(c) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

(d) They have indicated to the auditors and the Audit committee

(i) significant changes in internal control over financial reporting during the year;

(ii) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(iii) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system over financial reporting.

Clause 50. The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time.

11. On a perusal of the SCN, I find that the main allegation against the Noticees is that BBIL has manipulated its financial statements, showing a more than healthy picture of its profit and loss account and balance sheet. SCN alleges that financials of BBIL were manipulated by entering into fake purchase and sale transactions by BBIL with the entities controlled by Noticee no. 2 i.e. MD of BBIL. It is alleged that these manipulated financial statements also appeared in its Prospectus when BBIL got listed on stock exchange in 2006. Moreover, it is also alleged that these allegedly manipulated figures also appeared in its annual financial statements which misled the common investors and that such acts cause serious prejudice to integrity of the securities market. It is also alleged that Noticee nos. 2 to 9 who were executive directors of BBIL, have colluded in ensuring that the company's financials are misstated. It has also been alleged that Noticee No. 10 and 11, who were the auditors of BBIL at the relevant times, were responsible for negligence in certification of accounts of BBIL and lack of professional skepticism in audit. As per the allegations made in the SCN, *modus operandi* adopted by the Noticees, was as under:

- (a) Fictitious purchases were recorded by BBIL from the entities whose bank accounts were controlled by Shri Nitin Sontakke and associates
- (b) Based on the amounts recorded as purchases (which are fictitious) to the entities whose bank accounts were controlled by Shri Nitin Sontakke, BBIL, either directly or by discounting a letter of credit, transferred money to the bank accounts of these entities.
- (c) Since, Mr. Nitin Sontakke and Shri David Kunder could operate the bank account of these entities, they withdrew some part/all of the money directly in the cash from the accounts and transferred the remaining money in the bank account of other entities whose bank accounts were controlled by Shri Nitin Sontakke. They also made the other entities transfer such remaining money to BBIL, which showed it as sales revenue (based on fictitious sales).

12. I further note that the SCN additionally mentions certain findings of an investigation conducted by Indian Bank which has, in its report, classified the loan account of Noticee No. 1 as 'fraud'. In this regard, the SCN refers to various details such as misutilization of loan proceeds, using loan to buy second hand machinery, *modus operandi* to defraud the bank of the money raised through working capital loans, letters of credit and cash credits etc. I also observe that Noticee nos. 9 and 10 have extensively made submission related to this issue. It is understood that the matter related to alleged fraud by Noticee no.1 in respect of bank loans taken by it, is *sub-judice* and criminal proceedings have been initiated for the same by CBI which is pending before the court in Pune and the same is not subject matter of present SCN. I also note that although the SCN narrates the findings of the Indian Bank, however it does not make any allegation related to the same. Moreover, I also note that the allegation pertaining to loan given by Indian Bank does not appear in the section which deal with investigation by SEBI. It is observed that the allegation in the SCN is that the Noticees have engaged in dubious accounting practices to defraud the investors by manipulating the financial statements.
13. I observe that during the period of investigation, Noticee no. 2 was the MD of BBIL, Noticee no. 3 was the promoter of BBIL, Noticee no. 4 was the joint MD of BBIL, Noticee no. 6 was the Director, Finance of BBIL, Noticee no. 5, 7, 8 and 9 were executive directors of BBIL and Noticee nos. 10 and 11 were auditors of BBIL. I further note that Noticee nos. 3 and 5 are deceased and therefore, the proceedings with respect to them abate.
14. Noticee nos. 2, 6 and 8 have raised an issue related to delay and the present proceedings being hit by limitation. In this regard, I note that although, IPO by BBIL was made in November, 2006, however, the alleged dubious accounting practices were carried on by BBIL up to the financial year 2010-11. SEBI became aware of such alleged misrepresentation by BBIL in February, 2015 through a letter dated February 03, 2015 received from CBI whereafter SEBI initiated its investigation. I note that Noticee no. 6 is the son of Noticee no. 2 and during the present proceedings Noticee no. 2 has

represented Noticee no. 8 also. It is observed that during the investigation, SEBI examined the role of 15 entities connected to Noticee no. 2 in the alleged fraud and summons were also issued to Noticee no. 2 none of which were responded to. The following table provides the details of the summons issued to Noticee no. 2 and non-compliance:

Date of SEBI letter	Date of deposition	Result
September 30, 2016	October 7, 2016	Did not appear
October 13, 2016	October 21, 2016	Did not appear
December 30,2016	January 5, 2017	Did not appear
January 09,2017	January 18, 2017	Did not appear
January 20,2017	February 3, 2017	Did not appear
January 27, 2017	February 15, 2017	Did not appear

After completion of investigation, SCN was issued to the Noticees on October 24, 2018. During the present proceedings before me, Noticee no. 2 sought repeated adjournments, as discussed in para 9 above, but did not address the allegations levelled in the SCN. I find that there is no delay as alleged by these Noticees.

15. I note that none of the Noticees have made any submissions regarding allegations of dubious accounting practices and misstatements in its financial reports, except for Noticee nos. 10 and 11 who were the auditors of BBIL, which will be dealt with separately.
16. The findings of investigation have observed that that Mr. Nitin Sontakke, who was the MD of BBIL and his associates have used following entities to show fictitious purchase and sales transactions:
 - a. Nairs Distributors Private Limited
 - b. N.R. Distributors Private Limited
 - c. M/s Dhanashree Enterprises
 - d. Laukik Paper Industries Private Limited
 - e. Sailab Marketing Services Private Limited

- f. Swapnil Distributors Private Limited
- g. JPK Trading (I) Private Limited
- h. Ostwal Trading Co. Private Limited
- i. New Planet Trading Co. Private Limited
- j. Capetown Mercantile Private Limited
- k. Faststone Trading Co. Private Limited
- l. Riddhi Siddhi Multi trade private limited
- m. Natasha Enterprises
- n. Mohit International
- o. Kush International

17. I note that, based on the statements of proprietors/ persons in control of entities mentioned at (a), (b) and (c) above, the SEBI investigation has concluded that the entities mentioned at (a) to (o) above were directly or indirectly controlled by Mr. Nitin Sontakke, who was the MD of Noticee no. 1. The copies of these statements have been provided to all Noticees as annexure to SCN. A few examples of BBIL's transactions with some of these entities are discussed below.

Nairs Distributors Private Limited:

17.1. SCN alleges that Mr. Nitin Sontakke and his associates used Nairs Distributors Private Limited to allegedly show fake purchase for BBIL and diverting the funds. It is also alleged that Shri Jayant Vasanttrao Kolapkar, auditor of BBIL, was also the auditor of this company. It is alleged that Mr. Nitin Sontakke and others used to submit the pre-assigned invoices, pre-signed delivery challans and pre-signed letterheads to the entity banks for discounting the bills. After the credit of the payment against Letter of Credit (LC) facility sanctioned to BBIL, Mr. Nitin Sontakke and others used to withdraw the amounts in the cash through pre-signed cheques.

17.2. I note that Noticee no. 10 has submitted that he was not the auditor of Nairs Distributors Private Limited.

17.3. From the statement of Shri Raju Nair, the owner of Nairs Distributors Private Limited, I note the following:

- He has stated that he knew Shri Nitin Sontakke, CMD and Shri David Kunder, director finance of BBIL. Nairs Distributors Private Limited deals in publication and printing of stationery items.
- During his interaction with Shri Sontakke and David in 2005, they asked him that he should form a private limited company for showing supply of material to their firm BBIL only on paper so that they could arrange the payment to his company through the LC facility as BBIL was having LC facility with Indian bank, Deccan Gymkhana branch, Pune .They further explained to him that as a result his firm Nairs Distribution Private Limited would be shown as debtor of BBIL in the books of account of BBIL for staking claim for higher working capital/term loan/ credit facilities from the bank or any other financial institution. They further told him that he should withdraw the cash and make payment to them as they wanted cash for expansion of their business. They further told him that he should either sign the cheques in advance or they will take his sign as and when required. He was supposed to give them the signed cheques, signed invoices, letter for the banks, delivery challans etc. For doing this Shri Nitin Sontakke and Shri David Kunder paid him salary of Rs. 15000 per month and on their insistence and pressure he accepted their proposal.
- Nairs Distributors Private Limited was incorporated in 2005. The company is closed as on the date of recording of statement. In name, it was into business of raw material supplier for printing /book business. He was working as supervisor in their construction division of BBIL.
- He used to receive salary of Rs. 10000 and later on Rs. 15000 in cash or by cheque. Thereafter, Shri Nitin Sontakke and Shri David Kunder helped him in getting his company registered with Registrar of Companies, Pune in the name of Nairs Distributors Private Limited, as well as in getting the bank accounts opened in Federal Bank, Pune, Udyam Vikas Sahakari Bank, Pune and Axis Bank, Pune.
- They also got the Proforma invoices, delivery challans, bills, letterheads printed in the name of his firm. They also obtained the blank cheques signed from him. In addition, a

number of blank Proforma invoices, delivery challans, letterheads etc. were also signed by him for using the same for discounting the bills from his bank as and when required by them.

- Shri Nitin Sontakke and Shri David Kunder used to submit the pre-signed invoices, pre-signed delivery challans and pre-signed letterheads by showing sale of material to their firm BBIL by Nairs Distributors Private Limited to his bank for discounting the bills. After credit in his account against the LC facility sanctioned to BBIL, they used to fill in the amounts in the duly signed blank cheques for withdrawing the cash which were in their possession.
- He used to sign on the said cheques as per the directions of Mr Sontakke and Shri David Kunder.
- He have never sold any material to BBIL at any point of time. The figures of sale shown in the invoices and other documents were filled up by them for first discounting the bills and thereafter withdrawing the cash from his accounts as decided by them. The LRs used for showing supply to their firm by his firm were bogus.
- His company did not purchase any material from any firm for supplying to BBIL. However in order to show that his company was having sufficient material for supply to BBIL, they showed bogus purchases in the name of his company from some companies of Mumbai. For which, they showed the payment in cash. The bogus lorry receipts and the sale bills were arranged by them. All the accounts books and other papers regarding his transaction with BBIL and other companies were kept by them. He does not have any account books with him.
- During the year 2005-2006 they had shown purchases from his firm to the extent of Rs. 43.62 Crores. The said amount was withdraw by them from cash from his bank on the strength of pre-signed cheques which were in their possession.
- During the year 2006-2007 they had shown purchases from his firm to the extent of Rs. 97.97 Crore. Out of this amount, Rs.12.45 Crore was withdrawn in cash from his bank and the remaining amount was transferred to other companies named Laukik Paper Industries Pvt. Ltd.(Rs. 2.17 Crore), N R Distributors Pvt. Ltd. (Rs. 8.66 Crore), and Sailab Marketing Services Pvt. Ltd. (Rs. 64.54 Crore). The said amount of Rs. 12.45 Crore was withdrawn by them in cash from his bank on the strength of pre-signed cheques which were in their possession.

- During the year 2007-08, they had shown purchases from his firm to the extent of Rs. 14.21 Crore. This amount was transferred to various Creditors during the year.
- During the year 2008-2009 there was no sale transaction with BBIL. During the year 2008-2009, Rs. 9.90 Crore was received from BBIL, Rs. 2.17 Crore was received from Laukik Paper Industries Pvt Ltd, Rs. 8.66 Cr. was received from N R Distributors Pvt. Ltd. Such amounts were transferred to various Creditors.
- During the year 2009-10, they had shown purchases from his company to the extent of Rs. 06.12 Crore. During the year 2009-10, amount of Rs. 07.70 Crore was received from BBIL. Out of this amount Rs. 55.10 Lacs was transferred to N R Distributors and the remaining amount was transferred to various Creditors during the year. Later on, it was decided by Shri Sontakke and Shri David Kunder that they would show false transaction through his companies into their other companies and would receive the said money in their company BBIL by false transaction.
- He has simply allowed the account of his firm to be used by Shri Sontakke and David Kunder, so that he could get a small business transaction from BBIL. The liabilities shown on his firm are not correct as the amounts shown are simply on account of false sale done by Shri Nitin Sontakke and Shri David Kunder of BBIL.

17.4. I note that this entity was shown as creditor in the books of BBIL. As stated by Shri Raju Nair, the following table indicates the fake purchases done by BBIL from this entity over the years.

Fake purchase(in crores) by BBIL during Financial Year					
2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
1.10	43.62	97.97	14.21	--	6.12

17.5. From the bank statement of BBIL and Nair Distributor Pvt. Ltd., it is observed that the statement of Shri Raju Nair stating that amounts received from BBIL were withdrawn by cash and amounts received from BBIL were transferred to other entities controlled by BBIL, is corroborated. One such example where an amount of Rs. 59,54,033/- was transferred from BBIL to the bank of Nairs Distributors Pvt.

Limited & subsequently withdrawn in cash, as noted in the findings of investigation, is given below.

Date	Particulars	Instrument No.	Withdrawal	Deposit	Balance
18/04/2006	By BDU -939 BLUE BIRD	0		5954033	20308102.57
18/04/2006	To SELF	731280	900000		19408102.57
18/04/2006	To SELF	731281	900000		18508102.57
18/04/2006	To SELF	731282	900000		17608102.57
18/04/2006	To SELF	731283	900000		16708102.57
18/04/2006	To SELF	731284	900000		15808102.57
18/04/2006	To SELF	731285	900000		14908102.57
18/04/2006	To SELF	731286	900000		14008102.57
18/04/2006	To SELF	731287	900000		13108102.57
18/04/2006	To SELF	731288	900000		12208102.57
18/04/2006	To SELF	731289	900000		11308102.57
18/04/2006	To SELF	731290	900000		10408102.57

taken from Bank Account of Nairs Distributors Pvt. Limited with Federal bank

17.6. As stated by Shri Raju Nair, the withdrawals in cash was by Shri Nitin Sontakke and his associates.

17.7. Another example of transactions, as noted in the findings of investigation, where BBIL paid money to Nairs Distributors Pvt. Limited which thereafter was withdrawn /transferred from the bank account of Nairs Distributors Pvt. Limited to N.R. Distributors Limited, which is another entity whose bank accounts were being controlled by Noticee no. 2 and his associates (for Financial Year 2006-07) is as follows.

Date	Particulars	Instrument No.	Withdrawal	Deposit	Balance
01/02/2007	By BDU -1058 BLUE BIRD INDIA LTD.	0		9773488	19564369.32
01/02/2007	To TR N R DISTRIBUTORS	731363	19406072		158297.32
02/02/2007	By BDU -1063 BLUE BIRD (I) LTD	0		1274929	1433226.32
02/02/2007	By BDU -1068 BLUE BIRD (I) LTD	0		5956360	7389586.32
02/02/2007	To N.R.DISTRIBUTERS PVT LTD	731364	7130712		258874.32
05/02/2007	By BDU -1073 BLUE BIRD INDIA LTD	0		4615987	4874861.32
05/02/2007	To NR DISTRIBUTORS PVT LTD	731365	4518167		356694.32

09/02/2007	To N.R.DISTRIBUTORS PRIVATE LIMITED	731367	9637317	240021.32
12/02/2007	By BDU -1079 BLUE BIRD INDIA LTD.	0	9666526	9906547.32
12/02/2007	By BDU -1080 BLUE BIRD INDIA LTD.	0	9682183	19588730.32
12/02/2007	To N.R.DISTRIBUTORS P.LTD.	731368	19295746	292984.32
15/02/2007	By Clg,Lcc No.13673	564752	12420800	12713784.32
17/02/2007	To N.R.DISTRIBUTORS	731369	12318750	395034.32
19/02/2007	By Clg,Lcc No.13851	44456	2683644.53	3078678.85
taken from Bank Account of Nairs Distributors Pvt. Limited with Federal bank				

17.8. On a perusal of the bank statement of Nairs Distributors Pvt. Ltd. (Account No.330 in Federal Bank, Pune Branch) it is found that many such instances can be identified. Some are given below:

- On April 04, 2006, Rs.97,46,461/- was transferred by BBIL to this entity out of which Rs.97,00,000/- was withdrawn using self cheques.
- On May 20 2006, Rs. 56,68,415/- was transferred by BBIL to this entity and on the same day Rs.40,00,000 is withdrawn using self cheques
- On January 24, 2007, BBIL transferred 48,81,972/- to Nairs Distributors Pvt. Ltd.. On the same day Rs. 48,78,595/- was transferred to Laukik Paper Industries Private Limited, another entity who bank accounts were being controlled by Nitin Sontakke and his associates.

17.9. I also note from the statement of Shri Raju Nair that during the Financial Year 2008-09, the bank account of Nairs Distributors Pvt. Limited was also used to route certain amounts of money from entities associated with Shri Nitin Sontakke to creditors of BBIL.

Transactions during Financial Year 2008-09			
Amount Received From	(Rs. in Cr.)	Transferred to	(Rs. in Cr.)
M/s Laukik Paper Industries Private Limited	2.17	others	20.73
M/s N.R Distributors Private Limited	8.66		
BBIL	9.9		
Total	20.73	Total	20.73

17.10. From the findings of investigation and the statement of Shri Raju Nair as well as the bank statements discussed above, I find that BBIL used to misrepresent to the banks that it had purchased certain goods from Nair Distributor Pvt. Ltd. and based on the LC facility sanctioned to BBIL, the banks used to release money to Nair Distributor Pvt. Ltd who in turn used to transfer this money to other BBIL connected entities or it used to be withdrawn in cash from the account of Nair Distributor Pvt. Ltd. by Shri Nitin Sontakke and his associates. I observe that these kinds of transactions are observed in the FY 2006-07 and 2009-10. The following tables shows such transactions:

Transactions during Financial Year 2006-07		
(Fake Purchases made by BBIL and receive into the account of Nairs Distributors Private Limited Rs. in Cr.)	Money from the account of Nairs Distributors Private Limited transferred to/Withdrawn by	(Rs. in Cr.)
97.97	M/s Laukik Paper Industries Private Limited	2.17
	M/s N R Distributor	8.66
	M/s Sailab Marketing Services Private Limited	65.54
	BBIL (In cash)	12.45
97.97	Total	88.82

Transactions during Financial Year 2009-10		
Money received from BBIL (Rs. in Cr.)	After LC discounting money transferred to/Withdrawn by	(Rs. in Cr.)
7.7	M/s N R Distributor	0.551
	Others	7.149
7.7	Total	7.7

17.11. Thus, I find that the purchases claimed by BBIL worth Rs. 97.97 crores in the FY 2006-07 were fake and without any actual transfer of goods from Nairs Distributors Pvt. Limited to BBIL. Therefore, the purchase figure reported by BBIL in its books

of accounts was wrong and BBIL had manipulated its books of accounts to reflect fake purchases from Nairs Distributors Pvt. Limited

N.R. Distributors Private Limited

17.12. SCN alleges that Mr. Nitin Sontakke and others used this entity to inflate the sales of BBIL & diverting the funds. I note that this entity was shown as debtor in the books of BBIL. It may be noted that Noticee no.10 who was auditor of BBIL was also auditor of the said firm.

17.13. I note that in his statement, Shri Manoj B Nair, owner of N R Distributors Private Limited has also given similar account as that given by Shri Raju Nair. A summary of the statement of Shri Manoj B Nair is as follows:

- His firm N R Distributors Private Limited was incorporated on December 6, 1999. The company is in existence but is not indulging in any business since the last 7 years. The company was involved in distribution of FMCG products. He was the director and authorized signatory for the company.
- His firm was shown as a 'distributor' of BBIL's stationery products from 1999 till 2010.
- He knew Shri Nitin Sontakke as he was an old friend and both were members of a social organization named "Patit Pavan Sanghatana". Initially he used to provide vehicles to Blue Bird India Limited from his travel agency. He knew Shri David Kunder as he was an employee of Blue Bird India Limited.
- Shri Jayant Vasantrya Kolapkar was auditors/CA of his firm.
- In the year 2005, Shri Nitin Sontakke and Shri David Kunder had called him to the office of Blue Bird India Limited and asked him to use his firm in inflating the turnover of Blue Bird India Limited by accepting fake bills as sales bills.
- They explained that his company could be shown as a debtor of Blue Bird India Limited in its books and it will help in staking a higher claim for higher working capital /loan facilities from the banks.
- The modus operandi was that Shri Nitin Sontakke and Shri David Kunder will give cheques in his company's name which he had to return through other cheques in favor of Blue Bird India Limited.
- While he was not ready, they impressed upon him that his firm was not getting the money and was returning the same to Blue Bird India Limited. There was no illegality

involved. However, they threatened him stating that they will stop supply of stationery to his firm .Under pressure he accepted that proposal.

- His firm was having accounts with Axis Bank, Andhra Bank, Dena Bank, Development Credit Bank and Udyam Vikas Sahakari Bank, which were used for routing the bank transactions.
- His firm did not purchase any material from Blue Bird India Limited except stationery items, that too to the extent of a few thousand rupees. However, during the year 2005-06, Shri Nitin Sontakke and Shri David Kunder had shown false sales to his company to the extent of Rs. 41.42 crore. For making the payment, the amount was arranged from bogus debtors and deposited in the banks of his company by Shri Nitin Sontakke and Shri David Kunder. Subsequently, it was transferred from his bank on the strength of the pre signed cheques which were in their possession.
- During the year 2006-07, they had shown false sales to his company to the extent of Rs. 127.66 crores. For making the payment, Shri Nitin Sontakke and Shri David Kunder had arranged from other companies as follows:
 - Dhanasree Enterprises -RS. 4.75 crore
 - Laukik Paper Industries Private Limited- Rs. 84.59 crore
 - Nairs Distributors Private Limited - RS.8.66 crore
 - Sailab Marketing Services Private Limited - Rs.10.20 crore
 - Swapnil Distributors Private Limited- Rs. 25.37 crore
 - Other distributors – Rs.13.65crore.Out of these amounts, Rs. 132.03 crore was transferred to Blue Bird India Limited.
- During the year 2007-08, they had shown fake sales to his company to the extent of Rs. 31.97 crore. During the year 2008-09, there was no sales transactions from Blue Bird India Limited to his company. During the year 2008-09, RS. 75.02 crore was received from various debtors. Out of this amount, Rs. 15.29 crore was transferred to Blue Bird India Limited, Rs. 31.68 crore to Laukik Paper Industries Private Limited, Rs. 12.03 crore to Swapnil Distributors, Rs. 10.2 lacs to Sailab Marketing Services Private Limited, Rs. 8.66 crore to Nair Distributors Pvt. Limited and Rs. 4.75 crore to Dhanasree Enterprises.

- He further stated that the amount received from various firms as mentioned above were arranged by Shri Nitin Sontakke and Shri David Kunder so that they could get the amount ultimately to their firm BBIL through his firm in clandestine manner.

17.14. According to the statement the following table indicates the fake sales from BBIL by this entity over the years.

Fake Sales (in crores) from BBIL during Financial Year				
2004-05	2005-06	2006-07	2007-8	2008-09
28.27	41.42	127.66	31.97	--

17.15. From the bank statement of BBIL and N R Distributors Private Limited, it is observed that the statement of Shri Manoj B. Nair that amounts received from connected entities of BBIL were used to pay BBIL, is corroborated. For example in the Account Number 21/182 of N R Distributors Private Limited maintained with Udyan Vikas Sahakari Bank, Shivaji Nagar, a few examples are noted as follows:

- a. On June 24, 2006 N R Distributors Private Limited paid BBIL Rs. 71,02,583/. On the same date an amount of Rs.10,20,000/- was transferred to the account of N R Distributors Private Limited by Laukik Paper Industries Private Limited and Rs.60,00,000/- by Sailab Marketing Services Private Limited.
- b. On August 21, 2006, Laukik Paper Industries Private Limited transferred Rs.1,07,00,000/- to N R Distributors Private Limited which on the same day was paid to BBIL.

17.16. Transactions for Money being withdrawn from Bank account of N.R. Distributors Pvt. Limited by BBIL (for Financial Year 2006-07) as given in the SCN is also noted as follows:

Date	Particulars	Instruments	Dr Amount	Cr Amount	Total Amount Dr/C
	BT PAYMENT				
07/02/2007	By Clg. 00075	143716		77,58,844.00	77,90,960.75 CR
08/02/2007	To Clg.N.R.Distributors	478219	2,79,000.00		75,11,960.75 CR
09/02/2007	To BLUE BIRD (INDIA) LTD	478221	11,20,140.00		63,91,820.75 CR
09/02/2007	To BLUE BIRD (INDIA) LTD	478215	4,22,752.00		59,69,068.75 CR
09/02/2007	To BLUE BIRD (INDIA) LTD	478224	12,81,307.00		46,87,761.75 CR
09/02/2007	To BLUE BIRD (INDIA) LTD	478222	6,47,204.00		40,40,557.75 CR
09/02/2007	To BLUE BIRD (INDIA) LTD	478220	36,70,130.00		3,70,427.75 CR

Taken from Bank Account of N.R. Distributors Pvt. Limited with UdayamSahakari Bank Limited.

17.17. I note from the statement of Shri Manoj B. Nair and the banks statement of N.R. Distributors Pvt. Limited, that for making the payment for the fake sales which BBIL purportedly made to N.R. Distributors Pvt. Limited, the amount was arranged from entities whose bank accounts were being controlled by Shri Nitin Sontakke and his associates. Then the money were transferred to BBIL. The following table shows such transactions:

Transactions during Financial Year 2006-07			
Amount Received From	(Rs. in Cr.)	Transferred to	(Rs. in Cr.)
M/s Laukik Paper Industries Private Limited	84.59	BBIL (in cash)	132.03
M/s Nairs Distributors Private Limited	8.66		
M/s Dhanashree Enterprises	4.75		
M/s Swapnil Distributors Private Limited	25.37		

M/s Sailab Marketing Services Private Limited	10.2		
Others	13.65		
Total	147.22	Total	132.03

17.18. I also note that during Financial Year 2008-09, it is noted that the bank account of N.R. Distributors Pvt. Limited have been used to route the money received from debtors of BBIL to BBIL and other entities which were controlled by BBIL. As stated by Shri Manoj B. Nair, these transactions are only monetary transactions and are not in the nature of sales / purchases.

Transactions during FINANCIAL YEAR 2008-09			
Amount Received From	(Rs. in Cr.)	Transferred to	(Rs. in Cr.)
Debtors	75.02	M/s Laukik Paper Industries Private Limited	31.68
		M/s Nairs Distributors Private Limited	8.66
		M/s Dhanashree Enterprises	4.75
		M/s Swapnil Distributors Private Limited	12.03
		M/s Sailab Marketing Services Private Limited	0.102
		BBIL	15.29
Total	75.02	Total	75.512

17.19. Thus, I find that the sales claimed by BBIL worth Rs. 132.03 crores in the FY 2006-07 were fake and without any actual transfer of goods from BBIL to N.R. Distributors Pvt. Limited . Therefore, the sales figure reported by BBIL in its books of accounts was wrong and BBIL had manipulated its books of accounts to reflect fake sales to N.R. Distributors Pvt. Limited .

M/s Dhanashree Enterprises

17.20. I observe that, similar to Nairs Distributors Pvt. Limited, this entity was shown as creditor in the books of BBIL.

17.21. From the statement of Shri Purushottam Rajaram Moghe, owner of Dhanashree Enterprises I note as follows:

- Shri Nitin Sontakke and Shri David Kunder employed him with the salary of Rs. 12,500 per month only on the condition that he should open a firm for showing supply of material to their firm BBIL only on paper.
- Subsequently, Dhanashree Enterprises was formed in 2004 with the help of Shri Nitin Sontakke and Shri David Kunder, Former CFO of BBIL. They also help him in getting the bank accounts opened in Federal bank, Pune; Udyam Vikas Sahakari Bank, Pune; Axis Bank, Pune, & United Bank of India, Pune.
- Shri Nitin Sontakke and Shri David Kunder would arrange payment to Dhanashree Enterprises through the LC facility which BBIL was having with the Indian Bank, Deccan Gymkhana branch, Pune.
- As a result, his firm Dhanashree Enterprises would be shown as creditor of BBIL in the books of Account of BBIL.
- The bogus bills, which were arranged by Shri Nitin Sontakke and Shri David Kunder, were discounted in the bank. Thereafter, the money would be withdrawn in cash from the bank by Shri Nitin Sontakke and Shri David Kunder. Shri Nitin Sontakke and Shri David Kunder used to take pre-signed checks in advance or signed checks from him for getting cash from the bank.
- Shri Moghe was supposed to give Shri Nitin Sontakke and Shri David Kunder the signed cheques, signed invoices, blank letter for the banks duly signed, delivery challans duly signed etc. They also got the Proforma invoices, delivery challans, bills, letterheads printed in the name of his firm. They used these documents for discounting the bogus bills from his bank as and when required by them.
- Shri Nitin Sontakke and Shri David Kunder used to submit the pre-signed invoices, pre-signed delivery challans and pre-signed letterheads in the Bank by showing sale of material to their firm BBIL by Dhanashree Enterprises.
- They used to submit the documents to his bank for discounting. After credit in his account against the LC facility, they used to fill in the amount in the duly signed blank cheques for withdrawing the cash, or for transferring to any account of their choice.
- His firm has never sold any material to BBIL at any point of time. The figures of sale shown in the invoices and other documents were filled up by them for first discounting the bills in his Bank and thereafter withdrawing the cash from his accounts on the

basis of pre-signed cheques as decided by them. The LRs used for showing supply to their firm by my firm were bogus.

- His firm did not purchase any material from any firm for supplying to BBIL. However in order to shown that his firm was having sufficient material for supply to BBIL, they showed bogus purchases in the name of his firm from some companies of Mumbai, for which, they showed the payment in cash. The bogus lorry receipts and the sale bills were arranged by them. All the accounts books and other papers regarding his transactions with BBIL and other companies were kept by them.
- Shri David Kunder had given him the ledger Account of Dhanashree Enterprises from 1.4.2004 to 31.3.2008. While giving the ledger sheets, Shri David Kunder had instructed him to depose before the CBI or any law enforcement agency or tax authorities that his firm had supplied the material, to BBIL as reflected in the said ledger sheets. The figure in the said ledger sheet are incorrect as no sale transaction during the aforesaid had ever happened.
- Shri Moghe had contacted Shree Kolapkar and inquired about the same who informed him that the ledger sheets were certified by him at the request of Shree David Kunder on the basis of record available with him. Shri Moghe informed him as to how his form was used for showing bogus sales to BBIL from 2004 - 05 to 2006 – 07 and thereafter showing transactions in his bank account in the year 2007 - 08 and 2008 - 09.
- During the year 2004 – 2005, Shri Nitin Sontakke and Shri David Kunder had shown purchases from his firm to the extent of Rs. 21.71 Crores. The said amount was withdrawn by them in cash from his bank on the strength of pre-signed cheques which were in their possession.
- During the year 2005 - 2006 Shri Nitin Sontakke and Shri David Kunder had shown purchases from his firm to the extent of Rs. 66.94 Crores. The said amount was withdrawn by them in cash from his bank on the strength of pre-signed cheques which were in their possession.
- During the year 2006 - 2007 Shri Nitin Sontakke and Shri David Kunder had shown purchases from his firm to the extent of Rs. 32.75 Crores. Out of this amount, Rs.17.10 Crores was withdrawn in cash from his bank and the remaining amount was transferred to other companies named Laukik Paper Industries Pvt. Ltd. (Rs. 72.18 Lacs); N R Distributors Pvt. Ltd.(Rs. 4.75 Crores), and to Sailab Marketing Services

Pvt. Ltd. (Rs. 3.58 Crores). The said amount of Rs. 17.10 Crore was withdrawn by them from cash from his bank on the strength of pre-signed cheques which were in their possession.

- During the year 2007 - 08 there was no sales transactions to BBIL. Only Rs. 10 Lacs was received from BBIL and Rs. 9.28 Lacs was returned to BBIL by withdrawing the cash. These transactions were done to allow receipt of cash to BBIL.
- During the year 2008 - 2009, there was no sales transactions with BBIL. During the year 2008 - 09, Rs. 3.52 Cr. was received from BBIL, Rs.72.18 lacs was received from Laukik Paper Industries Pvt Ltd, Rs. 04.75 Crore was received from N R Distributors Pvt. Ltd. and Rs.15 Lacs was received from Sailab Marketing Services Pvt. Ltd. The amount so received was transferred to various Creditors of BBIL by Shree Nitin Sontakke and Shri David Kunder.
- In the year 2010, Sales Tax Department conducted raid on BBIL. Shri Moghe along with others viz. Shri Raju Nair, Shri Shashank Sahasrabudhe and Shri Javelgekar were called by the Sales Tax Department. Upon enquiry by the Sales Tax Department, all of them accepted about issue of bogus bills upon BBIL.

17.22. As stated by Shri Purushottam Rajaram Moghe, the following table indicates the fake purchases done by BBIL from Dhanashree Enterprises over the years.

Suppliers/Distributors	Fake purchases (Rs. in cr.) made during Financial Year				
	2004-05	2005-06	2006-07	2007-8	2008-09
Dhanshree Enterprises	21.71	66.94	32.75		

17.23. Thus, I find that Shri Nitin Sontakke and Shri David Kunder used to submit the pre-assigned invoices, pre-signed delivery challans and pre-signed letterheads to the entity banks for discounting the bills. After the credit of the payment against LC facility sanctioned to BBIL, Mr. Nitin Sontakke and others used to withdraw the amounts in the cash through pre-signed cheques. The following tables shows such transactions.

Transactions during Financial Year 2006-07			
Fake Purchase by	(Rs. in Cr.)	transferred to/Withdrawn by	(Rs. in Cr.)
BBIL	32.75	M/s Laukik Paper Industries Private Limited	0.7218
		M/s N. R Distributors Private Limited	4.75
		M/s Sailab Marketing Services Private Limited	3.58
		BBIL (in cash)	17.1
Total	32.75	Total	26.1518

17.24. I also note from the statement of Shri Purushottam Rajaram Moghe that during the Financial Year 2008-09, the bank account of Dhanashree Enterprises was also used to route certain amounts of money from other controlled entities to creditors of BBIL.

Transactions during Financial Year 2008-09			
Money Received from	(Rs. in Cr.)	transferred to/Withdrawn by	(Rs. in Cr.)
BBIL	3.52	others	9.1418
M/s Laukik Paper Industries Private Limited	0.7218		
M/s N. R Distributors Private Limited	4.75		
M/s Sailab Marketing Services Private Limited	0.15		
Total	9.1418	Total	9.1418

17.25. I find that the statement of Shri Raju Nair, Shri Manoj B. Nair and Shri Purushottam Rajaram Moghe corroborate each other. From the statement of Shri Purushottam Rajaram Moghe and the findings of investigation, I find that the purchases claimed by BBIL worth Rs. 32.75 crores in the FY 2006-07 were fake and without any actual transfer of goods from Dhanashree Enterprises to BBIL. Moreover, out of this amount Rs.26.1518 crores were further transferred by Dhanashree Enterprises to other BBIL controlled entities or withdrawn in cash by Shri Nitin Sontakke and his associates. Therefore, I find that the purchase figure reported by BBIL in its books

of accounts was wrong and BBIL had manipulated its books of accounts to reflect fake purchases from Dhanashree Enterprises.

18. I note that BBIL and other Noticees (except Noticee no. 10 and 11) have not made any submissions related to these fictitious sales and purchase figures in the books of accounts of BBIL. I note from the discussions above, that BBIL paid certain amounts (obtained through a LC facility from banks) to entities whose bank accounts were controlled by Shri Nitin Sontakke and his associates. Simultaneously, BBIL also received certain amounts from entities whose banks accounts were being controlled by Shri Nitin Sontakke and his associates by showing fictitious sales figures. Thus, the amounts were transferred back to BBIL through entities whose banks accounts were controlled by Shri Nitin Sontakke and his associates. The SCN give examples of two such transactions as follows:

- a) Transaction 1: For the Financial Year 2006-07, BBIL has shown purchases of Rs. 97.97 crore to Nairs Distributors Pvt. Limited. By way of discounting of a letter of credit issued by BBIL, an amount of Rs.97.97 crore has been received in the account of Nairs Distributors Pvt. Limited. Out of these funds, Nairs Distributors Pvt. Limited has transferred Rs. 8.66 crore to N R Distributors, which is also shown as one of the customers of BBIL. BBIL, by showing fake sales to N R Distributors, has received the same amount of Rs. 8.66 crore in their account.
- b) Transaction 2: Similarly, for the Financial Year 2006-07, it can be noted that BBIL has shown purchases of Rs.32.75 crore to Dhanashree Enterprises. By way of discounting of a letter of credit issued by BBIL, an amount of Rs.32.75 crore has been received in the account of Dhanashree Enterprises. Out of these funds, Dhanashree Enterprises has transferred Rs.4.75 crore to N.R. Distributors Pvt. Limited, which is also one of the customers of BBIL. BBIL, by showing fake sales to N.R. Distributors Pvt. Limited, has received the same amount of Rs.8.66 crore in their account.

19. The SCN also states that similar transactions have been mentioned in the Chargesheet filed by CBI. To portray the extent of the fraud, a table of which has been mentioned in the chargesheet of CBI depicting such fraudulent transactions with some of the BBIL controlled entities, is referred in the SCN, which is as follows:

Suppliers/Distributors	Sale / purchase by BBIL	Fake sales / purchases (in crores) made during Financial Year					
		2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
N R Distributors Pvt. Ltd	Sale	28.27	41.42	127.66	31.97	-	-
Dhanshree Enterprises	Purchase	21.71	66.94	32.75	-	-	-
Nairs Distributors Private Limited	Purchase	1.10	43.62	97.97	14.21	-	6.12
Laukik Paper Industries P Ltd	Purchase	230.6	89.4	110.05	31.3	-	3.86
Sailab Marketing Services Private Limited	Sale	8.06	10.48	192.92	-	-	-

20. It is understood that the case pending before CBI Court, Pune wherein aforesaid chargesheet of CBI has been filed, has not yet reached final determination. I also note that the CBI chargesheet also includes statements of Shri Sasank Shahsrabudhe, director of Laukik Paper Industries Pvt. Ltd. and Shri Shankar Eknath Barke, director of Sailab Marketing Services Pvt. Ltd. which are on similar lines as Shri Manoj B. Nair and Shri Raju Nair. In my view, based on the bank statements available on record and statements of owners of Nairs Distributors Pvt. Limited., N.R. Distributors Pvt. Limited and Dhanashree Enterprises available on record, it has been found that BBIL recorded purchase and sales whereas actual transfer of goods had not taken place and these wrong figures were reflected in its books of accounts and therefore, BBIL has indulged in misrepresentation in its books of accounts. Thus, all the sale/purchases which became the basis of the income/expenditure of BBIL, were based on aforesaid fake

sale/ purchase transactions. Consequently, financial statements of BBIL which were based on the said income/expenditure, were all manipulated.

21. I note that according to Chapter VI of the SEBI(Disclosure and Investor Protection) Guidelines, 2000 (since rescinded) which were applicable at that time of Initial Public Offer (IPO) of its equity shares by BBIL in the year 2006, the issuer company was required to disclose, *inter alia*, the following information in its offer document:

“6.10 Financial Statements

6.10.1 Selected Consolidated Financial and Operating data

6.10.2 Financial Information of the issuer company

6.10.2.1 A report by the auditors of the issuer company with respect to:

- (a) Profits and losses and assets and liabilities, in accordance with clauses 6.10.2.2 or 6.10.2.3, as the case may require;

22. From the copy of the final prospectus dated November 24, 2006 of BBIL as available on the website of SEBI, I note that BBIL made IPO of its equity shares in the year 2006 wherein it had issued 8,775,000 number of equity shares of face value of Rs. 10 per share to the public at an issue price of Rs. 105 per share and raised Rs. 92.13 crore (approx.) through the IPO. The issue made by the company was a 100% book built issue for which issue opened on November 16, 2006 and closed on November 22, 2006 and a prospectus dated November 24, 2006 was filed with registrar of companies, Maharashtra. I note that financial results of BBIL, which have been found to be manipulated in the previous paras, have been mentioned/referred at various places in the prospectus viz: summary of financial information (pages 2 to 5), disclosure of transactions with related parties as required by AS-18 (page 84), auditor’s report as required by Part II of Schedule II of Companies Act, 1956, dated November 01, 2006 (pages 87 & 88) and Annexures thereto, management discussions and analysis of financial conditions, results of operations (pages 109-128, at pages 115, 116, 117, 118, 120 and 128) and other regulatory and statutory disclosures (page 133). Thus, BBIL has made false and misleading disclosures in its prospectus in order to make its IPO of

equity shares successfully subscribed and thereafter, listed on the stock exchanges. I note that following persons had signed the statutory declaration in the aforesaid prospectus:

- (i) Nitin P. Sontakke (Noticee no. 2)
- (ii) Harbhagwan S. Arora (Noticee no. 4)
- (iii) Vidya N. Sontakke (Noticee no. 5)
- (iv) Apoorv N. Sontakke (Noticee no. 6)
- (v) Satish D. Bhagwat (Noticee no. 7)
- (vi) David P. Kunder (Noticee no. 8)
- (vii) Madhusudan S. Vaidya (Independent Director)
- (viii) Brigadier HSN Sastry (Retd.) (Independent Director)
- (ix) Dr. Vikas Govind Pai (Independent Director)
- (x) Anil C. Agashe (Independent Director)
- (xi) Girish H. Inamdar (Independent Director)
- (xii) Dr. Vitthal M. Bachal (Independent Director)

23. I note that in terms of Section 62 of Companies Act, 1956 (since repealed), in case of misstatement in prospectus, following persons were made liable:

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
- (c) every person who is a promoter of the company; and
- (d) every person who has authorised the issue of the prospectus.

24. It is also noted that in the prospectus, auditor's report as required by Part II of Schedule II of Companies Act, 1956, dated November 01, 2006 signed by Noticee no. 10 and 11,

has been reproduced at page numbers 87 and 88, wherein Noticee no. 10 and 11 have been mentioned as joint auditors of BBIL. Further, at page 139 of the prospectus of BBIL, it was mentioned that Sashank Patki & Associates i.e. Noticee no. 11 was appointed as auditor of BBIL on September 30, 2005. It is noted that equity shares of BBIL were listed on BSE and NSE. On the first day of trading on December 11, 2006, equity shares of BBIL opened at a price of Rs. 128 per share as against the issue price of Rs. 105 per share. I find that subscription to the IPO of BBIL was successful because of the manipulated financials disclosed in the prospectus of BBIL which misled the investors to subscribe to the shares of BBIL. I note that investors were also misled by the quarterly financial results disclosed by BBIL to the stock exchanges from 2006-07 to 2010-11 in terms of erstwhile equity listing agreement and as well as by the Annual Reports which contained manipulated financials of BBIL.

25. BBIL was showing an increasing trend in net sales from financial year 2004-05 (Rs. 330.79 crore) onwards till financial year 2008-09 (Rs. 502.22 crore), fell to Rs. 428.02 crore for Financial Year 2010-11 and thereafter, it further plunged to Rs. 10.6 crore for the financial year 2009-10 and Rs. 10.22 crore for Financial Year 2010-11 due to writing off of debt and writing down on its stocks. I find that the fraudulent sales and purchase, as discussed in previous paragraphs were perpetrated from financial year 2004-05 to financial year 2010-11. Therefore, I observe that, based on the fake transactions discussed in the previous paragraphs, BBIL has manipulated its financial statements, showing a more than healthy picture of its profit and loss account and balance sheet. I also note that there is a Sales Tax demand notice for Rs. 44 Crore for the period from 2006-2010 and this further indicates that the company deliberately reported higher sales to misguide the bankers and the investors including its shareholders but reported actual lower sales to the Sales-Tax authorities and paid lower sales-tax. I find that such fictitious figures of sales and purchase was appearing in the Profit and Loss accounts in the annual statement of accounts of BBIL for the financial year 2004-05 to financial year 2010-11 which were also part of the Annual Report of BBIL. I observe that based on the financial information disclosed on a continuous basis by companies in its disclosures

made to the stock exchanges and Annual Reports, investors take investment decisions. Thus, there is an obligation cast on the company to present true and fair view of the financials and prepare and disclose financial statements in accordance with applicable standards of accounting and financial disclosures. In view of the misrepresentation of sales and purchase figures by BBIL as discussed above, I find that BBIL had failed to disclose the true financial position in its statements of accounts in line with the applicable Accounting Standards and thus, violated Clause 50 of the then Listing Agreement along with Clause 41 (i) (a) of the then Listing Agreement which prescribes that uniform accounting practices should be followed while preparing financial results of a company. Clause 49 IV (b) of the then Listing Agreement stated that, where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements together with the management's explanation. However, in the case of BBIL no such disclosure was made in the financials of BBIL and thus, BBIL has violated Clause 49 IV (b) of the then Listing Agreement. Under Clause 41 (II) (a) of the then Listing Agreement, while placing the financial results before the Board, the Chief Executive Officer or MD and Chief Financial Officer of the company, by whatever name called, were to certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading. The annual accounts of BBIL were *inter alia* certified by Noticee no. 2, the MD of BBIL and Noticee no. 8, its CFO. Since, the financial results contained misrepresentations and fictitious figures, I find that Noticee no. 2 and 8 have failed in the duties cast upon them under the Listing Agreement, Clause 41 (II) (a) and Clause 49 (V) and hence, are in violation of said Clause.

26. It is observed that the misrepresentation of the sales and purchase figures as discussed above were most likely carried out with a view to *inter alia* fraudulently usurp the legitimate funds of the company which the company had obtained through different credit facilities from banks, which is a *sub-judice* matter being pursued by CBI. Moreover, I find that BBIL came out with a public issue in the year 2006. I note that the

inflated purchase and sales figure of BBIL, as discussed in the previous paragraphs, were also included in the Prospectus of BBIL dated November 24, 2006 for its IPO, in summary of financial information (pages 2 to 5), disclosure of transactions with related parties as required by AS-18 (page 84), auditor's report as required by Part II of Schedule II of Companies Act, 1956, dated November 01, 2006 (pages 87 & 88) and Annexures thereto, management discussions and analysis of financial conditions, results of operations (pages 109-128, at pages 115, 116, 117, 118, 120 and 128) and other regulatory and statutory disclosures (page 133), in order to paint a rosy picture of the financial health of the company.

27. Regulation 2(1) (c) of the PFUTP Regulations, 2003 defines fraud as follows:

“(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

...

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

...

(8) a false statement made without reasonable ground for believing it to be true.

.....

And “fraudulent” shall be construed accordingly;...”

I find that BBIL has knowingly concealed its true financial picture from the market and investors and has made false statements related to its financial health in its statement of accounts as well as its Prospectus. I note that, in the IPO made by BBIL, issue price was Rs. 105/- per share. However, on the first day of its trading on December 11, 2006, the price opened at Rs. 128/- per share and thereafter, till December 2007 was hovering in the range of Rs. 52/- to Rs. 97/-. Thus, I find that by inflating its purchase and sales figures in its financial statements for the financial year 2004-05 to financial year 2010-11 as well as its Prospectus, BBIL and Noticee no. 2, 4, 5, 6, 7, 8 and 9, who were its executive directors, have induced the investors to subscribe to their IPO and thereafter, because of continuous disclosures of manipulated financials in quarterly disclosures to

stock exchanges and in the Annual Reports of BBIL, have perpetrated fraud on investors and the securities market and thus, violated Section 12A (b) of the SEBI Act, 1992, Regulation 3 (c), 4(1) and 4(2) (f) of PFUTP Regulations, 2003. Being MD of BBIL and having an active role in the said fraud, I find that Noticee no. 2 has also violated Section 12A (b) of the SEBI Act, 1992, Regulation 3 (c), 4(1) and 4(2) (f) of PFUTP Regulations, 2003. Since Noticee no. 4 was joint MD and thus responsible for the affairs of BBIL, I also find that Noticee no. 4 has violated Section 12A (b) of the SEBI Act, 1992, Regulation 3 (c), 4(1) and 4(2) (f) of PFUTP Regulations, 2003. I find that Noticee no. 8 was Director (Finance) and CFO of BBIL and actively participated in the fraud and thus violated Section 12A (b) of the SEBI Act, 1992, Regulation 3 (c), 4(1) and 4(2) (f) of PFUTP Regulations, 2003. I also note that the executive directors of BBIL, i.e. Noticee nos. 6, 7 and 9 were part of the Board of Directors and the annual financial statements of BBIL, which contained fraudulent misrepresentations were placed before them for approval. Thus, I find that Noticee nos. 6, 7 and 8 have also violated Section 12A (b) of the SEBI Act, 1992, Regulation 3 (c), 4(1) and 4(2) (f) of PFUTP Regulations, 2003.

28. With respect to the role of the auditors i.e. Noticee nos. 10 and 11 in the matter, I note that Noticee no. 10 was the auditor of BBIL for the financial years 2001-02 to 2008-09. Noticee no. 11 was the auditor of BBIL for the financial years 2005-06 (from September 30, 2005) to 2009-10. SCN alleges that Noticee no. 10 and 11 have also violated Section 12A (a), (b) & (c) of the SEBI Act, 1992, Regulations 3 (b), (c) & (d), 4(1) and 4(2)(a),(e),(f),(k) & (r) of PFUTP Regulations, 2003 and the provisions of the erstwhile Listing Agreement.
29. With respect to the misrepresentations in the books of accounts of BBIL related to fictitious purchase and sale, both Noticees nos. 10 and 11 have stated that all these fictitious transactions were supported by documents and the auditors had no way to know that these transactions were fictitious. Noticee no. 11 has specifically stated that the purchase bills were supported by Goods Received Note (GRN) and entries in the stores ledger which are the basic evidence of the receipt of the material by the company.

Notice no. 11 has also stated that the purchase bills were under LC facility issued by the bankers of the company and they were stamped by the banks. Further Noticee no. 11 has stated that in case of sales, bills were raised on customers and delivery challans were also prepared and there were certain cash sales which were supported by cash bills and that payment was also being received in the customers' accounts.

30. Noticee no. 10 has also submitted that he is under the jurisdiction of ICAI which is an expert body and SEBI has no jurisdiction over him. In this regard, I note that Hon'ble Bombay High Court in ***Price Waterhouse & Co. Vs. SEBI (WP NO. 5249 of 2010 decided on August 13, 2010)*** with respect to SEBI's jurisdiction over auditors has held as follows:

"25.

.... In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market. So far as the role of Auditors is concerned, it is a very important role under the Companies Act. As posited in Section 227 of the Companies Act, every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the Company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the Company such information and explanations as the auditor may think necessary for the performance of his duties. The auditors in the Company are functioning as statutory auditors. They have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company.

.....

With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. Normally, an investor invests his money by considering the financial health of the Company and in order to find out the same, one will naturally bank upon the accounts and balance-sheets of the Company. If it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts, in our view, there is no reason as to why to protect the interests of investors and regulate the securities market, such a person

cannot be prevented from dealing with the auditing of such a public listed Company. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market.”

31. From the above-mentioned judgment of Hon'ble Bombay High Court, it is observed that, for SEBI to exercise jurisdiction over an auditor, it has to be shown that the case pertains to an auditor who in connivance and in collusion with the officers or directors of a company has concocted false accounts. Regarding Noticee no. 11, SCN alleges that he was auditor of BBIL for the financial years 2005-06 (from September 30, 2005) to 2009-10, i.e. within the period when the financials of BBIL were manipulated. I note that, unlike Noticee no. 10, there is no allegation against Noticee no. 11 that he was in collusion with BBIL or Noticee nos. 2 and 8 for manipulating the financials of BBIL. However, it is noted that without there being any allegation pertaining to collusion with BBIL or its directors, Noticee no. 11 has been alleged to be in violation of provisions of PFUTP Regulations, 2003. In view of the judgment of the Hon'ble Bombay High Court in the PWC matter (*supra*), SEBI can take action against an auditor if it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts. In view of the same, I find that the violation of PFUTP Regulations alleged against Noticee no. 11 is not made out. I also note that SCN also alleges the violation of provisions of erstwhile Listing Agreement by Noticee no. 11. In this regard, I note that Clause of the erstwhile Listing Agreement invoked in this regard creates liability of the Issuer Company and/or CEO and CFO of the Issuer Company and not on the auditors. Therefore, violation of Clauses of erstwhile Listing Agreement by Noticee no. 11, as alleged in the SCN, is also not made out.
32. With respect to Noticee no. 10, it has been alleged that Noticee no. 10 had colluded with Noticee no. 2 and 8 based on the fact that he was also the auditor of two of the entities whose bank accounts were used by Noticee no.2 and his associates to perpetrate the fraud. I also find that BBIL was using these two entities wherein Noticee no. 10 was the auditor, to cook up fictitious purchase and sales figures of BBIL which was also reflected

in the annual financial results of BBIL. Moreover, one of the entities where Noticee no. 10 was the auditor, N.R. Distributors Private Limited was used by BBIL to route its funds (without any explanation for the same) in the 2008-09 when Noticee no. 10 was the auditor of BBIL. Noticee no. 10 has not produced any material during these proceedings to show that any query was raised by him related to any of these transactions between BBIL and the entities which he was auditing. He has only submitted that the fake sales and purchases were accompanied by bills and all other documents and thus, not possible for him to detect. In this regard, I note that the auditor is not supposed to carry out a superficial audit and is supposed to approach audit with professional skepticism. As mentioned above, Noticee no. 10 was the auditor of BBIL for the financial years 2001-02 to 2008-09 and during the said period, he was also the auditor of two of the entities controlled by Noticee no. 2 through which fake sales and purchases were carried out. Noticee no. 10 was the auditor, N.R. Distributors Private Limited, an entity controlled by Noticee no. 2, which had transferred funds to BBIL without any explanation for the same, however, Noticee no. 10 did not raise any queries about these transfer of funds. I find that the failure of the auditor to raise red flags with respect to instances of fake transactions or transactions without explanation between two entities, both of which are audited by him, are not merely gross negligence but shows the collusion between BBIL and Noticee no. 10 and shows that Noticee no. 10 was also involved in the fraud perpetrated by BBIL. I note that on the basis of these manipulated financial statements of BBIL it made its IPO and got its equity shares listed on NSE and BSE. I also note that Noticee no. 10 alongwith Noticee no. 11 had given Auditor's Report, containing these manipulated financials, which was reproduced in the Prospectus of BBIL, issued to the public at large and raised around Rs. 92.3 crore from investors. I find that these disclosures in the Prospectus of BBIL in its quarterly financial results and subsequent disclosures made by BBIL to the stock exchanges and in the Annual Report, based on the fake sale/ purchase transactions, on the basis of these financial statements had induced the investors to subscribe/buy/sell/deal/ remain invested in the shares of BBIL. In view of the discussions above, I find that Noticee no. 10 has violated Section 12A (b) of the SEBI Act, 1992, Regulations 3 (c), 4(1) and 4(2) (f) of PFUTP Regulations, 2003.

33. With respect to a specific disciplinary proceeding of the ICAI against Noticee no.10 as mentioned in the SCN, I note the present proceedings against Noticee no. 10 have been initiated for the violations of the provisions of the Securities Laws, as alleged in the SCN. There is a specific allegation in the SCN that Noticee no. 10 colluded with Noticee no. 2 and 8, to commit fraud. In the previous paras, I have found that Noticee no. 10 had colluded with BBIL and its directors. Thus, in view of the judgment of Hon'ble Bombay High in the PWC matter (*supra*), present proceedings against Noticee no. 10 can be carried on and the order passed by ICAI against Noticee no. 10 in the disciplinary proceedings has no bearing on the present proceedings or its outcome.
34. I also note that SCN also alleges the violation of provisions of erstwhile Listing Agreement by Noticee no. 10. In this regard, I note that Clause of the erstwhile Listing Agreement invoked in this regard creates liability of the Issuer Company and/or CEO and CFO of the Issuer Company and not on the auditors. Therefore, violation of Clauses of erstwhile Listing Agreement by Noticee no. 10, as alleged in the SCN, is not made out.
35. In conclusion, I find that under the facts and circumstances of the present case and in view of the violation by Noticee nos. 1, 2, 4, 6, 7, 8 and 9, this is a fit case for issuance of directions under Section 11(4) and 11B of the SEBI Act, 1992. In view of the fact that BBIL is currently under liquidation and the Hon'ble High Court of Bombay has ordered the company to be wound up vide its order dated June 23, 2011, it will not be practical or suitable to issue directions to the company.

Directions:

36. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B of SEBI Act, 1992 read with Section 19 thereof, hereby, direct as follows:

- (i) Noticee no. 1 is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of five (5) years. However, in view of the order dated June 23, 2011 passed by Hon'ble Bombay High Court directing winding up of Noticee no. 1, the present direction shall come into force if the winding up order is recalled, from the date of such recall;
- (ii) Noticee nos. 2 and 8 are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of three (3) years, from the date of coming into force of this order;
- (iii) Noticee nos. 4, 6, 7 and 9, are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two (2) years, from the date of coming into force of this order;
- (iv) Noticee no. 10 is hereby restrained from directly or indirectly issuing any certificate related to audit of listed companies, compliance obligations of listed companies and intermediaries registered with SEBI and the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, those provisions of the Companies Act 2013 which are administered by SEBI under section 24 thereof and the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI, for a period of one (1) year, from the date of coming into force of this order; and

- (v) Proceedings against Noticee no. 3 and 5 are disposed in view of findings recorded in para 13 above.
37. During the period of restraint, as directed in para 36 above, the existing holding of securities including the units of mutual funds, of the concerned Noticees, shall remain under freeze.
38. The obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
39. This Order comes into force with immediate effect.
40. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai

Date: June 18, 2021

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**