

**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 M/s Pincon Spirit Limited (PAN: AAHCS8354B)**

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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 has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has 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 SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) of protecting 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 companies whose names are included as shell companies by SFIO and MCA, were potentially involved in
  - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “**LODR Regulations**”) and/or

- (b) Misusing the books of accounts/funds of the company 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 action 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, 1992, in respect of listed shell companies including M/s Pincon Spirit Limited (hereinafter referred to as “PSL” / “Company”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions, on the 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 said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the 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 measure, trading in scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges completed their detailed examination of such companies.
  6. Pursuant to the same, Bombay Stock Exchange Limited (hereinafter referred to as “BSE”) vide notice dated August 7, 2017, National Stock Exchange of India Limited (hereinafter referred to as “NSE”) vide notice dated August 7, 2017 and Metropolitan Stock Exchange of India Limited (hereinafter referred to as “MSE”) vide notice dated August 07, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in

respect of all the listed securities as identified by MCA and communicated by SEBI, with effect from August 8, 2017.

7. On August 09, 2017, SEBI further advised the 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 requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and Stock Exchanges, PSL filed an appeal No. 178 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 11, 2017 directed the following:-

“.....

2. *Similar question was raised in the case of J. Kumar Infraprojects Ltd. (Appeal No. 174 of 2017) and by our order dated 10.08.2017 we have stayed direction 1(a) & (b) contained in the impugned communication of SEBI dated 07.08.2017 qua the appellant therein.*
3. *In view of the facts set out in the Memorandum of Appeal and other documents tendered at the time of hearing relating to annual turnover of the appellant company for last three years, which even according to SEBI prima facie appear to be correct, we extend the said stay to the case of the appellant company herein and direct the stock exchanges to reverse their decision in respect of the appellant company as expeditiously as possible.*
4. *Appellant company is at liberty to make a representation to SEBI against the impugned communication of SEBI dated 07.08.2017. If representation is made, SEBI shall dispose of the said representation in accordance with law.*
5. *It is made clear that this order shall not come in the way of SEBI as well as the stock exchanges to investigate the case of the appellant company and initiate proceedings if deemed fit.....”*

9. PSL vide its letter dated August 14, 2017 had made a representation to SEBI submitting *inter alia* as under:
- (a) Company have its own production unit of Indian Made Foreign Liquor (IMFL), Indian made Indian Liquor (IMIL) and FMCG.
  - (b) Company have cash credit finance of Rs. 325 Crores from a consortium of 10 banks namely, State Bank of India, Bank of India, HDFC Bank, Andhra Bank, Vijaya Bank, Corporation Bank, Punjab National Bank, UCO Bank, IDBI Bank and Lakshmi Vilas Bank. There is no default in debt servicing by the company.
  - (c) Company had filed income tax return for Assessment Year (AY) 2017-18, 2016-17 & 2015-16. Copy submitted.
  - (d) Company had filed annual returns with MCA for Financial Year (FY) 2015-16, 2014-15 & 2013-14. Copy of acknowledgment submitted.
  - (e) Company had submitted Auditor Certificate dated August 10, 2017. The Auditor certify that Company is a going concern and is engaged in the business of Manufacturing, Marketing, Blending, Bottling and Retail of IMFL, IMIL and Refining and Packaging of FMCG items (including edible oil) through own manufacturing set up, tie up manufacturing set up / Brand Franchise.
  - (f) Company had paid excise duty amounting to Rs. 437.29 Crores.
10. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed with out 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. SEBI vide letter dated August 16, 2017 had advised PSL to provide following information by August 24, 2017:

- (a) Connection with Mr. Raj Kumar Tharad and/or Mr Anil Kumar Khemka and summary of any dealings of the Company with or through Mr. Raj Kumar Tharad and/or Mr Anil Kumar Khemka, either directly or indirectly, and the nature and quantum thereof. You are advised to provide all the relevant documents with respect to the above information.
- (b) You are also advised to provide the details of your investment in Saffron Commercial Private Limited.
- (c) Further, you are also requested to furnish details of employees on the rolls of the Company, their respective roles, remuneration received qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar, Junior management, Middle management, senior management, may be given with names and corresponding details.

12. PSL vide its letter dated August 17, 2017 submitted the information sought by the SEBI's letter dated August 16, 2017, which are as under:

- (a) *Reply to query 1: As per our books and information available with us, we have no transaction with Mr. Raj Kurnar Tharad and / or Mr. Anil Kumar Khemka*
- (b) *Reply to query 2: From the past available information available with us, Sarang Viniyog Limited (Presently Pincon Spirit Limited) had acquired 12,500 shares of Saffron Commercial Private Limited under the previous management in financial year 2005-06, which were subsequently sold out in financial year 2008-09 under the same management*
- (c) *Reply to query 3: As on August 17, 2017, total number of employees are 50 (Senior Management – 7, Mid-Level Management – 13, Junior Level Management – 10 and Blue Collar – 20).*

13. Further, PSL vide its letter dated August 19, 2017 also submitted the following:

- (a) Company is in the business of manufacturing, blending, bottling and marketing of its own brand of liquor products (IMFL - Indian Made Foreign Liquor and IMIL -- Country Liquor) and edible oil in FMCG segment. Company's business is spread out in different states of India
- (b) The Standalone Sales as per Audited Balance Sheet for FY 2016-17 is Rs. 1420.05 crores (FY2015-16: Rs. 946.06 crores). For the liquor business vertical, Company has to pay in advance excise duty of 49% and additional excise duty of 26% i.e. 75% advance duty in aggregate to run our business activity. In addition to this, TDS of 1% is also attracted. During the period from August 2016 to July 2017, Company had paid excise duty amounting to Rs. 437.29 crores.
- (c) Company has to depend on working capital finance of Rs. 325 crores from 10 consortium bankers for supporting fast expanding business volume of the Company.
- (d) Company External Risk Score is D&B: 62 / Low risk by Dun & Bradstreet and External Credit Rating is SMERA BBB+ / Stable by SMERA Ratings.

**Hearing and Reply:**

14. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, SEBI vide communication dated September 07, 2017, granted an opportunity of hearing to PSL on September 13, 2017. On September 13, 2017, Mr. Arup Thakur, Director & CFO, Mr. Partho Basu Director & Dy. CFO and Mr. Arun Kumar Ganeriwala Sr. Vice President, Authorized Representatives (hereinafter referred to as "ARs") appeared for PSL and made oral submissions which are as under:

- (a) *PSL is in the business of manufacturing, blending, bottling, marketing and distribution of liquor and edible oil. 70% of revenue comes from liquor and 30% of revenue comes from edible oil. Company pays excise duty of approximately Rs. 1500 crores per month. There are approximately 1200 employees in the company.*

- (b) *Mr. Monoranjan Roy is current Promoter and Chairman & Managing Director of PSL. In the year 2016, Mr. Monoranjan Roy made an open offer to the shareholder of PSL for the acquisition of shares of PSL. The copy of letter of offer is submitted.*
- (c) *ARs submits the copy of quarterly unit inspection report of PSL dated August 18, & 19, 2017 done by State Bank of India.*
- (d) *ARs submits the copy of PSL submissions dated August 19, 2017 made to SEBI.*
- (e) *PSL depends on working capital finance from 10 consortium bankers for supporting their fast expanding business. Company had never defaulted in interest payment with any bank.*

PSL was advised to submit the following information by September 19, 2017:

- (a) *An affidavit from Mr. Monoranjan Roy stating the following:*
- (i) *In the open offer the entities from whom he had acquired the shares of PSL, i.e. Gravel Marketing Pvt Ltd, Starlight Commosale Pvt Ltd, Shree Tribhuvan Tie Up Pvt Ltd., Magnolia Vinimay Pvt Ltd., Bubna Properties Pvt Ltd. and Dream Commosale Pvt. Ltd., who were the individuals behind these companies with whom he had negotiated, i.e. the negotiating entities for the companies.*
  - (ii) *As per Mr. Monoranjan Roy's understanding who was managing the company or in control of the company prior to Mr. Monoranjan Roy being in charge of the company.*
  - (iii) *Whether Mr. Monoranjan Roy knows or has ever spoken to, at any time, either with Mr. Raj Kumar Tharad or with Mr Anil Kumar Khemka or any official/promoter/owner of the company named Bhagyaraj Vyapaar Pvt. Ltd. and if yes, what was the details in that regard?*
- (b) *Excise duty receipts / chalaan for last 6 days (i.e. September 7 to September 12, 2017).*
- (c) *With respect to investment by PSL in Saffron Commercial Pvt. Ltd (SCPL).*

- (i) *Details of the transaction, including but not restricting to price at which the shares were bought by the company, number of shares and from whom were they bought and its total amount paid along with the documents supporting it.*
  - (ii) *Details of the transaction, including but not restricting to price at which shares were sold by the company , number of shares and to whom were they sold to and its total amount received along with the documents supporting it.*
  - (iii) *Backup papers of transaction i.e. copy of board resolution sanctioning the investment i.e. approval from board.*
  - (iv) *Rationale for investment put up to the board members for the said investment.*
  - (v) *Whether articles of Memorandum of Association allowed for such investment along with back papers.*
- (d) *Contact details of the person whoever was in control of company in prior period as per Mr. Monoranjan Roy's affidavit. Company shall seek affidavit from the said person in control of the company sating the following:*
- (i) *Whether that person knows or has ever spoken to, at any time, either with Mr. Raj Kumar Tharad or with Mr Anil Kumar Khemka or any official/promoter/owner of the company named Bhagyaraj Vyapaar Pvt. Ltd. and if yes, what was the details in that regard?*

15. SEBI vide email dated September 13, 2017 has also advised PSL to furnish the aforesaid information by September 19, 2017.

16. PSL vide its letter dated September 15, 2017 submitted the information sought by SEBI at the time of hearing and vide email dated September 13, 2017, which are as under:

“ .....

- (a) *Affidavit of Mr. Manoranjan Roy is annexed.*
- (b) *Excise Duty receipts /challan amounting to Rs. 12.24 crores from September 07, 2017 to September 14, 2017 is annexed.*

(c) *The details as available with the present management of the Company with respect to the investment by Sarang Viniyog Limited (Presently Pincon Spirit Limited) in Saffron Commercial Pvt. Ltd. are pointile as below:*

(i) *As per the documents available with us as on this date, an investment was made in 12,500 shares (Face Value: Rs. 10/-) of Saffron Commercial Pvt Ltd @ Rs. 400/- per share amounting to Rs. 50 lakhs by way of direct subscription in the company. Further, Annual Return of Saffron Commercial Pvt. Ltd. for the year 2005-2006 reflects the fact of investment in 12,500 equity shares. Copy of Annual Return for the year 2005-06 of Saffron Commercial Pvt. Ltd. is enclosed.*

*We have found in our records of two bank accounts of Sarang Viniyog Limited, which were in control of the earlier management. The details are as under:*

I. *HDFC Bank Limited, Jardine House Branch, 4 Clive Row, Kolkata – 700001, Account Number – 10152020000801.*

II. *Kotak Mahindra Bank, Brabourne Road Branch, Kolkatta – 700001, Account Number – 03232090003787.*

(ii) *As per Annual Report of Sarang Viniyog Limited for financial year 2008-09, it appears that 12,500 shares were sold. Further, Annual Return of Saffron Commercial Pvt. Ltd for the year. 2008-2009, reflects that 12,500 shares were sold to one Dr. B. L. Shailesh. Copy of Annual Return of Saffron Commercial Pvt. Ltd. for the year 2008-09 is enclosed. No document is available with us to figure out the price at which the equity shares were sold. Also no document is available with us to verify the total amount received.*

(iii) *We could not find any board resolution approving the transaction in the minute books of the Company pertaining to that period of time.*

(iv) *We also could not find any document as regards to the rationale for the above investment.*

*As per our understanding, the transactions were conducted by the earlier management as a part of day to day business affairs of the Company which would*

*be apparent due to the fact that Clause 3 (A)(i) of the Main Objects of the Memorandum of Association of the Company inter-alia provides for investment activities in shares, debentures and other securities.*

*As per Clause 3 (A)(i) of the Main Objects of the Memorandum of Association of the Company inter-alia provides for investment activities in shares, debentures and other securities. The copy of Memorandum and Articles of Associations is enclosed.*

*This is for your kind information that, none of the present directors / management/ promoter of the company were involved with the affairs of the company at that point of time, when the above transaction were occurred. Other than the above, no further information is presently available with us.*

*(d) Contact details of the person who was in control of company in prior period as per Mr. Monoranjan Roy's affidavit was Mr. Rajendra Bubna having DIN 00167811, resident of 4, Fairlie Place 1st Floor, Room No,116 Kolkata-700001(as per the latest details available at the website of MCA).*

*We have arranged for intimating Mr, Rajendra Bubna for an Affidavit from him in the lines as mentioned in Para (d)(i) of SEBI email. Receipt of the Affidavit lies as per the decision of Mr. Rajendra Bubna. Further, we have no knowledge as regards to the fact whether Mr. Rajendra Bubna knows or has ever spoken to, at any time, either with Mr. Raj Kumar Tharad or with Mr Anil Kumar Khemka or any official/promoter/owner of the company named Bhagyaraj Vyapaar Pvt. Ltd.*

*.....”*

17. Further, SEBI vide email dated November 07, 2017 had advised PSL to submit following additional information in the matter by November 13, 2017:

(a) From the Annual Report for the F.Y. 2016-17, it is observed that the company had entered into related party transaction with Bhattacharya Bottling Plant Private Limited (Associate of the Company) for Rs. 6.98 crore for Purchase/sundry Manufacturing expenses.

However, on analysis of the bank statement submitted by the company to NSE, it is observed that the company have received Rs. 83.13 crores (Approx.) from Bhattacharya Bottling Plant Private Limited during the period 01/04/2016 to 31/03/2017.

- (b) Further, it is also observed that the company had entered into nil related party transactions with Paul Distributors Private Limited (Subsidiary of the Company) during the F.Y. 2016-17 as reported in the 35th Annual Report. However, on analysis of bank statements submitted by the company to NSE, it is observed that the company had received Rs. 20.57 crores (Approx.) and have transferred Rs. 7.99 crores (Approx.) during the period 01/04/2016 to 31/03/2017.

In this regard, you are requested to provide details of nature of transactions entered with these related parties (Bhattachrya Bottling Plant Private Limited and Paul Distributors Private Limited), the link to company business and revenues from operations. Further, you are also requested to clarify for non-disclosure of all related parties transaction in the annual report

- (c) Provide the details of total sales made to top 10 customers along with amount(s) received and balance receivable from these top 10 customers for the FY 2016-17. Also provide the percentage contribution by the top 10 customers in the sales made by Pincon during the F.Y. 2016-17.
- (d) It is observed that there is article in Times of India with respect to Pincon Ponzi scheme and the link for the same is <https://timesofindia.indiatimes.com/city/jaipur/pincon-ponzi-scheme-sog-seeks-help-of-ed-sebi/articleshow/61512782.cms>. In this regard, you are requested to provide your comments on the same.

18. PSL vide email dated November 10, 2017 submitted the information sought by SEBI email dated November 07, 2017, which are as under:

“ .....

- (a) *Bhattacharya Bottling Plant Private Limited (BBPL) is an associate of PSL and PSL has been using premises of BBPL for Blending, Manufacturing & Bottling of PSL brand Indian*

*Made Indian Liquor (IMIL) products. PSL is the brand owner and is holding the manufacturing license in respect of the IMIL products. BBPL has been operating since the last two decades and owing to their long term presence in the West Bengal IMIL market, they have created an image and a reputation for themselves in the market. PSL has been reaping & capitalising on this long drawn BBPL presence by way of selling & marketing of its own IMIL products throughout the state of West Bengal. The amount of Rs 83.13 crores received by PSL in their bank a/c from BBPL represents the sales proceeds deposited by BBPL in respect of sale of PSL IMIL products which cannot be retained by BBPL since the same pertains to sale of PSL brand IMIL products. PSL has booked this amount transferred by BBPL into its a/c and the amount is a part of " Income/ Revenue from Operations" as reflected in the ABS of PSL as of 31.03.2017. The amount of Rs 6.98 crores is the real " Related Party Transactions" which was entered into by PSL with BBPL during the FY 2016-17 and the same has been reflected in the ABS of PSL as of 31.03.2017. The amount of Rs 6.98 crores reflects the amount paid to BBPL towards Manufacturing Expenses for Blending of PSL brand IMIL products in their premises. The same has been duly verified & certified by PSL statutory auditor in the ABS as of 31.03.2017.*

*(b) Paul Distributors Private Limited (PDPL) is a subsidiary of PSL and PSL has been utilising the services of PDPL towards Distribution of PSL brand IMFL/ IMIL products throughout the state of West Bengal. PDPL is also a distributor of other reputed IMFL brands (of other IMFL Manufacturers) throughout West Bengal & this distribution activity is carried out by PDPL on behalf of PSL. The amount of Rs 20.57 crores received by PSL from PDPL represents the distribution sale proceeds of PSL brand IMFL & IMIL products in West Bengal during FY 2016-17. For facilitating lifting of other brand IMFL products for distribution, an amount of Rs 7.99 crores was transferred to PDPL during 2016-17. The details of transactions entered into between PSL & PDPL have been verified by PSL statutory auditors and since there is no manufacturing activity involved between PSL & PDPL, the statutory auditors of PSL have certified NIL related party transactions between PSL & PDPL during 2016-17.*

*We trust that the details of nature of transactions entered into with the related parties- BBPL & PDPL as stated above, the link to PSL business & the Revenue from Operations*

stand clarified. We would like to submit that all related party transactions have been duly disclosed in PSL financial statements and after being scrutinised, verified & certified by PSL statutory auditors.

(c) Details of total sales made to Top 10 Customers of IMFL, IMIL & FMCG ( Edible Oil) for the FY 2016-17 are given hereunder :

**A. TOP 10 CUSTOMERS OF IMFL & AMOUNT RECEIVABLE AS ON 31.03.2017:**

1. Bamangachi FL OFF Shop: Rs 1.26 Crores
2. Bandel FL OFF Shop : Rs 1.45 Crores
3. Bhatpara FL Off Shop: Rs 1.21 crores
4. Cossipore FL Off Shop : Rs 1.51 crores
5. Dolphin FL Off Shop : Rs 1.62 crores
6. Kalipada Ghosh FL Off Shop : Rs 1.10 Crores
7. Suhrid Kr Saha FL Off Shop : Rs 1.26 Crores
8. Blossom FL Off Shop : Rs 0.96 Crore
9. Canning FL Off Shop : Rs 0.73 Crore
10. Farm Side FL On Shop : Rs 0.86 Crore

**B. TOP 10 CUSTOMERS OF IMIL & AMOUNT RECEIVABLE AS ON 31.03.2017:**

1. Champahati FL On Shop: Rs 2.95 Crores
2. Dantan FL Off Shop ( CS) : Rs 1.61 Crores
3. Domjur CS Shop : Rs 0.76 Crore
4. Golf Green Market CS Shop : Rs 0.74 Crore
5. Jalaberia CS Shop: Rs 0.81 lakh
6. Kamrul Pachwai CS Shop : Rs 0.93 Crore
7. Ma Laxmi Enterprise : Rs 0.61 crore
8. Par Shyampur CS Shop : Rs 1.75 Crores
9. Seakhala CS Shop : Rs 1.03 Crores
10. Tethys FL On shop ( CS) : Rs 0.94 Crore

**C. TOP 10 CUSTOMERS OF FMCG (EDIBLE OIL) & AMOUNT RECEIVABLE AS ON 31.03.2017:**

1. D.B.Enterprise : Rs 0.43 Crore
2. Gita Suppliers: Rs 0.44 Crore
3. Gobindo Chandra Dutta & Sons: Rs 0.45 Crore
4. Matri Enterprise: Rs 0.78 Crore
5. Mukherjee Enterprise: Rs 0.46 Crore
6. Paul Ent: Rs 0.80 Crore
7. Pancharatan Ent: Rs 0.57 Crore

8. *Narayan Bhandar: Rs 0.53 Crore*
9. *Sayani Enterprise: Rs 0.69 Crore*
10. *Shyam Sundar Traders: Rs 0.65 Crore*

*On an average around 60-65% of the total sales of PSL as of 31.03.2017 was contributed by the aforesaid top 10 customers.*

*(d) In respect of news article published in Times of India, we would like to clarify that there is no such scheme called " Pincon Ponzi" scheme since Pincon Spirit limited has never been dealing with or was never involved in so called " Ponzi " schemes at any point of time and therefore we vehemently deny such false & fabricated newspaper reporting which we feel are for tarnishing the brand image & brand goodwill of PSL. Further details in this respect have been clarified & submitted to the Exchange vide our earlier communication dtd. 07.11.2017.*

19. As the reply of PSL vide email dated November 10, 2017 was not adequate. Therefore, SEBI vide email dated November 13, 2017 had advised PSL to submit the following information by November 17, 2017:

(a) Details of sales of top 10 customers of each product separately (IMIL, IMFL and Edible Oil) in the following format during the financial year 2016-17:-

<b>Product</b>	<b>Name of Customer</b>	<b>Opening Balance as on April 01, 2016</b>	<b>Total Sales made during the F.Y. 2016-17</b>	<b>Amount received during the F.Y. 2016-17</b>	<b>Closing Balance as on March 31, 2017</b>	<b>Contribution of sales in terms of % to total Sales made during the F.Y. 2016-17</b>	<b>Name of Bank Accounts with Account Number where the amount has been received from the said customers</b>

20. As information sought vide SEBI's email dated November 13, 2017 was not received from PSL, therefore, SEBI vide email dated November 20, 2017 has once again advised PSL to

submit the information sought in SEBI's email dated November 13, 2017 by November 21, 2017. PSL vide email dated November 20, 2017 submitted the information sought in SEBI's email dated November 10, 2017, which are as under:

*"We like to bring your attention to the fact that our office is still sealed by Economic Offence Wing and documents/systems are not accessible and hence documents cannot be submitted immediately. We therefore request you to grant us some more time to submit/furnished information required by you. Further, we are enclosing copy of minutes of Board Meeting held on 17/11/2017 to update you"*

21. Pursuant to SEBI's letter dated August 9, 2017, NSE vide its letter dated August 29, 2017 submitted its report stating as under:

- (a) Company is compliant with five clauses of Standard Operating Procedures under LODR Regulations.
- (b) The Auditor certified that the company is a going concern.
- (c) Auditor certified that the company has been maintaining Cash credit Accounts with multiple banks under consortium banking arrangement aggregating to Rs. 325 crores. The auditors have scrutinized the bank statements of the respective banks for the last one year and observed that there is regular transaction in the bank accounts and all the accounts are active. Auditor also observed that the monthly bank interest and charges of all the banks have been serviced by the company and there is no default in service of the same.

NSE recommended that as per the compliance record and other details submitted by the company in SEBI prescribed format, Pincon Spirit Limited may be allowed to be traded on NSE.

However, the same has been concluded on the basis of the requirement of filings to be made by the Company. It is also essential to analyse the contents and representations made in the filings to arrive at prima facie findings of any misrepresentation therein.

22. It is noted that SEBI is in receipt of copy of FIR and copy of press note alongwith letter dated November 6, 2017 from Special Operations Group, Jaipur against Shri Monoranjan Roy,

Chairman of PSL and other office bearers. The FIR and press note alleged that the six companies, name mentioned therein, raised money by way of debentures during the year 2012-14. The press note also alleged that these companies collected money around Rs.1600 crores from 3 lakh investors and siphoned off money to PSL and Pincon Lifestyle Ltd. From the MCA records, it is noted that Monoranjan Roy was the director of four company out of said six companies.

**Consideration:**

23. On perusal of the materials available on record, the following prima facie/potential issues arise for consideration.

- (a) *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and 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 account/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, 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.*

24. 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 including of its financials and/or its business and possible of 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 account/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.*

25. Based on the replies given by the company in response to SEBI's queries, prima facie observations are as under:

(a) Vide affidavit dated September 15, 2017, Mr. Monoranjan Roy stated the followings:

(i) He had acquired shares of Pincon Spirit Limited (erstwhile Sarang Viniyog Limited) from the following companies represented by their authorized representatives.

<b>S.No.</b>	<b>Name of Company</b>	<b>Authorised Representatives</b>
1	Gravel Marketing Pvt Ltd	Laxmi Dhar Parida (Director)
2	Starlight Commosale Pvt Ltd	Laxmi Dhar Parida (Director)
3	Shree Tribhuvan Tie UP Pvt Ltd	Kamala Kanta Jena (Director)
4	Mangolia Vinimay Pvt Ltd	Kamala Kanta Jena (Director)
5	Bubna Properties Pvt Ltd	Rajendra Bubna (Director)
6	Dream Commosale Pvt Ltd	Kamala Kanta Jena (Director)

(ii) The share purchase agreement with the above companies have been negotiated through one Mr. Sanjeev Jhunjunwala, S/o Mr. Sajjan Jhunjunwala, residing at P-61, VIP Road, 7M CIT Scheme, Kankurgachi, Kolkata – 700054.

(iii) To the best of his knowledge and belief, prior to his taking over charge of the company, the management and control of the company was vested with Mr. Rajendra Bubna (then Director of Sarang Viniyog limited and director of Bubna Properties Limited).

(iv) He has never spoken either with Mr. Raj Kumar Tharad or with Mr. Anil Kumar Khemka or any official/promoter/owner of Bhagyaraj Vyapaar Pvt Ltd.

(b) During the course of hearing and vide SEBI's email dated September 13, 2017 PSL had advised to submit an affidavit from the person who was in control of the company prior to

Mr. Monoranjan Roy. As per Mr. Monoranjan Roy's affidavit, Mr. Rajendra Bubna was in control of the company prior to him. In this regard, the Company submitted that they have arranged for intimating Mr. Rajendra Bubna for submission of affidavit however the receipt of affidavit lies as per the decision of Mr. Rajendra Bubna. However, it is noted that till date, the company has not submitted the affidavit from the person whoever was in control of Company, prior to Mr. Monoranjan Roy.

- (c) The Company in its 35<sup>th</sup> Annual Report for the F.Y. 2016-17 at Page No. 64 and 84 have mentioned that the Company entered into related party transactions with Bhattacharya Bottling Plant Private Limited (Associate) for Rs. 6.98 crores with respect to purchase/sundry manufacturing expenses. The Company also mentioned nil transactions with Paul Distributors Private Limited (Subsidiary).

However on analysis of sample bank statements submitted by the Company to NSE for the period April 01, 2016 to March 31, 2017, it was observed that the Company received approximately Rs. 83.13 crores from Bhattacharya Bottling Private Limited (BBPL) during the period April 01, 2016 to March 31, 2017. Further, it was also observed that the Company had received approximately Rs. 20.57 crores and had transferred approximately Rs. 7.99 crores from/to Paul Distributors Private Limited (PDPL) (Subsidiary of PSL) during the period April 01, 2016 to March 31, 2017.

- (d) In this regard, Company stated that amount of Rs 83.13 crores received by PSL in their bank a/c from BBPL represents the sales proceeds deposited by BBPL in respect of sale of PSL IMIL products which cannot be retained by BBPL since the same pertains to sale of PSL brand IMIL products. PSL has booked this amount transferred by BBPL into its a/c and the amount is a part of 'Income/ Revenue from Operations' as reflected in the annual balance sheet (ABS) of PSL as of 31.03.2017. The amount of Rs 6.98 crores is the real "Related Party Transactions" which was entered into by PSL with BBPL during the FY 2016-17 and the same has been reflected in the ABS of PSL as of 31.03.2017.

PSL also stated that it has been utilising the services of PDPL towards Distribution of PSL brand IMFL/ IMIL products throughout the state of West Bengal. PDPL carries out distribution activity on behalf of PSL. The amount of Rs 20.57 crores received by PSL from PDPL represents the distribution sale proceeds of PSL brand IMFL & IMIL products in West Bengal during FY 2016-17. For facilitating lifting of other brand IMFL products for distribution, an amount of Rs 7.99 crores was transferred to PDPL during 2016-17. The details of transactions entered into between PSL & PDPL have been verified by PSL statutory auditors and since there is no manufacturing activity involved between PSL & PDPL, the statutory auditors of PSL have certified nil related party transactions between PSL & PDPL during 2016-17

- (e) Thus from para 25(c) & 25(d) above, it appears that the associate and/or subsidiary companies (i.e. BBPL & PDPL) of PSL collect the sale proceeds of various products sold by PSL to its customers and then transfer the said amount to the bank accounts of PSL. Therefore this amount does not fall under Related Party transactions as per the company's submissions. However, it is noted that as per regulation 2(1)(zc) of LODR Regulations, *Related Party Transactions means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract.* Thus, transfer of resources / services between a listed entity and a related party falls under the definition of related party transactions. From the submission of PSL, it is observed that BBPL has provided marketing services to PSL and PDPL provided distribution services to PSL and funds have been transferred from PDPL and BBPL to PSL. It is clear from the definition of related party transaction as mentioned in regulation 2(1)(zc) of LODR Regulations, the above said services would fall under the definition of related party transaction. Therefore, I do not find any merit in the submission of the Company that the amount of sale proceeds collected by PDPL and BBPL and transferred to PSL does not come under Related Party Transactions.

Thus, the transactions of amount of Rs 83.13 crores received by PSL from BBPL and transactions of amount of Rs 20.57 crores received by PSL from PDPL and amount of Rs. 7.99 crores transferred to PDPL are related party transactions. However, this was not disclosed in the Annual Reports. Thus, there is *prima facie* evidence of misrepresentation of financials and suspicion about the genuineness of these transactions and whether due process was followed by PSL in these transactions with related entities.

- (f) The proceeds from the sale of products by PSL, first received by the associate companies and/or subsidiary companies and then transferred to PSL is not a sound prudent practice to be followed by the companies. The normal business practice to be followed by the companies is that - the company receives the amount of sale proceeds directly from the customer to whom the products have been sold/ invoices have been raised and not the third party or through routing of funds. This *prima facie* raises suspicion on genuineness of the amount received from associate/ subsidiary companies which has been included in the Revenue from operations as reported by the Company. Thus, there appears to be *prima facie* suspicion regarding misuse of books of accounts/funds by the company.
- (g) SEBI vide email dated November 7, 2017, had advised PSL to provide - the details of total sales made to the Top 10 customers along with total amount received and balance receivables from these customers. However, PSL vide email dated November 10, 2017 only submitted the balance receivables from top 10 customers (product wise) as on March 31, 2017. As information submitted by PSL vide email dated November 10, 2017 was incomplete, therefore, SEBI vide email dated November 13, 2017 again advised PSL to submit the details of total sales made product wise along with amount received during the F.Y. 2016-17 for Top 10 customers in the specified tabular format as mentioned at para 19(a) above. In this regard, Company vide email dated November 21, 2017 stated that their office is sealed by Economic Offence Wing and documents/systems are not accessible to them and therefore, documents cannot be submitted immediately.

26. From the above I note the followings:

- (a) From the Company's annual report of Financial Year (FY) 2016-17, it is noted that transactions of PSL with BBPL and PDPL are not reflected in the related party transaction of the Company's annual report for FY 2016-17 and Company's explanation that it is not a related party transaction is not acceptable. Thus, PSL had not disclosed the related party transaction with BBPL and PDPL in annual report FY 2016-17. Therefore, there is *prima facie* evidence of misrepresentation of financials and suspicion about the genuineness of said transactions and whether due process was followed by PSL in said transactions with related entities.
- (b) It is noted that the proceeds from the sale of products by PSL, first received by the associate companies and/or subsidiary companies and then transferred to PSL. This *prima facie* raises suspicion on genuineness of the amount received from associate/subsidiary companies which has been included in the Revenue from Operations. Thus, there appears to be *prima facie* suspicion of misuse of funds/books of accounts and further misrepresentation of financials.

27. Thus, there is *prima facie* evidence of misrepresentation of business/financials as well as suspicion of misuse of funds/ books of accounts of the Company. The directors & KMPs have therefore *prima facie* failed to discharge their fiduciary responsibility. The Company is also liable for the *prima facie* violations observed and it is imperative that in the interest of investors, the financials of the Company be independently audited to establish their genuineness.

**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.*

28. In view of the *prima facie* evidence on the misrepresentation of financials by the Company as well as suspicion of misuse of funds/ books of accounts of the Company, the persons who are in control of the Company and the directors/promoters 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.
29. The findings in this order have been rendered on the basis of the *prima facie* evidence available at this stage. Detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations and possible compromise of minority shareholder interest.
30. Further, pending enquiry/ audit, considering the interest of public shareholders involved in PSL, I find it is appropriate to revert the trading in the securities of PSL to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
31. In view of the issues determined above, I am of the view that following urgent interim directions are required to be taken, pending further enquiry/audit.

### **INTERIM ORDER**

32. 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, subject to para 32(iv) of this order, the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against M/s Pincon Spirit Limited as under:
- i.* The trading in securities of PSL 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 by PSL, if any;
  - b. Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if any.
- iii.* The promoters and directors in PSL are permitted only to buy the securities of PSL. The shares held by the promoters and directors in PSL 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 Pincon Spirit Limited.
33. The '*directors*' for the purpose of direction mentioned at para 32(iii) above shall mean and include:
- (a) the persons who are acting as directors on the date of this order, or
  - (b) the persons who are 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.
34. Accordingly the representation of M/s Pincon Spirit Limited is disposed of.
35. The above directions shall take effect immediately and shall be in force until further Orders.
36. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, M/s Pincon Spirit Limited is advised to file its reply/objections to this interim order. The company, from the date of receipt of this Order, may file its reply, if any, receivable by SEBI within 30 days from such receipt, and may also indicate in the reply 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, if any. In the event of M/s Pincon Spirit Limited failing to file reply or requesting for an opportunity of personal hearing in its reply

within the said 30 days, the preliminary findings of this Order and ad-interim directions at para 32 above shall stand confirmed automatically, without any further orders.

37. Copy of this Order shall be forwarded to the recognised stock exchanges & depositories for information and necessary action.

38. 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: DECEMBER 19, 2017**

**PLACE: MUMBAI**

**MADHABI PURI BUCH**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**