

**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 Pacific Finstock Limited

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 reneging 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 Securities and Exchange Board of India Act, 1992 in respect of listed shell companies including Pacific Finstock Limited (hereinafter referred to as "PFL" / "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, all the recognized stock exchanges, 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 a letter dated August 24, 2017 addressed to SEBI and BSE, PFL submitted the following:

“At the outset we clarify that we are not a listed company on any Stock Exchange as on date. We are on the dissemination Board of BSE Ltd. We are RBI registered NBFC company since last about 17 years. Further, we confirm that we are not a Shell company as inferred or otherwise. We are a going concern.

The company was incorporated on 6th day of September 1994 and obtained Certificate of Incorporation on 6th day of September 1994 in the state of Gujarat in the name of Pacific Finstock Limited. The Company has not changed its name since incorporation. The present business activities of the Company interalia are investment in quoted securities; rental income on leased assets. The company is a debt-free company & is regular in compliance with regulatory requirements of various authorities as on date. The company earned an income of 14,638,480.15 & profit of Rs 1,06,96,712.23 as on 31' March,2017 & company will pay income-tax of Rs 17,74,567 on or before 30th September, 2017 (which is due date for Income-Tax payment).

As on date there are about 3,580 shareholders of the Company (who are old investor).

Pacific Finstock Limited was listed on Vadodara Stock exchange Limited (VSE) which is shown on the Dissemination Board on BSE. Plan of Action for the same was submitted to BSE on 29th June 2017 as was required in terms of SEBI's circular dated 10th October, 2016.

The company has appointed Skyline Financial Services Private Limited as its Registrar and Transfer Agent and has also applied for ISIN number to CDSL and NSDL for dematerialization.

We request you to remove our name from the list of suspected Shell Companies, so that, our shares and company can be listed at BSE Ltd.

The Company is a corporate entity having CIN No. L17110GJ1994PLC022972. The Company has about 3579 shareholders.

The company's capital is Rs. 4,00,00,000 (face value of shares Rs. 10/- each). The Company is registered as a Non-Banking Finance Company (NBFC) with Reserve Bank of India vide registration dated 20th March, 1998. The Company is registered as NBFC since 1998. The Company is debt-free. There is no litigation against the company.

The company emphatically confirms and states that it is not a shell company - it is active, functioning and operational. Neither SEBI, nor BSE nor MCA nor ITD/SFIO has prior checked with the company nor its version on this point was obtained by them. The Company states that without verifying even basic, preliminary point, the company has been treated as a shell company and extreme, drastic, overnight action as contained in SEBI/BSE's notice/orders has been taken to the detriment of the company and its shareholders / investors / other stakeholders.

The company states that SEBI's treating it as a shell company has caused negative implications and the company and its directors have been stigmatized in corporate circles.

...

The company is functioning, has registered office, has business activities, has revenue stream, employees and is a tax paying company, the company has one banker, R&TA and statutory auditors;

The Company has not been served with any prior notice from SEBI/MCA regarding its purported "Shell Status"; however it became aware from BSE Notice dated 7th August, 2017.

The Company submits recent SEBI's/BSE's notice dated 07th August, 2017 are erroneous, opposed to law and facts and were issued in total disregard of the principles of natural justice and also contrary to the Rules, Bye-Laws and Regulations of the BSE and SEBI laws and listing agreement. The company further

submits that it has not violated any provision of law as alleged or otherwise. In fact, the impugned order does not even mention the specific provision which the company has alleged to have violated. The company is not a shell company as alleged or otherwise or as concluded or otherwise.

The BSE notice dated 07th August 2017 and action therein is not only unreasonable but seeks to deprive the company of its fundamental rights of a hearing, which is a basic feature of Article 14 of the Constitution.

In view of the facts and circumstances recorded above and the specific submissions made herein, the Company prays for the following reliefs from the SEBI:-

That the order / notice dated 7th August, 2017 as far as our company is concerned be not made applicable and we be not treated as a shell company.

As our Listing application (Direct Listing) is already pending before BSE & required to be dealt with expeditiously, we request you to pass an appropriate order in the matter so that BSE Ltd. dose not treat us a shell company and approves our listing application on an urgent basis.”

9. Thereafter vide letter dated September 14, 2017, PFL made a request for a personal hearing and submitted the following:

“Our company has already applied to BSE for relisting of its securities (and plan of action) and this application is pending at BSE for its consideration. The last date for consideration by BSE is 30th September, 2017.

We are an NBFC company registered with RBI. It is in the interest of our several stakeholders that the securities of the company are listed on BSE. We specifically bring you notice that in terms of SEBI circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated 10th October, 2016 SEBI gave two option to the company, a copy of which is enclosed for ready reference.”

10. Vide letter dated September 23, 2017, PFL, drawing reference to its earlier letters dated August 24, 2017 and September 14, 2017, again requested for an opportunity of personal hearing in the matter. Thereafter, hearing was scheduled in respect of PFL on October 3, 2017.
11. In the meantime, aggrieved by the aforesaid letter dated August 7, 2017 issued by SEBI, PFL filed an appeal No. 264 of 2017 before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). Hon'ble SAT vide order dated September 29, 2017 directed the following:-

"2. Counsel for the appellant states that since the representation made by the appellant to SEBI against the communication dated 7.8.2017 is pending before SEBI, appellant seeks permission to withdraw the appeal and pursue the representation pending before SEBI.

3. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the matter before SEBI, where the hearing is admittedly fixed on 3rd October, 2017.

4. SEBI is directed to dispose of the above 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.

5. It is the case of the appellant that the application made by the appellant to BSE for direct listing of its securities has not been entertained in view of the order passed by SEBI on 7.8.2017. Counsel for BSE states that the application of the appellant was not accepted by the online system as the net worth of the company was below the prescribed limit.

6. Counsel for the appellant states that the net worth of the company falls within the prescribed limit and there was an inadvertent error in the application made by the appellant.

7. In these circumstances, we direct that if the appellant makes a fresh application for direct listing of the securities during the course of the day, then BSE shall accept the said application either on-line or written application of the appellant at the Head Office of BSE at Mumbai and pass appropriate order thereon.

8. *It is made clear that any order that may be passed by the BSE on the application of the appellant shall be subject to the order that may be passed by SEBI.*"

12. 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.

Hearing and Reply:

13. An opportunity of personal hearing was granted to PFL on October 3, 2017 when its authorized representative appeared and made, *inter alia*, the following submissions:

- i) The company has no idea as to why it has been categorized as a suspected shell company.
- ii) The company is debt free, has no bank and tax liability and has around 3500 shareholders.
- iii) The company has not received any notice from any authority.
- iv) The company is currently on the dissemination board.
- v) The company's application for direct listing has been stalled because of SEBI's letter dated August 7, 2017. While the company was trying to make the application on BSE's online system, it did not allow the company to key in the requisite details including net worth.
- vi) It is eligible for direct listing as per the old norms (applicable prior to September 29, 2017) and meets the net worth criteria specified thereunder.
- vii) It was prayed that once the restrictions imposed on the company pursuant to SEBI's letter dated August 07, 2017 are removed, the company's application for direct listing should be considered by BSE under the old eligibility criteria.

14. During the hearing, PFL was asked to provide the information / response on the following points (supported by documentary evidence) as early as possible and latest by October 13, 2017:

1. *As per Annual report 2016-17, the company have made short term capital gain (STCG) on sale of shares of Rs. 1.04 crore. In this regard, you are advised to provide the list of shares sold along with the number of shares, price of sell, purchase price, whether the sale of shares was at exchange platform o off market and whether the shares sold are listed or unlisted
If the shares are unlisted or were traded off market then the counterparty details for the sale and purchase transaction carried out.
You are also requested to highlight the corresponding entry in the bank statement for the purchase and sale done by the company to generate STCG. Also furnish the copy of Income tax return where income tax has been paid on the STCG.*
2. *Details of the bank accounts being maintained by the company during the F.Y. 2016-17. If the company has only two accounts one with PNB and one with UCO bank then explain the following with documentary evidence:*
 - a. *The total receipts in the two bank accounts during the F.Y. 2016-17 is Rs. 1.81 crore. Trade receivables have gone down by Rs. 0.63 crore during the F.Y. 2016-17. Therefore the Balance receipts after adjusting trade receivables is Rs. 1.18 crore. In light of this justify the revenue from operation of Rs. 1.46 crore recorded during the F.Y. 2016-17.*
 - b. *Provide the bank statements of all the bank account being maintained by the company during the F.Y. 2016-17 for the period 01/04/2016 to 31/03/2017.*
3. *Details of inventory of Rs. 1.96 crore as on March 31, 2017, lower of cost or fair market value along with full list of shares, no. of shares, if listed then the market price as on March 31, 2017 and if unlisted then valuation certificate showing how the fair value has been determined.*
4. *It is observed that the statutory auditor has been changed from F.Y. 2016-17. Full details for how many years the previous auditor served and the explanation for change in auditor. Board resolution and Shareholders resolution for change in auditor.*
5. *Long term borrowings have increased by Rs. 1.76 crores during the F.Y. 2016-17. No corresponding entries in the bank statement was observed. Therefore provide the bank statement highlighting the receipt of long term borrowings, along with*

details of parties from whom the borrowings was received, contracts, terms of borrowings. Further if the borrowings are from related parties then board resolution, shareholders resolution and secretarial audit report for whether due process was followed while dealing with related party.

- 6. Details of Long term loan and advances of Rs. 3.24 crores as on March 31, 2017 and increase in the short term loans and advances by Rs. 3.20 crores during the F.Y. 2016-17. Provide the bank statement highlighting the above increase in the loans and advances, along with details of parties to whom the loans and advances has been given, contracts, terms of loans and advances, principal and interest. Further if the loans and advances are to related parties then board resolution, shareholders resolution and secretarial audit report for whether due process was followed while dealing with related party.*
- 7. Submit the Annual Report for the F.Y. 2014-15.*
- 8. It is observed that the auditor in its audit report for the F.Y. 2015-16 have qualified its report by stating that the name of related parties with whom inter corporate advances have been made and in which investment have been made was not made available to auditor. Further auditor have mentioned that there is continuing contravention of section 185 of companies act 2013 for allowing loans and advances of Rs. 9.13 lakhs to related parties during the F.Y. 2015-16. Therefore you are advised to provide explanation to the auditor qualification mentioned in the Audit report for the F.Y. 2015-16 along with the detail of related parties along with transaction carried out during the F.Y. 2015-16, contracts, terms of these transactions, secretarial audit whether due process has been followed or not and if followed the copy of board resolution and shareholders resolution.*
- 9. Further the auditor have highlighted that the accounts and balances of various parties remain stagnant and unconfirmed since long back, status as to receivables and payables thereof cannot be ascertained and commented. In this regard, provide the details of parties along with when it will be paid or when the amount can be received and confirmation of parties.*

SEBI also sent a reminder e-mail to the company on October 9, 2017 asking for the above information.

- 15. The company vide email dated October 16, 2017 has submitted, *inter alia*, the following response to the above mentioned queries: -*

Query 1. *As per Annual report 2016-17, the company have made short term capital gain (STCG) on sale of shares of Rs. 1.04 crore. In this regard, you are advised to provide the list of shares sold along with the number of shares, price of sell, purchase price, whether the sale of shares was at exchange platform or off market and whether the shares sold are listed or unlisted*

If the shares are unlisted or were traded off market then the counterparty details for the sale and purchase transaction carried out.

You are also requested to highlight the corresponding entry in the bank statement for the purchase and sale done by the company to generate STCG. Also furnish the copy of Income tax return where income tax has been paid on the STCG.

- The company had sold 20,73,200 shares of Natural Expo Agro Industries Limited through off market transfers at Rs. 7/- per share to Panki Investments Limited (8,73,200 shares) and Amarkantak Traders Limited (12,00,000 shares) on 08/03/2017. The abovementioned 20,73,200 shares were purchased on 25/04/2016 at Rs. 2/- per share from Anvita Sales Corporation. Therefore company made a gain of Rs. 1,03,66,000.
- The company also submitted bank statement highlighting Rs. 6,00,000 paid to Anvita Sales corporation on 12/10/2017 and Rs. 55,00,000 received from Panki Investments Limited (Rs. 28 lakh on 11/10/2017 and Rs. 27 Lakhs on 12/10/2017). Further, the company submitted that Rs. 35,46,400 is due to Anvita Sales Corporation and Rs. 6,12,400 is due from Panki Investments Limited and Rs. 84,00,000 is due from Amarkantak Traders Limited (formerly known as Shubh Poultries Limited).

Query 2. *Details of the bank accounts being maintained by the company during the F.Y. 2016-17. If the company has only two accounts one with PNB and one with UCO bank then explain the following with documentary evidence:*

- a. *The total receipts in the two bank accounts during the F.Y. 2016-17 is Rs. 1.81 crore. Trade receivables have gone down by Rs. 0.63 crore during the F.Y. 2016-17. Therefore the Balance receipts after adjusting trade receivables is Rs. 1.18 crore. In light of this justify the revenue from operation of Rs. 1.46 crore recorded during the F.Y. 2016-17.*

b. Provide the bank statements of all the bank account being maintained by the company during the F.Y. 2016-17 for the period 01/04/2016 to 31/03/2017.

- Pacific Finstock Limited has primarily two bank accounts in PNB & UCO Bank. While it also has one division called "Pacific Health Care "(Division of Pacific Finstock Ltd). There is an account in Name of Pacific Health Care in Bank of India Sayajigunj Branch.
- During the F.Y 2016-17, total turnover of Rs 1.46 Crore which were Credit sales of Share of Rs 1.38 Crore were erroneously shown in Loans and Advances instead of Trade Receivable in our Books of Account. So trade receivable of Rs 0.63 Crore was not included in the Credit sale of share of Rs 1.38 Crore which was shown in Loans and Advances erroneously. Total Loans and Advances of Rs. 3.29 Crore included both the Sundry Debtors i.e Amarkantak Traders Limited (Rs.84,00,000) and Panki Investments Limited (Rs 61,12,400)
- The company attached Bank statements of Punjab National Bank, UCO Bank of Pacific Finstock Ltd and Bank of India of Pacific Health Informatics For F Y 2016-17.

Query 3. *Details of inventory of Rs. 1.96 crore as on March 31, 2017, lower of cost or fair market value along with full list of shares, no. of shares, if listed then the market price as on March 31, 2017 and if unlisted then valuation certificate showing how the fair value has been determined.*

- Pacific Finstock Limited has inventory of Shares of listed companies. Details for the same including Cost as well as Fair Market Value (as Per Bombay Stock Exchange) as on 31.03.2017 is below.-

Name of the Company	No. of Shares	Cost	Market Value as on 31/03/2017
Empire Unifor Software Solutions Ltd	9500	95000	14820

Vikas Ecotech Limited	900	18630	18765
Shree Ganesh Spinners	5,02,000	1,87,47,463	1,55,620
Valuemart in	2,11,652	7,72,178	80,427.76
TOTAL		1,96,33,271	2,69,632.76

Query 4. *It is observed that the statutory auditor has been changed from F.Y. 2016-17. Full details for how many years the previous auditor served and the explanation for change in auditor. Board resolution and Shareholders resolution for change in auditor.*

- Our Previous Auditor Mr. Nayan R Kothari Partner of M/s Parag Patel & Associates. Chartered Accountant, was appointed as Statutory Auditor of PFL for F Y 2010-11 to F.Y.2012-13. From F Y 2013-14, he has started his own Proprietorship firm under name of "Nayan R Kothari & Co" and appointed till FY 2015-16. As he is doing audit work of may assignment of Bank Audit and because of his pre occupation in other works, Company decided to appoint New Auditor M/s Sheetal Samriya & Associates, Partnership firm from F.Y. 2016-17. M/s Sheetal Samriya & Associates has listed company audit works and they have experience of SEBI Rules and Regulations so we have appointed the same. The copies of Board resolution and copy of resignation as statutory auditor by Nayan R Kothari & Co. were enclosed.

Query 5. *Long term borrowings have increased by Rs. 1.76 crores during the F.Y. 2016-17. No corresponding entries in the bank statement was observed. Therefore provide the bank statement highlighting the receipt of long term borrowings, along with details of parties from whom the borrowings was received, contracts, terms of borrowings. Further if the borrowings are from related parties then board resolution, shareholders resolution and secretarial audit report for whether due process was followed while dealing with related party.*

Query 6. *Details of Long term loan and advances of Rs. 3.24 crores as on March 31, 2017 and increase in the short term loans and advances by Rs. 3.20 crores during the F.Y. 2016-17. Provide the bank statement highlighting the above increase in the loans and advances, along with details of parties to whom the loans and advances has been*

given, contracts, terms of loans and advances, principal and interest. Further if the loans and advances are to related parties then board resolution, shareholders resolution and secretarial audit report for whether due process was followed while dealing with related party.

- Increase in Long term Borrowing of Rs 1.76 Crore were shown in Bank statements. Following parties, Copy of Confirmation Statement, Loan Agreement, Board Resolution including related party, Bank Statement highlighting corresponding Party were enclosed:
 - Adamina Traders P Ltd.
 - Anvita Sales Corporation
 - Jayeshbhai R Thakkar
 - Kavit Industries Limited
 - Mahesh S Kahar
 - Shree Saibaba Exim P Ltd
- Long term Advances of Rs 3.24 Crore as on March 31, 2017 and Increase in Short term Loans and advances by Rs 3.20 Crore were shown in Bank statement (if any). Following Parties, Copy of Confirmation Statement, Loan Agreement , Board Resolution including related party, Bank Statement with Highlighting corresponding Party were enclosed:

SHORT TERM LOANS & ADVANCE

- Ghanshyambhaij Bharwad
- Jethabhai Bharwad
- Hetal Trivedi
- Panki Investment Ltd
- Amarkantak Traders Ltd

LONG TERM LOANS & ADVANCES

- Kavit Intermediate(Div. Of Kavit Industries Ltd)
 - Prabhav Industries Ltd
- All long term borrowing of Rs 3.24 crore were carried in books of account since long time (approx. more than 5 years) and the same were not possible to be

recovered. so, promoter of company Mr. Jayesh R Thakkar purchased (took over) long term loans and advances, investments and unsecured loans through net asset purchase agreement dated October 12, 2017.

- Copy of Secretarial Audit Report for FY 2016-17 was enclosed.

Query 7. *Submit the Annual Report for the F.Y. 2014-15.*

- Company submitted a copy of the Annual Report for F Y 2014-15.

Query 8. *It is observed that the auditor in its audit report for the F.Y. 2015-16 have qualified its report by stating that the name of related parties with whom inter corporate advances have been made and in which investment have been made was not made available to auditor. Further auditor have mentioned that there is continuing contravention of section 185 of companies act 2013 for allowing loans and advances of Rs. 9.13 lakhs to related parties during the F.Y. 2015-16. Therefore you are advised to provide explanation to the auditor qualification mentioned in the Audit report for the F.Y. 2015-16 along with the detail of related parties along with transaction carried out during the F.Y. 2015-16, contracts, terms of these transactions, secretarial audit whether due process has been followed or not and if followed the copy of board resolution and shareholders resolution.*

- As company has taken/given Loans to related party which were resolved by given/taken back in next financial year. As in F Y 2015-16 companies have given/taken Loans from related parties. So, in F Y 2015-16 Auditor has qualified its Report and PFL have taken action by returning back amount in next financial year. Copy of Board Resolution and Shareholder Resolution for following related parties were enclosed:

1. Jayesh Thakkar
2. Prabhav industries Ltd
3. Kavita Intermediate
4. Shree Saibaba Exim Pvt. Ltd.
5. Kavita Industries Ltd

Query 9. Further the auditor have highlighted that the accounts and balances of various parties remain stagnant and unconfirmed since long back, status as to receivables and payables thereof cannot be ascertained and commented.

In this regard, provide the details of parties along with when it will be paid or when the amount can be received and confirmation of parties.

- All long term borrowing of Rs 3.24 crore were carried in books of account since long time (approx. more than 5 years) and the same were not possible to be recovered. so, promoter of company Mr. Jayesh R Thakkar purchased (took over) long term loans and advances, investments and unsecured loans through net asset purchase agreement dated October 12, 2017.

Consideration of issues:

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

- 1) Whether there is *prima facie* evidence of misrepresentation by PFL including that of its financials and/or its business.
- 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.
- 3) 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.

17. 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 PFL including that of its financials and/or its business.*

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 renegeing on the fiduciary responsibility cast on them.

18. Based on the material available on record, *prima facie* observations are as under:

- i) On analysis of Annual Report for the F.Y. 2015-16 (especially Note 9 and Cash Flow Statement), it is observed that the company had sold 12,00,000 shares of Natural Expo Agro Industries Limited at Rs. 10/- per share. In the F.Y. 2016-17 Company purchased the shares of Natural Expo Agro Industries Limited at Rs. 2/- per share and sold at Rs. 7/- per share.

It is noteworthy that Natural Expo Agro Industries Limited and Pacific Finstock Limited have same address i.e. Chinoi Building, Station Road, Vadodara 390002 as per MCA database and submissions of Pacific. Mr. Jayeshchdrabhai Thakkar is common director in Natural Expo Agro industries limited and Pacific Finstock limited.

It is observed that the company purchased shares on credit from Anvita Sales Corporation on April 25, 2016 and sold shares on credit to Panki Investments Limited and Amarkantak Traders Limited on March 8, 2017 and there were no fund transfers at the time of purchase or sale of shares of Natural Expo Agro Industries Limited.

The consideration amount for purchase and sale of shares by PFL mentioned in the submissions of PFL dated October 16, 2017 appears to be an afterthought as the partial amount of such sale and purchase has been reflected in the bank account statements pursuant to the queries raised during the WTM hearing. No challans have been submitted for payment of tax on STCG. The company in its reply has also confirmed that it has a tax liability of Rs.17.82 lakhs which would be paid before October 31, 2017.

It is noted that the company is appearing on the Dissemination Board of BSE. The company has stated that it has applied to BSE for Direct Listing on June 29, 2017 and in view of SEBI letter dated August 7, 2017 issued to the exchanges its applications was not processed under the Direct Listing norms prior to September

29, 2017. BSE vide email has informed that the net worth criteria for companies to be listed under Direct Listing norms prior to September 29, 2017 was at least Rs. 3 crores as per the latest Audited Financials.

In view of the above facts, it prima facie appears that the abovementioned transaction i.e. purchase and sale of shares of Natural Expo Agro Industries Ltd. was recorded in the books of the accounts of the company to comply with the net worth requirement of Rs. 3 crore on paper so as to avail listing at BSE under Direct Listing norms prior to September 29, 2017, even though there was no cash flow till that date.

- ii) As per Annual Report 2016-17, the total Bank balance as on March 31, 2017 is Rs. 40,95,147.63. The company has replied that it has three bank accounts (including the bank account of Pacific Health Informatics) and the balance as on March 31, 2017 is Rs. 24,58,148.62. As per Annual Report 2016-17, there were Nil Cheques/Drafts in hand.

Name of Bank	Balances as on March 31, 2017
Punjab National Bank	78,211.08
UCO Bank	3,33,284.82
Bank of India	20,46,652.72
TOTAL	24,58,148.62

Thus, it is observed that there is discrepancy between what has been reported in the financials for the F.Y. 2016-17 and the bank statements.

- iii) It is noted that amount of trade receivables has been shown under Loans and advances in the financials of the company for FY 2016-17. The same figures were presented by the company for audit also. The company has claimed that it was done erroneously, however, the same appears to be an afterthought by the company as it was brought out by the company only after SEBI questioned it during the hearing. It does not appear to reason that such an error never came to the notice of the company even after its accounts were audited. In view of the above, the inclusion of trade receivables under Loans and advances, prima facie appears to be misrepresentation in financials by PFL.

- iv) With respect to investment in Shree Ganesh Spinners Limited (currently known as Yantra Natural Resources Ltd.), it is observed that trading in this scrip is suspended since August 28, 2015. The closing price of the scrip as appearing on August 27, 2015 on BSE website is Rs.0.31/- per share. The market value of the scrip has diminished substantially. On analysis of annual report for the F.Y. 2016-17, it is observed that the company has not made provision for diminution in the value of investments. The value of inventory as per annual report is shown as 1.96 crores as on March 31, 2017, whereas the market value thereof as submitted by the company is only Rs.2.69 lakhs. Thus, *prima facie* there appears to be misrepresentation of financials of PFL.
- v) For increase in long term borrowings, the company has furnished the names of entities from whom it has borrowed the amounts and has furnished copies of ledger extracts, bank statements and certain loan agreements. From the agreements, it is observed that the said entities are appearing as borrowers instead of lenders and in some cases, the tenure of agreements being 45 months, the same have lapsed. Further, Anvita Sales Corporation is shown by the company in long term borrower whereas it is noted that PFL has purchased shares of Natural Expo Agro Industries Ltd from Anvita Sales Corporation on April 25, 2016 which should have been shown under Trade Payables. The details gathered from the agreements are as under:

Name of entity	Date of Agreement	Entity appearing as	Amount	Tenure of agreement
Adamina Traders Pvt. Ltd.	31/12/2011	Borrower	1 crore	45 months
Jayeshbhai R Thakkar	05/01/2016	Borrower	1 crore	45 months
Kavit Industries Limited	05/01/2016	Borrower	4 crore	45 months
Mahesh S Kahar	31/12/2010	Borrower	30 lakhs	45 months
Shree Saibaba Exim P Ltd	02/07/2016	Borrower	10 lakhs	45 months

Thus there is a discrepancy between the reported financials and supporting documents.

vi) The details of Long term loans and advances and short term loans and advances as gathered from the copies of agreements submitted by the company are as under:

Name of entity	Date of Agreement	Entity appearing as	Amount	Tenure of agreement
Ghanshyam J Bharwad	09/09/2016	Borrower	1.5 crores	45 months
Jethabahi Bharwad*	09/09/2016	Borrower	2.5 lakhs	45 months
Hetal Trivedi*	09/09/2016	Borrower	2.5 lakhs	45 months
Kavit Intermediate	05/01/2016	Borrower	5 lakh	45 months
Prabhav Industries Ltd.	15/04/2014	Borrower	30 lakhs	45 months

*Loan amount said to have been given by Pacific Health Infomatics, stated to be division of Pacific Finstock Ltd.

Kavit Intermediate (stated to be division of Kavit Industries) and Prabhav Industries share the same address with Pacific Finstock Ltd. – 9th Floor, Galav Chambers, Sayajiganj, Vadodara- 390020.

The amount shown as short term loan and advances for Panki Investment Ltd. and Amarkantak Traders Ltd. were actually the amount due for sale of shares of Natural Expo Agro Industries Ltd. on credit as on March 31, 2017 which is in the nature of trade receivables but has been categorized under 'Short term Loans and Advances'. In any case, in terms of the agreements submitted for entities (offered short terms loans and advances and if amount dues for Panki and Amarkantak are considered), the increase in amount is only by 3 crores and not 3.2 crores.

All the agreements pertaining to long term borrowings, long term loans and advances and short terms loans and advances are not on stamp paper nor have they been notarized, which raises a doubt regarding their authenticity.

vii) The company has submitted the secretarial audit report for the F.Y. ended March 31, 2017 wherein the secretarial auditor has highlighted that the required documents in case of related party transactions were not produced before it. Further the secretarial audit report has highlighted non-compliance of various requirements. The relevant observation of secretarial audit report is reproduced below:

“ I confirm that the Company has partly complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, Listing Agreement etc. mentioned hereinabove, other than those mentioned above subject to following observations:

- 1. The Company has not filed certain forms & certain forms were filed with delay filling fees.*
- 2. The Company has not appointed an Internal Auditor for FY 2016-17 as required under Section 138 of the Companies Act, 2013.*
- 3. The constitution of various Committees is not in conformity with the requirement of Section 178 of the Companies Act, 2013 and rules thereunder during the Audit period. However, Company is taking steps to regularize the same.*
- 4. The Company has failed to appoint whole time Key managerial personnel as required under Section 203 of the Companies Act, 2013 and rules thereon.*
- ...*
- 7. The Company has failed to produce Prof of dispatch notice to the members of Annual General Meeting as required under Section 101 of the Companies Act, 2013.*
- 8. Company has not file the Return as required by the RBI act, 1934 and RBI Directions and Guidelines.*

I further report that compliance of applicable financial laws including Direct and Indirect Tax laws by the Company has not been reviewed in the Audit

since the same has been subject to review by the Statutory Auditors and other designated professionals,

...

At the time of secretarial audit Company could not produce necessary agenda/notices given to all directors to schedule the Board Meetings or any other supporting, hence I am unable to comment whether adequate notice of board meeting along with agenda was sent at least seven days in advance or not, nor we can found whether a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting. Majority decision is carried through while the dissenting Members views are captured and Recorded as part of the minutes.

Since Minutes books is not updated, hence we cannot comment whether majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

- Statutory Register was not updated at the time of secretarial audit of the Company.*
- At the time of secretarial audit, company has not produced relevant documents, hence I cannot comment whether any Related Party Transaction (RPT) has taken place or Board/ Shareholders approval was taken for the same.*

I further report that there are not adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.”

Thus, it is observed that there are significant governance issues relating to PFL which have been highlighted by the auditor.

viii)The company has submitted the Net Assets Purchase agreement on which, *inter-alia*, following observations are made:-

- a) The agreement is signed between PFL and Mr. Jayesh Thakker and is dated October 12, 2017.

- b) The date of the agreement is after questions were raised during the WTM hearing.
 - c) This agreement appears to be an afterthought and no Board resolution and shareholders resolution has been furnished.
 - d) The company has submitted that all long term loans and advances (which appear to have been inadvertently referred to as long term borrowings) of Rs 3.24 crore were carried in books of account since long time (approx. more than 5 years) and the same were not possible to be recovered so, promoter of company, Mr. Jayesh R Thakkar purchased (took over) long term loans and advances, investments and unsecured loans through net asset purchase agreement dated October 12, 2017.
 - e) The agreement provides for annexures –reflecting investment in shares as on September 30, 2017 for an amount of Rs.27,64,371 and loans and advances as on September 30, 2017 for an amount of Rs. 1,89,65,890/-. However, the total amount does not add up to Rs. 3.24 crores.
 - f) Article II on page 4 of the said agreement states that the consideration of Rs. 2.17 crores is paid by the Assignor (i.e. PFL) to the Assignee (i.e. Jayesh Thakker). In fact, the company has stated that they have sold all long term loans and advances to Jayesh Thakker and not vice versa as indicated in Article II.
- ix) On analysis of Bank statement of Bank of India submitted by the company for the F.Y. 2016-17, it is observed that there are several entries wherein the amount has been received from Kavit Industries Limited (a related party of PFL) and withdrawn as cash. Further it is observed that there are majorly three types of transactions in the bank statement i.e. Kavit Industries Limited, Jayesh Thakkar (Director) and Cash. Further, the said bank account belongs to Pacific Health Informatics. This raises *prima facie* suspicion that the bank account is being used for purposes other than primary business activities.

19. In view of the above, I observe that PFL has failed to submit adequate documents to substantiate the figures disclosed in its financials and to establish their genuineness. It is noted that the secretarial audit report has highlighted several non-compliances of provisions of Companies Act and other applicable laws by PFL. The report also highlights adverse findings regarding the related party transactions entered into by PFL. PFL has failed to provide any explanation regarding the adverse findings of the

secretarial audit report and also whether due process was followed by it while dealing with related parties, which raises a strong suspicion regarding misuse of funds/ books of accounts by PFL. Considering the above, in my view, there is *prima facie* evidence of misrepresentation of financials by the company and a strong suspicion regarding the 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.*

20. In view of the *prima facie* observations regarding misrepresentation of financials by the company and the suspicion regarding 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.
21. Further, on account of the observations regarding misrepresentation of financials by the company and the suspicion regarding 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.
22. I note that the company is currently on the dissemination board of BSE and was not trading even prior to August 07, 2017.
23. In light of the above, I am of the view that following urgent interim actions are required to be taken, pending audit/further enquiry.

INTERIM ORDER

24. 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 PFL and direct as under:

- i. Stock Exchange shall appoint an independent forensic auditor, *inter alia*, to further verify:
 - a) Misrepresentation including of financials and/or business of PFL, if any;
 - b) Misuse of the funds/books of accounts of PFL, if any.
- ii. The promoters and directors in PFL are permitted only to buy the securities of PFL. The promoters and directors of PFL shall not sell the securities of PFL held by them, either in physical form or dematerialized form.
- iii. 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 PFL.

25. The 'directors' for the purpose of directions 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.

26. Accordingly, the representation dated August 24, 2017 made by PFL is disposed of.

27. The above directions shall take effect immediately and shall be in force until further Orders.

28. It is clarified that BSE shall process the application of the company as per the eligibility criteria for direct listing as was applicable prior to September 29, 2017. However, BSE shall consider the outcome of the forensic audit directed above, while considering the suitability of listing of PFL.

29. The findings in this order have been rendered on the basis of the *prima facie* evidence available at this stage. However, detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations. In this context, PFL 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 reply/objection. In the event PFL 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 PFL automatically, without any further orders.

30. Copy of this Order shall be forwarded to the Reserve Bank of India, 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 26, 2017
PLACE: MUMBAI

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