CP/MPB/CFID/CFID_4/28660/2023-24

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, CHAIRPERSON
CONFIRMATORY ORDER

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

In respect of:

Sl. No.	Name of the Entity	PAN
1	Subhash Chandra	AACPC4004A
2	Punit Goenka	AAEPG2529E

(Collectively referred to as "*Entities*")
In the matter of Zee Entertainment Enterprises Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") passed an *Interim Order* dated June 12, 2023 (hereinafter referred to as "***Interim Order***") in the instant matter against Mr. Subhash Chandra (hereinafter referred to as "***Entity No. 1***") and Mr. Punit Goenka (hereinafter referred to as "***Entity No. 2***"). Vide the *Interim Order*, the following interim directions were issued against the Entities, which would be in force until further orders: -

1.1. The Entities shall cease to hold the position of a director or a Key Managerial Personnel in any listed company or its subsidiaries until further orders.

1.2. Zee Entertainment Enterprises Ltd. (hereinafter referred to as "***ZEEL***" / "***Company***") shall place the Order before its Board of Directors, within 7 days from the date of receipt of the Order.

Developments Post Interim Order

2. It is noted that the *Interim Order* was served on the Entities vide emails dated June 12, 2023. Pursuant to the *Interim Order*, the Entities had filed appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "***SAT***"). Hon'ble SAT vide its order dated July 10, 2023 while disposing of the appeals, *inter alia* held as follows:

"*We do not find any reason to interfere in the impugned order at this stage and we dispose of the appeals directing the appellants to file a reply / objection along with a stay vacating application to the ex parte ad interim order dated June 12, 2023 within two weeks from today*."

3. In compliance with the directions of Hon'ble SAT, Entities filed their written replies vide their letters dated July 24, 2023. In the meantime, SEBI had filed a Miscellaneous Application before Hon'ble SAT for seeking clarification with respect to the appointment of the quasi-judicial authority in the instant matter. Hon'ble SAT vide its order dated July 27, 202, clarified as follows:
"*We direct SEBI to appoint another WTM and if no WTM is available, then any authorised officer higher in grade or rank or position to the WTM would hear and decide the matter.*"

4. Subsequent to the aforesaid order of Hon'ble SAT, an opportunity of personal hearing was granted to the Entities on July 31, 2023 vide hearing notice dated July 28, 2023. Also, upon consideration of the submissions of the Entities, certain additional information / documents were sought from the Entities vide emails dated July 29, 2023 and July 31, 2023 to better appreciate the submissions.

5. On the scheduled date of hearing, the Authorised Representatives (hereinafter referred to as "**ARs**") of the Entities appeared and reiterated the submissions made by the Entities in their respective written replies. Further, during the course of the personal hearing, certain clarifications on the oral submissions were sought, to which the Entities were advised to submit their responses by August 3, 2023.

6. Post hearing, Entities vide their letters dated August 8, 2023 reiterated their submissions as made in their previous reply and at the time of hearing. Further, Entity No. 2 vide his email dated August 9, 2023 provided some of the information as was sought from him vide email dated July 29, 2023. Entity No. 2 vide his email dated August 12, 2023 has forwarded the reply of Living Entertainment Enterprises Pvt. Ltd. that it had submitted to SEBI.

Prima facie findings of the Interim Order

7. The *Interim Order prima facie* observed as follows:

7.1. Entity No. 1 the then Chairman of ZEEL/ Essel Group, had provided a Letter of Comfort dated September 4, 2018 (hereinafter referred to as "**LoC** ") towards credit facilities availed by company belonging to Essel Group (Essel Green Mobility Ltd.) from Yes Bank Ltd. (hereinafter referred to as "**YBL**"), wherein it was stated as follows:

"This is with regards to the Rs 200 crores loan outstanding in Essel Green Mobility Ltd. from Yes Bank Ltd. (the "Facility").

We will ensure that a fixed deposit of at least Rs. 200 crores is available with Yes Bank Ltd., from any one of Essel Group of companies (including Zee Entertainment Enterprises), at all times whilst the said Facility remains due and outstanding and that in the event of default under the said Facility, you may appropriate the fixed deposit towards repayment of the said Facility ."

7.2. Entity No. 1 had issued the concerned LoC without the knowledge or approval of the Board of Directors of ZEEL.

7.3. It was observed that on the strength of the said LoC, YBL on July 24, 2019 had adjusted the fixed deposit of INR 200 crore of ZEEL for meeting the obligations of the following seven entities towards YBL (hereinafter referred to as "***Seven Associate Entities***").

Table No. 1

Sl. No.	Name of the Associate Entities
1.	Pan India Infraprojects Pvt. Ltd.
2.	Essel Green Mobility Ltd.
3.	Essel Corporate Resources Pvt. Ltd.
4.	Essel Utilities Distribution Company Ltd.
5.	Essel Business Excellence Services Pvt. Ltd.
6.	Pan India Network Infravest Ltd.
7.	Living Entertainment Enterprises Pvt. Ltd.

7.4. The abovementioned seven Associate Entities are owned / controlled by family members of Entities No. 1 and 2. As per the Annual Report of ZEEL for the financial year 2019-20, the above seven Associate Entities were described as companies controlled by key management personnel (hereinafter referred to as "***KMP***") and their relatives. The KMPs included Mr. Subhash Chandra and Mr. Punit Goenka.

7.5. ZEEL has submitted to SEBI that INR 200 crore, equivalent to the value of the fixed deposit which was liquidated by YBL in July 2019 for the dues from the seven Associate Entities owned / controlled by Promoter Family, had subsequently been received back from those Associate Entities during the period September 26, 2019 and October 10, 2019 and that there was no loss to ZEEL. The table below gives the particulars of the transaction referred to.

Table No. 2

Sl. No.	Name of the Associate Entity	Amount repaid (INR in crore)	Date of repayment
1.	Pan India Infraprojects Pvt. Ltd.	14.80	26-Sep-19
2.	Essel Green Mobility Ltd.	17.10	27-Sep-19
3.	Essel Corporate Resources Pvt. Ltd.	22.30	30-Sep-19
4.	Essel Utilities Distribution Company Ltd.	19.20	30-Sep-19
5.	Pan India Infraprojects Pvt. Ltd.	36.90	30-Sep-19
6.	Essel Business Excellence Services Pvt. Ltd.	23.00	10-Oct-19
7.	Pan India Network Infravest Ltd.	49.30	01-Oct-19
8.	Living Entertainment Enterprises Pvt. Ltd.	17.40	01-Oct-19
	Total	**200.00**	

7.6. Upon examination of bank statements of ZEEL, Associate Entities and other entities, it was *prima facie* noted that major portion of the INR 200 crore inflow into ZEEL had originated from either ZEEL itself or listed companies of the Essel Group or their subsidiaries (named below), which after passing through several layers, reached the accounts of the Associate Entities from where it ultimately reached ZEEL's account. Thus, the funds had followed a circular route where funds originated from ZEEL/listed companies of Essel Group and their subsidiaries, passed through various entities including those owned or controlled by the Promoter Family and ultimately reached ZEEL. The details of funds originating from ZEEL/listed companies of Essel Group and their subsidiaries and its beneficiary i.e., the Associate Entities is reproduced below:

Table No. 3

Sl. No.	Name of Listed Entity/its Subsidiaries	Amount due (INR in crore)	Associate Entity benefited	Amount (INR in crore)
1	ZEEL	17.1	Essel Green Mobility Ltd.	40.1
		23	Essel Business Excellence Services Pvt. Ltd.	

Sl. No.	Name of Listed Entity/its Subsidiaries	Amount due (INR in crore)	Associate Entity benefited	Amount (INR in crore)
2	Zee Studios Ltd. (wholly owned subsidiary of ZEEL)	17.4	Living Entertainment Enterprises Pvt. Ltd.	66.7
		49.3	Pan India Network Infravest Ltd.	
3	Zee Akaash News Pvt. Ltd. (wholly owned subsidiary of Zee Media Corporation Ltd., a listed company and part of Essel Group)	14.8	Pan India Infraprojects Pvt. Ltd.	14.8
4	Dish Infra Services Pvt. Ltd. (wholly owned subsidiary of Dish TV India Ltd., a listed company and part of Essel Group)	22.3	Essel Corporate Resources Pvt. Ltd.	22.3
	Total	**143.9**		**143.9**

7.7. Accordingly, it was *prima facie* observed that funds diverted from ZEEL / other listed companies and their subsidiaries had ultimately benefitted the Promoter Family, as the Associate Entities, which were the beneficiaries of appropriation of ZEEL's fixed deposit of INR 200 crore by YBL for settlement of their liabilities, are owned / controlled by the Promoter Family of ZEEL and their "return of funds to ZEEL" was not genuine. As regards the balance amount (INR 200 crore – INR 143.90 crore), the fund trail in respect of the same is under examination.

7.8. ZEEL has made a disclosure confirming the receipt of funds, along with interest, from the Associate Entities in its Annual Report for the FY 2019-20. Since the payments from Associate Entities have been found to be *prima facie* non-genuine, the said disclosure in the Annual Report *prima facie* appears to be a mis-statement/misrepresentation.

7.9. The aforesaid *prima facie* observations and findings, *prima facie* showed the employment of scheme by the Promoter Family of ZEEL to divert the assets of ZEEL and other listed companies of Essel Group and their subsidiaries for the benefit of the Promoters. The said *prima facie* scheme can be summarised put as follows:

7.9.1. Issuance of LoC dated September 4, 2018 by Entity No. 1 to YBL ensuring availability of a fixed deposit of at least INR 200 crore including from ZEEL with YBL for loan outstanding in Essel Green Mobility Ltd.;

7.9.2. Default by the seven Associate Entities leading to appropriation of ZEEL's fixed deposit of INR 200 crore by YBL on July 24, 2019;

7.9.3. Circular and layered transactions including through connected entities of ZEEL / Essel Group to show receipt of funds by ZEEL from six Associate Entities;

7.9.4. Subsequent misleading disclosure by ZEEL in its Annual Report about receipt of funds;

7.9.5. Upon inquiry by SEBI regarding the details of payments received by ZEEL from the Associate Entities, submissions of false information to SEBI.

7.10. Entity No. 1 was the Chairman of Essel Group which included ZEEL at the relevant time when he had issued the concerned LoC to YBL. Further, Entity No. 2 was the Managing Director and Chief Executive Officer of ZEEL at the time when the fixed deposit was created and funds were moved out of ZEEL for being routed again to ZEEL through layered and circuitous transactions, for falsely portraying that ZEEL had received the dues from Associate Entities. The aforesaid *prima facie* shows the involvement of the Entities in the *prima facie* scheme. Moreover, as noted above they were the direct beneficiaries of the said fund diversion.

7.11. In view of the above, it was *prima facie* found that the Entities have indulged in fraudulent and unfair trade practices resulting in *prima facie* violation of the provisions of regulations 4(1) and 4(2) (f) of PFUTP Regulations. Further, in view of the misrepresentation in the Annual Report for the FY 2019-20 and false submissions to SEBI including the failure of the Entities to discharge their duties as Directors of ZEEL for their personal benefit, the Entities have also *prima facie* violated provisions of regulation 4(2)(f) of LODR Regulations.

Reply of the Entities

8. The Entities have denied the *prima facie* observations made against them in the *Interim Order*. Majority of the submissions made by the Entities in their written submission are on similar lines and the same are summarised together, below. Further, the submissions of the Entities that are specific to them are summarised separately.

9. The common submissions of the Entities are as follows:

9.1. The *Interim Order* must fall because it had relied upon information, which was gathered during the course of settlement proceedings, which is contrary to the established provisions of the SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "***Settlement Regulations***").

9.2. The *Interim Order* must also fall as reliance has been placed while passing the Order in the matter of Shirpur Gold Refinery Ltd. to which the Entities were not a party to, with no notice given to the Entities and no opportunity of being heard given to the Entities.

9.3. In the given facts and circumstances of the matter, there was no urgency in the matter after 4 years (approx.) which justifies passing of the *Interim Order.* There are no cogent evidence, which at least indicate towards the continuance of the offence.

9.4. The direction issued in the *Interim Order* is punitive in nature, which is beyond the scope of Section 11B. Therefore, it cannot be issued and should be withdrawn.

9.5. SEBI does not have the power under the SEBI Act to direct the Entities to cease to hold the position of a Director or a KMP in any listed company or its subsidiaries. Further, SEBI does not have any explicit powers under Section 11 (4) of the SEBI Act to restrain any person from acting as a Director. Therefore, the directions issued by way of *Interim Order* is beyond the powers of SEBI enshrined in the SEBI Act and is also *ex-facie* in contravention of the provisions of Companies Act.

9.6. It is submitted that the bank statements by themselves can never lead any reasonable person to arrive at a conclusion that any transfer of money reflected in a bank statements is or is not pursuant to any 'sham entries' or on account of 'circuitous transactions' as is alleged in the *Interim Order*.

9.7. There is no evidence available on record to prove that fund transactions were mere bogus book entries without any consideration. Hence, the burden of proof has not been discharged in the matter. Rather, SEBI has put the onus on the Entities to prove the negative.

9.8. No material has been provided in the *Interim Order* pertaining to dealing in securities or inducement to deal in securities or impact on price or volume, etc.

under PFUTP Regulations. Hence, framing of charges under the PFUTP Regulations are very general in nature and do not make out any specific case containing necessary ingredients required to constitute these violations against the Entities.

9.9. It is submitted that the regulation 4(2) (f) of the PFUTP Regulations uses the word knowingly which means that it is mandatory to prove *mens rea* or intention on behalf of the Entities to bring the violation of the PFUTP Regulations.

9.10. The reference made to the movement in the share price of ZEEL during the FY 2018-19 to FY 2022-23 is misplaced in the given facts and circumstances of the case.

10. The submissions which are specific to Entity No. 1 are as follows:

10.1. Entity No. 1 had issued the LoC in his personal capacity, as it is not on the letterhead of ZEEL. At the time of issuance of the LoC, Entity No. 1 was only a Non-Executive Chairman, who was not involved in the management of ZEEL and was not even an authorized signatory for ZEEL's banking/financial operations. Therefore, LoC did not create any liability on the assets of ZEEL.

10.2. The LoC was not in the nature of a guarantee and therefore could not have been interpreted in that way.

10.3. The LoC was issued for the loans outstanding specifically in Essel Green Mobility Ltd. Hence, the appropriation of fixed deposits of ZEEL by YBL for seven Associate Entities was without any authorisation.

10.4. Entity No. 1 is not associated with ZEEL or any listed company and therefore the *Interim Order* serves no purpose.

10.5. The *Interim Order* is factually incorrect in stating that Entity No. 1 was a KMP in ZEEL. The Annual Report at Page 60 specifically records the name of KMP's during the F.Y. 2019-20 and the name of Entity No. 1 does not appear in the list.

10.6. The *Interim Order* fails to appreciate that Entity No. 1 is at the first place already not in any position to violate the directions given by the impugned Order. He has resigned since August 2020 from ZEEL and currently does not hold a position in any public listed company. Hence, directions against him should be revoked.

11. The submissions which are specific to Entity No. 2 are as follows:

11.1. Entity No. 2, being the Managing Director and Chief Executive Officer of ZEEL has taken appropriate steps and put in measures and checks in place to ensure that the allegations as made in the *Interim Order* cannot be repeated in future.

11.2. There is no correlation between the directions passed in the *Interim Order* and the violations observed, making the *Interim Order* excessive and manifestly unreasonable.

11.3. There is no evidence to demonstrate the role of Entity No. 2 in the issuance of LoC and the wrongful misappropriation of said LoC by YBL.

11.4. The very first bank transfer of the monies by ZEEL and / or its subsidiary to the recipient of the monies was for valuable consideration. Hence, the question of all the remaining entries appearing in each of the instances is of no consequence, as the same has caused no loss to ZEEL. In any event, Entity No. 2 cannot be asked to explain the transactions beyond the first instance and those, which he is not, connected with.

11.5. Entity No. 2 has explained the transactions that have taken place between ZEEL and / or its subsidiaries with the entities with whom the former had fund transfer (in the first instance) as being *bona fide* business transactions for due consideration. Further, there are instances where the money, which has come back to ZEEL, is either more or less than the funds allegedly circulated.

11.6. All the transactions were backed by proper documentation (MoUs, addendums, agreements, and invoices) and were duly approved by relevant authorities as per the financial authority matrix. The Audit Committee also approved transactions with related parties.

11.7. As long as ZEEL has made the payments towards valuable consideration, subsequent utilisation of funds by the other parties to repay ZEEL does not constitute diversion of funds nor does it cause any loss to ZEEL.

11.8. In regards with the related parties, it is pertinent to note that Entity No. 2, in no capacity, was in control of the day-to-day transactions and had neither any access or right to operate the bank statements of the alleged associated entities.

11.9. Entity No. 2 has never been involved in the operations, financing or control of the borrower entities. Hence, there is no case made out against Entity No. 2 of having benefitted from the impugned transactions.

11.10. Since all the transactions are genuine and legitimate, there is neither any misrepresentation in the Annual Reports of ZEEL nor any false submissions has been made to SEBI. Therefore, Entity No. 2 has not violated provisions of LODR Regulations.

11.11. The continuation of directions against the Entity No. 2 will have debilitating effect on the affairs of ZEEL and on the proposed restructuring transactions. Hence, it is prayed that either the directions against him should be revoked or alternatively pending final order, he may be allowed to continue holding his position in ZEEL and other listed companies.

12. Entity No. 2 vide email dated August 9, 2023 while submitting that the information sought is beyond the scope of the *Interim Order* and that no liberty was provided by Hon'ble SAT to SEBI for seeking additional information, *inter alia* submitted as follows:

12.1. Seeking of additional data goes on to substantiate the claim of the Entity No. 2 that the *Interim Order* was passed in haste, without there being any urgency in the matter.

12.2. Essel Green Mobility Limited became aware about the misappropriation of ZEEL Fixed deposit by YBL when it was brought to its notice by the accounts team/its consultant on or around September 17, 2019.

12.3. Entity has submitted GST filing details by Pen India Ltd. and Kyoorius Communications Pvt. Ltd.

Findings and Consideration

13. Before dwelling upon the *prima facie* findings, submissions and the directions issued in the *Interim Order* on the basis of the material available on record, it is relevant here to clarify that the present proceedings before me are in the nature of confirmatory or modification or revocation proceedings during which the assessment of the following is required:

Primary Issue

13.1. Whether the Entities have been able to refute the *prima facie* findings of the *Interim Order* with cogent evidence that necessitates modification or revocation of the interim directions issued against them?

Sub-Issues

14. In order to answer the aforesaid primary issue, the following sub-issues need to be answered:

14.1. Whether the *prima facie* findings of the *Interim Order* that Entity No. 1 has issued the LoC in his official capacity, has been refuted by him?

14.2. Whether, the Entities have been able to refute the *prima facie* finding of the *Interim Order* that the funds which were received by ZEEL from the six Associate Entities, were not their own funds but the source of the funds were ZEEL, it subsidiary and listed companies of Essel Group?

14.3. Whether the *prima facie* findings of the *Interim Order* that the disclosure made in the Annual Report of FY 2019-20 regarding receipt of funds from the six Associate Entities was a mis-statement / misrepresentation, has been refuted by the Entities?

14.4. Whether, the *prima facie* findings of the *Interim Order* that the actions of the Entities have led to the violations of provisions of PFUTP Regulations, has been refuted by the Entities?

14.5. Whether, in the light of the submissions made by the Entities, is there a need to re-visit the directions issued under the *Interim Order*?

15. I understand that a detailed investigation in this matter is being conducted by SEBI, the outcome of which will decide further course of action and initiation of further proceedings in the matter as might be required as per the law. However, at present I proceed to deal with the issues enumerated above, as per the material available on record and submissions made by the Entities.

16. Having carefully considered the oral and written submissions made by the Entities, I find it appropriate to segregate certain facts of the case as stated in the *Interim Order* and as available on record, which have also not been disputed by the Entities so far, and these undisputed facts are listed in a chronological order, in the table below:

Table No. 4

Sl. No.	Date	Facts
1	September 4, 2018	Entity No. 1 had issued a LoC to YBL to the tune of INR 200 crore for loan outstanding in Essel Green Mobility Ltd.
2	July 24, 2019	YBL had liquidated the fixed deposit of INR 200 crore of ZEEL held by it, towards the dues of seven Associate Entities. As per Annual Report of FY 2019-20, the seven Associate Entities have been shown as Related Parties of ZEEL.
3	September 18, 2019	Seven associate entities wrote to ZEEL that it has come to their knowledge that proceeds in relation to a term deposit of ZEEL has been transferred to their current account and that they would be returning the said proceeds.
4	September 26, 2019 to October 10, 2019	The bank statement of the seven associate entities shows that cumulatively they have transferred funds to the tune of INR 202.5 crore to ZEEL (INR 2.5 crore as interest).
5	September 30, 2019	ZEEL wrote a letter to YBL disputing and objecting to its act of misappropriating ZEEL's fixed deposit.
6	October 11, 2019	YBL letter to ZEEL regarding appropriation of the fixed deposit of INR 200 crore.
7	October 17, 2019	Attention of Board of Directors and Audit Committee was drawn for the first time on the alleged appropriation by YBL of the fixed deposit. Further, ZEEL made the corporate announcement to BSE Ltd. on *"Financial Results for the Half Year Ended on September 30, 2019"*, informing that ZEEL has been reimbursed the money amounting to INR 200 crore from the seven Related Entities.
8	November 22, 2019	Resignation of Mr. Subodh Kumar, Non-Independent Director of ZEEL and Ms. Neharika Vohra, Independent Director from ZEEL.
9	November 24, 2019	Resignation of Mr. Sunil Kumar, Independent Director of ZEEL.
10	November 2019 - June 2020	Regular updates were given to the Board of Directors and Audit Committee of ZEEL regarding the progress made in the fixed deposit matter.
11	June 21, 2020	ZEEL commissioned Grant Thornton India LLP to carry out an audit regarding the related party transactions carried out during the period April 1, 2018 to September 30, 2019 and a report was prepared on the procedures adopted by ZEEL.
12	July 22, 2020	ZEEL and YBL agreed to resolve the matter pertaining to the Fixed Deposit without causing any prejudice to each other
13	July 31, 2020	The report prepared by Grant Thornton India LLP was submitted to the Exchanges.
14	August 18, 2020	Entity No. 1 resigned as Non-Executive Director and Chairman of ZEEL.

15	August 19, 2020	Entity No. 1 was appointed as Chairman Emeritus of ZEEL.
16	December 2020 to January 2021	Correspondences between SEBI and ZEEL regarding Letter of Comforts issued by the Entities.
17	June 14, 2021	Adjudication proceedings were initiated against ZEEL and the Entities for the alleged violations of LODR Regulations.
18	June 27, 2021	SEBI issued an advisory letter to ZEEL cautioning it to be careful and to ensure compliance with LODR Regulations.
19	July 6, 2022	SEBI issued show cause notice to ZEEL and the Entities for the alleged violation of provisions of LODR Regulations.
20	September 2, 2022	ZEEL and Entity No. 2 filed settlement applications with SEBI in relation to the show cause notice dated July 6, 2022.
21	April 18, 2023	Settlement applications of ZEEL and Entity No. 2 was rejected by SEBI in the Adjudication Proceedings.
22	April 27, 2023	SEBI sought certain information / details with respect to INR 200 crore fixed deposit appropriated by YBL.
23	May 8, 2023	ZEEL responded to the above letter of SEBI providing the relevant information.
24	June 12, 2023	*Interim Order* was passed.

17. Further, the role of the Entities in the subject matter as *prima facie* identified in the *Interim Order* and which has not been contested by the Entities, is as follows:

17.1. Entity No. 1:

17.1.1. He had issued the LoC to YBL.

17.1.2. At the time of issuance of LoC by him, he was Non-Executive Director and Chairman of ZEEL and is currently Chairman Emeritus of ZEEL.

17.1.3. He was also Chairman of Essel Group at the relevant time.

17.1.4. He is part of the Promoter Group of ZEEL and is an integral part of Essel Group.

17.2. Entity No. 2:

17.2.1. He was the Managing Director and Chief Executive Officer (hereinafter referred to as "**MD & CEO**") of ZEEL at the time of creation of fixed deposit.

17.2.2. He was at the helm of the affairs of ZEEL when the fixed deposit of INR 200 crore was liquidated by YBL and when the seven Associate Entities "repaid" the money to ZEEL.

17.2.3. He is the part of the Promoter Group of ZEEL and is an integral part of Essel Group.

18. From the above, it can be seen that apart from being farther-son, both the Entities are integral part of Essel Group and were also members of the Board of Directors when the fixed deposit was created and the money was apparently "repaid" by the seven Associate Entities to ZEEL.

19. I now proceed to deal with the submissions of the Entities in the context of the scope of the extant proceedings.

20. At the outset, I would like to address one of the preliminary issues raised by the Entities with respect to SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "**Settlement Regulations**") and the connected issue of reliance placed on the Order in the matter of Shirpur Gold Refinery Ltd.

21. The Entities have submitted that the *Interim Order* must fall on the ground that the information which was used to pass the *Interim Order* in the extant matter was gathered contrary to the provisions of Settlement Regulations. Further, it has also been argued that the *Interim Order* at various paragraphs has referred to and relied upon the findings in a separate Order in the matter of Shirpur Gold Refinery Ltd. but there is no basis for invoking the Shirpur Gold Refinery Ltd. Order *qua* the Entities since they were not arrayed as parties therein.

22. With respect to the submission regarding Settlement Regulations, attention is drawn to regulation 29 (2) of Settlement Regulations. The same reads as follows:

Confidentiality of information.

29 (1)…

(2) Where an application is rejected or withdrawn, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations:
Provided that this sub-regulation shall not apply where the settlement order is revoked or withdrawn under these regulations.
Explanation–
When any fact is discovered in consequence of information received from a person in pursuance of an application, so much of such information, whether it amounts to an admission or not, as relates distinctly to the fact thereby discovered, may be proved.

On a perusal of the aforesaid regulation, it is noted that any proposals or information or representation made by the applicant cannot be introduced as evidence against the

applicant before any Court or Tribunal. On examining the submission of the Entities in this regard, it is noted that the Entities have not submitted specifically what was the information or representation that was made by them, which has been used in the *Interim Order.* It is already on record that SEBI had initiated adjudication proceedings in relation to disclosure lapses on part of ZEEL as regards the appropriation of INR 200 crore of ZEEL's fixed deposit towards the amount borrowed by the seven Associate Entities. It is also on record that during the period 2022-23, SEBI was investigating the matter of Shirpur Gold Refinery Ltd. Three entities namely, *Pan India Infraprojects Pvt. Ltd., Living Entertainment Enterprises Pvt. Ltd. and Essel Corporate Resources Pvt. Ltd.* find references in the Shirpur Gold Refinery Ltd. matter, also figured in the list of seven Associate Entities whose loans were adjusted by YBL from the fixed deposit of INR 200 crore of ZEEL. Thus, investigation in the matter of ZEEL was triggered pursuant to investigation in the Shirpur Gold Refinery Ltd. matter couple with the rejection of settlement application of ZEEL and Entity No. 2. Further, the findings of the *Interim Order* are not based on any of the information submitted by ZEEL and Entity No. 2 in their settlement application. Accordingly, the argument of the Entities that the *Interim Order* relies on the information gathered from the settlement application is devoid of merit.

23. The Entities have also contended that they are not a party to the Order passed in the matter of Shirpur Gold Refinery Ltd., however, SEBI has placed reliance on the said Order to foist liability on the Entities. The contention of the Entities may look attractive at the first read but on a careful reading of the *Interim Order*, it can be seen that the aforesaid contention of the Entities has been made without considering the context in which the reference to Shirpur Gold Refinery Ltd. Order has been made in the *Interim Order*. The sole Promoter of Shirpur Gold Refinery Ltd. is Jayneer Infrapower and Multiventures Pvt. Ltd., whose majority shareholders are Entity No. 2 (49.80%) and brother of Entity No. 2, Mr. Amit Goenka (49.80%). Thus, there is no doubt that the company, Shirpur Gold Refinery Ltd. belongs to the conglomerate, Essel Group. The allegation in the said Order is that funds were siphoned from the company through layered transactions using connected entities for the benefit of the Promoters. In the instant matter, a separate and independent *prima facie* finding has been arrived at in the *Interim Order* that funds have been siphoned from ZEEL using

connected entities through layered transactions for the benefit of the Promoters of ZEEL. Thus, there is a commonality in both the Orders not only in terms of the *prima facie* scheme employed but also in the identity of the persons who gained at the expense of the listed companies and the beneficiaries belonged to the same conglomerate, the Essel Group. Further, the alleged conduit companies, which were allegedly used to obscure the transactions, were also common in both the matters namely, Churu Enterprises LLP, Lemonade Capital Advisors LLP, Ayati Multi Trading Pvt. Ltd. and Ekmart Trading Pvt. Ltd. Therefore, the *Interim Order* merely referred to the Shirpur Gold Refinery Ltd. Order to show a pattern wherein the Promoters of the companies that are part of the Essel Group have benefited at the expense of the listed companies by siphoning funds from the respective listed companies. The same is nothing but an observation of repetitive behavior of the individuals who are at the helm of the companies belonging to the Essel Group. In any case the *prima facie* findings which have been arrived at the in the *Interim Order* are independent of the Shirpur Gold Refinery Ltd. Order and stands on its own set of facts and circumstances. Therefore, to contend that any prejudice has been caused to the Entities for the reason that a reference to the Order of Shirpur Gold Refinery Ltd. has been made in the *Interim Order* is without merit.

24. Now, I proceed to examine the issues as framed in the beginning of this Order that are related to factual aspects of the matter.

Issuance of LoC

25. The first issue pertains to the issuance of LoC by Entity No. 1 to YBL. Entity No. 1 has submitted that LoC was issued by him in his personal capacity and not on behalf of ZEEL as it is not on the letterhead of ZEEL. It is submitted that at the time of issuance of the LoC, he was a Non-Executive Chairman, who was not involved in the management of ZEEL and was not even an authorized signatory for ZEEL's banking/financial operations. Therefore, any LoC issued by him could not in any way impute any liability on ZEEL.

26. With respect to the submission of Entity No. 1 that the LoC was issued in his personal capacity, it is noted upon perusal of the said letter that he had signed the said letter dated September 4, 2018 as Chairman, Essel Group. Essel Group is a conglomerate

that consists of several companies operating in diverse industries. However, its flagship company is ZEEL and Entity No. 1 had specifically mentioned the name of ZEEL (hand written it, post printing the letter) in the said LoC. Insertion of the name of ZEEL had certainly lend credence to the LoC and on cue, by the next day i.e., September 4 and 5, 2018, ZEEL had created a fixed deposit of exactly the same amount as mentioned in the LoC i.e., INR 200 crore with YBL. Thus, if we look into the following attending circumstances around the creation of the fixed deposit of INR 200 crore on September 4 and 5, 2018, on a preponderance of probability basis, it can be held that the LoC was not in the personal capacity of Entity No. 1 but rather in the capacity of the head of the Promoter Group having control over ZEEL:

26.1. If the LoC was in his personal capacity, there was no need for the Entity No. 1 to sign it off as Chairman of Essel Group. The use of the word "ensure" shows that companies belonging to Essel Group were accustomed to act under the advice and instructions of Entity No. 1, which not only empowered him to issue such a letter on their behalf but for the Bank to accept such a letter as a valid Letter of Comfort. Moreover, the word "We" and not "I" connoted that he was signing on behalf of the Essel Group.

26.2. The name of ZEEL was specifically inserted in the LoC, thereby showing the express intent of Entity No. 1 to "ensure" action by ZEEL. His ability to do the same came from the fact that at the relevant point in time, he was the Chairman of ZEEL and was regularly attending its board meetings. Therefore, not only was he aware of the functioning of ZEEL, but being the Promoter of ZEEL and the fact that he was associated with ZEEL for a significant period of time and the fact that his son who was also part of the same Promoter Group, was the MD & CEO of ZEEL, he clearly had administrative influence over the working of ZEEL.

26.3. Though, it would have been natural for ZEEL to make fixed deposits in the normal course of its business, but in the given situation, writing of the LoC by Entity No. 1 for the amount of INR 200 crore on September 4, 2018 with specific reference to ZEEL, and correspondingly, ZEEL creating the fixed deposit of exactly the same amount by the next day, in the given facts and circumstances, on a preponderance

of probability basis, shows that the proximate cause of making of the said fixed deposit was the LoC written by Entity No. 1.

26.4. Entity No. 1 has not submitted any documentary evidence including bank statement(s) to evidence that he had the ability to ensure that a fixed deposit of INR 200 crore can be made by him in his personal capacity nor is his case that he made such a fixed deposit. Thus, in a way, creation of the fixed deposit by ZEEL was seemingly effective discharge of Entity No. 1's obligation to "ensure" that a fixed deposit of INR 200 crore would be placed by Essel Group with YBL.

26.5. Even a bare reading of the LoC also leads to an inference that Entity No. 1 had not written the LoC in his personal capacity as through the LoC, he is conveying to YBL that companies belonging to Essel Group including ZEEL would ensure that a fixed deposit of at least INR 200 crore would be available with YBL. If he was writing in his personal capacity then he should have no reason to refer to companies belonging to Essel Group.

26.6. YBL vide its letter dated October 11, 2019 had in its communication with ZEEL regarding the appropriation of the fixed deposit had referred to the LoC issued by Entity No. 1 in favour of the Bank for the financial assistance granted by YBL to various companies of Essel Group. It had also further stated that various possibilities including appropriation of fixed deposit by YBL was discussed with the "leadership team of Essel Group companies". There is no material available on record or has been submitted by the Entities to show that they had raised any objection with YBL regarding the LoC being issued by Entity No. 1 in his official capacity.

27. Entity No. 1 has placed reliance on the Order of Hon'ble Bombay High Court in the matter of *Yes Bank Ltd.* vs. *Zee Entertainment Enterprises Ltd. and Ors.* decided on August 19, 2020 wherein it was held that LoC was not in the nature of a guarantee and therefore could not have been interpreted in that way.

28. On the aspect of whether or not LoC, is in the nature of guarantee, I have read the Order of Hon'ble Bombay High Court in the matter of *Yes Bank Ltd.*, relied upon by Entity No. 1. The LoC, which was in question in the said Order was the LoC dated May

31, 2016 given by Entity No. 2 to YBL to facilitate the borrowing by Living Entertainment Ltd., Mauritius. The Hon'ble High Court after examining the contents of the said LoC and conduct of the parties found that the LoC dated May 31, 2016 given by Entity No. 2 to YBL was not a guarantee and *inter alia* held as follows:

"In a given case, a letter of comfort may indeed amount to a guarantee. Not every letter of comfort is ipso facto a guarantee. The nomenclature is unimportant, as is the absence of the word 'guarantee'.

…

The document is to be construed as a whole, read in a reasonable commercial sense, and in context of events and associated documents.

…

Whether the document in question is a guarantee or not depends upon the exact terms to which the guarantor binds himself. In law, no guarantor is liable for more than what the guarantor has undertaken.

…

The conduct of the parties is a relevant factor in assessing the construction of any contract."

29. I note that the aforesaid Order of the Hon'ble Bombay High Court was limited to the LoC dated May 31, 2016. It has been held by the Hon'ble High Court that there can be situations where a LoC can be treated as a guarantee. Therefore, to submit that the instant LoC dated September 4, 2018 was not a guarantee as the Hon'ble High Court has held that LoC dated May 31, 2016 was not a guarantee, is an incorrect understanding of the said Order. I have gone through the contents of both the LoCs. The content of both the LoCs are different viz., in the LoC dated September 4, 2018 the writer commits to "ensure" that a fixed deposit of at least INR 200 crore would be available with YBL, whereas LoC dated May 31, 2016 states that it would "support" ATL Media Ltd. (subsidiary of ZEEL) which had a put option agreement in place with the borrower, by infusing equity / debt for meeting all its working capital requirements etc. Unlike in the case of LoC dated May 31, 2016, where there was legal dispute between ZEEL and YBL regarding the LoC dated May 31, 2016, in the instant case, both ZEEL and YBL had resolved the matter on July 22, 2020 pertaining to the fixed deposit which was liquidated on the strength of the LoC dated September 4,

2018 by way of YBL adjusting the fixed deposit towards the dues of the borrowers and ZEEL by seemingly "recovering" the amount from the borrowers. Thus, in effect as far as YBL was concerned the LoC acted as a guarantee. I note that under the terms of the settlement, YBL had kept the proceeds of the fixed deposit of INR 200 crore. Therefore, it can be seen from the above that the facts and circumstances of the two matters are different. Hence, I am of the view that the reliance placed by the Entity No. 1 on the Order of the Hon'ble Bombay High Court, is misplaced.

30. Without prejudice to the above contentions, Entity No. 1 has submitted that a bare perusal of the contents of the LoC, would show that the LoC was issued for the loans outstanding specifically in Essel Green Mobility Ltd. and not for the outstanding loans of other borrower entities. Therefore, the appropriation by YBL of ZEEL's fixed deposit for borrowing entities was without any authorisation.

31. In this regard, I would note that there are more facts involved in the appropriation of fixed deposit of INR 200 crore by YBL. To the extent that the LoC was for the outstanding loan of Essel Green Mobility Ltd., Entity No. 1 is correct. But what the Entity No. 1 is not presenting is the fact, that as on July 24, 2019, when YBL liquidated the fixed deposit, the total outstanding amount of companies belonging to Essel Group including Essel Green Mobility Ltd. (which had INR 200 crore outstanding), was INR 8,470 crore. YBL after having discussed with the leadership team of Essel Group of companies, as claimed by YBL in its letter dated October 11, 2019, decided to adjust the fixed deposit towards dues of the seven Associate Entities rather than that of Essel Green Mobility Ltd. Whether YBL could have appropriated the fixed deposit in the first place, is a matter of dispute between YBL and ZEEL (which they have settled as on date, as discussed earlier, in a manner that lends credence to the assurance given by Entity No. 1 to YBL in the LoC). However, for the purpose of the instant matter, the fact remains that the LoC was issued by Entity No. 1 and on the strength of the same as expressly communicated by YBL to ZEEL, the fixed deposit of INR 200 crore was liquidated by YBL. As noted in preceding paragraphs, based on the available materials, Entity No. 1 has not been able to substantiate that the LoC was issued in his personal capacity. To put it differently, whether the appropriation by YBL of ZEEL's fixed deposit for borrowing entities was without authorisation (although settled by ZEEL),

is not germane in the instant matter which deals with the issuance of LoC and circular, non-genuine transactions.

Fund Transfers

32. The next issue that arises for consideration is whether the Entities have been able to demonstrate that the six Associate entities have genuinely transferred funds to ZEEL equivalent to the fixed deposit that was liquidated by YBL for the dues of the six Associate Entities.

33. The aforesaid issue has to be answered on the following parameters:

33.1. Whether the Entities have been able to refute the *prima facie* finding of the *Interim Order* that the fund transaction between various companies and / or body corporates which are part of the *prima facie* scheme, are non-genuine transactions.

33.2. Whether on a preponderance of probability basis, the Entities have been able to refute the *prima facie* findings of the *Interim Order* that the circular movement of funds was by design and not a coincidence.

34. In this regard, the bank statements of ZEEL and Associate Entities were examined. The same also led to the examination of bank statements of a few other companies, some of which were part of the Essel Group. The examination of the bank statements *prima facie* showed the following pattern:

34.1. It is noted that in 5 out of 6 instances of Associate Entities transferring funds to ZEEL (except the instance involving Essel Corporate Resources Pvt. Ltd.) that have been identified in the *Interim Order,* just prior to the said transfer, a substantial deposit has been made by the related parties of ZEEL namely, once by Pan India Infraprojects Pvt. Ltd. and on 4 instances by Sprit Infrapower & Multiventures Pvt. Ltd. (Promoter of ZEEL) in the account of the Associate Entity. Even in the instance when Pan India Infraprojects Pvt. Ltd. has transferred money to the Associate Entity, it has received money from Sprit Infrapower & Multiventures Pvt. Ltd. Thus, the Promoter of ZEEL was involved in all the 5 instances.

34.2. It is also noted that prior to the receipt of funds from Pan India Infraprojects Pvt. Ltd. and / or Sprit Infrapower & Multiventures Pvt. Ltd., the Associate Entities had negligible balances compared to the proposed transfer they were to make to ZEEL.

34.3. As per the available material, it is noted that in 3 of the 5 instances the difference in time of receipt of money from Pan India Infraprojects Pvt. Ltd. and / or Sprit Infrapower & Multiventures Pvt. Ltd. and onward transfer to ZEEL by the Associate Entity, is in the range of 7 minutes to 27 minutes (approx.).

The aforesaid facts when seen together along with the connection between the Promoter of ZEEL and Associate Entities, on a preponderance of probability basis, leads to an inference that the proximate cause for the receipt of money from Pan India Infraprojects Pvt. Ltd. and / or Sprit Infrapower & Multiventures Pvt. Ltd. was for the purpose of onward payment to ZEEL by the Associate Entities. The table below shows the requisite details as stated above:

Table No. 5

S. No.	Name of Associate Entity	Date	A/c Balance **before** Fund Receipt (INR)	Conduit Entity providing Funds	Amount Received from Conduit Entity (INR)	Amount Transferred to ZEEL (INR)	EOD Balance (INR)
1.	**Pan India Infraprojects Private Limited** *IDBI Bank 14102000021225*	26 September 2019	60,604	Sprit Infrapower	14.8 crore At 16:31:24	14.8 crore At 16:41:23	60,604
2.	**Essel Green Mobility Limited** *IDBI Bank 14102000028608*	27 September 2019	12,491	Pan India Infraprojects[1]	17.1 crore At 15:08:11	17.1 crore At 15:15:39	12,491
3.	**Essel Corporate Resources Private Limited** *IDBI Bank 14102000020873*	30 September 2019	51,592	Churu Enterprises LLP	22.3 crore At 10:11:39	22.3 crore At 10:16:12	51,592
4.	**Pan India Network Infravest Limited** *IDBI Bank*	1 October 2019	4 lakh	Sprit Infrapower	49.3 crore At 16:05:42	49.3 crore At 16:32:34	14 lakh

[1] Sprit Infrapower , in turn, provided INR 17.1 crore to Pan India Infraprojects Pvt. Ltd.

S. No.	Name of Associate Entity	Date	A/c Balance <u>before</u> Fund Receipt (INR)	Conduit Entity providing Funds	Amount Received from Conduit Entity (INR)	Amount Transferred to ZEEL (INR)	EOD Balance (INR)
	14102000023029						
5.	**Living Entertainment Enterprises Pvt Ltd** *Axis Bank 915020041754316*	1 October 2019	1.35 crore	Sprit Infrapower	17.4 crore	17.4 crore	1.35 crore
6.	**Essel Business Excellence Services Limited** *Deutsche Bank 1555655-00-0*	10 October 2019	9.3 crore	Sprit Infrapower	23 crore	23 crore	6.7 crore

34.4. With respect to the 6th instance, it is noted that the entity which had transferred funds to Essel Corporate Resources Pvt. Ltd. immediately prior to the onward transfer to ZEEL, is Churu Enterprises LLP. It is noted that Churu Enterprises LLP is involved in all the transactions as discussed in the *Interim Order* except in the fund transaction where Essel Green Mobility Ltd. has transferred funds to ZEEL.

34.5. In fact, in all the instances where Sprit Infrapower & Multiventures Pvt. Ltd. has transferred money to the Associate Entities directly (4 in nos. out of 5), it has invariably received the funds from Churu Enterprises LLP. It cannot be a mere coincidence that the Promoter entity of ZEEL is receiving funds from Churu Enterprises LLP on the same day or just a day prior and then is transferring almost identical amount(s) to the Associate Entities to be further paid to ZEEL. On a preponderance of probability basis, it is hard to attribute to mere coincidence the flow of funds in 4 different chains across layers of *prima facie* connected companies, of near identical amounts in a matter of few minutes and days. The same, *prima facie* establishes purposive orchestration of movement of funds, on a preponderance of probability basis. Thus, when one considers the following facts, on a preponderance of probability basis, it leads to an inference that the funds that were transferred by

Churu Enterprises LLP to Sprit Infrapower & Multiventures Pvt. Ltd., were for paying ZEEL:

34.5.1. The funds were received by Sprit Infrapower & Multiventures Pvt. Ltd. from Churu Enterprises LLP on the same day or just a day prior to the transfer to the Associate Entity.

34.5.2. Sprit Infrapower & Multiventures Pvt. Ltd. transferred almost identical sums to the Associate Entity as it received from Churu Enterprises LLP.

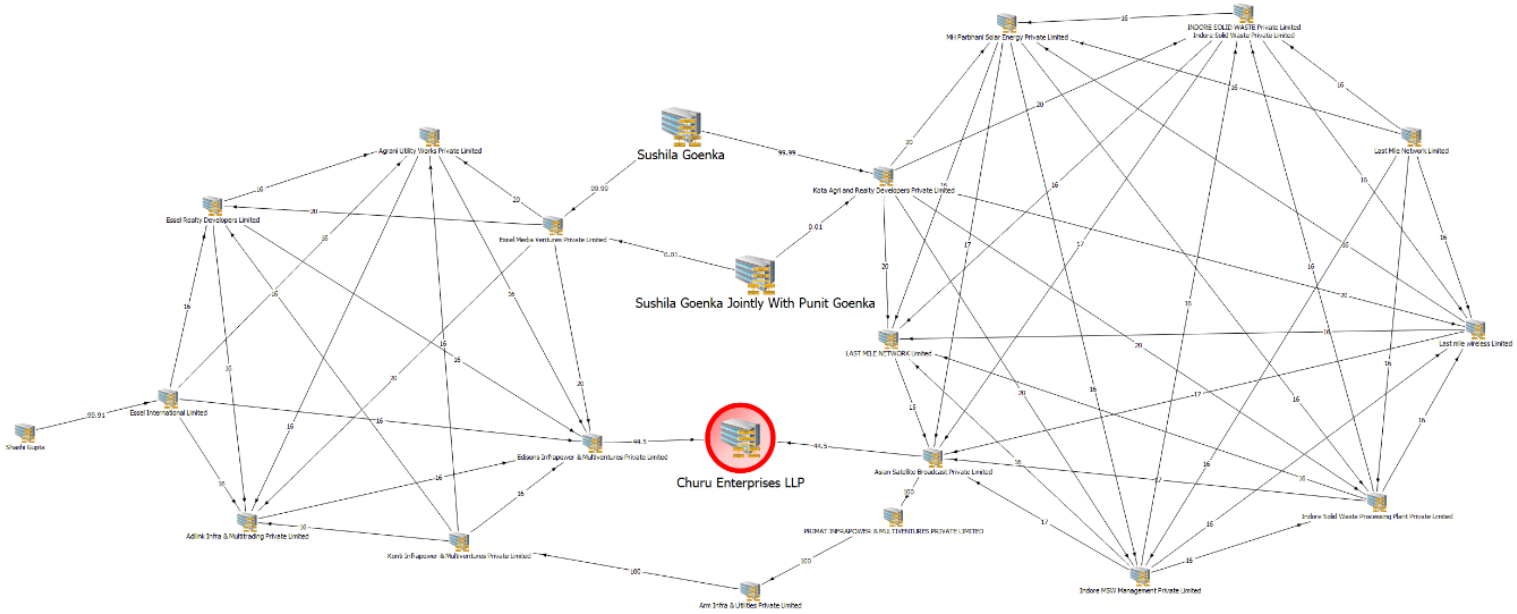
34.5.3. Sprit Infrapower & Multiventures Pvt. Ltd. transferred the funds immediately to the Associate Entity.

34.5.4. Timing of the contact between Sprit Infrapower & Multiventures Pvt. Ltd. and Churu Enterprises LLP, coincided with the period when the Associate Entities had to transfer / return the funds to ZEEL.

34.5.5. The funds prior to the receipt by ZEEL from the Associate Entity had already passed through multiple layers in an apparently orchestrated manner.

34.5.6. Sprit Infrapower & Multiventures Pvt. Ltd. and Churu Enterprises LLP are closely connected with each other. The former is the Promoter of ZEEL whereas, the majority partnership interest in the latter is that of Ms. Sushila Goenka, who is the wife of Entity No. 1 and a part of the Promoter Family. It is seen that Ms. Sushila Devi Goenka along with her son Mr. Punit Goenka (Entity No. 2) controls 89% partnership interest in the said LLP through an intricate web of cross-holdings. A pictorial representation of partnership interest pattern of Churu Enterprises LLP as noted from the publicly filed documents by the said LLP, is reproduced below and also attached as **Annexure-A** of this Order:

Figure No. 1



35. As noted in the preceding paragraphs, bank statements of few other companies were also examined. It was noted that the said companies were in between the initial transaction done by ZEEL and / or listed subsidiaries of Essel Group companies and the leg wherein Sprit Infrapower & Multiventures Pvt. Ltd. receives the funds. Such companies are hereinafter referred to as "**conduit entities**". Churu Enterprises LLP has played both the roles of a conduit as well as the entity, which has transferred money directly to the Associate Entity. The aforesaid examination of the bank statements *prima facie* showed the following pattern:

35.1. The conduit entities had negligible balance, prior to receipt of funds from the initial recipient of the funds from ZEEL or its subsidiary and / or listed companies of Essel Group and their subsidiaries.

35.2. Conduit entities have transferred identical amounts in 21 out of 23 instances upon receipt of funds to one or multiple other conduit entities.

35.3. As per the available records, the time range of transfer between receipt of funds by conduit entities from the initial recipient and to other conduit entities is in the range of few seconds to 2 hours (approx.).

35.4. It is noted that out of the 6 instances involving Associate Entities that have been discussed in the *Interim Order,* in 5 instances the leg involving the conduit entities got completed in a single day. In other words, the time when the conduit entity

received funds from the initial recipient till the time Sprit Infrapower & Multiventures Pvt. Ltd. receives the funds to be directly transferred to the Associate Entities, is within 24 hours.

35.5. There are few conduit entities, which have appeared on multiple occasions across the fund transactions namely, Ekmart Trading Pvt. Ltd., Ayati Multi Trading Pvt. Ltd., Lemonade Capital Advisors LLP, Churu Enterprises LLP Datalink Multitrading Pvt. Ltd., Zigtraka Media Solutions Pvt. Ltd. and Lansium Techno Infra Pvt. Ltd.

35.6. The particulars of the transactions between the conduit entities are reproduced below:

Table No. 6

S. No.	**Name of Entity Bank and A/c No.**	**Date**	**A/c Balance <u>before</u> Fund Receipt (INR)**	**Receipt from Connected / Conduit Entities (INR)**	**Payment to Connected / Conduit Entities (INR)**	**EOD Balance (INR)**
1.	**Norfolk Media Solutions Pvt Ltd** *IDBI Bank 1110102000003575*	25 September 2019	12,140	7.2 crore received from Zee Akaash News	Cumulatively, 7.2 crore transferred to: - Narneel Multi Trading, - Zigtraka Media Solutions, and - Lansium Techno Infra.	12,140
2.	**Narneel Multi Trading Pvt Ltd** *IDBI Bank 1110102000003599*	26 September 2019	3 lakh	1.99 crore received from Norfolk Media Solutions At 16:09:39	1.99 crore transferred to Ekmart Trading At 16:11:33	3 lakh
3.	**Zigtraka Media Solutions Pvt Ltd** *IDBI Bank 1110102000003582*	26 September 2019	29,336	2.09 crore received from Norfolk Media Solutions At 16:16:32	2.09 crore transferred to Ayati Multi Trading At 16:19:15	29,336
		1 October 2019	29,336	60 crore received from Pen India Ltd Between 14:20:00 - 14:24:00	Cumulatively, 60 crore transferred to: - Ayati Multi Trading; - Datalink Multitrading; and - Artarna Multi Trading Between 15:26 to 15:39:01	4,336

S. No.	Name of Entity Bank and A/c No.	Date	A/c Balance **before** Fund Receipt (INR)	Receipt from Connected / Conduit Entities (INR)	Payment to Connected / Conduit Entities (INR)	EOD Balance (INR)
4.	**Ekmart Trading Pvt Ltd** *IDBI Bank 1110102000003568*	26 September 2019	28,461	1.99 crore received from Narneel Multi Trading At 16:11:33	1.99 crore transferred to Ayati Multi Trading At 16:14:11	28,461
		1 October 2019	39 lakh	7.42 crore received from Datalink Multitrading At 15:40:17	7.42 crore transferred to Ayati Multi Trading At 15:40:44	39 lakh
5.	**Ekmart Trading Pvt Ltd** *IDBI Bank 0014102000036139*	9 October 2019	59,254	11.73 crore received from Datalink Multitrading At 13:31:17	11.73 crore transferred to Ayati Multi Trading At 13:32:24	59,254
6.	**Ayati Multi Trading Pvt Ltd** *IDBI Bank 1110102000001267*	26 September 2019	28,869	4.08 crore cumulatively received from: - Ekmart Trading; and - Zigtraka Media Solutions Between 16:14:11 to 16:19:15.	4.08 crore transferred to Lemonade Capital Advisors LLP Between 16:15:17-16:20:35	28,869
		1 October 2019	28,869	60 crore cumulatively received from: - Zigtraka Media Solutions; and - Ekmart Trading Between 15:26 to 15:40:44	60 crore transferred to Lemonade Capital Advisors LLP At 15:41:23	53,869

S. No.	Name of Entity Bank and A/c No.	Date	A/c Balance <u>before</u> Fund Receipt (INR)	Receipt from Connected / Conduit Entities (INR)	Payment to Connected / Conduit Entities (INR)	EOD Balance (INR)
		9 October 2019	31,192	23 crore cumulatively received from: - Ekmart Trading - Datalink Multitrading Between 13:32:24 to 13:33:08.	23 crore transferred to Lemonade Capital Advisors LLP At 13:33:57	31,192
7.	**Mixrex Media And Cable Pvt Ltd** *IDBI Bank 0014102000034414*	25 September 2019	13 lakh	7.6 crore received from Zee Akaash News	7.72 core transferred to Lansium Techno Infra	64,050
8.	**Lansium Techno Infra Pvt Ltd** *IDBI Bank 1110102000003551*	26 September 2019	6,066	10.84 crore cumulatively received from: - Norfolk Media Solutions; and - Mixrex Media Between 16:21:51 and 16:25:52	10.84 crore transferred to Lemonade Capital Advisors LLP Between 16:24:42 and 16:27:24	6,066
		27 September 2019 (Friday)	6,066	25 crore received from Interria Multibiz At 18:43:40	25 crore transferred to Lemonade Capital Advisors LLP On 30 September 2019 (Monday) at 09:54:18	12 lakh
9.	**Lemonade Capital Advisors LLP** *IDBI Bank 1110102000003117*	26 September 2019	1 lakh	14.92 crore cumulatively received from: - Ayati Multi Trading; and - Lansium Techno Infra	14.92 crore transferred to Churu Enterprises LLP At 16:28:36	1 lakh

S. No.	Name of Entity Bank and A/c No.	Date	A/c Balance **before** Fund Receipt (INR)	Receipt from Connected / Conduit Entities (INR)	Payment to Connected / Conduit Entities (INR)	EOD Balance (INR)
				Between 16:20:35 to 16:27:24		
		30 September 2019	5 lakh	25 crore received from Lansium Techno Infra At 09:54:18	25 crore transferred to Churu Enterprises LLP At 09:54:55	Rs. 27 lakh
		1 October 2019	5,857	60 crore received from Ayati Multi Trading At 15:41:23	60 crore transferred to Churu Enterprises LLP At 15:41:40	5,857
10.	**Khoobsurat Infra Pvt Ltd** *IDBI Bank 0014102000026080*	27 September 2019	3 lakh	8.35 crore received from Living Entertainment Enterprises At 14:22:25	8.35 crore transferred to Sprit Infrapower At 14:58:22	3 lakh
11.	**Dcplay Distribution Pvt Ltd** *IDBI Bank 0109102000042459*	27 September 2019	1 lakh	25 crore received from Dish Infra Services At 12:06:52	25 crore transferred to Interria Multibiz At 12:12:17	1 lakh
12.	**Interria Multibiz Pvt Ltd** *IDBI Bank 0492102000012290*	27 September 2019	94,688	25 crore received from Dcplay Distribution At 12:12:17	25 crore transferred to Lansium Techno Infra At 18:43:40	94,688
13.	**Artarna Multi Trading Pvt Ltd** *IDBI Bank 1110102000000580*	1 October 2019	17,758	1.62 crore received from Zigtraka Media Solutions At 15:39:01	1.62 crore transferred to Megasteps Infrapower At 15:39:20	17,758
14.	**Megasteps Infrapower &**	1 October 2019	10,404	1.62 crore received from	1.62 crore transferred to Datalink Multitrading	10,404

S. No.	Name of Entity Bank and A/c No.	Date	A/c Balance **before** Fund Receipt (INR)	Receipt from Connected / Conduit Entities (INR)	Payment to Connected / Conduit Entities (INR)	EOD Balance (INR)
	Multitrading Pvt Ltd *IDBI Bank 0502102000009232*			Artarna Multi Trading At 15:39:20	At 15:39:53	
15.	**Datalink Multitrading Pvt Ltd** *IDBI Bank 1110102000003148*	1 October 2019	2 lakh	7.42 crore cumulatively received from: - Zigtraka Media Solutions; and - Megasteps Infrapower Between 15:30 to 15:39:53	7.42 crore transferred to Ekmart Trading At 15:40:17	2 lakh
		9 October 2019	96,836	40 crore received from Kyoorius Communications Pvt Ltd At 10:25:25	Cumulatively, 23 crore transferred to: - Ekmart Trading; and - Ayati Multi Trading Between 13:31:17 to 13:33:08	96,836

36. The aforesaid pattern when seen along with the timing of the said conduit entities coming together, attempt to muddle the funding transactions by creating several layers and the fact that the funds from the conduit entities ultimately reached either the Promoter of ZEEL (Sprit Infrapower & Multiventures Pvt. Ltd.) or the body corporate related to the Promoter Family (Churu Enterprises LLP), on a preponderance of probability basis *prima facie* leads to an inference that the transactions of the conduit entities was by design and not by a mere a coincidence.

37. Before proceeding further to deal with the submissions of the Entities in this regard, I would like to summarise the fund transactions among the various companies, as noted above.

37.1. ZEEL or its subsidiary and / or listed companies of Essel Group and their subsidiaries transfer money either to their related party or to companies with

whom they have commercial relationship (in some cases long term commercial relationship).

37.2. The recipient of the funds from the Essel Group transfers the funds the next day or within few days (1-2 days) of transfers, almost identical funds to the conduit entities.

37.3. The conduit entities transfer funds within themselves the same day as they have received it (almost identical) and the funds ultimately reach the Promoter of ZEEL (Sprit Infrapower & Multiventures Pvt. Ltd.) or the body corporate related to the Promoter Family (Churu Enterprises LLP).

37.4. Sprit Infrapower & Multiventures Pvt. Ltd. or Churu Enterprises LLP transfer almost identical funds as received from the conduit entities to one or more of the Associate Entities.

37.5. Associate Entities transfer exactly the same amount as received from either Sprit Infrapower & Multiventures Pvt. Ltd. (directly / indirectly) or Churu Enterprises LLP, to ZEEL.

38. Thus, it can be *prima facie* seen that the Essel Group where the Entities and their family members are an integral part, have an overwhelming presence in the fund transactions, be it the source of funds or as part of layers through which the funds have moved or be it the immediate transferor of funds to the Associate Entities just prior to the latter transferring funds to ZEEL.

39. It is submitted by the Entities that the bank statements by themselves can never lead to a conclusion that transfer of money is pursuant to a sham transaction or on account of circuitous transactions, as alleged in the *Interim Order*. I agree with the submission of the Entities to the extent that *per se* the entries in the bank statements cannot lead to a conclusion that they are pursuant to a sham transaction or part of a circular movement of funds. The same is also not the *prima facie* observation of the *Interim Order.* An entry in the bank statement shows that a particular transaction has taken place in the bank account of the holder. It is only when the digital footprint of the said transaction is traced along with the attending circumstances and the entities involved in the transactions, one can determine whether it was part of a circular transaction or not. The *Interim Order* has also examined the digital footprint of a particular transaction along with the various entities involved in the transaction which had

prima facie shown that an identical sum of money has moved through multiple layers within a span of few days before finding its way to the bank account of one of the Associate Entities prior to being transferred to ZEEL, which was one of the initial source of the said funds to begin with. Therefore, to submit that *Interim Order* has relied upon the bank statements independent of the other circumstances of the instant matter, is an incorrect reading of the *Interim Order.*

40. Entity No. 2 has made the following submissions with respect to the fund transfers:

40.1. If the very first bank transfer was for a *bona fide* business transaction and for due consideration, the remaining entries appearing in each instance are of no consequence. More so when no loss has been caused to ZEEL.

40.2. All the transactions are backed by proper documentations including the transactions with the related parties are approved by the Audit Committee.

40.3. As long as ZEEL has made payments towards valuable consideration, subsequent utilisation of funds by other parties to repay ZEEL do not constitute diversion of funds.

40.4. With respect to related parties, it may be noted that Entity No. 2 was not in control of their day-to-day transactions. Further, Entity No. 2 cannot be asked to explain the transactions beyond the first instance and those with whom he is not connected with. Moreover, he has not benefited from the impugned transactions.

40.5. There are instances where the money received by ZEEL is either more or less than then the funds that were allegedly circulated.

40.6. Entity No. 2 has taken appropriate steps and put in measures and checks in place to ensure that the allegations as made in the *Interim Order* cannot be repeated in future.

41. Before proceeding to deal with the aforesaid submissions of Entity No. 2, , I would like to emphasize that the *prima facie* findings of the *Interim Order* is that the funds have moved through several layers and in a circular fashion to reach the account of the Associate Entities who transferred it to ZEEL. I have already noted above a common pattern in the fund transfers among the companies and / or body corporates involved in the fund transfers. The said commonality across multiple chains of fund transfers during the same period wherein most of the transferors and transferees are *prima facie* connected, at this stage on a preponderance of probability basis, cannot be ruled

as a coincidence. Therefore, as noted in the *Interim Order,* in order to show that ZEEL has received money from its sixAssociate Entities equivalent to the fixed deposit amount, which was liquidated by YBL towards the dues of the six Associate Entities, a *prima facie* scheme was orchestrated and to that end, the impugned fund transactions took place. Thus, as all the legs of the fund transfers were pursuant to the *prima facie* scheme, they have to be seen together to have a holistic understanding of the fund movement and in conjunction with the attending circumstances.

Without prejudice to the above, I proceed to deal with the submissions of Entity No. 2, *in seriatim.*

41.1. With respect to the submission of Entity No. 2 that if the first transfer is for a due consideration, the remaining entries in the transaction, is of no consequence, I note that the same would be *prima facie* contrary to the facts and circumstances of the case. To state that the first leg of the fund movement is an independent and distinct transaction from the rest of the fund transfers, would be seeing each fund transfers in isolation. The primary finding of the *Interim Order* is that *prima facie* a scheme was employed wherein circular fund transfers had taken place to show receipt of funds by ZEEL from the Associate Entities. Towards that end objective, the various parts of the scheme were designed. As noted in the preceding paragraphs, the Associate Entities did not have funds equivalent to the amount that was appropriated by YBL by liquidating ZEEL's fixed deposit of INR 200 crore. Neither the companies that were used as conduit entities or for layering the transactions had the requisite funds. The same necessitated infusion of funds. Thus, the need arose for ZEEL or its subsidiary or the subsidiaries of listed companies belonging to Essel Group to initiate the initial transaction which kick started the whole circular transaction. It has been noted in the preceding paragraphs that the entire set of transactions were completed within a few days and at each stage / leg of the scheme, the funds had moved immediately upon receipt of the same by the transferee. Moreover, the companies belonging to Essel Group were present both at the time of inception of the transaction as well as towards the end part of the transaction. In the preceding paragraphs, a common pattern that has emerged upon examination of the bank statements of Associate Entities and Conduit Entities have

been discussed. The said common pattern raises significant red flags with respect to the fund transfers. To brush the pattern aside as mere coincidence would be incorrect as it happened at the time when the Associate Entities were in dire need of funds to return to ZEEL. Furthermore, there are multiple conduit entities that are common across the fund transactions and are ultimately transferring the funds to either to one of the Promoters of ZEEL or to a body corporate, which is closely connected with the Entities. Therefore, the submission that once the first leg of transfer is explained, there is no need to explain the rest is untenable as there are a plethora of circumstances that are inextricably linked with the fund transactions that *prima facie* enabled the Associate Entities to transfer funds to ZEEL and the same cannot be accepted as genuine. Therefore, at this stage of the proceedings, I am unable to agree with the submission of Entity No. 2.

41.2. With respect to the submission of the Entity No. 2 that the transactions are backed by necessary documentation and approval of Audit Committee, it is noted that the following documents have been submitted by him:

41.2.1. Agreements with Living Entertainment Enterprises Pvt. Ltd., Essel Business Excellence Services Pvt. Ltd., Pen India Ltd. and Kyoorius Communications Pvt. Ltd.

41.2.2. 3 credit notes issued by Pen India Ltd.

41.2.3. Entity No. 2 has not submitted any documents with respect to fund transfer done by Zee Akaash News Pvt. Ltd. and Dish Infra Services Pvt. Ltd. stating that he does not have access to their records.

41.2.3.1. With respect to the agreements with Living Entertainment Enterprises Pvt. Ltd. and Essel Business Excellence Services Pvt. Ltd., it is observed that they are related parties of ZEEL and both the entities have a long-standing commercial relationship with ZEEL. Thus, there is no surprise that Audit Committee approvals are in place for transacting with them. However, submitting an agreement and stating that the fund transfer was pursuant to that, does not carry weight. No material has been brought on record to demonstrate that the impugned fund transfer was pursuant to the agreements viz., what was the value of services that

was offered during the relevant period, when was the invoice raised, commonality of processes followed during the previous instances of delivery of similar services, etc.. Therefore, at this stage, given the linkages between the entities, the circumstances surrounding the timing of transfers and the large number of similar sets of circular transactions, I am, at this stage unable to accept the submission of the Entity No. 2 that the fund transfers were genuine in nature.

41.2.3.2. Living Entertainment Enterprises Pvt. Ltd. vide its letter dated June 6, 2023 to SEBI (forwarded for instant proceedings on August 12, 2023) has submitted that it had received funds from Sprit Infrapower & Multiventures Pvt. Ltd. towards subscription of Optionally Convertible Debentures. In this regard, I note that the said submission of the entity is not supported by any documentary evidence namely details of the said issue, correspondences related to the said issue, other subscribers to the said issue, etc. Further, as noted Living Entertainment Enterprises Pvt. Ltd. had transferred the identical amount to ZEEL, which it had received, from Sprit Infrapower & Multiventures Pvt. Ltd. on the same day. Sprit Infrapower & Multiventures Pvt. Ltd. had in turn received the funds through multiple layers on the same day, before transferring it to Living Entertainment Enterprises Pvt. Ltd. The aforesaid circumstances on a preponderance of probability basis, cannot be brushed aside as mere coincidence and hence, I find that the submission of the entity is unacceptable.

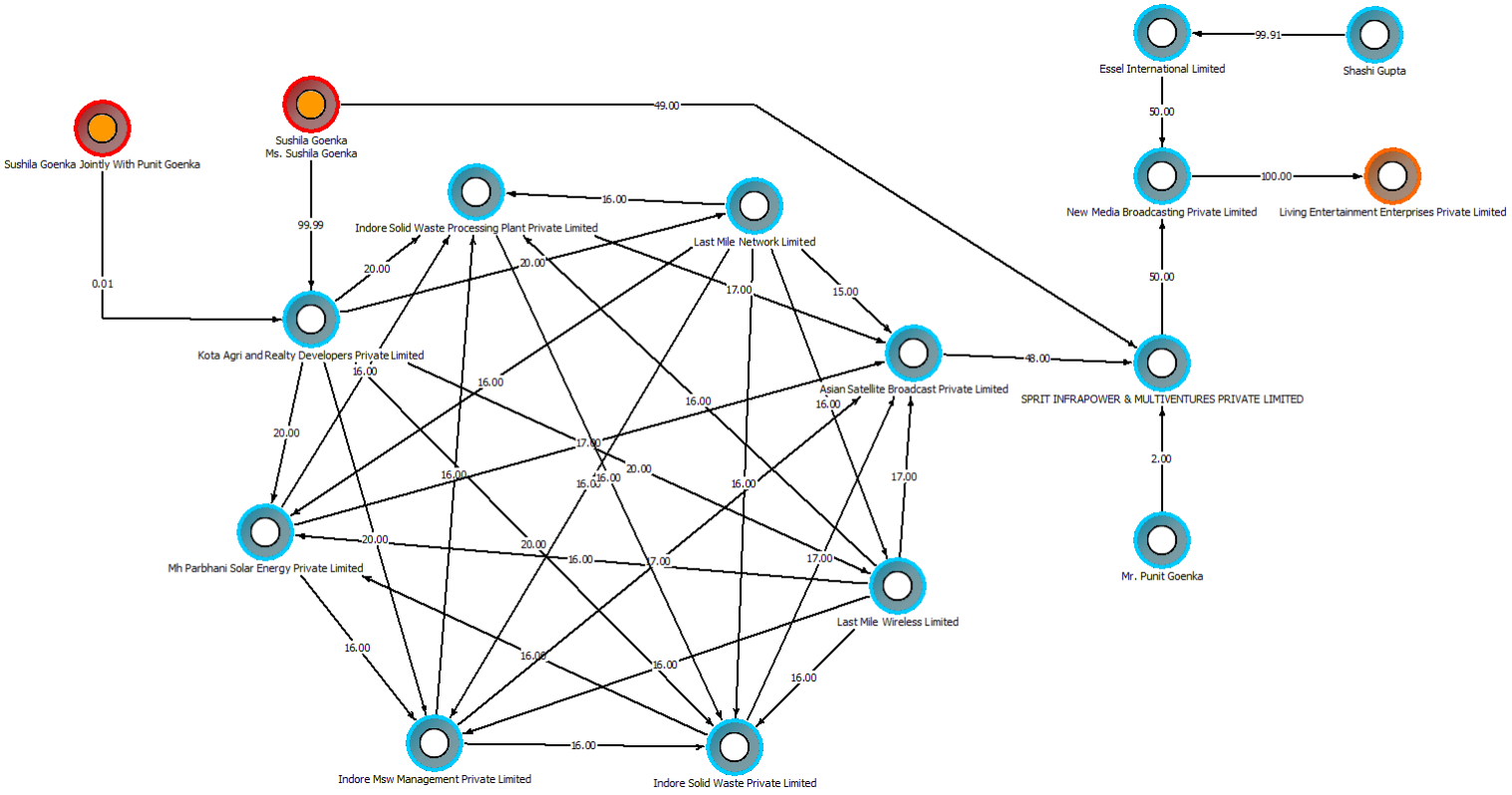
41.2.3.3. There are also other circumstances which show that why the agreements alone are not sufficient to lead credence to Entity No. 2's submissions. With respect to Living Entertainment Enterprises Pvt. Ltd., it is noted that on September 26, 2019, ZEEL made a payment of INR 8.35 crore to Living Entertainment Enterprises Pvt. Ltd. If ZEEL had already been informed on September 18, 2019 that INR 17.4 crore of ZEEL's funds had been erroneously credited to Living Entertainment Enterprises Pvt. Ltd., it is baffling to understand why ZEEL would have

paid an amount of INR 8.35 crore to Living Entertainment Enterprises Pvt. Ltd. before receiving INR 17.1 crore which were due to it.

41.2.3.4. Surprisingly, on September 27, 2019 even after Living Entertainment Enterprises Pvt. Ltd. received the additional amount of INR 8.35 crore from ZEEL, it used these funds to make a payment of INR 8.35 crore to Khoobsurat Infra Private Limited (another Promoter company) instead of first repaying ZEEL, whose money (INR 17.1 crore) it had erroneously received two months ago in July 2019.

41.2.3.5. It is noted from the records that Entity No. 2 and Ms. Sushila Goenka together control 50% shareholding of Living Entertainment Enterprises Pvt. Ltd. The remaining 50% shareholding is held by Essel International Limited, a Mauritius based entity which has been declared as part of the Essel Group in the Scheme of Arrangement for Merger of ZEEL with Sony Group. The web of intricate connections of shareholding of Living Entertainment Enterprises Pvt. Ltd., as noted from the publicly filed documents by Living Entertainment Enterprises Pvt. Ltd. is shown in the chart below and is also annexed as **Annexure - B** of this Order:

Figure No. 2



Incidently, I note that Mr. Anil Abasaheb Chougule was a Professional Director in Living Entertainment Enterprises Pvt. Ltd. during the aforementioned period. Mr. Anil Abasaheb Chougule and Mr. Punit Goenka had previously worked together in various companies of Essel Group viz., Agrani Infrastructure Works Private Limited (2013-14) Kolar & Ramgiri Gold Mining Private Limited (2013-14), etc., wherein Mr. Anil Abasaheb Chougule worked under Mr. Punit Goenka as a Professional Director. Thus, *prima facie* it can be said that Entity No. 2 exercised considerable influence over Living Entertainment Enterprises Pvt. Ltd.

41.2.3.6. With respect to Essel Business Excellence Services Pvt. Ltd., it is noted that on September 26, 2019, ZEEL made a payment of INR 9 crore to Essel Business Excellence Services Pvt. Ltd. If ZEEL had already been informed on September 18, 2019 that INR 23 crore of ZEEL's funds had been erroneously credited to Essel Business Excellence Services Pvt. Ltd., it is again baffling to understand why ZEEL would have paid an

amount of INR 9 crore to Essel Business Excellence Services Pvt. Ltd. before receiving INR 23 crore which were due to it.

41.2.3.7. Surprisingly, on September 27, 2019 even after Essel Business Excellence Services Pvt. Ltd. received the additional amount of INR 9 crore from ZEEL, it used these funds to make a payment of INR 9 crore to Sprit Infrapower & Multiventures Pvt. Ltd. (another Promoter company) instead of first repaying ZEEL, whose money (INR 23 crore) had been erroneously received by Essel Business Excellence Services Pvt. Ltd., two months ago in July 2019.

41.2.3.8. Vide letter dated September 18, 2019, Essel Business Excellence Services Pvt. Ltd. stated that it shall return the proceeds adjusted by YBL against ZEEL's fixed deposit, i.e. INR 23 crore through cheque no. 417609 dated September 30, 2019. Interestingly, though the cheque was meant to be dated September 30, 2019, ZEEL only received credit for the amount of INR 23 crore on October 10, 2019. Pertinently, on the same day, i.e., October 10, 2019, Essel Business Excellence Services Pvt. Ltd. received INR 23 crore from Sprit Infrapower & Multiventures Pvt. Ltd.

41.2.3.9. In view of the aforesaid discussions, it can be seen that there are enough and more red flags with respect to the transactions of Living Entertainment Enterprises Pvt. Ltd. and Essel Business Excellence Services Pvt. Ltd. including their strong connection with Essel Group that support a *prima facie* observation that the circular transactions are non-genuine.

41.2.3.10. With respect to the agreements submitted for fund transfer with Pen India Ltd., it is noted that two kinds of agreements were made. The first one was for making two Hindi language films (agreement was made in July- August 2019) which was shelved (due to Covid) to enter into a fresh agreement for Remake Rights. There are few details which are missing from Entity's submissions such as what steps were taken between August 2019 to March 2020, how much work under the first agreement was completed, when was the strategic call taken to obtain

the Remake Rights, what were the correspondences with Pen India Ltd. regarding the same and when did the said correspondences started, any correspondences to show that the amount paid under the first agreement would be adjusted under the second agreement, etc. Moreover, the two credit notes submitted by Entity for the transaction on September 30, 2019 show that it was for INR 72.57 crore whereas the impugned transfer is for INR 71.34 crore. Furthermore, vide letter dated July 23, 2023, Entity No. 2 has submitted that the payment of INR 71.34 crore has been made by Zee Studios Ltd. to Pen India Ltd. against the invoice (A2/2019-20) dated September 30, 2019 raised by Pen India Ltd. However, the invoice is not shared by Entity No. 2. Further, GST filings submitted by Entity No. 2 vide email dated August 8, 2023 do not indicate such a transaction against the said invoice. In the entire FY 2019-20 and FY 2020-21, the said invoice number is not filed with GST as per the submissions made by Entity No. 2. The non-filing of the GST of this invoice generated by Pen India Ltd. on the identified transactions cast doubt on the genuineness of the transaction itself. It is further noted that Pen India Ltd. has transferred these funds to Zigtraka Media Solutions Pvt. Ltd. on the next day at around 2:20 pm. It may be noted that these funds immediately got circulated through a number of conduit entities and reached ZEEL by around 4:30 PM on the same day (October 1, 2019). In the process the fund travelled through 12 conduits to reach ZEEL.

41.2.3.11. Thus, the aforesaid discussion shows that though Entity No. 2 has submitted certain documents, the same *prima facie* does not establish that the fund transfer was pursuant to the agreement as certain details / information are missing to establish the whole chain of transactions between ZEEL and Pen India Ltd. including the fact that the funds were immediately moved through layers so as to reach ZEEL within a day. Therefore, at this stage, I am unable to accept the submission of Entity No. 2.

41.2.3.12. With respect to the agreement submitted for fund transfer with Kyoorius Communications Pvt. Ltd., it is noted from Entity No. 2's submission that ZEEL had earlier collaborated with Kyoorius Communications Pvt. Ltd. and had again decided to collaborate with it for 5 events prior to March 2020. However, due to Covid, ZEEL renegotiated with Kyoorius Communications Pvt. Ltd. From the submission of the Entity No. 2, it is noted that neither any proof of ZEEL's earlier contact with Kyoorius Communications Pvt. Ltd. has been submitted by him nor any correspondences have been submitted by him to show that when and for what the initial contact was made with it. Similarly, no correspondences with respect to renegotiation have been submitted by Entity No. 2. Further, it is stated in the agreement that payment will be made subsequent to the performance of all services by Kyoorius Communications Pvt. Ltd. to the satisfaction of ZEEL. Hence, the agreement is contradictory to the claim by ZEEL with respect to payment of INR 41.16 crore made to Kyoorius Communications Pvt. Ltd. is advance payment. Kyoorius Communications Pvt. Ltd. was supposed to receive the payment after performance of all services and to the satisfaction of ZEEL. In the instant matter, the payment were made even before the agreement is made contrary to the clauses of the agreement and the agreement is silent about the advance receipt of the entire amount.

41.2.3.13. Interestingly, it is noted that the impugned fund transfer for INR 41.16 crore was done on October 9, 2019. Prior to receipt of the said funds from ZEEL, Kyoorius Communications Pvt. Ltd. had only INR 3 lakh in its HDFC Bank account. Post receipt of the fund, within 2 days, it transfers INR 40 crore to Datalink Multi Trading Pvt. Ltd. which itself had INR 96,836/- in its IDBI Bank account. Datalink Multi Trading Pvt. Ltd. further transfers INR 23 crore to other conduit entities the same day to ultimately reach one of the Promoters of ZEEL that transferred INR 23 crore to Essel Business Excellence Services Pvt. Ltd., one of the Associate Entities, which is exactly the same amount owed by it to ZEEL.

41.2.3.14. The aforesaid discussions shows that though Kyoorius Communications Pvt. Ltd. has submitted some documents but the same does not corroborate the submission of Entity No. 2 especially in light of the subsequent fund transfers and account balance of the recipients. Hence, currently I am not inclined to accept the agreement as submitted by Entity No. 2.

41.2.3.15. With respect to Zee Akaash News Pvt. Ltd., it is noted Zee Akaash News Pvt. Ltd. is a wholly owned subsidiary of another listed company of Essel Group viz. ZEE Media Corporation Limited, which is owned by the same Promoter Family. The aforesaid when seen along with the pattern which shows that the flow of funds from Zee Akaash News Pvt. Ltd., has mirrored the fund transfers in other 5 instances in terms of time taken for fund transfers across layer of companies and time taken to complete the entire fund transaction, on a preponderance of probability basis, *prima facie* cannot be a coincidence. Therefore, at this stage the submission of the Entity cannot be accepted on its face value.

41.2.3.16. Similarly the submission of Entity No. 2 that he does not have access to the records of Dish Infra Services Pvt. Ld. and hence cannot comment on the fund transfer done by it, cannot be accepted at this stage as the flow of funds from the said entity has also followed the same pattern as has been observed in respect of the other fund flows noticed in the matter. In the given facts and circumstances of the matter, considering the commonality in the fund flow pattern with the other 5 instances as discussed in the *Interim Order,* involvement of common conduit entities including the involvement of Churu Enterprises LLP which is *prima facie* controlled by the Entities, I am unable to accept the submission of Entity No. 2 at this stage.

41.3. Entity No. 2 has submitted that payment by ZEEL has been made for valuable consideration and subsequent utilisation of funds by entities to repay does not constitute diversion of funds. In this regard, I have already noted in preceding paragraphs that though Entity No. 2 has made certain submissions regarding the

genuineness of the fund transactions, however, it does not demonstrate the complete chain of events or provides the whole information. Further, there have been instances which shows that ZEEL had transferred funds to entities that already owed money to it. Subsequently that particular entity further transferred money to other Promoter companies instead of paying back to ZEEL. Thus, neither the action of ZEEL nor the actions of the related parties to whom ZEEL had transferred funds makes any rational sense and thus cannot be accepted as genuine. Moreover, the digital footprint of the subsequent utilisation of the funds by the other parties shows that the funds after passing through multiple layers have *prima facie* reached one of the Promoter companies of ZEEL to be finally landing in the bank account of ZEEL after passing one last time through the Associate Entities' bank account. Thus, *prima facie* the fund transfers show that the funds received by ZEEL from the Associate Entities actually belonged to ZEEL / other listed entities and subsidiaries belonging to the listed companies of Essel Group, and not to those Associate Entities. However, the fixed deposit of INR 200 crore of ZEEL was liquidated by YBL towards the dues of the Associate Entities. The same *prima facie* constitutes diversion of funds and a loss to ZEEL/ other listed entities and subsidiaries belonging to the Essel Group.

41.4. With respect to Entity No. 2's submission that he is not in control of day-to-day transactions of the related parties, I note that in the instant matter, *prima facie,* a scheme was employed to wipe off the debt of the seven Associate Entities against the fixed deposit of INR 200 crore of ZEEL. It is an admitted fact that the conduit entities and the seven Associate Entities are part of Essel Group, of which the Entities along with their family members are an integral part. As already discussed, the submissions of Entity No. 2, in the given facts and circumstances of the case, fall short of explaining the genuineness of the initial transaction executed by ZEEL or subsidiaries belonging to Essel Group. Moreover, the subsequent fund transactions of the related parties have several red flags, as discussed above.

41.5. Then there is involvement of other companies belonging to Essel Group in the fund transactions namely, Khoobsurat Infra Pvt. Ltd., Sprit Infrapower & Multiventures Pvt. Ltd., Pan India Infraprojects Pvt. Ltd., Churu Enterprises LLP, etc. There are also

certain set of conduit entities, which are common across fund transactions. Therefore, it can be seen *prima facie* that in the scheme which was employed to benefit the seven Associate Entities and ultimately the Entities No. 1 and 2, who are integral part of the Essel Group, various Essel Group companies have come together to materialize the scheme, be it the source companies or the initial recipients of the funds or the companies who are involved just prior to final transfer to ZEEL. Thus, *prima facie,* various companies of Essel Group had their part to play in the scheme and it would be a very simplistic way of looking at the various circumstances surrounding the fund transfers even if for a moment, one were to accept that Entity No. 2 was not in charge of the day to day affairs of the related companies of ZEEL.

41.6. Similarly, the submission of Entity No. 2 that he cannot be asked to explain the transactions beyond the first instance and those with whom he is not connected, is devoid of merit on the following grounds. As noted above, the explanation furnished by Entity No. 2 for the first transaction is not satisfactory in the given facts and circumstances of the case. Further, it would be incorrect to state that he is not connected with the subsequent companies that are involved in the fund transfers. I have noted in preceding paragraphs that not only one of the Promoter of ZEEL, Sprit Infrapower & Multiventures Pvt. Ltd. was involved in almost all of the transactions but also there were other companies / entities belonging to Essel Group which were involved in the fund transfers at one stage or the other, namely Khoobsurat Infra Pvt. Ltd., Pan India Infraprojects Pvt. Ltd., Churu Enterprises LLP, Zee Akaash News Pvt. Ltd., and Dish Infra Services Pvt. Ltd. It is one thing to say that he is not on the Board of Management of such companies and it is completely other thing to say that he is not connected with the said companies. One of the features of the scheme was to mask the fund transfers. To that effect, various companies belonging to Essel Group and a set of common conduits played their part by helping in layering the transactions. Thus, when seen holistically, each company knew what it was doing as evinced from their low bank balance and immediate transfer of funds. As observed in the *Interim Order,* the *prima facie* scheme was employed for the benefit of the seven Associate Entities and through them Entities No. 1 and 2 benefitted. Further, on a preponderance of probability basis, it is difficult to attribute the commonality in flow of funds across 6 different chains and the involvement of

companies and / or body corporates connected with the Entities. Therefore, at this stage I am not inclined to give benefit of doubt to Entity No. 2 that he was not aware of the scheme just because he was not on the Board of the said companies and / or body corporates.

41.7. With respect to exercise of control by Entity No. 2 on the companies / body corporates which were part of the layered transactions, I note that Churu Enterprises LLP and Sprit Infrapower & Multiventures Pvt. Ltd. were the entities which had directly transferred money to the Associate Entities prior to the latter transferring it to ZEEL, in all the instances that were identified in the *Interim Order* (except 1 instance where it was indirectly done by Sprit Infrapower & Multiventures Pvt. Ltd.). It has already been noted in the preceding paragraphs that Ms. Sushila Devi Goenka along with her son Mr. Punit Goenka controls 89% partnership interest in Churu Enterprises LLP. It is seen from the publicly available documents that Mr. Ashok Balvantrai Sanghavi is a Professional Director in Cyquator Media Services Private Limited (Promoter entity of ZEEL) from January 25, 2019 onwards as also the Designated Partner in Churu Enterprises LLP. Being the professional Director in the Promoter entity, Mr. Ashok Balvantrai Singhavi is required to report to the Promoter i.e. Mr. Punit Goenka. Further, he is also a Director/ Partner in the following companies, that are identified as part of Essel Group as mentioned in the table below:

Table No. 7

Company/LLP name	Date of Appointment	Cessation Date	Designation
Asian Satellite Broadcast Private Limited	24/09/2013	16/02/2016	Director (Professional)
Churu Enterprises LLP	01/04/2015	-	Designated Partner
Cyquator Media Services Private Limited	25/01/2019	-	Director (Professional)
Essel Corporate LLP	26/03/2018	-	Designated Partner
Essel Corporate Resources Private Limited	24/09/2013	24/04/2023	Director (Professional)
Essel Finance Capstar Advisory Limited	23/06/2008	02/04/2014	Director
Essel Housing And Infrastructure Development Private Limited	14/12/2015	14/02/2018	Director (Professional)

Company/LLP name	Date of Appointment	Cessation Date	Designation
Living Entertainment Enterprises Private Limited	02/11/2019	-	Director (Professional)
New Media Broadcasting Private Limited	16/05/2018	-	Director (Professional)
Pan India Network Infravest Limited	25/04/2005	16/03/2009	Director
Pan India Network Limited	17/03/2009	-	Director (Independent)
Sprit Infrapower & Multiventures Private Limited	20/06/2012	24/09/2013	Additional Director (Professional)

The table above shows the relationship of Mr. Ashok Balvantrai Singhavi as a Professional Director / Independent Director / Designated Partner in many of the Promoter controlled entities including Sprit Infrapower & Multiventures Private Limited, Essel Corporate Resources Private Limited, New Media Broadcasting Private Limited and Living Entertainment Enterprises Private Limited to name a few, mostly as a Professional Director.

Further, Mr. Vipin Choud*hary* was a Designated Partner in Churu Enterprises LLP at the relevant time, as noted from publicly available documents. The list of some of his directorships during the aforementioned period is given below:

Table No. 8

Company/LLP Name	Appointment at Current Designation on	Cessation Date	Designation
Essel Corporate LLP	01/07/2019	-	Designated Partner
Essel Finance Advisors And Managers LLP	26/11/2021	-	Body Corporate As Designated Partner
Essel Finance Capstar Advisory LLP	09/12/2021	-	Designated Partner
Essel Finance Management LLP	23/12/2021	-	Body Corporate As Designated Partner
Essel Finance Portfolio Managers LLP	23/12/2021	-	Designated Partner
Essel Finance Wealth Zone LLP	26/11/2021	-	Designated Partner
New Media Broadcasting Private Limited	27/09/2019	-	Director (Professional)
Pan India Network Limited	30/09/2017	20/08/2019	Director (Professional)
Shirpur Gold Refinery Limited	14/11/2018	31/10/2019	Nominee Director (Promoter)

Company/LLP Name	Appointment at Current Designation on	Cessation Date	Designation
Sprit Infrapower & Multiventures Private Limited	30/09/2019	-	Director (Professional)
Sprit Sports Private Limited	30/09/2019	-	Director (Professional)
Sri Gayatri Educational Services Private Limited	16/09/2021	-	Director (Professional)
Subhash Chandra Foundation	30/11/2021	-	Director (Professional)

The table above indicate the relationship of Mr. Vipin Choudhary as a Professional Director/ Nominee Director / Promoter in many of the Promoter controlled entities.

In view of the above, it can be *prima facie* held that Mr. Ashok Balvantrai Singhavi and Mr. Vipin Choudhary in their capacity as Professional Director(s) would be taking instructions from the Promoters of the companies belonging to Essel Group. Thus, it can be *prima facie* held that Entity No. 2 did exercise control over Churu Enterprises LLP.

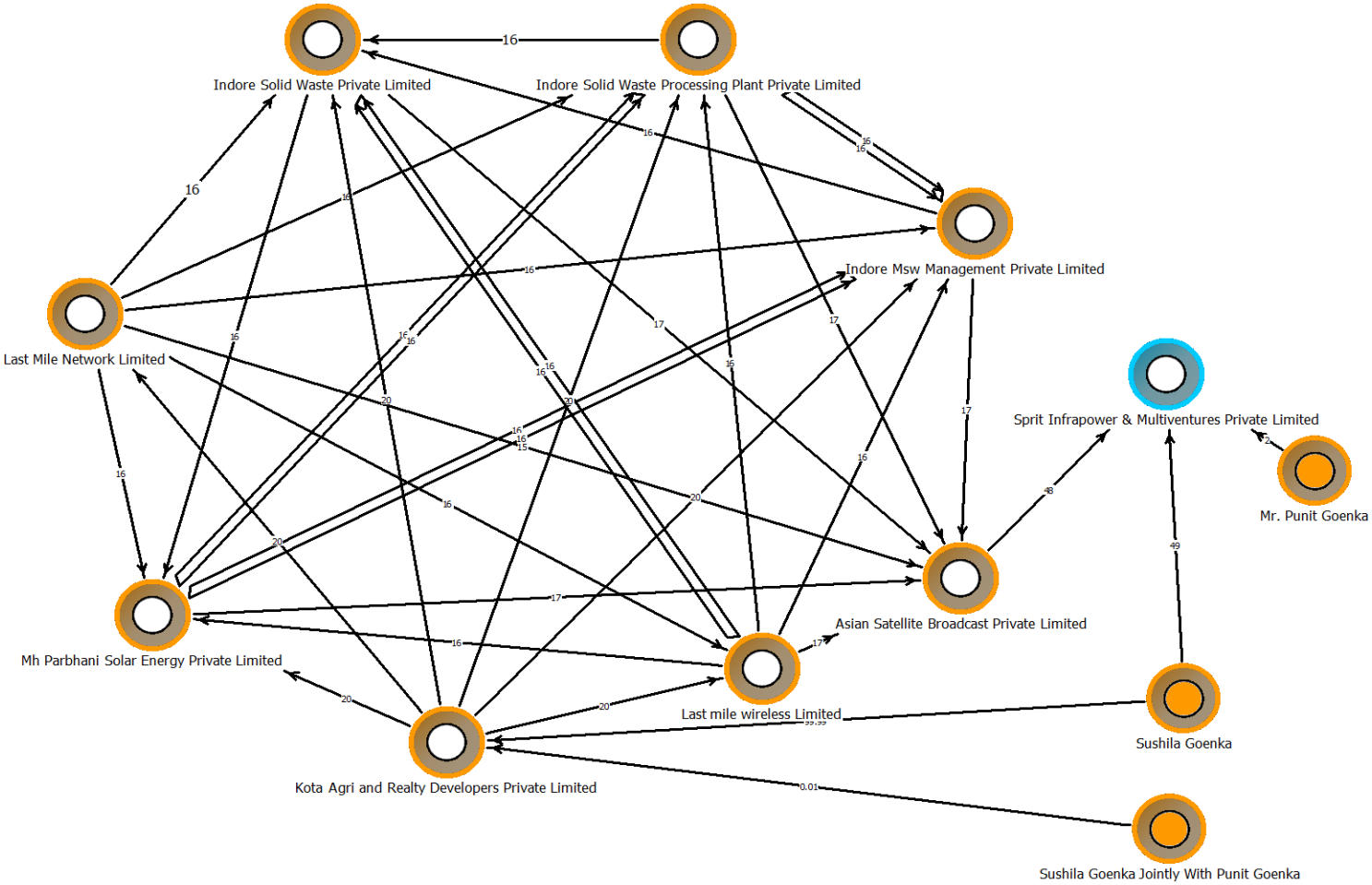
Similarly, with respect to control of Entity No. 2 over Sprit Infrapower & Multiventures Private Limited, which was the other company involved in direct / indirect fund transfer to the Associate Entities, following is noted:
The shareholding structure of Sprit Infrapower & Multiventures Private Limited, as noted from publicly available materials, is detailed below.

Table No. 9

Entity	Shareholder	%
Sprit Infrapower & Multiventures Private Limited	Ms. Sushila Goenka	49
	Asian Satellite Broadcast Private Limited	48
	Mr. Punit Goenka	2

The web of intricate connections of shareholding of Sprit Infrapower & Multiventures Private Limited is pictorially shown below and is also attached as **Annexure – C** of this Order:

Figure No. 3



From the above, it is seen that Ms. Sushila Goenka and Mr. Punit Goenka hold 51% directly in Sprit Infrapower & Multiventures Private Limited and indirectly hold 48% through Kota Agri and Realty Developers Pvt. Limited, MH Parbhani Solar Energy Pvt. Limited, Last Mile Network Limited, Indore Solid Waste Private Limited, Indore Solid Waste Processing Plant Private Limited and Indore MSW Management Private Limited.

Moreover, Mr Vipin Choudhary, who was a Designated Partner in Churu Enterprises LLP at the relevant time, was the Director in the Sprit Infrapower & Multiventures Private Limited at the relevant time. The same further *prima facie* establishes Mr. Punit Goenka's influence on the entity.

41.8. The submission of Entity No. 2 that he has not benefitted from the scheme is also without merit. It has been noted in preceding paragraphs that the seven Associate

Entities have benefited to the tune of INR 200 crore as their dues to YBL was set off against the fixed deposit of ZEEL. The seven Associate Entities had written to ZEEL on September 18, 2019 that it has come to their attention that a term deposit maintained by ZEEL with YBL was transferred to their current account maintained with YBL and that they would be returning the funds to ZEEL. From the material available on record and Entity No. 2's submissions, it is not clear at this stage as to how the seven Associate Entities gained the knowledge that the funds they have received in their current account from YBL belongs to ZEEL. Essel Green Mobility Ltd. has given an explanation but the said explanation is without any supporting evidence. Hence, cannot be accepted at face value. Further, if the funds were transferred by YBL to the account of seven Associate Entities erroneously by YBL, then why instead of transferring back the money to YBL, money was transferred to ZEEL. The aforesaid when seen along with the fact that there was hardly any money in the bank accounts of the Associate Entities prior to the transfer done by them to ZEEL and as per the available records, Entities No. 1 and 2 through various cross holdings, have shareholding in the seven Associate Entities, leads to a *prima facie* inference that it was Entity No. 2 along with Entity No. 1 who stands to benefit, if the debt is erased from the books of the seven Associate Entities.

In addition to the above, the benefit, which has accrued to Entity No. 2 (and even Entity No. 1 as the Chairman of the Essel Group of Companies) out of the scheme, also has to be assessed by considering as to what would have happened if YBL had not appropriated the said fixed deposit. It is an undisputed fact that the seven companies were 'related parties' of ZEEL. As has been *prima facie* found in the *Interim Order*, these seven companies were owned / controlled by the Promoter family of ZEEL, including Entity No. 1 and Entity No. 2. The fact that YBL (after consulting with the leadership team of Essel Group as noted from YBL's letter dated October 11, 2019) had to appropriate the fixed deposit towards the loans taken by the seven Associate Entities is indicative only of the fact that in the normal course, these seven Associate Entities had not been able to pay up their dues. Accordingly, had the fixed deposit not been appropriated, all these seven Associate Entities owned and controlled by the Promoter Family of ZEEL, would have defaulted. In the event of such a default, all these seven Associate Entities would have been exposed

to legal action from YBL in terms of the provisions of the Insolvency and Bankruptcy Code, 2016, Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, Recovery of Debts and Bankruptcy Act, 1993 and other applicable laws. Since, the seven Associate Entities were owned and controlled by the Promoter Family of ZEEL, any default on their part would also have exposed the Promoter Family's inability to pay debt of companies owned / controlled by them. The possible repercussions thereof would also have been the loss of trust of lenders in other Essel Group Companies. Clearly, the possible ramifications of the default by the seven Promoter owned / controlled companies would have been severe, and the same strengthens the *prima facie* findings that the Entities had orchestrated the scheme to conceal the default by the Associate Entities and the loss that had been caused to ZEEL / other listed entities and subsidiaries of the Essel Group.

41.9. The submission of Entity No. 2 that not in every instance the money, which was allegedly circulated, had come back to ZEEL, is untenable. It would be too naïve to believe that every time the money is circulated, only if the exact amount lands up in the bank account of the last recipient, only then can it be considered non-genuine. In any case, in the instant matter the money that has been received in the bank account of ZEEL, was almost the same amount that was circulated.

41.10. Entity No. 2 has submitted that he has taken appropriate measures to ensure that the *prima facie* observations in the *Interim Order* are not repeated in the future. I have perused the submissions of Entity No. 2 regarding the additional measures taken by Entity No. 2 for risk mitigation and they were as follows:

41.10.1. The said measures pertain to determination of procedural lapses in the fixed deposit matter.

41.10.2. It was noted by the Management Auditor that none of the authorised signatories of ZEEL had permitted YBL to appropriate the fixed deposit.

41.10.3. Further, guidelines for appointing authorised signatories of banking and investment transactions were verified by the Management Auditor.

41.10.4. Moreover, Management auditor also confirmed the receipt of funds from the Borrower Entities. Lastly, all the fixed deposits of ZEEL were withdrawn to be invested in liquid funds.

The aforesaid measures which have been undertaken by Entity No. 2 are based on the premise that the fixed deposit of ZEEL was appropriated by YBL erroneously / on account of a procedural lapse. The same is however different from the *prima facie* observations recorded in the *Interim Order*. As brought out in the *Interim Order*, the instant matter pertains to issuance of LoC by Entity No. 1 and on the strength of the said LoC, YBL had liquidated the fixed deposit of INR 200 crore. Even YBL's letter dated October 11, 2019 to ZEEL refers to the said LoC. The letter also states *"... various possibilities including appropriation of fixed deposit number xxxxxxxxxxx0070 by the Bank, was duly discussed with the leadership team of Essel Group Companies. Thus, we are surprised and shocked to read the contents of your letter dated September 30, 2019. Hence, you along with Essel group Companies should stop feigning ignorance about the appropriations of the said fixed deposit by the Bank."*

The above letter of YBL makes a clear assertion that it was in possession of the LoC given by Entity No. 1 and post discussion with the "*Leadership Team of Essel Group Companies*", it had proceeded to liquidate the fixed deposit. No future correspondences in this regard have been submitted by the Entities to show that Entity No. 2 / ZEEL had objected to the averment made by YBL in its letter. In any case, the measure that was taken by Entity No. 2 i.e., to strengthen the procedural requirement for investment / liquidating fixed deposit, is not the source from where the situation discussed in the *Interim Order* has emanated. The primary reason leading to the *Interim Order* is the issuance of LoCs to Banks for dues of companies related to Promoters / Promoter Group creating an encumbrance on the assets of a listed company. It is a matter of record that not only Entity No. 1 but also Entity No. 2 has issued LoCs on multiple occasions. For instance, a LoC dated March 27, 2017 was issued by Entity No. 2 to RBL Bank Ltd. for the facility of INR 225 crore provided by the Bank to Living Entertainment Enterprises Pvt. Ltd. Considering the above, I find that the measures taken by Entity No. 2 do not address the issues of

encumbrances created on assets of ZEEL, etc., which have been highlighted in the *Interim Order*.

Further, the measure pertaining to the Management Auditor confirming receipt of funds from Borrower entities is incomplete as has been detailed in the *Interim Order* as well as in this Order. Moreover, the step taken to invest only in liquid funds does not shield the assets of ZEEL from the encumbrances, if any, which have been created on its assets for the benefit of companies related to Promoters.

In view of the aforesaid discussion, it is clear that the measures that Entity No. 2 has taken, are not oriented towards addressing the issue at hand which is mainly about corporate governance and adoption of robust controls while dealing with related parties on an off the books.

From the minutes of the Board Meeting and Audit Committee meeting dated October 17, 2019, it is not clear whether the issuance of LoC by Entity No. 1 was brought to the notice of the Board Members or the Audit Committee members. Further, it is also not clear whether the letter dated October 11, 2019 of YBL wherein it had referred to the LoC and had stated to have spoken to the leadership team of Essel Group Companies before liquidating the fixed deposit, was brought to the notice of the Board Members or discussed in the Board meeting. The only documented disclosure of the issuance of LoC by Entity No. 1 is in the Annual Report, which is much later in time. The Entities have not submitted any material to show that the aforesaid fact was disclosed to the Company or its shareholders prior to publication of the Annual Report. Even after reading the legal opinion dated October 15, 2019 obtained by ZEEL from external legal expert, it can be inferred that LoC and YBL's letter dated October 11, 2019 were not disclosed to the legal expert before seeking the opinion on liquidation of fixed deposit by YBL.

Entity No. 2, in his submissions, has not clarified whether the investigation which was carried out by Grant Thornton India LLP under the instructions of the Audit Committee of ZEEL, specifically dealt with issue regarding issuance of LoC by the promoters and the appropriation of fixed deposit by YBL and whether it had examined the receipt of funds by ZEEL from the Associate Entities. Upon perusal of the report submitted by Grant Thornton India LLP, it is noted that it dealt with Film

Advances and Related Party Transactions other than with subsidiaries exceeding INR 230 million. Without prejudice to the above, even if it is accepted for the time being that the transactions with Associate Entities were treated by ZEEL as well as Grant Thornton India LLP as related party transactions, because of the criteria of INR 230 million, only dealings with 2 of the Associate Entities could have been examined and that is also not clear whether it was examined. Thus, before any reliance can be placed on the aforesaid report, it is necessary to ascertain whether the report has examined the issue at hand. The same necessitates further investigation in the matter.

In light of the discussion above, it can be seen that when the Entities were part of the management of ZEEL, the steps taken by Entity No. 2 / ZEEL were not relevant or adequate to address the issue at hand. Further, the legal opinion that was sought by ZEEL was *prima facie* without disclosing all the material facts related to the fixed deposit. Even the investigation which was ordered by ZEEL and the subsequent report made thereof is *prima facie* not complete in all aspects.

Thus, it is seen that Entity No. 2 who was the MD and CEO of ZEEL at the relevant time as well as till the passing of the *Interim Order* is fundamentally conflicted and has *prima facie* not been diligent in taking steps to adequately address the issue at hand. This is not in the best interests of the Company or its shareholders. He is *prima facie* involved in the scheme, which puts his interest in conflict with the interests of the Company. Moreover, when ZEEL believed that the fixed deposit was misappropriated by YBL, then it is not clear from the available records/submissions, why in spite of the Audit Committee directing to take immediate action against YBL, ZEEL entered into a protracted discussion with YBL. It is not that both the actions are mutually exclusive. The same *prima facie* casts doubt on the exercise of independent judgment by Entity No. 2. Therefore, in the given facts and circumstances of the case the measures taken by Entity No. 2 do not seem to be adequate and were not geared towards addressing the root cause of the problem.

42. As has been discussed in detail in the preceding paragraphs, the facts and circumstances *prima facie* show that a well-crafted scheme was orchestrated to

conceal the default to YBL by the Associate Entities of the Essel Group and to conceal the fact that the funds that were owed by the seven Associate Companies to ZEEL were actually not paid and only a false impression was given that the six Associate Entities, from their own sources, had made good the loss that was caused to ZEEL on account of the appropriation of the fixed deposit of INR 200 crore by YBL under the LoC issued by Entity No. 1 during the tenure of Entity No. 2, and both the Entities being part of the Promoter Group and beneficiary of the Associate Entities.

43. With reference to the submission of the Entities that the burden of proof has not been discharged by SEBI as there is no evidence to establish that the impugned fund transactions are bogus transactions, I note that the *Interim Order* has unequivocally brought out that the fund transactions were layered and circular in nature and were carried out amongst companies / body corporates of the Essel Group. Further, the transactions were executed within very short intervals over a span of a couple of days and that this pattern was executed not just in 1 or 2 cases, but in as many as 6 cases. The possibility of this being a coincidence is too low to be leniently considered. Thus, the aforesaid circumstances on a preponderance of probability basis, show that the fund transactions were *prima facie* non-genuine. Hence, the submissions of the Entities in this regard are untenable.

Role of Entities

44. While the elaborate discussion in the preceding paragraphs brings out the role played by Entity No. 1 and Entity No. 2 in the scheme, I find it appropriate to, in summary, delineate my findings in respect of the role played by them in the whole scheme.

45. Entity No. 1 had issued the LoC to YBL on September 4, 2018 for the amount of INR 200 crore, which *prima facie* is the root cause for the designing of the alleged scheme. By the next day, a fixed deposit of INR 200 crore was created by ZEEL. As has been *prima facie* held in preceding paragraphs, the said LoC cannot be considered as having been issued by Entity No. 1 in his personal capacity. At the time, when the fixed deposit was created and when the fixed deposit was appropriated by YBL in July 2019, Entity No. 1 was the Non-Executive Director of ZEEL and the Chairman of ZEEL and Essel Group. Upon appropriation, he neither took any corrective steps nor brought the fact of appropriation to the notice of the Board of Directors of ZEEL. YBL, in its

letter dated October 11, 2019, with respect to the appropriation of the fixed deposit, had made a reference to the LoC issued by Entity No. 1 and had also stated that it had discussed with the *leadership team* of Essel Group various possibilities including appropriation of the fixed deposit towards the dues of the Associate Entities. Thus, *prima facie*, not only the LoC given by Entity No. 1 gave YBL the *comfort* to liquidate the fixed deposit but YBL actually did so with the knowledge of ZEEL's leadership. Entity No. 1 has been leading the Essel Group for more than 30 years. He was a part of the Board of ZEEL during the period when the entire scheme was designed and implemented.

It has already been detailed in earlier paragraphs that various companies / body corporates belonging to Essel Group were involved in obscuring the fund trail of the impugned transactions. The said companies / body corporates being private limited companies and LLPs and the fact that majority shareholding in them was held by Entity No. 1's wife, sons and other family members, *prima facie* shows that Entity No. 1 had considerable control / influence over them. Further, it was during his tenure on the Board of ZEEL that the financials of ZEEL were misrepresented and the wrong announcements were made to the Stock Exchanges, as has been brought out in the *Interim Order*.

In view of the aforesaid, it can be *prima facie* inferred that Entity No. 1 was not only involved from the very beginning but looking at the companies / body corporates involved in the scheme and the similar pattern of fund flow across 6 different chains, which have been described earlier. Considering the above, I have no option but to conclude that Entity No. 1 was actively involved in the design and execution of the scheme, which has been found *prima facie* to be in violation of the securities laws.

46. As regards the role of Entity No. 2, I note that at the relevant time i.e., during the period when the entire scheme was designed and implemented, he was the MD & CEO of ZEEL. As per his own submission, ZEEL had renewed the fixed deposit on June 12, 2019 with maturity on September 10, 2019. However, the said fixed deposit was liquidated on July 24, 2019 i.e., within 1.5 months of renewal. Considering that he was in-charge of day-to-day functioning of ZEEL, such untimely liquidation of a fixed deposit of INR 200 crore would have come to his attention as in any case an intimation

of liquidation would have been sent by YBL to ZEEL. Further, as already noted as per YBL's letter dated October 11, 2019, YBL was in talks with the *leadership team* of Essel Group regarding dues of the Associate Entities wherein the possibility of liquidation was also discussed. Entity No. 2 along with Entity No. 1 has been spearheading Essel Group for decades. Thus, it would not be incorrect to infer that he was aware of the liquidation of the fixed deposit by YBL even before receiving letter from the Associate Entities on September 18, 2019.

It has been discussed in preceding paragraphs that the measures that were taken by Entity No. 2 were focussed the procedural aspects of operation of a fixed deposit account and creation of fixed deposits. However, the genesis of the current issue was the LoC issued by Entity No. 1, i.e., Entity No. 2's father. Further, the examination of related party transactions that was carried out by Grant Thornton India LLP, had a minimum value of INR 23 crore which left out the majority of the transactions under consideration in this matter, if at all the Associate Entities were examined. Thus, it can be seen that *prima facie* no effective steps have been taken by Entity No. 2 to address the issue at hand in spite of being directed by the Audit Committee to do so. Further, it was during his tenure in ZEEL as MD & CEO that the financials of ZEEL were misrepresented and the wrong announcements were made to the Stock Exchanges, as has been brought out in the *Interim Order*.

ZEEL is involved in 3 of the impugned transactions which *prima facie* cannot be regarded as genuine transactions in light of the fact that Essel Group companies / body corporates were involved in layering the fund transactions are these are under the influence / control of Entity No. 2 by virtue of his and his family members' shareholding in them. This *prima facie* shows that he had to be involved in the designing and execution of the scheme, which has been found *prima facie* to be in violation of the securities laws. The same also addresses the submission of Entity No. 2 that even though he had not issued the LoC, *prima facie* he was also instrumental in orchestrating the scheme.

47. The above findings as regards the role of Entity No. 2 clearly bring out his role in the *prima facie* scheme and also address the argument of Entity No. 2 that SEBI has only cherry picked facts to establish his role in the scheme.

***Prima facie* Violations of LODR Regulations:**

48. The next issue that arises for consideration is whether the Entities have refuted the *prima facie* findings of the *Interim Order* that the disclosure made in the Annual Report of FY 2019-20 regarding receipt of funds from the six Associate Entities was a mis-statement / misrepresentation.

49. It will be appropriate here to quote the relevant portion of LODR Regulations.

LODR Regulations

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

…

(f) Responsibilities of the board of directors:

The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(1)Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

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

(ii) Key functions of the board of directors

…

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

…

(iii) Other responsibilities:

…

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

(7) The board of directors shall exercise objective independent judgement on corporate affairs.

50. The Company, at note 45 on page 228 of its Annual Report for FY 2019-20, has stated that *"The Company had a fixed deposit with a bank of ₹2,000 million. During the month of July 2019, the bank had prematurely and unilaterally adjusted the amount of the fixed deposit, which was maturing on 10 September 2019, against the dues of certain non-group related parties (promoter group entities). Subsequently, these related parties have paid the said amount to the Company along with the interest thereon amounting to ₹25 million. The Audit Committee had advised the management to investigate the matter fully and take appropriate action. The report of the findings was presented to the Audit Committee and taken on record that there were no exceptions."*

51. As noted in preceding paragraphs, the Entities have not been able to refute the *prima facie* findings that the impugned fund transactions were non-genuine in nature. Consequently, the disclosure made by ZEEL in its Annual Report for the FY 2019-20 was incorrect. Further, since the Entities have *prima facie* benefitted at the expense of ZEEL and its public shareholders and were part of the Board of Directors of ZEEL at the relevant point of time, it can be *prima facie* held that the Entities have not acted in good faith, with due diligence and care and in the best interest of ZEEL and its shareholders. Furthermore, since the interests of the Entities were in direct conflict with the interests of ZEEL and its shareholders, it can be *prima facie* held that they have not exercised their independent judgment while dealing with the issue of liquidation of fixed deposit by YBL. Accordingly, they have also *prima facie* failed to maintain high ethical standards as Board members of ZEEL. Moreover, they had also not disclosed to the Board of Directors that they had a material interest in the transaction with the Associate Entities that was directly affecting ZEEL. Hence, their conduct *prima facie* failed to meet the expectations of operational transparency to stakeholders of ZEEL.

52. In view of the above, I find that *prima facie* the above described conduct of the Entities is in violation of regulations 4 (2)(f)(i)(1), 4 (2)(f)(i)(2), 4 (2)(f)(ii)(7), 4 (2)(f)(iii)(3), 4 (2)(f)(iii)(6) and 4 (2)(f)(iii)(7) of the LODR Regulations.

***Prima Facie* Violations of PFUTP Regulations:**

53. Another important issue that merits consideration is whether the Entities have been able to refute with cogent material the observation in the *Interim Order* that *prima facie* their actions have led to the violation of the provisions of PFUTP Regulations. The provisions which are *prima facie* observed to have been violated by the Entities are as follows:

PFUTP Regulations

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

…

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves any of the following:—

…

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

54. It has been submitted by the Entities that the charging provisions of PFUTP Regulations mentioned in the *Interim Order* are erroneous as there is no material pertaining to dealing in securities or inducement to deal in securities or impact on price or volume. In this regard, I would like to refer to the order of the Hon'ble Supreme Court of India in the matter of *N Narayanan* vs. *Adjudicating Officer, SEBI* decided on April 26, 2013, wherein it was held as follows:

"Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'...

... Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers."

Further, the Hon'ble Supreme Court of India in the matter of *SEBI* vs. *Kanaiyalal Baldevbhai Patel and Ors.* decided on September 20, 2017, while dealing with the definition of 'dealing in securities', prior to its amendment on February 1, 2019, held as follows:

"*The definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term ' to mean' has been changed to 'includes', which prima facie indicates that the definition is broad. Moreover, the inclusion of term 'otherwise transacting' itself provides an internal evidence for being broadly worded...*"

The Hon'ble Court while dealing with the definition of 'fraud' held as follows:

"The definition of 'fraud' under Clause (c) of Regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of term 'fraud'."

55. Drawing strength from the aforesaid Orders of the Hon'ble Supreme Court of India, I note that it has been *prima facie* found in the instant matter that the Entities have used manipulative and deceptive devices as they have tried to obscure the fund trails to show that the six Associate Entities have actually used their own funds to pay ZEEL. The said manipulative and deceptive device was *prima facie* adopted by the Entities to demonstrate that ZEEL had not incurred any loss by the liquidation of its fixed deposit by YBL. Consequently, *prima facie* incorrect information was disclosed to the market, which would have hampered the investors in having an informed opinion before dealing in the securities of ZEEL. Thus, the actions of the Entities have led to

market abuse which is *prima facie* not in consonance with the provisions of regulation 4(1) of PFUTP Regulations.

56. Further, as noted by the Hon'ble Supreme Court of India in the matter of *Kanaiyalal Baldevbhai Patel* (supra), the definition of fraud under PFUTP Regulations has two parts, one catch all provision and other specific instances. Thus, I note that the specific instances mentioned in the regulation 2 (1)(c)(1) to 2 (1)(c)(9) of PFUTP Regulations would also constitute act of fraud even if there is no inducement to deal in securities, which is the requirement of the first part of the definition of fraud under regulation 2 (1)(c) of PFUTP Regulations. Therefore, any act of *knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment* or *a suggestion as to a fact which is not true by one who does not believe it to be true* or *an active concealment of a fact by a person having knowledge or belief of the fact* or *deceptive behavior by a person depriving another of informed consent or full participation* or *a false statement made without reasonable ground for believing it to be true*, will also constitute fraud under PFUTP Regulations. In the instant matter, it has been *prima facie* found that the Entities had employed a scheme to show that the transfer of funds from six Associate Entities to ZEEL was genuine. Thus, *prima facie* the Entities have actively concealed a fact and have made a suggestion that ZEEL has suffered no loss in spite of having the knowledge that it is not true. Hence, their acts *prima facie* constitute fraud under PFUTP Regulations and are *prima facie* in violation of regulation 4(1) of PFUTP Regulations.

57. Moreover, post amendment i.e., February 1, 2019, the definition of *dealing in securities* has been modified to include any act, *which may be knowingly designed to influence the decision of investors in securities*. In the instant matter, the Entities were *prima facie* involved in the scheme, which served two purposes; the *first* was to portray that ZEEL had incurred no loss due to the liquidation of its fixed deposit of INR 200 crore by YBL in respect of dues of the seven Associate Entities, which are related parties of ZEEL and *second*, the apparent "repayment" by the Associate Entities showed that the Entities, who along with their family members are the majority shareholders of the said Associate Entities, which are privately held, have not benefitted from the liquidation of the fixed deposit of ZEEL as the Associate Entities have "repaid" ZEEL

from their own sources. However, *prima facie* finding of the *Interim Order* shows contrary to the aforesaid observation, which the Entities have not been able to refute in the extant proceedings. Therefore, *prima facie,* it can be reasonably inferred that the whole scheme was orchestrated to prevent the shareholders as well as the investors in general from knowing that the Entities have benefitted at the expense of ZEEL. This implies that the management of ZEEL is not working in the best interests of the Company or its public shareholders. The same will certainly influence the decision of the investors to invest in ZEEL's securities. Hence, the submission that there was no '*dealing in securities*' by the Entities is devoid of merit.

58. The Entities had also made the corporate announcement on October 17, 2019 that the related parties have reimbursed the amount of INR 200 crore to ZEEL. As noted above, *prima facie* the related parties had not reimbursed ZEEL from their own sources, rather the funds were routed by ZEEL, its subsidiaries and other listed companies of Essel Group companies. Further, there is no material available on record to show that *prima facie* the information that the appropriation of ZEEL's fixed deposit by YBL was *inter alia* triggered by LoC issued by Entity No. 1, was made known to the shareholders prior to its publication in the Annual Report. Hence, it is *prima facie* held that the Entities have published false and incomplete information which has misled the shareholders and investors. Therefore, *prima facie* the act of the Entities qualifies as an unfair trade practice. It will be relevant here to quote from the Order of the Hon'ble SAT in the matter of *V Natarajan* vs. *SEBI* decided on June 29, 2011 wherein it was held as follows:

> "*These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities.*"

59. The *prima facie* actions of the Entities, as discussed above, have in effect resulted in diversion of assets of ZEEL to the benefit of the seven Associate Entities and ultimately to the benefit of the members of the promoter family of ZEEL (including the Entities), who own / control the seven Associate Entities. The same is squarely covered under the Explanation of regulation 4(1) of PFUTP Regulations. In view of the above, the Entities are *prima facie* in violation of regulation 4(1) of PFUTP Regulations.

60. Entities have also submitted that regulation 4(2)(f) of PFUTP Regulations uses the word 'knowingly' which means it is mandatory to establish *mens rea* to bring the violation of the said provision. On a perusal of the said provision, I do not concur with the submission made by the Entities. It has been held by the Hon'ble Supreme Court of India in the matter of *Kanaiyalal Baldevbhai Patel* (supra) that to attract the rigor of regulations 3 and 4 of the 2003 Regulations, *mens rea* is not an indispensable requirement and the correct test is one of preponderance of probabilities. Further, the word 'knowingly' in the aforesaid regulation would mean that the person had the knowledge or that he was aware about a particular information that was not true but still went ahead and published it. I have already discussed in preceding paragraphs that the Entities had *prima facie* orchestrated the scheme and hence they were aware that the corporate announcement that was made / published with respect to the reimbursement done by the Associate Entities was false, but still, knowingly, they caused the announcement to be published. Hence, their actions have *prima facie* violated regulation 4(2)(f) of PFUTP Regulations.

61. Further, the submission of the Entities that the violations of PFUTP Regulations noted in the *Interim Order* are general in nature and do not make out any specific case, is also untenable for the reason that the *Interim Order* has specifically mentioned that *prima facie* there is diversion of funds of ZEEL and misrepresentation in the Annual Report of ZEEL. Both the *prima facie* violations fall within the ambit of regulations 4 (1) and 4(2) (f) of PFUTP Regulations. Accordingly, I reject the submission of the Entities in this regard.

Other Legal Submissions made by the Entities:

62. Before dealing with the submission of the Entities with respect to the interim measures taken against them, I would like to address certain other legal submissions made by the Entities before me.

63. Entities have argued that SEBI, under Sections 11(1), 11(4) and 11B (1) of the SEBI Act, does not have the power to restrict/refrain any person to act/continue as a Director or KMP in any listed company or its subsidiaries and that the provisions of Companies Act, 2013 govern the appointment and removal of Director of a company. It has also been argued that the power of SEBI to regulate the affairs of companies under the Companies Act, 2013 is only confined in Chapter III, IV and Section 127 of the Companies Act, 2013 that deal with '*Prospectus And Allotment of Securities*', '*Share Capital and Debentures*' and '*Punishment for failure to distribute dividends',* respectively. Further, since SEBI is neither a Court nor a Tribunal for the purposes of the Companies Act, it cannot disqualify a person from acting as a Director. Moreover, SEBI does not have any explicit powers under Section 11 (4) of SEBI Act to restrain any person from acting as a Director.

64. With regard to the above submissions, I note that under Section 11(1) of SEBI Act, SEBI has been, in no uncertain terms, mandated to protect the interest of the investors, by such *measures* as it thinks fit. While the term "measure" has not been defined in the SEBI Act, a plain reading of the provisions makes it clear that the SEBI Act confers discretion on SEBI to take measures as it deems fit to achieve the objectives of the SEBI Act. Now the question arises as to whether such measures have any limitations. It goes without saying that SEBI has to regulate a multi-faceted and dynamic market and in such a market, varied situations, scenarios and exigencies may arise. As and when new issues arise, they call for new solutions and measures. Thus, SEBI may take any course of action or measure that is best suited to address a particular situation. Therefore, any measure taken by SEBI to address a particular situation, so long as it is towards achieving the objective of investor protection and development of and regulation of the securities market, would be within the authority of law. Though Section 11 (4) of SEBI Act lists out certain specific measures that can be taken either pending investigation or inquiry or on completion of such

investigation or inquiry, its provisions are without prejudice to the provisions contained in sub-sections (1), (2), (2A), and (3) of Section 11 and Section 11B of SEBI Act. Thus, the provisions of Section 11 (4) of SEBI Act are in addition to the measures that can be taken under Sections 11(1) and 11B of SEBI Act, rather than circumscribing the scope of measures that can be taken under Sections 11 (1) and 11B of SEBI Act. In this context, it will be appropriate to quote the Order of Hon'ble SAT in the matter of *Karvy Stock Broking Ltd.* vs. *SEBI* decided on January 8, 2007. In the said matter it was held as follows:

"*The primary function and duty of the Board is to protect the interests of the investors in securities and to regulate the securities market. The preamble to the Act which declares the dominant purpose also makes it clear that the Board has been established for this purpose. This duty is performed under sections 11 and 11B of the Act which are the very soul and heart of it. These two sections are the very reason for the existence of the Board.*

… As already observed, section 11 is the very heart and soul of the Act. This provision has been periodically amended and today it is substantially different from what it was at its inception in the year 1992. The scope of the power has been considerably widened. ***The introduction of sub section (4) in section 11 and various other provisions like section 11B is indicative of the legislative intent. These provisions are meant to arm the Board with authority so as to be able to effectively exercise power and achieve the declared objectives of the Act****. It is clear that a common thread runs through the various provisions of the Act and that is to empower the Board to take preventive as well as punitive measures so as to protect the investor and to promote the securities market. "* (Emphasis supplied).

From the above findings of Hon'ble SAT, it can be discerned that Sections 11 (1), 11(4) and 11B of SEBI Act are enabling provisions which have been enacted to empower SEBI to achieve its primary objective. Such enabling provisions must be construed so as to serve the purpose for which they were enacted. Hence, all the three sections have to be read harmoniously to advance the object for which SEBI as a market Regulator came into existence rather than adopting an interpretation that would preclude the possibility of the Regulator exercising its power to remedy a mischief in a multi-faceted and dynamic domain.

65. In the above background which discusses the "measures" that SEBI can take under Sections 11(1), 11(4) and 11B (1) of the SEBI Act, I now proceed to examine the submissions of the Entities.

66. In the given facts and circumstances of the matter, it was considered, in the *Interim Order* that the apt measure would be, if the Entity No. 1 who was at the helm of the affairs of ZEEL for a significant period of time and Entity No. 2 who is the only Executive Director of ZEEL, be kept away from the affairs of ZEEL, till further orders from SEBI, pending outcome of the ongoing investigation. Such measure was taken under the provisions of Sections 11(1), 11(4) and 11B (1) of the SEBI Act and not under any provisions of Companies Act, 2013. It is a well settled position that the directions under Sections 11 and 11B of SEBI Act can be issued to any person associated with the securities market including any KMP or Board members of a listed company. Therefore, to submit that considering SEBI's power under Companies Act, 2013 is well defined and limited to few aspects of a listed company, SEBI cannot issue directions against KMPs or a Director of a listed company, would be erroneous. There have been a multitude of cases viz., *V. Natarajan* vs. *SEBI* decided on June 29, 2011, *Parsoli Corporation et. al.* vs. *SEBI* decided on August 8, 2011, *Mr. Girishchandra Mukundram Baluni* vs. *SEBI and Other Connected Appeals* decided on July 17, 2022, etc. wherein Hon'ble SAT had upheld the orders of SEBI where SEBI had directed individuals / Directors to be not associated with any listed company. In any case, I note that it was never SEBI's case that the directions have been issued under the provisions of Companies Act, 2013. The directions against the Entities were issued under SEBI Act as they are the persons who are /were associated with the securities market in their capacity of individuals who were at the helm of affairs of ZEEL and / or were part of its management and there is a *prima facie* finding of violation of provisions of securities laws against them.

67. Further, the submission of the Entities that SEBI, not being a Court or Tribunal under Companies Act, 2013, does not have the power to direct any person to be a Director, is devoid of merit. Entities are attempting to equate the conditions which can disqualify a person to be appointed as a Director of any company with enforcement measure taken by SEBI in the instant matter to restrain the Entities, *inter alia,* from

being part of a listed company when *prima facie* certain violations have been noted against them under securities laws. To state that they are one and the same thing is a flawed reading of the relevant provisions of SEBI Act and Companies Act, 2013. Disqualification for appointment as a Director of any company, goes to the root of the eligibility and attributes of an individual to qualify to be member of any Board of Management of the company. Whereas, a temporary restraint, as in the instant matter to serve as a Director of any listed company, neither disqualifies the individual to become a Director in any unlisted / private company nor does it give a verdict that henceforth that individual can never be appointed as a Director in any listed company. In other words, temporary restraint on an individual to be a Director of listed companies does not question whether the individual is 'eligible' to be appointed on the Board of Management of a listed company. It is a specific measure taken by SEBI to keep the particular individual away from the listed companies as there are findings against the individual which show, *prima facie,* violation of securities laws and the said restraint serves to protect the interest of the investors and to protect the integrity of the securities market.

68. In view of the above discussion, it is clear that SEBI has in past issued directions restraining entities from being associated with listed companies as Directors / KMPs, and the same have also been consistently upheld by Hon'ble SAT. If the submission of the Entities is accepted, the same would lead to a situation wherein the power that can be exercised by SEBI while passing final orders, cannot be exercised as an interim measure. To put it differently, what the Entities are submitting is that the power of SEBI to restrain an individual from being part of a listed company does not flow from the provisions of the SEBI Act but, it is contingent on the stage of proceedings, which in my view, is an erroneous understanding of the provisions of the SEBI Act.

69. Regarding SEBI not having power under Section 11(4) to restrain any person from acting as a Director, I have already discussed in preceding paragraphs that Sections 11(1), 11(4) and 11B (1) of the SEBI Act have to be harmoniously read and the aforesaid enabling provisions together confer powers upon SEBI of wide amplitude to take any measure that would serve the primary objective of protecting the interest of investors and that would promote development of and regulation of the securities

market. I do not agree with the narrow interpretation of Section 11(4) of SEBI Act submitted by the Entities as it is not only an isolated reading of the said provision but is also against the object of the SEBI Act as laid out in its preamble.

70. Entity No. 2 has submitted that he has taken remedial and preventive steps to ensure that no misappropriation of assets of ZEEL would take place in future and therefore the direction issued in the *Interim Order* is punitive in nature which is beyond the scope of Section 11B of the SEBI Act. In this regard, I find it relevant to draw reference to the findings highlighting the inadequacy and inappropriateness of the measures taken by Entity No. 2 to address the issues that have been highlighted in the *Interim Order.* Further, I also note that the interim measures taken by SEBI in the present case are preventive in nature (elaborated in subsequent paragraphs) as the interests of Entities are factually in direct conflict with the interests of the public shareholders and the company and the interim measure is aimed at ensuring that a fair and transparent investigation is conducted in respect of the financials of ZEEL so that the interests of public shareholders and ZEEL are not adversely affected.

71. One cannot lose sight of the fact that SEBI has been vested with statutory powers to regulate the securities market and regulating the securities market includes regulation through prohibitory as well as mandatory orders, with the objective of ensuring investors' protection and to promote the development of the securities market. Here, it will be appropriate to refer to the provisions of Sections 11 and 11B of the SEBI Act. A plain reading of the language of the sections itself shows that SEBI has to protect the interests of the investors in securities and has to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section (2) of Section 11, and in due discharge of this duty cast upon SEBI as a part of its statutory function, it has been vested with the powers to issue directions under Section 11B. As held in *Bank of Baroda Ltd.* vs. *SEBI* (2000) 26 SCL 532 by Hon'ble SAT, *"Section 11 and 11B are inter-connected and co-extensive as both these sections are mainly focused on investor protection"*. At this juncture, it would also be relevant to quote the order of Hon'ble Bombay High Court in the matter of *Anand Rathi and Ors.* vs. *SEBI* decided on May 2, 2001, to stress upon

the scope and ambit of SEBI's jurisdiction. Hon'ble Bombay High Court in the said matter held as follows:

"While considering the question as to whether the SEBI has authority of law under Sections 11 and 11B to order interim suspension, we have to bear in mind that SEBI is invested with statutory powers to regulate securities market with the object of ensuring investors protection, orderly and healthy growth of securities market so as to make SEBI's control, over the capital market to be effective and meaningful. It cannot be gainsaid that SEBI has to regulate speculative market and in case of speculative market varied situations may arise and looking into the exigencies and requirements, it has been entrusted with the duty and functions to take such measures as it thinks fit. Section 11B is an enabling provision enacted to empower the SEBI Board to regulate securities market in order to protect the interest of the investors. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted. It is well settled principle of statutory construction that it is the duty of the Court to further Parliament's aim of providing of a remedy for the mischief against which enactment is directed and the Court should prefer construction which will suppress the mischief and advance remedy and avoid evasions for the continuance of the mischief."

72. In the light of the aforesaid legal position and the orders of the Hon'ble Bombay High Court / SAT, one has to examine the nature of the interim directions issued against the Entities.

73. The facts and circumstances of the case demonstrate that there exists a *prima facie* case against the Entities. Further, the tone and tenor of the *Interim Order* shows that the directions have been issued as an interim measure to enable smooth progress of the investigation in the matter. It is noted from the *prima facie* findings that Entity No. 2 is not only the beneficiary of the *prima facie* scheme employed in the matter but is the only Executive Director in ZEEL and is the MD & CEO of ZEEL. Thus, he is involved in the day-to-day management of ZEEL and he exercises control over the affairs of ZEEL. It is also a matter of record that ZEEL has not taken any action against him for the lapses noted with respect to the liquidation of fixed deposit of INR 200 crore by YBL, in spite of resignation of two Board members (Non-Independent Director and Independent Director of ZEEL) citing the said lapses. Similar is the case of Entity No.

1 against whom also, at the relevant time and till date, no action has been taken by ZEEL in spite of his LoC being the trigger for liquidation of fixed deposit of ZEEL by YBL. The aforesaid circumstances show that the Entities are individuals in accordance with whose advice, directions or instructions the management of ZEEL is accustomed to act. Therefore, on the one hand there is the administrative authority / influence that the Entities have over ZEEL and on the other hand lies the interests of the shareholders and investors in ZEEL including adherence to the principles of corporate governance norms, which is essential for the integrity of the securities market. In the given facts and circumstances of the case, the scales are tilted in the favour of shareholders and investors in ZEEL and the overall development of the securities market rather than the Entities. Seen in the aforesaid light the interim measure taken vide the *Interim Order* is only preventive in nature.

74. It has been noted from the *prima facie* findings of the *Interim Order* that the Entities have not been transparent in their dealings with either ZEEL or with the securities market. Entity No. 1 had issued a LoC to YBL without informing the Board of Management of ZEEL. It was also not informed to the market participants via a corporate announcement. Further, the fixed deposit was liquidated by YBL on July 24, 2019. The intimation for the same would have been provided to ZEEL. From the letter of YBL dated October 11, 2019, it is noted that YBL had discussed with the *leadership team* of Essel Group various possibilities including appropriation of the fixed deposit for the dues of companies belonging to Essel Group. Entities are an integral part of Essel Group and from the aforesaid circumstances, it can be inferred that they had the knowledge about the steps that may be taken by YBL. Also, based on undisputed facts, it is noted that on September 18, 2019, the seven Associate Entities had written to ZEEL that it has come to their knowledge that proceeds in relation to a term deposit of ZEEL have been transferred to their current account and that they would be returning the said proceeds. Being MD & CEO, Entity No. 2 did not take any action on the information provided by the seven borrower entities of either inquiring with YBL (till September 30, 2019) nor did he inform the Board of Directors (till October 17, 2019) about the same. Consequently, no disclosures were made at that time regarding the giving of LoC to YBL or regarding the liquidation of the fixed deposit of INR 200 crore by YBL, to the shareholders or to the market in general. The

edifice of Indian securities market is built on disclosure and transparency in the dealings of the listed companies and intermediaries in the securities market. The aforesaid actions of the Entities are against the basic tenets of the securities market and are certainly not in the interest of the investors and the integrity of the securities market. In other words, the mischief that SEBI is trying to address by the interim measures is that ZEEL as a listed company should be strictly adhering to the principles of transparency and good corporate norms rather than being in *prima facie* violation of the same. Therefore, the interim measures taken in the *Interim Order* are preventive in nature as they seek to prevent obstructions in fair and transparent investigation.

75. I am of the opinion that in the given facts and circumstances of the matter, the measures which are interim in nature, satisfy the test of preventive measure as the *prima facie* actions of the Entities and their involvement / influence over the affairs of ZEEL subverts the interest of the shareholders and investors including the integrity of the securities market. Therefore, I find that the interim measures, pending investigation serve the purpose of protecting and safeguarding the market and the interest of the investors and hence, cannot be said to be punitive in nature.

Submissions w.r.t. interim measures being contrary to principles of Constitution of India and the doctrine of proportionality:

76. Having noted as above, I now proceed to deal with the arguments of the Entities in respect of principles of Constitutional Law and the doctrine of proportionality.

77. The Entities have contended that the directions in the *Interim Order* have deprived them of their fundamental right to carry on business under Article 19(1)(g) of the Constitution of India, 1950.

78. In this regard, it is noted that Article 19 (1) (g) of the Constitution of India, 1950 guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business. However, at the same time, it is pertinent to mention that this freedom is not uncontrolled as clause (6) of Article 19 of the Constitution of India, 1950 authorizes legislation, which imposes reasonable restrictions on this right in the interest of general public. Here, I would like to refer to the Order of the Hon'ble

High Court of Judicature for Rajasthan at Jaipur, in the matter of *M/S Punit Mercantile Pvt. Ltd.* vs. *Union of India and others* decided on October 29, 2010. In the said matter, the Hon'ble High Court while appreciating the whole scheme of SEBI Act, has *inter alia* held as follows:

"*…Perusal of aforesaid paras shows that the SEBI Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors...*

…Looking to the object of the SEBI Act, provisions of Sections 11(4) & 11(B) of the SEBI Act imposes a reasonable restriction in conformity to Clause (6) of Article 19 of the Constitution of India. This is in the larger interest of the investors and to achieve the objects of SEBI Act. In the light of aforesaid, we do not find that provisions of Sections 11(4) & 11(B) of the SEBI Act are violative of Article 19(1)(g) of the Constitution of India. Accordingly, challenge to the constitutional validity of the aforesaid provisions is not accepted. Thus, the provisions are held to be intra-vires…"

79. It is a matter of common knowledge that SEBI Act is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In the present case, the *Interim Order* has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. In the *Interim Order* as well as in this Order, the conduct of the Entities has been found to be *prima facie* fraudulent. As noted above, a temporary restraint has been imposed on the Entities, which is aimed at preventing obstructions in fair and transparent investigation in the matter. In view of the above, I find that the restraint order against the Entities is not in violation of Article 19(1)(g) of the Constitution of India, 1950 as contended by them.

80. The Entities have also argued that doctrine of proportionality is now well established in jurisprudence and is a recognized facet of Article 14 of the Constitution of India, 1950 and the same has not been followed in the present case. In this regard, *firstly,* it is understood from the observations of Hon'ble SAT in the matter of *Zenith Steel Pipes and Industries Limited* vs. *SEBI,* that the doctrine of proportionately becomes

applicable when *punitive* measures are taken against the aggrieved entity. From the observations of Hon'ble SAT, quoted by Entity No. 2 in his reply, the following is noted:

"In matters relating to punitive measures the emphasis has shifted from the wednesbury principle of unreasonable to one of proportionality. A disproportionate punitive measure which does not commensurate with the offence would be violative of Article 14 of the Constitution of India."

81. In the instant case, as has been elaborated in earlier paragraphs, the measures taken against the Entities are *preventive* and not *punitive*. To reiterate, the *Interim Order* seeks to ensure that a fair and transparent investigation is conducted in respect of the financials of ZEEL so that the interests of public shareholders are not adversely affected. *Secondly,* without prejudice to the above, the directions are, in my view, proportionate to the purpose of ensuring an expeditious, fair and transparent investigation. I, therefore find that there is no violation of doctrine of proportionality or Article 14 of the Constitution of India, 1950.
82. Entities have submitted that it is well settled that a law that violates Article 21 of the Constitution of India, 1950 must conform to the five-pronged test of proportionality in order to pass muster. The five prongs are:
    82.1. A legitimate state aim;
    82.2. A rational nexus between the rights-infringing measure and the State aim;
    82.3. The rights infringing measure should be the least restrictive measure open to the State to achieve its goals;
    82.4. There should be a balance between the extent and severity of the infringement and the state aim;
    82.5. There should be provided sufficient safeguards against the possibility of abuse of the rights-infringing measure.
83. I now proceed to examine whether or not the directions issued in the *Interim Order* meet the said tests:
    83.1. *Legitimate state aim* – I have dealt at length in preceding paragraphs as to how the actions of the Entities while being part of the management of ZEEL have jeopardized the interests of the shareholders of ZEEL and have affected the integrity of the securities market including the confidence of the investors. SEBI has been cast with

the primary duty of protecting the interests of investors and to promote the development of and to regulate the securities market. Thus, in the given facts and circumstances of the case, at this stage of the proceedings, as an interim measure, directions were issued against the Entities in furtherance of the primary objective of SEBI.

83.2. *Rational nexus between the rights-infringing measure and the State aim* – The *prima facie* conduct of the Entities has shown that the Entities have prioritized their own interests above the interests of the public shareholders of ZEEL which constitute 96% of the shareholding of ZEEL. Moreover, several other LoCs given out by the Entities are being scrutinized by SEBI. Therefore, *prima facie* the conduct of the entities is not suitable for them to be part of a listed company as the repercussions of the wrong doing are not restricted to that particular listed company but reverberates across the securities market. On the other hand, SEBI has the primary duty to keep the securities market space safe and secure and build investor confidence. The aforesaid is important for the development of the securities market. Looking from the above perspective and considering that a free and fair investigation is imperative in the matter, one can see a reasonable nexus between the temporary restraint imposed on the Entities vis-à-vis the primary objective of SEBI.

83.3. *Rights infringing measure should be the least restrictive measure open to the State to achieve its goals* – To begin with, the directions are temporary in nature, pending final outcome of the matter. Further, there were several other measures which could have been taken against the Entities under the provisions of the securities laws. E.g., debarring the Entities from accessing the market or dealing in securities or being associated with securities market in any capacity including being associated with an intermediary, etc. However, in the given facts and circumstances of the case which had *prima facie* cast a doubt on the conduct of the Entities to be part of the management of a listed company, it was deemed appropriate that the temporary restraint be imposed on Entities.

83.4. *Balance should be there between the extent and severity of the infringement and the state aim* – The restriction that has been imposed upon Entity No. 1, seeks to only keep him away from exercising any influence over the management of ZEEL, which

is possible owing to his connection / relationship with the Promoters of ZEEL and also by virtue of his long association with ZEEL. The direction is aimed at ensuring a comprehensive investigation in the matter. With respect to Entity No. 2, the restriction has been imposed looking into the *prima facie* findings against him in the *Interim Order.* Not only he *prima facie* failed to disclose all the material developments with respect to appropriation of fixed deposit by YBL to the Board of Directors of ZEEL, but the subsequent measures taken by him did not address the issue at hand, nor was any effective investigation done to find the root cause of the problem. Further, the LoCs issued by him are also being examined by SEBI. Thus, when one sees holistically, the temporary restraint imposed on Entity No. 2 is proportionate to the malaise that SEBI is trying to remedy in the instant matter i.e. entities not adhering to basic principles of securities market and corporate governance norms.

83.5. *There should be provided sufficient safeguards against the possibility of abuse of the rights-infringing measure* – As discussed in preceding paragraphs, measures that SEBI can take are circumscribed by the objective for which SEBI has been set up. I have also discussed at length in earlier paragraphs as to how the measures taken by SEBI are preventive in nature and towards achieving the objective of SEBI Act. Thus, I find that the measures taken by SEBI are within the confines of SEBI Act.

84. In addition to the above, it has been contended by the Entities that since there is no violation of the PFUTP Regulations or the LODR Regulations by the Entities, there is no co-relation between the directions passed in the *Interim Order* and the alleged violations and the directions are excessive.

85. With regard to the above submission, I note that the *Interim Order* has given a specific finding that the actions of the Entities are in *prima facie* violation of PFUTP Regulations and LODR Regulations. In the instant proceedings also, the Entities have not been able to refute the *prima facie* findings of the *Interim Order*. Since there is a *prima facie* violation of the provisions of securities laws, it necessitated issuance of directions against the Entities. As discussed in the preceding paragraphs, SEBI under Sections 11(1) and 11B of SEBI Act can take any measure, which it deemed appropriate in the given facts and circumstances of the case, to achieve its object of

investor protection and promote the development of the securities market. It has been observed that the Entities have *prima facie* not met the expectations of operational transparency in their dealings with the Board of Directors of ZEEL as well as with the shareholders. Further, they have not made adequate and timely disclosures, rather the disclosures were made on a piecemeal and misleading manner. Moreover, their interests have put them in direct conflict with the interests of the Company and its shareholders. Thus, considering the overall conduct of the Entities and its impact on the integrity of the securities market and confidence of the investors, in general and ZEEL in particular, pending detailed investigation, the actions of the Entities did warrant the issuance of directions. Hence, I do not find any merit in the submission of the Entities in this regard.

Urgency for issuance of directions:

86. As discussed in the preceding paragraphs, after consideration of the observations recorded in the *Interim Order* and the submissions in that regard made by the Entities, there exists a *prima facie* case against the Entities. In this backdrop, I now proceed to address the submission made by the Entities that there was no urgency in the mater which warranted issuance of the directions vide the *Interim Order*.

87. The *prima facie* findings have shown that Entity No. 1 had issued LoC without the knowledge of the Board of Directors of ZEEL. It is on record that even Entity No. 2 had issued LoCs to Banks. Both the Entities have, as a matter of practice, issued LoCs to Banks to help the companies related to them. The said LoCs are being examined by SEBI. Further, as noted in the *Interim Order* both the Entities were involved in the *prima facie* scheme to benefit their Associate Entities at the expense of ZEEL and in the process they have misrepresented to the shareholders of ZEEL and have made false disclosures. Thus, the *prima facie* actions of the Entities are against the basic tenets of the securities market i.e., transparency in dealings and making sufficient disclosure.

88. In this backdrop, I note that every Managing Director or a Director or Chairman or member of the Board of a company owes a fiduciary duty towards the shareholders. Essentially, the position of a Director is founded on trust and confidence reposed in such person by the shareholders. In the present case, as discussed in the preceding

paragraphs, the conduct displayed by the Entities in managing the affairs of the listed company seriously jeopardizes the trust that the shareholders repose in the Chairman and Managing Director of a listed company. As noted, *prima facie,* the Entities were responsible for employment of the scheme, which has jeopardized not only the interests of 96% of ZEEL's shareholders but has also caused irreparable injury to the integrity of the market and confidence of the investors, in general. SEBI, as the securities market regulator, *inter alia*, seeks to protect the interest of the shareholders of listed companies. One such interest that SEBI has attempted to safeguard in this case is to take into account the trust deficit that has been caused on account of the conduct of the Entities described in the *Interim Order*. The directions issued vide the *Interim Order* also seek to reinstate the belief of the shareholders that affairs of a listed company have to be managed in accordance with law and SEBI as a regulator cannot allow such listed companies to be operated like sole proprietorships.

89. In the instant case, urgency of issuance of the interim directions is not to be assessed from the view point of the transactions *per se,* rather it is the egregious nature of the transactions (which came to SEBI's notice as explained in the *Interim Order*), which display a total disregard to the accountability of the Managing Director and Chief Executive Officer and the Chairman to the shareholders of a public listed company in which more than 96% shares are owned by the public. ZEEL's assets to the extent of INR 143.9 crore have been depleted on account of the transactions noticed in the *Interim Order prima facie* for the benefit of the related parties of the Entities. The interim directions seek to prevent the Entities from abusing their positions in respect of a public listed company in an unbridled manner, without bringing key issues to the notice of the Board and risking the assets of the listed company to the benefit of the private limited companies directly / indirectly controlled by them.

90. It is noted that under the leadership / control of the Entities, the affairs of ZEEL have not been carried out in the best interest of the shareholders and the company as such. In fact, to the contrary, the Entities have prima facie orchestrated the scheme to cover up the direct loss to ZEEL on account of the appropriation of the fixed deposits towards loans taken by Associate Entities.

91. It is seen that Entity No. 2 who was the MD & CEO of ZEEL at the relevant time as well as till the passing of the *Interim Order*, has *prima facie* not been diligent in taking steps to adequately address the issue at hand which is not in the best interests of the Company as well as its shareholders. Further, he is also *prima facie* involved in the scheme, which puts his interest in conflict with the interests of the Company. Similarly, Entity No. 1 who was part of the management of ZEEL *prima facie* did not take any effective steps to bring to light all the material facts of the matter to the Board of Directors of ZEEL. As noted, he is *prima facie* involved in the scheme, which puts him in conflict with the interests of the Company as well as the shareholders.

92. Fair investigation requires that all the relevant facts necessary for examination to arrive at the possible violations are before the investigating authority. In the instant matter, it is stated by the entities that after the resignation of the independent directors, internal examination into the appropriation of fixed deposit has happened and steps have been taken and appropriate updation has been made to the shareholders on this issue. What is important is to assess whether their internal examination has covered the entire facts of the issue or only selective aspects of the issue. In the Board discussions dated October 17, 2019 as reflected by the minutes dated November 25, 2019, the issuance of LOC, which was the trigger for the appropriation of the fixed deposit in the first place, appears to have not been discussed at all. Thereby, again the board was given selective information. The issue being highlighted before Board was fixed deposit appropriation rather than the LOC issuance by Entity No. 1 without the board approval triggering the appropriation of fixed deposit. In the corporate announcements dated October 17, 2019, the shareholders were again given the selective information. No information relating to LOC issuance by Entity No. 1 was disclosed to the shareholders. The issue of LOC issuance without the approval of the board was not even covered in examination by Grant Thornton that was appointed for internal review for matters including related party transactions. Only in the Annual Report dated August 26, 2020, a reference of the LOC is made stating that it was issued by Entity No. 1 in his personal capacity (and as I have found earlier, this could not have been the case). It is also noted that no objection was made during the discussion that YBL had with leadership team of ZEEL before invoking the LOC. No compliant was made or litigation was filed against YBL

challenging the invocation of LOC, if it was (as claimed) issued in Entity No. 1's personal capacity. The above only illustrates that selective information was shared with the board and the public while effective steps have not been taken against Entity No. 1 for not taking approval or informing the Board for giving a LOC that created encumbrance on the company's assets in his official capacity. It does not stand to reason as to why no effective step was taken against YBL by ZEEL, if ZEEL believed that the LOC was issued in his personal capacity by Entity No. 1. All these facts and circumstances go on to show that the continuance of the entities can result in them adversely exercising their influence over relevant entities to misrepresent or selectively disclose facts so as to misdirect the course of the investigation.

93. In consideration of the above, I find that the urgency shown by SEBI, in issuing the interim directions vide the Interim Order, was justified in the peculiar facts and circumstances involved in the matter.

Assessing whether the restraint imposed on the Entities needs to be continued:

94. In light of the above findings, I now proceed to examine the question whether the restraint imposed on the Entities needs to be continued considering the following parameters:
    (a) *Prima facie* case;
    (b) Irreparable injury;
    (c) Balance of convenience.

Prima facie case:

95. In view of what has been discussed hereinabove, I find that the Entities have not been able to refute the observations regarding *prima facie* violation of the provisions of securities laws contained in the *Interim Order.* In the foregoing paragraphs, I have determined that there exists a *prima facie* case against the Entities that they were involved in design and execution of the scheme whereby the seven Associate Entities were benefited directly, with the ultimate benefit accruing to the members of the promoter family of ZEEL including the Entities, at the cost of the funds belonging to the public listed companies i.e., ZEEL and other listed companies mentioned in the *Interim Order.* I have already discussed at length the various facets of the *prima facie*

case against the Entities and for the sake of brevity I draw reference to the previous paragraphs of this Order.

Irreparable injury:

96. From the viewpoint of the irreparable injury that is sought to be prevented by way of the continuance of the interim directions against the Entities, it becomes important to once again refer to the imminent harm that may be caused if the restraint imposed vide the Interim Order were to be revoked. As has been discussed in detail in earlier paragraphs, the conduct displayed by the Entities exhibits that their interests are directly in conflict with the shareholders of ZEEL since they have attempted to conceal the very fact of encumbrance over the assets of ZEEL and the loss that has been caused to ZEEL because of the circular and layered transactions masking the actual source of funds. While the Entities are on the Board of the companies under investigation, they can influence the direction and outcome of the investigation. The resultant irreparable loss that will be caused to the interests of shareholders would be that the true facts would never come to light. The whole purpose of the enforcement action taken by SEBI will also become infructuous. To reiterate, the same is inimical not only to the shareholders of the companies involved in the present matter, but also to the investors' trust in the securities market as a whole. Considering the above, I am of the view that in order prevent such an irreparable injury, the restraint imposed upon the Entities has to be continued.

Balance of convenience:

97. For the determination of urgency for issuance of interim directions, balance of convenience needs to be assessed before passing an ex-parte order, i.e. whether the interest of the investors or orderly development of the securities market outweighs the affected interest of the person against whom the interim directions are issued. The factors for determination of balance of convenience can be manifold in a case. Such factors may be competing with the factors which contribute to the existence of no-urgency. Each factor may have varying degrees of force for determination of urgency. The cumulative assessment of such factors would guide whether urgency or balance of convenience exists in a particular case. The essential principle for testing the

balance of convenience in the present case would be to test if the direction is confirmed, what would be the probable inconvenience to the Entities against whom such directions have been issued as a preventive measure in the interim vis a vis the inconvenience that would be caused to the investors and the market if the direction is not confirmed. In the given case in view of the prima facie finding of misrepresentation and siphoning of funds, not only the investors of ZEEL are affected but also market integrity as a whole and the investors' confidence in the market also get affected. On the other hand, the contrasting interest of the Entities has to be considered who have been temporarily restrained from holding the position of director / KMP in select companies. I find it important to reiterate here that in light of the egregious conduct on part of the Entities as brought out in the Interim Order, it is essential that a fair, transparent and expeditious investigation is conducted in the matter so as to protect the interest of public shareholders in listed companies. Considering the above, in my view, the balance of convenience lies in favor of continuance of the restraint against the Entities till the time the proceedings in the present matter are complete.

98. Considering the above parameters, and taking note of the fact that detailed investigation in the matter is ongoing. I am inclined to agree with the rationale that in order to carry out a fair and transparent investigation in the matter, it is essential that the Entities are kept away from ZEEL's helm of affairs so that they do not adversely exercise their influence over relevant entities to misdirect the course of the investigation.

99. In continuation with the above, I note that Entity No. 2 has made a submission that since SEBI is asking for documents from him at this stage even after passing of the *Interim Order*, the same shows that there was no urgency in passing of the *Interim Order.* With regard to the above, I note that the grounds for passing of the *Interim Order* have already been discussed in detail in the preceding paragraphs and the justification thereof is independent of the documents sought from the Entity No. 2. Further, the requirement of seeking documents from Entity No. 2 arose from the submissions made by him post the *Interim Order* and also that investigation in the matter is ongoing as has been mentioned in the *Interim Order.* The principles of

natural justice would require that the other side be given fair opportunity for bringing out all its submissions in full. In case of gaps in the submissions, SEBI can ask the Entities to furnish further information to substantiate their submissions. I, therefore, do not find merit in the submission of the Entity No. 2 in this regard and reject the same.

Summary of findings:

100. To summarize the acts of omissions and commission of the Entities mentioned in the *Interim Order* which have led to the *prima facie* violation of the provisions of PFUTP Regulations and LODR Regulations and my *prima facie* findings in that regard after consideration of the submissions made by the Entities, I note the following:

100.1. LoC "ensuring" availability of fixed deposit of at least INR 200 crore (with specific reference to ZEEL) with YBL was issued by Entity No. 1 on September 4, 2018. The same has been *prima facie* found to be issued not in his personal capacity but in his capacity as Chairman of Essel Group of which ZEEL is a flagship company.

100.2. By issuing the said LoC, Entity No. 1 effectively encumbered the assets of ZEEL to the extent of INR 200 crore. The said effective encumbrance became the reason for appropriation of the fixed deposit of INR 200 crore belonging to ZEEL by YBL.

100.3. Though the LoC was issued for the loan taken by Essel Green Mobility Ltd., YBL liquidated the fixed deposit of INR 200 crore towards the dues of seven Associate Entities which are related parties of ZEEL. Further, Entities No. 1 and 2 along with their immediate family members are the majority shareholders in the said seven Associate Entities.

100.4. As claimed by YBL in its letter dated October 11, 2019, it decided to adjust the fixed deposit towards dues of the seven Associated Entities after having discussed with the *leadership team* of Essel Group of companies. Both the Entities, being a part of the promoter family and the positions that they have held or are holding in various companies of the group, are integral to the *leadership team* of Essel Group of companies.

100.5. Thus, *prima facie*, not only the LoC given by Entity No. 1 gave YBL the *comfort* to lend against it, but also the comfort to appropriate the fixed deposit and YBL actually did so.

100.6. The factum of LoC was not disclosed to the Company or its shareholders prior to publication in the Annual Report.

100.7. ZEEL had renewed the fixed deposit on June 12, 2019 with maturity on September 10, 2019. However, the said fixed deposit was liquidated and appropriated on July 24, 2019 i.e., within 1.5 months of renewal. Such untimely liquidation of a fixed deposit of INR 200 crore would have come to the attention of the management of ZEEL especially Entity No. 2 who was in-charge of day-to-day functioning of ZEEL, as in any case an intimation of liquidation would have been sent by YBL to ZEEL. Thus, he was aware of the liquidation of the fixed deposit by YBL in July 2019 itself. However, no immediate steps were taken by Entity No. 2 to address the issue.

100.8. At the time, when the fixed deposit was created and when the fixed deposit was appropriated by YBL in July 2019, Entity No. 1 was the Non-Executive Director of ZEEL and the Chairman of Essel Group. Upon appropriation, he neither took any corrective steps nor brought the fact of his LOC or the appropriation to the notice of the Board of Directors of ZEEL.

100.9. On September 18, 2019, the seven Associate Entities, in identical language and through identical signatures, wrote to ZEEL that it has come to their knowledge that proceeds in relation to a term deposit of ZEEL have been transferred to their current account and that they would be returning the said proceeds.

100.10. The bank statement for the period September 26, 2019 to October 10, 2019 of the seven Associate Entities show that cumulatively they have transferred funds to the tune of INR 202.5 crore to ZEEL (INR 2.5 crore as claimed interest).

100.11. In order to show that the said Associate Entities have paid the amount equivalent to the sum which was appropriated by YBL from the aforesaid fixed deposit, funds were moved from ZEEL / its subsidiaries / other listed companies / subsidiaries of Essel Group, through several layers wherein a number of common conduit entities were used to mask the fund transfers including companies which were connected to the Entities No. 1 and 2 and their family members, to ensure that

sufficient funds became available with the Associate Entities to pay ZEEL. Thus, circular fund transfers were done to show receipt of funds by ZEEL.

100.12. The fact that YBL (after consulting with the leadership team of Essel Group as noted from YBL's letter dated October 11, 2019, which has not been disputed by the Entities) had to appropriate the fixed deposit towards the loans taken by the seven Associate Entities is indicative of the fact that in the normal course, these seven Associate Entities had not been able to pay up their dues. Accordingly, had the fixed deposit not been appropriated, these seven Associate Entities owned and controlled by the Promoter Family of ZEEL, would have defaulted. In the event of such a default, these seven Associate Entities would have been exposed to legal action from YBL in terms of the provisions of the Insolvency and Bankruptcy Code, 2016, Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, Recovery of Debts and Bankruptcy Act, 1993 and other applicable laws. Since, the seven Associate Entities were owned and controlled by the Promoter Family of ZEEL, any default on their part would also have exposed the Promoter Family's inability to pay debt of companies owned / controlled by them. The possible repercussions thereof would also have been the loss of trust of lenders in other Essel Group Companies. Clearly, the possible ramifications of the default by the seven Promoter owned / controlled companies would have been severe, and the same strengthens the *prima facie* findings that the Entities had orchestrated the scheme to conceal the default by the Associate Entities and the loss that had been caused to ZEEL / other listed entities and subsidiaries of the Essel Group.

100.13. The Entities, to cover up the apparent loss to ZEEL, orchestrated the scheme involving layered transactions to show that the money had come back to ZEEL.

100.14. Consequently, the disclosure made by ZEEL in its Annual Report for the FY 2019-20 was false. Further, ZEEL had also submitted false information to SEBI regarding receipt of INR 200 crore from its Associate Entities.

100.15. Despite the promoter holding of only 3.99% shares in ZEEL, the Entities continue to be at the helm of affairs of ZEEL and their actions have adversely affected the interests of 96.01% of the shareholders. Their position in ZEEL / Promoter Group has been misused by them to devise the said scheme.

100.16. Entity No. 1 was not only involved from the very beginning by virtue of issuing the LoC, but looking at the companies / body corporates involved in the scheme and the similar pattern of fund flow across 6 different chains it is clear that Entity No. 1 was actively involved in the orchestration of the scheme, which has been found *prima facie* to be in violation of the securities laws.

100.17. As regards the role of Entity No. 2, during the period when the entire scheme was orchestrated, he was the MD & CEO of ZEEL. The remedial measures claimed to have been taken by Entity No. 2 were focussed the procedural aspects of operation of a fixed deposit account and creation of fixed deposits. However, the genesis of the current issue was the LoC issued by Entity No. 1, i.e., Entity No. 2's father. *Prima facie* no effective steps have been taken by Entity No. 2 to address this issue. Further, it was during his tenure in ZEEL as MD and CEO that the financials of ZEEL were misrepresented and false announcements were made to the stock exchanges.

100.18. ZEEL is involved in 2 of the impugned transactions which *prima facie* cannot be regarded as genuine transactions in light of the fact that Essel Group companies / body corporates which were involved in layering the fund transactions are these are under the influence / control of Entity No. 2 by virtue of his and his family members' shareholding in them. This *prima facie,* shows that Entity No. 2 was also involved in the orchestration of the scheme, which has been found, *prima facie,* to be in violation of the securities laws.

Assessment of the directions:

101. Having considered the submissions made by the Entities in respect of the observations / allegations made in the *Interim Order*, the issue that now needs examination is whether the interim measures taken against the Entities need to be revisited in light of the submissions made by them.

102. It has been submitted on behalf of the Entities that the directions issued vide the *Interim Order* are indefinite in terms of scope as well as time as they restrain the Entities from holding the position of a director or KMP of any listed company or its subsidiaries till further directions. To this submission, without prejudice to other findings in this Order, I do find merit in the arguments advanced in this regard by the

Entities. As has been highlighted in various sections of this Order, one of the key purpose behind issuance of urgent interim directions against the Entities was to ensure a fair and transparent investigation in the matter, which would not be possible while the Entities are in positions of influence in ZEEL and the other listed companies subsidiaries identified as part of the scheme. The directions are temporary in nature and are aimed at safeguarding the interest of public shareholders of the Company. Balancing the said purpose of ensuring a fair and transparent investigation with the impact of the directions on the Entities, I find it appropriate to modify the directions in the following manner:

i. The investigation in the matter by SEBI shall be completed in a time-bound manner and in any event, within a period of 8 months from the date of this Order;

ii. Till further orders, Entities shall not hold position of a Director or a KMP in ZEEL, other public listed companies and their wholly owned subsidiaries, under the control of the Entities and have been identified as part of the scheme, nor in any resultant company that is formed pursuant to a merger or amalgamation of any of these companies with any other company, wholly or in part, or in any company, which is formed pursuant to demerger of any of these companies. The rationale for the same being that while the proceedings in the matter are in progress, it is SEBI's priority to insulate the assets of the public listed companies from exercise of any influence or control by the Entities. The same rationale applies to wholly owned subsidiaries of such listed companies because their assets, in effect, belong to the shareholders of such listed companies.

103. While the Entities may argue that even the limited restraint noted above will be excessive and disproportionate in the matter, it is emphasized that the imminent effect of permitting the Entities to be in position of influence is that the ongoing investigation cannot be fair and complete. As has been highlighted earlier, the interests of Entities are factually in direct conflict with the interests of the public shareholders and the Company. As *prima facie* found, the Entities have actively tried to conceal the very acts which have led to the loss of at least INR 143.9 crore to the public listed companies including ZEEL.

104. Entity No. 2 has submitted that he is integral to the functioning of the merged company (ZEEL's merger with Culver Max Entertainment Pvt. Ltd.) due to his experience in the industry and local expertise. It has also been stated that the scheme of merger also contemplates approval of the Board for appointment / removal of the KMP of the company. In this regard, I note that the conduct of Entity No. 2 as the Managing Director and Chief Executive Officer of ZEEL has been found to be *prima facie* in violation of provisions of PFUTP Regulations and LODR Regulations. His actions were in direct conflict with the interests of 96% public shareholders of ZEEL, necessitating imposition of temporary restraint on him. In this context, I find it apt to refer to a statement given by Entity No. 2 in an interview given to ET Now, which is as follows:

"*…However, Goenka emphasized that the merger is significant irrespective of his role, as the resulting entity will be under Sony's control…*"

105. Thus, in my view, as outlined herein, the restrictions imposed on him are reasonable in the facts and circumstances of the case.

106. It is also learnt that on August 10, 2023, Hon'ble National Company Law Tribunal has granted its approval to the above mentioned merger. It is noted from the reply submitted in this regard that post-merger, Entity No. 2 would be appointed as Managing Director of the merged company. The same means that he would be entrusted with substantial powers of management of the affairs of the merged company. That very role in ZEEL is under question and therefore, till the final outcome of the proceedings in the instant matter, it would be appropriate that he is not part of the management of ZEEL or any corporate *avatar* of it.

107. In respect of Entity No 1, it has been submitted that he does not hold any position of directorship or KMP in ZEEL or any other company and therefore, the direction seeks to serve no purpose except for impacting his reputation. In this regard, while it is not in dispute that as on date, Entity No. 1 does not hold any director / KMP position and is only Chairman Emeritus of ZEEL, one cannot lose sight of the fact that in the instant case, it is the LoC issued by Entity No. 1, which is the original / root cause of the entire scheme, which has, *prima facie,* been orchestrated. In the absence of the LoC, neither YBL would have appropriated the fixed deposit of ZEEL towards the loans of Associate Entities nor any loss would have been caused to ZEEL/other listed

companies nor the Entities would have needed to design the whole scheme to conceal the said loss. Further, even if he is not holding a position of Director / KMP, it is not disputed that he is a part of the Promoter Group and has a long standing influence on the companies belonging to the Essel Group, and therefore, nothing precludes him from seeking re-appointment on the Board of ZEEL in accordance with the Companies Law. Accordingly, the possibility of him impacting fair and transparent investigation, should he be so appointed, cannot be ruled out. Thus, in my view, continuance of restraint of the limited nature noted above is essential in respect of Entity No. 1.

Order:

108. Considering the material on record, oral and written submissions of the Entities and findings thereupon mentioned in the preceding paragraphs, pending investigation, I, in exercise of the powers conferred upon me under Sections 11(1) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and in the facts and circumstances of the case, hereby modify the directions of the *Interim Order,* as follows, with effect from the date of this order:

i. The investigation in the matter by SEBI shall be completed in a time-bound manner and in any event, within a period of 8 months from the date of this Order;

ii. Entity No. 1 and Entity No. 2 shall not hold position of a Director or a KMP in the following companies till further directions:

   a. Zee Entertainment Enterprises Ltd.;
   b. Zee Media Corporation Ltd.;
   c. Zee Studios Ltd. (wholly owned subsidiary of Zee Entertainment Enterprises Ltd.);
   d. Zee Akaash News Pvt Ltd. (wholly owned subsidiary of Zee Media Corporation Ltd.);
   e. any resultant company that is formed pursuant to a merger or amalgamation of the above named companies with any other company, wholly or in part;
   f. any company, which is formed pursuant to demerger of any of the above named companies.

109. I note that a detailed investigation in the matter is in progress which may bring out additional acts of omission or commission, of the Entities, if any, in detail, depending on the material and after considering the facts and veracity of their submissions. The findings in the extant order are *prima facie* findings in a matter under investigation.

110. A copy of this order shall be served on all recognized Stock Exchanges, depositories and registrar and share transfer agents to ensure compliance with the above directions.

-Sd-

DATE: August 14, 2023 **MADHABI PURI BUCH**

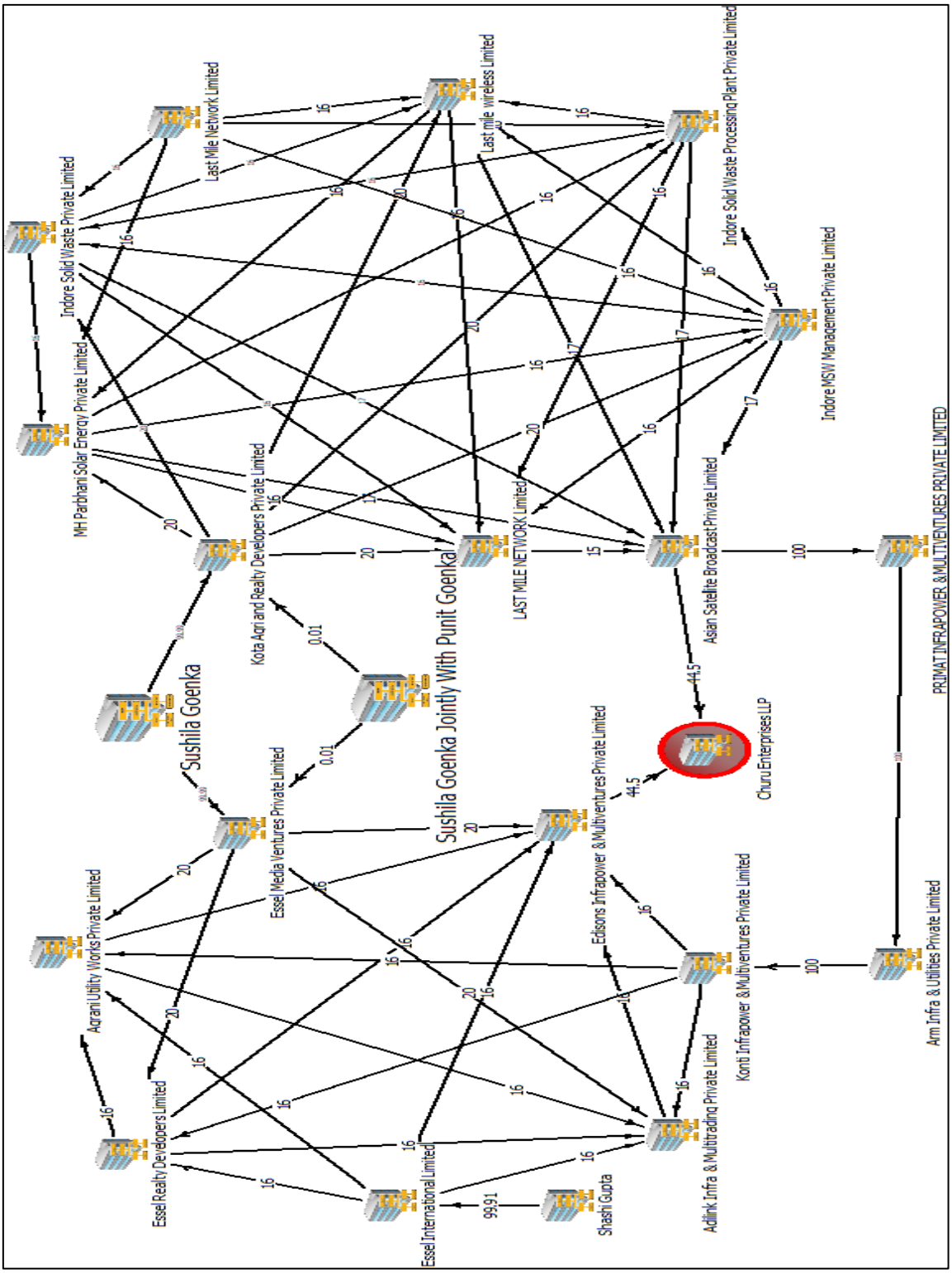
PLACE: MUMBAI **CHAIRPERSON**

SECURITIES AND EXCHANGE BOARD OF INDIA

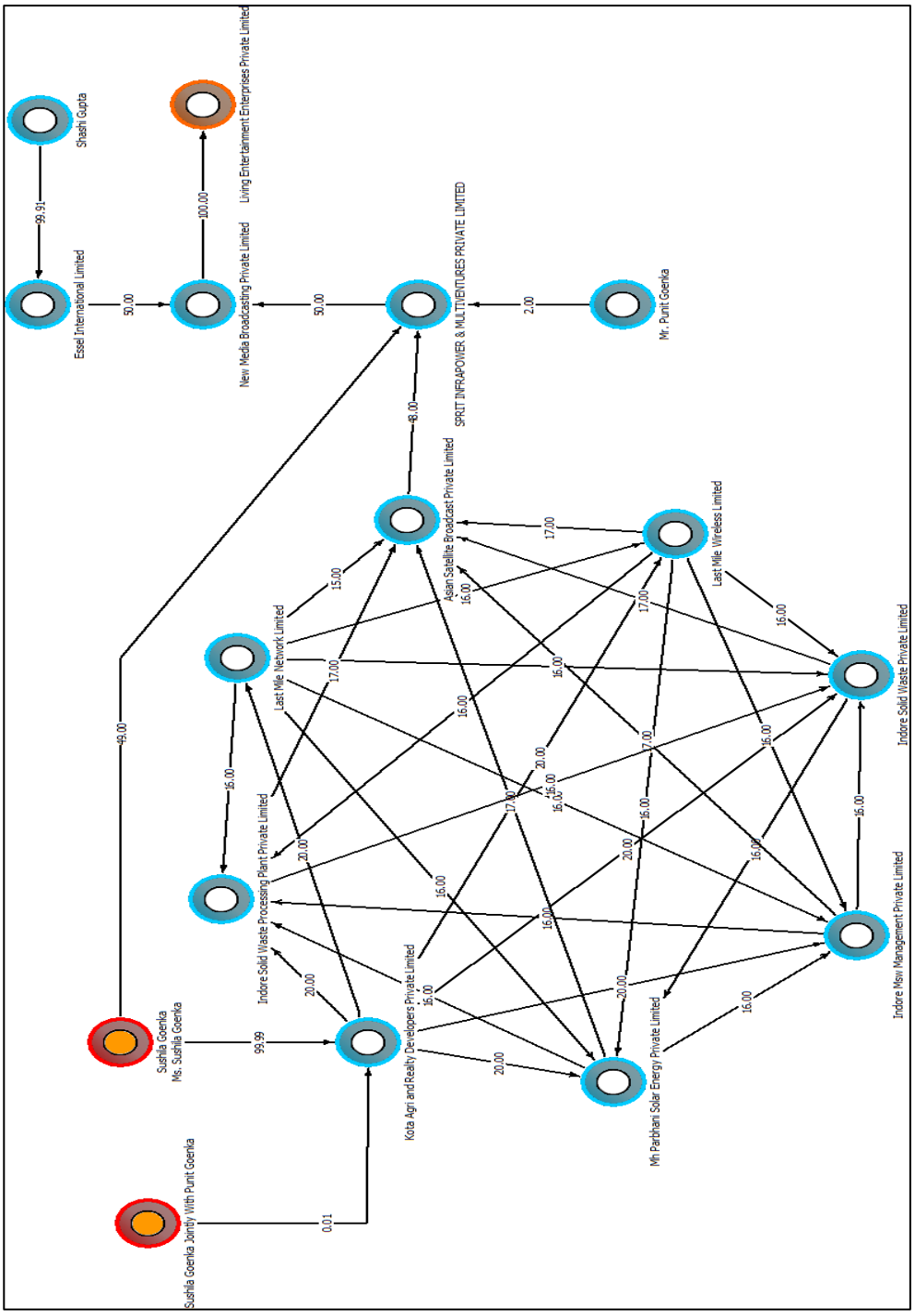
Encls:

- Annexure A- Pictorial representation of partnership interest pattern of Churu Enterprises LLP
- Annexure B- Pictorial representation of shareholding pattern of Living Entertainment Enterprises Pvt. Ltd.
- Annexure C- Pictorial representation of shareholding pattern of Sprit Infrapower & Multiventures Pvt. Ltd.

Annexure A - Churu Enterprises LLP



Annexure B - Living Entertainment Enterprises Pvt. Ltd



Annexure C - Sprit Infrapower & Multiventures Private Limited