

WTM/AB/ISD/ISD-FAC/9555/2020-21

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

**UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 12A OF THE SECURITIES CONTRACTS (REGULATIONS) ACT, 1956**

**In respect of:**

<b>Noticee No.</b>	<b>Name of the Noticees</b>	<b>PAN</b>
1.	Indian Infotech & Software Limited	AAACI0350E
2.	Kamal Nayan Sharma	BFFPS8269J
3.	Varsha Muraka	AHCPM7606B
4.	Harish Joshi	ADYPJ1327J
5.	Mukund Bhardwaj	AHHPB0587H

*The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers and collectively as “the Noticees”.*

**In the matter of Indian Infotech & Software Limited.**

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1. Present proceedings have emanated from a show cause notice dated April 04, 2019 (hereinafter referred to as “**SCN**”), issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), to the abovenamed Noticees, calling upon them to show cause as to why appropriate directions under Sections 11(1), 11(4), 11A and 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and Section 12A of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) should not be issued against them for the violations of provisions of SEBI Act, SCRA, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) and SEBI (Prohibition on Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”), as mentioned therein.

2. The brief narrations of the facts leading to the issue of aforesaid SCN is as under:

- (i) SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs ('MCA') vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office ('SFIO') dated May 23, 2017 which contained the database of shell companies along with their inputs.
- (ii) SEBI by its letter dated August 7, 2017 addressed to BSE Ltd. ('BSE'), *inter alia* in respect of listed shell companies including Indian Infotech & Software Limited (hereinafter also referred to as '**IISL**' or '**company**'), placed trading restrictions on promoters/directors of such companies. Vide said letter dated August 7, 2017, SEBI also directed the stock exchanges to place the scrip of such shell companies in the trade to trade category with limitation on the frequency of trades and imposed a limitation on the buyer by way of 200% deposit on the trade value.
- (iii) Pursuant to the same, BSE vide notice dated August 07, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 07, 2017 in respect of all the listed shell companies, as identified by MCA and communicated by SEBI, with effect from August 08, 2017.
- (iv) IISL vide its letter dated August 17, 2017 made a representation to BSE with a copy marked to SEBI *inter alia*, submitting as under:
  - a. Company had filed its Annual Income Tax Return on timely basis and had complied with the Income Tax provision and there are no pending disputes with Income Tax Department.
  - b. Company had done all compliances with respect to the Companies Act, 2013 and had filed all Annual Returns with the office of Registrar of Companies (ROC), Mumbai
  - c. Company had not taken any loan from Bank or any Financial Institution. Hence, no default has been made.

- d. Company had done all the compliances with respect to LODR Regulations.
  - e. Company had obtained certificate from the Auditor stating that the company is a going concern and no default has been made with regard to the Companies Act, 2013 and Income Tax and all the above requirements are complied with
  - f. Company submitted the Certificate of Registration obtained from the Reserve Bank of India (RBI) for carrying on the business as an NBFC Company.
- (v) In the meantime, aggrieved by the aforesaid letters dated August 07, 2017 issued by SEBI and BSE, IISL filed an appeal No. 200 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"). The Hon'ble SAT vide order dated August 24, 2017 directed the following:-

".....

*2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.*

*3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investing the matter and initiate appropriate proceedings if deemed fit...."*

- (vi) Pursuant to the aforesaid directions by Hon'ble SAT, SEBI passed an order dated September 21, 2017 (hereinafter referred to as the "**Interim Order**") directing *inter alia* as under:

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- i The trading in securities of IISL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.*
- ii Exchange shall appoint an independent forensic auditor inter alia to further verify:*
  - a. Misrepresentation including of financials and/or business of IISL, if any;*
  - b. Misuse of the funds / books of accounts of the company, if any.*

- iii The promoters and directors in IISL are permitted only to buy the securities of IISL. The shares held by the promoters and directors in IISL shall not be allowed to be transferred for sale, by depositories.*
- iv The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s Indian Infotech & Software Limited.*

(vii) Subsequently, SEBI vide order dated February 08, 2018 (hereinafter referred to as “**Confirmatory Order**”) confirmed the directions mentioned in the interim order dated September 21, 2017 against IISL and its promoters and directors.

(viii) Pursuant to the interim order and confirmatory order, BSE in its letter dated December 26, 2017 had informed the company about the appointment of M/s. Chokshi & Chokshi LLP (hereinafter referred to as the “**forensic auditor**”) as auditors for conducting forensic audit of IISL. By the said letter, IISL was requested to cooperate with the forensic auditor and informed that non-cooperation in the matter would be viewed seriously leading to further appropriate actions. The forensic auditor in its emails dated January 04 and 06 of 2018, requested IISL to provide contact details of the company officials for co-ordination for conducting the forensic audit. However, IISL vide letter dated January 06, 2018 to BSE raised objection to interim order dated September 21, 2017 and accordingly, forensic audit of IISL was kept on hold. Thereafter, BSE vide emails dated May 23, 2018 and July 17, 2018 advised IISL to provide required documents/clarifications and to cooperate with the forensic auditor failing which further action would be taken in the matter. Despite various correspondences by the forensic auditor and BSE, IISL failed to furnish the information and documents to the forensic auditor. Subsequently, BSE conducted a site inspection of the registered office of IISL on October 19, 2018 and submitted its inspection report to SEBI on October 23, 2018. On the basis of the examination of the inspection report of BSE, Annual Report 2015-16 of IISL and replies filed by IISL, an SCN, as referred to in paragraph 1 above, was issued to the Noticees.

3. The brief of the allegations levelled against the Noticees in the SCN are as under:

- (i) It was observed that for the quoted investments of Rs. 8.47 crore approx. all the shares are sold to a single entity (Dhanaasha Infracon Pvt. Ltd.) in an off-market transaction in the year 2015-16, at the value appearing at balance sheet of Rs. 8.47 crore. The company was still holding the shares as on March 31, 2016. As per the depository records, these shares appear in the name of company even till September 18, 2017 and no transaction has taken place with respect to these shares during the period April 2015 to March 2017. IISL stated that it had sold the said quoted investment to Dhanaasha Infracon Pvt. Ltd. (DIPL) and received the entire sale proceed of such quoted investment, which is reflected in the bank account statement. IISL admitted the shares are still held with them because DIPL does not have demat account and submitted that DIPL is in the process of opening demat account and IISL is under an obligation to effect the transfer of said shares in the name of DIPL (Copy of IISL letter dated October 17, 2017 placed as Annexure 5 to the SCN). IISL had not provided any documents to substantiate its claim of sale of shares. IISL had also not provided the bank account statement highlighting the receipt of consideration or any documentary evidence showing receipt of sale proceeds. Further the transaction claimed by the IISL was not in line with any commercially prudent transaction. This prima facie raises serious doubts on the authenticity of the sale transaction and hence, it was alleged that there is misrepresentation of financials of the company.
- (ii) The company had the goodwill amount appearing in the Balance sheet as on March 31, 2016 amounting to approximately Rs. 51 crore. It is alleged that the company had failed to furnish the copy of the Independent Chartered Accountant Valuation report, which was referred in the Amalgamation Order passed by the Hon'ble High Court of Bombay dated May 04, 2012, for the goodwill amount of approximately INR 51 crore appearing in the Balance sheet as on March 31, 2016.

(iii) The company was appearing under the category 'Investment Company' on the RBI Website as on August 31, 2017. However, Statutory Auditor Certificate (SAC) says that the company is a Loan Company. Further, their Annual Report 2015-16 says that approximately 85% of the turnover of the company is from IT and Software Products. IISL stated that it is a Non-Banking Financial Company (NBFC) carrying as "Loan Company" and it had also submitted the MOA & AOA of the company along with the Reserve Bank of India (RBI) Certificate and Statutory Auditor Certificate (SAC) submitted to RBI in which also it is clearly mentioned that the company is "Loan Company" (Relevant Extract of Annual Report, MOA, SAC and details as provided on RBI website is placed as Annexure 8 to the SCN). Further IISL also stated that the company is carrying out the business activities of lending and there is typographic error in the Annual Report 2015-16 under MGT – 9, which is error, but that majority of the revenue is generated from lending business activities. The certificate of registration was granted to IISL by RBI to carry on the business of NBFC without accepting the public deposits. Further, as per the MOA of the company, the main object of the company is "*To carry on the business of buying, selling, leasing, letting on hire, hire purchase or easy payment system, all types of industrial, agricultural, commercial and household apparatus, plant equipment, machinery, vehicles, vessels, carriers, household goods and materials, buildings and real estate. AND to finance industrial enterprise and to promote companies engaged in industrial and trading business.*" The Certificate granted by RBI nor the MOA of the company specify that IISL is a Loan Company. It was revealed that there were significant contradictions in respect of the claimed business of the company and hence, it has been alleged that IISL has misrepresented its business.

(iv) In the financial year 2015-16, the income (sales of goods/services) of IISL was approximately Rs. 91 crore and the purchase of Traded goods is approximately Rs. 106 crore. Further it was observed from the 'Extract of Annual Return' that as on the financial year ended March 31, 2016 attached by the company to the Director's report in the Annual Report 2015-16, the principal business activities disclosed by the company was of "IT & Software

Products and Interest Income” and not investment in shares. Further, it was observed from the annual reports for the year 2014-15 and 2013-14, that the Revenue from operations schedule shows the income (sales of goods/services) of companies and the purchase of traded goods. Company stated that in the financial year 2015-16, the company as an NBFC Company also traded in various equity shares of Listed and Unlisted Company both through the Online Platform and Offline mode and the amount of Rs. 91 crore reflect the purchase of shares and not purchase of goods, however, from the Cash flow statement for the year ended March 31, 2016, the Cash flow with respect to purchase of Investments appears to be Rs. 37.50 lakhs only. Further, company stated that there was a typo error in the Annual Report for Financial Year 2015-16 printed by the company wherein the “Purchase of Shares” is mentioned as “Purchase of goods”, “Sale of Shares” is mentioned as “Sale of Goods”. Hence, from the above it has been alleged that the company had made wrong presentation about the business in its annual report and Annual Return for the year 2015-16.

- (v) The company’s HDFC bank statement of account no. 00600350115229 and Yes Bank statement of account no 020185700000189 revealed that there were numerous entries of funds received by IISL from multiple entities and transferred to other entities on the same day leaving a negligible closing balance in the bank account. IISL stated that as the company was maintaining negligible balance, the transactions made by it cannot be treated as accommodation entries just because it does not maintain the balance in its account. IISL have current account with the bank which does not provide any interest on the amount kept with them, whereas company earns interest if such funds are deployed as loans & advances. IISL stated that if it maintains heavy balance in the bank account and company cannot generate revenue which may affect shareholders’ interests. The basis of prima facie suspicion of accommodation entries is because there are numerous entries of funds received by IISL from multiple entities and transferred to other entities on the same day leaving a negligible closing balance in the bank account. It is not solely because there is negligible closing balance. The company has not

submitted any documentary evidence pertaining to Loans & Advances and therefore, the authenticity of the loans & advances schedule submitted by the company cannot be verified and also the claim of the company vide its reply that "...the company earns interest if such funds are deployed as loans & advances...." remains to be substantiated. The company has not provided evidence to substantiate whether the transfer of funds or receipt of funds relate to the loans and advances and that the funds received were "immediately deployed for lending purpose". Hence, it has been alleged that the company is being used as a conduit to facilitate accommodation transactions.

- (vi) The forensic auditor was appointed by BSE pursuant to SEBI directions, however, despite affording reasonable number of opportunities to the company by the auditor, the company failed to furnish requisite information / documents essential to conduct the exercise of forensic audit. The company inter-alia did not provide information/ documentary evidence showing receipt of proceeds for sale of the quoted investments including bank statement, goodwill valuation report, supporting documents towards purchase of goods and income from sale of goods. The company did not submit any supporting documents till date to contest the observations made in the confirmatory order.
  
- (vii) BSE conducted physical inspection of the registered office of the company on October 19, 2018 at Room No. – 122, Block D, 1<sup>st</sup> Floor, Sitala Devi Chs. Ltd., D. N. Nagar, Ambivali, Andheri (West), Mumbai – 400 053. BSE in its report (Inspection Report as provided by BSE is placed as Annexure 3 to the SCN) observed the following:
  - a. Office was situated in a residential complex. Further, there were neither any furniture nor any computers/printers available at the said office.
  - b. None of directors of IISL or company secretary were present at the time of visit. Mr. Sachin Merchande, the only company official who was present there, could not clarify regarding operations carried out



from the said premises. According to him, none of the directors visited the office.

- c. As per electricity bills provided to the team for the month of July 2018, August 2018 and September 2018, these bills were in the name of R. K. Developers. Further, it was observed that there was very minimum electricity consumption of 25 units during these 3 months. As per the society maintenance bill provided by Mr. Sachin Merchande, bill is in the name of Mr. Sandeep Rasiklal Sheth & Others. Upon enquiring, Mr. Sachin could not clarify relationship of Mr. Sandeep Rasiklal Sheth with IISL. Thus, it appeared that the premises was on a rent. However, no rent agreement was provided to the team.
- d. As per attendance sheet of the Annual General Meeting ("AGM"), it appeared to have been held at the office for last 3 years, it was observed that, more than 30 shareholders of IISL have attended these meetings. As per records, company's total area is about 225 sq. ft. which includes a room, kitchen and facilities. In view of the same, there was suspicion as to how such a small room could accommodate more than 30 shareholders in addition to other company directors and officials attending such AGMs.

(viii) The SCN alleges that the company (Noticee no.1) had failed to present true and fair financial statements and had executed transactions which were non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company. Further, that IISL had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors and are fraudulent in nature.

(ix) The SCN alleges that the directors (Noticee no. 2 to 5) were responsible for all the acts of omission and commission by the company. It was the duty and responsibility of the directors (Noticee no. 2 to 5) to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors of the listed companies have greater responsibility as they have access to inside information such as

the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Further, independent director (Noticee no. 3) had the duty of being vigilant. Therefore, the directors (Noticee no. 2 to 5) have allegedly failed in their duties.

- (x) Further, the SCN alleges that it was the duty of the chief financial officer (Noticee no. 5) of the company 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 while placing the financial results.
  - (xi) The SCN alleges that the directors including the Chief Financial Officer (CFO) of the company have failed to exercise duty of care by misrepresenting the financials. The directors and CFO in this matter had failed to discharge their fiduciary responsibility. Further, that the documents as requested by the forensic auditor had not been provided by IISL.
  - (xii) The SCN alleges that the company (Noticee no.1) and its directors (Noticee no. 2 to 5) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature.
4. Therefore, it has been alleged in the SCN that Noticee no. 1 to Noticee no. 4 have violated Section 12A (a) (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred as "SEBI Act") and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1)(c),(e) and (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6) and (7), 4(2)(f)(iii)(1),(3),(6) and (12) of LODR Regulations, Section 21 of SCRA and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992.

5. It is also alleged in the SCN that Noticee no.5 has violated Section 12A (a), (b) and (c) of the SEBI Act, 1992 and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1)(c),(e) and (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6) and (7), 4(2)(f)(iii)(1),(3),(6) and (12) of the LODR Regulations and Clause 49 (ix) of the erstwhile Listing Agreement read with Section 21 of SCRA.
6. The SCN issued to the Noticees, contained certain annexures, list of which is as under:

<b>Annexure no.</b>	<b>Particulars of the document</b>
Annexure 1	Copy of Interim order dated September 13, 2017
Annexure 2	Copy of Confirmatory Order dated February 08, 2018
Annexure 3	BSE Inspection Report
Annexure 4	Copy of relevant extract of Reply of IISL letter dated September 12, 2017 and depository statements
Annexure 5	Copy of IISL letter dated October 17, 2017
Annexure 6	Extract of Annual Report 2015-16 notes to Balance Sheet as at 31 <sup>st</sup> March, 2016
Annexure 7	Copy of High Court order dated May 04, 2012 and goodwill certificate of IISL
Annexure 8	Extract of Annual Report 2015-16, MOA, SAC and details as provided on RBI website
Annexure 9	Certificate of Registration from RBI
Annexure 10	Extract of Annual Report 2015-16 for Cash flow statements.
Annexure 11	Company's HDFC bank statement account no. 00600350115229 and Yes bank statement account no 020185700000189
Annexure 12	Copy of BSE letter dated Dec 26, 2017, SCN dated August 30, 2018, email dated May 23 & July 17, 2018 and Forensic Auditor email dated January 04 & 06, 2018

**Replies, Inspection, Hearing and Written submissions:**

7. The SCN dated April 04, 2019 was delivered to all the Noticees, the details of which are as under:

<b>Sr. No.</b>	<b>Name of Noticee</b>	<b>SCN Delivered</b>	<b>Mode of Delivery</b>
1	Indian Infotech & Construction Limited	Yes	Newspaper publication on May 12, 2019
2	Kamal Nayan Sharma	Yes	Affixture
3	Varsha Muraka	Yes	Newspaper publication on July 07, 2019
4	Harish Joshi	Yes	Affixture
5	Mukund Bhardaj	Yes	Speed Post AD

8. Thereafter, an opportunity for personal hearing was granted to the Noticees for November 13, 2019. The Notice dated October 29, 2019 for personal hearing to be held on November 13, 2019, was served to Noticees no. 1 and 3 through newspaper publication on November 09, 2019 as the notice could not be delivered by post. The notice for personal hearing was delivered to Noticees no. 2 and 5 by Speed Post AD. However, the notice dated October 29, 2019 for personal hearing could not be delivered to Noticee no. 4. On November 13, 2019, none of the Noticees appeared for the personal hearing and nor did any of the Noticees make a request for adjournment. Following the principles of natural justice, another opportunity of hearing was granted to the Noticees on December 12, 2019. The notice for personal hearing to be held on December 12, 2019 was served on Noticees no. 1, 3 and 4 by newspaper publication on December 08, 2019 and the notice was delivered to Noticees no. 2 and 5 through affixture. On December 12, 2019, the authorised representative for Noticee no. 1 appeared and submitted that it had not received the SCN dated April 04, 2019. Accordingly, a copy of the SCN was provided to the authorised representative during the hearing on December 12, 2019 and a final opportunity for personal hearing was granted to Noticee no. 1 to be held on January 09, 2020. Noticees no. 2, 3, 4 and 5 did not appear for the personal hearing granted to them on December 12, 2019, and neither did they make any request for adjournment.

9. For the personal hearing scheduled on January 09, 2020, the Noticee no. 1 vide its letter dated January 07, 2020, sought for an adjournment and accordingly, a final opportunity for personal hearing was granted to Noticee no. 1 on January 29, 2020. On January 29, 2020, the authorised representative of Noticee no. 1 appeared and made submissions and filed its reply dated January 27, 2020 to the SCN. The authorised representative of Noticee no. 1 also sought for additional time to file its detailed reply/written submissions and accordingly, Noticee no. 1 was granted time to file its written submissions on or before February 13, 2020. The Noticee no. 1 then vide its letters dated February 14, 2020 and February 27, 2020 sought further time for filing its detailed reply/written submissions. Thereafter, the Noticee no. 1 vide its letter dated March 16, 2020, sought further time up to first week of April to file its detailed reply/written submissions on account of the lockdown due to covid-19 pandemic. Since the Noticee no. 1 had not filed its reply within the time requested by it, and in view of the continuing lockdown due to the Covid-19 pandemic, a reminder vide email dated July 02, 2020 was sent to the Noticee no. 1 granting the Noticee a final opportunity to file its reply immediately. Subsequently, the Noticee no. 1 vide its letter dated September 22, 2020, filed its detailed reply to the SCN. I note that Noticees no. 2, 3, 4 and 5 have not filed any reply to the SCN till date.

**Submissions of the Noticees:**

10. The various submissions made by the Noticee no. 1, are as under:

- (i) *IISL is a registered Non Banking Financial Company Investment and Credit Companies (NBFC-ICC) and non accepting Public Deposit other than NBFC-ND-SI having a valid certificate of registration (COR) issued by Reserve Bank of India vide certificate no. B-13.00221 and company is engaged in the non banking finance business, the company was originally incorporated as "Indian Leasers Limited" on May 22, 1982. Subsequently the name of the company was changed to "Indian Infotech & Software*

- Limited” on July 20, 1998 and was issued a fresh certificate of incorporation pursuant to change in its name by concerned RoC and RBI.*
- (ii) *IISL is a listed company with BSE Ltd. for more than 35 years and having large shareholders base of the company and company is also registered and engaged as NBFC company since 1998 to till date and company is regular in filing of Annual Returns with RoC (MCA) and Income Tax Department and MCA/ROC/IT Department is regularly issuing us the assessment orders and never has given any adverse order.*
- (iii) *The company is having more than 15,000 shareholders including more than 200 bodies corporate holding exceeding 30% shareholding of the company and none of them has raised any query about the existence and whereabouts of the company. Even in BSE’s report it is confirmed that the company is existing.*
- (iv) *Reply to para 2 of the SCN – We deny the allegation. It appears our initial objection to the appointment of the forensic audit was not considered by SEBI/BSE. Be that as it may, the Auditor M/s Choksi & Choksi LLP never got in touch with us nor sent any list of required documents nor visited our office for audit. There was no follow up nor did the auditor contact any of our directors for carrying out the audit. We are prepared even today for audit as required by BSE and co-operate with any forensic auditor anytime. It appears there is some misunderstanding.*
- (v) *Reply to para 3 of the SCN – We have already shifted our registered office to the following address w.e.f. 15-04-2019*  
*Indian Infotech & Software Ltd*  
*Unit No. 518, 5<sup>th</sup> Floor,*  
*Anjani Complex, Parera Hill Road,*  
*Andheri (East) – Mumbai – 400 099.*

*This address is shown on BSE/MCA website. We clarify that the old office was on rent and company was operating from that address. When BSE*

*team came for inspection they were informed that painting work was going on because of Diwali & therefore records were bundled and kept in polythene bags. We confirm that the company is existing, well functioning, doing business as NBFC and to establish this, we are prepared to submit whatever documents required by BSE/SEBI.*

- (vi) *As the company office premises was in residential complex and there was very few electricity points for use, secondly after scrutiny in this matter we came to know from electrician that there was technical mistake in the meter of electricity or the meter reading were not recorded by the authorized person of electricity company therefore the electricity consumption details were not recorded in the utility bill, as the name of the Builder (R.K. Developers) on the electricity bill is continued in the name of builder of complex and as the name of Mr. Sandeep Rasikal Sheth was appeared on the maintenance bill of society as he is owner of office premises and the office premises was taken on rent from him, we are enclosing Form INC-22 of MCA along with rent agreement.*
- (vii) *The company has conducted all the Annual General Meeting of the company as per scheduled time, date and venue of the AGM given by the company in notice of AGM and AGM was convened accordingly and all the compliances and attendance of the shareholders has been recorded in the register of AGM and there is no such question about the seating capacity of 30 or more persons at the venue of AGM (register office of company) as they have arranged the chairs at the venue (Register Office) for AGM and all the shareholders were offered the seating arrangements on the first come first serve basis and for remaining shareholders there was necessary arrangements were made as per requirement to make convenient to hold the AGM.*
- (viii) *Reply to para 4 (i) of the SCN – with regard to the sale of investment worth Rs, 8.47 crore to DIPL (Dhanaasha Infracon Pvt. Ltd.), we fail to understand how this transaction prima facie appears to be*

*misrepresentation of financials of the company as the shares were sold at the cost price to the company. If you go through the investment schedule submitted by the company, it is clear that we sold investment worth Rs. 58.36 crore in the said financial year to various companies out of which Rs. 8.47 crores investment were sold to DIPL. In the interim order it was contested that we had sold the debared listed companies shares to DIPL which we are still in possession in our demat account on which we replied in response to interim order dated 17/10/2017, that market valuable of shares can be taken at negligible value but were able to find a buyer who was ready to pay as the cost of such shares and the company duly sold such shares to DIPL. We would again like to point out that no accounting standards or any other law states that the sale is complete only when the shares are transferred to the purchaser (transferee) as such holding such shares does not amount to financial misrepresentation and again the company was able to fetch the entire cost out of such investment and no booked any loss on such shares, then how such transaction is treated as financial misrepresentation? In both the orders issued by SEBI, no section of law or accounting standards or guidance notes were mentioned under which the same should be treated as financial misrepresentation and its just an (general statement without any information and evidence) allegation that the transaction is not genuine whereas the company had received the entire sale proceed of the same and rightly booked in financial statement of the company. Moreover we had also stated that the company being NBFC company diluted investment as it sees market space in lending business and as such decision was taken to dilute its exposure in investment business and focus on lending business in the financial year 2015-16. We once again enclose the investment schedule along with ledger of DIPL along with banking transaction reflecting in bank statement. These transactions were duly audited and no qualification from auditors is there at the relevant time.*

- (ix) *Reply to para 4 (ii) of the SCN – With regard to the company goodwill amount appearing in the Balance Sheet as on March 31, 2016 amounting*



to Rs. 51 crore approximately, your good self has mentioned that the company has failed to furnish this Independent Chartered Accountants Certificate for the same. On this we draw your attention to our reply dated 12/09/2017 and 17/10/2017, we have submitted the calculation of goodwill as per the Hon'ble High Court Order and we would like to state you that no accounting standard of guidance note state that valuation of goodwill need be certified by the Independent Chartered Accountant while booking the same amount as Goodwill. The said goodwill was generated on account of merger order of Hon'ble High Court Mumbai and we had duly submitted to BSE the High Court order copy along with calculation of Goodwill. We further submit that the company has obtained No objection/In-principle approval from BSE for merger and submitted necessary documents along with valuation report of Independent Chartered Accountant (H.T. Merchant & Co. Chartered Accountant) for swap exchange ratio and statutory auditor certificate for post merger valuation was also submitted to Hon'ble High Court Mumbai and BSE.

- (x) Reply to para 4 (iii) your goodself had mentioned that there was significant contradiction in respect of claimed business of the company and prima facie misrepresentation of its business. On this we have already given you the brief profile of the company and the company is registered as NBFC company with Reserve Bank of India. The certificate issued by the RBI does not state the company is Investment Company or Loan Company, the certificate only state the company is registered under RBI as NBFC company duly stating NBFC company with accepting public deposit or non-public deposit. The company duly registered with RBI requires submitting yearly SAC certificate furnishing the type of activity carried out by the company.
- (xi) As it well aware that in the previous year the prime business activity under NBFC the company majorly doing business as "Investing Company" but the company in the financial year 2015-16 started major business activity as "Loan Company" as such the auditor rightly mentioned the same as "Loan Company" in its SAC certificate. The major point is under the RBI Act, an

*NBFC company can perform both the activities of lending and investing as such the company had never done any business activity against any law of NBFC and the company in timely manner report and complied with all the compliances of the RBI NBFC Regulation. Again in MOA submitted taken on record the only major business activity is mentioned in show cause notice but if whole objects along with ancillary object are read with the same the company is eligible to carry business activity of lending and finance. Further we admitted our mistake that in MGT-9 in Directors Report for FY 2015-16, it was typo error which was copied from the previous year where the company enter into business activity of IT and Software products and changed the company name from “Indian Leasers Ltd” to “Indian Infotech & Software Ltd” but the business did not pick up the company continued with the old business of “Investing and Lending”. We admit that it has been overlooked by all, in fact from shareholders in AGM as well and such mistake was not rectified and recorded in the minutes but it cannot lead to misrepresentation of accounts as the Audited Financial Accounts as a whole was prepared as NBFC company and related to accounting standards and law applicable to NBFC and which was duly acknowledged by the shareholders in the AGM and thus they were aware.*

- (xii) *Reply to para 4 (iv) of the SCN –your good self has pointed out that, the sales and purchase of the company in the annual report for FY 2015-16 shown as goods sold/purchased. At first we admit the mistake which was genuine and we should have been more specific in mentioning the type of sales and purchase done by the company and we did the same in our reply letter. But at the same time we would like to mention that as per law which define goods also includes shares as goods and as per the Schedule II of Financial Presentation of Profit and Loss Statement also stated Sale of Goods and Purchase of Traded goods and as such no contravention of law or accounting standard took place. In the AGM, the shareholders were duly informed about the business activity carried by the company and there has been no investor complaints on such reporting and no competent authority raised such point. Again you had referred to Cash Flow Statement in which*

*you had mentioned that Rs. 37.50 lakh only as purchase of investment. It is correct and true as only Rs. 37.50 lakh has been purchased as Investment and duly reported as financing activities and Rs. 57 crore approximately was reported as Sale of Investment in the same cash flow statement. When the company buys or sells shares as stock in trade it is not reported as purchase of investment or sale of investment and should be reported under cash flow from business activity only and the cash flow was prepared as per accounting standard – Indirect Method and the company rightly reported the purchase of shares and sale of shares as business activity. Lastly, the company as per various law and compliances applicable to the company has rightly reported its nature of business. No adverse remark from the auditors in FY 2015-16 has been made.*

*(xiii) Reply to para 4 (v) of the SCN – Regarding the Bank statement query raised by your good self, we again inform you that we didn't hide any facts from SEBI and submitted the complete bank statement of the company for the financial year 2015-16. The transactions are numerous as the size of the company is huge and transactions are many and we had received funds from the parties to whom the investment is sold and please note the fact that the parties do not keep huge bank balance in their current bank accounts and pay as per fund arranged in and out of business activities and we received fund as per our requirement and request on such day and we lend the same to the parties seeking loan from us. The company has networth of more than Rs. 200 crore approx. and its again no compulsory to hold the entire such fund in bank account, the company invest and do business as per the capital of the company and we did the same and again no law in country state that how to maintain the bank balance of the company. The company has never taken loan from banks or parties. As a company, we fail to understand as to how non maintaining huge bank balance can be treated as accommodation entry and misrepresentation or misappropriation in financial statement, or objectionable, commercial wisdom demand deployment of funds to earn interest, rotation, velocity,*

*churning so that maximum returns are earned on the capital and/or surplus fund.*

*(xiv) Reply to para 5 of the SCN – your good self again raised the point that the company fail to furnish required information/documents to forensic auditor appointed by BSE pursuant to SEBI directions. We had already mentioned that we had received mail from forensic auditor on 04/01/2018 and 06/01/2018 and we had duly replied vide email dated 11/01/2018 to them and till date we have not received any communication from the forensic auditor for the documents required by them nor any emails, as such, its harsh to say that we as company did not cooperate. As mentioned above, we are even prepared to furnish the documents as required by forensic auditor even today. It appeared to us at the relevant time that the appointed auditor for reasons known to them did not follow up with us and appears to have abandoned the job.*

*(xv) Reply to para 6 of the SCN – you had summarized the para 4 and stated that the company till date fail to furnish documentary evidence to elaborate our contention. In this regard, we would like to state that firstly we were never informed or asked the specific papers to be submitted as per the law and accounting standards governing the financial statement and the allegation put on us was in general and we had continually followed up with BSE to reply our one major question that why the company is included in the “list of shell companies” and why such action against the company is taken. For the records we would like to place the Assessment Order passed by the Assistant Commissioner of Income Tax for the financial year 2015-16 & 2016-17 wherein no financial misrepresentation, misuse of funds of the company has been observed by IT officers, according to assessment order passed by IT Department there is no such allegation or adverse comment has been given.*

*(xvi) Reply to para 7 & 8 of the SCN – your good self had mentioned the various show cause notices issued by the BSE and correspondence made by the forensic order and stated that we fail to comply with the same which again*

*baseless allegation, we had replied timely to all the notices issued by the BSE and forensic auditor and if we not received any further communication from them then its not our fault.*

*(xvii) Reply to para 11 of the SCN - We would like to submit that the directors of the company have performed their duties very well and have taken care of all possible risk management and internal financial control framework as per the applicable laws, rules and regulations on the company, all the standards and measures for better control and accountability has been maintained and followed by the Company and accounts of the company has been reviewed and approved by Board and its committees periodically and the same has been audited by a peer reviewed chartered accountant firm which gave a fair and transparent view of the financial statement, all the necessary and possible precaution, risk management has been taken in place commensurate with the size of the company for recording the transaction as well as accounting and auditing of the books of accounts of the company. The directors of the company responsible for establishing and maintaining internal controls for financial reporting and have evaluated the effectiveness of the internal control systems of the company pertaining to financial reporting and the Company's Board of Directors all significant deficiencies in the design or operation of internal controls, of which they are aware and steps were taken to rectify the deficiencies.*

*The company has an internal control system which is commensurate with the size, scale and complexity of its operation. The internal auditors monitor the efficiently and efficacy of the internal control systems in the company, compliance with operating system/accounting procedures and policies of the company. Significant audit observations and corrective actions thereon are presented to the audit committee of the Board. The company has adequate systems and procedures to provide assurance of recording transaction in all material respects. Therefore, the director and management of the company have performed their duties regard to internal financial control and this can be further proven by as statutory auditors have never given any qualification or adverse observation in any of their reports in any financial years.*

*According to the financials of the company your good self may check none of the directors has use the funds of the company for their personal use neither company has paid any high remuneration to any of the director or KMP therefore the equation of misrepresentation and misuse of funds of the company does not arise on the directors of the company and secondly the BSE/MCA/SFIO has not given any such evidences which prove the allegations on the directors for siphoning the funds by Board of Directors of the company, the company and its directors deny the allegations.*

*(xviii) Reply to para 12 & 13 of the SCN – We would like to submit that Chief Financial Officer of the company has performed all the duties very well and have taken care of all possible risk management and internal financial control framework as per applicable laws, rules and regulation on the company, all the standard measures for better control and accountability has been maintained and followed by the company and accounts of the company has been reviewed and approved by Board and its committees periodically and the same has been reviewed by a peer reviewed Chartered Accountant firm which given a fair and transparent view of the financial statement and the auditor firm has not given any adverse remark or modified opinion in their audit report, all the necessary and possible precaution, risk management has been taken in place commensurate with the size of the company for recording the transaction as well as accounting and auditing of the books of the company.*

*The Chief Financial Officer of the company is responsible for establishing and maintaining internal controls for financial reporting and have evaluated the effectiveness of the internal control system of the company pertaining to financial reporting and the certificate of CFO has been also given in the Annual Report for the confirmation of accuracy and correctness of the financials of the company.*

*CFO of the company reviewed the adequacy and operating effectiveness of the internal controls therefore the allegations made on the CFO of the company is baseless and we deny this allegation.*

(xix) *Reply to Para 19 and 20 of the SCN – Firstly we seek apology as this reply got delayed as we needed time to prepare the same in detail and you are well aware that entire world was struck with the sudden lockdown announcement on account of Covid-19 pandemic which kept the business houses under lock down and still we have to follow the SOP issued by ICMR and thus the company took time to submit this detail reply to show cause issued by your good self.*

(xx) *In conclusion we deny that we had failed to present true and fair financial statements for the year ended 31-03-2016. The statutory auditors had given no adverse remark in that years audit report or in subsequent years audit report. The transactions treated as non-genuine were not so hence there was no misrepresentation of the accounts/financials. There was no misuse of accounts/funds of the company. We deny that the company had misused fund/misrepresented books of accounts which are detrimental to the interests of genuine investors. We deny having done any fraudulent transaction. There has not been any major complaint on SCORES. It appears minor, technical, inadvertent errors have been blown out of proportion. Further genuine typographical errors have been construed as misrepresentation which is totally misconceived and absurd.*

**Consideration of submissions and findings:**

11. I have perused the SCN dated April 04, 2019, along with its annexures, the replies filed by the Noticees and submissions made during the course of personal hearing and written submissions filed thereafter. The question now arises as to whether the Noticees have violated the provisions of SEBI Act, 1992, SCRA, 1956, PFUTP Regulations, 2003, LODR Regulations, 2015 and the applicable clause of Listing Agreement, as alleged in the SCN dated April 04, 2019.

12. Before dealing with the various allegations made in the SCN, it would be appropriate to refer to the provisions of law which are alleged to have been violated by the Noticees and relevant extract whereof is reproduced below:

**Relevant extract of provisions of SEBI Act, 1992:**

**“Functions of Board.**

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

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

(a).....

(b)....

(i) *calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;*

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

***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control***

**Section 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 recognised 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;*

(d) *.....”*

**Relevant extract of provisions of SCRA:**

**“Conditions for listing.**



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

**Relevant extract of provisions of LODR Regulations:**

**“Principles governing disclosures and obligations.**

4.(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b)The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c)The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d).....

(e)The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) .....

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

.....

(2)The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(a).....

(b).....

.  
. .  
. .  
. .

(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(1).....

(2) *The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.*

.....

(ii) *Key functions of the board of directors-*

(1) .....

(2).....

(3).....

(6) *Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.*

(7) *Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards...*

.....

(iii) *Other responsibilities: (1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.*

(2).....

(3) *Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.*

(4).....

.....

.....

(6) *The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders...*

.....

.....

.....

(12) *Members of the board of directors shall be able to commit themselves effectively to their responsibilities.*

.....

.....

**Relevant extract of 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.”

**Regulation 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).....
- (b).....
- ...
- (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;
- (g)...
- (h)...
- .....
- (r) Planting false or misleading news which may induce sale or purchase of securities;  
.....”

13. I note that it has been alleged in the SCN that IISL did not cooperate with the forensic auditor i.e. M/s Chokshi & Chokshi LLP (hereinafter referred to as the “forensic auditor”) that was appointed by BSE pursuant to the directions in the Interim Order for conducting forensic audit of IISL. IISL in his detailed reply dated September 22, 2020 has submitted that their initial objection to the appointment of the forensic audit was not considered by SEBI/BSE. They have submitted that the auditor M/s Choksi & Choksi LLP never got in touch with them

nor sent any list of required documents nor visited their office for audit. Further, that there was no follow up and the auditor did not contact any of their directors for carrying out the audit. They have submitted that they are prepared even today for audit as required by BSE and co-operate with any forensic auditor anytime. IISL have submitted that this is due to some misunderstanding. In this regard, I note that the Interim Order dated September 21, 2017, was passed after considering the submissions/reply dated September 12, 2017 of IISL, wherein, it was *inter alia* directed as under:

*“ii. Exchange shall appoint an independent forensic auditor inter alia to further verify:*

- a. Misrepresentation including of financials and/or business of IISL, if any;*
- b. Misuse of the funds / books of accounts of the company, if any.”*

14. By the said Interim Order, IISL was advised to file its reply/objections to the Interim Order and IISL vide its letter dated October 17, 2017 had filed its reply/objections to the Interim Order. Subsequently, after considering the reply dated October 17, 2017 of IISL, SEBI vide Order dated February 08, 2018, confirmed the directions passed in the Interim Order observing that:

*“7. Vide interim order, IISL was advised to indicate in its reply whether it desires to avail an opportunity of personal hearing, if any. From the reply of IISL dated October 17, 2017, it is noted that Company has not specified that whether it desires to avail an opportunity of personal hearing. SEBI vide email dated November 22, 2017 had advised IISL to confirm whether it desire to avail an opportunity of personal hearing or not. However, till date IISL had not submitted any reply to the same. Thus, I note that ample opportunity has been given to IISL to state whether it desire to avail an opportunity of personal hearing. Despite having been given ample opportunities, IISL had failed to avail of the same. I am, therefore, proceeding with the matter based on IISL replies & other material available on record and the issue for consideration before me is whether the directions in the Interim Order need to be continued, revoked or modified in any manner.*

8. Based on the replies given by the company in response to Interim order dated September 21, 2017, the observations are as under:

(a).....

.....

9. I note that IISL, at this stage, has failed to submit any documentary evidence in support of its claim and has also failed to give a plausible reason/explanation alongwith suitable documentary evidences for the charges /allegations / prima facie findings as described in the interim order. I also note that further enquiry/audit in the matter is pending.

10. In view of the above, I find that the facts and circumstances of the case as brought out in the Interim Order have not changed, justifying the discontinuation/modification/revocation of the directions passed in the Interim Order. It is further noted the audit as directed in the interim order shall also cover the transaction covered in para 8 (a) above for ascertaining the facts relating to the possible violation of the provisions mentioned therein.”

15. Hence, I find that the reply/initial objection of IISL to the appointment of the forensic audit was considered by SEBI while passing the Order dated February 08, 2018 confirming the directions in the Interim Order *inter alia* directing the stock exchange to appoint an independent forensic auditor to verify the misrepresentation including of financials/business of IISL and the misuse of the funds/books of account of IISL, if any. Therefore, I find that the objection raised by IISL on the appointment of the forensic auditor cannot be a defence for IISL to avoid inspection by the forensic auditor and hence, I find the said submission of IISL as untenable.

16. Now coming to the contention of IISL that the forensic auditor never got in touch with them nor sent any list of required documents nor visited their office for audit, I note that in its reply IISL has acknowledged that it had received mail from forensic auditor on January 04, 2018 and January 06, 2018 and they have replied to the auditor vide email dated January 11, 2018. However, I find that no such email addressed to the forensic auditor has been provided by the Noticee. There is an email on record dated January 11, 2018 which has been sent by IISL to BSE. In this email I find that the Noticee has not offered to submit itself to forensic audit, rather it raised objection to the forensic audit which as discussed in the previous para was not tenable. Be that as it may, the contention raised by IISL in this regard itself stands contradicted by its own acknowledgment in its reply that it had received 2 emails from the forensic auditor.

17. I note that the forensic auditor was appointed by BSE pursuant to the directions in the Interim Order for conducting forensic audit of IISL and the forensic auditor vide emails dated December 26, 2017, January 04, 2018 and January 06, 2018 to IISL, requested IISL to provide contact details of company officials for co-ordination for conducting the forensic audit, however, IISL did not cooperate with the forensic auditor. Further, BSE vide its email dated January 02, 2018 requested IISL to cooperate with the audit firm as the audit firm had reported that the company is not providing the details requested from IISL. Thereafter, BSE vide its emails dated May 23, 2018 and July 17, 2018 advised IISL to cooperate with the forensic auditor pursuant to the Confirmatory Order dated February 08, 2018 passed by SEBI. However, no response or cooperation was received from IISL and accordingly, BSE issued a SCN dated August 30, 2018 to IISL to show cause as to why disciplinary action as may be deemed fit should not be taken against it for failure to make necessary documents/clarifications available to forensic audit firm for the purpose of forensic audit. I note from BSE letter dated October 12, 2018 to SEBI that IISL has not submitted any response to the BSE SCN dated August 30, 2018.
18. Further, I note that IISL has never stated in any of its replies/emails to BSE that it has not received any letter/mail from the forensic auditor or that it has responded to the forensic auditor and neither did it respond to the SCN dated August 30, 2018 issued by BSE for failure to cooperate with the forensic auditor. It is evident from the above narration of facts and documents before me that IISL had received the letters of the forensic auditor and failed to cooperate with the forensic auditor. Therefore, I find that all the contentions raised by IISL for not allowing forensic audit are an afterthought and non-cooperation with the forensic auditor by IISL as directed in the Interim Order was a deliberate attempt by IISL to avoid the forensic audit.
19. Further, the contention and submission of IISL that they are prepared even today for audit as required by BSE and cooperate with any forensic auditor anytime is nothing but a delaying tactic and is an attempt to avoid regulatory action. Hence, I find that IISL (Noticee no. 1) has failed to cooperate with the

forensic auditor appointed by BSE on the directions of SEBI and therefore, have violated Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992.

20. With regard to the allegation in the SCN on the findings of the Inspection report filed by BSE after conducting a physical inspection of the registered office of IISL on October 19, 2018 at Room No. 122, Block D, 1<sup>st</sup> Floor, Sitala Devi Chs. Ltd., D.N. Nagar, Ambivali, Andheri (West), Mumbai 400053, IISL have submitted that when the BSE team had come for inspection, painting work was going on because of Diwali and therefore records were bundled and kept in polythene bags. With regard to the minimal electricity consumption of the premises, IISL submitted that the company office premises was in a residential complex and there was very few electricity points and that there was a technical mistake in the electricity meter or the meter reading was not recorded by the authorized person. Further, IISL have submitted that the name of the Builder (R.K. Developers) on the electricity bill is continued in the name of builder of complex and the name of Mr. Sandeep Rasikal Sheth appeared on the maintenance bill of society as he is owner of office premises and the office premises was taken on rent from him. IISL have also submitted that the company has conducted all the Annual General Meetings (AGM) of the company as per scheduled time, date and venue of the AGM given by the company in notice of AGM. That the AGM was convened with all the compliances and the attendance of the shareholders have been recorded in the register of AGM and there is no such question about the seating capacity of 30 or more persons at the venue of AGM (registered office of company) as they have arranged the chairs at the venue for AGM and all the shareholders were offered the seating arrangements on the first come first serve basis and for remaining shareholders there was necessary arrangements were made as per requirement to make convenient to hold the AGM.

21. With regard to above submissions of IISL, I note from the inspection report of BSE that the office was situated in a residential complex and there was no furniture or any computers/printers available at the said office. Further, it is noted from the inspection report that as per the company's latest correspondence dated September 27, 2018 with the Exchange, the company letter head carried

landline and fax no. 022 – 4295 6833 for its registered office address, however, no such landline telephone/fax instrument was available at the said premises. I note that during the inspection, none of directors or company secretary of IISL were present. I note that one Mr. Sachin Merchande, the only company official who was present there, could not clarify regarding operations carried out from the said premises and according to him, none of the directors visited the office. I note that electricity bills for the months of July 2018, August 2018 and September 2018 were provided to the inspection team and it was observed that there was minimal electricity consumption of 25 units during these 3 months. I note that IISL has claimed that there was a technical mistake in the reading of the meter for the said 3 months. However, I note that IISL has not provided any other electricity bills prior or after the said 3 months to substantiate their contentions that the reading for the said 3 months were due to technical mistake. Further, given that there are no computers/printers etc., and Mr. Sachin Merchande submission that none of the directors visited the office, it appears that it is a non-functional office premises with minimal electricity consumption. I also note that as per the Leave and Licence Agreement for the registered office as submitted by IISL, it is stated in the agreement that the Licensor has agreed to allow the Licensee (i.e. IISL) to use and occupy the premises for residential purposes only. Hence, considering the low consumption of electricity, no computers/printers or furniture and the submissions of Mr. Sachin Merchande, it appears that no operations are being carried out by the company from the registered office address. With regard to the AGM, although it is questionable as to how more than 30 shareholders including company officials could have been accommodated in the small office of about 225 square feet area, I find that the attendance sheet duly signed by the shareholders who attended the AGM have been submitted and there are no complaints by the shareholders with regard to the AGM before me.

22. It has been alleged in the SCN that from a perusal of the Annual Report, IISL had made a sale of investments of approximately Rs. 8.47 crore to Dhanaasha Infracon Pvt. Ltd. (hereinafter referred to as “**DIPL**”) in an off-market transaction in the year 2015-16, however, that IISL was still holding the shares as on March



31, 2016 and IISL has not provided any documents to substantiate its claim of sale of shares or provided its bank account statement highlighting the receipt of consideration or any documentary evidence showing receipt of sale proceeds of such investments. In this regard, IISL has submitted that it sold investment worth Rs. 58.36 crores in the FY 2015-16 to various companies out of which Rs. 8.47 crores investments were sold to DIPL. IISL has submitted that no accounting standards or any other law states that the sale is complete only when the shares are transferred to the purchaser and further that holding such shares does not amount to financial misrepresentation. Further, that no section of law or accounting standards or guidance notes were mentioned under which the same should be treated as financial misrepresentation and it is just an allegation that the transaction is not genuine whereas the company had received the entire sale proceed of the same and rightly booked in financial statement of the company. In this regard, I note that the particulars of investment of IISL with regard to the off-market transaction with DIPL of Rs. 8.47 crores, as submitted by IISL, is as under:

<b>Sr. No.</b>	<b>Script name</b>	<b>No. of shares</b>	<b>Cost price</b>	<b>Mode</b>	<b>Sale Price</b>
1	Golden Goenka Fincorp Limited	3,50,000	25,82,441	Off-market	25,82,441
2	Kappac Pharma Limited	29,400	74,71,061	Off-market	74,71,061
3	Rajlaxmi Industries Limited	56,370	1,71,153,162	Off-market	1,71,153,162
4	Sulabh Engg & Services Limited	2,57,300	5,75,60,740	Off-market	5,75,60,740
5	Novarlis India Limited	30	8,280	Off-market	8,280
				<b>Total</b>	<b>8,47,75,684/-</b>

23. From a perusal of the bank statements submitted by IISL, I note that IISL had received various amounts from DIPL ranging from Rs. 90,000 to Rs. 1 crore on various dates from December 2015 to February 2016. The details of receipt of amounts from DIPL, as submitted by IISL, are as under:

<b>Sr. No.</b>	<b>Date</b>	<b>Particular</b>	<b>Credit Amount</b>
1	22-12-2015	By HDFC Bank Ltd	1,00,00,000
2		By HDFC Bank Ltd	47,00,000
3		By HDFC Bank Ltd	50,00,000
4	23-12-2015	By HDFC Bank Ltd	85,00,000
5	24-12-2015	By HDFC Bank Ltd	20,00,000
6		By HDFC Bank Ltd	30,00,000
7		By HDFC Bank Ltd	30,00,000
8		By HDFC Bank Ltd	20,00,000
9	28-12-2015	By HDFC Bank Ltd	15,00,000
10		By HDFC Bank Ltd	30,00,000
11	29-12-2015	By HDFC Bank Ltd	25,00,000
12		By HDFC Bank Ltd	90,000
13		By HDFC Bank Ltd	20,00,000
14		By HDFC Bank Ltd	50,00,000
15		By HDFC Bank Ltd	65,00,000
16		By HDFC Bank Ltd	50,00,000
17		By HDFC Bank Ltd	16,00,000
18	11-01-2016	By HDFC Bank Ltd	9,50,000
19		By HDFC Bank Ltd	2,00,000
20	12-01-2016	By HDFC Bank Ltd	27,50,000
21	22-01-2016	By HDFC Bank Ltd	9,00,000

24. Though I find the bank statements show the transfer of money from DIPL to IISL, from the above tables, it can be seen that the full sale price amounts were not transferred in a single transaction but the amounts were transferred in tranches

over a period of 3 months. In this regard, I note that there is neither an agreement/documentary evidence for the said sale of shares between IISL and DIPL nor is there any agreement/documentary evidence whereby IISL has agreed to receive the payment for the shares in such tranches over a period of 3 months, before me. I also note that IISL vide its detailed reply dated September 22, 2020 has not submitted as to whether the shares have now been transferred to DIPL or submitted any documents to show transfer of shares/delivery of the shares to the account of DIPL. Hence, it is not clear as to whether the amount of Rs. 8.47 crores transferred by DIPL to the account of IISL was for the purpose of sale of shares to DIPL as claimed by IISL, as it appears that the shares have not yet been transferred till date to DIPL, whereas the payments have been made by DIPL to IISL in 2015 itself. Further, IISL has not submitted any proof or evidence of an agreement for such sale of shares to substantiate their claims that the payment received from DIPL was for the sale of shares. Hence, I find that IISL has been unable to prove the authenticity of the transactions and therefore, I find that the quoted investments of Rs. 8.47 crores approx. from the sale of shares to DIPL in an off-market transaction in the year 2015-16 is a misrepresentation of the financials in the balance sheet of IISL, as alleged in the SCN.

25. Another allegation in the SCN is that IISL failed to furnish the copy of the Independent Chartered Accountant Valuation report, which was referred in the amalgamation order passed by the Hon'ble High Court of Bombay dated May 04, 2012, for the goodwill amount of approximately Rs. 51 crore appearing in the balance sheet as on March 31, 2016. IISL has submitted that as per their replies dated September 12, 2017 and October 17, 2017, the company has submitted the calculation of goodwill as per the Hon'ble High Court Order and stated that no accounting standard or guidance note states that valuation of goodwill need be certified by the Independent Chartered Accountant while booking the same amount as Goodwill. IISL has submitted that the said goodwill was generated on account of merger order of Hon'ble High Court of Bombay and they had duly submitted to BSE the High Court order copy along with calculation of Goodwill. Further, IISL have submitted that the company has obtained No objection/In-principle approval from BSE for merger and submitted necessary documents

along with valuation report of Independent Chartered Accountant (H.T. Merchant & Co. Chartered Accountant) for swap exchange ratio and statutory auditor certificate for post merger valuation was also submitted to Hon'ble High Court of Bombay and BSE.

26. With regard to the above submission, I note that the goodwill amount of approximately Rs. 51 crores appearing in the balance sheet of the company as on March 31, 2016 has been calculated by IISL and the calculation as prepared by IISL has been submitted with its reply dated September 22, 2020. From a perusal of the calculation, I note that the calculation of Goodwill is stated to be as per the Scheme of Amalgamation Order passed by Hon'ble High Court of Bombay. From a perusal of the Amalgamation Order dated May 04, 2012 of the Hon'ble High Court of Bombay, I note that it is *inter alia* indicated in the Amalgamation Order that "*The networth of the Transferor No. 1 (Lambodar Nirmal Limited) as per the valuation report of Independent Chartered Accountant is Rs, 73,36,96,520/-.....The networth of the Transferor No. 2 (Niki Metal Company Limited) as per the valuation report of Independent Chartered Accountant is Rs, 88,16,70,376/-*". IISL was required to furnish the said two Independent Chartered Account valuation reports as referred to in the said Amalgamation Order of the Hon'ble High Court of Bombay. However, I find that IISL has failed to furnish the same. I find that IISL have instead made irrelevant and immaterial submissions that they have submitted the calculation of goodwill and that valuation of goodwill need not be certified by an Independent Chartered Accountant. Hence, I find the aforesaid submissions made by IISL do not inspire confidence as they have failed to provide the copy of the Independent Chartered Accountant valuation reports as referred in the Amalgamation Order dated May 04, 2012 of the Hon'ble High Court of Bombay.

27. I note that it has been alleged in the SCN that IISL has made significant contradictions in respect of the claimed business of the company. It was alleged that the company was appearing under category 'Investment Company' on the RBI Website as on August 31, 2017, however, that the Statutory Auditor Certificate (SAC) submitted by the company to RBI states that the company is a

Loan Company, while the Annual Report (2015-16) of the company says that approximately 85% of the turnover of the company is from IT and Software Products. Hence, it has been alleged in the SCN that there were significant contradictions in respect of the claimed business of the company. In this regard, IISL has submitted that the certificate issued by RBI does not state that the company is an Investment Company or Loan Company, that the certificate only states that the company is registered under RBI as NBFC company and it is required for the company to submit yearly SAC certificate furnishing the type of activity carried out by the company. IISL submitted that in the previous years the company was mainly doing business as “Investing Company” but the company in the financial year 2015-16 started major business activity as “Loan Company” and as such the auditor rightly mentioned the same as “Loan Company” in its SAC certificate. IISL has submitted that under the RBI Act, an NBFC company can perform both the activities of lending and investing and the company had never done any business activity against any law of NBFC and the company has complied with all the compliances of the RBI NBFC Regulations in timely manner. Further, IISL has submitted that with regard to the MOA of the company, the only major business activity has been mentioned in the SCN but that if the whole objects along with ancillary object are read with the same the company is eligible to carry business activity of lending and finance. IISL has submitted that there was a mistake in the MGT-9 in Directors Report for FY 2015-16 as it was typo error which was copied from the previous year where the company entered into business activity of IT and Software products and changed the company name from “Indian Leasers Ltd” to “Indian Infotech & Software Ltd” but the business did not pick up and the company continued with the old business of “Investing and Lending”. IISL has submitted that it has been overlooked by them and such mistake was not rectified and recorded in the minutes but that it cannot lead to misrepresentation of accounts as the Audited Financial Accounts as a whole was prepared as NBFC company and related to accounting standards and law applicable to NBFC and which was duly acknowledged by the shareholders in the AGM and thus they were aware.

28. With regard to the above submissions made by IISL on the business of the company, I note that there is lot of discrepancies in the submissions made by IISL in its detailed reply dated September 22, 2020. I note that in its said detailed reply IISL on the one hand has stated that in the previous years the company was mainly doing business as “Investing Company” but the company in the financial year 2015-16 started major business activity as “Loan Company” and as such the auditor rightly mentioned the same as “Loan Company” in its SAC certificate, whereas, IISL in its same detailed reply has also submitted that prior to FY 2015-16, the company had entered into business activity of IT and Software products but the business did not pick up and the company continued with the old business of “Investing and Lending”. Therefore, I find that IISL has also continued to give contradicting statements in its replies as IISL has not made any clear statements about what business it was doing before FY 2015-16 and what business it was doing in FY 2015-16.

29. I also note that IISL in its detailed reply had submitted that they have made a mistake in MGT-9 in Directors Report for FY 2015-16, that it was typo error which was copied from the previous year where the company entered into business activity of IT and Software products and changed the company name from “Indian Leasers Ltd” to “Indian Infotech & Software Ltd” but that the business did not pick up and the company continued with the old business of “Investing and Lending”. However, I note that in the Annual Report (2015-16) of the company, it is stated that approximately 85% of the turnover of the company is from IT and Software Products. Hence, IISL has made contradictory statements by stating that in the financial year 2015-16 it continued with the old business of “investing and lending”. Further, I note that in the aforesaid submission, IISL has stated that in the previous year to 2015-16, the company entered into business activity of IT and Software products and changed the name from “Indian Leasers Ltd” to “Indian Infotech & Software Ltd”. However, I note that in the same reply dated September 22, 2020, IISL has stated that the name of the company changed from ‘Indian Leasers Limited’ to ‘Indian Infotech & Software Limited’ on July 20, 1998. Therefore, I find that the submissions made by IISL are contradictory and hence untenable.

30. Further, it has been alleged in the SCN that IISL stated that it is a NBFC carrying as “Loan Company” and that Statutory Auditor Certificate (SAC) submitted to RBI clearly mentions that the company is “Loan Company”, however, as per the Memorandum of Association (hereinafter referred to as “**MoA**”) of the company, the main object of the company is “*To carry on the business of buying, selling, leasing, letting on hire, hire purchase or easy payment system, all types of industrial, agricultural, commercial and house-hold apparatus, plant equipment, machinery, vehicles, vessels, carriers, household goods and materials, buildings and real estate. AND to finance industrial enterprise and to promote companies engaged in industrial and trading business*”. In this regard, IISL has submitted in its detailed reply that with regard to the MoA, only the major business activity is mentioned in show cause notice but if whole objects along with ancillary object are read with the same the company is eligible to carry business activity of lending and finance. IISL have also submitted that the company in the financial year 2015-16 started major business activity as “Loan Company” and that the auditor rightly mentioned the same as “Loan Company” in its SAC certificate, whereas, I also note that the company is registered and engaged as an NBFC with RBI since 1998, which raises questions as to the business activities of IISL prior to 2015-16 if its primary business was not as a Loan company then. Further, I note from the submissions of IISL that the company has also done business of IT and Software Products and I note from the Annual Report for FY 2015-16 that approximately 85% of the turnover of the company was from IT and Software products. IISL as an NBFC, its principal business must be the one for which it was granted registration by RBI. On the contrary it is clear that IISL has engaged in businesses which are not part of the main objects of the company as given in the MoA or the principal business of an NBFC for which registration was granted. IISL has also not produced any document showing the approval of shareholders for change in the main business activity or from the concerned regulator and nor has it submitted any information to the stock exchange as change of any business activity by a listed company is a material event which is required to be informed to the shareholders. Hence, I find that there are significant contradictions in respect of the claimed business of the company and

IISL has misrepresented the business of the company in its Annual Report for FY 2015-16.

31. Further, it has been alleged in the SCN that in the financial year 2015-16, the income (sales of goods/services) of IISL was approximately Rs. 91 crore and the purchase of traded goods is approximately Rs. 106 crore. Further, it is alleged that as observed from the 'Extract of Annual Return' as attached to the Director's report in the Annual Report 2015-16, the principal business activities disclosed by the company was of "IT & Software Products and Interest Income" and not business in shares/investment in shares. From the SCN it is noted that the company stated in the Annual Report 2015-16 that in the financial year 2015-16, the company as an NBFC Company also traded in various equity shares of Listed and Unlisted Company both through the Online Platform and Offline mode and the amount of Rs. 91 crore reflect the purchase of shares and not purchase of goods, however, from the Cash flow statement for the year ended March 31, 2016, the Cash flow with respect to purchase of Investments appears to be Rs. 37.50 lakhs only. Further, it has been alleged in the SCN that the company had stated that there was a typo error in the Annual Report for Financial Year 2015-16 printed by the company wherein the "Purchase of Shares" is mentioned as "Purchase of goods" and "Sale of Shares" is mentioned as "Sale of Goods". In this regard, IISL has submitted that it is correct and true that only Rs. 37.50 lakh has been purchased as Investment and duly reported as financing activities and Rs. 57 crore approximately was reported as Sale of Investment in the same cash flow statement. Further, IISL has submitted that when the company buys or sells shares as stock in trade it is not reported as purchase of investment or sale of investment and should be reported under cash flow from business activity only and the cash flow was prepared as per accounting standard – Indirect Method and the company rightly reported the purchase of shares and sale of shares as business activity and no adverse remark from its auditors in FY 2015-16 has been made.

32. With regard to above submissions of IISL, I note that the said sale and purchase of "shares" have been mentioned as sale and purchase of "goods" and the same



has been attributed to by IISL as a typographical error. However, I find the submission that it is a typographical error to be untenable as I note from the Annual Report 2015-16 of IISL that approximately 85% of the turnover of the company was from IT and Software Products and hence, the sale of goods could also have been referring to its sale of IT and Software products/services. Further, it is not clear whether the sale/purchase of shares was a business activity or an investment activity of shares as IISL has failed to provide any evidence to substantiate its claims with regard to its sale/purchase of shares. I note that this was the very purpose why a forensic audit was warranted and directed in the first place and the fact that IISL has not cooperated with the forensic auditor that has been appointed pursuant to the Interim Order raises further question on the authenticity and credibility of the claims made by IISL with regard to its sale and purchase of investments and business activities, which I note has not been substantiated by any evidence.

33. It has also been alleged in the SCN that IISL is facilitating accommodation transactions as there are numerous entries of funds received by IISL in its bank account from multiple entities and transferred to other entities on the same day leaving a negligible closing balance in the bank account. It has been alleged that IISL's HDFC bank statement of account no. 00600350115229 and Yes Bank statement of account no 020185700000189 revealed that there were numerous entries of funds received by IISL from multiple entities and transferred to other entities on the same day leaving a negligible closing balance in the bank account. It has been alleged that the company has not submitted any evidence pertaining to loans and advances and therefore, the authenticity of the loans & advances schedule submitted by IISL cannot be verified and also the claim of IISL that the company earns interest if such funds are deployed as loans & advances, remains to be substantiated. Further, it has been alleged that the company has not provided evidence to substantiate whether the transfer of funds or receipt of funds relate to the loans and advances and that the funds received were "immediately deployed for lending purpose", as stated by IISL. Hence, it was alleged that the company is being used as a conduit to facilitate accommodation transactions. In this regard, IISL has submitted that it has not hidden any facts from SEBI and has submitted the complete bank statement of

the company for the financial year 2015-16. IISL has submitted that the transactions are numerous as the size of the company is huge and transactions are many and they had received funds from the parties to whom the investment is sold. IISL also submitted that the company has networth of more than Rs. 200 crore approx. and it's not compulsory to hold the entire fund in the bank account. That the company invest and does business as per the capital of the company and there is no law in the country stating how the bank balance of the company is to be maintained. Further, IISL submitted that it has never taken loan from banks or parties and they fail to understand as to how non-maintaining huge bank balance can be treated as accommodation entry and misrepresentation or misappropriation in financial statement as commercial wisdom demand deployment of funds to earn interest, rotation, velocity, churning so that maximum returns are earned on the capital and/or surplus fund.

34. With regard to the aforesaid submission of IISL on the allegation that the company is being used as a conduit to facilitate accommodation transactions, I find that the allegation has risen not from the fact that it has a negligible closing balance but because IISL has failed to provide any evidence to substantiate its claims that the transfer or receipt of funds pertains to loans and advances/investments by IISL. I note that IISL has failed to furnish any supporting evidence pertaining to the loans and advances and as such the entries in the bank statement cannot be co-related with loans made by the company or interest received by the company. The mere submission of the bank statements does not suffice as it does not explain the legitimate purpose of the funds transferred or received. I find that the failure of the company to provide any supporting documents such as agreements/terms with regard to interests, tenure, default clauses, security papers, particulars of borrowers etc. on its claims that the funds transferred or disbursed and received were for the purposes of loans and advances or for investments, and its failure to cooperate with the forensic audit is a clear indication that the company is facilitating accommodation transactions and hiding the true nature of its fund transfers or its activities. Hence, in the absence of any evidence to substantiate the authenticity

of the loans and advances schedule submitted by the company, I find the above submissions of IISL to be without any merit and untenable.

35. In view of the above allegations that the company has misrepresented its financials and its business activities and failed to provide any evidence to substantiate its claims on the financials, it has been alleged in the SCN that there was an obligation cast on the company to present true and fair view on the financials in each and every respect and prepare and disclose financial statements in accordance with applicable standards of accounting and financial disclosures. IISL has submitted that the audited financial statements and other financial information of the company present a true and fair view of the company's affairs and are in compliance with the existing accounting standards, applicable sections, provisions of the Companies Act, 2013 and other applicable laws and regulations, the aforesaid standalone financial statements give the information required under provisions and rules of the Companies Act, 2013 and other applicable laws, regulations in the manner so required and give a true and fair view in conformity with the Indian Accounting Standards prescribed under section 128 to 134 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rule 2015, as amended and other accounting principles generally accepted in India, of the state of affairs of the company. Further, it has submitted that the financial results of the company were prepared according to the applicable provision of the Companies Act and other applicable acts and accounting standards as well as the same has been approved by the Board of Directors in the meetings (Board Meetings, Audit Committee Meetings) on interval basis on quarterly, half yearly, yearly basis and the same has been audited by our statutory auditors which is a reputed and experienced chartered accountant firm which is having a peer reviewed certificate by Indian Institute of Chartered Accountant in India. IISL has submitted that in every financial results they have declared that financial statements and other financial information of the company present a true and fair view of the company affairs and are in compliance with the existing accounting standards, applicable laws and regulations, the aforesaid standalone financial statements given the information required by the Companies Act, 2013 and other applicable laws, rules and

regulation. That they have presented true and fair financial statements and have duly audited and have not executed transactions which were non-genuine in nature or tantamounting to misrepresentation of the accounts/financial statements. Further, that the use of funds were as per the business requirements of the company and is certified by the statutory auditor at every financial year and therefore, the allegation for misuse of funds/misrepresented books of accounts which are detrimental to the interest of genuine investors and are fraudulent in nature are contrary to future position.

36. With regard to the above submissions of IISL, I find that there is no merit in its submissions that it has complied with all the provisions of the existing accounting standards all the applicable laws, rules and regulations. I find that they are mere submissions and bold statements as they have not been substantiated by any evidence. If IISL was in compliance all the applicable laws, rules and regulations as it claims, there is no reason why it would not cooperate with the forensic auditor or respond/furnish documents as sought by BSE and the forensic auditor. IISL has submitted that the audited financial statements and other financial information of the company present a true and fair view of the company's affairs. These submissions amount to claiming the house has been cleaned and yet not permitting an inspection of the house to verify such claims. I find that they are empty claims lacking any evidence of authenticity or legitimacy. The veracity of the claims by IISL that it has presented a true and fair view of the company's affairs cannot be ascertained and accepted by mere submissions of compliance. It has to be accompanied by some evidence or proof that the said claims are genuine, however, I find that IISL has either not produced any evidence or has produced evidence which is irrelevant for the issue to be determined. IISL has submitted in its letter dated September 22, 2020 that they are prepared to submit whatever documents required by BSE/SEBI to establish that the company is existing, well-functioning and doing business as NBFC and yet I find that it has not provided any of the documents sought by BSE or the forensic auditor. In view of the findings in the above paras, I find that IISL has failed to submit plausible explanations along with suitable evidence against the allegations relating to misrepresentation of financials and

business in the SCN and has thus failed to present true and fair financial statements and has executed transactions which were non-genuine in nature tantamounting to misrepresentation of the accounts/financial statements and misuse of account/funds of the company which are detrimental to the interests of genuine investors.

37. A company which is listed has to provide material information to its shareholders and prospective investors on a continuous basis as per the LODR Regulations/Listing Agreement to enable them to take informed investment or divestment decisions. It is observed that IISL has failed to give correct timely information about its business activity or any change in business activity to its shareholders/investors. The company claimed to have been engaged in investment and loan business as an NBFC but the Annual Report 2015-16 showed that it was engaged in IT and Software business and there is no evidence to show that any material disclosure was made for the change in business of the company. Further, from the submissions made by IISL and the documents available before me, I find that IISL has kept the investors in the dark about the true nature of income of the company from interests earned from loans or sale of IT and Software products or gain from investments and thus, the misleading information with respect to its business activities and the true nature of its income had the potential to mislead the investors and was unfair.

38. In view of the above findings, I find that IISL (Noticee no. 1) has violated Regulations 4(1)(c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6) and (7), 4(2)(f)(iii)(1), (3), (6) and (12) of the LODR Regulations, Regulation 4(1) and 4(2)(f) and (r) of the PFUTP Regulations and Sections 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. I note that Section 21 of the SCRA provides that when the securities of a company are listed on a stock exchange on the application by any person such person shall comply with the conditions of listing. In terms of provisions of Section 11 and 11A of the SEBI Act and Section 31 of the SCRA, LODR Regulations have been framed to provide for conditions of listing. In view of the violations of the provisions of the LODR Regulations, by IISL (Noticee no.

1), as mentioned above, I find that IISL (Noticee no. 1) has also violated Section 21 of the SCRA.

39. With regard to the liability of the directors (Noticees no. 2 to 5), I find that none of the Noticees no. 2 to 5 have submitted any reply to the SCN. I note that IISL in its reply dated September 22, 2020 has submitted on behalf of the directors that the directors have performed their duties very well and have taken care of all possible risk management and internal financial control framework as per the applicable laws, rules and regulations on the company, all the standards and measures for better control and accountability has been maintained and followed by the company and accounts of the company has been reviewed and approved by Board and its committees periodically and the same has been audited by a peer reviewed chartered accountant firm which gave a fair and transparent view of the financial statement. That all the necessary and possible precaution, risk management has been taken in place commensurate with the size of the company for recording the transaction as well as accounting and auditing of the books of accounts of the company. Further, IISL have submitted that the company has an internal control system which is commensurate with the size, scale and complexity of its operation and the internal auditors monitor the efficiency and efficacy of the internal control systems in the company, compliance with operating system/accounting procedures and policies of the company. That significant audit observations and corrective actions thereon are presented to the audit committee of the Board and the company has adequate systems and procedures to provide assurance of recording transaction in all material respects. IISL have submitted that the directors and management of the company have performed their duties with regard to internal financial control and this can be further proven by as statutory auditors have never given any qualification or adverse observation in any of their reports in any financial years. Further, that none of the directors have used the funds of the company for their personal use and neither has the company paid any high remuneration to any of the director or KMP and therefore, the equation of misrepresentation and misuse of funds of the company does not arise on the directors of the company and also that the BSE/MCA/SFIO have not given any such evidence which prove the

allegations on the directors for siphoning the funds by Board of Directors of the company.

40. Further, with regard to the allegations against the Chief Financial Officer (Noticee no. 5), IISL submitted that the Chief Financial Officer of the company has performed all the duties very well and have taken care of all possible risk management and internal financial control framework as per applicable laws, rules and regulation on the company and that all the standard measures for better control and accountability has been maintained and followed by the company. Further, that the accounts of the company has been reviewed and approved by Board and its committees periodically and the same has been reviewed by a peer reviewed Chartered Accountant firm which has given a fair and transparent view of the financial statement and the auditor firm has not given any adverse remark or modified opinion in their audit report. IISL have also submitted that all the necessary and possible precaution, risk management has been taken in place commensurate with the size of the company for recording the transaction as well as accounting and auditing of the books of the company. That the Chief Financial Officer of the company is responsible for establishing and maintaining internal controls for financial reporting and have evaluated the effectiveness of the internal control system of the company pertaining to financial reporting and the certificate of Chief Financial Officer has been also given in the Annual Report for the confirmation of accuracy and correctness of the financials of the company. Further, that the Chief Financial Officer of the company reviewed the adequacy and operating effectiveness of the internal controls therefore the allegations made on the Chief Financial Officer of the company is baseless. In this regard, the details of the directors and CFO of the company for the relevant period i.e. during the FY 2015-16, are as under:

<b>Sr. No</b>	<b>Name of Director</b>	<b>Designation</b>
1	Mr. Kamal Nayan Sharma	Executive Director and Managing Director
2	Ms. Varsha Muraka	Non-Executive Independent Director
3	Mr. Harish Joshi	Non-Executive Non-Independent Director

4	Mr. Mukund Bhardwaj	Executive Director and Chief Financial Officer.
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41. In this regard, I find that the above submissions of IISL with regard to the allegations against the directors and the Chief Financial Officer of the company are baseless and random submissions of compliance of the applicable laws without providing any evidence to substantiate any of the said claims. A forensic auditor was appointed for the very purpose of verifying the said claims of IISL that it has complied with all the applicable laws, and the fact that IISL has not cooperated with the forensic auditor renders the above submissions of compliance by IISL as untenable and without any merit. I note that the company being a legal entity acts through human minds represented by the Board of Directors which is responsible for all the acts of omission and commission by the company. The directors are expected to take utmost care in dealing with the affairs of the company and to ensure that all applicable laws are being complied with. In terms of Regulations 4(2)(f)(i)(2) and 4(2)(f)(ii)(6) and (7) of the LODR Regulations, the Board of Directors are required to conduct themselves as to meet the expectations of operational transparency to stakeholders, managing potential conflict of interest in related party transactions and to ensure the integrity of the listed company's accounting and financial systems. As per Regulation 4(2)(f)(iii)(1), (3), (6) and (12) of LODR Regulations, the Board of Directors are required to ensure effective monitoring of the management, to act in good faith, with due diligence and care and in the interest of the listed company and shareholders. However, I find that Noticee no. 2, 3 and 4 as directors of the company (Noticee no. 1) are responsible for the company which has failed to comply with the aforesaid provisions of the LODR Regulations as the company has failed to cooperate with the forensic auditor appointed by BSE and have failed to provide any evidence to substantiate the financial transactions and statements of the company as sought by BSE and SEBI, thereby failing to present true and fair financial statements and executing transactions which were non-genuine in nature tantamounting to misrepresentation of the accounts/financial statements and misuse of account/funds of the company.



42. Further, I note that Noticee no. 5 was an Executive Director of IISL from October 10, 2011 and resigned on September 28, 2017. He also the CFO of IISL for the FY 2015-16. I note that as per Clause 49(ix) of the erstwhile Listing Agreement, the CFO must certify that they have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading and that 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. The CFO must also certify that the company to the best of their knowledge hasn't entered into any transaction during the year which are fraudulent, illegal or violative of the company's code of conduct. Further, the CFO must certify that 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. However, I find that Noticee no. 5, as the CFO of IISL has failed to comply with Clause 49(ix) of the erstwhile Listing Agreement and as an Executive Director of IISL is also responsible for the acts of the company, as the company (Noticee no. 1) has failed to present true and fair financial statements and executed transactions which were non-genuine in nature tantamounting to misrepresentation of the accounts/financial statements and misuse of account/funds of the company.

43. In this regard, with respect to the liability of directors, I note that the Hon'ble Supreme Court, in the matter of *N Narayanan v. Adjudicating Officer, SEBI (Civil Appeals No. 4112-4113 of 2013)* has observed as under:

*"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long*

*associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

44. Therefore, In view of the above observations made by the Hon'ble Supreme Court, I find that Noticees no. 2, 3, 4 and 5 as directors of Noticee no. 1, and Noticee no. 5 also as the CFO of Noticee no. 1, are responsible for the failure of the company to present true and fair financial statements and executing transactions which were non-genuine in nature tantamounting to misrepresentation of the accounts/financial statements and misuse of account/funds of the company which are detrimental to the interests of genuine investors, as observed in foregoing paras. Further, I find that Noticee no. 2, 3 and 4 are responsible for the failure of the company to cooperate with the forensic auditor that was appointed by BSE pursuant to the directions in the Interim Order for conducting forensic audit of Noticee no. 1. Thus, I find that Noticees No. 2, 3, 4 and 5 have violated Regulations 4(1)(c),(e) and (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6) and (7), 4(2)(f)(iii)(1),(3),(6) and (12) of LODR Regulations, Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations and Section 21 of SCRA. Further, I also find that Noticees no. 2, 3 and 4 have violated Sections 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992, and Noticee no. 5 has violated Clause 49(ix) of the erstwhile Listing Agreement read with Section 21 of SCRA.

**DIRECTIONS:**

45. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4), 11A and Section 11B read with of Section 19 of the SEBI Act, 1992, and Section 12A of the SCRA, hereby issue the following directions:

- (i) Indian Infotech and Software Limited (Noticee no. 1), Kamal Nayan Sharma (Noticee no. 2) and Mukund Bhardwaj (Noticee no. 5) are

restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of these Noticees shall also remain frozen.

(ii) Harish Joshi (Noticee no. 4) is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 6 months from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticee shall also remain frozen.

(iii) Varsha Muraka (Noticee no. 3) is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 months from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticee shall also remain frozen.

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

47. A copy of this order shall also be sent to all the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

48. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and the Reserve Bank of India, along with a copy of the Inspection Report of BSE for their information.

**Place: Mumbai**

**Date: November 12, 2020**

**Sd/-**

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**