

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 35 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN RE VIOLATION OF PROVISIONS OF PFUTP REGULATIONS, STOCK BROKER REGULATIONS AND OTHER CIRCULARS.

IN RESPECT OF

S. No.	Entity's Name	PAN
1	AMRAPALI AADYA TRADING & INVESTMENT PVT. LTD.	AAECA3909P
2	AADYA COMMODITIES PVT. LTD	AAHCA2094C
3	MR. SANJEEVA KUMAR SINHA	ALEPS6005L
4	MR. PAWAN MISHRA	AMIPM6148D
5	MS. AMITA SINHA	AOIPS2038G
6	MS. VANDANA SINHA	ASUPS6193E
7	MR. SUJEET KUMAR SONA	CWTPS3069L
8	MR. ABNISH KUMAR SUDHANSHU	AXQPS1237C
9	MR. NARAYAN JEE THAKUR	ADIPT8774F

Background

1. Amrapali Aadya Trading & Investment Pvt. Ltd. (hereinafter referred as 'AATIPL'/ 'Amrapali'/ Stock Broker'/ 'Broker'/) having its registered office at 13, Vaishali, Pitampura, Delhi-110088 is registered with SEBI as a stock broker of National Stock Exchange Ltd. (NSE) in equity segment, equity derivative segment and Currency Derivative Segment, a stock broker of Bombay Stock Exchange Ltd. (BSE) in equity segment and equity derivative segment, a stock broker of Metropolitan Stock Exchange of India (MSEI) in equity segment and equity derivative segment, Depository Participant of Central Depository Services Ltd. (CDSL) and also as a Registered Portfolio Manager.

2. Aadya Commodities Pvt. Ltd. (hereinafter referred as 'ACPL'/'Aadya'/'CD Broker') is registered with SEBI as a commodity derivatives broker of Multi Commodity Exchange of India Ltd (MCX).
3. Mr. Sanjeeva Kumar Sinha and Mr. Pawan Mishra are the present directors of AAT IPL. Mr. Abnish Kumar Sudhanshu and Mr. Narayan Jee Thakur were the past directors of AAT IPL. Ms. Amita Sinha, Ms. Vandana Sinha, Mr. Sanjeeva Kumar Sinha and Mr. Sujeet Kumar Sona are the present directors of ACPL.
4. SEBI had received a reference dated August 10, 2017 from NSE vide which NSE had forwarded the preliminary findings of inspection of AAT IPL for the period April 01, 2016 to March 31, 2017 (hereinafter referred to as "reference period"). Thereafter, SEBI carried out a preliminary inquiry in the matter and observed, *inter alia*, the following:
 - i) AAT IPL *prima facie* violated the provisions of Clause A(1) and (5) of the Code of Conduct prescribed for the stock brokers under the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 ("Stock Brokers Regulations") on account of non-disclosure to the Stock Exchange in respect of pledge creation of clients' securities.
 - ii) On account of falsification of records such as trial balance and ledger, AAT IPL *prima facie* violated the provisions of Regulations 4(1) and 4(2)(p) of PFUTP Regulations and also the provisions of Clause A(1) and (5) of the Code of Conduct prescribed for the Stock brokers under the Stock Brokers Regulations.
 - iii) Non segregation of clients funds from own funds on part of AAT IPL was in violation of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993. Further, non-segregation of clients funds from own funds and using the clients funds for non-clients was in violation of Clause 15 of Rights and Obligations document for Stock Brokers, Sub-brokers and Clients as prescribed by SEBI vide its circular dated August 22, 2011.
 - iv) By transferring clients' funds and securities to its sister concern - ACPL, AAT IPL is in *prima facie* violation of SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 15 of Rights and Obligations document for Stock Brokers, Sub-brokers and Clients as prescribed by SEBI vide its circular dated August 22, 2011.

Further, AAT IPL and ACPL were *prima facie* related on account of common directors, common address and common shareholders. It was observed that AAT IPL had also transferred the securities and money of its clients to ACPL. Since, ACPL was related/connected to AAT IPL, *prima facie* it was aware that the securities and money of the clients of AAT IPL had been transferred to it. Therefore, AAT IPL and ACPL violated Clause A (1) and clause A (5) of the Code of Conduct for Stock Brokers on account of the transfer of clients' funds and securities by AAT IPL to ACPL.

- v) AAT IPL used the securities of its clients for itself and thereby violated clients Clause 15 of Rights and Obligations document for Stock Brokers, Sub-brokers and Clients as prescribed by SEBI vide its circular dated August 22, 2011.
 - vi) AAT IPL has failed to ensure the running account settlement of funds/securities of its clients, which was in *prima facie* in violation of Clause 12 of SEBI circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clause 31 of Rights and Obligations document for Stock Brokers, Sub-Brokers and Clients as prescribed by SEBI vide its circular dated August 22, 2011.
 - vii) By failing to report several DP accounts to the stock exchange, AAT IPL *prima-facie* violated SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P /2016/95 dated September 26, 2016.
5. Further, BSE also had conducted an inspection of AAT IPL on August 08, 2017 for FY 2016-17, and made several adverse observations against the broker such as non-segregation of clients and own securities, pledging of clients' securities in respect of clients having credit balance, use of Clients' funds for purposes other than authorized purposes. BSE also informed that a number of clients were demanding their pay-outs from AAT IPL but it had neither acknowledged nor registered their grievances.
6. It is pertinent to note that as on *October 25, 2018*, the total value of clients' claims against AAT IPL across NSE and BSE is Rs. 270.71 crore (including settled and pending claims). Further, the total value of clients' claims against ACPL on MCX is Rs. 1.52 crore (including settled and pending claims).

Directions issued vide the interim order

7. Considering the facts and circumstances and the *prima facie* findings of violations

by AAT IPL and ACPL, SEBI passed an interim order dated August 22, 2017 against AAT IPL, ACPL and their directors (present and past) namely, Mr. Sanjeeva Kumar Sinha, Mr. Pawan Mishra, Ms. Amita Sinha, Ms. Vandana Sinha, Mr. Sujeet Kumar Sona, Mr. Abnish Kumar Sudhanshu and Mr. Narayan Jee Thakur (hereinafter collectively referred to as “the Noticees” and individually by their respective names). SEBI issued the following directions vide the interim order against the Noticees:

- i. *Amrapali Aadya Trading & Investment Pvt. Ltd, Aadya Commodities Pvt. Ltd., Mr. Sanjeeva Kumar Sinha, Mr. Pawan Mishra, Ms. Amita Sinha, Ms. Vandana Sinha, Mr. Sujeet Kumar Sona, Mr. Abnish Kumar Sudhanshu and Mr. Narayan Jee Thakur are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;*
- ii. *The aforesaid entities and persons shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;*
- iii. *The aforesaid entities and persons are directed to provide a full inventory of all their assets whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately but not later than 5 working days from the date of receipt of these directions.*
- iv. *The aforesaid entities and persons are directed not to dispose off or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets excluding money lying in bank accounts except with the prior permission of SEBI.*
- v. *Till further directions in this respect, the assets of these entities shall be utilized only for the purposes of payment of money and/or delivery of securities, as the case may be, to the clients/investors under the supervision of the concerned stock exchange(s).*
- vi. *The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid entities and persons except for the purpose mentioned in para 56(v) after confirmation from the concerned stock exchange in this regard.*
- vii. *The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by Amrapali Aadya Trading & Investment Pvt. Ltd. and Aadya Commodities Pvt. Ltd. and Mr. Sanjeeva Kumar Sinha except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s).*

- viii. *The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of Entities mentioned in para 56(i).*
- ix. *Since AAT IPL is a DP with CDSL having Registration no. IN-DP-CDSL-487-2008, CDSL is also directed to closely monitor the activities of AAT IPL as a DP.*

Service of the interim order and replies of the Noticees

- 8. The interim order was served on all the Noticees. Vide the interim order, the Noticees were provided a time period of twenty one days to file their replies / objections to the interim order. They were also advised that if they want to avail an opportunity of personal hearing, they may do so by giving a specific written request in that regard to SEBI.
- 9. Pursuant to the interim order, replies were received from the Noticees. Mr. Sanjeeva Kumar Sinha filed a reply dated October 12, 2017 for himself and on behalf of AAT IPL, Mr. Pawan Mishra, Mr. Narayan Jee Thakur and Mr. Sujeet Kumar Sona. Mr. Sanjeeva Kumar Sinha also filed a separate reply dated October 12, 2017 for himself and on behalf of ACPL, Ms. Amita Sinha, Ms. Vandana Sinha and Mr. Sujeet Kumar Sona. However, it is noted that these replies sent by Mr. Sanjeeva Kumar Sinha on behalf of AAT IPL & Others and ACPL & Others were not sent along with authorization letters from these entities. Mr. Abnish Kumar Sudhanshu, Mr. Pawan Mishra and Mr. Sujeet Kumar Sona also filed their respective replies vide letters dated September 15, 2017, October 13, 2017 and October 23, 2017, respectively. The replies of the Noticees, who submitted the same pursuant to the interim order, are summarized as under:

M/S AMRAPALI AADYA TRADING & INVESTMENT PVT.LTD AND (1) MR. SANJEEVA KUMAR SINHA (2) MR. PAWAN MISHRA (3) MR. SUJEET KUMAR SONA 4) MR. NARAYAN JEE THAKUR (SUBMITTED BY MR. SANJEEVA KUMAR SINHA)

AAT IPL has been operating bona fide and has not acted to the detriment of investors

- 1) It is submitted that AAT IPL and the undersigned have been operating bonafide and have not acted in detriment of the interest of the investors. AAT IPL has the proven track record of operating in this business segment for the last around 13 years. AAT IPL has been operating from 30 offices on pan India basis with around 450 employees working directly under AAT IPL and around 1000 franchise/ authorised persons associated with AAT IPL. In the last 13 years,

there has been no substantial complaint from the investors and AAT IPL has been meeting all its obligations pertaining to inspections, compliances, demands in adherence to NSE, BSE and Board for all these years and have always co-operated with the authorities and the exchanges on year to year basis.

- 2) It is further submitted that even with respect to the investigation conducted by the National Stock Exchange, AAT IPL has fully complied with the demands of NSE and furnished all such information required. AAT IPL has lent all cooperation to the investigation and has never caused any obstruction or impediment thereto:
- 3) That even the extension sought by AAT IPL to file the present objections was on the ground of uncontrollable and unforeseeable circumstances namely a fire incident in the entire office premises which resulted in disarray and difficulty in the collation of data as well as loss and some partial damage to computers and data. In furtherance to same, only such above mentioned data was not able to be collected for purpose of presenting objections and the same was duly communicated to the Board vide email dated 11.09.2017.
- 4) It is further submitted that no amount of investor funds or securities belonging to the clients, has been embezzled or siphoned off from AAT IPL. The entirety of the investors/client securities and funds can be traced to the company AAT IPL, and nothing therefrom has been siphoned off into personal accounts of the directors of AAT IPL. In furtherance to the same, it is also to be noted that AAT IPL or any of its promoters/ directors have not gained any disproportionate gain or unfair advantage by the various acts alleged in the said order.
- 5) It is submitted that no mala fide acts can be attributed to AAT IPL or any of its directors nor can it be said that it has been engaged in any fraudulent practices or acted against the investor interest. It is submitted that the said order dated 22.08.2017 is incorrect, unjust and based on mistaken reference/investigation report by the NSE and no coercive action should be pursued, especially in light of the *bona fide* attempts being made to resolve investor grievances and in view of the lack of mala fide on behalf of AAT IPL.
- 6) AAT IPL and its Directors have always strived to be in bona fide compliance and it cannot be said that the defaults alleged are of repetitive nature. AAT IPL has already undertaken substantial steps towards settlement of investor grievances and has prepared and submitted a Resolution Plan/ Scheme to the NSE

- 7) Without prejudice to the rights and contentions of AAT IPL and all its directors which are detailed hereinafter, it is submitted that AAT IPL has already taken substantial steps towards settlement of client grievances and has prepared a tentative Resolution Plan whereby all the investor grievances would be resolved and such plan is in full consultation with Hon'ble Board and also the National Stock Exchanges through the counsels.
- 8) That the NSE had issued a show cause notice dated 01.09.2017 and also scheduled a personal hearing before the Disciplinary Action Committee on 19.09.2017 and 28.09.2017. AAT IPL has duly filed its response to the said show cause notice and also attended the personal hearings. During the course of the said hearing, AAT IPL has submitted its Resolution Plan for settlement of client accounts of AAT IPL before the NSE and is given to understand that the NSE is in consideration of the same and has sought their formal response thereto.
- 9) AAT IPL has already sought permission from the Board in terms of para 56(iv) of the said order for disposing of part of the assets of AAT IPL and partially settling the claims of the clients from such money under the supervision of NSE. Positive response is in expectation and copy of such communication dated 14.09.2017 and 26.09.2017 seeking its permission for disposing of the assets of AAT IPL is annexed.
- 10) It is submitted that no punitive action merits to be taken against AAT IPL and directors as they are acting in bona fide and in the interest of quick and efficacious resolution of investor grievances.

Preliminary Objections

Without prejudice to the contentions on merits, the following preliminary objections are raised with respect to the impugned order.

- 11) The Ex parte Interim Order has been passed in complete violation of the principles of natural justice and fundamental rights. Impugned order has major and severe civil consequences and could not have been passed without following the due process of natural justice
- 12) Admittedly, the SEBI order is a penal order with far reaching civil consequences. Firstly, it impacts the rights of AAT IPL & other Respondents to carry out business, which is the fundamental right under Article 19(1)(g). Secondly, it has severe repercussions on AAT IPL and other Respondents

which has a grave consequence. Thirdly, it operated as a severe infringement of personal liberties of Directors as even their freedom to dispose of 'their assets and properties, has been curtailed in one blow.

- 13) Such impugned order with severe consequences could not have been passed without affording due opportunity to the Respondents to be heard and without disclosing all underlying material. It is a settled law and has been held by the Hon'ble Apex Court in various landmark judgments that when an authority inflicts any penalty by exercise of powers under a statute, such an authority is bound to adhere to strictest principles of natural justice and propriety of process including issuance of notice and granting opportunity to be heard even if no such requirement is stated in the statute.
- 14) Impugned order has been passed and findings are reached solely on basis of NSE data without even any basic verification or application of mind by the Board. It is evident from and admitted in the impugned order itself that the Hon'ble Board has entered *prima facie* findings on various allegations which involve complex factual details and technical records, solely on basis of the initial findings of the investigation and inspections conducted by NSE. It is evident that no independent verification or even a prima facie check has been done by the Hon'ble Board of the data supplied by the NSE, before the impugned order has been passed.
- 15) It is to be noted that substantial reliance on mistaken, incomplete, suppressed, distorted, misconstrued and erroneous investigation report/ procedure is itself sufficient ground to object and vacate this said order. It is a basic tenet of a judicial process that there must be application of mind to material and cogent reasons behind the exercise of a statutory power to impose a penalty. No penalty can be passed in a mechanical manner without independent and keen application of mind and verification of facts
- 16) Data/Investigation report furnished by NSE and relied upon has never been disclosed to AATIPL by the Hon'ble Board and AATIPL till date has no means of verifying the said data.
- 17) The impugned order is a lengthy document that makes reference to various materials and appears to be founded on voluminous documentation. However, shockingly, none of the said underlying materials and documents, stated to have been supplied by NSE to the Hon'ble Board, have been annexed or otherwise been supplied to AATIPL.

- 18) It is stated that the same is an egregious violation of the basic tenets of natural justice and amounts to a "closed-room conviction" where neither the undersigned has any knowledge of or opportunity of examining the crucial materials which have been swapped behind the scene between the two authorities. Such a procedure, and infliction of such harsh restraints on basic fundamental rights and liberties, is draconian and unheard of and abhorrent to the rule of law and principles of natural justice. AAT IPL cannot be kept entirely in the dark about the basis on which the findings have been reached and relied.
- 19) The above is all the more troubling as the data that has been accepted by the Hon'ble Board as the basis of entering prima facie findings is shockingly inaccurate. The impugned order relied on the complaints of the investors without verification of their credentials and claims/undertakings, however, the data is unreliable, for various reasons as listed below.
- 20) It is brought to the attention of the Hon'ble Board that vide email dated 06.10.17 the undersigned had communicated to NSE/ DAC pertaining to the discrepancies in complainants claims and false nature of claims put up before the DAC/NSE. The Respondents also requested to allow comprehensive verification regarding the credentials of complaints and claims filed against the Respondent.
- 21) The Interim Order has been issued hastily on the basis of misconstrued, incomplete, partial, and un-finalized raw data. NSE allegations are not based on any formal records of AAT IPL.
- 22) The Order raises various contentions based on "discrepant" or "incorrect" entries in the trial balances of AAT IPL on the basis of the information collected by NSE. However it is submitted that the inspection of NSE is based on unfinished, raw data collected directly from the computers of the company. The data including the trial balance was submitted on 19.04.2017, a scant 19 days from the end of the previous financial year which was also the reference period. Needless to state, the said data/records had never been finalized, let alone audited, and there had not been enough time to complete the accounting process for the previous year records.
- 23) It is thereby important to note that in AAT IPL as in most similar institutions, an internal procedure is followed for finalizing such records by escalating the records through the audit and accounts team, which includes process of tallying the records with journals and informal records, matching with bank statements to remove all erroneous entries, double-checking individual entries for human

error etc. Needless to say the said process had not been carried out by 19.04.2017. As a consequence, the said data had not been audited by any accountant. In the trial balances as submitted on 19.04.2017, there had been various transactions which had not been accounted for, resulting in the discrepant entries for Debtors and other accounting heads. It is inevitable that in a running business involving thousands of accounting transactions, human error creeps in and needs to be rectified before finalization and no disciplinary action merits to be taken for the incorrect entries, especially as the said data had not yet been audited.

- 24) Shockingly, the Order does not mention or take into account the fact that AATIPL had already weeded out most errors in the trial balance submitted voluntarily on 03.08.2017 and had rectified all entries in relation to GFL.
- 25) It is critical to note that after the initial trial balances were collected on 19.04.2017, AATIPL had been working on finalizing its records. Despite the complete disarray in the office of AATIPL and the resignation/non-attendance of its staff in view of the investigation, AATIPL through concerted effort prepared updated trial balances which were submitted by the email dated 03.08.2017 to the NSE.
- 26) In fact, each and every erroneous entry pertaining to receipt from GFL incorrectly shown, had been corrected and GFL was shown as a creditor. Further, though even the records as on 03.08.2017 had not been final, plentiful errors relating to debtors, creditors, loans given etc. had also been corrected. As several transactions had not been missed out previously, there was a change in several details- for instance the number of debtors and creditors had changed because the earlier figures did not account for extremely old transactions or transactions of very little value.
- 27) Shockingly, the Order is entirely silent on this vital fact, leading to the implication that either all materials have not been placed before the Board by the NSE or that the same have not been considered in the order dated 22.08.2017.
- 28) Needless to state, it beggars imagination as to how the Order has been issued prima facie finding that there are discrepancies between the data submitted by AATIPL on 19.04.2017 and the data collected by NSE on 17.08.2017, when in fact, AATIPL had been correcting its records and had submitted updated records on 03.08.2017 which removed most of the errors mentioned in the Order. It may also be noted that NSE themselves collected the data from the systems of AATIPL on 17.08.2017 and no such data was submitted by

AATTIPL on 17.08.2017. The said act defeats every principle of natural justice and propriety, and calls into question the very validity of the Order as it admittedly relies entirely upon the material collected by the NSE.

- 29) Order also merits to be struck down as it relies on different data at different points as convenient to lend support to findings
- 30) Not only has the Order entirely not considered the fact that AATTIPL had submitted updated/partially corrected data, it even relies at data of different dates at different parts of the Order to support different findings.
- 31) It is submitted that the selective/manipulative usage of different data amount to throughout the Order on account of insufficient material placed by the NSE or incorrect appreciation of the material placed by the NSE, renders the order gravely improper. The data of different dates has been used as and when convenient to bolster allegations as deemed fit.
- 32) It is submitted that on this ground alone the Order merits to be withdrawn as the usage of data of different dates for different findings while suppressing that corrected data has later been submitted voluntarily by AATTIPL taints the Order with impropriety.

Violation of basic principles of natural justice and inalienable right of the Respondents under Article 21

- 33) Admittedly the impugned order places heavy reliance upon an alleged confessional statement of the undersigned director Shri Sanjeeva Kumar Sinha which has never been supplied to him or to AATTIPL. Further admittedly the impugned order only produces partial/selective extracts from the written statement claimed to be made by the undersigned and nowhere disclosed the complete contents of the purported confessional statement.
- 34) That it is draconian and abhorrent to the canons of justice that a person can be put to severe civil consequences on the basis of materials never disclosed to him, and even more so when it is a purported self-issued confessional statement that has only been partially produced while obscuring or cutting out certain contents.
- 35) It is submitted that the above mentioned are not only in violation of the principles of natural justice but also holds sufficient merits for this Order to be vacated/withdrawn on this ground alone.

OBJECTIONS TO FINDINGS:

36) On the merits of the findings/ allegations/contentions, it is submitted that the Order under reply is misguided and has been issued on basis of incomplete facts and incorrect appreciation of the transactions mentioned therein. The response to specific contentions is given as under.

Whether AAT IPL has prima facie created pledge of its clients securities and the said creation was not disclosed to the stock exchange, If so whether AAT IPL has prima facie violated any provision of securities laws

37) Creation of pledge with Globe Fincap Ltd., Edelweiss Capital Ltd and Axis Bank was done in complete good faith and on intimation of clients, there has been no misdemeanour of any amount nor any negative impact on the investor rights, All information was duly disclosed to the NSE and mere allegation of non - disclosure is completely false and unintentional

38) Hon'ble Board has not been made aware or has not considered that AAT IPL had supplied updated data and records voluntarily on 03.08.2017, hence no question of "concealment"

39) The findings of the order alleging Globe Fincap Ltd. for unreported creation of pledge is based on the disputed data provided by the undersigned through vide email dated 12.06.17. However such data has been voluntarily rectified to the NSE through vide email dated 03.08.17, since the NSE acted hastily without granting the Respondents an opportunity to file complete data to them, they still counted on incomplete data provided on 12.06.17.

Pledge of securities was bona fide and for permissible purposes

40) However, it is to be submitted that Globe Fincap Ltd. is nothing but a specialized affiliate entity of Globe Capital Market Limited incorporated to carry out business of financial services, and is under the same management. GFL and GCML have most directors in common and even have the same registered address as per records available with the Ministry of Corporate Affairs.

41) It is submitted that the pledge of securities with GFL had been done as GCML preferred to extend the loan to the extent of securities worth Rs. 49.7 crores through the specialized entity GFL, a specialized vehicle incorporated in 2008 in order to carry out financial business, rather than accepting pledge of

securities worth entire amount of Rs. 55.56 crores in GCML itself. Thus, a mere non-disclosure on account of any internal structuring of third party entity would not fall in the category of any alleged offence of code of conduct pertaining to Securities Law or under its ambit as mentioned in your vide order dated 22.08.17.

42) Further, the money received by pledging was utilized only for specific clients whose shares were pledged and therefore no sort of mis-utilization of client funds could be held in the findings.

43) Further, it is to be noted that funds were raised by AAT IPL due to insufficient credit balances available in the client account and the same is borne out very clearly from the material submitted by AAT IPL to NSE, which shall clearly show that only for bona fide purposes such funds were duly raised and obtained only in view of requirements of those clients, meet respective client margin/pay-in requirements, to enhance trading limit and/or margins or in view of anticipated exposure as intimated by clients. Hence, there is no question nor intention of the Respondents regarding any misdemeanour by AAT IPL in the matter of pledge of securities.

Pledge was permissible in terms of the relevant circular

44) Circular No. MRD/DoP/SE/CIR - 11/2008, dated 17.04.2008 states asunder:

"2.1 Brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client's margin requirements / pay-ins. Brokers should also maintain records to ensure proper audit trail of use of client collateral."

45) The circular clearly states that the collateral must not be used for any purposes other than meeting the respective clients' margin requirements/ pay-ins, which is the purpose that AATIL has pledged the securities for. Thus in fact there is no violation of law simply by pledging the securities as done by AAT IPL, as it has not misused the securities and has only utilized it for permissible purposes.

46) Whereas it is correct that securities were pledged with Edelweiss Capital Limited, GFL and Axis Bank Ltd., and funds were raised against such securities but it is firmly denied that there were any excess amounts raised which were not required for client requirements/obligations. The funds raised allegedly in excess, amounting to Rs. 4.6 crores from ELC and Axis Bank were used to meet client margin requirements. Further, It is submitted that the amounts

raised beyond the debit balances too were put to use for client requirements to enhance trading limit and/or margins or in view of anticipated exposure as intimated by clients. Further there is not at all any misdemeanour by AAT IPL in the matter of pledge of securities and all the suspicion raised by NSE is completely baseless and false.

47) In furtherance, it is to be noted that all the due information pertaining to GCML, Axis Bank and ECL was always disclosed timely to the relevant authorities on as and when basis, however, this particular instance relating to GFL and GCML was wrongly reported in the books which was timely rectified and supplied to the exchange voluntarily. Hence, all the contentions raised in the order pertaining to non-fulfilment of broker obligations stand misconstrued, untenable and clearly fallible. Hence, any action passed under the findings of non-compliance/ non-disclosure of the same should be reviewed and principal of natural justice should prevail hereon.

Whether AAT IPL has prima facie falsified its accounts to conceal the creation of pledge of its clients securities and entries on debtors liability. If so whether AAT IPL has prima facie violated any provision of securities laws.

48) There is not at all any falsification or tampering of accounts by the AAT IPL and the Company has itself informed NSE about the errors in the letter dated 12.06.2017 relating to pledge of securities with Globe Capital Markets Ltd. and further extended full cooperation with the investigation

49) With respect to the issue concerning "Concealment" of pledge of client securities with Globe Fincap Ltd ("GFL"), it is also important to that all the finding of NSE on which the Hon'ble Board has heavily relied are distorted and misinterpreted, the corrected information pertaining to pledging of securities with GFL was itself brought to the notice of the NSE and has voluntarily pointed out the inaccuracy in the contents of the email dated 12.06.2017, by the Respondents/undersigned.

50) Not only has the said information been voluntarily given by AAT IPL itself, it is further abundantly clear that AAT IPL has throughout assisted the investigation in complete bona fide and has given free access to investigation teams as and when required without any obstruction or delay.

51) It is clear that there was no intention to conceal the fact of pledging of securities with Globe Fincap Ltd, and merely because an erroneous letter had been sent on 12.06.2017, the subsequent good conduct and bona fide of AAT IPL cannot

be overlooked just to sustain a false finding of so-called "concealment/ non-disclosure".

- 52) It is also crucial to note that pledging of securities is not per se itself a violation of any SEBI circular or by-law. Hence there was no illegality committed by AAT IPL
- 53) The Ex-parte interim order has heavily relied on incorrect submissions/ investigation of NSE, based on un-finalized, unaudited and misconstrued raw data/accounts rather than final audited records duly provided to NSE.
- 54) Further, it is to be noted that impugned order once again showed reliance to mistaken NSE investigations and that there were erroneous entries on the back office bank books submitted vide emails dated 20.04.2017, 26.04.2017 and 20.06.2017, more specifically that out of 34 entries which pertain to GFL (Rs. 10.3 crores for receipt and Rs. 3.55 crores for payment) 18 entries (for Rs. 8.05 crores receipt, Rs. 26.96 lacs payment) were erroneously recorded in the name of incorrect entities. The particulars of heads like Debtors and others have also changed.
- 55) In respect of the discrepant entries, it is pointed out that firstly, it is not as if the transactions with the said entities, namely R2V Business Solutions Pvt. Ltd, Adhinath Enterprises, Westlink Trading Pvt. Ltd. etc., are a sham. There have been various genuine business transactions with the said entities and it is only that certain entries have been made incorrectly.
- 56) Secondly, it is submitted that the order is based on the data obtained through NSE's random sampling from unfinished, raw data collected directly from the computers of the noticee.
- 57) In the trial balances as submitted on 19.04.2017, there had been various transactions which had not been accounted for, resulting in the discrepant entries like of Debtors and other relevant heads of the books. **It is inevitable** that in a running business involving thousands of accounting transactions, human error creeps in and needs to be rectified before finalization and no disciplinary action merits to be taken for the incorrect entries, especially as the said data had not yet been audited. Hence, there is no "falsification" of accounts.

AAT IPL 's corrected data has not been taken into account

- 58) Similarly, all the wrongful findings provided by NSE pertaining to abovementioned incomplete, mistaken data of accounts, even though mostly corrected version of the same was duly supplied to the NSE on 03.08.17, but they have completely ignored that negligently. Relying on the same, any allegation pertaining to falsification of ledgers or back office records is completely baseless and particularly form of shifting onus on the Respondents for negligent investigation by NSE, on which the Hon'ble Board heavily relied.
- 59) However, it is to be reiterated in view of above, AAT IPL had already weeded out most errors in the trial balance by 03.08.2017 and had rectified all entries in relation to GFL, Axis Bank and others, which were still mistaken to be false. All the due objections pertaining to above were duly made in the reply of NSE SCN dated 26.09.17, However till date SEBI has not verified all such discrepancies in NSE investigations and not pursued their individual efforts to verify the same and on the basis of misassembled report passed the impugned order dated 22.08.17
- 60) It is critical to note that after the initial trial balances were collected on 19.04.2017, AAT IPL had been working on finalizing its records. Despite the complete disarray in the office of AAT IPL and the resignation/non-attendance of its staff in view of the investigation, AAT IPL through concerted effort prepared updated trial balances which were submitted by the email dated 03.08.2017 to the NSE.
- 61) In the said revised/updated records, AAT IPL had managed to weed out a significant number of errors. In fact, each and every erroneous entry pertaining to receipt from GFL incorrectly shown, had been corrected and GFL was shown as a creditor. There had also been software errors leading to incorrect entries which were weeded out. Further, plentiful errors relating to debtors and others heads had also been corrected, though even the records as on 03.08.2017 had not been final. The increase in number of debtors, for instance, had been because the earlier figures did not account for extremely old transactions or transactions of very little value.
- 62) Shockingly, the impugned Order has relied on such misassembled data, entirely misapplied, misinterpreted taken from mistaken investigation of NSE. It beggars imagination as to how the Order has been issued setting up a case that there are discrepancies in NSE report and in between the data submitted by AAT IPL on 19.04.2017 and the data collected by NSE on

17.08.2017, when in fact, AAT IPL had been correcting its records and had submitted updated records on 03.08.2017 which removed most of the errors mentioned in the Order. The said act defeats every principle of natural justice and propriety, and calls into question the very reliance of the said order and the process adopted by the NSE. It is submitted that on this ground alone the Ex Parte Interim Order needs to be withdrawn as it fails to meet the very basic criteria of propriety needed for the judicial process.

63) Whether AAT IPL has prima facie failed to segregate client funds and paid clients funds to non-clients. If so whether AAT IPL has prima facie violated any provision of securities laws

64) It is denied and clearly objected that there has been any failure to ensure proper segregation of client funds and own funds or client transactions and own transactions. The impugned Order alleged that there has been transfer of funds amounting Rs. 21 crore from client bank to own bank account and all the vice versa and that net transfers and brokerages were duly ignored.

65) With respect to the above, it is stated that while it is correct that there have been transfers, it is submitted that transfers made to AAT IPL's account from client accounts are made strictly for reasons permissible under the various circulars issued by the regulatory authorities are in no manner objectionable or unlawful.

Transfers from client account to own account only for permissible purposes under relevant circular

66) Transfers from the client account to business account have undertaken duly in accordance to SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993. It is important to reiterate that all client funds were deposited into the client accounts and all payments to clients were made from the client accounts, hence there is no question of violation of the said circular.

67) The transfers have been made towards brokerage, service tax, stamp duty DP charges, Transaction charges etc., amounting to a total of Rs. 21.63 cr has been transferred from client bank account to the company account. The detailed bifurcation of deductions is annexed.

68) However, it is submitted that reliance on such figure is meaningless; as it would fluctuate greatly from day to day- clients have running accounts and accordingly the amount are transferred and subsequently settled. Examining the transferred amount at a given date holds no meaning as there is regular settlement of the

client bank accounts as is industry practise and aids in the growth of the business and brings benefits to the investor.

AAT IPL has not initiated any improper use of client funds

69) It is submitted that not an iota of evidence has been put on record by NSE in its SCN dated 01.09.17 and even the reason or rationale behind the findings of this order has not been revealed. Admittedly, the payments made to the entities listed have been done from "own bank account" and not from client bank accounts. There is no prima facie evidence at all that the funds transferred have been withdrawn from client funds. Transfer of funds from client account to own account is a permissible transaction. Transfer from own account to business associates/third party entities naturally is also permissible. The same cause as mentioned above was replied to NSE through its SCN Reply of 26.09.17. Hence, neither the impugned order proved that funds from client account has been transferred to third parties account, nor it is able to conclusively disclose reasoning behind assertion that funds have been routed to third parties, the Order in fact discloses no actual substantial findings at all and merits to be withdrawn. Hence, Order of the Board should be vacated.

70) It is reiterated that the payments made by AAT IPL to business associates are genuine business transactions. It is not the case made in the Order that funds have been transferred directly from client accounts to third parties. Admittedly, the payments have been made properly from the account of AAT IPL. There is absolutely no material evidence disclosed to prove that clients' funds have been funnelled out by these payments, or that the payments have been made from client funds.

71) Further, while the Order through has emphasized on the creditors, they have ignored the debtors in the books of account with whom such similar business transactions were carried out.

Whether AAT IPL has prima facie transferred its clients' funds and securities to ACPL. If so whether AAT IPL and ACPL have prima facie violated any provision of securities laws

72) The impugned order relied on contention that simply because client funds are available in AAT IPL bank account, the client funds must have been transferred by AAT IPL ' to Aadya Commodities Pvt. Ltd. ("ACPL") is entirely baseless, untenable, and amounts to surmise and conjecture and ought to be withdrawn. It is pointed out that once again, there is absolutely no evidence or material

placed on record which would enable the Company to understand for what reason and on what basis it has been concluded that client funds have been transferred to ACPL. As such the charge is vague and it is impossible for the notice to raise a complete and substantial fair defence in light of the vague and unsubstantiated findings.

- 73) It is once again stressed that it is NOT the case made out in the SCN or as relied in this Order that funds have been transferred between the client bank accounts of one entity to the other, or from the client bank account of one entity to the own account of the other. It is also not the case that AAT IPL has transferred/received funds on behalf of clients from/to the bank account of its group entity dealing in commodities, ACPL.
- 74) Moreover, the finding in respect of transfer of funds to and from ACPL is also entirely bizarre as the fact of the matter is that admittedly there has been a net surplus received from ACPL amounting to around Rs. 2.57 crores, hence it boggles the imagination as to how there can be an issue of siphoning/misapplication of funds, which are in the first place not even the client funds. Thus, it is clear that ACPL has funded AAT IPL for the genuine business requirements of AAT IPL.
- 75) In respect of the transfer of securities to ACPL and vice versa, it is pointed out that these transfers pertain to securities transfer between the two companies (AAT IPL and ACPL) having common clients, it is nothing but transfer of client funds from one exchange to another after considering net position of client who are trading on both exchanges, with authorization from the client. The transfers from AAT IPL to ACPL was for daily client obligations for funds and securities in both exchanges, there was no element of misappropriation or diversion or any anti-investor practise therein, neither has any such specific instance been proved in the findings relied in this Order. Nor has any such client made any complaint about inter-exchange settlement of funds and securities.
- 76) It is critical to note that the Hon'ble Board itself does not discourage the industry practise/ trend of integration of stock exchanges between commodities and securities exchanges which are often carried out with same clients across sister entities registered with different exchanges. Attention of the Hon'ble Board is drawn towards the Circular No. SERI/HO/MIRSD/NHRSDI/CIR/P/2017/104 dated 21.09.2017, which is passed with express intent to facilitate integration between stock brokers and clarifies that client account may be transferred from one stock broker to the other stock broker. Hence there is

nothing at all mala fide or unlawful about the stated activities of AAT IPL and ACPL.

77) Further, in respect of the issues raised regarding transfer of funds and securities between AAT IPL and ACPL, it is perhaps most important to note that neither entity has made any amount of disproportionate gain or unfair advantage as a result of such adjustments of clients across different segments.

78) It is also critical to note that neither entity has received any complaint from any client relating to such intercompany fund transfer of their balance from one segment to another and that the same has been done with full knowledge of the clients.

79) It is also critical to note that there are only 14 such instances and the value of the securities also is minuscule amounting to Rs. 1.36 crores and for this reason also no strict disciplinary action is merited.

Whether the clients' securities have been prima facie sold by AAT IPL for itself in violation of any provision of securities law.

80) It is submitted the trading was done through employee accounts in order to maintain the securities in the pool account. The accounts bearing Client Code No. DK-21 (Deepak Kumar) is employee account and trading has been done therein to maintain the shortfall/surplus in the client pool account securities as needed. Transactions were made in order to reduce the impact on pay in and pay out obligations of the clients as well as to mitigate the losses incurred by the company in the transactions undertaken by the Company. The said accounts are not required to be settled and nothing is payable to the said employees/clients. Copy of undertaking by Shri Deepak Kumar, the employee of the company regarding no claims is annexed herewith and marked.

81) Thus the amount of securities shown to be attributed to these accounts, is actually a "duplicate" entry as it pertains to the actual securities which were brought and sold on behalf of the existing client and the contra effect in the above said employee ids has to be ignored, failing which the actual client securities would be counted twice over.

82) AAT IPL was incurring losses because revenue generation was not at par in comparison of expenditure in down turn market. It is submitted that keeping in mind the efforts made by AAT IPL to mitigate client loss as well as its clean antecedents, a lenient view ought to be taken of the same.

83) Further, seeking the note of above and heavy reliance on utilisation client securities for own use is purported to confessional written submissions made by Mr Sanjeeva Kumar Sinha during his appearance before the Hon'ble Board on 11.08.2017, for which no copy of such written submissions were ever provided to the undersigned or AAT IPL and that purported contents of the same have been quoted partially, omitting certain portions. It is submitted that the above mentioned are not only in violation of the principles of natural justice but also holds sufficient merits for this Order to be vacated/withdrawn on this ground alone.

Whether AAT IPL and ACPL have prima facie failed to carry out running account settlement in violation of any provision of securities law

84) Allegation cannot be sustained as it is beyond doubt based on incorrect materials which have not been verified. The impugned order blindly relied on the complaints of the investors without verification of their credentials and claims / undertakings, Recently through vide email dated 06.10.17 the undersigned have duly communicated to NSE/ DAC pertaining to the discrepancies in complainants claims and false nature of claims put up before the DAC/NSE.

85) Most glaringly, it has been discovered that out of the various complaints on which NSE has based its actions, complaints of sample clients such as Mr. Ratish Tagde and Violet Media LLP proved to be completely false, malafide and untrue. The findings to the above said complaints are stated below:-

A. As per the complaint dated 06.09.17, the complainant Mr. Ratish Tagde (Client code-99R08), claimed the securities of worth Rs.93, 10,312 against 4454695 securities of OCTAVE, and further stated to hold 0 credit balance in its trading account. However, as per our internal verification through sampling method, we got to know that in actuality Mr. Ratish Tagde holds a debit net balance of Rs 86,50,372 and also standing Rs 15,725 as a credit balance. It is to be also noted that the actual price of such securities was worth Rs.84, 63,920 in aggregate.

B. Similarly, as per another complaint dated 06.09.17, the complainant Violet Media LLP (Client code-99V04), claimed the securities worth Rs.49,19,448 against 8,97,344 securities of OCTAVE and 4,00,000 securities of FRONTBUSS and further stated to hold 0 credit balance in its trading account. However, as per our internal verification, we got to

know that Violet Media LLP holds debit net balance of Rs 1,22,68,127 and also to be noted that the actual price of such securities was worth Rs.45,68,953 in aggregate.

86) Further, the Hon'ble Board, once again heavily relied on misassembled information provided by NSE to the Board and all rectified data was duly provided dated 03.08.17. However, NSE relied on market value of securities standing under bank account/clearing member/ clearing corporation account of Rs.5.27 crores against Rs. 11.24 crores of creditors or client with credit balance. It is to be noted that such amount is derived on the basis of current market value of such securities on particular relevant date. However, comparing two aggregate process on different relevant dates is unjust practice of deriving findings in investigation, practised by NSE. Thus, any findings on mere presumption or assumption of being false cannot be a relevant ground for granting such severe consequences through the impugned order, hence such consequences should be immediately vacated

Allegation cannot be maintained in light of nature of certain client transactions

87) It is critical to note that a large proportion of the clients of AAT IPL were operating on an understanding with AAT IPL where they were inactive in trading of securities and received interest payments in their preferred mode with respect to the securities held by them. These clients, were fully aware of and approved the application of their funds and securities by AAT IPL. The funds allegedly misapplied or siphoned off has not in fact been diverted by AAT IPL but has been used for servicing client requirements.

88) It is submitted that a large number of clients are "inactive" clients, to the effect that they have parked their securities and do not engage in active trade. They have authorized AAT IPL to treat their securities as thought fit and do not require settlement of account. In view of the understanding with these clients, it can be seen that no client funds or securities have been siphoned off and non-settlement is not a grievance to these investors.

Whether AAT IPL has prima facie failed to report its DP accounts to NSE in violation of any provision of Securities law

89) It is submitted that the CDSL accounts that have not been reported to the NSE inadvertently as the said accounts have been dormant and unused for years and thus a mistake has been made. It is submitted and assured that the Applicant will take care to report the same in the future. It is submitted that as

the accounts are dormant, it is not that the Applicant has made any material gain from non-disclosure of the same and the same is an honest mistake and lenient view ought to be taken.

90) It is also submitted that AAT IPL is in any instance desirous of closing down the dormant accounts and undertakes to take the required action if the same is deemed fit by the Board.

AADYA COMMODITIES PVT. LTD AND ITS DIRECTORS NAMELY MR. SANJEEVA KUMAR SINHA, MS. AMITA SINHA, MS. VANDANA SINHA and MR. SUJEET KUMAR SONA (SUBMITTED BY MR. SANJEEVA KUMAR SINHA)

- 1) At the outset, it is stated that the contents of the said Order are denied in entirety unless specifically admitted hereunder and no part of the same may be deemed to be admitted on ground of non-traverse.
- 2) It is further stated that since a common order has been passed against AAT IPL and ACPL, ACPL seeks to place reliance on the contents of the objections filed by AAT IPL of the impugned order and that the contents of the same may be read as part of the present objections are not reiterated herein for sake of brevity.

ACPL has been operating bona fide and has not acted detriment to investors.

- 3) It is submitted that ACPL and the undersigned have been operating bona fide and have not acted in detriment of the interest of the investors. ACPL is an operationally connected entity of AAT IPL which has the proven track record of operating as securities broker for the last around 13 years and ACPL has been handling the clients' transactions in the commodities exchange. Together ACPL and AAT IPL have been operating from 30 offices on pan India basis with around 450 employees working directly and around 1000 franchise/ authorised persons. In the last 13 years, there has been no substantial complaint from the investors and ACPL, incorporated since 2008 and AAT IPL have been meeting all its obligations pertaining to inspections, compliances, demands in adherence to NSE, MCX and BSE for all these years and have always co-operated with the authorities and the exchanges on year to year basis. Only minor complaints have ever been raised and have immediately been resolved.
- 4) It is further submitted that no amount of investor funds or securities belonging to the clients has been embezzled or siphoned off from ACPL. The entirety of the investors / client securities and funds can be traced to the company ACPL,

and nothing there from has been siphoned off into personal accounts of the directors of ACPL or otherwise. In furtherance to the same, it is also to be noted that ACPL has not gained any disproportionate gain or unfair advantage.

- 5) It is submitted that no mala fide acts can be attributed to ACPL nor can it be said that it has engaged in fraudulent practises or acted against investor interest. It is submitted that the said order dated 22.08.2017 is incorrect, unjust and based on mistaken reference/investigation report by the NSE and no coercive action should be pursued, especially in light of the bona fide attempts being made to resolve investor grievances and in view of the lack of malafide on behalf of ACPL.
- 6) ACPL and its Directors have always strived to be in bona fide compliance and it cannot be said that the defaults alleged are of repetitive nature. ACPL is ready and willing to settle all outstanding investor grievances
- 7) Without prejudice to the rights and contentions of ACPL which are detailed hereinafter, it is submitted that the allegations raised against ACPL chiefly relate to outstanding investor grievances. The said investor grievances pertain to settlement of client accounts. In this respect, MCX has vide an ex-parte order dated 20.09.17 declared ACPL a "defaulter". It is submitted that ACPL was not aware of the said hearing and thus did not attend the hearing. Since then, ACPL has written to MCX on 26.09.17 stating that the order merits to be withdrawn and a hearing be given to ACPL.
- 8) In the letter dated 26.09.17 addressed to SEBI ACPL has already put forward that the only reason why it was not able to resolve investor grievances is for the reason that the notices for the hearing of the Investor Grievance Redressal Committee ("IGRC") had not been properly served on ACPL and ACPL had not been aware of the said hearings.
- 9) It is submitted that as already submitted to the MCX, ACPL is presently in the position to settle all client accounts and is willing to do, given the opportunity.
- 10) ACPL hereby thus seeks permission from the Board in terms of para 56(iv) of the impugned order for disposing of assets of ACPL, and seeks ... to present its plans for revival including disposal of property, raising loans from third parties and restructuring. ACPL undertakes to present detailed resolution plan at the said meeting and requests an opportunity, in interest of expeditious resolution of investor claims.

- 11) It is submitted that no punitive action merits to be taken against ACPL and directors as they are acting in bona fide and in interest of quick and efficacious resolution of investor grievances.

Directors Smt. Amita Sinha and Smt. Vandana Sinha cannot be held personally liable for alleged default of ACPL

- 12) The attention of the Hon'ble Board are drawn to essential background of the directorship of ACPL and the manner in which the business of ACPL is run, in light of which no vicarious liability can be affixed upon the Directors Smt. Vandana Sinha and Smt. Amita Sinha.

- 13) It is submitted that at the time ACPL commenced business, there were several regulatory and procedural hurdles in the management and running of commodities brokerage, at that time a nascent field in the Indian financial arena. Equity brokers could not obtain a license for commodities brokerage and since then several of the stringent regulations concerning commodities exchange have been dispensed with in interest of promoting ease of doing business. At the time, the promoters of the older securities business run through AAT IPL, could not incorporate a company under their own directorship or commence commodities exchange business through the same entity AAT IPL. In this background, ACPL was incorporated and the requirement of 2 directors was met by constituting board of directors including the wife and sister of Mr. Sanjeeva Kumar Sinha, namely Smt. Vandana Sinha and Smt. Amita Sinha respectively.

- 14) While the said directors had requisite experience as they had tangentially been involved in the business of AAT IPL, they were not involved in the day to day management and running affairs of ACPL. Smt. Amita Sinha, sister of Mr. Sanjeeva Sinha, is a graduate in field of arts and her attention had chiefly been focused on rearing young child born in 2004 and thus she had only had the absolute minimal involvement in affairs of ACPL.

- 15) Similarly, Smt. Vandana Sinha is a science graduate and her chief engagement was with rearing family and education/career of her children and she had absolute minimal involvement in affairs of ACPL

- 16) It is submitted that the management and running affairs of ACPL was effectively carried out by the management of AAT IPL. To this effect, the attention of the Hon'ble Board is drawn to the fact that the two entities, namely ACPL and AAT IPL, have a common sales team, accounts team, operate from the same

office premises and use the same systems. All operational purposes are mixed and all the resources answer to the management and promoters of AATIPL. Smt. Amita Sinha and Vandana Sinha are not involved in the affairs of ACPL to the extent which would render them personally liable for alleged default of ACPL.

- 17) With view to the above, it is submitted that the names of Smt. Vandana Sinha and Amita Sinha merit to be dropped from the proceedings and no coercive action merits to be taken against them. Smt. Vandana Sinha and Amita Sinha undertake to resign from the Directorship of ACPL.

PRELIMINARY OBJECTIONS

- 18) It is submitted that without prejudice to the contentions on merits, the following preliminary objections are raised with respect to the impugned order.
- 19) The impugned order has shockingly been passed without an investigation whatsoever into the affairs of ACPL.
- 20) The impugned order imposes severe penalties on ACPL and its directors, without taking into account the basic foundational fact that till date there has been no specific investigation into the affairs of ACPL.
- 21) The Relevant authority, MCX has never carried out an investigation into affairs of ACPL.
- 22) It is submitted that ACPL is under the supervisory/investigate jurisdiction of MCX. However, till date, the MCX has never conducted any investigation into the affairs of ACPL. It is on the basis of the false, untrue and misconstrue findings of the NSE, restrictions and order is imposed on ACPL. This is substantially against the law of consciousness and principle of natural justice.
- 23) Neither has the MCX ever sent a notice or letter informing of inspection to ACPL, nor has it ever deputed any official as investigating officer for affairs of ACPL. There has not been a single visit to the office premises of ACPL by any official of MCX or any investigate agency empowered by MCX to act on its behalf.
- 24) It is clear that even the nascent steps of investigation, namely sending investigation notice and appointing investigating officer, has never been carried out, and thus it is entirely unimaginable that any findings can be entered on the

allegations against ACPL and even harsh consequences can be imposed, without going through the prerequisite of conducting inquiry.

- 25) NSE has no jurisdiction to investigate affairs of ACPL and in fact has never even attempted to investigate ACPL. Report of NSE pertains only to AAT IPL and cannot be "borrowed" for adjudication of claims against ACPL
- 26) In this case, it is to credit of NSE that they have never represented to have carried out any investigation into affairs of ACPL and admittedly their investigation was constrained to AAT IPL.
- 27) It is submitted that thus, there has been no investigation, no findings, no inspection, and no allegations into affairs of ACPL by either MCX or NSE.
- 28) It is submitted that while ACPL and AAT IPL are operationally connected separate legal entities, investigation into another cannot be "borrowed" to reach findings against the others not only for the reason that the said is arbitrary, unfair and in violation of principle of natural justice, but also more specifically because accounts of the two entities are maintained separately.
- 29) Mere manipulative NSE findings cannot be relied by the Board for imposition such impugned order on ACPL, persistently when neither the Board nor the MCX or any other relevant authority have ever inspected or investigated into the affairs of ACPL. Board cannot rely on false and untrue facts pertaining to one company and held liable to the other separate entity on the basis of such unreliable investigative procedures and evidence.
- 30) It is submitted that the accounts and books of AAT IPL and ACPL are maintained separately, and the records are entirely independent of each other. Thus no findings could have been entered on the affairs of ACPL without investigation of MCX or any other relevant authority.
- 31) The Ex parte Interim Order has been Passed in violation of the principles of natural justice and violate fundamental rights of the undersigned recognized by Articles 14, 19 (1) and 21 of the Constitution of India
- 32) Admittedly, the SEBI order is a penal order with for reaching civil consequences. Firstly, it impacts the rights of ACPL & other Respondents to carry out business, which is fundamental right under Article 19(1) (g). Secondly, it has severe on repercussions of ACPL and other Respondents which has a grave consequence. Thirdly, it operated as a severe infringement

if personal liberties of Directors as even their freedom to dispose of their assets and properties, has been curtailed in one blow.

- 33) Such impugned order with severe consequences could not have been passed without affording due opportunity to Respondents to be heard and without disclosing all underlying material. It is a settled law and has been held by the Hon'ble Apex Court in various landmark judgments that when an authority inflicts any penalty by exercise of powers under a statute, such an authority is bound to adhere to strictest principles of natural justice and propriety of process including issuance of notice and granting opportunity to be heard even if no such requirement is stated in the statute.
- 34) It is pointed out that it is evident from and admitted in the impugned order that the Hon'ble Board has entered prima facie findings on various allegations which involve complex factual details and technical records, solely on basis of the initial findings of the investigation and inspections conducted by NSE into the affairs of the other operationally connected separate legal entity, AATIPL. Whereas any investigative proceedings for ACPL were completely ignored.
- 35) The Hon'ble Board blatantly passing such impugned order against ACPL on of false and misconstrued data supplied by the NSE, without independent investigation or verification is clearly against the principle of natural justice and law of consciousness.
- 36) It is to be noted that substantial reliance on mistaken, incomplete, suppressed, distorted, misconstrued and erroneous investigation report/ procedure is itself sufficient ground to object and vacate this said order.
- 37) It is a basic tenet of judicial process that there must be application of mind to material and cogent reasons behind exercise of statutory power to impose penalty. No penalty can be passed in a mechanical manner without independent and keen application of mind and verification of facts.
- 38) Data/Investigation report furnished by NSE and relied upon has never been disclosed to ACPL by the Hon'ble Board and ACPL till date has no means of verifying the said data
- 39) That the impugned order enters findings on various complicated and lengthy allegations involving findings of facts which involve extensive technical records. The impugned order is a lengthy document that makes reference to various materials and appears to be founded on voluminous documentation. However,

shockingly, none of the said underlying materials and documents, stated to have been supplied by NSE to the Hon'ble Board, have been annexed or otherwise been supplied to ACPL.

- 40) It is stated that the same is an egregious violation of the basic tenets of natural justice and amounts to a "closed-room conviction" where neither the undersigned has any knowledge of or opportunity of examining the crucial materials which have been swapped behind the scene between the two authorities. Such a procedure, and infliction of such harsh restraints on basic fundamental rights and liberties, is draconian and unheard of and abhorrent to the rule of law and principles of natural justice. ACPL cannot be kept entirely in the dark about the basis on which the finding have been reached and relied.
- 41) That the above is all the more troubling as the data that has been accepted by the Hon'ble Board as basis of entering prima facie findings is shockingly inaccurate as detailed in the objections filed by AATIPL, and moreover pertain only to AATIPL and not at all to ACPL for which entity separate accounts and records are maintained..

OBJECTIONS TO FINDINGS:

Whether AATIPL has prima facie transferred its clients' funds and securities to ACPL. If so whether AATIPL and ACPL have prima facie violated any provision of securities laws

- 42) The impugned order relied on contention that simply because client funds are available in AATIPL bank account, the client funds must have been transferred by AATIPL to ACPL is entirely baseless, untenable, and amounts to surmise and conjecture and ought to be withdrawn. It is denied and clearly objected that there has been any failure to ensure proper segregation of client funds and own funds or client transactions and own transactions.
- 43) It is pointed out that once again, there is absolutely no evidence or material placed on record which would enable the Company to understand for what reason and on what basis it has been concluded that client funds of AATIPL clients have been transferred to ACPL. As such the charge is vague and it is impossible for the notice to raise a complete and substantial fair defence in light of the vague and unsubstantiated findings.
- 44) It is submitted that not an iota of evidence has been put on record by NSE or the Hon'ble Board in support of the allegations raised and even the reason or

rationale behind the findings of this order has not been revealed beyond conjecture that client funds must have been transferred. Admittedly, the payments made between ACPL and AATIPL have been done from "own bank account" and not from client bank accounts. There is no prima facie evidence at all that the funds transferred have been withdrawn from client funds. Transfer of funds from client account to own account is a permissible transaction. Transfer from own account to business associates/third party entities naturally is also permissible. Hence, the impugned order has merely assumed without any material in support, that funds from client account has been transferred between ACPL and AATIPL. The order in fact discloses no actual substantial findings at all and merits to be withdrawn.

- 45) It is stressed that neither the act of transfer of funds from client bank account to own account illegal as it is done on permissible grounds as already explained, nor is transfer of funds to and from the company accounts of AATIPL and ACPL unlawful.
- 46) Further, as a matter of fact under the impugned order it is wrongly interpreted and alleged against ACPL intentions and hereby it is to be submitted that there was and still till date sufficient amount of margins and funds is standing with the Clearing Member Globe Commodities Ltd. through alienation of which the requirements/ dispute of the investors could have been easily met, resolved and settled in the best interest of the securities market and investors. However, ACPL was unable to do so due to the imposition of impugned SEBI order directing to restrain any such transaction as mentioned above.
- 47) However, it is to be submitted that the ACPL was in a complete disarray and was also in a phase of collating and preparing the objections to the SEBI order dated 22.08.2017, for which it had sent an email dated 13.09.2017 to the Exchange and sought an extension of time to file the reply as the ACPL. Since its directors were under great plethora of receiving letters and notices across channels from various authorities, *malafidely* alleging ACPL on the basis of non-binding false finding of the mistaken, misinterpreted investigation.
- 48) It is stated that while it is correct that there have been transfers, it is submitted that transfers made to AATIPL's account from client accounts are made strictly for reasons permissible under the various circulars issued by the regulatory authorities are in no manner objectionable or unlawful. Transfers from the client account to business account have undertaken duly in accordance to SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993. It is important to reiterate that all client funds were deposited into the client accounts and all

payments to clients were made from the client accounts, hence there is no question of violation of the said circular.

- 49) It is once again stressed that it is NOT the case made out in the SCN or as relied in this Order that funds have been transferred between the client bank accounts of one entity to the other, or from the client bank account of one entity to the own account of the other. It is also not the case that AAT IPL has transferred/received funds on behalf of clients from/to the bank account of its group entity dealing in commodities, ACPL.
- 50) It is submitted that ACPL has funded AAT IPL for the genuine business requirements of AAT IPL- the payments made are genuine business transactions. Admittedly, the payments have been made properly from the account of AAT IPL/ACPL.
- 51) As the Order discloses no material evidence to show that the transfers are non-genuine/sham transactions and have been effected to defraud investors, it is respectfully submitted that business transactions not involving investors are outside the purview of the Securities Law and vested powers of the Board.
- 52) In respect of the transfer of securities to ACPL and vice versa, it is pointed out that these transfers pertain to securities transfer between the two companies (AAT IPL and ACPL) having common clients, it is nothing but transfer of client funds from one exchange to another after considering net position of client who are trading on both exchanges, with authorization from the client. The transfers from AAT IPL to ACPL was for daily client obligations for funds and securities in both exchanges, there was no element of misappropriation or diversion or any anti-investor practise therein, neither has any such specific instance been proved in the findings relied in this Order. Nor has any such client made any complaint about inter-exchange settlement of funds and securities.
- 53) It is critical to note that the Hon'ble Board itself does not discourage the industry practise/ trend of integration of stock exchanges between commodities and securities exchanges which are often carried out with same clients across operationally connected entities registered with different exchanges. Attention of the Hon'ble Board is drawn towards the Circular No. SEBI/HO/MIRSD/MIRSDI/CIR/P/2017/104 dated 21.09.2017, which is passed with express intent to facilitate integration between stock brokers and clarifies that client account may be transferred from one stock broker to the other stock broker. Hence there is nothing at all mala fide or unlawful about the stated activities of AAT IPL and ACPL.

54) Further, in respect of the issued raised regarding transfer of funds and securities between AATIP and ACPL, it is perhaps most important to note that neither entity has made any amount of disproportionate gain or unfair advantage as a result of such adjustments of clients across different segments.

55) It is also critical to note that neither entity has received any complaint from any client relating to such intercompany fund transfer of their balance from one segment to another and that the same has been done with full knowledge of the clients.

56) It is also critical to note that there are only 14 such instances and the value of the securities also is minuscule amounting to Rs. 1.36 crores and for this reason also no strict disciplinary action is merited.

Whether AATIPL and ACPL have prima facie failed to carry out running account settlement in violation of any provision of securities law

57) The impugned order blindly relied on the complaints of the investors without verification of their credentials and claims. It is shocking but apparent that there is no basic verification of complaints before using it as basis for issuing SCN and making reference to the Board.

58) No such allegations can be raised or adjudicated in the absence of issuance of any Show Cause Notice or even a primary, basic investigation of books and records of ACPL.

59) ACPL hereby thus seeks permission from the Board in terms of para 56(iv) of the impugned order for disposing of assets of ACPL, and seeks ... to present its plans for revival including disposal of property, raising loans from third parties and restructuring. ACPL undertakes to present detailed resolution plan at the said meeting and requests an opportunity, in interest of expeditious resolution of investor claims.

60) In furtherance to same we hereby pray as follows-

- a) That the Ex parte interim order should be immediately vacated and dismissed;
- b) That direct MCX to vacate the orders dated 23.08.17 and 20.09.17 pertaining to restraint from securities market and declaration of defaulter.

c) That the restraints and restrictions levied on the company and its directors though the operation of para 56 of Ex parte interim order should be immediately vacated and dismissed. The said company should herein like before be allowed to remit its normal course of business and operations in order to settle best interest of investors;

d) That the Board be pleased to allow the alienation of ACPL assets in supervision of exchanges as part of the Resolution Plan, and grant a personal hearing to enterian the resolution plan in detail;

e) That the names of Smt. Vandana and Amita Sinha merit to be dropped from the proceedings and no coercive action be taken against them.

MR. ABNISH KUMAR SUDHANSHU

PRELIMINARY OBJECTIONS:

- 1) As recorded in paragraph 49 & 50 in the impugned order, the applicant has been implicated merely on the ground that the applicant had acted as a Director during a certain period of alleged violation by the company, AAT IPL and as such the applicant is also liable in his capacity of individual director.
- 2) He was appointed in AAT IPL as Director-Research [Reporting to Sanjeeva Kumar Sinha (Managing Director/Promoter) and had the following roles :
 - i) Conducting/Preparing research reports.
 - ii) Representing AAT IPL before Media.
 - iii) Interviews/expert opinions upon news channels.
 - iv) Daily tips to AAT IPL's clients.
 - v) Co-ordination with Sale-team.
- 3) It is evident from the impugned order that all the illegalities/ violations/ irregularities in dealing with investors' funds and securities which have allegedly been committed by AAT IPL, have direct connection with the job responsibilities of those officials of the AAT IPL who were in charge of and/or responsible for the conduct of account/finance department of the AAT IPL. It is submitted that the applicant herein had merely acted as a `Director-Research' and his job responsibilities as detailed herein above had not even a remote connection with the account/finance department of the AAT IPL. Thus, the fact of the applicant being not involved in the conduct/ management of the account/finance department of the AAT IPL makes it expedient that the impugned Ex-parte Ad-interim order qua applicant be vacated.

Law regarding the vicarious liability of the `Director':

- 4) It is submitted that the law fastens the vicarious liability upon the director for the acts committed by the company in two situations, *firstly*, when there are sufficient evidences of the active role of such director in the conduct of business of the company, and *secondly*, when the statute itself contains a provision providing for the vicarious liability of director for the acts of the company. Vicarious liability is also fastened upon a director when it is proved that such director occupies the key position in the company such as a `Managing Director' or Whole-Time Director'. A director, however, shall not be vicariously liable for the acts of the company if he is able to prove that the alleged act was committed without his knowledge and that he exercised the due diligence. Merely being a director of a company is not sufficient to make such person vicariously liable for the acts of company. A director in a company cannot be deemed to be in charge of and responsible for each and every act of the company. The requirement of law is that the director sought to be made vicariously liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. It would be against the interest of justice to fasten vicarious liability upon each and every director of the company. Such approach would hinder good persons to come forward and become directors. It would have adverse effect on corporate well-being. It is submitted that in the present case vicarious liability cannot, legally, be fastened upon the applicant as he, not only was ignorant about the illegalities being committed by the company, but he also exercised the due diligence.

No evidence of role of the applicant in the illegalities allegedly committed by the company:

- i. There is not even an iota of evidence disclosed in the impugned Ex-parte Ad-interim order which shows any role of the applicant in any of the illegalities/violations/irregularities in dealing with investors' funds and securities which have allegedly been committed by the AAT IPL.
- ii. That no Board Resolution or Power of Attorney was ever passed/executed by the Board of Director of AAT IPL in favour of the applicant thereby authorizing him to do any act on behalf of the AAT IPL or conferring any powers upon him.
- iii. That the applicant had no power/authority to control/ operate/ manage any of the bank/demat accounts of the AAT IPL, which were the medium to commit various illegalities/violations/irregularities in dealing with investors' funds and securities.
- iv. The applicant annexed the pay-slips of his salary which shows his designation as `Research-Head'.

- v. That even the impugned Ex-parte Ad-interim order in paragraph 55 avers *"It is noted that Mr. Sanjeeva Kumar Sinha is the promoter of AAT IPL and has been its director from September 21, 2011 till date. He was also the designated director of AAT IPL during the reference period and has also been managing the day to day affairs of the company including overseeing the regulatory compliance and corresponding with the stock exchanges. Further, Mr. Sanjeeva Kumar Sinha also became a director of ACPL on August 1, 2017 and as per the relevant Form 32 available in MCA's records, he is shown as a promoter of ACPL. He also holds substantial shareholding in both AAT IPL and ACPL. The association of Mr. Sanjeeva Kumar Sinha with AAT IPL and ACPL and his position particularly in AAT IPL prima facie shows that he had an active role in the acts and omissions of AAT IPL and ACPL discussed hereinabove... "*. Thus, there is no evidence of the applicant having any role in the commission of any illegalities allegedly committed by the AAT IPL.

Exercise of due diligence by the applicant:

- 5) It is submitted that the applicant was made the director in AAT IPL as part of a larger conspiracy which has been unearthed now. The applicant has earned enormous good-will and reputation in the securities market by his hard work. Applicant is a well-known researcher in the securities market and he is frequently invited by various news channels for keeping his views on the securities market. AAT IPL offered the directorship to the applicant with the motive of harnessing his good-will. That the applicant has always exercised the due diligence while performing his duties as Director-Research. However, the applicant, despite exercising the due diligence, could not become privy to various illegalities/violations/irregularities committed by AAT IPL and its top management in dealing with investors' funds and securities, which all was done in a very clandestine manner.
- 6) That as long as on 22/4/2015, applicant had taken a certificate from the AAT IPL regarding his role and job responsibilities in the company, which reads as *"This is to certify that Mr. Abnish Kumar Sudhanshu (Director-Research) is not involved in any Trading/DP and day to day financial activity of the company. He has been dealing with the equity research and has been confined in this area only. He bears a good moral character."*
- 7) When the applicant realized that he has been made the director for the name sake and that he had no role in the conduct and management of the company, he tendered his resignation from the directorship long back on **13/1/2016** by

writing an email to the effect *"Dear Sir, As per subject line I am resigning from the post of Director of this company, there is lots of reason to resign and completely professional reason I don't want to become dummy person on this post. Second I will continue my other roles and responsibilities as usual nothing will change. So I am requesting you to kindly accept my resignation."* That in the last, applicant was constrained to write another email on 29/12/2016 to the effect *"Dear Sir, Kindly accept my resignation from post of Director without any delay as I already informed you 8 to 10 times in written manner as well as verbal manner. As you know I am also research head of this organization and I could not sign any legal document further, kindly treat this mail as a final notification."* Copies of the emails written by the applicant thereby resigning from the directorship have been annexed.

No unlawful gain to the applicant out of the various alleged illegalities/ violations/ irregularities

- 8) The applicant has furnished the requisite information/ documents/ records to SEBI in compliance of the summons, a bare perusal of which shows that the applicant has not been the beneficiary of any unlawful gain out of the various illegalities/violations/irregularities, if any, committed by AAT IPL and its top management in dealing with investors' funds and securities.
- 9) Paragraph 6 & 7 of the interim order show the list of shareholders holding more than 5% shares of the AAT IPL and ACPL. In this regard, it is submitted that the fact that the applicant's name does not find mention therein itself proves that the applicant never enjoyed any significant position in the management and control of the AAT IPL or ACPL. The true fact is that the applicant does not hold even a single share of the AAT IPL and ACPL. The applicant was made the director in AAT IPL with the ulterior motive.
- 10) The applicant as a Research-Head' had no correspondence with the NSE during inspection and no omission can be attributed to the applicant on account of the failure/non-compliance by the AAT IPL to the alleged repeated reminders and visits by the NSE.
- 11) That the applicant had no knowledge regarding the clients' securities having been pledged by the AAT IPL. It is also submitted that applicant did not represent the AAT IPL before the NSE during the course of inspection and therefore there was no denial or failure to disclose the information on the part of the applicant.

- 12)The applicant submits that he as a Director-Research had no role in the maintenance of the trial balance, bank books or ledger of the AAT IPL and therefore, the applicant had never had any knowledge regarding the alleged concealment by the AAT IPL.
- 13)Paragraphs 30-32 of the interim order aver as to how the AAT IPL has transferred the funds and securities to and from its sister concern i.e. ACPL. In this regard, it is submitted that the said transfer, if any, had taken place without the knowledge of the applicant and further the applicant had no power/authority to operate/control the bank or demat accounts of the AAT IPL or ACPL.
- 14)Paragraph 41 of the interim order mentions about various complaints regarding the non receipt of funds and securities of the clients pending against the AAT IPL before the SEBI,, NSE, BSE and MCX. It has further been stated that majority of those complaints were received during August 7-18, 2017. In this regard, it is submitted that the applicant had resigned long back and that the applicant had no role whatsoever in the management of the AAT IPL which gave rise to the cause for filing of those complaints by the clients of the AAT IPL.
- 15)Paragraph 55 correctly records that in view of the facts and circumstances as have become unearthed after inspection and preliminary inquiry by the SERI and NSE that Mr. Sanjeeva Kumar Sinha, as a Managing Director and Promoter of the AAT IPL and ACPL, had the main role in the commission of various illegalities/violations/irregularities committed by the AAT IPL in dealing with investors' funds and securities.

MR. PAWAN MISHRA

PRELIMINARY OBJECTIONS:

A very short duration of less than five months of directorship of applicant:

- 1) At the outset, it is submitted that the paragraph 5 of the impugned order wrongly states the tenure of directorship of the **applicant** as '23/1/2017 till date'. Applicant states that he had sent an email on 1.6.2017 for resigning from the directorship with effect from 15.6.2017. That the applicant, after resigning from the directorship with effect from 15.6.2017, sent two reminders on 7.8.2017 and 9.8.2017 with a request to the company to fulfil the necessary legal formalities of resignation with the Registrar of Companies. True copies of the emails, dated 1.6.2017, 7.8.2017 and 9.8.2017 are annexed. A true copy of the Form No. DIR-11 submitted before the Registrar of Companies showing the

resignation date as 1.6.2017 and effective date of resignation as 15.6.2017 is also annexed. Thus, the applicant remained the director in the company for a very short duration of less than five months i.e. from 23.1.2017 to 15.6.2017.

Job responsibilities/profile of the applicant:

- 2) The applicant had joined AAT IPL on 1st July 2011 only. A true copy of the appointment letter, dated 1 July 2011 of the applicant is annexed. The applicant, after joining the company, was assigned the job profile of franchisee/branch coordinator and in this capacity applicant's job responsibilities were to coordinate with the branches/sub-brokers/franchisees of the company. The applicant had never been part of any decision making process of the company as the applicant has always remained at a very junior level in the organizational structure of the company.
- 3) It was in the month of January, 2017 that the applicant was offered the directorship in the company as other director in the company had resigned and the company had to maintain the minimum number of directors on the board as per the Companies Act. The applicant expressed his reluctance to become the director, but the Managing Director of the company, Mr. Sanjeeva Kumar Sinha gave only two choices to the applicant, either to accept the directorship or face termination from the job. The applicant had no choice but to accept the directorship as the applicant has family to support and it was very difficult for the applicant to find another job in such job crises.
- 4) It is also important to submit here that the applicant was made the director only for the name sake and applicant never played any role in the conduct and management of day to day affairs of the company. The job profile of the applicant even after becoming the director, remained the same as it was before i.e. coordination with the branches/sub-brokers/franchisees of the company.
- 5) As the applicant came to know about several illegality/irregularities being committed by the Managing Director and his wife in the company, the applicant resigned from the directorship. The applicant within the very short duration of less than five months of directorship realized that he had been made the director in the company as part of a larger devious conspiracy, which has been unearthed now. The applicant has been made only the scapegoat. It is very important to note here that it is evident from the impugned order that all the illegalities/violations/irregularities in dealing with investors' funds and securities which have allegedly been committed by AAT IPL, have direct connection with the job responsibilities of those officials of the AAT IPL who were in charge of

and/or responsible for the conduct of account/finance department of the AAT IPL. It is submitted that applicant's job responsibilities as detailed herein above had not even a remote connection with the account/finance department of the AAT IPL. Thus, the fact of the applicant being not involved in the conduct/management of the account/finance department of the AAT IPL makes it expedient that the impugned Ex- parte Ad-interim order qua applicant be vacated.

Law regarding the vicarious liability of the 'Director':

- 6) It is submitted that the law fastens the liability upon the director for the acts committed by the company in two situations, *firstly*, when there are sufficient evidences of the active role of such director in the conduct of business of the company, and *secondly*, when the statute itself contains a provision providing for the vicarious liability of director for the acts of the company. The vicarious liability is also fastened upon a director when it is proved that such director occupies the key position in the company such as a 'Managing Director' or 'Whole-Time Director'.
- 7) A director, however, shall not be vicariously liable for the acts of the company if he is able to prove that the alleged act was committed without his knowledge and that he exercised the due diligence. Merely being a director of a company is not sufficient to make such person vicariously liable for the acts of company. A director in a company cannot be deemed to be in charge of and responsible for each and every act of the company. The requirement of law is that the director sought to be made vicariously liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. It would be against the interest of justice to fasten vicarious liability upon each and every director of the company. Such approach would hinder good persons to come forward and become directors. It would have adverse effect on corporate well-being. It is submitted that in the present case vicarious liability cannot, legally, be fastened upon the applicant as he, not only was ignorant about the illegalities being committed by the company, but he also exercised the due diligence, which the applicant shall prove in the coming paragraphs.
- 8) No evidence of role of the applicant in the illegalities allegedly committed by the company:
 - (a) There is not even an iota of evidence disclosed in the impugned Ex-parte Ad-interim order which shows any role of the applicant in any of the illegalities/violations/irregularities in dealing with investors' funds and securities which have allegedly been committed by the AAT IPL.

- (b) No Board Resolution or Power of Attorney was ever passed/executed by the Board of Director of AAT IPL in favour of the applicant thereby authorizing him to do any act on behalf of the AAT IPL or conferring any powers upon him.
- (c) That the applicant had no power/authority to control/operate/manage any of the bank/demat accounts of the AAT IPL, which were the medium to commit various illegalities/violations/irregularities in dealing with investors' funds and securities.
- (d) That even the impugned Ex-parte Ad-interim order in paragraph 55 avers *"It is noted that Mr. Sanjeeva Kumar Sinha is the promoter of AAT IPL and has been its director from September 21, 2011 till date. He was also the designated director of AAT IPL during the reference period and has also been managing the day to day affairs of the company including overseeing the regulatory compliance and corresponding with the stock exchanges. Further, Mr. Sanjeeva Kumar Sinha also became a director of ACPL on August 1, 2017 and as per the relevant Form 32 available in MCA's records, he is shown as a promoter of ACPL. He also holds substantial shareholding in both AAT IPL and ACPL. The association of Mr. Sanjeeva Kumar Sinha with AAT IPL and ACPL and his position particularly in AAT IPL prima facie shows that he had an active role in the acts and omissions of AAT IPL and ACPL discussed hereinabove..."*. Thus, there is no evidence of the applicant having any role in the commission of any illegalities allegedly committed by the AAT IPL.

Exercise of due diligence by the applicant:

- 9) It is submitted that the applicant has always exercised the due diligence while performing his duties. However, the applicant, despite exercising the due diligence, could not become privy to various illegalities/violations/irregularities committed by AAT IPL and its top management in dealing with investors' funds and securities, which all was done in a very clandestine manner. The applicant immediately resigned from the directorship when he came to know about the illegalities being committed by the AAT IPL.

No unlawful gain to the applicant out of the various illegalities/ violations/ irregularities committed by AAT IPL and its top management in dealing with investors' funds and securities:

- 10) That the applicant has furnished the requisite information/documents/records to the SEBI in compliance of the summons, a bare perusal of which shows that the applicant has not been the beneficiary of any unlawful gain out of the various

illegalities/violations/irregularities, if any, committed by AAT IPL and its top management in dealing with investors' funds and securities.

- 11) The true fact is that the applicant does not hold even a single share of the AAT IPL and ACPL. The applicant was made the director in the AAT IPL with the ulterior motive.
- 12) The applicant had no correspondence with NSE during inspection and no omission can be attributed to the applicant on account of the failure/non-compliance by the AAT IPL to the alleged repeated reminders and visits by the NSE.
- 13) The applicant had no knowledge about the clients' securities or the securities, if any, pledged by the AAT IPL or any of its officials/other directors.
- 14) The applicant submits that he had no role in the maintenance of the trial balance, bank books or ledger of the AAT IPL and therefore, the applicant had never had any knowledge regarding the alleged concealment by the AAT IPL.
- 15) It is submitted that the applicant had no role in the maintenance/operation of the accounts of the AAT IPL or its clients and therefore, applicant had no knowledge of any such violation, if any, committed by the AAT IPL.
- 16) It has been stated that majority of the complaints against AAT IPL were received during August 7-18, 2017. In this regard, it is submitted that the applicant had already resigned on 1.6.2017 which came into effect from 15.6.2017 and that the applicant had no role whatsoever in the management of the AAT IPL which gave rise to the cause for filing of those complaints by the clients of the AAT IPL.

MR. SUJEET KUMAR SONA

- 1) I was appointed Director in Aadya Commodities Pvt. Ltd. on 24.7.2017. From the day of my appointment, no Board Meeting of the Company was called out. Even I did not get access to records of the Company. Therefore, I am not aware of the acts, if any, of the Company which attracts the action. In view of this it is very much clear that I was Director of the **Company only for name sake**. Nothing is attributed to me.
- 2) I have no concern with the affairs of the Company. I was just an employee of this Company. I have no access to papers/documents discussed in the notice.

- 3) I am not in possession of any paper/s / document/s related to/mentioned in the subject show Cause Notice.
- 4) As per the said notice, investigation was made in the affairs of the Company from period April, 2017 to August, 2017 and I was never questioned for the acts mentioned in the notice. During the investigation, it has come to the notice of the investigation team that I had no role in the same. In fact no document/s have been supplied to me to answer the said notice in effective manner *qua* the allegations. There is no direct/indirect allegation/s against me in the matter. I have been served notice as to fulfil legal parameters.
- 5) As and when document/s related to my involvement in the case are provided to me, I shall be in position to answer all your queries pertaining to my role, if any, in the Co's affairs.
- 6) I have already cooperated in the investigation and I shall make myself available for further investigation, if any, in the matter.
- 7) In view of this it is requested to drop my name from the present case. In case my presence is required, I shall make myself available to you at the given place and time to be mentioned in the notice/correspondences.

MS. ANITA SINHA

- 1) I further say that my elder bother Shri Sanjiv Sinha requested me to be director of M/s ACPL solely due to the reason that he needed another person to become director because as per applicable regulations he could not become director in the ACPL. I accepted his request solely out of love and affection of my bother Shri Sanjeev Sinha.
- 2) It is stated that the present dependent was never taking any part in the day to day affairs of the company, M/s. ACPL. I never signed any document as Authorized Signatory or Agent or Representative of the company, M/s. ACPL neither I attended or participated in the day to day affairs of the company in any manner.
- 3) I further say that I was merely a dormant Director and was not aware of the transactions conducted by the company. I was not aware about the transactions between the ACPL and its clients or with any other entity.

- 4) I further submit that I do not have any meaningful shareholding in the company, M/s. ACPL neither the present Respondent has received any dividend etc. from the said companies.
- 5) It is submitted that the allegation qua the present Respondent is solely based on certain conjectures and surmises and assumptions which are contrary to the documents maintained by the company in its usual course of business.
- 6) It is a matter of record that the present Respondent was not aware or could not have become aware about the irregularities happening in M/s. AATIPL or M/s ACPL.
- 7) It has been primarily alleged that since the broker, M/s. AATIPL could not maintain separate account for their clients their entire fund has been presumed to be fund of the clients of the said broker. It is further submitted that there is no reason for the present Respondent to believe that the broker
- 8) M/s. AATIPL was not keeping segregation between its own fund and client's fund. In such circumstances, the entire basis of the adverse order qua the present Respondent is unsustainable and the order is liable to be recalled qua the present Respondent.
- 9) It is further submitted that it has been erroneously assumed that the company M/s. ACPL is related party of M/s. AATIPL merely on the basis that Mr. Sanjiv Sinha have become Director of M/s. ACPL and he is also the director of M/s. AATIPL.
- 10) It is pertinent to mention that Mr. Sanjiv Sinha was not a Director in M/s. ACPL at the time when the subject transactions were conducted between the companies and in fact he has been appointed as Director only with effect from 01.08.2017.
- 11) It is further submitted that it has been erroneously assumed that M/s. ACPL was party in violation of provisions of Securities Law whereas it is a matter of record that the name of M/s. ACPL has appeared incidentally and solely because of the fact that M/s. ACPL was kind to the broker, M/s. AATIPL.
- 12) I further say and submit that I am simple science graduate and primarily a homemaker. I did not understand the financial matters or legalities involved in the operations of the M/S ACPL or any other entities.

13) I say that my brother Sanjeev Sinha was role model in that family from my child hood. He was outstanding in studies from the very beginning. He was selected in most prestigious Netrahat school where he was selected through competition among the students of Bihar & Jharkhand (undivided Bihar). Thereafter my brother admitted in the prestigious Hindu College of Delhi University. I accepted the directorship of the above said companies due to the love affection and respect of my brother.

14) I further say and submit that I have not done or omitted anything which results in violation of any of the provisions of the SEBI Act or Regulations or Rules at any point of time.

HEARING AND SUBMISSIONS

10. An opportunity of hearing was provided to all the Noticees on December 21, 2017. Hearing notices in that regard were delivered to all the Noticees except ATIPL and ACPL. On the said date of hearing, representatives on behalf of Mr. Sanjeeva Kumar Sinha, Ms. Amita Sinha and Ms. Vandana Sinha sought adjournment, which was granted. No representation was received on behalf of ATIPL and ACPL as the hearing notice could not be delivered to them. Mr. Pawan Mishra, Mr. Sujeet Kumar Sona, Mr. Narayan Jee Thakur and Mr. Abnish Kumar Sudhanshu made their oral submissions and hearing was concluded in respect of these entities.
11. Subsequently, another opportunity of hearing was provided to ATIPL, ACPL, Mr. Sanjeeva Kumar Sinha, Ms. Amita Sinha and Ms. Vandana Sinha on January 16, 2018. On the said date, the authorized representative on behalf of Ms. Amita Sinha appeared and made submissions. The hearing notice sent to ATIPL and ACPL returned undelivered from their registered address. Thus, the hearing notice communicating January 30, 2018 as the next date of hearing in respect of ATIPL and ACPL was subsequently delivered by way of affixture.
12. On behalf of Mr. Sanjeeva Kumar Sinha, Advocate Rajeev Kumar Jha vide letter dated January 12, 2018 submitted that Mr. Sanjeeva Kumar Sinha is in judicial custody and his request for interim bail has been denied by the Court. He further submitted that in these circumstances, it will be difficult for him to represent Mr. Sanjeeva Kumar Sinha properly and therefore the hearing may be adjourned. The request for adjournment on behalf of Mr. Sanjeeva Kumar Sinha was denied for the reason that on the earlier scheduled date also i.e. December 21, 2017, an adjournment was sought on behalf of Mr. Sanjeeva Kumar Sinha, and acceding to the said request, hearing was scheduled for January 16, 2018. Further, sufficient time had elapsed since the passing of the interim order and even if Mr. Sanjeeva

Kumar Sinha was in judicial custody, his representatives could have met him and represented his case before SEBI. However, in the interest of natural justice, Mr. Sanjeeva Kumar Sinha was given two weeks' time to file his written submissions in the matter. However, no written submissions were received on his behalf.

13. On behalf of Ms. Vandana Sinha, her Advocate vide letter dated January 12, 2018 submitted that an appeal filed by ACPL was coming up before Hon'ble SAT on January 16, 2018. In view thereof, the Advocate sought for adjournment of hearing. The request for adjournment on behalf of Ms. Vandana Sinha was denied for the reason that on the earlier scheduled date also i.e. December 21, 2017, an adjournment was sought on her behalf, and acceding to the said request hearing was scheduled on January 16, 2018. Further, hearing in respect of an appeal filed before Hon'ble SAT did not prevent Ms. Vandana Sinha from attending the hearing through video conference as scheduled. However, in the interest of natural justice, Ms. Vandana Sinha was given two weeks' time to file her written submissions in the matter.
14. In respect of AAT IPL and ACPL, hearing notice communicating January 30, 2018 as the date of hearing was served by way of an affixture but no one appeared on their behalf on the said date.
15. The oral submissions of the Noticees (who appeared on December 21, 2017 and January 16, 2018) made during the hearing are, *inter alia*, as under:

Mr. Pawan Mishra

- a) He had no knowledge of the allegations leveled against AAT IPL and others in the interim order. He was never shown the books of accounts and other documents.
- b) He had no role in maintaining trial balance and books of AAT IPL.
- c) He became a director by mistake in January 2017 as his salary was being increased and he did not pay attention to the designation.
- d) The increased salary was paid to him since April 2017.
- e) He resigned as a director in June 2017.
- f) He used to look after one franchise out of the 250 franchises of AAT IPL. He only used to make commission payments sheets.
- g) He got to know about the shortage of funds in AAT IPL in April 2017 when there was a delay in pay-in and pay-out for the franchise.

Mr. Sujeet Kumar Sona

- a) He was only a director in ACPL at the time of passing of the order. He was never a director in AATIPL.
- b) He became a director only for 14 days in ACPL.
- c) He only used to handle administrative work and no idea about the day to day functioning.
- d) He became director because Mr. Sanjeeva Sinha told him that the company is short of one director and ROC would impose heavy penalty on the company if they do not appoint a director. He was also promised an increase of 20% in his salary.
- e) He had joined the company as an employee on September 15, 2010.
- f) Till July 2017 he had drawn the salary as the admin.
- g) He was not involved in equity trading at all.

Mr. Narayan Jee Thakur

- a) He was employed with Aadya Trading in 2004-05. He used to talk to clients for opening accounts.
- b) He joined the company as a director in 2010 when the earlier director (Mr. Sanjeev Manchanda) had resigned. However, he never received an appointment letter from the company.
- c) He was made a director by misusing his DIN without any signature and without his knowledge.
- d) Even though he was named as a director, he was never the signing authority for nay purposes. He was never involved in any kind of decision making.
- e) His salary was increased after 6 months of acting as a director from Rs. 10,000 to Rs. 25,000. In 2013, his salary was increased to Rs. 50,000.
- f) Mr. Sanjeeva Sinha used to give interest to clients in cash. The clients were aware of such types of transactions. There was no documentation with clients regarding the said payment of interest. The rate of interest payable to the clients was not fixed.
- g) He finally resigned from the company in December 2015.
- h) His letter of resignation was uploaded on the MCA website after one year. He had given a hand written resignation letter but the resignation letter uploaded on MCA website is printed and not signed by him.

Mr. Abnish Kumar Sudhanshu

Mr. Abnish Kumar Sudhanshu himself along with his Advocate Mr. Sachin Mittal appeared and made, *inter alia*, the following submissions:

- a) The only basis for issuance of directions against him is his directorship in the company i.e. vicarious liability. There is no specific allegation against him.
- b) Though I was a director, I had no knowledge about the operations and functioning of the company. I performed due diligence at my level.
- c) The company was privately held and most of the employees were the relatives of Mr. Sanjeeva Sinha.
- d) In February 2016, I had tendered my resignation to the company but the company did not act upon it despite various verbal request made by him. I resigned on the advice of an advocate.
- e) I was the research head of the company and was made director in 2013.
- f) Most of the irregularities mentioned in the interim order occurred after I had left.
- g) I was made a director possibly because of my reputation in the financial market. I used to do media interactions, and used to write articles in newspapers.
- h) After joining the company, I realized that I was merely a namesake director. Thereafter, on April 22, 2015, I took a NOC from Mr. Sanjeeva Sinha stating that I was not involved in decision making in the company. In December 2016, I threatened Mr. Sanjeeva Sinha that I would go to the media if he does not let him resign. Mr. Sanjeeva Sinha did not want me to resign because he wanted to harness my reputation.
- i) No Board Resolution or power of attorney was signed in my favour. I did not hold any shares in the company.
- j) The operation of demat account of the company, which was used for the purpose of alleged irregularities, was not done by me.
- k) I was not a signatory in the bank account of the company nor did I sign any documents or cheques in the company.
- l) It is also SEBI's case that Mr. Sanjeeva Sinha was in charge of the company. The sales heads of the company used to report directly to Mr. Sanjeeva Sinha.
- m) In July –August 2017, he got to know about the activities of the company.
- n) He had not made any illegal gains. He had no connection with the 33 companies mentioned by SEBI in the order.

Mr. Abnish Kumar Sudhanshu was directed to file an affidavit stating that he was not aware of interest being paid to the clients by whatever name called. Mr. Abnish Kumar Sudhanshu made a prayer that he should be allowed to be employed somewhere in the financial market.

Ms. Amita Sinha

- a) Ms. Amita Sinha is the sister of Mr. Sanjeeva Sinha, who used to manage Aadya Commodities Pvt. Ltd.

- b) She is a homemaker and had taken the post of a director at the request of Mr. Sanjeeva Sinha when he told her that the company is not meeting with the minimum required number of directors under the law.
- c) He had no role in the day to day affairs of the company and was only a namesake director.
- d) She can at best be called a dormant director as she had no association with the business of the company. She did not sign any cheques or documents and was not aware of the functioning and operations of the company.

16. During the hearing, the entities were also given time for filing their written submissions. The written submissions of the Noticee, who filed the same, after the hearing are as under:

Mr. Narayan Jee Thakur

- 1) I was working with the company Amrapali Aadya Trading & Investment Pvt. Ltd. since 2003 and was appointed as a director in the month of June 2010.
- 2) I had submitted resignation from the directorship of the company in writing in the month of December 2015 but acknowledgment was not given to me. I had continued working with the company till February 2016 but my resignation was not filled with concerned authorities i.e. ROC, Exchanges, DP, etc. during my working period.
- 3) That working condition was not healthy for me in the company and I had to leave the organization in the month of February 2016 without any benefit.
- 4) Thereafter I had moved to my native place where my spouse and kids have settled, and also used to visit Delhi to search of job and to look after my old-aged mother.
- 5) I came to know that the company has filled my resignation with Registrar of the Company (ROC) in the month of April 2017. Here it is also pointed out that my original resignation letter has not been filled by the company with ROC, which is now evident from the MCA website.
- 6) I was only director on paper without any right and responsibility. I was appointed as a director of the company to comply with regulatory norms. It is also evident from the record that I was not made authorized signatory with banks or financial corporation where company used to make financial transactions. Usually I had signed the financial statement for purpose of filing of documents in ROC, ITR and exchanges which were mandatory requirements. I would like to reiterate that I was director of the company only on paper however my actual and practical job profile like an executive.

- 7) That I was also appointed as a Director in M/s Aditi Information Technology Private Limited on 18/12/2003, but I was not authorized or got involved with any financial transaction or any activities in this Company.
- 8) I had also been made Director on 02/01/2013 in the following Companies:
- (i) Vishay Electric Private Limited
 - (ii) Niti Marketing and Services Private Limited
 - (iii) Citygreen Tour & Travels Private limited
 - (iv) Realvalue Land Infra Private Limited
 - (v) Prefect Infotech Private Limited
 - (vi) Anmol Advertising Private Limited
 - (vii) JMR Buildwell Private Limited
- 9) The above Companies mentioned at S.No. I to VI have been amalgamated into the Company mentioned at S. No. VII. Thereafter my resignation had been filled from the Company at S. No. VII w.e.f. 15/02/2017.
- 10) That it is pertinent to highlight that no financial transaction has taken place in the company mentioned at S.No. I to VII during tenure of my directorship as per best of my knowledge.
- 11) That I was not connected in any manner, directly or indirectly with any financial transactions in the Company Amrapali Aadya Trading & Investment Pvt. Ltd. or other companies wherein financial transactions has been carried out with AAT IPL during my tenure of Directorship or thereafter. That I was neither authorized signatory in Bank Accounts nor had ever signed any cheques or financial instrument(s) nor made any payments under my signature.
- 12) That M/s Amrapali Aadya Trading & Investment Pvt. Ltd. and other companies mentioned above were under the control of Mr. Sanjeeva Kumar Sinha, the executive Director of the AAT IPL, who was managing the day to day and other affairs of the Company wholly and solely.
- 13) That I was just an employee in the organization and only acted upon the instructions of the executive Director, Mr. Sanjeeva Kumar Sinha, who is promoter and owner of the Company to secure my job. When I joined the organisation in 2003, my salary was Rs. 6,000 (approx.) per month and at the time of leaving the Company, I was drawing salary of Rs. 60,000 per month (approx).
- 14) I had never received remuneration in the capacity of director. I has received monthly salary which was hiked from time to time as per my job profile from the company and same may be evident from the record.
- 15) I am unemployed since I left the Company M/s Amrapali Aadya Trading & Investment Pvt. Ltd. till date. I have moved to my village due to no source of income to meet my ends.

- 16) The above submission along with earlier verbal and written submissions made is to the best of my knowledge and belief and nothing has been concealed.
- 17) It is humbly requested that the Ex parte interim order should be immediately vacated against me. It is further requested to not take any punitive action against me so that I can start fresh job/work to earn and to meet my both ends and live peaceful life.

CONSIDERATION OF ISSUES

17. I have considered the replies / oral submissions / written submissions filed by the Noticees. The issue to be considered at this stage is as follows:

Whether in light of the facts and circumstances of the case, the findings of the interim order and the submissions of the Noticees in response thereto, the directions issued against the Noticees vide the interim order need to be confirmed, revoked or modified in any manner?

18. The consideration of the issue in light of the oral/ written submissions made by the Noticees is contained in the subsequent paragraphs.

COMMON SUBMISSIONS MADE BY THE NOTICEES :

The following paragraphs deal with certain contentions which have been raised by two or more of the Noticees, and findings in that regard shall also hold good against other Noticees in so far as the same are applicable to them.

19. A common submission made by the Noticees is that no opportunity of hearing was provided to them by SEBI before passing the *interim order*. In this regard, I note that the *interim order* has been passed on the basis of *prima facie* findings observed during the preliminary examination/inquiry undertaken by SEBI. The facts, circumstances and the reasons necessitating issuance of directions by the *interim order* have been examined and dealt with in the said *interim order*. The *interim order* has also been issued in the nature of a show cause notice affording the Noticees a post decisional opportunity of hearing. I also note that the power of SEBI to pass *interim orders* flows from sections 11 and 11B of the SEBI Act which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide an entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court

of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 are noteworthy:-

"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. 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. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "

20. Thus, considering the facts and circumstances of a particular case, an *ad-interim ex-parte order* may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the *interim order* in the present case was passed under the provisions of sections 11(1), 11(4), 11B and 11D of the SEBI Act. The second proviso to section 11(4) clearly provides that *"Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned"*. Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an *interim order* is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathi & Others Vs. SEBI* (2002) 2 Bom CR 403, has held as under:

"It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. Thus, it is a settled position that while ex parte interim orders may always be made without a pre

decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."

21. Further, the Hon'ble High Court of Judicature of Rajasthan at Jaipur in the matter of *M/s. Avon Realcon Private Limited. & Ors Vs. Union of India & Ors* (D.B. Civil WP No. 5135/2010 Raj HC) has held that:

"...Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the Interim order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim orders are passed by the Court, Tribunal and Quasi-Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also..."

22. In view of the above, I find that the *interim order* passed by SEBI did not disregard of the principles of natural justice since, reasons for passing the *interim order* have been clearly stated in the *interim order* and, in accordance with the settled law, the Noticees were afforded a post-decisional opportunity to file their replies and avail of personal hearing. I, therefore, reject the contention of the Noticees in this regard.
23. Another common contention of some of the Noticees is that the restraint order is in breach of their fundamental right to carry on business under Article 19(1)(g) of the

Constitution of India. In this regard, it is noted that Article 19 (1) (g) guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business. However, at the same time it is pertinent to mention that this freedom is not uncontrolled as clause (6) of Article 19 authorises legislation which imposes reasonable restrictions on this right in the interest of general public. It is a matter of common knowledge that Securities and Exchange Board of India, 1992 is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In the present case, the restraint order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. As noted in the *interim order*, the conduct of the Noticees has been found to be *prima facie* fraudulent and in violation of Regulations / Circulars being administered by SEBI and therefore the directions have been issued against the Noticees including restraining them from accessing the securities market and dealing in securities till further directions. It is a settled law that while exercising his fundamental rights a person cannot commit an act which is forbidden by law. In view of the above, I find that the restraint order against the Noticees is not in violation of Article 19(1) (g) of the Constitution of India.

24. The directors of AATIPL / ACPL have raised a common contention that there is no specific allegation against them in the interim order and that they have been implicated merely on the ground that they had acted as Director(s) during a certain period of alleged violation by the company. It has also been submitted that they were only namesake directors and had no role in the day to day affairs of AATIPL. In this regard, I find it relevant to mention that in terms of the order of Hon'ble SAT in the matter of *Manoj Agarwal v. SEBI* (Order dated July 14, 2017), a director cannot be absolved from his obligations under the provisions of the Companies Act on the ground that he had merely lent his name to be a director of the Company or had not paid any subscription money or was not involved in the day to day affairs of the company.

25. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

" 13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956.

"

26. Further, with regard to liability of a director even in cases where no specific allegation has been levelled against him, the following observations of the Hon'ble Supreme Court of India in the matter of *Official Liquidator, Supreme Bank Ltd. Vs. P. A. Tendolkar (dead) by L. Rs. And Ors.* 1973 SCR (3) 364 are noteworthy:

"It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company."

27. In light of the above, a person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or he has to face the consequences for any violation or default thereof. The Noticees therefore cannot wriggle out from their liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by the company. Accordingly, the Noticees (being directors) were obligated to ensure compliance with the obligations of the company under the law and were also responsible for all the deeds/acts of the Company during the period of their directorship.

SPECIFIC SUBMISSIONS OF THE NOTICEES:

The following paragraphs deal with the submissions raised by the Noticees specific to them.

28. It has been submitted by AAT IPL that the impugned order has been passed and findings are reached solely on basis of NSE data without even any basic verification or application of mind by the Board. In this regard, it is noted that the interim order has been passed by SEBI after a preliminary inquiry, which included the examination of the documents / records submitted by AAT IPL during NSE's inspection. The order records that separately a detailed investigation is being carried out by SEBI. The order also records reasons for issuing interim directions pending detailed investigation. Thus, the submission of AAT IPL in this regard is devoid of any merit.
29. AAT IPL submitted that the Data/Investigation report furnished by NSE and relied upon has never been disclosed to it by SEBI, and AAT IPL till date has no means of verifying the said data. It has also been submitted that the statement of Mr. Sanjeeva Sinha recorded by SEBI has also not been provided. In this regard, it is submitted that pursuant to passing of the *interim order*, all the Noticees at all times had the liberty to seek inspection of documents / data which were relied upon by SEBI for the purpose of passing the *interim order*. However, it is noted that no request for inspection was received on behalf of AAT IPL at any point of time after the passing of the *interim order*. The submission of AAT IPL in this regard is therefore, baseless and cannot be accepted.
30. AAT IPL has submitted that the Interim Order raises various contentions based on "discrepant" or "incorrect" entries in the trial balances of AAT IPL on the basis of the information collected by NSE, however, the inspection of NSE is based on unfinished, raw data collected directly from the computers of the company. It has also been submitted that the Order does not mention or take into account the fact that AAT IPL had already weeded out most errors in the trial balance submitted voluntarily on 03.08.2017 and had rectified all entries in relation to GFL. With regard to these submissions, I find it relevant to draw reference to the order of NSE's DAC dated October 11, 2017 because similar submissions were raised by AAT IPL before the DAC. It is noted that subsequent to submission of trial balance (dated March 31, 2017) to NSE on April 19, 2017 during NSE's inspection, there was no correspondence from AAT IPL to NSE regarding discrepancy in the said trial balance. It was only when confirmation from its clearing member (GCML) was sought on July 11, 2017 that AAT IPL claimed that trial balance submitted earlier in April was incorrect. Thereafter, AAT IPL submitted data on July 12, 2017, August

3, 2017 and August 17, 2017. However, the data provided on all these dates did not match with each other. It is noted that sufficient opportunities were provided by NSE to AAT IPL for making correct submissions, but AAT IPL did not co-operate with NSE. Further, as regards the data submitted by AAT IPL on August 3, 2017, wherein it has claimed to have corrected most of the discrepancies, it is noted that the DAC in its order has examined the same and has also highlighted the mismatches and *prima facie* falsification of accounts by AAT IPL. As noted earlier, AAT IPL did not file any reply (other than its initial reply). The order of NSE's DAC was passed on October 11, 2017 but no submission has been made on behalf of AAT IPL disputing the findings of DAC in its order. In view of these facts and circumstances, I find that the submissions of AAT IPL in this regard are without any basis and are therefore, rejected.

31. It has been submitted by AAT IPL that it has already taken substantial steps towards settlement of client grievances and has prepared a tentative Resolution Plan whereby all the investor grievances would be resolved and the plan is in full consultation with SEBI and also the National Stock Exchange through the counsels. In this regard, it is noted that while AAT IPL had stated that it will submit a "resolution plan" with regard to the grievances of its clients, but till date no such resolution plan has been submitted by AAT IPL before SEBI or NSE. In fact, subsequent to the initial reply, no further reply was made by AAT IPL or its directors on its behalf. Further, AAT IPL also did not avail the opportunity of hearing. It is relevant to mention that the past and present directors of AAT IPL attended personal hearings in person or through authorized representatives but none of them made any representation on behalf of AAT IPL. Thus, it is noted from record that no resolution plan has ever been submitted by AAT IPL. Thus, the above submission of AAT IPL is misleading and is therefore, rejected. A similar submission was made on behalf of ACPL also and like AAT IPL, no resolution plan has been submitted by ACPL also. Thus, the submission on behalf of ACPL is rejected for the reasons cited above in respect of AAT IPL.

32. AAT IPL has submitted that it has already sought permission from the Board in terms of para 56(iv) of the interim order for disposing of part of the assets of AAT IPL and partially settling the claims of the clients from such money under the supervision of NSE. Before NSE's Disciplinary Advisory Committee also, AAT IPL had made a submission that it has sought permission from SEBI and the same has been granted. In this regard, it is clarified that though a request in that regard was received by SEBI, but no permission was granted to AAT IPL to dispose of its assets for the reason that the value of the total assets of AAT IPL and the total value of investors' claims was not ascertainable, and that the subject assets were

mortgaged. The submission of AATIPL in this regard is therefore fallacious and merits no consideration.

33. In addition to the above submissions, AATIPL has also made submissions in respect of the specific allegations levelled in the interim order (issues A to G mentioned in the interim order). With regard to these submissions, it is noted that the common thread of argument that runs through the submissions of AATIPL is that it had submitted corrected / modified data to NSE which was not considered in the interim order. As can be seen in the earlier paragraphs the contention of AATIPL relating to data submitted by AATIPL on July 12, 2017, August 3, 2017 and August 17, 2017 has already been dealt with. Amongst other observations, it has also been observed that the data submitted by AATIPL on these three dates did not match with each other. Apart from the above, another common line of argument of AATIPL in respect of all the allegations levelled in the interim order is that the acts of AATIPL were *bona fide* and in the interest of its clients. In that regard, it is noted that hundreds of complaints have been received by SEBI and NSE against AATIPL alleging *prima facie* fraud on part of AATIPL in relation to misuse of funds and securities of these complainants (clients of AATIPL). This fact in itself negates the submission that the acts of AATIPL were *bona fide* and in the interest of its clients. One more significant fact which controverts the claim of AATIPL is the total absence of disclosures on part of AATIPL in respect of the usage of clients' securities and funds by AATIPL.
34. On behalf of ACPL, it has been submitted that the impugned order has been passed without an investigation whatsoever into the affairs of ACPL. In this regard, I note from the record that AATIPL and ACPL are related companies with common promoter and common director(s). While it is correct that the inspection was carried out only in respect of AATIPL, at the same time it is also correct that ACPL's involvement / role was observed during the inspection. To the extent of its involvement in the *prima facie* fraud / irregularities, allegations have been levelled against ACPL in the interim order. The interim order was passed against ACPL in the interest of investors to prevent further harm to the securities market. Further, detailed investigation in the matter is also underway to ascertain, amongst other things, the detailed role of all the Noticees including ACPL in the matter. Considering the above, I find that the action initiated against ACPL vide the interim order is justified.
35. Apart from the common submissions discussed earlier, the directors of AATIPL and ACPL have also made certain specific submissions based on their roles and responsibilities in the companies and the circumstances under which they became

directors of the said companies. These submissions of the directors are dealt with separately in the subsequent paragraphs.

36. The tenure of the Noticees as directors in AAT IPL and ACPL as per the MCA records is as under:

S. No	Entity Name	Tenure of the Directors
A	AAT IPL	
	Present Directors	
1	Mr. Sanjeeva Kumar Sinha	21/09/11 till date
2	Mr. Sujeet Kumar Sona	14/06/17 till date
	Past Directors	
1	Mr. Abnish Kumar Sudhanshu	21/12/13 till 24/01/17
2	Mr. Narayan Jee Thakur	12/06/10 till 30/04/17
3	Mr. Pawan Mishra	23/01/17 till 15/06/17
B	ACPL	
	Present Directors	
1	Ms. Amita Sinha	05/08/08 till date
2	Ms. Vandana Sinha	05/08/08 till date
3	Mr. Sanjeeva Kumar Sinha	01/08/17 till date
4	Mr. Sujeet Kumar Sona	24/07/17 till date

37. Mr. Abnish Kumar Sudhanshu submitted that he was appointed in AAT IPL as Director-Research [Reporting to Sanjeeva Kumar Sinha (Managing Director/ Promoter). His job responsibilities in the company did not have even a remote connection with the account/finance department of the AAT IPL, which had a direct connection with the illegalities/violations/irregularities in dealing with investors' funds and securities which have allegedly been committed by AAT IPL. As noted above Mr. Sudhanshu was a director of AAT IPL during the period 21/12/13 to 24/01/17. It has been noted in the interim order that the irregularities / violations on part of AAT IPL were going on prior to 2016-2017 (i.e. the period of NSE's inspection). During that period, the company had only three directors namely, Mr. Sinha, Mr. Thakur and Mr. Sudhanshu. As per the directors' details submitted by AAT IPL to NSE for the period 2014-2016, Mr. Sinha, Mr. Thakur and Mr. Sudhanshu were shown as "Designated Directors". In view of the nature of business and operations of AAT IPL, it can reasonably be inferred that these three directors were collectively responsible to the company for the conduct of its

operations. Having accepted the position of a designated director, Mr. Sudhanshu cannot be allowed to take the defence that he was only the “Research Head” preparing research reports for AATIPL. Had his role only been preparation of research reports for AATIPL, he could have taken the job as a “Research Analyst” or “Executive Research”. The position of a director in the company entailed the roles and responsibilities of a director under the law. As noted from his own reply, Mr. Sudhanshu used to represent AATIPL before Media, used to give interviews on news channels on AATIPL’s behalf, used to provide tips to clients and also used to coordinate with the sales team. It is incomprehensible that Mr. Sudhanshu could perform these functions in AATIPL without being aware of the functional and financial details of AATIPL. In light of the above, the submissions of Mr. Sudhanshu in this regard do not hold any merit and are therefore, rejected.

38. Mr. Sudhanshu has also submitted that he had always exercised due diligence while performing his duties as Director-Research. He also stated that on 22/4/2015, he had taken a certificate from AATIPL which read as *"This is to certify that Mr. Abnish Kumar Sudhanshu (Director-Research) is not involved in any Trading/DP and day to day financial activity of the company. He has been dealing with the equity research and has been confined in this area only. He bears a good moral character."* In this regard, I find it relevant to mention that if Mr. Sudhanshu had exercised due diligence while performing his functions as a director, he must have been aware of the irregularities going on in the operations of the company. Instead, the very fact that Mr. Sudhanshu felt the need for and obtained a certificate from AATIPL certifying that he was not involved in the day to day functioning of the company, leads to the *prima facie* inference that Mr. Sudhanshu was aware of the irregularities going on in AATIPL and obtained the certificate to try and protect himself against possible liability. He had submitted that he had tendered his resignation in February and December 2016, however, despite being a qualified and experienced professional in the securities market, he did not take any steps to get his resignation uploaded on the MCA portal and instead continued to function in AATIPL as a director. Thus, the fact of tendering of resignation does not support the submissions of Mr. Sudhanshu.

39. Ms. Amita Sinha submitted that she is a homemaker and had taken the post of a director of ACPL at the request of her brother, Mr. Sanjeeva Sinha when he told her that the company is not meeting with the minimum required number of directors under the law. Further, she had no role in the day to day affairs of the company and was only a namesake dormant director. In this regard, it is relevant to mention that Ms. Amita Sinha became a director of ACPL in 2008, which is much prior to the date when Mr. Sanjeeva Sinha became a director in ACPL (i.e. 01/08/17). Thus, her argument that she became a director to meet the minimum number of

directors at the request of her brother holds no merit. Further, even if for a moment her submission is accepted, she would still be liable on account of her responsibilities and obligations as a director of the company (ACPL in her case), which has already been discussed in earlier paragraphs. Thus, Ms. Amita Sinha as a director shall be responsible for the acts / omissions of ACPL as discussed in the interim order.

40. In the reply submitted by Mr. Sanjeeva Sinha on behalf of ACPL, Ms. Vandana Sinha, Ms. Anita Sinha and others, it has been submitted that Ms. Vandana Sinha and Ms. Anita Sinha were not involved in the day to day management and running of affairs of ACPL. The requirement of 2 directors of ACPL was met by constituting board of directors including them. Further, Smt. Amita Sinha, is a graduate in field of arts and her attention had chiefly been focused on rearing young child born in 2004 and thus she only had minimal involvement in affairs of ACPL. Similarly, Ms. Vandana Sinha is a science graduate and her chief engagement was with her family and education/career of her children and she had absolute minimal involvement in affairs of ACPL. It has further been submitted that the management and running of affairs of ACPL was effectively carried out by the management of AAT IPL.

41. With regard to these submissions, I find it pertinent to highlight that Ms. Vandana Sinha and Ms. Anita Sinha were the only directors of ACPL since 2008 to 2017 (when 2 other directors joined ACPL). They were also the *designated directors* of ACPL notified to SEBI and used to sign on the statutory filings of ACPL. Separately, no information has been provided as to who constituted the management of the company if the only directors were not involved in the day to day management of the company. The argument that the directors were not managing the company and someone else was doing the same, is in itself fallacious. As discussed in earlier paragraphs, Ms. Vandana Sinha and Ms. Anita Sinha, being the directors of ACPL at the relevant time, were responsible for the acts and omissions of ACPL. Further, Ms. Vandana Sinha held majority shareholding in ACPL and AAT IPL, while Ms. Anita Sinha along with Ms. Vandana Sinha was a director of two companies, which in turn held shares in ACPL and AAT IPL. I, therefore, do not find any merit in the submissions on behalf of Ms. Vandana Sinha and Ms. Anita Sinha in this regard.

42. Mr. Narayan Jee Thakur in his defence submitted that he had joined AAT IPL as an employee in 2003 – 2004 and his job then was only to talk to clients for opening accounts. Later, he became a director of AAT IPL in 2010 but he was never the signing authority for any purposes nor was he ever involved in any kind of decision making. He also submitted that he resigned from the company in December 2015 but his resignation letter was uploaded after 1 year. In this regard, I note from the

record that Mr. Thakur acted as a director of AAT IPL from 2010 to 2016. His submission that he was made a director without his knowledge contradicts his own submission made during the hearing that his salary was increased after 6 months of acting as a director from Rs. 10,000 to Rs. 25,000 and subsequently, in 2013, his salary was increased to Rs. 50,000. He also admitted that he was aware of the fact that AAT IPL used to pay interest to its clients in cash. I also note from the record that Mr. Thakur was the designated director of AAT IPL and used to sign on statutory filings on behalf of AAT IPL. Further, other arguments raised by him such as him being a namesake director, no financial involvement, etc. have already been dealt with under the common submissions raised by directors. In view of the above, I do not find any merit in the submissions of Mr. Thakur in this regard and reject the same.

43. Mr. Pawan Mishra submitted that he had joined AAT IPL as an employee in 2011 and he used to do franchisee/branch coordination in the company and had no idea about its financial transactions. Further, he became a director of AAT IPL only in January 2017 for the purpose of ensuring compliance with the Companies Act and to avoid penalty which would have been levied on AAT IPL since it had only one director. In this regard, I find it relevant to note that as per the MCA records as on the date of the interim order, Mr. Mishra's resignation was not uploaded. However, subsequently, his resignation details were uploaded and based on the same his resignation from AAT IPL is taken as w.e.f June 15, 2017. As regards his submissions, I find that the circumstances under which a person becomes a director have no bearing on his roles and responsibilities as a director. The relevant fact in his case is that he was working in the company as an employee for 7 years and joined as a director when another director (Mr. Sudhanshu) had resigned citing malpractices in the company. The tenure of Mr. Mishra as a director is covered within the inspection period / reference period of inspection of NSE, which formed the basis of examination by SEBI. When he joined the company as a director, there were only 2 directors in AAT IPL and as per the directors' details submitted by AAT IPL to NSE on May 23, 2017, Mr. Pawan Mishra and Mr. Sinha were shown as "Designated Directors". In view of these facts, he cannot deny having any role or knowledge of the business and operations of AAT IPL. He submitted that he resigned when he came to know about several illegality/irregularities being committed by Mr. Sinha and his wife in the company. This submission is itself contradictory to his other submission that he had never played any role in the conduct and management of day to day affairs of the company and he continued to function as an employee as he was prior to becoming a director. It does not appeal to reason that Mr. Mishra did not become aware of the illegalities / irregularities of AAT IPL during his 6 years of employment but he got to know of the same after becoming a director even though he continued to function as an

employee (as claimed by him). These facts and circumstances *prima facie* show that Mr. Mishra was aware of the acts/ omissions of AAT IPL. The responsibilities, obligations and liabilities of Mr. Mishra as a director have already been discussed earlier as a part of the common submissions raised by directors. In view of the above, I reject his submissions in this regard.

44. Mr. Pawan Mishra and Mr. Abnish Kumar Sudhanshu have also raised a contention that they cannot be held vicariously liable for the acts of AAT IPL merely on account of being the directors of AAT IPL. In this regard, I note that in accordance with the settled law on vicarious liability of directors for acts of the company, a director shall *not* be vicariously liable for the acts of the company if he is able to prove that the alleged act was committed without his knowledge and that he exercised due diligence. As discussed above, in respect of both Mr. Sudhanshu and Mr. Mishra, the facts and circumstances (such as AAT IPL being a private limited company with 2 or 3 directors at a time, Mr. Sudhanshu and Mr. Mishra being “Designated Directors” of AAT IPL and the long association of Mr. Sudhanshu and Mr. Mishra with AAT IPL) lead to the *prima facie* conclusion that they had the knowledge of the ongoing violations by AAT IPL. Without prejudice to the above, even if for a moment it is assumed that they did not have the knowledge of acts/omissions of AAT IPL, both of them have not provided any particulars of the due diligence that they had carried out. In my view, if these directors had exercised due diligence while performing their duties as director(s), they must have been aware of the irregularities going on in the operations of the company. Mr. Sudhanshu has submitted that he had obtained a certificate of his non-involvement in the day to day functioning of the company. As discussed earlier, the very need for obtaining such a certificate leads to the *prima facie* inference that he had knowledge of the irregularities going on in AAT IPL. In view of the above, I find that the submission of Mr. Sudhanshu and Mr. Mishra in this regard is unfounded and is unacceptable.

45. As regards Mr. Sanjeeva Kumar Sinha, it is noted that the Mr. Sanjeeva Kumar Sinha filed a reply dated October 12, 2017 for himself and on behalf of AAT IPL, Mr. Pawan Mishra, Mr. Narayan Jee Thakur and Mr. Sujeet Kumar Sona. He also filed a separate reply dated October 12, 2017 for himself and on behalf of ACPL, Ms. Amita Sinha, Ms. Vandana Sinha and Mr. Sujeet Kumar Sona. Thereafter opportunities to appear for hearing and to file written submissions were provided to him but he did not avail the same and only adjournments were sought on his behalf. The initial submissions dated October 12, 2017 filed by him have been dealt with hereinabove. He has been a director of AAT IPL since 21/09/11 and was also its designated director and used to statutory filings on behalf of the AAT IPL. He was also the Managing Director and promoter of AAT IPL. Further, he is also a director of ACPL. In addition thereto, he is a substantial shareholder of AAT IPL

and ACPL. Further Mr. Sinha has not made any specific submission regarding his role / responsibility / obligation in respect of the violations alleged in the interim order. Therefore, I find that nothing has been brought on record to dispute his role in the allegations levelled in the interim order.

46. Mr. Sujeet Kumar Sona has been named in the interim order as a director of ACPL from July 24, 2017. It is noted from the MCA records that he also became a director of AAT IPL on June 14, 2017 and information in that regard was uploaded on the MCA portal subsequent to the passing of the interim order. Though the tenure of directorship of Mr. Sona is outside the reference period but is important to note that he was working with the company as an employee since September 15, 2010. Further, he joined AAT IPL and ACPL as a director in June and July 2017, respectively, by when the irregularities in the operations and functioning of AAT IPL had been revealed at least to the employees of AAT IPL. It is also pertinent to mention that Mr. Sona had joined the company to provide a *prima facie* exit to another director namely, Mr. Pawan Mishra. These facts show that Mr. Sona had accepted the directorship of AAT IPL and ACPL being fully aware of the then prevailing state of affairs of the companies. I am, therefore, unable to accept his submissions in this regard.

47. I note that a detailed investigation in the matter is underway, which will determine the role of all the directors in the violations alleged in the interim order.

48. Considering the above, I find that at this stage, the Noticees have failed to give any plausible reasoning/explanation for their acts and omissions as described in the *interim order* and have not been able to make out a case with supporting documents for contradicting the findings of the *interim order* which would warrant revocation of the *interim order*.

ORDER

49. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11B and 11D thereof, hereby confirm the directions issued against all the Noticees vide *ex-parte ad interim* Order dated August 22, 2017, subject to the modification mentioned in paragraph 50 below in respect of para 56 (v), (vi) and (vii) of the interim order except in respect of directions issued against Mr. Sanjeeva Kumar Sinha in para 56(vii) thereof.

50. It is noted that SEBI held a meeting on April 26, 2018 with representatives of exchanges and depositories to discuss settlement of claims of clients of AAT IPL

and ACPL. In the said meeting, it was decided that a separate Demat account and a separate bank account would be opened, and these accounts would work as escrow accounts wherein the securities and funds belonging to AAT IPL/ACPL would be transferred. Considering the above, I am of the view that such a step would be in the interest of clients / investors and would also be helpful in faster processing of claims as and when the same is directed. I, therefore, direct as under:

- i) NSE's Defaulters Committee shall, as expeditiously as possible, open a demat account wherein the following shall be transferred:
 - a) All the securities lying at the demat accounts of AAT IPL,
 - b) Free balance of AAT IPL's securities lying with NBFCs,
 - c) Securities lying with GCL - Clearing Member of ACPL (*since securities were actually transferred from AAT IPL's account to ACPL and then to GCL as collateral even when ACPL did not carry out any transactions during the relevant period*),
 - d) Mutual funds units held in the names of AAT IPL.
- ii) NSE's Defaulters Committee shall, as expeditiously as possible, open an interest bearing escrow account with a Nationalized Bank, wherein the following shall be transferred:
 - a) Funds lying in various bank accounts held in the name of AAT IPL.
- iii) MCX also shall, as expeditiously as possible, open a demat account wherein the following shall be transferred:
 - a) All the securities lying at the demat accounts of ACPL,
 - b) Mutual funds units held in the name of ACPL.
- iv) MCX shall also, as expeditiously as possible, open an interest bearing escrow account with a Nationalized Bank, wherein the following shall be transferred:
 - a) Funds lying in various bank accounts held in the name of ACPL.

51. The concerned entities including Banks, NBFCs, Depositories, Clearing Members and RTAs are directed to transfer the Money, Securities and Mutual funds, etc. as applicable, to the above mentioned demat account(s) and bank account(s) at the request of NSE's Defaulters Committee and MCX.

52. This order is without prejudice to any enforcement action that SEBI may deem necessary against the Noticees pursuant to the investigation in the matter. This order shall continue to be in force till further directions.

53. A copy of this order shall be served on all recognized Stock Exchanges, Commodity Derivatives Exchanges, Depositories and Registrars and Transfer Agents to ensure compliance with above directions.

Sd/-

DATE: October 31st, 2018

PLACE: MUMBAI

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