

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

**INTERIM ORDER**

**Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992  
in the matter of Nu Tek India Limited (PAN – AAACN2270L).**

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***Background of case:***

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “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 (hereinafter referred to as “SFIO”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) to protect the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
3. SEBI was of the view that the companies identified as shell companies by SFIO and MCA were potentially involved in:
  - (a) Misrepresentation including that of their respective financials and businesses and possible violations of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or
  - (b) Misusing their respective books of accounts/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore renegeing on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)

4. SEBI was also of the view that investors should be alerted on the possible enforcement actions by various authorities leading to potentially significant impact on the price of the stock.
5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act in respect of listed shell companies including **Nu Tek India Limited** (hereinafter referred to as “NTIL” / “Company”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions on promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the letter dated August 7, 2017 also placed the scrip 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, so as to alert them on trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the stock exchanges, including by way of audit and forensic audit, if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measures, trading in the scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions till SEBI and stock exchanges complete their detailed examination of such companies.
6. Pursuant to the above, BSE vide notice dated August 7, 2017, addressed to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies as identified by MCA and communicated by SEBI, with effect from August 8, 2017.
7. On August 09, 2017, SEBI further advised the Stock Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance with Companies Act, whether company is a going concern, its business model, status of compliance with listing requirements, etc.
8. Vide its letter dated September 7, 2017, NTIL made a representation, *inter alia*, submitting as under:
  - (a) That SEBI passed the said order dated August 07, 2017 on the suspicion that the company is Shell Company but in fact the company is fully operational and doing its business. It is also complying the requirement of law applicable.
  - (b) That the Company is regularly filing the required documents and disclosures to the stock exchanges and have also complied with the notices issued by NSE and BSE by which they

- had asked for certain information by the Company certified by the auditors vide letter NSE/LIST/15323 dated 9th August, 2017 and 20170807-31 dated 7th August, 2017.
- (c) That the company undertakes to provide all the required information in future upon hearing from any of the authorities.
- (d) That the company requested to withdraw the direction issued by the aforesaid order dated 07.08.2017.
9. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, NTIL filed an appeal No. 221 of 2017 before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). Hon'ble SAT vide order dated September 11, 2017 directed the following:-
- "2. As the appellant has already made a representation to BSE against the said ex-parte order dated August 07, 2017, with a copy to SEBI, 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 investigating the matter and initiate appropriate proceedings if deemed fit."*
10. Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* (order dated August 10, 2017) held that the measure taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.
11. Pursuant to above mentioned SEBI's letter dated August 9, 2017 (mentioned above), NSE has submitted its report wherein it has *inter alia* observed the following:

(a) Adverse findings by Exchanges for LODR –

Penalty of Rs. 10000 is levied to the company for delay in submission of Results for the quarter March 2016. Company has not paid the penalty amount.

(b) Adverse findings by Auditors –

The details of the dispute pending with Income tax authorities are:

S.No.	Particulars	Assessment year	Amount (Rs.)
1	CIT(APPEAL)	2014-15	18,53,136
2	ITAT-Delhi	2011-12	12,41,595

**Hearing and Reply:**

12. Pursuant to the decision of Hon'ble SAT, an opportunity of personal hearing was granted to NTIL on September 20, 2017 when its authorized representative Mr. Nasar Ahmad appeared and made *inter alia* following oral submissions-

- a. That the company has been functioning since the year 1993 and till date no investigation has ever been conducted by any authority regarding its functioning / operations.
- b. That no complaint has been filed against it from any investor nor has it received any notice from any regulatory authority.

NTIL was asked to provide the information / response on the following points (supported by documentary evidence) as early as possible and latest by September 28, 2017:

1. Confirm the nature of business carried out by the company and the nature of business disclosed to the exchanges. Clarify whether Nu Tek India Ltd. controls its wholly owned subsidiary in Hong Kong and how the investments made by the wholly owned subsidiary does not come under the nature of business carried out by the company.
2. Share purchase agreement for investment in Gulf Corporation Limited. How the business of Gulf Corporation Limited is not part of your business.
3. Whether any disclosures were made with respect to mining business.
4. Clarify on non-payment of penalty amount of Rs. 10000 levied by NSE for delay in submissions of the results for the quarter - March 2016.

5. As per Annual Report 2015-16, Auditor has made qualifications regarding the following:
  - i. Foreign branches of the company not audited
  - ii. Foreign subsidiaries of the company not audited
  - iii. Non Payment of undisputed statutory dues
  - iv. Fixed assets not verified

Provide explanation in this regard along with documentary evidence. Inform whether the company is still in default or there is any change as on date.

6. Fixed assets of the foreign subsidiaries as on March 31, 2016.
7. Audited accounts of subsidiaries and branches for the F.Y. 2015-16 and 2016-17.
8. Realizable value for Rs. 11 crore invested in the wholly owned subsidiary i.e. Nu-tek Europe. If the management have made decision to shut down the company, why is this not shown as loss.
9. Documents with respects to 2 GDRs issued by the company including the offer documents and full disclosures with respect to use of GDR proceeds in the context of nature of business.
10. Explain the nature of business of subsidiaries; also explain how business is carried out if there is no rent paid by these subsidiaries.
11. On analysis of annual report for F.Y. 2015-16, Rs. 6.28 Crore have been shown as Salaries and wages expenses for subsidiaries. Provide the number of employees including the designation and the amount of salary paid.
12. Bank Statements of subsidiaries for the F.Y. 2015-16.
13. Details along with documentary proof including the terms of contracts, terms of advances for the following balance sheet items in the F.Y. 2015-16:
  - i. Advances to Suppliers
  - ii. Advances to Employees
  - iii. Borrowings
  - iv. Trade Payables

*Declaration whether the advances has been given to the related party, if yes, explain whether secretarial audit for due process has been followed.*

14. Details of project done overseas along with listing, contracts and payment terms.

SEBI also sent an e-mail to the company on September 22, 2017 asking for the above information.

13. NTIL filed its response to the queries / information sought from it on September 28, 2017. The query-wise response of NTIL is as under:

Query 1- Confirm the nature of business carried out by the company and the nature of business disclosed to the exchanges. Clarify whether Nu Tek India Ltd. controls its wholly owned subsidiary in Hong Kong and how the investments made by the wholly owned subsidiary does not come under the nature of business carried out by the company.

Query 2- Share purchase agreement for investment in Gulf Corporation Limited. How the business of Gulf Corporation Limited is not part of your business.

- The company is engaged in business of providing Telecom Infrastructure services and supplies of telecom and IT related items. The company provides infrastructure services for both wireless mobile and wire line fixed telecommunication services for both wireless mobile and wire line fixed telecommunication networks. The company also deals in the supplies of different telecom and IT equipment which it sources from the different suppliers and supplies to the customers.
- Further the Company at its Extra ordinary general meeting held on 5<sup>th</sup> March 2011 through postal ballot altered its object clause and inserted the activities of export, import, buy, sale, trade and otherwise deal with goods, capital goods, raw materials, semi-finished goods, merchandise, iron, ore, minerals, chemicals, oils, metals and other goods and items another related activities.
- NU Tek HK Private Limited is 100% subsidiary of the company and is controlled by it. NU Tek HK Private Limited purchased 45% equity shares of Gulf Power Corporation Limited and does not have management control on it. It is a strategic investment by the company and the company is not directly into mining.
- The company had made investment in Gulf Power Corporation Limited through its Hongkong subsidiary to get benefits in its prospective business relating to trade in

commodities. The share purchase agreement submitted by the company is attached in the Company reply.

Query 3- Whether any disclosures were made with respect to mining business.

- The company has made strategic investment through its wholly owned subsidiary and the same has been disclosed in the Annual report of the F.Y. 2010-11 under the Head Management Discussion and Analysis.

Query 4- Clarify on non-payment of penalty amount of Rs. 10000 levied by NSE for delay in submissions of the results for the quarter - March 2016.

- The company had sent the letter dated September 08, 2016 to NSE that they have done the filings and requested to waive of the penalty. The company came to know at the time of hearing before WTM on 20/09/2017 that the penalty is outstanding and accordingly has paid Rs. 10,000 as levied by NSE

Query 5- As per Annual Report 2015-16, Auditor has made qualifications regarding the following:

- i. Foreign branches of the company not audited
- ii. Foreign subsidiaries of the company not audited
- iii. Non Payment of undisputed statutory dues
- iv. Fixed assets not verified

Provide explanation in this regard along with documentary evidence. Inform whether the company is still in default or there is any change as on date.

- The audited financials of branches could not be made available due to non-availability of audited financials of the branches. But now audited financials of the Branch Kenya for the F.Y. 2015-16 and 2016-17 is available with the company which is in line with results declared in the financials of the company
- Audit of the Nepal Branch is not been done by the company as there is no business being carried out by the company.
- Audited financials of wholly owned subsidiary i.e. Nu Tek HK Private Limited could not be made available to the statutory auditor as there was delay on the part of the auditors of the Hong Kong subsidiary.

- In case of NU Tek Europe SRO there is no requirement to get the financials results audited as per the requirement of laws of Czech republic. The company has filed income tax returns certified by the Auditors at Czech Republic and is placed in the file.
- The company had incurred losses in the F.Y. 2013-14 and F.Y. 2014-15 in its operations due to which there were liquidity issues and company could not make the payment of statutory dues. However, most of the statutory dues have now been paid. Out of total dues of Rs. 2.04 crores, Rs. 0.43 crores is still outstanding.
- As per company policy the management conducts physical verification of the fixed assets over a reasonable interval of 3 years in a phased manner. Earlier physical verification was conducted for the period of three years in the F.Y. 2013-14 on March 10, 2014. The physical verification was due in F.Y. 2016-17 and conducted the physical verification of assets and also further engaged M/s Gupta Ulhas & Associates, Chartered Accountant for verification of the assets on sample basis to test the genuineness of the report, M/s Gupta Ulhas & Associates, Chartered Accountant have also made sample tests but same could not be completed before audit. The report of the physical verification is provided by M/s M/s Gupta Ulhas & Associates, Chartered Accountant Chartered Accountants on 28.08.2017 is placed in the file.

Query 6- Fixed assets of the foreign subsidiaries as on March 31, 2016.

- There is no fixed assets in case of Nutek Europe SRO.
- In case of Nu Tek HK Private Limited the Fixed Assets for the F.Y. 2015-16 includes the following
  1. Property Plant and Equipment at Kenya HKD 44,220,030
  2. Furniture and Fixtures HKD 5,004
  3. Equipment and Software HKD 35,802,801

Query 7- Audited accounts of subsidiaries and branches for the F.Y. 2015-16 and 2016-17.

- The company enclosed accounts of subsidiaries and branches in its reply.

Query 8- Realizable value for Rs. 11 crores invested in the wholly owned subsidiary i.e. Nu-tek Europe. If the management have made decision to shut down the company, why is this not shown as loss

- The Board of Directors in principle discussed the possibility of closing down its subsidiary at their meeting held on June 14, 2017 as other agenda items. The management has prepared a note of the possibilities of closing down the said subsidiary, which would be discussed in the next meeting of the Board. The effect of the closure would be given in the financial statements of the company at the appropriate time and the balance would be brought back through normal banking channel with proper disclosure. The Board considers the investment as good and believes that it shall be able to bring back the investment. The Board is hopeful to complete the process of closure before the end of the financial year 2017-18. Any profit or loss arising out of the closure of the subsidiary would be accounted for in the books of the company at the time of closure of the subsidiary.

Query 9- Documents with respects to 2 GDRs issued by the company including the offer documents and full disclosures with respect to use of GDR proceeds in the context of nature of business.

- The company enclosed GDR offer documents in its reply.
- Out of USD 73.4 million ( USD 29 million in 1<sup>st</sup> GDR on 05/08/2010 and USD 44.4 million in second GDR on 14/12/2010), USD 62.96 million was invested in wholly owned subsidiary NU Tek HK Private Limited. USD 7.50 million has been repatriated to India.

Query 10- Explain the nature of business of subsidiaries; also explain how business is carried out if there is no rent paid by these subsidiaries.

- Ketun Energy Private Limited is being operated from the corporate office of the company. Also in case of foreign subsidiaries the business are being sourced from Gurgaon office and staffs are sent to execute the projects from Gurgaon. However, Nutek HK Private Limited and Nutek Europe SRO has its offices at the Following places:-

Nu Tek HK Private Limited  
Address: Unit A, 12/F, JCG Building, No 16 Mongkok Road  
Kowloon, Hong kong

Nu Tek Europe SRO  
Address: Alexo CZ, Helena van de Munt, Vaclavske, Namesti 21, Praha 1

Rent is added in the fee to the consultants and has not been shown separately in case of foreign subsidiaries.

Query 11- On analysis of annual report for F.Y. 2015-16, Rs. 6.28 Crore have been shown as Salaries and wages expenses for subsidiaries. Provide the number of employees including the designation and the amount of salary paid.

- It is submitted that the salary payment Rs.6.28 Crores relates to the payment of salaries and wages to the employees of Ketun Energy Private Limited, which is wholly owned subsidiary of the company based in India. This company has made a revenue income of Rs. 7,57,40,000 in year 2015-16 and the total cost of Employees was Rs. 62,372,240.
- The company enclosed the details of employees, their names and designations with the Salaries and Wages in its reply.

Query 12- Bank Statements of subsidiaries for the F.Y. 2015-16.

- The company has submitted the bank statements of subsidiaries.

Query 13- Details along with documentary proof including the terms of contracts, terms of advances for the following balance sheet items in the F.Y. 2015-16:

- i. Advances to Suppliers
- ii. Advances to Employees
- iii. Borrowings
- iv. Trade Payables

*Declaration whether the advances has been given to the related party, if yes, explain whether secretarial audit for due process has been followed.*

- The details of the contracts relating to advances made to the suppliers, copies of the contracts and other documents asked for is placed in the file. It is being confirmed that none of the parties except Oriental Stitch Private Limited to whom advances were made are related to the company directly or indirectly. It is confirmed that Rs.15,04,781/- was paid as rent advance to the Oriental Stitch Private Limited, which has common directors. The disclosure about the related party transaction has been made on page no.67 of the Annual Report of the Company for FY2015-16 under note no.27 Disclosure pursuant to Accounting Standard 18.

- It is submitted that the Company operates in the remote areas for installation, commissioning, maintenance and operations of telecom sites for which the employees need continuous supports in the field. The company as a policy transfers funds to the account of the employees for the purpose of their movements, lodging and boarding and other project related expenses. The employees sent their bills for settlement on certain intervals but at any given time there is substantial amount given as advance for the purpose of project related activities. It is clarified that these advances are not for the personal use but to support the employees in the filed for execution of the projects undertaken by the company. Details of the advances made to the employees are placed in the file
- Details of the Borrowings are as under:
  - a. Secured Loan from against Car Finance Amounting to be Rs. 59 Lakhs.
  - b. Secured Loan from against Car Finance Amounting to be Rs. 4 Lakhs.
  - c. Secured Loan from against Hypothecation of Equipments to be Rs.20 Lakhs.
- The company submitted the details of the trade payables in its reply..

Query 14- Details of project done overseas along with listing, contracts and payment terms.

- The Company submitted the details of projects done overseas and copies of the contract overseas.

**Consideration of issues:**

14. On perusal of the material available on record, the following issues arise for consideration.

- (a) Whether there is *prima facie* evidence of misrepresentation by NTIL including that of its financials and/or its business and is there any possible violation of LODR Regulations by the company.
- (b) Whether there is *prima facie* evidence to show that the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.
- (c) In view of the determination on the above issues and the order of SAT in the aforesaid appeal, whether, in light of the representation of the company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.

15. On the basis of documents available on record, my observations on above issues are as under:

***Issue No. 1.*** *Whether there is prima facie evidence of misrepresentation by NTIL including that of its financials and/or its business and is there any possible violation of LODR Regulations by the company.*

***Issue No. 2.*** *Whether there is prima facie evidence to show that the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*

16. As per Auditor Certificate, the company is engaged in providing Telecom Services across India and overseas and as per Annual Report and the number of permanent employees on the rolls of the Company are 865 during F.Y. 2015-16. However it is observed from the Annual Report 2016 that 65% of its Assets comprises of Non-Current Investment in its subsidiaries and the said investments along with material available on record are examined. Based on the material available on record, *prima facie* observations are as under:

- (a) The company has three subsidiaries namely Ketun Energy Private Limited, NU Tek Europe SRO and Nu Tek HK Private Limited. The company has submitted that Ketun Energy Private Limited which have a turnover of Rs. 7.57 crore during the F.Y. 2015-16 does not has any tangible or intangible assets. Nu Tek Europe SRO also does not have tangible or intangible assets. The company listed out fixed assets of Nutek HK Private Limited but no document was submitted by the company to verify the existence of fixed assets listed. Further fixed assets of US\$ 44 million of Nutek HK Private Limited comprises of Property, plant, and equipment at Kenya which is shown as project under consideration as at March 31, 2016 and March 31, 2017 without any specific details. It is pertinent to note there is no change in the amount of projects under consideration as on March 31, 2015 to March 31, 2017 which raises a doubt on the genuineness of such projects/actual end use of the funds.
- (b) It is observed that the company is mainly into telecommunication services however the company's wholly owned subsidiary i.e. Nutek HK Private Limited has invested major chunk of HK\$ 349 million out of its total assets of HK\$ 575 million in Gulf Power Corporation limited. The company has submitted the share purchase agreement between the Nu Tek HK Private Limited and East Africa Distribution Limited for the purchase of 45% stake in Gulf Power Corporation Limited. However the consideration for the

purchase of stake is not mentioned in the agreement, though the registered number i.e. IC/1440/09 is indicated in the share purchase agreement dated December 09, 2010. Thus it raises a doubt on the authenticity and genuineness of such investment by the company/actual end use of the funds.

- (c) The auditor report submitted by the Company for Nu Tek HK Private Limited have mentioned that no documentary evidence was provided to substantiate the recoverability and to assess provision for the trade receivables of HK\$ 94,000,000 as on March 31, 2016 and as March 31, 2017. The auditor report submitted by the company of Nutek HK Private Limited for the F.Y. 2015-16 and F.Y. 2016-17 have mentioned that in absence of sufficient documentary evidence, they are unable to ascertain the underlying value of the group's investment in associate of HK\$ 349 million and to assess the amounts of provisions, if any, which might have been required. Thus there is prima facie suspicion of misrepresentation of financials of the company.
- (d) The company has replied that Nu Tek HK Private Limited purchased 45% equity shares of Gulf Power Corporation Limited on December 09, 2010 and does not have management control on it. It is a strategic investment by the company and the company is not directly into mining business. The company had made investment in Gulf Power Corporation Limited through its Hongkong subsidiary to get benefits in its prospective business relating to trade in commodities. However on analysis of Annual Report of 2010-11 at Page Number 12 under Management Discussion and Analysis of Nu Tek India Limited, it is observed that the company has mentioned that it invested in Gulf Power corporation limited having coal mines in Indonesia. The relevant extract of the Annual Report 2010-11 is mentioned below:

*“Your company plans to foray into power sector in a major way, ranging from owning raw material assets to setting up power generating capacities, and has made an acquisition to tie up its backend raw material supply notably the coal assets. The company recently acquired 45% equity in Gulf Corporation, a company having coal mines in Indonesia, for USD 45 Million through its Hong Kong subsidiary.”*

Nu Tek India Limited invested in Gulf power Corporation Limited on December 09, 2010, which is into mining business through its Hongkong subsidiary when the principal activities of Nu Tek India Limited was telecommunication services. Nu Tek India Limited have replied that it has changed its object clause on March 05, 2011 (after 4 months of investment in mining business) and inserted the activities of export, import, buy, sale, trade and otherwise deal with goods, capital goods, raw materials, semi-finished goods, merchandise, iron, ore, minerals, chemicals, oils, metals and other goods and items another related activities. As per financial Statements of Nu Tek HK Private

Limited for the F.Y. 2015-16 and 2016-17, the principal activities of Gulf Power Corporation limited is shown general trading. However still the amended object clause does not cover the mining business where Nu Tek India Limited has invested major chunk of Rs. 336 crores out of the total assets of Rs. 536 crores as on March 31, 2016. Thus there is prima facie evidence of misrepresentation of business by the company.

- (e) The company in the return filed to RBI of GDR for USD 29 million and USD 44.4 million have stated the following purposes for which GDR has been raised.

*“Setting up/acquisition of new manufacturing facilities, up gradation/modernization of existing facilities, investment in subsidiaries, augmenting long term working capital and any other use, as may be permitted under applicable law or regulations.”*

The company has replied that out of USD 73.4 million ( USD 29 million in 1<sup>st</sup> GDR on 05/08/2010 and USD 44.4 million in 2<sup>nd</sup> GDR on 14/12/2010) raised in 2 GDRS, USD 62.96 million was invested in wholly owned subsidiary i.e. NU Tek HK Private Limited and USD 7.50 million was repatriated to India. However, as mentioned earlier NU Tek India Limited has not submitted any documentary evidence on the consideration paid for the purchase of 45% stake in Gulf Power Corporation Limited and on the final use of GDR proceeds. Thus there appears to be *prima facie* suspicion of misuse of GDR proceeds.

- (f) The company has provided list of individuals for the amount of advance to employees without any date since when the same is pending to be adjusted. The company has provided the list of parties for trade payable without any documentary proof including the terms of contract, payment terms, since when the amount is due etc. Secretarial audit report for related party transaction of Rs. 15,04,781 with Oriental Stitch Private Limited was not provided. Hence no inference can be drawn on the same which may be audited by an auditor.
- (g) The company has provided some agreements and copy of purchase order for the amount of advance to suppliers outstanding as on March 31, 2016. However, it is observed that the agreement/contract copies are not available for many suppliers and there is no list of parties to whom the amount is outstanding along with the ageing analysis. Further with respect to the agreement/contract copies provided by the company for some suppliers, no corresponding bank entries for the amount outstanding is furnished. In absence of full details of the advance to suppliers, it is not possible to comment on the genuineness of outstanding advance to suppliers and the same may be audited by an auditor.
- (h) Nu Tek Europe SRO does not carry out any business and even the bank statement for the period 04/05/2015 tom 31/12/2015 submitted by the company does not show any transactions. The company has replied that the Board considers the investment of Rs.

11 crore in Nu Tek Europe as good but no document has been submitted to substantiate the realization of Rs. 11 crore as good. Further on analysis of financial results submitted by the company of Nu Tek Europe SRO for the F.Y. 2015-16 and 2016-17, it is observed that Nu Tek Europe SRO has not been generating any income for the Period 2014-15 to 2016-17. As per the financial statements submitted by the company for the F.Y. 2015-16 and 2016-17, it is observed that there is huge outstanding of 1.56 million Euro and advance to suppliers of 0.22 million Euro since March 31, 2014 which raises a suspicion on the recoverability of these amounts.

17. Considering the above observations, it *prima facie* appears that as per Auditor Report, NTIL has neither provided any documentary support to substantiate the recoverability and to assess provision for the trade receivables of HK\$ 94,000,000 as on March 31, 2016 and as March 31, 2017 nor it has provided any documentary support to ascertain and to assess the amounts of provisions, if any, which might have been required for the underlying value of the group's investment in associate of HK\$ 349 million. Thus there is strong *prima facie* suspicion of misrepresentation of financials of the company. Further out of USD 73.4 million raised in 2 GDRS by NTIL, USD 62.96 million was invested in NU Tek HK Private Limited who in turn invested to purchase of 45% stake in Gulf Power Corporation Limited. However NTIL has not submitted any documentary evidence on the consideration paid for the purchase of 45% stake in Gulf Power Corporation Limited and has also failed to demonstrate the final use of GDR proceeds. Thus there appears to be *prima facie* suspicion of misuse of GDR proceeds. Further NTIL has invested major chunk of Rs. 336 crores out of the total assets of Rs. 536 crores as on March 31, 2016 in the mining business which is not even covered in the amended object clause of NTIL, which itself was amended 4 months after the aforesaid investment. Thus there appears to be *prima facie* evidence of misrepresentation of business by the company. In view of the foregoing, in my view, there is *prima facie* evidence of misrepresentation of its business/financials by the company and strong suspicion of misuse of books of accounts/funds by the company.

***Issue No. 3.*** *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

18. In view of the *prima facie* observations on misrepresentation of books of accounts by the company and the misuse of books of accounts/funds by the company, the persons who are in

control of the company and the directors of the company are *prima facie* liable for action by SEBI and should not be permitted to exit the company at the cost of innocent shareholders.

19. Further, on account of the above mentioned observations on misrepresentation of books of accounts by the company and the misuse of books of accounts/funds by the company, it is also imperative that in the interest of investors, the financials of the company be independently audited to establish their genuineness.
20. Pending enquiry/ audit, considering the interest of public shareholders involved in NTIL, I find it appropriate to revert the trading in securities of NTIL to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
21. In view of the above, I am of the view that following urgent interim actions are required to be taken, pending audit/further enquiry.

### **INTERIM ORDER**

22. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, hereby, modify the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against NTIL and direct as under:
  - i. The trading in securities of NTIL 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 forensic auditor interalia to further verify:
    - a. Misrepresentation including of financials and/or business of NTIL and its subsidiaries, if any;
    - b. Misuse of the books of accounts / funds (including GDR proceeds) including facilitation of accommodation entries, if any.
  - iii. The promoters and directors in NTIL are permitted only to buy the securities of NTIL. The shares held by the promoters and directors in NTIL 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 NTIL.

23. The directors for the purpose of direction mentioned at para 22 (iii and iv) above shall mean and include:
- a. the persons who are acting as directors on the date of this order, or
  - b. the persons who were acting as directors of this company as on August 07, 2017, who cease to be director, by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017
24. Accordingly, the representation made by NTIL is disposed of. The above directions shall take effect immediately and shall be in force until further Orders.
25. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. at this stage. However, detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations. In this context, NTIL is advised to file its reply/objections to this *interim order*, if any, within 30 days from the date of receipt of this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard. In the event NTIL fails to file its reply or to request for an opportunity of personal hearing within the said 30 days, the preliminary findings of this Order and *ad-interim* directions shall stand confirmed against NTIL automatically, without any further orders.
26. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for their information and necessary action. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

-Sd-

**DATE: OCTOBER 9, 2017**  
**PLACE: MUMBAI**

**MADHABI PURI BUCH**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**