

SECURITIES AND EXCHANGE BOARD OF INDIA

CONFIRMATORY ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B(1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

IN RESPECT OF:

S. No.	NOTICEE	PAN
1.	EROS INTERNATIONAL MEDIA LTD.	AAACR2148H
2.	EROS WORLDWIDE FZ LLC (NOW KNOWN AS EROS WORLDWIDE FZE)	AABCE8755A
3.	EROS DIGITAL PVT. LTD.	AAACE6627Q
4.	SUNIL ARJAN LULLA	AAAPL4639E
5.	PRADEEP KUMAR DWIVEDI	AAFPD6402N

THE AFORESAID NOTICEES ARE HEREINAFTER REFERRED TO BY THEIR RESPECTIVE NAMES /S. No. AND COLLECTIVELY AS “**NOTICEES**” UNLESS THE CONTEXT SPECIFIES OTHERWISE.

BACKGROUND:

- Securities and Exchange Board of India (“**SEBI**”) had passed an *Ad Interim Ex Parte Order* dated June 22, 2023 (“**Interim Order**”) against the above mentioned Noticees, wherein it was *inter alia* directed that:

“87. ...

- Noticee 4 is restrained from holding the position of a Director or a Key Managerial Personnel in any listed company, including Eros, or its subsidiaries or any SEBI registered intermediary until further Orders.
- Noticee 5 is restrained from holding the position of a Director or a Key Managerial Personnel in any listed company other than Eros or any SEBI registered intermediary until further Orders.
- Noticees 1 to 5 are restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders. ...”

- Against the Interim Order, Noticees 1, 4 and 5 had preferred Appeals before the Hon’ble Securities Appellate Tribunal (“**SAT**”). The Hon’ble SAT, vide an Order dated August 22, 2023 (“**SAT Order**”), while disposing of (i) **Misc. Application**

no. 868 of 2023 & Misc. Application No. 869 of 2023 & Appeal No. 604 of 2023 – Eros International Media Ltd. vs. SEBI; (ii) Misc. Application no. 870 of 2023 & Misc. Application No. 871 of 2023 & Appeal No. 605 of 2023 – Sunil Arjan Lulla vs. SEBI and (iii) Misc. Application no. 872 of 2023 & Misc. Application No. 873 of 2023 & Appeal No. 605 of 2023 – Pradeep Kumar Dwivedi vs. SEBI, had directed as under:

“22. In our opinion, the contention that no prima facie case existed in passing of the Interim Order is wholly erroneous. The investigation has prima facie revealed siphoning of funds to various entities of the appellant Company which cannot be lost sight of and in the absence of any cogent reply being given we also find that some of the content advance entities being not existent also leads to a presumption of diversion of funds in the form of content advance and trade receivable.

23. ...

24. In view of the aforesaid, we do not find any reason to interfere with the Interim Order at this stage and we dispose of the appeal directing the appellants to file reply /objection along with a stay vacation application to the ad-interim ex-parte order dated 22nd June, 2023 within three weeks from today. If such a reply along with the stay vacation application is filed, the WTM will fix a date within a week from date of filing the reply by the appellants. The WTM will provide an opportunity of hearing to the appellants and after considering the material evidence that has been placed by them will pass appropriate order within three weeks thereafter.”

HEARING:

3. Pursuant to the above mentioned SAT Order, Noticee 1 i.e. Eros International Pvt. Ltd. (“**Eros**”), Noticee 4 i.e. Sunil Arjan Lulla and Noticee 5 i.e. Pradeep Dwivedi, had filed their replies along with applications seeking stay of the directions contained in the Interim Order vide separate letters each dated September 13, 2023. Thereafter, in compliance with the SAT Order, SEBI granted an opportunity of hearing to the aforementioned Noticees and also Noticee 2 i.e. Eros Worldwide FZ LLC (now known as Eros Worldwide FZE)

(“**Eros Worldwide /EWW**”) and Noticee 3 i.e. Eros Digital Pvt. Ltd. (“**Eros Digital /EDPL**”) on September 20, 2023, which was subsequently adjourned on a request made by the said Noticees.

4. An opportunity of hearing was thereafter granted to the Noticees on September 25, 2023, wherein Senior Advocate Vikram Nankani appeared for Noticees 1, 2 and 3 while Advocate Somshekhar Sundaresan appeared for Noticees 4 and 5. The authorised legal representatives reiterated the submissions made by the Noticees in their respective written replies. The Noticees had thereafter filed post–hearing submissions with SEBI, on October 3, 2023.

FINDINGS CONTAINED IN THE INTERIM ORDER

5. Before proceeding to examine the objections raised by the Noticees, it would be appropriate to briefly detail the *prima facie* findings in the Interim Order.

5.1 Noticee No. 1, in its financial results for FY 2019-20, disclosed impairment of “*Content Advances*” and “*Film Rights*”, which along with impairment provided for other advances and goodwill, amounted to Rs.1553.52 Crore. In the same year, Eros also wrote off trade receivables amounting to Rs.519.98 Crore. Pursuant to said disclosure, National Stock Exchange of India Ltd. (“**NSE**”) examined the financial statements of the Company and forwarded a preliminary examination report (“**PER**”) to SEBI. The PER observed that *prima-facie* these transactions indicated that the Company was engaging in financial mis-reporting/siphoning/diversion of funds.

5.2 Pursuant to receiving the PER, SEBI initiated a detailed investigation into the affairs of the Company. The SEBI investigation has so far revealed that *prima-facie*:

5.2.1 It was noted that Noticee No. 1 had impaired content advances including interest /adjustments of Rs.1320.40 with 87 entities and written off trade receivables of Rs.519.98 Crore with 17 entities. Entity-wise details were examined, and it was noted that Rs. 1172.41 Crore representing 88.8% of

the total impairment related to 18 entities (“**Content Advances Entities /CAE**”).

5.2.2 The details of impairment/write-offs in respect of the CAEs and TREs are given in the Tables below:

TABLE NO. 1 (CONTENT ADVANCES ENTITIES)

S. No.	NAME OF ENTITY	CLOSING BALANCE AS ON MARCH 31, 2020 (BEFORE IMPAIRMENT)	AMOUNT IMPAIRED (IN CRORE)	CLOSING BALANCE AS ON MARCH 31, 2020 (AFTER IMPAIRMENT)
IMPAIRMENT PROVISION/WRITE-OFF OF CONTENT ADVANCES (IN CRORE)				
1	NEXT GEN FILMS PVT LTD (NOW KNOWN AS VIYANAA MEDIA WORKS PVT LTD)	300.03	251.70	48.33
2	GLOBUS ENT FZE	197.98	197.98	0.00
3	RV FILMS	241.73	163.47	78.26
4	SPICY ENTERTAINMENT AND MEDIA LTD*	108.54	92.20	16.34
5	VIRGO ENTERTAINMENT PVT LTD	205.40	88.23	117.17
6	MEDIAONE GLOBAL ENTERTAINMENT LTD*	63.61	63.61	0.00
7	METRONET MULTIMEDIA PVT LTD	58.59	58.59	0.00
8	EXPRESS IMAGE PVT LTD	52.00	52.00	0.00
9	UPKAR DEALTRADE PVT LTD	36.50	33.79	2.71
10	BASE INDUSTRIES GROUP	29.63	29.63	0.00
11	DIL MULTIMEDIA PVT LTD	27.51	27.51	0.00
12	M M MOVIEZ	20.30	20.30	0.00
13	ADARSH TELEMEDIA PVT LTD	52.85	17.04	35.81
14	COLOUR YELLOW PRODUCTIONS P LTD	47.82	15.42	32.40
15	SIDDHARTH ANAND PRODUCTIONS	14.71	14.71	0.00
16	RED EYE KRAFT PVT LTD	8.95	8.95	0.00
17	ENCASH ENTERTAINMENT LTD*	21.80	7.03	14.77
18	RITESTONE SOLUTIONS PVT LTD (WRITE OFF)	30.25	30.25	0.00
TOTAL OF 18 ENTITIES		1518.20	1172.41	345.79
INTEREST ON VARIOUS PRODUCTION ACCOUNTS		101.11	80.30	20.81
OTHER 69 ENTITIES		109.13	52.28	56.85
ADJUSTMENTS BY COMPANY FOR CONSOLIDATED FINANCIAL STATEMENTS**		-	15.41	-
GRAND TOTAL		1728.44	1320.40	423.45

* BSE LISTED COMPANY

** NO BREAK-UP/DETAILS PROVIDED BY THE COMPANY

(TRADE RECEIVABLE ENTITIES) (RS. IN CRORE)		
S. No.	NAME OF ENTITY	BAD DEBTS WRITTEN OFF (IN FY 2019-20)
1	SUPERNOVA ADVERTISING LTD*	45.47
2	JIWANJYOTI SALES PVT LTD	45.15
3	SRI KARANI EXPORTS PVT LTD	44.52
4	JAGNAMO MULTISERVICES PVT LTD	37.08
5	ADHIRAJ DISTRIBUTORS LTD*	36.21
6	WABASH VINTRADE PVT LTD	34.72
7	SHREE SHYAM MOTION PICTURES PVT LTD	33.89
8	VIBHAKAR TRADING PVT LTD	30.86
9	SPRINGBOARD MEDIA VENTURES PVT LTD	29.28
10	BCPL INTERNATIONAL LTD#	28.67
11	THINK INK STUDIO LTD@	28.21
	OYEEE MEDIA LTD@	3.60
12	GORA ENTERPRISES PVT LTD	28.00
13	SHYEN TRADING LLP	28.00
14	NYSA SALES PVT LTD	27.86
15	BB COMMERCIAL LTD#	19.10
16	ADARSH GLOBAL TRADE & SERVICES PVT LTD	15.08
17	VIEW FINDER PUBLICITY PVT LTD	4.28
TOTAL		519.98
*BSE SME ITP LISTED ENTITY.		
#CALCUTTA STOCK EXCHANGE LISTED ENTITY.		
@ THINK INK STUDIO LTD WAS EARLIER KNOWN AS OYEEE MEDIA LTD. THE NAME WAS SUBSEQUENTLY CHANGED TO THINKINK PICTUREZ LTD. IT IS A BSE LISTED COMPANY.		

5.2.3 Examination of the ledgers of the 17 TREs, Silver Frame Movies and Venu Visuals (hereinafter collectively referred to as “**Trade Receivable Entities**” or **TREs**), maintained in the books of Eros, revealed that Eros had recognised revenue of Rs.1623.81 Crore, during the period FY 2012–13 to FY 2018–19 from these 19 entities, out of which Rs. 1099.59 Crore was shown as received in the books of the Company.

5.2.4 It was noted that Noticee No. 1 had entered into certain contracts with aforesaid 19 TREs wherein Noticee 1 granted them the rights to re-release movies in multiple regional languages for a fixed tenure. It was noted that the dates of agreements with Silver Frame Movies and Venu Visuals went back to FY 2012–13. As per section 4(1) of The Cinematograph Act, 1952, every movie (even if it is re-released after dubbing) in India needed compulsory certification from censor board. However, none of the movies, for which agreements were executed by Eros with the aforesaid 19 entities,

had taken any Censor Board certification to re-release the movie. No information was furnished by any of the TREs or their Directors which would indicate that the movies were actually released. This created doubt on whether the entities had actually exploited the commercial rights obtained from Eros.

5.2.5 Out of the 17 TREs, only 13 responded to Summons issued by SEBI and only provided basic information and did not provide any information/documents which could substantiate that they had taken steps to exploit the commercial rights acquired from Eros. Three individuals, who were Directors of these entities, appeared before SEBI on receipt of the Summons and also made e-mail submissions. The submissions of these three Directors indicated that they were dummy Directors.

5.2.6 It was noted that over the period FY 2012 to FY 2020, Eros had booked total revenue of Rs.1623.81 Crore from aforesaid 19 entities, out of which an amount of Rs.1099.59 Crore was received by Eros and remaining amount of Rs.519.98 Crore was written off as bad debts. However, on analysis of bank account statements of aforesaid 19 entities, it was noted that out of Rs.1099.59 Crore received by Eros, *prima facie* 60% of the amount i.e. Rs.664.05 Crore was funded by Eros only. Eros indulged in round tripping of funds. Eros, through multiple entities, funded the aforesaid 19 entities. Those entities in turn paid back the amount to Eros. In some instances, the amount was paid back to Eros on the same day and in some instances it was given to Eros with a gap of a few weeks /months.

5.2.7 Many of aforesaid entities have business which are not related to media/entertainment industry.

5.2.8 Further, a significant portion of Noticee 1's revenue was generated through these 19 entities. In FY-19, more than 65% of the total revenue of Eros came from these 19 entities. Details of revenue earned through these entities is given in the Table below:

PARTICULARS	FY 2012-13 TO FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	TOTAL
REVENUE ACCOUNTED BY NOTICEE 1 [A]	2,854.13	1,178.68	1,146.18	707.66	835.64	669.00	7,391.29
REVENUE EARNED FROM 19 CUSTOMERS OF NOTICEE 1 (AS PER THE LEDGERS IN THE BOOKS OF ACCOUNTS OF NOTICEE 1) (B)	200.66	183.63	219.5	399.82	557.76	62.44	1,623.81
% OF REVENUE EARNED FROM 19 CUSTOMERS OF NOTICEE 1 (B/A*100)	7.03%	15.58%	19.15%	56.50%	66.75%	9.33%	21.97%

5.2.9 These figures call into question the integrity of the financial statements of the company and indicate that Eros was using the cover of these entities to inflate its financial statements.

5.2.10 It was noted that as on March 31, 2020, out of total "Content Advances" (Intangible Assets) of Rs.1650.33 Crore (before impairment provision), Rs.1518.20 Crore (Rs.1487.95 Crore + Rs.30.25 Crore) of content advances were of 18 entities only. Further, out of the amount of Rs.1518.20 Crore, Eros impaired Rs.1172.41 Crore i.e. 77.22% of total content advances of aforesaid 18 entities {provision was made for Rs.1142.16 Crore for 17 entities and Rs.30.25 Crore was fully written off for one entity}.

5.2.11 On analysis of ledgers and bank statements of "Content Advances entities" it was noted that payments were made to these entities as way back as FY2012-13. On analysing the ledgers provided by Eros, it was noted that a substantial amount - Rs.1247.49 Crore - was identified as untraceable (neither any film rights were created nor the funds returned to Eros) and 94% of this amount (Rs.1172.41 Cr) was subsequently written off by Eros. Therefore, to understand the actual utilization of the funds provided by Eros, the bank statements of the aforesaid entities for the period 2012-13 to 2019-20 were examined. The analysis revealed that, prima facie, Eros appeared

to have siphoned off/diverted funds using these CAEs since FY2012-13 and these entities rather than utilizing the funds for intended purpose of making movies/contents/films, have prima-facie assisted Noticee 1 in diverting/siphoning the funds. SEBI Investigation, which is ongoing, has at this stage identified that potentially Rs. 687. 37 Crore out of Rs.1247.49 Cr, which was untraceable, was siphoned off/diverted by Eros. The details of the same are given in the table below:

FUNDS DIVERTED/SIPHONED OFF TO/BY	NAME OF CONTENT ADVANCE ENTITY WHO SIPHONED/DIVERTED FUNDS	AMOUNT IDENTIFIED (RS.IN CRORE)	TOTAL AMOUNT (RS.IN CRORE)
THROUGH MULTIPLE LAYERS TO CONNECTED/UNCONNECTED ENTITIES BY NOT PRODUCING ANY MOVIE	SPICY	114.04	332.00
	EXPRESS	52.00	
	UPKAR	36.50	
	DIL MULTIMEDIA	28.50	
	ADARSH	52.85	
	SIDDHARTH ANAND	17.36	
	RED EYE KRAFT	8.95	
	ENCASH	21.80	
OVERSEAS PROMOTER OF EROS, I.E. EWW	NEXTGEN	36.44	66.11
	VIRGO	29.67	
OVERSEAS CONNECTED ENTITIES OF EROS	NEXTGEN & VIRGO	14.23	14.23
RELATIVES OF PROMOTERS AND LULLA FAMILY, I.E. RAJANI FAMILY	NEXTGEN	56.73	56.73
LOAN REPAYMENTS	NEXTGEN	73.26	111.09
	VIRGO	37.83	
OTHER GROUP COMPANIES OF EROS VIZ. EROS TELEVISION INDIA PRIVATE LTD., EROS INTERNATIONAL FILMS PVT. LTD.	NEXTGEN	39.31	46.71
	VIRGO	6.90	
	M M MOVIES	0.50	
POTENTIALLY CONNECTED PARTIES OF EROS	VIRGO	3.55	59.50
	NEXTGEN	4.00	
	M M MOVIES	21.70	
	RITESTONE	30.25	
TOTAL		686.37	686.37

5.2.12. Investigation also revealed that of the aforesaid 18 content advance entities, 11 entities are directly/indirectly connected to Eros and almost 65% i.e. Rs. 868.23 crore, of the total impairment provision/write off pertained to these 11 connected entities.

5.2.13. GST License of certain TREs was cancelled by GST department retrospectively from the date of registration. Further, GST License of certain CAEs was also cancelled by GST department *suo moto*. This further raises

doubts on genuineness of operations of these entities. Further, w.r.t. one of the TRE namely M/s Jiwanjyoti Sales Pvt Ltd, SGST Department, West Bengal provided copy of GST registration cancellation order. On examination of same, it was noted that the GST certificate was taken by entity based on false and fabricated documents and by means of fraud and wilful misstatements of facts.

- 5.2.14.** While SEBI was investigating the matter, it was noted that even after the impairment of Rs.1290.15 Crore of content advances in FY2019-20, Eros made content advances to the same CAEs in FY 2020-21, 2021-22 and 2022-23.
- 5.2.15.** A surprise visit by a BSE Team to the registered office of a CAEs, to whom payment was made subsequent to FY 2019-20, in April – May 2023, revealed that their registered offices were closed. Further, with respect to two of the other content advance entities, the GST Registration of these entities has been cancelled by the GST department *suo moto*. Even after the cancellation of GST certificates, the Company made payments to these two entities.
- 5.2.16.** Another PER was received from NSE on February 16, 2023, raising concerns pertaining to related party transactions and audit qualification.
- 5.2.17.** In view of the above, it was prima facie found that the Entities indulged in fraudulent and unfair trade practices resulting in *prima facie* violation of the provisions of PFUTP Regulations.

FINDINGS ON THE PRELIMINARY OBJECTIONS RAISED BY THE NOTICEES:

6. Noticee 1 – 5 have raised the following preliminary objections for which point-wise findings are made as under:

6.1 **Violations of principles of natural justice (incomplete inspection):**

- a. *Eros requested for inspection of documents /information referred to and relied upon in the Impugned Order including the forensic audit report of KPMG since its appointment as the forensic auditor.*
- b. *Further, documents /evidence basis which SEBI has come to its conclusions regarding diversion and round-tripping and fund flow analysis, have not been provided during the inspection.*
There are several other documents that were not provided despite Eros's request, due to which Eros has not had the benefit of perusal of such documents prior to providing its reply. This is in violation of the principles of natural justice.

6.2 Noticees have submitted that despite repeated requests to SEBI for documents considered /relied upon in the Interim Order, SEBI had ignored the same. In this context, from the material available on record, the following is noted:

- a. M/s Naik Naik & Company, Advocates for Noticees 1, 4 and 5 and M/s R V Legal, Advocates for Noticees 2 and 3 had sought inspection of documents, which was provided to them on July 25, 2023 and July 31, 2023, respectively.

b. The details of information sought and rejected by SEBI is reproduced below:

S. No.	INSPECTION OF INFORMATION/CLARIFICATION/DOCUMENTS SOUGHT BY THE NOTICEES.	NOTICEE SEEKING INSPECTION	REASONS FOR REJECTION OF REQUEST.
1.	COMMUNICATION BETWEEN NSE AND SEBI IN THIS REGARD	NOTICEE 1, 4 & 5	THE COPIES OF TWO EMAILS EXCHANGED BETWEEN SEBI AND NSE WAS NOT PROVIDED AS THE SAID EMAILS ALSO CONTAINED OTHER 3 RD PARTY INFORMATION TO RELATED TO THE PROCEEDINGS AGAINST THE NOTICEE.
2.	MINUTES OF MEETING BETWEEN NSE AND SEBI	NOTICEE 1, 4 & 5	ONE MEETING WAS HELD WITH NSE ON DECEMBER 30, 2021 POST RECEIPT OF PER FROM NSE. HOWEVER, NO MINUTES OF THE MEETING WERE PREPARED.
3.	COMMUNICATION / INFORMATION SOUGHT AND RECEIVED FROM BSE	NOTICEE 1, 4 & 5	INTERNAL DOCUMENTS WERE NOT SHARED AS THE INVESTIGATION HAD NOT CONCLUDED
4.	LETTER OF APPOINTMENT OF KPMG AS FORENSIC AUDITOR	NOTICEE 1, 4 & 5	AS THE FORENSIC AUDIT IS NOT YET CONCLUDED, THE SAME WAS NOT PROVIDED.
5.	INTERIM / PROVISIONAL / FINAL FORENSIC AUDIT REPORT RECEIVED FROM KPMG	NOTICEE 1 TO 5	NO INTERIM / PROVISIONAL / FINAL FORENSIC AUDIT REPORT HAS BEEN PROVIDED BY KPMG. HENCE, NO DOCUMENT WAS PROVIDED TO THE NOTICEES.
6.	COMMUNICATION WITH KPMG. COPY OF MINUTES OF MEETING WITH KPMG	NOTICEE 1 TO 5	THE COPIES OF VARIOUS COMMUNICATION WITH KPMG WAS NOT SHARED AS THE SAME QUALIFIED AS AN INTERNAL DOCUMENT.
7.	MINUTES OF INTERNAL MEETING OF SEBI ADOPTING KPMG REPORT	NOTICEE 1 TO 5	NOT AVAILABLE.
8.	WHETHER SEBI HAS USED INPUT FROM KPMG IN PASSING THIS ORDER?	NOTICEE 1, 4 & 5	REQUEST WAS IN THE NATURE OF A QUESTION
9.	INTERIM / FINAL INVESTIGATION REPORT OF SEBI	NOTICEE 1 TO 5	NOT AVAILABLE. INVESTIGATION IS UNDER PROGRESS AND NO SUCH REPORT HAS BEEN PREPARED.
10.	MINUTES OF INTERNAL MEETING OF SEBI ADOPTING INTERIM INVESTIGATION REPORT OF SEBI.	NOTICEE 1 TO 5	NOT AVAILABLE.
11.	COMMUNICATIONS WITH INDIVIDUALS/ ENTITIES/ BROKERS/ DEPOSITORIES/ STOCK EXCHANGES/ RTA (LINK INTIME)/ BANKS/ INCOME TAX DEPARTMENT/ GST DEPARTMENT/ MCA/ OTHER GOVT. ORGANIZATIONS ETC. IN THIS REGARD.	NOTICEE 1 TO 5	THE REQUEST WAS VAGUE.
12.	INTERNAL NOTES, MARKING, MINUTES AND COMMUNICATIONS WITHIN SEBI IN THIS REGARD AS FAR AS SAME ARE RELEVANT IN OUR CASE.	NOTICEE 1 TO 5	INTERNAL DOCUMENTS WERE NOT SHARED AS THE INVESTIGATION HAD NOT CONCLUDED
13.	ALL THE ORDER LOG AND TRADE LOG OF PERIOD OF INVESTIGATION.	NOTICEE 1 TO 5	NOT AVAILABLE
14.	ANY OTHER DOCUMENTS, STATEMENTS, EVIDENCES, REPORT, ANNEXURES, ETC. USED IN PREPARATION OF SCN.	NOTICEE 1 TO 5	THE REQUEST WAS VAGUE.
15.	WE NEED TO INSPECT ALL ABOVE ORIGINAL TOGETHER WITH RELEVANT ANNEXURES.	NOTICEE 1 TO 5	REQUEST WAS IN THE NATURE OF A QUESTION

c. Thereafter, vide a letter dated July 27, 2023, the Advocates for Noticees 1, 4 and 5, had sought inspection of documents stating that the inspection provided on July 25, 2023, was incomplete. The inspection

of documents was again granted to the Noticees on several dates in August 2023.

- d. Incidentally, vide the above mentioned letter, the Advocates had also submitted that two documents that were earlier requested for inspection from SEBI vide their letters dated July 9, 2023 and July 11, 2023, were not provided by SEBI. In this context, it is noted that the aforementioned two letters referred to by the Advocates did not contain any such request for inspection of the said two documents, viz. BSE Reports including investigation reports /site reports for 18 CAEs and documents used to ascertain that TREs were bogus entities. The details of information sought and rejected by SEBI is reproduced below:

S. No.	INSPECTION INFORMATION/CLARIFICATION/DOCUMENTS SOUGHT BY THE NOTICEES.	OF REASONS FOR REJECTION OF REQUEST.
1.	BSE REPORTS INCLUDING INVESTIGATION REPORTS/SITE REPORTS FOR 18 CAES.	<p>BSE SITE VISIT REPORT OF SPICY ENTERTAINMENT & MEDIA LTD WHICH WAS RELIED UPON WHILE PASSING INTERIM EX-PARTE ORDER WAS PROVIDED TO THE NOTICEES.</p> <p>OUT OF 18 CAES, SITE VISIT WAS CARRIED OUT BY BSE AT OFFICE PREMISES OF 3 CAES. OUT OF WHICH ONLY 1 SITE VISIT REPORT WAS RELIED UPON WHILE PASSING INTERIM EX PARTE ORDER. INFORMATION WAS PROVIDED TO THE NOTICEES.</p> <p>SINCE, THE MATTER IS PENDING INVESTIGATION, REMAINING TWO SITE VISIT REPORTS WAS NOT PROVIDED TO THE NOTICEES. FURTHER, THESE TWO REPORTS WERE NOT RELIED UPON WHILE PASSING THE INTERIM ORDER.</p>
2.	CLARIFICATION WHETHER THE IMPUGNED ORDER WAS FORWARDED TO ANY AUTHORITIES /AGENCIES FOR INFORMATION.	REQUEST WAS IN THE NATURE OF A QUESTION

6.3 The allegation regarding insufficiency of documents as raised by the Noticees has been carefully analysed by me in light of the information provided by SEBI, which includes the PERs, all Bank Statements gathered during investigation Summons issued and replies received of CAEs and TREs, Correspondences with GST Dept., Site visit reports relied upon and also the reason for rejection of providing a particular document sought for inspection. It is observed, where the documents were not provided by SEBI, the same was either on account of them not being available, pendency of investigation or the request itself being in the nature of seeking clarification from SEBI. Accordingly, I find that all relevant and available documents as

obtained by SEBI and which were relied upon in the Interim Order, have been provided to the aforementioned Noticees for ensuring a suitable defence for them. Therefore, in my considered view, the aforesaid allegation does not stand.

6.4 *Erroneous retrospective application of the amended Regulation 4(1) of the (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations”) (introduced with effect from February 1, 2019) read with the Explanation thereto (inserted with effect from October 19, 2020), to transactions dating back to 2012:*

- a. *The Interim Order invoked the provisions of amended Regulation 4(1)¹ read with the Explanation to Regulation 4(1) of the PFUTP Regulations². The transgressions alleged in the Interim Order date back to FY 2012, which is prior to the amendment of Regulation 4(1) of the PFUTP Regulations and the insertion of the Explanation to the said Regulation 4(1). The mere fact that the Explanation to Regulation 4(1) of the PFUTP Regulations suggests it is clarificatory, it would not ipso facto render it applicable retrospectively, since it introduces new concepts. Thus, prior to the amendment to Regulation 4(1), for a charge to be made thereunder, it was essential for SEBI to establish “dealing in securities”, as defined in Regulation 2(1)(b). The amendment to Regulation 4(1) widens the scope of the PFUTP Regulations to include “manipulative, fraudulent or...unfair trade practice in securities markets” thereby introducing a new concept entirely.*
- b. *The object of the PFUTP Regulations is to curb “market manipulation” i.e. “unwarranted interference in the operation of ordinary market forces of supply and demand”³ While the Impugned Order invokes the PFUTP*

¹ As amended vide the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 with effect from February 1, 2019.

² Inserted vide SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 with effect from October 19, 2020.

³ [SEBI vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1, paragraph 23].

Regulations, it fails to allege, much less establish, even prima facie, any market manipulation caused by the “potential transgressions”.

- c. *It was argued by the Noticee that the Hon’ble Supreme Court has held in the matter of **SEBI vs. Kanaiyalal Baldevbhai Patel**⁴, that to attract the rigour of Regulations 3 and 4 of the PFUTP Regulations, allegations of fraud must be proved on a “preponderance of probabilities”. Further, in **Balram Garg vs. SEBI**⁵, the Supreme Court has held that “where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused” i.e. they should be such as to “exclude every hypothesis but the one proposed to be proved”. The Supreme Court found this necessary to obviate against the danger that “conjecture or suspicion may take the place of legal proof”. The Interim Order does not meet this standard of proof. It was submitted that at paragraph 85, the Interim Order categorizes the alleged offences as “potential” transgressions.*
- d. *Sections 12A(a), (b) and (c) of the SEBI Act are also premised on the existence of a “dealing in securities”.*
- e. *Reliance was also placed on Ritesh Agarwal vs. SEBI, (2008) 8 SCC 205.*

6.5 In this context, it is noted that the Hon’ble Supreme Court has upheld the invocation of PFUTP Regulations for financial mis-statements made by a company, prior to amendments made to the PFUTP Regulations in 2019 and 2020, in the matter of **N. Narayanan vs. SEBI**⁶, wherein it was held that: “28. We notice in this case that the Directors of the company had clearly violated provisions of (Section) 12A of SEBI Act read with Regulations 3 and 4 of 2003 Regulations. Companies whose securities are traded on a public market, disclosure of information about the company is crucial for the accurate pricing of the company’s securities and also for the efficient

⁴ paragraph 62

⁵ (2022) 9 SCC 425, paragraph 48

⁶ Decided on April 6, 2013.

operation of the market.” Further, the preliminary findings in the Interim Order in respect of misstatement in financials statement of the Company is still continuing. Therefore, even if the contention of the Noticee is to be accepted, the preliminary findings in the Interim Order will still be applicable subsequent to the amendments made to the PFUTP Regulations in 2019 and 2020. Having considered the contention advanced by the Noticees, I am of the view that the same is without merit.

6.6 It was also submitted by the Noticee that the pre-requisites of a charge under the PFUTP Regulations, as held by the Hon’ble Supreme Court in the matter of **SEBI vs. Kanaiyalal Baldevbhai** premised on the existence of a “*dealing in securities*” and actual “*inducement*”. In this regard, without prejudice to the observation made above, it is noted that it has been brought out in the Table 2 of the Interim Order that the shareholding of the Promoters /Promoter Group in Eros fell from 62.39% as on March 31, 2019 to 16.25 % as on March 31, 2023. It can therefore be noted that there has been a significant reduction in the promoter shareholding at a time when misstatements enumerated in the Interim Order were available in the public domain. Given the same, the contention that there has been no “*dealing in securities*” has to fail. Further, in relation to the submission that inducement is a necessary ingredient of fraud, reference is made to the observation of the Hon’ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Pvt. Ltd.**⁷, wherein it was held that: “If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged.”

6.7 In view of the above, given the preliminary findings in the Interim Order that there was material mis–statement with regard to the financials of the

⁷ Civil Appeal No. 1969 of 2011.

Company, it would not be a requirement on SEBI to separately show that the investors were induced to trade because of the misstatement.

SUMMARY OF SUBMISSIONS ON MERIT:

7. Noticee 1 has *inter alia* submitted as under:

i. The Interim Order fails to take into consideration the nature of business of Noticee 1.

- a. *In the conduct of its business, Eros enters into agreements with (i) Content Advance Entities (“CAEs”), under which Eros makes payments to CAEs for development, production, and delivery of content to Eros and (ii) with Trade Receivable Entities (“TREs”), under which Eros grants exploitation rights to the TREs for a fixed term, in the films/content and accordingly receives consideration from such TREs.*
- b. *The said agreements are project specific agreements. In the event the project fails (for host of reasons beyond the control of Eros and as is common in the media and entertainment industry), it does not necessarily mean that Eros would no longer do business with such CAE or TRE.*
- c. *For agreements with TREs:*
 - *When TREs failed to pay the consideration due from them, Eros terminated the agreements, before the expiry of the term, after taking active steps to recover outstanding amounts from the TREs.*
 - *On such termination, rights assigned to TREs reverted back to Eros, which is not taken into account in the Order.*
 - *It is for such rights that are reversed and adjusted in the books of accounts of Eros, that the write-offs were made by Eros in FY 2019–20, in accordance with the accounting treatment prescribed by the Accounting Standards.*
- d. *For agreements with CAEs:*
 - *For non-delivery of content from CAEs, Eros invoked arbitration against CAEs.*

- *It is pertinent to highlight that the amounts that remain outstanding from the CAEs for non-delivery of content have been impaired by Eros in FY 2019–20.*

ii. Transactions with TREs:

a. Alleged mismatch between the objects mentioned in the Memorandum of Association (“MoA”) as compared to the GST records.

- *The Interim Order fails to recognize the limitations with regard to the GST registration process in India. GST registration form requires a business entity to describe the specific goods or services that it deals in as per Harmonized System of Nomenclature code (“**HSN Code**”) issued by World's Customs Organization (“**WCO**”). However, the prescribed forms only allow five (5) HSN Codes to be used per entity, in contradistinction to a MoA which provides a much wider scope for describing the business activities of a company. It would therefore be incorrect to assume that the nature of business as per GST records has to be in absolute conformity with the object clauses in the MoA, given the aforesaid system limitations. In any event, even assuming there exists such discrepancy, it cannot invalidate Eros’ transactions with the TREs.*

b. The agreements entered with TREs were sham transactions:

- *It is well-settled that “...Where a transaction results in rights and obligations, it can never be treated as a sham transaction...”. In this regard, reliance is placed on the judgment of the Supreme Court in *Standard Chartered v. Andhra Bank*⁸. Thus, the Interim Order could not have, in law, disregarded the transactions executed by and between Eros and the TREs.*

⁸ (2006) 6 SCC 94; paragraph 54

iii. Reasons for interim directions do not satisfy the tests for Ex-Parte Orders which are preventive in nature.

a. Allegation that Eros made payments to CAEs even after impairment in FY 2019–20.

- *Eros has either received amounts from the CAEs for non-delivery of content or the amounts have been adjusted against other delivered content /projects aggregating to about Rs.47.86 Crore after impairments were made in FY 2019–20.*
- *Expecting Eros to end all business relationships merely due to impairment in the past is unreasonable as this would essentially entail blacklisting of such CAEs which would only be detrimental towards Eros as this would entail finding new production houses or creating new production houses overnight and handing over any competitive intelligence to other players in the market.*
- *The choice of doing business falls within the commercial wisdom of the Company.*

b. Allegation that Eros potentially diverted funds to related parties of Promoters of Eros through CAEs and the amounts were not utilized towards the stated purpose.

- *The allegation is false, baseless and denied and there is no evidence provided apart from mere conjecture and surmises. Merely since a project has failed does not detract from the genuineness of the transaction.*
- *No relationship falling under definition of related party /persons is established throughout the Interim Order. Even in the case of Vikram Rajani, definition of ‘related party /person’ does not cover brother-in-law, and therefore, it is erroneous to conclude that either Vikram Rajani or Viyanaa Media Works Private Ltd. (Formerly known as Nextgen Films Pvt. Ltd.) (“Nextgen”) is a related party.*

c. Allegation that Spicy Entertainment & Media Limited (one of the CAEs) (“Spicy”) is a paper company:

- *Merely because BSE team visited an address of Spicy and found it closed, does not imply that the entity is a paper company without verifying the operational address mentioned on its website.*

- *Amounts paid by Eros to Spicy as mentioned in the Interim Order, are not disputed. The impairment is carried out as per Section 133 of the Companies Act, 2013 (“**Companies Act**”) read with Indian Accounting Standards 36. Disclosure of impairments in financial statements of Eros is as per Section 129 of the Companies Act. The same has also been confirmed by the Statutory Auditors in the Independent Auditors Report annexed with the Financial Statements of Eros for FY 2019–20.*

d. Allegation that Eros has made payments even after cancellation of GST Registration of entities:

- *GST Registration of the TREs was valid on the date on which the TRE Agreements were executed.*
- *GST Registrations can be cancelled for a host of reasons, and such a cancellation of GST Registration of TREs with retrospective effect, does not call into question the credibility of the entities.*
- *Subsequent to the written-off of outstanding balances due from the TREs, during the period from August 2020 to October 2021, Eros has received due credit of GST, which was paid by it on the license fees receivable that it wrote off in respect of 13 TREs. The fact that Eros received such credits from the TREs belies any allegation of non-genuineness of the TREs and more so any allegation of non-genuineness on the ground of cancellation or suspension of TRE’s GST Registrations.*
- *Eros has made payments to CAEs [NextGen and Virgo Entertainment Pvt Ltd (“**Virgo**”)] after cancellation of their GST Registration, only on delivery of content.*

e. Allegation that Eros made payments to NextGen and Virgo out of which amounts remained untraceable.

- *Eros has not been provided with documents relied upon forming the basis of such allegation. Therefore, Eros has not been given a fair opportunity to present its case in this regard.*

- f. Allegation that Eros has diverted funds to Noticee 2 (Eros Worldwide FZE) (“EWW”) through NextGen and Virgo:**
- *Monies paid by Eros to the CAEs are under separate underlying transactions and the monies paid by the CAEs to EWW are under separate underlying transactions. In fact, USD 14 million remains outstanding from NextGen and Virgo towards transactions separately entered into by these entities with EWW, which belies any allegation of diversion.*
 - *Impugned Order alleges related party relationship of NextGen to Eros/EWW through Mr. Vikram Rajani (brother-in-law of Managing Director of Eros). Brother-in-law is not a related party as per the definition under Companies Act, 2013.*
- g. Allegation that Eros continues to make payments to “potentially bogus entities”:**
- *Eros has no connection with CAEs to which it transfers funds under legitimate agreements. No basis for such an allegation.*
- iv. Allegation of Round Tripping:**
- a. *Eros paid monies to CAEs under specific agreements for delivery of content. Each CAE mentioned in Para 28 of the Impugned Order has delivered content against the amounts paid by Eros. The amounts paid by Venu Visuals to Eros are under separate transactions. Hence, such separate and independent transactions (i) payments made by Eros to CAEs, (ii) payments by the said CAEs to TREs (Venu Visuals) and (iii) payments made by TREs to Eros, cannot be justifiably termed as round-tripping.*
 - b. *The allegations of round tripping are ostensibly based on assumptions and presumptions as the amounts seem to tally on over-all basis (even though it would suffer from a hindsight bias) and without appreciating that all the entities and transactions therein are independent and acting under independent contracts.*
- v. Allegations of continuing misrepresentation of financial statements:**
- a. *In relation to the qualification given by the statutory auditors as mentioned in Para 83(a) of the Impugned Order, it is pertinent to note the following:*

- *The qualification was made by the statutory auditors in the Financial Statements of Eros on account of the clarification made by the management of Eros that the net worth of EWW, Eros International Ltd. UK and Eros International USA Inc. (overseas related parties of Eros) has eroded. Such a statutory qualification cannot be grounds for passing interim directions against Eros when in fact this is only evidence of Eros's improving governance, identification of issues and full disclosure made to all stakeholders.*
- b. *In relation to the allegations that majority of Eros's revenue is from related parties, it is pertinent to note the following:*
 - *Eros generates revenue by assigning rights to its overseas related parties in films/content for international exploitation. The same has been disclosed by Eros in the Red Herring Prospectus of 2010. Moreover, isolating the revenues generated from related party transactions only during the period from FY 2020–2023 gives an incorrect picture since Eros has been transacting with the said related parties for a long time.*
- vi. ***Allegations qua dummy Directors of the TREs:***
 - *The finding in the Interim Order that three of the Directors of the TREs (Uplaksh Adlakha, Yogendra Garje and Bhushan Sakpal) were dummy Directors, based on statements / submissions made by the three individuals cannot amount as any evidence towards Eros' mala fides. The fact that three Directors allegedly stated that they were dummy Directors, by no means warrants a conclusion that the rest of the TREs were mere paper companies.*
 -
- vii. ***Allegation that one Nitin Boricha Kishore controlled companies connected to Eros:***
 - *The allegation in the SCN that Nitin Boricha Kishore controlled several companies connected to the Noticee, is denied. Even if Mr. Kishore happened to be a Director of Supernova Advertising Ltd. (A TRE) and Next Gen Films Pvt. Ltd. (A CAE), it would be a stretch to conclude that he was in control of these companies just because of this fact.*

- *Even if there are suspicions concerning the legitimacy of certain Directors of these entities and a consequent suspicion on the transactions entered with them by Eros, the Order fails to take into consideration the doctrine of 'Indoor Management'. As per this doctrine, individuals dealing with a company are not obligated to inquire into the regularity of the company's internal affairs or the authority of its officers. This principle serves as a safeguard for third parties who rely on the apparent authority of company officials and helps maintain the stability and certainty of commercial transactions.*
- viii. ***Eros is directed to provide data of end-to-end utilization of funds paid by Eros to CAEs:*** *This data, which is related to the usage of funds by third parties, is not and cannot be in the possession and control of Eros.*
8. **Noticee 2**, apart from adopting the submissions made on behalf of Noticee 1, has *inter alia* submitted as under:
- i. *The transactions between Nextgen and EWW are bona fide, genuine commercial transactions and independent from the transactions between Eros and Next Gen.*
- ii. *In relation to the allegation in the Interim Order that an amount of RS. 6,10,99,601 was siphoned off by NextGen to EWW on 11th August 2016, Eros, NextGen, EWW and Desi Boyz Productions Limited ("**Desi Boyz**") entered into an Agreement dated July 1, 2016, by which it was recorded that Eros engaged NextGen for production of a movie titled "Desi Boyz 2" under the agreement dated 11th December 2014. Desi Boyz had incurred expenses amounting to USD 912,888/- towards production of the film, which NextGen was liable to pay to Desi Boyz. The Agreement further recorded that EWW paid USD 912,888/- to Desi Boyz on behalf of NextGen and accordingly it was agreed that NextGen is liable to pay EWW an amount of USD 912,888/-. Accordingly, on 11th August 2016, NextGen had paid an amount of RS. 6,10,99,601/-, equivalent to USD 9,12,888 to EWW.*
- iii. *In respect of the finding that RS. 3,20,82,219 was siphoned off by NextGen to EWW on 30th August 2016, EWW had rendered production services to NextGen. With regard to the said services, NextGen was liable to pay an*

- amount of USD 9,42,971 to EWW. In 2013-2014, NextGen had made a partial payment of Rs. USD 4,64,989 towards the said liability. However, an amount of USD 4,77,982 was pending towards the said liabilities. Accordingly, NextGen made payment of RS. 3,20,82,219/-, equivalent to USD 4,77,982/- to EWW towards the services rendered by EWW to NextGen on 30th August 2016.
- iv. As regard the Rs. 27.13 Crore by NextGen to EWW on 26th December 2016, NextGen, EWW and Desi Boyz entered into an Agreement dated 23rd November 2016, by which it was recorded that Desi Boyz had incurred an amount of USD 4,000,000 towards expenses for assisting NextGen in production of a movie titled 'Desi Boyz 2'. The said expenses were paid by EWW to Desi Boyz on behalf of Next Gen. Thereby, the Agreement recorded that Next Gen would be liable to pay an amount of USD 4,000,000 to EWW. Accordingly, NextGen paid an amount of NR 27,12,80,000/-, equivalent to USD 40,00,000/- on 26th December 2016 to EWW.
- v. Eros, Virgo, Grove Production Ltd ("**Grove**") and EWW entered into an Agreement dated 1st July 2016. By the said Agreement, it was recorded that Eros engaged Virgo for producing the untitled movie starring Ranbir Kapoor and Sonakshi Sinha. It also recorded that Virgo had sought assistance of Grove for production of the said movie for which Grove incurred expenses amounting to USD 19,95,462. EWW had paid USD 19,95,462 to Grove on behalf of Virgo and accordingly by this Agreement, it was recorded that Virgo is liable to pay an amount of USD 19,95,462 to EWW. Accordingly, Virgo has made payments aggregating to USD 19,95, 462 to EWW in separate transactions from July 2016 to August 2016.
- vi. Eros, Virgo, Castle Film Productions Ltd. ("**Castle Films**") and EWW entered into an Agreement dated 1st July 2016. The said Agreement recorded that Eros had engaged Virgo for production of the movie titled Aankhen 2. It also recorded that Virgo sought assistance of Castle Films and that Castle Films incurred an amount of USD 2,433,150 towards production of the said movie. EWW had paid USD 2,433,150 to Castle Films on behalf of Virgo. The Agreement thereby recorded that Virgo is liable to pay an amount of USD 2,433,150 to EWW. Accordingly, in July 2016 and August 2016, Virgo made payment of USD 2,433,150 to EWW.

- vii. *Eros through various group entities including EIL had entered into various ongoing transactions with Next Gen and Virgo for delivery of content under various agreements / documents year on year, commencing from FY 2012-13.*
- viii. *Under these transactions, a sum of USD 14 million remains outstanding and payable by Next gen and Virgo to EWW since 2019.*
- ix. *Further, the fact that EWW was a confirming party to the agreement dated 11th April 2014 by which EWW had engaged NextGen for production of a movie titled 'Desi Boyz 2' wherein EWW had admittedly no role in production does not in any manner infer that EWW does or can be faulted for the failure in production of the said film.*
- x. *As alleged at Paragraph 68 of the Impugned Order is incorrect and untenable since no monies as mentioned in Table 24 of the Impugned Order has been received by EWW from Express Image Pvt. Ltd. ("**Express**") (one of the CAEs of Eros.)*
- xi. *Eros has entered into a relationship agreement with EWW dated 16th December 2009, effective from 1st October 2009, wherein the international rights for distribution of Indian film content for the entire world excluding India, Nepal and Bhutan are licensed to the Eros International Group including EWW. This has also been disclosed by Eros under the Red Herring Prospectus dated 23rd September 2010 ("**RHP**"). Further, 2016 onwards, it was decided that Eros will license all overseas media rights to EWW and Eros will retain all Indian media rights.*
- xii. *Despite challenges caused due to the COVID-19 pandemic, EWW paid an amount of Rs. 357.49 Crore to Eros from FY 2019-20 to FY 2022-23. The net outstanding receivable balance of EWW has been reduced to Rs. 132.31 Crore (i.e., after adjustment of payables from Eros to EWW) as on 31st March 2023, as against the net receivable of Rs. 373.12 Crore (i.e., after adjustment of payables from Eros to EWW) as on 31st March 2022.*

9. **Noticee 3**, apart from adopting the submissions made on behalf of Noticee 1, has *inter alia* submitted as under:

- i. *The Interim Order ascribes no role whatsoever to EDPL, apart from referring to EDPL as the promoter of Eros and referring to it as a “potential beneficiary”.*
- ii. *The Interim Order seeks draw an adverse inference alleging that EDPL is a potential beneficiary merely based on the alleged control of EWW and Sunil Lulla. The Interim Order fails to establish how EDPL has benefitted and why such benefit, if any, is in violation of any applicable regulations.*
- iii. *While Mr. Sunil Lulla is a Director of EDPL, he is not a shareholder of EDPL.*
- iv. *The Interim Order fails to establish that EDPL was in control of Eros, as defined under Section 2(27) of the Companies Act, 2013. EDPL's shareholding in Eros was at the highest 22.72 percent and went down to 9.44 percent, subsequently. As EDPL did not hold 50 percent or more of the share capital of Eros and therefore it did not control Eros.*
- v. *Absent any evidence of control, it is impermissible to fasten EDPL with a charge under the PFUTP Regulations merely because it is a promoter of Eros.*

10. **Noticee 4**, apart from adopting the submissions made on behalf of the other Noticees, had *inter alia* submitted as under:

- i. *Interim Order amounts to a final order of disqualification and therefore, is without and/or in excess of jurisdiction of SEBI to pass ex-parte orders, which are meant to be preventive in nature, and cannot be made for punitive purposes.*
- ii. *SEBI has no power to remove a Director from the Board of Directors of a company, since this is governed solely by the provisions of the Companies Act, 2013.*
- iii. *No such power exists under Section 11(4) of the SEBI Act and as such a Director can be removed only under Companies Act, 2013.*
- iv. *Noticee submitted that under the Companies Act, 2013 a Director of a company can be removed under two provisions:*

- a. *Under Section 169 of the Companies Act, which vests such power on the company, in accordance with the procedure prescribed thereunder;*
 - b. *Under Section 242(2)(h) of the Companies Act, which provides the NCLT with the power to remove a Director in a petition filed for oppression or mismanagement under Section 241 of the Act.*
 - v. *The Companies Act, 2013 is “An act to consolidate and amend the law relating to companies”. Thus, as held by the Supreme Court in **Ravula Subba Rao vs. Commissioner of Income-tax AIR 1856 SC 604, paras 13 and 14**, an act which consolidates the law on a subject, is a “complete code in itself and exhaustive of the matters dealt with therein”*
 - vi. *The Companies Act, 2013 does not in any manner provide SEBI with the powers to remove a Director. To the contrary, the only powers vested in SEBI under the Companies Act, 2013 are provided for under Section 24 therein.*
 - vii. *The removal of a Director of a company falls under Chapter XI of the Companies Act, 2013 which is consciously not included in Section 24(1) of the Companies Act, 2013. Further, the power to remove a Director has not been delegated to SEBI under Section 458 of the Companies Act.*
 - viii. *It is well-settled interim reliefs can only be granted in aid of final reliefs. Thus, where a final relief (i.e., removal of Director) cannot be granted, it would be impermissible to grant interim reliefs (suspension of a Director).*
 - ix. *Ever since the initiation of the investigation, the Noticee has been extending all due cooperation to the best of his knowledge and belief.*
11. **Noticee 5**, apart from adopting the submissions made on behalf of the other Noticees, had *inter alia* submitted as under:
- i. *Noticee is being penalised on the basis of alleged suspicious transactions that have taken place in Eros before his appointment as CEO, only on basis that it was in his tenure that the impairment was recognised and substantial related party transactions were observed. This ignores the fact that a CEO is an employee of Eros and reports to the Board of Directors.*
Noticee submitted that given that he had joined Eros only on 27th January 2020, and was therefore not involved in the “potential transgressions” dating

back to FY 2012, the relevant provisions of PFUTP invoked by the SEBI cannot be applied retrospectively.

FINDINGS:

12. The remit of the present proceedings is limited to considering whether the directions in the Interim Order are liable to be vacated or modified, in light of the objections and other replies made on behalf of the Noticees, or whether they should be confirmed. I understand that a detailed investigation into this matter is being conducted by SEBI, the outcome of which will decide further course of action and initiation of further proceedings in the matter as per the law.
13. Before proceeding to examine the objections raised by the Noticees, it would be appropriate to briefly explain the preliminary findings in the Interim Order.
14. **Allegations in a nutshell** – Eros had utilized third parties (CAEs) for producing movies and would thereafter monetize the content created by the CAEs. Eros also entered into agreements with TREs for selling the rights owned by it. It was noted that over the years the proportion of the revenue recognized from TREs increased significantly. Eros or the TREs were, however, not able to show any evidence that TREs were successful in monetizing the rights obtained from Eros. This called into question the payments made to Eros by the TREs. It was *prima facie* noted that a significant portion of the funds transferred to Eros by TREs originated from Eros itself – the funds were routed to TREs, through CAEs. Certain portion of the funds, transferred to CAEs, were only noted to have been transferred to related entities of Eros. In FY 2020–21, Eros impaired /wrote-off, a significant portion of the advances made to CAEs and revenue receivable from TREs. This called into question the integrity of financials of Eros and raised concerns that funds were being diverted to entities connected to the Promoters of Eros.
15. Having considered the oral and written submissions made on behalf of the Noticees, it is noted that objections raised to the preliminary findings in the Interim Order can be broadly classified under the following four heads:

- I. *Objections broadly addressing the findings in the interim order questioning the revenues recorded from TREs in the books of Eros.*
- II. *Arguments raised in respect of the finding that money advanced by Eros to CAEs have been round tripped/siphoned to (i) entities connected to the promoters of Eros (ii) Eros itself routing it through TREs.*
- III. *Objections with respect to the need for passing of the Interim Order.*
- IV. *Challenge to SEBI'S power to pass directions restraining persons from acting as Directors of listed Companies.*

I. OBJECTIONS BROADLY ADDRESSING THE FINDINGS IN THE INTERIM ORDER QUESTIONING THE REVENUES RECORDED FROM TREs IN THE BOOKS OF EROS.

16. The significant preliminary finding recorded in the Interim Order was that neither the TREs nor Eros could provide any evidence to substantiate that the TREs were successful in monetizing the rights obtained from Eros. It was noted that over the years, 19 TREs accounted for a significant portion of the revenue recognized by Eros. In FY 2019 and 2020, the revenue recognized from these entities amounted to 56.50% and 66.75%, respectively, of the total revenue of the Company (Table 12 of the Interim Order). Eros had cumulatively booked revenue amounting to Rs. 1623.81 Crore from these 19 entities starting from FY 2013 onwards. Out of the aforementioned Rs. 1623.81 Crore, the books of Eros reflected that Rs. 1099.59 Crore⁹ was realized by the Company. The revenues recorded from these entities ranged from Rs. 367.61 Crore in the case of Silver Frame Movies to Rs. 16.80 Crore in the case of View Finder Publicity Pvt. Ltd. (Details provided in Table 11 of the Interim Order).
17. It was noted in the Interim Order that neither the TREs nor Eros have been able to submit any evidence to substantiate that the TREs have been successful in monetizing the rights obtained from Eros. Further, Noticee 1 in its reply, has also not offered any evidence to substantiate that the TREs were successful in monetizing the rights obtained from Eros. It has merely been stated that Eros

⁹ Noticee 1 has submitted in its reply that the figure is Rs. 1,103.84 Crore

cannot be faulted for the failure of the *TREs* to commercially exploit the rights obtained by them. Such an argument could potentially have been considered if the transaction concerned was a one-off business deal. However, in the instant case, on the contrary, the books of Eros record that over Rs. 1000 Crore had been received as revenue from the aforesaid *TREs*. Further, Eros has been transacting with some of these entities for more than 10 years. Given the scale of these transactions coupled with the length of time that Noticee 1 has been dealing with aforesaid *TREs*, Eros cannot simply brush away this charge by stating that it was only concerned with the consideration paid by them as per the contracts entered into with Eros. Given the aforementioned facts, I find that the arguments raised by the Noticees have no merit.

18. Also, this line of objection adopted by the Noticees in respect of *TREs* is markedly different from the approach adopted in respect of *CAEs*. In the case of *CAEs*, Noticee 1 has attempted to give a detailed response on not just the content created by them, for Eros, but has also submitted the details of content produced by them for third parties. However, in the case of *TREs* there is no mention of any attempts by *TREs* to monetize the rights obtained from Eros. In such a circumstance, considering the centrality of these revenues to the balance sheet of Eros, it is only natural for the investigation to look into the source of funds advanced by these entities to Eros. This is coupled with the preliminary findings in the Interim Order that a significant portion of the funds transferred by *TREs* to Eros could in fact be traced back to Eros itself. Given the same, I note that only a detailed investigation can unearth the actual source of the aforesaid funds.

A. ABSENCE OF CERTIFICATION OBTAINED FROM CBFC TO RERELEASE THE MOVIES IN REGIONAL LANGUAGES.

19. The agreement entered by Eros with *TREs* included agreements assigning rights to *TREs* for re-releasing various movies after dubbing them into regional languages. As per extant regulations, it was mandatory for respective *TREs* to obtain Certification from the Central Board of Film Certification (“**CBFC**”) prior to releasing the movies in other languages. It was however noted that no information was available on the website of CBFC regarding certification obtained for any of the movies, the rights for which were obtained by the *TREs*

from Eros. I note that the Noticees have not raised any objections to this finding in the Interim Order or provided any evidence to show that Certifications were indeed obtained by the *TREs*.

B. THE *TREs* SEEMED TO HAVE SIGNIFICANT REVENUES ONLY IN THE YEARS IN WHICH THEY HAD TRANSACTIONS WITH EROS.

20. It was noted in Interim Order that as per the financial statements filed by the *TREs*, these entities reported significant revenues only in the financial years in which they had business transactions with Eros. It is noted that the replies submitted by the Noticee do not raise any objections or offer any arguments to refute the said finding.

C. THE GST REGISTRATIONS OF MANY OF THE *TREs* WERE OBSERVED TO HAVE BEEN CANCELLED BY THE GST AUTHORITIES.

D. THERE WAS A MISMATCH IN THE NATURE OF BUSINESS OF THE *TREs* AS PER THE GST RECORDS AND AS RECORDED IN THEIR RESPECTIVE MOAs.

21. As regards this finding, the Noticees have submitted that GST Registration of the *TREs* was valid on the date on which the *TRE* Agreements were executed. It was further submitted that any subsequent cancellation, even if with retrospective effect, of the GST Registration, cannot invalidate or cast any doubt on the veracity of the transaction on the date of execution of the *TRE* Agreements. The Noticees have also submitted that GST registration can be cancelled for a host of reasons even if the taxpayer /entity is a genuine business entity. It was also contended that subsequent to the writing-off of outstanding balances due from the *TREs* to Eros, during the period from August 2020 to October 2021, Eros had received due credit of GST, which was paid by it on the license fees receivables that it had written-off, from 13 *TREs*.

22. The Noticees have also submitted that the Interim Order fails to recognize the limitations with regard to the GST registration process in India.

23. Having considered the contentions raised above, I note that the said findings in the Interim Order were only made in support of the preliminary findings that there was no evidence on record to support that *TREs* were engaged in activities which could support the significant payments made by them to Eros. Therefore, even if the above arguments are accepted, in the absence of evidence to show commercial exploitation of the rights obtained from Eros, by the *TREs*, there is no ground, in my view, to differ from the preliminary findings recorded in the Interim Order in respect of the transactions with *TREs*.

E. ACTUAL IMPACT OF THE WRITE-OFF WAS ONLY RS. 88 CRORE.

24. It was submitted that the “*write-offs*” noted in the Interim Order of Rs. 519.98 Crore in FY 2019–20 was an aggregate of the distinct categories of accounting treatment, which was done pursuant to the approval of the Board of Directors of Eros as well as its Audit Committee. This was explained in the replies as under:

- Expected Credit Loss (“**ECL**”) of Rs. 50.67 Crore upto FY 2018–19, which was written-off in FY 2019–20 and formed a part of Eros’ Annual Financial Report;
- Reversal of sale of rights of Rs. 358.28 Crore following termination of some of the *TRE* Agreements;
- Actual write-off of Rs. 111.03 Crore in FY2019–20.

25. The Noticee submitted that the Interim Order notes that the amount of bad debts written-off was Rs. 519.98 Crore, whereas the actual impact of the same was only Rs. 111.03 Crore in FY 2019–20. It was also submitted that out of this amount, Rs. 23.03 Crore was subsequently recovered, thereby reducing the actual impact to Rs. 88 Crore.

26. The Noticees have submitted that on termination of the agreements with the *TREs*, a significant portion of the rights transferred under the agreements reverted back to Eros. Given the same, it was submitted that an amount of Rs. 358.28 Crore has to be reduced from the written-off amount.

27. In the absence of any evidence to show monetizing of the rights by *TREs*, the value ascribed to these rights under these agreements become suspect. Further, these agreements, which may potentially be just paper transactions, had a material impact on the revenue recorded by Eros in the years in which they were entered into. Therefore, subsequently writing it down, even if accompanied by reversion of the rights to Eros, would still have the effect of materially distorting the published financials of Eros. It is noted that the entire effort of Eros has been to portray these transactions as legitimate arms-length transactions for transfer of valuable rights. All these contention hinge on this fact. It is, however, noted that these claims are not supported by any evidence presented by the Noticees to show that *TREs* have been successful in monetizing the rights obtained from Eros. As result these contentions must fail.

F. IMPAIRMENT /WRITE-OFF AS PER COMPANIES ACT, 2013 AND ACCOUNTING STANDARDS.

28. The Noticees have also submitted that the impairment /write-off was as required under the provisions of the Companies Act, 2013 and applicable Accounting Standards. In this regard, I note that the issue of impairment /write-off being not as per the applicable Accounting Standards /policies is not a matter of investigation and the same was also not alleged in the Interim Order. Rather, the Interim Order raises questions on the first leg of transactions, which was noted to be potentially fictitious and which resulted in inflated revenues and creation of assets and ultimately writing-off of the said amounts, by taking shelter under the Accounting Standards.

G. REVERSAL OF IMPAIRMENT.

29. The Noticees have contended that post FY 2019-20, they have reversed the provisioning made for impairment of content advances in the said FY. It was contended by the Noticees that an amount of Rs. 15.97 Crore was received from the *CAEs* and further, impairment provision amounting to Rs. 32.47 Crore was reversed in subsequent FYs. However, I note that even if the argument advanced by the Noticees is accepted, the quantum of impairment and

subsequent write-offs even excluding the aforesaid figures is substantial. The quantum which has subsequently been reversed is miniscule compared to the impairments which were recorded in the books of Eros.

II. ARGUMENTS RAISED IN RESPECT OF THE FINDING THAT MONEY ADVANCED BY EROS TO CAES HAVE BEEN ROUND TRIPPED /SIPHONED TO (I) ENTITIES CONNECTED TO THE PROMOTERS OF EROS (II) EROS ITSELF ROUTING IT THROUGH TRES.

30. Eros entered into contractual arrangements for production and development of content with various entities (CAEs). These agreements typically provided for co-production arrangement whereby the CAE would produce the film and Eros would pay for the production. The rights for the movie /content would be shared between Eros and CAE as provided in the agreement. The agreements entered with CAEs did not provide for upfront payments of the entire production expenses. The payments were instead staggered and made as per a Schedule agreed between the parties.

31. It was noted in the Interim Order that as on March 31, 2020, out of total “Content Advances” (Intangible Assets) of Rs. 1650.33 Crore (before impairment provision) reflected in the books of Eros, advances totalling Rs. 1518.20 Crore (representing 92% of the content advances) was made to 18 entities. Out of the Rs. 1518.20 Crore, Eros impaired /wrote-off Rs. 1172.41 Crore or 77.22% of total outstanding content advances made to these 18 entities. This further represented 88.8% of the total content impairment related to 18 CAEs (i.e. Rs. 1320.40 Crore) made /written-off by Eros for FY 2019-20.

A. ALLEGATIONS REGARDING THE GENUINENESS OF THE TRANSACTIONS ENTERED WITH CAES.

32. In its reply, Eros has submitted that the Interim Order fails to consider the credibility of the CREs and the past transactions they had with Eros. It is noted from the replies that Eros has provided details of the content delivered by these entities to Eros in the past. In other cases, where the CAEs had not delivered any content till date to Eros, a list of content produced by the entities for other

third parties were provided. It was noted in the Interim Order that in respect of 8 CAEs (viz. Spicy, Express, Upkar, Dil, Adarsh, Siddharth Anand, Red Eye Kraft, Encash), to which Eros had cumulatively advanced Rs. 332 Crore, no film rights were recorded in the balance sheet of Eros. Further, with respect to 4 of these CAEs (Adarsh, Dil, Encash and Upkar), 100% of the content advances amounting to Rs. 138.66 Crore was written-off (details provided in Table 15 of the Interim Order).

33. I, however, note that Eros has failed to provide any evidence of actual application of the funds provided to the CAEs. Similarly, the CAEs have also either failed to respond to the summons issued by SEBI or in cases where they have responded, failed to furnish any information or evidence showing utilization of funds provided by Eros for the intended purposes under the contracts entered between them. It is noted that Eros has not furnished the conditions for further advances or milestones completed by the CAEs which warranted the transfer of additional funds, other than the upfront payments. The only information that has been provided are copies of the contracts coupled with a claim that funds transferred were towards contracted projects along with vague /generic reasons for the failure of said projects. Further, no project specific information has been provided by the Noticees other than in a few cases.

B. CAES WERE CONNECTED TO EROS.

34. The Interim Order records a *prima facie* finding that 11 of the CAEs were noted to be connected to either Eros or its Promoters. The grounds on which this finding was made was elaborated in Table 16 of the Interim Order. I note from the replies of the Noticees that they have not challenged the connections that were drawn between the CAEs and Eros. Instead, an attempt has been made to contend that the connections do not satisfy the definition of '*related party*' under the Companies Act, 2013 or the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**").
35. The Noticees have attempted to link the term '*connected person*' with the definition of '*related party*'. The finding in the Interim Order does not provide that

Eros had not obtained the necessary approvals for ‘*related party transactions*’ as provided under Regulation 23 of the LODR Regulations when dealing with these entities. The finding has been made in aid of the finding that a significant portion of the funds transferred to these entities were subsequently transferred to other entities related to the Promoters of Eros or to Eros itself. The question of whether these entities were ultimately acting as per the directions of the Promoters of Eros is a question that will be part of the Investigation that is presently underway. What is undeniable at this stage is that there are *prima facie* indications that these were not arms-length transactions and funds transferred by Eros to these entities were not utilised for the intended purpose but instead were transferred either to entities connected to the Promoters of Eros or in certain instances to *TREs*, which in turn transferred it back to Eros. The preliminary finding is therefore that either Eros itself or entities connected to the Promoters of Eros were the ultimate beneficiary of a significant portion of the funds transferred by Eros to *CAEs*. In view of the aforesaid, I find no merit in the contention advanced by the Noticees.

C. FUNDS POTENTIALLY DIVERTED TO EWW, OVERSEAS PROMOTER OF EROS.

36. It was noted in the Interim Order that Eros transferred Rs. 66.11 Crore to its overseas promoter EWW. The funds were routed through NextGen and Virgo. The details of the transactions were provided in Table 19 of the Interim Order. It was noted that Eros transferred Rs. 27.50 Crore to NextGen on December 26, 2016, towards production of various movies. On the very same day, NextGen transferred Rs. 27.12 Crore to EWW. In their replies, Eros and EWW have contended that the payment made by Eros to NextGen were towards productions of movies while the payment made by NextGen to EWW was towards contractual commitments due under agreements entered into between them. I however, note that copies of such agreements entered into between NextGen and EWW have not been provided to SEBI.
37. As stated earlier, in terms of the agreements entered into with *CAEs*, the payments were supposed to be made by Eros as per the Schedule agreed upon between the parties. In its replies to SEBI, Noticee 1 fail to provide a break-up

of the payments made to Next Gen. Further, as stated in the Interim Order, even NextGen failed to provide any proof to show that the money obtained from Eros was applied for the purpose stated in the agreements entered with the said Noticee.

38. It is noted that the Noticees have further disputed the finding in the Interim Order that Rs. 3.90 Crore was transferred by Express to EWW (Table 24 of the Interim Order). Even if this contention is accepted, the aforementioned constitutes only about 1.16% (Rs. 3.90 Crore of Rs. 266.44 Crore) of the total amount that was potentially diverted.

D. ALLEGATIONS QUA DUMMY DIRECTORS OF THE TREs:

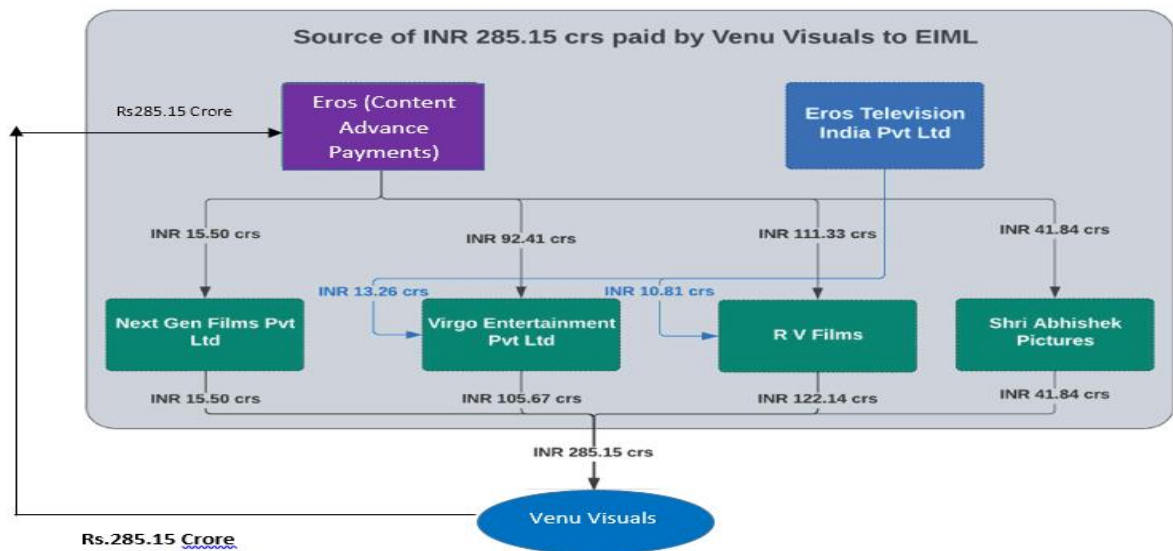
E. 'DOCTRINE OF INDOOR MANAGEMENT':

39. I note from the replies of the Noticees that they have submitted that the finding in the Interim Order that three of the Directors of the TREs (Uplaksh Adlakha, Yogendra Garje and Bhushan Sakpal) were dummy Directors, based on statements /submissions made by the three individuals, cannot amount as any evidence towards Eros's mala fides. In this regard, it is noted that there was no finding in the Interim Order relying solely on the submissions /statements made by the aforementioned individuals and their submissions /statements have been mentioned only in support of the overarching finding that the revenues booked by Eros, from TREs, was fictitious.
40. The Noticees have further submitted that even if there are suspicions concerning the legitimacy of certain Directors of TREs /CAEs and a consequent suspicion on the transactions entered with them by Eros, the Order fails to take into consideration the doctrine of '*Indoor Management*'.
41. The doctrine of '*Indoor Management*' seeks to protect third parties by placing a presumption that Directors are acting as per the mandates under the charter documents of the company. The Interim Order does not question whether the Directors of TREs /CAEs were empowered to enter into transactions with Eros. Further, the reference made to Nitin Boricha Kishore in the Interim Order was in

support of the finding that certain *TREs* and *CAEs* appeared to be potentially connected to the Eros or its Promoters. In view of the above, I am of the view that the reliance placed by the Noticees on the doctrine of ‘*Indoor Management*’, is misplaced.

F. FUNDS DIVERTED TO OTHER ENTITIES.

42. In the Interim Order, a pictorial representation (reproduced below) was provided to illustrate an instance of how funds transferred by Eros and Eros Television India Pvt. Ltd. (Group Company of Eros) to four *CAEs*, viz. NextGen, Virgo, RV Films and Shri Abhishek Pictures as Content Advances, were subsequently transferred by them to Venu Visuals (*TRE*). Venu Visuals (*TRE*) thereafter transferred the amount back to Eros.



43. I note that the Noticees in their reply, have listed the cumulative payments made to RV Films, Virgo and NextGen and stated that the Interim Order had alleged that a portion of these funds were transferred to another *TRE*. It is only in respect of the transaction with Abhishek Pictures where the Noticees have submitted that the same was for production and delivery of a Telugu Movie.

44. It is noted that in case of transfers to 3 out of the 4 *CAEs* listed above, the Noticees have only given a generic response that Eros had significant business operations with these entities in the past. Further, it is also noted that the cumulative funds transferred by Eros to the *CAEs* was ultimately transferred back

by Venu Visuals to Eros. Considering the nature of fund transfers, it would be difficult to term them as mere coincidences. Rather there appears to be a pattern whereby funds routed to CAEs have subsequently been booked by Eros as revenue by routing it through TREs. This seems to be a classic case of round tripping of funds. Given the proximity of the transactions between (a) Eros and CAEs, and thereafter, (b) between CAEs and Venu Visuals coupled with the (c) subsequent transfer of funds by Venu Visuals to Eros, it would be difficult to accept the explanation offered by the Noticee. Further, even if the explanation furnished in respect of the transaction with Abhishek Pictures is accepted pending investigation, it would still remain that funds north of Rs. 200 Crore were transferred by Eros back to its own accounts by layering it through CAEs and TREs. Accordingly, I find that the submissions made by the Noticees are not sufficient to overturn the *prima facie* findings in the Interim Order.

45. The Noticees have also contended that SEBI cannot, by relying on just one example (discussed at paragraph 42), taint the entire gamut of transactions entered into between TREs and Eros. In this context, it is noted that Table 11 of the Interim Order clearly indicated that at least Rs. 664.05 Crore received by Eros from TREs, could be traced back to funds provided to CAEs (before their subsequent transfer to TREs), by Eros. It is also noted from the records that the entire bank statements on the basis of which this preliminary finding was arrived at has been provided by SEBI, to the Noticees.
46. It is similarly noted that in respect of the finding that funds have been diverted to entities which may be potentially connected to Eros, the arguments made by the Noticees have no relation to the finding in the Interim Order. The Noticees have tried to argue that there is “*no common Director between Eros and these entities*”. It is reiterated that the finding in the Interim Order has been that funds transferred to CAEs were found to have been subsequently transferred to other entities instead of being utilised for the purposes intended under the agreements entered into between Eros and the CAEs.

G. SEBI CANNOT QUESTION THE SUBSTANCE OF THE AGREEMENTS ENTERED BETWEEN EROS WITH CAEs/TREs.

47. It was contended by the Noticees that the Interim Order could not have proceeded in disregard of the legally enforceable agreements entered into between Eros and CAEs especially when Eros had received content from CAEs. In this regard, reliance was placed by the Noticees on the decision of the Apex Court in the matter of **Standard Chartered vs. Andhra Bank**¹⁰.

48. As per the Noticees arguments, as long as the CAEs had delivered content to Eros in the past, SEBI would not be in a position to question any agreements entered into (including future agreements) with them. I am of the view that SEBI cannot be precluded from questioning the nature of transactions /agreements entered into by Eros with the same CAEs just because they had delivered content in the past. Even if it were to be accepted that the prior track record of the CAEs afforded the Noticees a presumption of legitimacy with respect to the transactions with CAEs, the fact that there were subsequent fund transfers between CAEs with entities connected to Promoters /TREs, with round tripping of funds to the accounts of Eros, cannot be completely ignored. Given the aforementioned, there are legitimate and justifiable grounds for questioning the subsequent agreements entered into by Eros with CAEs, which were suspect in nature. Similarly, in case of transactions with TREs, in the absence of evidence being presented by the Noticees that TREs were successful in monetizing the rights obtained from Eros, such contention advanced by them cannot be accepted.

H. DIVERSION OF FUNDS FOR MAKING LOAN REPAYMENTS.

49. A preliminary finding was recorded in the Interim Order that funds that were transferred by Eros to NextGen and Virgo were subsequently used by these entities to service loans that were availed by them and not for the intended purpose as per the agreements entered into between these entities with Eros. In

¹⁰ (2006) 6 SCC 94

response to this finding, the Noticees have submitted that even if it were to be assumed that the allegation is true, it does not in any manner detract from the fact that Eros made payments to Nextgen and Virgo for production of films /movies.

50. Having considered the Noticees' contention, I note that the aforementioned finding made in the Interim Order cannot be looked at in isolation since the same was made to indicate a broader pattern of funds received by CAEs, from Eros, being utilized for purposes other than those intended as per the agreements entered into between them.

I. DELAY IN INITIATING LEGAL PROCEEDINGS FOR RECOVERY

51. In the Interim Order, it was noted that even though Noticee 1 had submitted that it has initiated legal proceedings against the CAEs for recovery of money, there was a significant delay in initiating such proceedings. Further, it was noted in the Interim Order that the legal proceedings were initiated only after SEBI had commenced its investigation in the matter. In response to the said finding, Noticee 1 has submitted that the decision to initiate legal proceedings involves a lot of other considerations such as continuity of business relationships, possibility of successful recovery of amounts, etc. Noticee 1 has also submitted that merely because arbitration was invoked much after provisioning for impairment, the same cannot be a ground to conclude that the proceedings were a mere formality. Noticee 1 has also submitted that it is not within the remit of the Interim Order to determine whether the arbitration proceedings invoked were genuine since only the arbitral tribunal can make such a determination.
52. The Interim Order had questioned the delay by Eros, in initiating legal /recovery proceedings, since it was noted that said proceedings were initiated only after SEBI had started its investigation in the matter. Considering the aforesaid, I note that it was within the remit of SEBI to question whether or not the actions of Eros were merely an afterthought given the delay in initiating such proceedings. After all, investor interest and financial prudence should have been upper most in the

minds of the management of Eros to safeguard the Company's balance sheet. Accordingly, I am not inclined to accept Noticee 1's submissions.

J. TRANSFER OF FUNDS TO VIKRAM RAJANI.

53. The finding in the Interim Order was that funds transferred by Eros to CAEs have been subsequently transferred to other entities including Noticee 4's brother-in-law (at least Rs. 56.73 Crore), instead of being utilised by the CAEs for purposes other than those intended as per the agreements entered into between the said parties. Against this finding, the Noticees reiterated the submission that '*brother-in-law*' would not get covered within the definition of '*related party*' under the provisions of the Companies Act, 2013. The Noticees also submitted that siphoning of funds would typically involve a transfer of funds between parties pursuant to a pre-existing agreement wherein such transactions do not have any commercial purpose.
54. It is reiterated that in the instant case, the *prima facie* finding in the Interim Order clearly indicated that funds obtained by CAEs from Eros were subsequently transferred by them to Noticee 4's brother-in-law. I cannot ignore the fact that the said findings did reveal a pattern wherein entities connected to the Promoters have benefitted from the funds advanced by Eros to CAEs, which were thereafter transferred by the CAEs to them. Further, the findings in the Interim Order did not state that Eros had not obtained the necessary approvals for '*related party transactions*' as provided under Regulation 23 of the LODR Regulations when dealing with these entities. The finding has been made to aid the *prima facie* conclusion that a significant portion of the funds transferred to CAEs were subsequently transferred to other entities related to the Promoters of Eros or to Eros itself. In view of the aforesaid, I am inclined to reject the Noticees' contention.

III. OBJECTIONS WITH RESPECT TO THE NEED FOR PASSING OF THE INTERIM ORDER.

55. I note that the Noticees have disputed the need for passing interim directions. The Noticees have contended that payments made to the four CAEs, viz. NextGen, Virgo, RV Films and Shri Abhishek Pictures, after impairment in the books of accounts of Eros, were towards new projects for which assets were recorded in the books of accounts of Eros. In this regard, it is noted that passing of interim directions, pending investigation, was necessitated on account of the quantum of funds *prima facie* found to have been diverted coupled with the reluctance on the part of Eros and CAEs to provide information pertaining to the utilization of funds already transferred (and subsequently impaired /written-off). I therefore, find no merit in the argument advanced by the Noticees.
56. In respect of the finding in the Interim Report that the premises of Spicy were noted to be closed during the inspection undertaken by BSE, it was submitted by the Noticees that the inspection was not made at the operational address of the Company i.e. 68, R. K. Chatterjee Road (Kasba), Rash Behari Connector, 3rd Floor, Kolkata, 700 042, West Bengal, which address was also reflected on its website. Further, the Noticees have contended that without verifying the operational address, it cannot be implied that Spicy is a paper company simply because the BSE team found its premises closed. In this context, as recorded in the Interim Order, apart from the first inspection by the BSE team, a second inspection at the address disclosed by Spicy vide a corporate announcement dated May 9, 2023, was also conducted by the BSE team on May 24, 2023. The aforementioned inspection also noted that the premises of Spicy were closed. The changed /new address on the website of Spicy was only mentioned subsequent to the first and second inspections, again as an afterthought. Given the aforesaid, I find no merit in the submission that the inspection was undertaken at the wrong addresses.
57. It was also submitted that in its RHP dated September 23, 2010, Eros had disclosed that the business model of the company involved transacting with related parties. In this regard, it is submitted that the Interim Order did not *per se* question the transactions with related parties but rather the diversion of funds

to other entities including Noticee 4's brother-in-law, through CAEs, along with utilization of such funds (including round tripping) by the CAEs for purposes other than those intended including round-tripping, as per the agreements entered into between them and Eros.

58. The Noticees have also submitted that the quantum of transactions with the related parties is not as significant as stated in the Impugned Order. It was submitted that the total revenue earned by Eros from FY 2012–13 to FY 2022–23 was Rs. 8,284.04 Crore, out of which total revenue from related parties was Rs. 2,482.18 Crore, which comes to 29.96% of the total revenue of Eros for the aforementioned period. In this regard, I note that the Interim Order clearly brought out that there has been a substantial increase in the revenue recorded from related parties in the last three financial years. It is noted that the Noticees rather than addressing this finding, have instead attempted to dilute the same by calculating the percentage of revenue recorded from related parties as percentage of total revenues over the last 10 years. This, I note, is nothing but an attempt to sidestep the aforementioned finding in the Interim Order.

IV. CHALLENGE TO SEBI'S POWER TO PASS DIRECTIONS RESTRAINING PERSONS FROM ACTING AS DIRECTORS OF LISTED COMPANIES.

59. I note that the Noticees have contended that SEBI has no power to remove a Director from the Board of Directors of a Company, since this is governed solely by the provisions of the Companies Act, 2013. Having considered the arguments made on behalf of the Noticee, I note that it is well settled that powers vested upon SEBI under Section 11B of the SEBI Act are of wide amplitude and the Section empowers SEBI to craft directions which are attuned to the facts and circumstances in a given matter. Further, directions issued by SEBI in the past¹¹ restraining persons from acting as Directors of listed Companies have been upheld by the Hon'ble Supreme Court /SAT.

¹¹ *V. Natarajan vs. SEBI* decided on June 29, 2011, *Parsoli Corporation vs. SEBI* decided on August 8, 2011, etc.

60. In the present matter, as it was noted earlier that Eros seems to have engaged in a repeated cycle of transactions whereby funds which were initially advanced to certain entities, were found to have been potentially siphoned off to entities related to Promoters or found their way back to Eros. Given the nature and magnitude of these transactions, the integrity of the financials of the Company over many years became suspect. As a significant portion of funds were potentially diverted to entities connected to the Promoters of Eros, it necessitated passing of directions debarring Noticee 4 *inter alia* from participating in the management of Eros as it was noted that the Company is continuing to engage in such transactions. Further, this would also enable the Company to independently review these transactions and take potential remedial actions as necessary for retrieving these funds. The continuing presence of Noticee 4 in the Company could also potentially delay and hamper the investigation as the crux of the allegations in the Interim Order revolve on how entities connected to him have benefitted from the alleged manipulations. The above direction in the Interim Order is therefore required in the larger interest of public shareholders as well as the interest of the general investors and to prevent any further deterioration of financials /assets of Eros. Accordingly, I find no merit in the aforesaid contention raised by the Noticees.

MODIFICATION, RELAXATION OF DIRECTIONS CONTAINED IN THE INTERIM ORDER:

61. In its reply, Noticee 1 has submitted as under:

- i. Eros is restrained from “buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders”:***
 - a. This direction, which is a preventive measure, has adverse implications not only on the Eros but also its shareholders who are the very persons that such directions seek to protect. Therefore, this direction against Eros ought to be vacated.*
 - b. Without prejudice to the above and in the event that the WTM does not consider it fit to vacate the directions contained in paragraph 87(c) of the Impugned Order, at the very least, the said direction ought to be modified*

to the extent that Eros is allowed to raise funds in the ordinary course of its business.

62. In his reply, Noticee 4 has submitted as under:

i. Interim Order restrains Noticee 4 “... from holding the position of a Director or a Key Managerial Person in any listed company, including Eros, or its subsidiaries or any SEBI registered intermediary until further orders.”

a. The said direction is unnecessary for the following reasons:

- *Restrains Noticee 4 from playing a managerial role in any company without any specified time limit or restraint and has a wide expanse.*
- *It deprives Noticee 4 of his right to a profession and a career.*
- *It also deprives Eros of Noticee4’s experience, advisory and consultation.*

b. The only basis for such a restraint imposed upon Noticee 4 as stated in paragraph 74 of the Impugned Order is that Noticee 4 is the Executive Vice Chairman and Managing Director of Eros (Noticee1), has been associated with Eros since its inception and he has been part of the management of the Company throughout the period when the alleged transgressions were observed. This is untenable since:

- *It is well settled that the management of a company vests with the entire board of Directors and not with one particular Director.*
- *The Managing Director does not usurp the board of Directors but is in fact only a part of the board and an employee of a company [Reliance placed - **Ram Pershad vs. CIT, (1972) 2 SCC 696, para 7**].*
- *Similarly, a Chairman does not have different rights than that of a Director. [Reliance placed - **Shubh Shanti Services Ltd. vs. Manjulla Agarwalla, (2005) 5 SCC 30, Para 19**].*

63. In his reply, Noticee 5 has submitted as under:

i. Interim Order restrains Noticee 5 “... from holding the position of a Director or a Key Managerial Person in any listed company, other than Eros, or its subsidiaries or any SEBI registered intermediary until further orders.”

a. Noticee 5 had no connection with the Company until January 2020 when he was appointed as the CEO of the Company. Shortly after his appointment on 27th January 2020 Noticee 5 travelled to the US from the third week of February 2020 to the 1st week of March 2020, and shortly upon his return, a full-blown pandemic led lockdown was imposed during which all business activities and operations at Eros were being conducted in a work-from-home, online zoom meetings and virtual calls & meetings. It was only on 27th July 2020, that his services were confirmed.

b. The Impugned Order allows Noticee 5 to continue operating in the Company but restricts him from holding position in any other company without alleging any transgressions on part of Noticee 5 in any other company. If Noticee 5 is fit to operate in the Company whose transactions are a subject matter of the investigation, he is definitely fit to operate in other companies.

64. In addition to the above, in their replies, Noticees 4 and 5 have made the following submissions:

i. Interim Order restrains Noticees 4 and 5 from “buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders ...”.

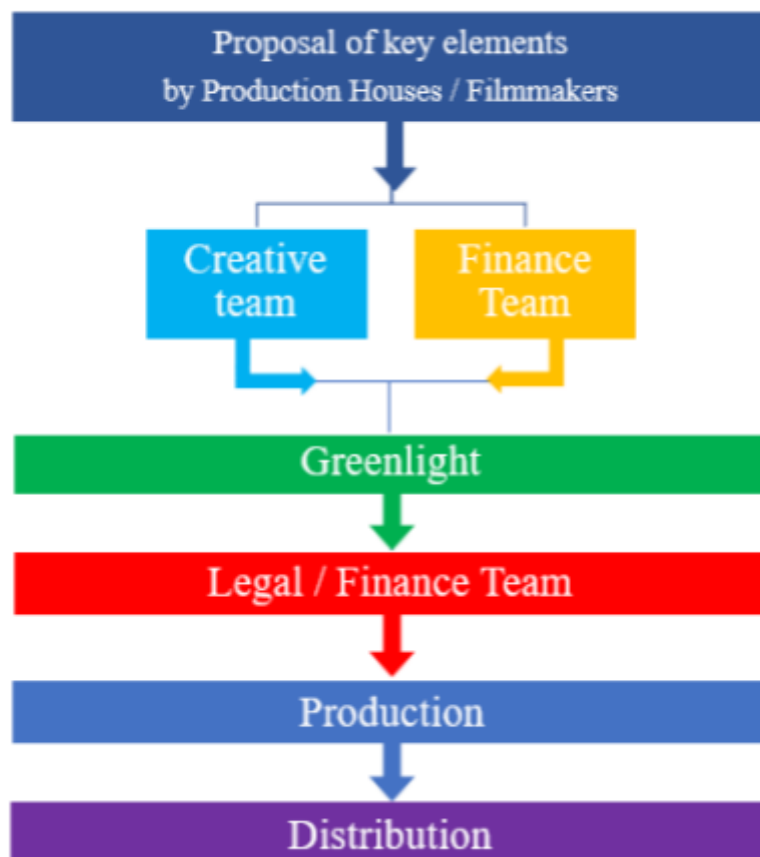
a. The Impugned Order does not contain even a whisper or shred of evidence regarding any alleged transgressions on part of the Noticees in dealing in securities. Such a restriction imposed upon the Noticees is wholly unreasonable. For instance, it is wholly unreasonable to restrict the Noticees from investing in the shares of India’s foremost companies such as Reliance Industries Limited, Tata Consultancy Services, Tata

Motors Ltd., to name a few or to invest in mutual funds through systematic investment plans.

- b. In view of the above, it is prayed that the direction with respect to the Noticees, be vacated. Without prejudice to the same, the said directions of restraint in buying, selling or dealing in securities, at the very least ought to be limited to only dealing with the shares of the Company given that it is the Company's balance sheet that is under scrutiny in the on-going investigation*
65. Vide the Interim Order, Noticee 1 was directed to provide a detailed report to SEBI including details of end-to-end utilization of content advances paid by it to 18 CAEs within 30 days from the date of passing of the said Order. In response, Noticee 1 vide a letter dated September 12, 2023, submitted that: *“This data, which is related to the usage of funds by third parties, is not and cannot be in the possession and control of Eros”.*

66. In this regard, the following is noted from the reply filed by Noticee 4 wherein he has submitted that Eros is involved in the business of production and distribution of films, including content for digital OTT platforms and the decision involves a complex process which comprises of various stakeholders, both within and outside Eros as explained pictorially below:

Pictorial representation of the Steps involved in development and production of a project:



Once a project is approved / Greenlit by Eros in accordance with the process set out above, the legal and finance teamwork in tandem to assess the most appropriate structure for production of the project i.e., whether it should be an acquisition deal, co-production deal, line production deal etc. These structures are dynamic and are decided on a case-to-case basis. There are extensive negotiations with the production house / film maker to freeze on the structure and determine the key terms, particularly the events of termination and consequences thereto, indemnity etc. which may have material ramifications on Eros.

67. At this stage, the Noticees have not submitted any information with regard to end-to-end utilization of content advances paid by it to 18 CAEs. This is indeed surprising considering the exhaustiveness of the process for development and production of an entertainment project, which also involves extensive negotiations with the production house / film maker to freeze on the structure and determine the key terms, particularly the events of termination and consequences thereto, indemnity etc. which may have material ramifications on Eros, once a project is approved /greenlit by the Company. Even otherwise, it is hard to accept that the utilisation post payment of advance funds, where it was not in accordance with the terms of the agreements, could have been done so without intimation to Eros, who in many cases is the sole producer of such projects. Again, this calls into question the prudence and diligence of making such large advances to CAEs without adequate due process. Accordingly, I find that this argument advanced by the Noticees cannot be accepted for the aforementioned reasons.
68. Additionally, pursuant to the Interim Order, vide an e-mail dated August 25, 2023, Noticee 4 had informed that he had restrained himself from participating in the affairs of Eros International Media Limited or any of its subsidiaries or any SEBI registered intermediary as a Director or KMP. This clearly indicates that the Noticee had failed to comply with the directions contained in the Interim Order.
69. It is reiterated that the Interim Order was passed to protect the interests of public shareholders as well as the interest of the general investors and to prevent any further deterioration of financials /assets of Eros. Further, the directions in the Interim Order against Noticee 5 were on account of his tenure as the CEO of Eros when the impairment and continuing payments to the same CAEs were made. At this stage of the proceedings, I find that no cogent reasoning has been furnished by the Noticees with regard to the *prima facie* findings in the Interim Order including the allegation of siphoning of funds to related or Promoter controlled entities, overstatement of books of accounts of Eros, etc. The findings detailed in this Order have brought out the aforementioned deficiency on the

Noticees' part. While it is a fact that Noticee 5 joined Eros on January 27, 2020 and was confirmed on July 27, 2020, the same does not take away from the fact that he should have been careful, while the transactions to write-off /impairment of assets created over the FY 2013–14 to FY 2019–20, was being carried out.

70. The substantive objections raised by the Noticees to the findings in the Interim Order can at best be termed as an exercise to distract from the substantive issue. There is not even a whisper in the replies about the two central preliminary findings in the Interim Order – the usage funds by CAEs which were subsequently written off and evidence of TREs monetizing the rights obtained from Eros. The Noticees have attempted to brush off these issues by contending, in the case of TREs, that they cannot be held responsible for providing information regarding how third parties were utilizing rights obtained from them and in respect of CAEs, by persistently claiming that content had been delivered in the past by these entities or by offering vague replies on the lines that such practices are a norm in the entertainment industry. No documentary evidence has been provided by Eros to substantiate payment of advances. These replies cannot be accepted considering the quantum of money involved, the centrality of these revenues to the balance sheet of Eros, duration of time such practices were continuing and the prima facie findings evidencing round tripping of funds. It is also to be noted that TREs and CAEs, who Eros has been dealing with for years have also failed to provide information to SEBI. Given these circumstances, SEBI as the securities market regulator cannot turn a Nelson's eye when such serious concerns are raised regarding the integrity of the financials of a publicly listed company. It is therefore my considered view that directions in the Interim Order are liable to be confirmed pending the completion of the investigation initiated by SEBI.
71. At this stage of the proceedings, I am of the considered view that having regard to the reasons mentioned above, there are no compelling reasons to accede to the prayers made by Noticees 1, 4 and 5 for vacating /modifying the directions against them.

DIRECTIONS –

72. I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4) and 11B(1) of the SEBI Act, hereby dispose of the replies /submissions made by the Noticees 1, 2, 3 4 and 5 in accordance with the following directions:

- (i) *Noticees 1 to 5* shall continue to be restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders.
- (ii) *Noticee 4* shall continue to be restrained from holding the position of a director or a Key Managerial Personnel in any listed company, including Eros, or its subsidiaries or any SEBI registered intermediary until further orders.
- (iii) *Noticee 5* shall continue to be restrained from holding the position of a director or a Key Managerial Personnel in any listed company other than Eros or any SEBI registered intermediary until further orders.
- (iv) The investigation by SEBI, in the matter, shall be completed in a time-bound manner and in any event, within a period of 6 months from the date of this Order.

73. A copy of this Order shall be forwarded to the recognized Stock Exchanges and Depositories for their information and necessary action.

Place: Mumbai
Date: October 13, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA