WTM/MPB/ISD/ 50 /2018

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11, 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

IN THE MATTER OF

Sl. No.	NAME	PAN
1.	Nu Tek India Limited	AAACN2270L

In Re: SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015

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1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI")**, in the interest of investors, vide its letter dated August 7, 2017 took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of certain listed companies identified as "shell companies" by the Ministry of Corporate Affairs (hereinafter referred to as **"MCA"**) including M/s Nu Tek India Limited (hereinafter referred to as **"NTIL" / "Company" / "Noticee"**). SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip of NTIL in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of the company from the stock exchange, if warranted. By virtue of these measure, trading in scrip was not suspended but

allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges complete their detailed examination of such companies.

2. Aggrieved by the aforesaid letter dated August 7, 2017 issued by SEBI and consequent actions of Stock Exchanges, NTIL filed an appeal No. 221 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**). The Hon'ble SAT vide order dated September 11, 2017 had noted that NTIL had made representation to BSE, with a copy to SEBI and directed SEBI to dispose of the representation made by NTIL as expeditiously as possible within a period of four weeks from the date of order. Hon'ble SAT also held that passing of any order on the representation made by NTIL would not preclude SEBI to further investigate the case of NTIL and initiate proceedings if deemed fit.

3. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, in the interest of natural justice, an opportunity of personal hearing was granted to NTIL on September 20, 2017. The authorized representative of NTIL had appeared for hearing and made submissions.

4. Thereafter, SEBI vide Interim Order dated October 09, 2017 (hereinafter referred to as **"Interim Order"**), had modified the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against M/s Nu Tek India Limited as under:

"22. ……

i. The trading in securities of NTIL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.

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

a. Misrepresentation including of financials and/or business by NTIL and its subsidiaries, if any;

b. Misuse of the books of accounts / funds (including GDR proceeds) including facilitation of accommodation entries, if any.

iii. The promoters and directors in NTIL are permitted only to buy the securities of NTIL. The shares held by the promoters and directors in NTIL shall not be allowed to be transferred for sale, by depositories.

iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s Nu Tek India Limited.

23. The 'directors' for the purpose of direction mentioned at para 22(iii and iv) above shall mean and include:

(a) the persons who are acting as directors on the date of this order, or

(b) the persons who are acting as directors of this company as on August 07, 2017, who cease to be director, by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017……"

5. The *prima facie* observations in the Interim Order were as under:

"……..

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

(a) The company has three subsidiaries namely Ketun Energy Private Limited, NU Tek Europe SRO and Nu Tek HK Private Limited. The company has submitted that Ketun Energy Private Limited which have a turnover of Rs. 7.57 crore during the F.Y. 2015-

16 does not has any tangible or intangible assets. Nu Tek Europe SRO also does not have tangible or intangible assets. The company listed out fixed assets of Nutek HK Private Limited but no document was submitted by the company to verify the existence of fixed assets listed. Further fixed assets of US$ 44 million of Nutek HK Private Limited comprises of Property, plant, and equipment at Kenya which is shown as project under consideration as at March 31, 2016 and March 31, 2017 without any specific details. It is pertinent to note there is no change in the amount of projects under consideration as on March 31, 2015 to March 31, 2017 which raises a doubt on the genuineness of such projects/actual end use of the funds.

(b) It is observed that the company is mainly into telecommunication services however the company's wholly owned subsidiary i.e. Nutek HK Private Limited has invested major chunk of HK$ 349 million out of its total assets of HK$ 575 million in Gulf Power Corporation limited. The company has submitted the share purchase agreement between the Nu Tek HK Private Limited and East Africa Distribution Limited for the purchase of 45% stake in Gulf Power Corporation Limited. However the consideration for the purchase of stake is not mentioned in the agreement, though the registered number i.e. IC/1440/09 is indicated in the share purchase agreement dated December 09, 2010. Thus it raises a doubt on the authenticity and genuineness of such investment by the company/actual end use of the funds.

(c) The auditor report submitted by the Company for Nu Tek HK Private Limited have mentioned that no documentary evidence was provided to substantiate the recoverability and to assess provision for the trade receivables of HK$ 94,000,000 as on March 31, 2016 and as March 31, 2017. The auditor report submitted by the company of Nutek HK Private Limited for the F.Y. 2015-16 and F.Y. 2016-17 have mentioned that in absence of sufficient documentary evidence, they are unable to ascertain the underlying value of the group's investment in associate of HK$ 349 million and to assess the amounts of provisions, if any, which might have been required. Thus there is prima facie suspicion of misrepresentation of financials of the company.

(d) *The company has replied that Nu Tek HK Private Limited purchased 45% equity shares of Gulf Power Corporation Limited on December 09, 2010 and does not have management control on it. It is a strategic investment by the company and the company is not directly into mining business. The company had made investment in Gulf Power Corporation Limited through its Hongkong subsidiary to get benefits in its prospective business relating to trade in commodities. However on analysis of Annual Report of 2010-11 at Page Number 12 under Management Discussion and Analysis of Nu Tek India Limited, it is observed that the company has mentioned that it invested in Gulf Power corporation limited having coal mines in Indonesia. The relevant extract of the Annual Report 2010-11 is mentioned below:*

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

Nu Tek India Limited invested in Gulf power Corporation Limited on December 09, 2010, which is into mining business through its Hongkong subsidiary when the principal activities of Nu Tek India Limited was telecommunication services. Nu Tek India Limited have replied that it has changed its object clause on March 05, 2011 (after 4 months of investment in mining business) and inserted the activities of export, import, buy, sale, trade and otherwise deal with goods, capital goods, raw materials, semi-finished goods, merchandise, iron, ore, minerals, chemicals, oils, metals and other goods and items another related activities. As per financial Statements of Nu Tek HK Private Limited for the F.Y. 2015-16 and 2016-17, the principal activities of Gulf Power Corporation limited is shown general trading. However still the amended object clause does not cover the mining business where Nu Tek India Limited has invested major chunk of Rs. 336 crores out of the total assets of Rs. 536

crores as on March 31, 2016. Thus there is prima facie evidence of misrepresentation of business by the company.

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

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

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

(f) *The company has provided list of individuals for the amount of advance to employees without any date since when the same is pending to be adjusted. The company has provided the list of parties for trade payable without any documentary proof including the terms of contract, payment terms, since when the amount is due etc. Secretarial audit report for related party transaction of Rs. 15,04,781 with Oriental Stitch Private Limited was not provided. Hence no inference can be drawn on the same which may be audited by an auditor.*

(g) *The company has provided some agreements and copy of purchase order for the amount of advance to suppliers outstanding as on March 31, 2016. However, it is observed that the agreement/contract copies are not available for many suppliers and there is no list of parties to whom the amount is outstanding along with the ageing analysis. Further with respect to the agreement/contract copies provided by the company for some suppliers, no corresponding bank entries for the amount outstanding is furnished. In absence of full details of the advance to suppliers, it is not*

possible to comment on the genuineness of outstanding advance to suppliers and the same may be audited by an auditor.

(h) Nu Tek Europe SRO does not carry out any business and even the bank statement for the period 04/05/2015 tom 31/12/2015 submitted by the company does not show any transactions. The company has replied that the Board considers the investment of Rs. 11 crore in Nu Tek Europe as good but no document has been submitted to substantiate the realization of Rs. 11 crore as good. Further on analysis of financial results submitted by the company of Nu Tek Europe SRO for the F.Y. 2015-16 and 2016-17, it is observed that Nu Tek Europe SRO has not been generating any income for the Period 2014-15 to 2016-17. As per the financial statements submitted by the company for the F.Y. 2015-16 and 2016-17, it is observed that there is huge outstanding of 1.56 million Euro and advance to suppliers of 0.22 million Euro since March 31, 2014 which raises a suspicion on the recoverability of these amounts.

……..."

6. Vide said interim order, SEBI had advised NTIL to file its reply/objections to the said interim order within 30 days from the date of receipt of the said interim order and also to indicate in its reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. The said interim order also mentioned that if NTIL had failed to file the reply or request for an opportunity of personal hearing within the said 30 days, the preliminary findings of the said interim order and ad-interim directions shall stand confirmed against NTIL automatically, without any further orders.

7. Vide email dated October 09, 2017 the copy of interim order was forwarded to NTIL. Vide letter dated October 12, 2017, the copy of interim order was also sent to NTIL at *"Nu Tek India Limited, B-27, Infocity, Sector -34, Gurgaon – 122 001, Haryana"* through Speed Post and the same was delivered.

8. NTIL vide letter dated October 16, 2017 had acknowledged the receipt of interim order and requested for an opportunity of personal hearing.

9. ***First opportunity of hearing:*** In the interest of natural justice, SEBI vide communication dated October 24, 2017, had granted NTIL an opportunity of personal hearing on November 14, 2017 at Head Office, Mumbai. Vide said communication, SEBI also advised NTIL to submit its reply to interim order within 30 days from the date of receipt of interim order. NTIL vide letter dated October 27, 2017 had requested to adjourn the scheduled hearing.

10. ***Second opportunity of hearing:*** In view of NTIL letter dated October 27, 2017 the hearing scheduled on November 14, 2017 was postponed. In the interest of natural justice, SEBI vide letter dated November 09, 2017 had granted NTIL another opportunity of personal hearing on December 19, 2017 at Head Office, Mumbai. NTIL vide email dated November 10, 2017 had confirmed that they would attend the hearing scheduled on December 19, 2017. However, it is noted that NTIL vide letter dated December 15, 2017 had once again requested to adjourn the scheduled hearing.

11. ***Third opportunity of hearing:*** In view of NTIL letter dated December 15, 2017 the hearing scheduled on December 19, 2017 was postponed. In the interest of natural justice, SEBI vide letter dated December 26, 2017 had granted NTIL another opportunity of personal hearing on January 24, 2018 at Head Office, Mumbai. NTIL vide email dated January 05, 2018 has informed SEBI that they were in discussions with Attorneys to attend the scheduled hearing.

12. In the meantime SEBI is in receipt of complaint from Navig8 Chemical Pool Inc. (hereinafter referred to as **"Navig8"**), sole creditor of Nu Tek (HK) Private Limited (hereinafter referred to as **"NTHK"**), a wholly-owned subsidiary of NTIL. SEBI vide email dated January 16, 2018 had advised NTIL to submit its reply alongwith documentary evidence on the following allegation raised in the complaint of Navig8, latest by January 20, 2018.

"…….

(a) <u>False representations regarding Nu Tek HK Private Limited</u>

(i) High Court of Hong Kong passed a winding up order against Nu Tek HK Private Limited on July 19, 2017. However, the same was intimated to stock exchanges on November 4, 2017.

(ii) Mr. M. Karthikeyan, (General Manager of Nu Tek India Limited and Director of Nu Tek HK Private Limited) was informed of the winding up order by emails dated July 19, 2017 and August 9, 2017 to which Mr. M. Kathikayen responded on August 25, 2017.

(b) <u>False representations regarding Nu Tek HK Private Limited's interest in Gulf Power Corporation Ltd.</u>

(i) Nu Tek HK Private Limited ceased to be shareholder in Gulf Power Corporation Limited some time in year 2017. (However, it may be noted that in terms of your submissions vide letter dated September 28, 2017 that Nu Tek HK Private Limited holds 45% shares of Gulf Power Corporation Limited.)

(ii) There appears to be huge discrepancy between the sum paid by Nu Tek HK Private Limited (approx. US$ 73 million) for its 45% stake in Gulf Power Corporation Ltd. and the net assets of Gulf Power Corporation Ltd as reflected in Dubai Chamber of Commerce and Industry (DCCI) report for the F.Y. 2016 (i.e. US$ 14.61 million).

(c) <u>Other breaches</u>

(i) As at July 19, 2017, Navig8 was owed US$8.14 million by Nu Tek HK Private Limited (unpaid till date) as a result of London Arbitration Award. The High Court of Hong Kong issued arrest warrant against Mr. Inder Sharma (Chairman and Managing Director of Nu Tek India Limited and former director of Nu Tek HK Private Limited) on January 20, 2017.

(ii) Vide order dated July 10, 2017, Singapore High Court issued arrest warrant against Mr. Inder Sharma for his failure to attend hearings on December 12, 2016 and March 13, 2017.

(iii) English High Court has issued arrest warrants against Mr. Murugaiyan Karthikeyan (Former and current director of Nu Tek HK Private Limited) and Inder Sharma.

……"

13. In reply to SEBI's email dated January 16, 2018, NTIL vide letter dated January 20, 2018 had denied all the allegation leveled against them in the complaint of Navig8. Further, vide said letter dated January 20, 2018, NTIL had requested 15 days' time to submit its reply in the matter.

14. It is noted that NTIL had neither appeared for hearing scheduled on January 24, 2018 nor requested for any adjournment for the said hearing. Further, in view of NTIL letter dated January 20, 2018 for its request of extension of time to submit its reply, SEBI vide email dated January 25, 2018 had granted NTIL time till February 04, 2018 to make its submission.

15. NTIL vide letter dated February 04, 2018 had submitted its reply, which *inter alia* as under:

"……

(a) Before providing the comments and submissions on the transactions and merits of the case, the Noticee humbly submits that the Interim Order is not valid in the eyes of law and must be quashed on the basis of the following reasons:

(i) It is stated that, the order dated August 07, 2017 was passed on the basis of a MCA letter dated June 09, 2017, vide which the Noticee along with other 330 companies were declared as shell companies. On the basis of this, SEBI, as a preventive measure, placed the scrip of the Noticee on Grade VI of Graded Surveillance Mechanism with an immediate effect. Due to this, restrictions were placed on the transferability of its shares amongst others.

(ii) Therefore it must be noted here that the order dated August 07, 2017, was passed qua the Noticee based on MCA Letter dated June 09, 2017 and the present Interim Order and directions contained qua Noticee were passed in pursuance to the order dated August 07, 2017. However, till date the said MCA letter has not been provided

to the Noticee, which amounts to gross violation of the cardinal principles of natural justice.

(iii) It is submitted that till date neither the Noticee has been provided with the details, document or evidences which has been collected by SEBI based on which the order dated August 07, 2017 was passed by SEBI, nor ever any Show Cause Notice has been issued to the Noticee, which would result into passing of the order dated August 07, 2017 and/or subsequently the Interim Order. When the documents were sought from the Noticee, it submitted the documents without knowing the allegations against him levied in the MCA letter. If the Noticee would have been made aware about the allegations in the MCA letter, it would have been in a better position to submit the documents along with the necessary explanation. Noticee submits that not supplying the copy of the MCA Letter to the Noticee is a serious violation of natural justice and on this ground the interim order must be set aside.

(iv) It is further pertinent to note, during the purported opportunity of hearing provided to the Noticee in the present matter, SEBI in spite of letting him know the charges/prima facie finding which has resulted into passing of the order dated August 07, 2017 against the Noticee, started seeking further information from the Noticees, which was subsequently provided by the Noticee vide its letter dated September 28, 2017.

(v) The approach followed by SEBI in passing the interim order without providing any opportunity of hearing, without seeking further clarification and/or issuing any Show Cause Notice is arbitrary, whimsical and capricious.

(vi) It is pertinent to note here that the order dated August 07, 2017 was passed by SEBI without providing any opportunity of hearing and/or providing details of the charges, which means that it was an ex-parte order. However, the procedure laid down for post decisional hearing and/or ex-parte proceeding which ought to have been followed before passing of the Interim Order, has not been followed in the present case. The concept of post decisional hearing has been developed to maintain balance between administrative efficiency and fairness to the individual. One of the cardinal principal of ex-parte proceeding or post decisional proceeding is that the party must be provided with a fair opportunity of hearing, which by no stretch of imagination can be said to have been done by the Learned Whole Time Member before passing the Interim Order.

(vii) It is humbly submitted that even if it is presumed that the present Interim Order was passed against the Noticee or its board of directors on the ground that they allegedly failed to discharge their responsibilities towards its shareholders or they have

committed any grave violation of LODR Regulation, the Interim Order contains no finding to that respect.

(viii) It is submitted that that the findings of the Stock Exchanges on the basis of the information submitted to them has not been shared with us. They have forwarded their report to the SEBI. However the Noticee has no knowledge whether the said report has been considered by your goodself.

(ix) It is strenuously submitted that before passing of the Interim Order, your goodself has called for certain information from us, which means that your goodself became part of the investigation. However, even the Interim Order was also passed by your goodself and which is against the principles of natural justice.

(x) As per one of the most fundamental principles of natural justice an adjudicator cannot become the part of the investigation as otherwise the whole inquiry or proceedings will be vitiated. It is further submitted that it is a trite law that India follows the adversary system of legal procedure which means that the judge or adjudicating officer acts as a neutral arbiter upholding the balance between the contending rivals without taking part in the investigation. It is humbly submitted that it is a well-established principle that if a judge or adjudicating officer becomes part of the investigation, then there is a reasonable likelihood of departmental or institutional bias. However as the same has not been done in the present case, the interim order must be quashed and set aside.

(b) Without prejudice to the above and assuming that the Interim Order is valid in the eyes of law, it is humbly submitted to your goodself that as per the directions in the Interim Order, we are coordinating with the forensic auditor appointed in the present matter. We are providing the forensic auditor with all the documents sought by him and the process of forensic audit is still going on. Hence, we are supplying all the relevant documents in regard to the observations made in the Interim Order by your goodself.

(c) However, Noticee is in receipt of an email dated January 16, 2018 of Mr. Pawan Chowdhary, Manager, Integrated Surveillance Department, SEBI vide which we have been informed by your goodself that SEBI is in receipt of complaint raising certain allegations against the Noticee. To this, the Noticee has been asked to offer comments, submissions along with the documentary evidences. With regard to this it is stated that the allegations raised in the complaint is frivolous and fallacious.

(d) The allegation in the first head is that the High Court of Hong Kong passed a winding up order against Nu Tek HK Private Limited on July 19, 2017, however, the same was intimated to stock exchanges on November 4, 2017. Mr. Murugaiyan Kartikeyan, (General Manager of Nu Tek India Limited and Director of Nu Tek HK Private Limited)

was informed of the winding up order by emails dated July 19, 2017 and August 9, 2017 to which Mr. M. Kathikayen responded on August 25, 2017. With regard to this allegation it is submitted that there was a Memorandum of Understanding (hereinafter referred to as "MoU") entered into between Nutek (HK) Private Limited and Mr. Murugaiyan Kartikeyan on September 15, 2018 vide which we it was decided that Mr. Murugaiyan Kartikeyan will be dealing in Oily Sludge on behalf of the Noticee and will give the Nutek (HK) Private Limited, 5% of the profits arising from the dealing. It was decided as per the terms of MoU that the entire loss, liability or any type of consequences arising from the dealing in oily sludge shall be the liability of Mr. Murugaiyan Kartikeyan.

(e) The reason for entering into the MoU is that the Nutek (HK) Private Limited was approached by Rajaullah Atiq Al- Tharawi TRD. Est, with a deal to trade in oily sludge. However as the Nutek (HK) Private Limited did not had any experience or expertise in business of oily sludge because of the fact that dealing in oily sludge is not the core business of the Nutek (HK) Private Limited, it refrained itself to enter into the deal. Then the directors of the Noticee were approached by Mr. Murugaiyan Kartikeyan, with an offer that all the business of dealing in oily sludge will be done by him, and will bear any liability whatsoever arising from dealing in oily sludge. He agreed to pay Nutek (HK) Private Limited, 45% of the profits generated from dealing in oily sludge for using the name of the company. Hence the MoU was entered into between Noticee and Mr. Murugaiyan Kartikeyan, the copy of which is hereby attached.

(f) The Noticee came to know about the order of winding up of Nutek (HK) Private Limited only upon receiving the letter of its lawyer and upon its receipt, the same was disclosed to Stock Exchanges. Although Mr. Murugaivan Kartikeyan was informed about the winding up order before, he did not communicate the same to the Noticee, hence no illegality can be attributed to Noticee.

(g) Further it must be observed here that the fact that the disclosure was done to stock exchanges about the winding up order establishes that there was no mala fide intention of the Noticee to hide the information. It is not the case that the Noticee has never disclosed the fact about the winding up order to any Stock Exchange. By no stretch of imagination, an inadvertent delay on the part of the Noticee, due to the circumstances beyond its control, can be equated to any illegality or mala fide intention of the Noticee.

(h) In the second head of the Email it has been observed that Nu Tek HK Private Limited ceased to be shareholder in Gulf Power Corporation Limited some time in year 2017. (However, it may be noted that in terms of your submissions vide letter dated September 28, 2017 that Nu Tek HK Private Limited holds 45% shares of Gulf Power Corporation Limited) and there appears to be huge discrepancy between the sum paid by Nu Tek HK

Private Limited (approx. US$ 73 million) for its 45% stake in Gulf Power Corporation Ltd. and the net assets of Gulf Power Corporation Ltd as reflected in Dubai Chamber of Commerce and Industry (DCCI) report for the F.Y. 2016 (i.e. US$ 14.61 million).

(i) With regard to this it is humbly submitted that as per the belief of the Noticee, it is still the shareholder of the Gulf Power Corporation Limited and is currently holding the 45% stake in Gulf Power Corporation Limited. It is humbly submitted that the Noticee has never been informed by Gulf Power Corporation Limited about it being ceased to be the shareholder in the company. There has been no intimation till date about the same to the Noticee and hence it can be presumed that the Noticee has not been ceased to be the shareholder of the company. It is submitted that the accounts of Gulf Power Corporation Limited are consolidated with the accounts of Nu Tek HK Private Limited. The Nu Tek HK Private Limited ask for the books of account of Gulf Power Corporation Limited for the consolidation in the month of June of every year. Therefore the Noticee is not in position to submit the balance sheet of Gulf Power Corporation Limited for the year ended 2017. However, it is stated that the Balance Sheet of Gulf Power Corporation Limited for the year ending December, 2016 indicates that the Noticee is still holding the stake in the company. The Balance sheet of Gulf Power Corporation Limited for the year ending December, 2016 is hereby attached.

(j) It is further strenuously submitted that if there would have been sale of shares by the Noticee, then the Noticee would have received some proceeds from the sale. However, Noticee submits that it has not received any such proceeds and so it can be said that till date there has been no transfer of the stake held by Noticee in Gulf Power Corporation Limited. Further, the fact that the Noticee still holds and is in possession of the Original Share Certificates of Gulf Power Corporation Limited corroborates the stand of the Noticee that there has been no transfer of stake in Gulf Power Corporation Limited till date and the Noticee still holds the shares. The copy of the original share certificate is hereby attached. Moreover, the transfer of stake of Gulf Power Corporation Limited from East Africa Distribution Limited to the Noticee was registered by Ras-Al Khaimah. The copy of Registered Certificate of Ras-Al Khaimah registering the transfer of stakes in Gulf Power Corporation Limited in favour of Noticee is hereby attached. Analysis of all the aforesaid facts will reach your goodself to a legitimate conclusion that the allegation levelled in the complaint received by SEBI are fallacious and cannot be said to be true by any stretch of imagination as the Noticee still holds the 45% stake in Gulf Power Corporation Limited.

(k) However, the Noticee on receipt of the email from SEBI has decided to look into the matter and has appointed Advocate Kefah Alzaabi as their Advocate to represent itself in the matter. The Noticee received a confirmation letter regarding the appointment of

Advocate Kefah Alzaabi for providing the service of filing legal complaint against Mr. Pramod Balkishan Aggarwal. The copy of the confirmation letter received from Advocate Kefah Alzaabi is hereby attached. The Currently, the Noticee is seeking legal advice and is planning to file a complaint against Mr. Pramod Balkishan Aggarwal, in whose favor the purported transfer of shares as been done, in order to find out the true position regarding the issue.

(l) Regarding the allegation of discrepancy in the consideration for purchase of 45% stake, it is humbly submitted that there is no discrepancy at all between the sum paid by Nu Tek HK Private Limited and the net assets of Gulf Power Corporation Ltd as reflected in Dubai Chamber of Commerce and Industry (DCCI) report for the F.Y. 2016. It appears that there is a discrepancy because the valuation has been done in different time period.

(m) In the year 2009-10, the management planned to expand the business of the Noticee and so decided to invest in the company which is in the business of trading. In past, Noticee had some financial deals with East Africa Distribution Limited and so it came to know that it holds 45% stake in Gulf Power Corporation Limited, a company based in U.A.E. On investigation, the officials of the Noticee found the Gulf Power Corporation Limited to be a good company with possibility of sound returns in future. The officials of the Noticee approached the management of East Africa Distribution Limited showing their interest in the purchase of stake held by East Africa Distribution Limited in Gulf Power Corporation Limited. Responding to the same, the management of East Africa Distribution Limited agreed to sell its stake in Gulf Power Corporation Limited to the Noticee for the consideration to be the fair valuation of the shares to be determined by a Valuer. In furtherance, Chimera Arbitrage SA, a valuer based in Africa, was engaged by both the companies to do the valuation of the 45% equity shares of Gulf Power Corporation Limited by East Africa Distribution Limited. Chimera Arbitrage SA submitted its Valuation Report on September 09, 2010. The copy of the valuation report is hereby attached.

(n) As per the valuation of the shares, a Conditional Share Sale and Purchase Agreement was entered into between Noticee and East Africa Distribution Limited on December 09, 2010 vide which East Africa Distribution Limited agreed to transfer 45% of its holding in Gulf Power Corporation Limited to the Noticee. The copy of the Conditional Share Sale and Purchase Agreement is hereby attached. The consideration for the purchase of 45% stake in Gulf Power Corporation Limited was paid through proper banking channels. The relevant Bank Statements indicating the transfer of consideration as per Conditional Share Sale and Purchase Agreement and highlighted in Yellow Color are hereby attached. Even thereafter the due process was followed and the Memorandum of Association and Articles of Association of Gulf Power Corporation Limited were

amended vide Addendum No. 4 on April 07, 2011. The copy of Addendum No. 4 dated April 07, 2011 to Memorandum of Association and Articles of Association of Gulf Power Corporation Limited is hereby attached. Subsequently, the resolution was passed by the Directors of Gulf Power Corporation Limited on April 21, 2011 vide which the transfer made by East Africa Distribution Limited to Noticee was acknowledged and Mr. Inder Sharma was authorized to do all acts on behalf of the Noticee. The copy of the resolution passed by the Directors of Gulf Power Corporation Limited on April 21, 2011 is hereby attached.

(o) *It is pertinent to note here that the transaction of purchase of 45% stake was done in the year 2010 on the basis of the valuation done in 2010, however the valuation of net assets of Gulf Power Corporation Limited, which has been compared with the consideration paid for the purchase of stake, was done in the year 2016. The investment was made by the Noticee in the expectation of high returns based on various circumstances; however, contrary to the expectation of the Noticee, the company did not performed well leading to loss in the net worth of the company. It is strenuously submitted that an investment decision, which subsequently turned out to be bad, cannot be the basis to infer any illegality or suspicion of fraud. Similar observations has been made by the Hon'ble Supreme Court of India in L P. Holding Asia Singapore P. Ltd. v. SEBI, AIR 2015 SC 274, in which it has been held that:*

> *"We say this because it is imperative to give sufficient elbow room to commercial entities for entering into a business transaction. There are a host of considerations that go into business relations and transactions between different entities."*

(p) *It is not the case that Noticee has subscribed the shares from Gulf Power Corporation Limited but has purchased the shares from East Africa Distribution Ltd. Hence, there is no discrepancy in the transaction on the basis of the net worth of Gulf Power Corporation Limited as reflected in Dubai Chamber of Commerce and Industry (DCCI) report for the F.Y. 2016, as the valuation has to be done not as per the 2016 but as per the 2010 i.e. year of agreement of purchase and sale.*

(q) *However it is stated that from past few days, the Noticee is not being informed about any working of Gulf Power Corporation Limited. The Noticee has taken legal advice in the matter and has appointed Advocate Kefah Alzaabi to represent the Noticee in the matter. The copy of the confirmation letter received from Advocate Kefah Alzaabi is enclosed above. Advocate Kefah Alzaabin has already sent a Legal Notice dated December 27, 2017 to Mr. Pramod Balkishan Aggarwal on behalf of the Noticee to discuss the present*

status of Gulf Power Corporation Limited. The copy of the Legal Notice is hereby attached.

(r) The allegations in the third head of the email are

(i) As at July 19, 2017, Navig8 was owed US$ 8.14 million by Nu Tek HK Private Limited (unpaid till date) as a result of London Arbitration Award. The High Court of Hong Kong issued arrest warrant against Mr. Inder Sharma (Chairman and Managing Director of Nu Tek India Limited and former director of Nu Tek HK Private Limited) on January 20, 2017.

(ii) Vide order dated July 10, 2017, Singapore High Court issued arrest warrant against Mr. Inder Sharma for his failure to attend hearings on December 12, 2016 and March 13, 2017.

(iii) English High Court has issued arrest warrants against Mr. Murugaiyan Karthikeyan (Former and current director of Nu Tek HK Private Limited) and Inder Sharma.

(s) With regard to this it is submitted that the same does not pertain to the Noticee but pertains to Mr. Inder Sharma and Mr. Murugaiyan Kartikeyan, hence no illegality can be attributed to the Noticee. It is pertinent to note here that in point no. (i) above the dispute arose between the Noticee and Navig8 because of the termination of the charterparty. The Arbitration Award was passed on June 04, 2015 against the Noticee. It is submitted the amount of US$ 8.14 is a disputed amount which not even on Noticee but on Inder Sharma and just because he also happens to be director of Noticee, it does not mean that Noticee will be held liable for the same.

(t) With regard to point no. (ii), it is stated that the same was not in knowledge of the Noticee and the Noticee came to know about the same only upon the receipt of the email by SEBI. However subsequently Noticee came to know that the warrants were issued by Singapore High Court only upon their failure to attend the hearing of a winding up petition. With regard to point no. (iii), it is stated that the same was not in knowledge of the Noticee and the Noticee came to know about the same only upon the receipt of the email by SEBI. It is submitted that the Noticee is seeking the legal advice from lawyers of various countries in order to find out if any harm can be caused to the Noticee in all the above cases.

(u) Hence, it is submitted that the Noticee has no role in the allegations raised in the head of `other breaches' in the email dated January 16, 2018 as the allegations are levelled against the individuals and not the Noticee. Illegality for any wrong committed by the individuals associated with the company cannot be attributed to the company itself. It is

further submitted that the Interim Order against the Noticee must be quashed against the Noticee on the basis of the aforesaid submissions and on the ground that the Interim Order is whimsical, capricious and arbitrary. The Noticee submits that it will submit more information, documents, explanations, etc. on hearing from your goodself.

…….."

16. Vide aforesaid letter dated February 04, 2018, NTIL stated that till date SEBI had neither provided MCA letter to the Noticee nor details, documents or evidence collected by it, based on which order dated August 07, 2017 was passed by SEBI. In reply to NTIL letter dated February 04, 2018, SEBI vide letter dated March 21, 2018 has forwarded the copy of MCA letter dated June 09, 2017 to NTIL, based on which SEBI vide letter dated August 07, 2017 had taken certain pre-emptive surveillance measures. Vide said letter dated March 21, 2018, SEBI also informed NTIL that names in MCA letter dated June 09, 2017 and annexures were redacted. Vide said letter dated March 21, 2018, SEBI advised NTIL to file written submissions within 7 days from the date of receipt of said letter and also advised that no request of extension of time will be considered. In reply to SEBI's letter dated March 21, 2018, NTIL vide letter dated April 03, 2018 has requested 4 weeks' time to submit additional written submission in the matter.

17. In response to SEBI's letter dated March 21, 2018, NTIL vide letter dated May 08, 2018 had *inter alia* stated as under:

"……

(a) On perusal of the aforesaid letter it appears that full copy of the said MCA letter dated June 09, 2017 has not been provided to us. This is because the paragraph indicated in the said letter is not complete and the letter has not been signed by any person. The fact that we have not been provided with the complete copy of the letter has created prejudice to us as we are not able to know about the observation made against us, if any, by MCA. Without knowing about the observations made by the MCA against us, we will not be able to provide our defence in order to convince your goodself that neither we are a shell company nor we have violated the provisions of SEBI laws.

(b) Further, the letter dated June 09, 2017 enclosed the copy of letter bearing no. SFIO/MRAU/0042017-SCBD dated May 23, 2017 received from Serious Fraud Investigation Office. We have reason to believe that the copy of said letter not been completely provided to us as it ends with the incomplete sentence at Para 3 and also has not been signed by a competent person. In Para 2 of the said Letter it has been indicated that the list of 331 shell companies has been provided in File "Database of Listed Shell Companies.xlsx" and the description of the source has also been indicated in which we appear at serial number 281 of the said list. However it is pertinent to note here that in the said SFIO letter, only a list of 331 alleged shell companies has been provided and the basis on which these 331 companies has been alleged to be shell companies has not been provided.

(c) Therefore it can be said that the only information which has been provided by your goodself vide letter dated March 21, 2018 is only the list of 331 alleged shell companies, which is already available in the public domain. It is humbly submitted that the list of the 331 shell companies was annexed to the letter dated August 07, 2017, which was uploaded on the website of National Stock Exchange of India Ltd. and BSE Ltd.

(d) Hence, your goodself in order to make an attempt to comply with the mandate of principal of natural justice has only provided us the list of 331 alleged shell companies which was already available in the public domain, which is completely wrong, whimsical, capricious and arbitrary.

(e) When we, vide our letter dated February 04, 2018, stated that not sharing the MCA letter would amount to gross violation of principles of natural justice, then our intention was not to ask for the list of the alleged 331 shell companies sent by MCA, but was to know the reasons and basis on which we have been alleged as a shell company by other authorities, in order to enable us to provide the reasons to the satisfaction of your goodself that neither we are a shell company nor we have violated the provisions of SEBI laws/regulations.

(f) It is strenuously submitted that it is not possible that MCA just sent the list of 331 companies which they believed to be a shell company without sending any reasons, observations and evidence on the basis of which MCA has reached to this destructive conclusion. This is because MCA and SEBI being 'State' as per the definition of Article 12 of the Constitution of India cannot act so negligently and cannot pass order against a person without any basis.

(g) It is submitted we are prejudiced by the said act of your goodself and are at complete loss to defend the orders passed against us. We have not been provided with the reasons and the basis on which MCA or SFIO has identified us as a shell company. Without

knowing the observations of SFIO, we will not be able to provide a complete defence to establish to the satisfaction of your goodself that we are neither a shell company nor we have violated the provisions of SEBI laws / regulations.

(h) Hence, we request your goodself to provide us the complete letters of MCA and SFIO which pertains to us along with the reasons and observations on the basis of which we have been alleged to be a shell company by MCA or SFIO. We also request your goodself to provide us further communique, if any, exchanged between SEBI and MCA relating to the issue of shell companies.

(i) It is submitted that not providing the noting made against us by SFIO and MCA in their letters to us amount to gross violation of the most cardinal principles natural justice.

……..”

18. In reply to NTIL letter dated May 08, 2018, SEBI vide letter dated May 31, 2018 had informed NTIL that copy of full MCA letter dated June 09, 2017 was already provided to NTIL vide SEBI letter dated March 21, 2018 and Vide said letter dated March 21, 2018, SEBI also informed to NTIL that names in MCA letter and annexures were redacted. Vide letter dated May 31, 2018, SEBI also informed NTIL that the findings in the interim order dated October 09, 2017 emerged out of SEBI's independent enquiry based on publicly available information and NTIL's reply dated September 28, 2017. Vide said letter dated May 31, 2018, SEBI advised NTIL to file written submissions, if any, within 7 days from the date of receipt of said letter and also advised that no further request of extension of time will be considered.

19. Vide letter dated June 07, 2018, NTIL requested for an opportunity of hearing before Hon'ble Whole Time Member. It is noted that SEBI has already granted three opportunities of hearing to NTIL, however, NTIL has failed to avail the same. Thus, in view of, ample opportunities of hearing having been already granted to NTIL, NTIL's request for another opportunity of hearing sought by them vide letter dated June 07, 2018 was rejected. The same was communicated to NTIL by SEBI vide email dated June 07, 2018.

20. In response to SEBI's email dated June 07, 2018, NTIL vide letter dated June 08, 2018 had *inter alia* stated as under:

"……..

(a) Kindly refer to the captioned email vide which your goodself has declined our request for providing an opportunity of personal hearing in the captioned matter. Further, your goodself observed that we were granted three prior opportunities of hearing and on the three occasions we could not remain present.

(b) In this regard it is humbly submitted that, before responding to observations, contained in the captioned email, we wish to provide a brief background of the matter. On August 07, 2017 Securities and Exchange Board of India ("SEBI") passed an ex-parte order, vide which scrip of our company was moved to Graded mechanism (i.e. Grade VI). We accordingly filed our response to the ex-parte order and submitted documents/ details which were directed. In spite of submitting the documents and details when we did not receive any relief from SEBI, we preferred an appeal before the Hon'ble Securities Appellate Tribunal, against the ex-parte order. The Hon'ble Tribunal post hearing both the parties accordingly passed an order dated September 11, 2017 directing SEBI to pass appropriate order in the matter within 4 weeks from the date of the order, post hearing us.

(c) Pursuant to that on September 20, 2017 an opportunity of hearing was granted to us and the same was attended by the representatives of the Company, who in turn for the vindicated the Company's stand and submitted that, the action taken against the Company, was uncalled for and in pursuance of one MCA Letter which was not provided to them thus requested the Whole Member to provide the documents and details based on which the said ex-parte order was passed. However, to the shock and surprise of us, it was intimated to us that, SEBI has initiated the investigation in the matter on its own and thereby our representatives were directed to submit certain documents and details. The Company vide its letter dated September 28, 2017 submitted the information and documents sought by SEBI.

(d) Subsequently, on October 09, 2017 without providing us with any opportunity to respond and/or make submissions to the alleged conclusions reached by SEBI, on the documents submitted by us, ad-interim order was passed in the matter. Vide the said ad-interim order (passed in an ex-parte manner) SEBI had inter alia directed (1) Promoters and directors of the our Company, were estoped from selling and/ or transferring their holding in the Company, (2) to submit further documents and explanations and (3) and ordered an independent forensic audit of our books and records. It is important here to

note, that both August 07, 2017 and October 09, 2017 were passed in a ex-parte manner and pending investigation. Further October 09, 2017 was supposed to be an order passed after proper hearing as the preceding order (August 07, 2017) was an ex parte order and it was mandatory for the authorities to pass an order after providing us a satisfactory opportunity of hearing. It is submitted that, even though, we were provided an opportunity of hearing on September 20, 2017 however the same was nothing but an empty- formality as neither we were provided with the documents/evidences based on which the ex-parte order was passed, nor allowed an opportunity to deconstruct / respond to the alleged prima facie conclusions which were reached by SEBI, in the ad-interim order (i.e. on October 09, 2017).

(e) It is trite of law that, in case an authority wish to pass any interim order based on some prima facie finding/ conclusion, the conclusion or the finding either be reached based on the documents which are already in possession of the authority and in case it wish to relay upon the document and details submitted by the judgement debtor, he should be provided an opportunity to respond and/or deconstruct the alleged conclusions, before the same can be treated as prima facie by the adjudicating authority. However, in the present matter no such opportunity was provided to us.

(f) In any event it further submitted that Company is suffering from a crisis lately as we were not able to generate much of the business and are suffering from prolonged losses and from the cut throat competition prevailing in the telecom sector. Most of our employees have resigned from the employment. It is further submitted that our managing director Mr. Inder Sharma is looking into the present matter and was instructing the advocates and the counsels. However, for past months his son was ailing and Mr. Sharma was tied up in taking care of his ailing son, who on a constant basis required medical attention and doctors advise.

(g) Further, SEBI vide the ad-interim order (October 09, 2017) had appointed independent auditors to go through the books and records of the company, and Mr. Sharma along with other staff members were in constant touch with the auditors and were majorly occupied in supplying the documents and details sought by them. Owing, these factors and the circumstances explained below, we were not in a position to avail the opportunities of hearing granted to us.

(h) In any event and it is humbly submitted that the reasons owing to which the hearing opportunities could not be availed by us has been expressed to your goodself vide communiques and the relevant authorities post considering the reasons contained their acceded our request. It is submitted that, owing to bona fide reasons we could not avails the opportunities granted to us.

(i) It is further submitted that, post passage of the ad-interim order dated October 09, 2017, we vide our letter dated October 16, 2017, requested your goodself to grant us an opportunity of personal hearing before the Ld. Whole Time Member. Accordingly, your goodself vide a letter dated October 24, 2017 provided us an opportunity of personal hearing on November 14, 2017. Upon the receipt of the said letter, we contacted our advocates, representing us in the matter and intimated them the scheduled date of hearing. However, owing to the certain prescheduled commitment they informed us their unavailable on the scheduled date of hearing. Hence, we vide our letter dated October 27, 2017, expressed our inability to attend the proceeding and sought an adjournment. Please note, as soon as we came to know about our advocates in ability we immediately requested for an adjournment to avoid any last minute inconvenience to your goodself.

(j) Further as the hearing was the scheduled in Mumbai and we are situated in Delhi, we were facing some issues to deal with the matter as the advocates appointed by us were based out of Delhi and were facing difficulties in attending the hearing in Mumbai. Hence, we decided to change our advocates and appointed the counsel in Mumbai as it will be easy for them to attend the hearing.

(k) Subsequently your goodself vide letter dated November 09, 2017 provided an opportunity of personal hearing on December 19, 2017. However, during this time, the new advocates appointed by us were going through the document and records in the matter and were preparing our response. But owing to the reasons explained in the previous paras, it was taking some time on our part to pass on appropriate instructions to our advocates in Mumbai. Further, as the scheduled hearing (i.e. on December 19, 2017) was just a week prior to the vacations of Hon'ble Bombay High Court, we were finding it difficult to find a counsel who could plead our case before the Ld. Whole Time Member. In the light of the same, we sought additional time to submit the reply and requested the hearing be scheduled at any other date post us submitting the reply.

(l) Pursuant to this, your goodself vide letter dated December 26, 2017 provided us another opportunity of personal hearing on January 24, 2018 before the Ld. Whole Time Member. This time we were almost prepared with our reply and were ready to attend the personal hearing. However, vide an email dated January 16, 2018, your goodself asked us to provide our comments on the allegations levied against us on the complaint received by you.

(m) As the information to be collected by us in order to respond to the allegation levied in the complaint were bulky in nature, we vide our letter dated January 20, 2018 sought additional time of 15 days to file the reply, which was according filed by us vide our letter dated February 04, 2018.

(n) It may be appreciated by your goodself that no hearing has taken place in the present matter after the filing of the reply dated February 04, 2018 and the hearing is actually required after filing of the detailed reply by an entity. Further, it must be pertinent to note here that even if the hearing would have been attended by us on any of the scheduled dates, your goodself would have been required to provide us an another opportunity of personal hearing pursuant to the email dated January 16, 2018, as the same had introduced additional facts in the matter which were not present at the stage of the passage of the ad interim order dated October 09, 2018.

(o) Further as brought to your goodself s attention, we were facing financial difficulties, it took some time on our part to arrange resources, which could be applied to continue the present legal proceeding. Thus a delay in arranging resources also contributed to the delay in filing the replies and other responses to your goodself.

(p) Due to these reasons, it is humbly submitted that an opportunity of personal hearing must be provided to us in the present matter as the fact that we missed three opportunities of personal hearing were due to the factors beyond our control.

(q) It is strenuously submitted that no prejudice will be caused to any party involved in the present matter, if an opportunity of personal hearing is provided to us. As there will be no harm be caused to the interest of investor and securities market nor SEBI will be put to any disadvantageous position. However if the hearing opportunity is not provided to us than an irreparable loss would be caused to us and our promoters, as we will not be able to explain our case before the relevant authority and the same would be putting us to more hardship and condemning us unheard. Thus, it can be said that the balance of convenience is in our favour and so it is imperative in the interest of justice, equity and good conscience that an opportunity of personal hearing is provided to us.

(r) It is further submitted that, Hon'ble apex court in plethora of judgments have underlined the importance of personal hearing and up held that a person is heard before any order is passed against him/them as it is a right which is fundamental to a just decision by any authority as it affects the rights of the noticee. Further the right of hearing is an sine qua non for fair trail and this rule cannot be sacrificed at the altar of administrative convenience or celerity. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is submitted that principle of natural justice are embodied under Article 14 and 21 of the Constitution of India and SEBI being a statutory authority and a 'State' as per Article 12 of the Constitution of India cannot violate the fundamental right of any person.

(s) In Sayeedur Rehman v. The State of Bihar, AIR 1973 SC 239, a three-Judges Bench of the Supreme Court highlighted importance of the rule of hearing in the following words:

"This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

(t) *In Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus:*

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partim rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to

the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(u) In Automotive Tyre Manufacturers Association v. The Designated Authority, (2011) 2 SCC 258 the Supreme Court explained the meaning and scope of "audi alteram partem" which is a fundamental maxim of natural justice. The Supreme Court observed that this maxim has many facets, two of them being (a) notice of the case to be met and (b) opportunity to explain and this rule cannot be sacrificed at the altar of administrative convenience or celerity. It was observed that

"It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle an be properly determined."

(v) In State of Orissa vs. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269 the Supreme Court was considering how the State should conduct an enquiry for the purpose of removing a holder of an office in its medical department before her superannuation "for good and sufficient reasons". The Supreme Court observed that basic rules of justice and fair play must be observed. Following observations of the Supreme Court need to be quoted:

"The deciding authority, it is true, is not in the position of a judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences."

(w) *In Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers, (2010) 4 SCC 785 the Supreme Court again emphasized the importance of giving an opportunity of hearing to the person who is likely to be adversely affected by the action of any administrative or quasi judicial authority and also the importance of passing reasoned orders. Following observations of the Supreme Court are material:*

"At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment...

The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given

notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."

(x) *In Reliance Gas Transportation Infrastructure Limited vs. Petroleum and Natural Gas Regulatory Board, 2016 ELR (APTEL) 1006*

"The above judgments state that the principles of natural justice are applicable to statutory bodies or Tribunals irrespective of whether they exercise administrative or quasi-judicial powers. Unless expressly excluded, the principles of natural justice apply to administrative/quasi-judicial decisions, which have adverse civil consequences for a party. Essential attribute of the concept of "natural justice" is making known to the person against whom an adverse order is likely to be passed the case against him and the material which is placed before the decision making authority which is likely to be taken into consideration by it while passing the order. Another attribute of equal importance is opportunity of hearing. Opportunity of hearing must be given to a person so that he can controvert or correct any evidence in possession of the decision making authority which may be used against him. Communication of a reasoned order to the person against whom the adverse order is passed is another attribute of "natural justice" concept."

(y) *Further, your kind attention is drawn towards the ratio laid by the Hon ble Supreme Court while deciding New Prakash and co. v. New Suvama and co. (AIR 1957 SC 232):*

"The rules of natural justice require that the party should have the opportunity to adduce all the relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given an

opportunity of cross-examining the witnesses examined by the other party, and further that no material should be relied upon against him without his being given an opportunity of explaining it."

(z) On the similar lines, the Hon'ble Securities Appellate Tribunal in the matter of Ms. Smitaben N. Shah v. SEBI, Appeal No. 37 of 2010 wherein the Hon'ble Tribunal in Para 7 of the order have dearly stated that-

"If the documents asked for are relevant and may help the delinquent to prepare his/her defence they have to be furnished and it is not correct to say that only the documents relied upon in the show cause notice alone are to be supplied to meet the ends of the justice."

(aa) The Hon'ble Apex Court in landmark case of Canara Bank v. Shri Debasis Das, AIR 2003 SC 2041 has observed that:

"How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debet esse judex in propria cause sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'allquis non debet esse judex in propria causa quai non protest esse iudex at pars' (Co.Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alterani partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui a liquid statuerit parte in audits alteramacetum licet dixerit, haud vacuum facerit' that is, 'he who shall decide anything without the other side having been heard,

although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6Co.Rep. 48-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. whenever an order is struck down as invalid being in violation of principles Of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated... The inevitable result is that the judgment of the Division Bench confirming that of the Learned Single judge has to be quashed so far as it relates to the question of violation of principles of natural justice". (emphasis supplied)

(bb) *Therefore, inlight of the aforesaid it is most humbly prayed to your goodself that, we be provide with an opportunity of personal hearing before the Ld. Whole Time Member in accordance with the cardinal principles of natural justice.*

……..”

21. In response to SEBI’s letter dated May 31, 2018, NTIL vide letter dated June 20, 2018 had *inter alia* stated as under

“…….

(a) In Para 6 of the captioned letter, your goodself has stated that "Please note that SEBI had already provided the copy of full MCA Letter vide SEBI's letter dated March 21, 2018". With regard to this, it is strenuously submitted that the said statement is false and misleading. By no stretch of imagination it can be said that (vide Letter dated March 21, 2018) the copy of the complete MCA Letter was provided to us and the reasoning behind the said submissions are as follows:

(i) Paragraph indicated in the MCA Letter is not complete and the letter has not been signed by any person.

(ii) The copy of letter bearing no. SFIO/MRAU/0042017-SCBD dated May 23, 2017 received from Serious Fraud Investigation Office (hereinafter referred to as the "SF10 Letter"), enclosed with the MCA Letter, ends with the incomplete sentence at Para 3 and also has not been signed by any person.

(iii)In Para 2 of the SFIO Letter it has been indicated that the list of 331 shell companies has been provided in File "Database of Listed Shell Companies.xlsx" and the

description of the source has also been indicated in which we appear at serial number 281 of the said list. However it is pertinent to note here that in the said SFIO letter, only a list of 331 alleged shell companies has been provided and the basis on which these 331 companies have been alleged to be shell companies has not been provided to us.

(iv) Hence, substantially your goodself has only provided the list of 331 alleged shell companies, which was already available in the public domain as the same was annexed to the letter dated August 07, 2017, which was uploaded on the website of National Stock Exchange of India Ltd. and BSE Ltd.

(b) It cannot be the case that MCA just sent the list of 331 companies which they believed to be shell companies without sending any reasons, observations and evidences on the basis of which MCA has reached to this destructive conclusion. Moreover, even if it is assumed that MCA only provided the list of 331 shell companies to SEBI, it cannot be the case that SEBI passed the ex-parte order dated August 07, 2019 just on the perusal the list of 331 suspected shell companies.

(c) Therefore, in absence of any details, it can be reasonably presumed that no case has been made against us in the MCA Letter providing the reasons as to why we have been suspected as the shell company. Hence, it is important that the extract of the letter in which adverse finding have been made against us in MCA Letter or the enclosed SFIO Letter was provided to us as without knowing the observations of SFIO. In the absence of such details, we will not be able to provide a complete defence to establish to the satisfaction of your goodself that we are neither a shell company nor we have violated the provisions of SEBI laws / regulations.

(d) It is further submitted that we have not asked for the complete MCA Letter but merely asked for the extracts of the letter in which the adverse finding have been noted against us.

(e) It has further been stated in the captioned letter that SEBI has passed the Order dated October 09, 2017 on the basis of facts emerged out of its independent enquiry based on the publicly available information and reply submitted by us the vide letter dated September 28, 2017.

(f) With regard to this it is humbly submitted that findings made in the Interim Order dated October 09, 2018 were not made on the basis of the documents provided to your goodself but were made on the basis of the suspicion, which were aroused by your goodself as we failed to provide certain documents to your goodself. The instances substantiating our claim are as follows:

(i) *In sub-para (a) of Para 16 on Page 12 of the Interim Order it has been stated that "The Company listed out fixed assets of Nutek HK Private Limited but no document was submitted by the company to verify the existence of fixed assets listed."*

(ii) *In sub-para (b) of Para 16 on Page 12 of the Interim Order it has been stated that "The company has submitted the share purchase agreement between the Nutek HK Private Limited and East Africa Distribution Limited for the purchase of 45% stake in Gulf Power Corporation Limited. However the consideration for the purchase of stake is not mentioned in the agreement though the registered number i.e. IC/1440/09 is indicated in the share purchase agreement dated December 09, 2010".*

(iii) *In sub-para (c) of Para 16 on Page 13 of the Interim Order it has been stated that "The auditor report submitted by the Company for Nu Tek HK Private Limited have mentioned that no documentary evidence was provided to substantiate the recoverability and to assess provision for the trade receivables of HK$ 94,000,000 as on March 31, 2016 and March 31 2017".*

(iv) *In sub-para (f) of Para 16 on Page 14 of the Interim Order it has been stated that "The company has provided list of individuals for the amount of advance to employees without any date since when the same is pending to be adjusted. The company has provided the list of parties for trade payable without an documents proof including the terms of contract, payment terms, since when the amount is due etc. Secretarial audit ort for related party transaction of Rs. 15,04,781 with Oriental Stitch Private Limited was not provided."*

(v) *In sub-para (g) of Para 16 on Page 14 of the Interim Order it has been stated that "The company has provided some agreements and copy of purchase order for the amount of advance to supplies outstanding as on March 31, 2016. However, it is observed that the agreement / contract copies are not available many suppliers and there is no list of parties to whom the amount is outstanding along with the ageing analysis. Further with respect to the agreement / contract copies provided by the company for some suppliers, no corresponding bank entries for the amount outstanding is furnished".*

(vi) *In sub-para (h) of Para 16 on Page 14 of the Interim Order it has been stated that "The company has replied that the Board considers the investment of Rs. 11 crore in Nu Tek Europe as good but no document has been submitted to substantiate the realization of Rs. 11 crore as good".*

(vii) *It has been concluded in Para 17 at Page 15 of the Interim Order that "Considering the above observations, it prima facie appears that as per Auditor Report, NTIL has*

neither provided any documentary support to substantiate the recoverability and to assess provision for the trade receivables of HK$ 94,000,000 as on March 31, 2016 and as March 31, 2017, nor it has provided any documentary support to ascertain and to assess the amounts of provisions, if an which might have been required for the underlying value of the group's investment in associate of HK$ 349 millions. Thus there is strong prima facie suspicion of misrepresentation of financials of the company. Further out of USD 73.4 million raised in 2 GDRS by NTIL, USD 62.96% million was invested in Nu Tek HK Private Limited who in turn invested to purchase of 45% stake in Gulf Power Corporation Limited. However NTIL has not submitted any documentary evidence on the consideration paid for the purchase of 45% stake in Gulf Power Coloration Limited and has also failed to demonstrate the final use of GDR proceeds".

(g) *It can be easily deduced from the above that the Interim Order has been passed on the basis of suspicion and nothing else , and that suspicion has been drawn on the basis that certain documents which have not been provided by us to SEBI. Instead of making an attempt to ask the required documents from us, the interim order has been passed against us alleging misrepresentation of financials and misuse of books of accounts, and in the interim order the documents not provided by us have been indicated.*

(h) *It is humbly submitted that the findings in an order has to be based on the documents submitted by the person and not on the basis of the documents not submitted by the person. This is because if an investigation is going on in the matter all the material and documents are sought from the person and after considering all the documents and materials, the order is to be passed in the matter. However in the present case, the queries were raised and materials were sought from us and the interim order was passed against us on the basis of certain documents not provided by us. What ideally should have been done is that the documents, non-supply of which has resulted in passing of interim order, must have been asked from us and an opportunity must have been given to us to submit the documents. It is then the interim order must have been passed after considering all the documents, more so because the investigation was still going on in the present matter and there was no urgency at all to pass the order in the present matter.*

(i) *As the same has not been done, it prima facie and ipso facto proves that the order has been passed in the present matter with a biased mind, and this bias has been caused due to the MCA Letter. If such a bias would not have been there, then, just like every other proceeding under SEBI, the interim order would have been passed after asking all the material from us and after proper appreciation of all the material. Therefore it cannot*

be said that SEBI has passed order dated October 09, 2017 on reliance of facts emerged out of its independent enquiry, as the bias was caused by the MCA Letter.

(j) Hence it is pertinent that the MCA Letter must be shared with us in order to enable us to explain to the satisfaction of the Ld. Whole Time Member and that the observations made against us in the MCA Letter are not correct. This will not only improve our case but will also help the Ld. Whole Time Member to proceed against us with a non-biased mind.

(k) Without prejudice to the above, it is humbly submitted that assuming without accepting that the order dated October 09, 2017 was passed on the basis of our reply dated September 28, 2017 and publicly available information, it is submitted that it has never been made clear by SEBI as to on what basis the ex-parte order dated August 07, 2017 has been passed.

(l) In Bhoruka Financial Services Ltd. vs. Securities and Exchange Board of India, [2006] 68 SCL 495 (SAT), it was observed by the Hon'ble Securities Appellate Tribunal that:

> *"If the matter is not so urgent and the Board wants to find out whether or not it is a fit case to order an enquiry or investigation it may issue notice to those allegedly involved in the wrong doing and make up its mind thereafter. In that event it will not be open to it to issue interim order/directions instantaneously obviously because the matter is not urgent and investigations/enquiry is yet to be ordered. The legislature has made its intention clear that interim direction / order could be passed by the Board only "either pending investigation or enquiry or on completion of such investigation or enquiry." Section 11 (4) is an enabling provision and it is not necessary that the Board should in every case pass an interim order / direction where an enquiry / investigation has been ordered. There could be cases where the Board may order an enquiry/ investigation and pass final orders/ directions only on its completion. This will depend upon the nature and seriousness of the complaint received..... It is, thus, clear that investigation can be made only by an order in writing and not otherwise. In the instant case this order was passed only on 05/12/2005. The so called preliminary investigations which the Board made prior to 05/12/2005 were only meant to make up its mind whether investigation was to be ordered or not. Whatever material the Board might have collected during the preliminary investigations could be used by it but it could not pass an interim order / direction prior to 05/12/2005 because no investigation was pending."*

(m) Powers available under Section 11(4) and 11B of the SEBI Act are not available in the instant case for the reason that a direction thereunder can be issued only "after making or causing to be made an enquiry". There is nothing on record to show that the said requirement has been followed in my case. However, in the instant case the interim directions vide letter dated August 07, 2017 were passed before making an order for investigation or enquiry. If it is the case of SEBI that. directions passed by your goodself vide the order dated August 07, 2017 were on the basis of the MCA Letter, then it would be unlawful to pass the directions as per the above cited order, because the same could only be used to order an investigation against us, as there was no urgency in the matter.

(n) Therefore, as it cannot be said that the MCA Letter was used for passing the ex-parte ad-interim directions vide letter dated August 07, 2017, it would be reasonable to deduce that the MCA Letter was considered during the pendency of the enquiry or investigation. In light of the above, it is humbly submitted that your goodself is bound by law as well as equity to provide us the MCA Letter. We request your goodself to not to consider this as a delaying tactic as it is a genuine request. In case SEBI does not have the complete MCA letter and it has proceeded against us on the basis of the list provided by MCA the directions qua us in the letter dated August 07, 2017 and order dated October 09, 2017, needs to be quashed for want of evidence.

(o) It is submitted that the power to issue directions under section 11, 11(B) and section 11 (4) of the Act has to be exercised judiciously, that it is well settled that a discretionary power is not to be invoked arbitrarily devoid of justification. It is all the more necessary in a case having adverse civil consequences as well as reputational adversity. It is humbly submitted that in the facts and circumstances of the instant case, the directions passed against us are not warranted and urgent. It is a well-accepted requirement to state clearly in the order as to how in the absence of the impugned order; the integrity of the securities market or interests of the investors would have been adversely affected. In the instant case, nothing has been brought on record to justify the directions inflicting irreparable damage on us. It is our humble submission that the exercise of such an arbitrary power is unwarranted or unjustified in the facts and circumstances of the instant case. Not even a prima facie case has been made out to warrant the issuance of such an ex-parte order dated August 07, 2017 of serious consequence against us. The imminent urgency has also not been explained to support the ex-parte order. It is respectfully submitted that the order against us has been passed with prejudice and bias overtaking the equity and fair play expected of a public authority.

(p) Further, it is important to note here that the order dated October 09, 2017 is an ad-interim order and the same has been passed on the basis of certain documents. In the next stage, either the confirmatory order is passed or the ad-interim order is set aside. A

confirmatory order is the order which confirms the directions passed in the interim order. In order to confirm if the directions passed in the ad-interim order were right or wrong, the confirmatory order has to be passed on the basis of the documents which were available with SEBI before the passing of the interim order. This is because at this stage SEBI is only confirming the directions passed by itself. Hence, in the present case, the documents submitted by us after October 09, 2018 (sic) cannot be considered by your goodself in passing the confirmatory order and the same can only be considered by your goodself while passing the final order in the matter.

(q) It is strenuously submitted that no prejudice will be caused to any party involved in the present matter, if an opportunity of personal hearing is provided to us. Neither there will be any harm caused to the interest of investor and securities market nor SEBI will be put to any disadvantageous position if an opportunity of hearing is provided to us. However if the hearing opportunity is not provided to us then the same will cause us and our promoters an irreparable injury as we will not be able to explain our case before the authority and the same would cause us more hardship. Thus, it can be said that the balance of convenience is in our favour and so it is imperative in the interest of justice, equity and good conscience, an opportunity of personal hearing is provided to us.

(r) In the light of the above, we request your goodself to provide us an opportunity of personal hearing before passing any order in the present matter as otherwise the same would amount to the gross violation of cardinal principles of natural justice.

22. From NTIL letters dated February 04, 2018, May 08, 2018, June 08, 2018 and June 20, 2018, I note that Noticee had not submitted any response on merits to the allegations/prima facie findings/ directions mentioned in the in the Interim Order dated October 09, 2017. However, I note that through said letters NTIL has submitted its reply on various other contentions /objections raised by them.

23. ***NTIL's First Contentions/Objections:***

(a) NTIL through its various letters had stated that complete/full copy of MCA and SFIO letters has not been provided to them, which amounts to gross violation of principle of natural justice.

(b) In regard to this, I note that SEBI vide letter dated March 21, 2018 has forwarded the copy of MCA letter dated June 09, 2017 to NTIL and stated that based on MCA letter dated June 09, 2017, SEBI vide letter dated August 07, 2017 had taken certain pre-emptive surveillance measures. I also note that vide said letter dated March 21, 2018 SEBI also informed NTIL that names in MCA letter and annexures were redacted. I further note that SEBI vide letter dated May 31, 2018 once again had informed NTIL that copy of full MCA letter dated June 09, 2017 was already provided to NTIL vide SEBI letter dated March 21, 2018 and SEBI also once again informed NTIL that names in MCA letter and annexures were redacted. Vide letter dated May 31, 2018, SEBI informed NTIL that findings in the interim order dated October 09, 2017 emerged out of SEBI's independent enquiry based on publicly available information and NTIL's reply dated September 28, 2017.

(c) It is observed that information from a Government Agency categorizing a company as a Shell Company was a trigger for SEBI that these companies may possibly have misrepresented their financials or misused their books of accounts and thereby may have violated the securities laws. Thus, based on such trigger (i.e. MCA letter dated June 09, 2017), SEBI in its administrative capacity under Section 11(1) of SEBI Act, vide letter dated August 07, 2017 had taken certain pre-emptive surveillance measures in respect of certain listed companies including NTIL. Aggrieved by the letter dated August 07, 2017 issued by SEBI and Stock Exchanges, companies including NTIL had filed an appeal before Hon'ble Securities Appellate Tribunal (SAT). Hon'ble SAT in the matter of *J.Kumar Infra Projects Limited vs. SEBI (*order dated August 10, 2017) held that the measure taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order passed under Section 11(4) of SEBI Act and not an administrative order passed under Section 11(1) of SEBI Act. Also, Hon'ble SAT in the matter of *NTIL vs. SEBI*, vide order dated September 11, 2017 made clear that passing of any order on the representation made by NTIL would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit. Therefore, on the same line of reasoning, the letter dated August 07, 2017 should be considered as ex-parte interim order.

(d) In view of Hon'ble SAT observation that letter dated August 07, 2017 issued by SEBI was in the nature of quasi-judicial order passed under Section 11(4) of SEBI Act, SEBI had provided an opportunity of hearing to NTIL on September 20, 2017 and called for information from NTIL, which was submitted by NTIL vide letter dated September 28, 2017. Thus, based on SEBI's independent enquiry emerging out of NTIL's reply dated September 28, 2017, NTIL's Annual Report for Financial Year (FY) 2015-16 and 2016-17 and excerpts from NTIL's Annual Report for FY 2010-11, SEBI passed an Interim Order dated October 09, 2017. As per the *prima facie* findings mentioned paragraph 16 of the interim order as reproduced hereinabove at paragraph 5, SEBI was of the view that there was a *prima facie* evidence that the company has misrepresented its financials and *prima facie* suspicion of misuse of funds/books of accounts of the company.

(e) Thus, I am of the view there is no violation of Principles of Natural Justice. Therefore, I do not find any merit in the said contention of NTIL.

24. ***NTIL's Second Contentions/Objections:***

(a) NTIL stated that the Whole Time Member (WTM) has called for certain information from NTIL and therefore, the said WTM has become the part of the investigation. NTIL further stated the one of the most fundamental principles of natural justice is that an adjudicator cannot become the part of the investigation as otherwise the whole inquiry or proceedings will be vitiated.

(b) In regard to this, I note that Hon'ble Supreme court in *Clariant International Ltd. and Ors. vs. Securities and Exchange Board of India* (25.08.2004 - SC): MANU/SC/0694/2004, states that the Board exercises its legislative power by making regulations, executive power by administering the regulations framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof.

(c) In order to perform the functions of the Board as mentioned in section 11 of the SEBI Act, the board may take such measures as it thinks fit as mentioned in section 11(1) and 11(2) of the SEBI Act. The said measures include calling for information mentioned under

various heads section 11(2) (i),(ia),(ib) and (la) of SEBI Act. The Board also has additional powers under section 11(3) of SEBI Act specific powers of Civil court as mentioned under the said section while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub- section (2A).

(d) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any measures, either pending investigation or inquiry or on completion of such investigation or inquiry mentioned in sub section 11(4).

(e) The calling for information under section 11(2) (ia) can be exercised by the Board if in the opinion of the Board, the information is relevant to any investigation or inquiry by the Board. It is noted that the Board can exercise the powers of calling for information either when conducting an investigation or while conducting enquiry under section 11(4) and 11B of the SEBI Act (hereinafter referred to as "enquiry"). The powers of the Board can be delegated by general or special order in writing to any member, officer of the Board or any other person under section 19 of the SEBI Act, 1992. On cumulative reading, it becomes clear, the enquiry powers can be exercised at various stages of the enquiry in consonance with powers delegated under Section 19 of the SEBI Act.

(f) The quasi-judicial proceedings being part of one of the stages of enquiry, the powers available while conducting enquiry continue to be available for exercise at the stage of quasi-judicial proceedings. There is no rigid, hide-bound, pre-determined procedure envisaged under SEBI Act for conducting an enquiry. The procedure so designed has to suit the requirements of the case and has to be so designed which embodies the principles of natural justice, whenever action is taken affecting the rights of parties. If the procedure adopted is fair, it matters not who and when the information was gathered or at what stage evidence was collected. The following findings of Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills* Vs *Union of India & Others (1984) SCC 465* are noteworthy:-

> *"There can be no tape measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case."*

(g) Further, the perusal of aforesaid provisions of SEBI Act coupled with the unification of powers indicate that proceedings before the Board are predominantly inquisitorial in nature. The scheme of SEBI Act is predominantly inquisitorial and the enquiry powers and adjudicatory powers are unified in the scheme of Act is manifest in section 4(3) of the SEBI Act which clearly lays down the Chairman of the Board has all the powers exercisable by Board. The absence of reference in the SEBI Act to distinct adverse parties as in the case of a "suit" and existence of powers of enquiry exercisable only on *suo motu* basis, if circumstance for exercising such power exist, for discharging the functions under SEBI Act further throws light on the predominant nature of the proceedings as inquisitorial. The interpretation that once quasi-judicial proceedings have been initiated, the power to seek information while conducting enquiry ceases to exist is contrary to the scheme of SEBI Act and securities laws. The conferment of powers to pass ad-interim ex-parte orders under the SEBI Act, 1992 or other provisions of securities law, as an interim outcome of quasi-judicial proceedings, pending enquiry, lends credence further to the existence of powers with the Board to seek information as part of enquiry till the completion of enquiry.

(h) While exercising the power to seek information relevant to the enquiry, during post decisional hearing for ex-parte interim order, it could be possible that the information gathered from the Noticee can contradict the prima facie evidence available at the time of passing of ex-parte interim order (beneficial material). It could also be possible, the information so gathered from the Noticee may indicate prima facie violations of different provisions of securities laws other than the one for violation of which the ex-parte interim order was passed (adverse material).

(i) Pursuant to the post decisional hearing on the ex-parte order, it results into either an order confirming or modifying or revoking the directions of the ex-parte order (post decisional interim order). It goes without saying, consideration of such beneficial material received from the party against whom ex-parte order has been passed, may result into appropriate modification or in a fit case revocation of ex-parte order.

(j) The argument that the adverse material cannot be relied upon in the post decisional proceedings of ex-parte order, stems from the principle of natural justice. Because if such adverse material is relied upon, this would result into findings on different provisions of securities laws in the post decisional interim order. However, the concerned person would not have benefit of contesting the adverse material. The principles of natural justice would be met if the Noticee is given another opportunity of hearing to controvert the adverse materials relied upon in the post decisional interim order.

(k) Needleless to say the adverse material should be used against the person against whom the ex-parte order has been passed, only after giving him reasonable opportunity of being heard. However, if circumstances exist for passing an ex-parte order on the basis of adverse material, under the scheme of SEBI Act the same can be done, with post decisional hearing. This results in a scenario where the post decisional interim order itself becomes an ex-parte interim order in respect of adverse material. The alternative way of discharging the investor mandate would have been to pass post decisional order without considering the adverse material and pass a fresh ex-parte order on the basis of adverse material.

(l) In my view, since passing of more than one interim order is permissible; when circumstances exist, more than one ex-parte interim orders would also be permissible in conformity with the principles of natural justice. In the interest of investors and securities market, the adverse material can be relied upon in the post decisional proceedings with an opportunity of being heard on those findings. This would prevent a needless protraction of interim order proceedings if the adverse material is considered through the alternative way mentioned above. I am also conscious of the view, that in the interest of finality to the findings, the principles governing the passing of ex-parte interim order should equally guide the exercise of such power of using adverse material sparingly in the interest of investors and urgency.

(m) In view of the above position of law, I am of the view that in quasi-judicial proceedings, while conducting enquiry, there is no legal bar on the Competent Authority to seek and rely on the information given by the Noticee for passing possible directions subject to an

opportunity for post decisional hearing being made available to the Noticee. Thus, I am of the view there is no violation of Principles of Natural Justice. Therefore, I do not find any merit in the said contention of NTIL. The fact that information has been sought and information such as Annual Report has been collected prior to the passing of Interim order dated October 09, 2017, shows that the said interim order was passed after enquiry was intiated.

25. ***NTIL's Third Contentions/Objections:***

(a) NTIL stated that if a hearing opportunity is not provided to them then an irreparable loss would be caused to them and their promoters, as they will not be able to explain their case before the relevant authority and the same would be putting them to more hardship and condemning them unheard. NTIL further stated that the balance of convenience is in their favor and therefore, it is imperative in the interest of justice, equity and good conscience that an opportunity of personal hearing be provided to them. NTIL submitted that, Hon'ble apex court in a plethora of judgments has underlined the importance of personal hearing and upheld that a person be heard before any order is passed against him/them as it is a right which is fundamental to a just decision by any authority as it affects the rights of the noticee. Further, NTIL stated that the right of hearing is a sine qua non for fair trail and this rule cannot be sacrificed at the altar of administrative convenience or celerity.

(b) In the present case, I note that three opportunities of hearing have been provided to NTIL to appear before me on November 14, 2017, December 19, 2017 and January 24, 2018 which NTIL had failed to avail.

(c) With respect to the hearing scheduled on November 14, 2017, I note that NTIL vide letter dated October 27, 2017 requested for first adjournment of hearing on the ground that the counsel /advocate was not available on scheduled date of hearing. The same was acceded and the hearing was adjourned to December 19, 2017.

(d) With respect to the hearing scheduled on December 19, 2017, NTIL once again (second time) vide letter dated December 15, 2017 requested for second adjournment of hearing on the ground that new advocate has been appointed by them and scheduled date of

hearing i.e. December 19, 2017 being last week prior to the starting of winter vacation of Hon'ble High Court of Mumbai and NTIL is facing difficulties in arranging lawyers to represent NTIL on schedule date of hearing. The same was acceded and the hearing was adjourned to January 24, 2018.

(e) With respect to the hearing scheduled on January 24, 2018, NTIL did not appear for hearing.

(f) Further, NTIL vide letter dated June 07, 2018, requested for an opportunity of hearing before Hon'ble Whole Time Member. Considering that ample opportunity of hearing had being already granted to NTIL, NTIL's request for another opportunity of hearing sought by them vide letter dated June 07, 2018 was rejected.

(g) I also note SEBI vide its interim order dated October 09, 2017 and vide its letters dated October 24, 2017, March 21, 2018 and May 31, 2018 had given NTIL four opportunities to submit its written submissions / reply on merits/findings/prima facie allegation mentioned in the interim order dated October 09, 2017, which NTIL had failed to avail till date.

(h) It is observed that continuously requesting adjournment of hearing and failing to submit written submissions/reply on merits despite multiple opportunities being given, shows the callous, lackadaisical and irresponsible approach of NTIL towards the present proceedings. I note that due procedure has been followed in the present proceedings and the same is not in violation of the Principles of Natural Justice. Considering the same, I am of the view that in the name of natural justice, NTIL was adopting dilatory tactics to cause uncalled for delay in disposal of the present proceedings. Therefore, I do not find any merit in the said contention of NTIL.

26. ***NTIL's Fourth Contentions/Objections:***

(a) NTIL vide letter dated February 04, 2018 stated that *"……However, Noticee is in receipt of an email dated January 16, 2018 of Mr. Pawan Chowdhary, Manager, Integrated Surveillance Department, SEBI vide which we have been informed by your goodself that*

SEBI is in receipt of complaint raising certain allegations against the Noticee. To this, the Noticee has been asked to offer comments, submissions along with the documentary evidences. With regard to this it is stated that the allegations raised in the complaint is frivolous and fallacious……"

(b) NTIL vide letter dated June 08, 2018 stated that *"……..It may be appreciated by your goodself that no hearing has taken place in the present matter after the filing of the reply dated February 04, 2018 and the hearing is actually required after filing of the detailed reply by an entity. Further, it must be pertinent to note here that even if the hearing would have been attended by us on any of the scheduled dates, your goodself would have been required to provide us an another opportunity of personal hearing pursuant to the email dated January 16, 2018, as the same had introduced additional facts in the matter which were not present at the stage of the passage of the ad interim order dated October 09, 2018……"*

(c) NTIL vide letter dated June 20, 2018 stated that *"……..Further, it is important to note here that the order dated October 09, 2017 is an ad-interim order and the same has been passed on the basis of certain documents. In the next stage, either the confirmatory order is passed or the ad-interim order is set aside. A confirmatory order is the order which confirms the directions passed in the interim order. In order to confirm if the directions passed in the ad-interim order were right or wrong, the confirmatory order has to be passed on the basis of the documents which were available with SEBI before the passing of the interim order. This is because at this stage SEBI is only confirming the directions passed by itself. Hence, in the present case, the documents submitted by us after October 09, 2018 (sic) cannot be considered by your goodself in passing the confirmatory order and the same can only be considered by your goodself while passing the final order in the matter……."*

(d) Considering the aforesaid reply of the Noticee, the issue before me is whether the facts/allegation made out in the complaint dated November 23, 2017 filed by Navig8 and Noticee's reply on the complaint can be considered at the stage of confirmatory order or not?

(e) In this regard, I note the following:

(i) An Interim order dated October 09, 2017 has been passed by SEBI against NTIL. Vide said order SEBI has directed stock exchange to initiate forensic audit against NTIL.

(ii) Thereafter, SEBI was in receipt of complaint dated November 23, 2017 from Navig8, a claimed creditor of Nu Tek (HK) Private Limited (hereinafter referred to as **"NTHK"**) and NTHK is a wholly-owned subsidiary of NTIL.

(iii) SEBI vide email dated January 16, 2018 had advised NTIL to submit its reply alongwith documentary evidence on the allegation raised in the complaint dated November 23, 2017 filed by Navig8, latest by January 20, 2018.

(iv) That hearing in the matter was scheduled on January 24, 2018.

(v) NTIL vide letter dated January 20, 2018 had denied all the allegation leveled against them in the complaint of Navig8 and requested 15 days' time to submit its reply in the matter.

(vi) That NTIL had neither appeared for hearing scheduled on January 24, 2018 nor requested for any adjournment for the said hearing.

(vii) In view of NTIL letter dated January 20, 2018 for its request of extension of time to submit its reply, SEBI vide email dated January 25, 2018 had granted NTIL time till February 04, 2018 to make its submission.

(viii) NTIL vide letter dated February 04, 2018 had submitted its reply to SEBI email dated January 16, 2018.

(ix) NTIL had not submitted any reply/response to the allegations/prima facie findings/directions mentioned in the Interim Order.

(x) SEBI vide email dated June 04, 2018 and June 05, 2018 had forwarded the copy of complaint dated November 23, 2017 filed by Navig8 and copy of relevant extract of NTIL reply dated February 04, 2018 alongwith annexures to stock exchange for

onward forwarding to the forensic auditor for its examination before it renders any findings in its report.

(xi) Forensic auditor had concluded the forensic audit in the matter and had submitted its report to National Stock Exchange of India Limited (**NSE**). NSE vide letter dated July 23, 2018 had submitted the forensic audit report to SEBI and the same was received by SEBI.

(f) It may be noted that any beneficial material submitted by the Noticee or from other sources need to be considered, for such materials are relevant for contradicting the *prima facie* finding entered in interim order dated October 09, 2017. The present averments mentioned in the compliant was denied by NTIL on the one hand. On the other hand, even assuming that the averments are true, the same does not contradict the *prima facie* findings of the interim order dated October 09, 2017. However, the veracity of those averments and, if the averments are true, whether it evidences any violations of securities laws would be considered by SEBI on examination of forensic audit findings.

(g) In view of the above facts and circumstances of the case i.e. complaint and NTIL reply on complaint has already been forwarded to forensic auditor for its examination and Forensic audit has been completed, I am not inclined to give any findings on the complaint or on the reply of NTIL on said complaint.

(h) However, this does not preclude me from giving findings/observations on the contention of NTIL that any additional material /documents submitted before me subsequent to issuance of interim order (i.e. complaint as well as NTIL's reply on complaint) cannot be considered while passing of confirmatory order. In this regard, I am of the view that any additional materials/documents received subsequent to issuance of interim order can be considered provided that due procedure of Principle of Natural Justice has been followed. In the present case, I note that extract of the complaint dated November 23, 2017 was forwarded to NTIL on January 16, 2018 and NTIL was granted time till January 20, 2018 to submit its reply on complaint and hearing in the matter was scheduled on January 24, 2018, but NTIL did not appear for hearing, instead submitted its reply on February 04, 2018. Thus, due procedure of Principle of Natural Justice has been followed in the present case.

(i) Notwithstanding of the above, I note that before passing of final order in the matter, NTIL would be granted with an opportunity to file a reply and appear for hearing on the findings of Forensic Auditor i.e. due procedure of Principle of Natural Justice will follow in the matter.

(j) Thus, I do not find any merit in the said contention of NTIL.

27. ***NTIL's Fifth Contentions/Objections:***

(a) NTIL vide letter dated February 04, 2018 stated that *"……It is submitted that that the findings of the Stock Exchanges on the basis of the information submitted to them has not been shared with us. They have forwarded their report to the SEBI. However the Noticee has no knowledge whether the said report has been considered by your goodself……"*

(b) In this regard, I note that interim order dated October 09, 2017 has referred to the findings of the report submitted by NSE and same has been mentioned at paragraph 11 of interim order. However, the facts mentioned in para 11 of the interim order dated October 09, 2017 are facts which were not found relevant upon for the *prima facie* findings on the violation of securities laws as found in the interim order dated October 09, 2017.

28. ***NTIL's Sixth Contentions/Objections:***

(a) NTIL vide letter dated June 20, 2018 stated that *"…….findings made in the Interim Order dated October 09, 2018 were not made on the basis of the documents provided to your goodself but were made on the basis of the suspicion, which were aroused by your goodself as we failed to provide certain documents to your goodself……"*

(b) In this regard, I note that interim order dated October 09, 2017 was passed on the basis of *prima facie* findings/suspicion arising out of SEBI's independent enquiry based on the NTIL's own Annual Reports and written submissions, for which NTIL was given an opportunity to submit its reply and explain its case, however it is noted that NTIL had not submit any reply/response to the allegations/prima facie findings/directions mentioned in the Interim Order.

(c) Further, despite knowing that the interim order gives reference to the fact that NTIL have failed to provide documentary evidence in respect of prima facie observations /findings mentioned in the interim order, NTIL till now had not submitted any documents in respect of prima facie allegations/observations/findings mentioned in the interim order. Also it did not submit any plausible explanation for not submitting the said documents. Instead, I note that NTIL kept on requesting for adjournment of hearing, which shows that NTIL never intended to explain its case or to submit those documents to SEBI. Therefore, an adverse inference in the interim order has been drawn on documents which have not been provided by NTIL to SEBI. I also note that the Interim Order dated October 09, 2017 passed by SEBI was on the basis of its independent enquiry emerged out of NTIL's submissions dated September 28, 2017, NTIL's Annual Report for FY 2015-16 and 2016-17 and excerpts from NTIL's Annual Report for FY 2010-11. Thus, I am of the view that Interim order has been passed not only on the basis of adverse inference but also on the basis of materials such as Annual Reports and other materials provided by the Noticee. Thus, I do not find any merit in the said contention of NTIL.

29. In summary, I noted that NTIL through its replies dated February 04, 2018, May 08, 2018, June 08, 2018 and June 20, 2018 have submitted its various contentions/objections. However, in view of paragraphs 23 to 28, I do not find any merit in the contentions of NTIL.

30. Further, I note that NTIL has not appeared for hearing despite being given three opportunities to do so and has also not submitted any response to the allegations/prima facie findings/ directions in the Interim Order despite four opportunities being given to do so. Further, no material has been brought to my notice contradicting the allegations/prima facie findings as described in the Interim Order or warranting any change in the directions passed in the Interim Order.

31. Therefore, in order to protect the interest of investors, based on the *prima facie* findings brought out in the interim order, which the company has chosen not to contest, I note that the entire extent of violations can be unearthed only by means of forensic audit. In view of the

above, I find that the facts and circumstances of the case as brought out in the Interim Order have not changed, justifying the dis-continuation or modification or revocation of the directions passed in the Interim Order.

ORDER

32. In view of the foregoing, I, in exercise of the power conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, hereby confirm the directions issued vide Interim Order dated October 09, 2017.

33. I note that forensic audit of NTIL as ordered in the interim order is complete and forensic auditor had submitted its report to NSE. NSE vide letter dated July 23, 2018 had submitted the forensic audit report to SEBI and the same was received by SEBI. The consequential action in that regard shall be taken in accordance with law. In view of this, this order confirming the directions at para 22 (ii) of the interim order dated October 09, 2017 has already been complied with. However, it is made clear that no case for revocation of this direction has been made out. Therefore, it would follow that the forensic audit pursuant to the interim order dated October 09, 2017 has been validly conducted.

34. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

-Sd-

DATE: OCTOBER 26, 2018 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA