

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

INTERIM ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s Svam Software Limited (PAN: AAACS0292B)

Background of case:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “SFIO”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the SEBI Act, 1992 (hereinafter referred to as “SEBI Act”) of protecting the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
3. SEBI was of the view that companies whose names are included as shell companies by SFIO and MCA, were potentially involved in
 - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or

- (b) Misusing the books of accounts/funds of the company including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)
4. SEBI was also of the view that investors should be alerted on the possible enforcement action by various authorities leading to potentially significant impact on the price of the stock.
5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of listed shell companies including M/s Svam Software Limited (hereinafter referred to as “**SSL**” / “**Company**”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measure, trading in scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges completed their detailed examination of such companies.
6. Pursuant to the same, Bombay Stock Exchange Limited (hereinafter referred to as “**BSE**”) vide notice dated August 7, 2017, National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) vide notice dated August 7, 2017 and Metropolitan Stock Exchange of India Limited (hereinafter referred to as “**MSE**”) vide notice dated August 07, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in

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

7. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. SSL vide its letter dated September 01, 2017 had made a representation to SEBI submitting *inter alia* as under:
 - (a) That SSL is a public limited company and listed at BSE. SSL had approximately 42,000 shareholders.
 - (b) That Company has always complied with all the regulatory compliances and Listing agreements.
 - (c) SSL was a leading company in software development and also covered a vast market of software development, sale and purchase of software, hardware and all accessories related to computers. SSL dealt in all computer related works like its hardware and software and accessories.
 - (d) SEBI has inadvertently classified company as Shell Company.
9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, SSL filed an appeal No. 271 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated October 16, 2017 directed the following:-

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2. As the appellant has already made a representation to BSE against the said ex-parte order dated 7th August, 2017, with a copy to SEBI, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed

before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of six weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit.... ”

10. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.

Hearing and Reply:

11. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, SEBI vide communication dated October 27, 2017, granted an opportunity of hearing to SSL on November 02, 2017. On November 02, 2017, Mr. Manish Jain, Advocate, and Mr. Sudhir Kumar Agarwal, Director of SSL, Authorized Representatives (hereinafter referred to as “ARs”) appeared on behalf of SSL and made oral submissions which are as under:

(a) Company came with IPO in the year 1994. Company was in the business of Education Software. Company had 2-3 schools as client to whom they provide education software. There are 6 employees in the company excluding directors and they are either MBA or post graduate.

- (b) Company is also in the business of supply of hardware, Real estate and Investment & lending.*
- (c) Company is a going concern and not a shell company. With respect to the queries raised by the BSE, Company had furnished all the documents regarding working of the company to BSE.*

Entity was advised to submit the following information by November 13, 2017:

- (a) What are the qualification of employees of the company?*
- (b) Whether the shift/change of activity of business from education software to trading hardware and then to real estate and then to investment & lending was informed to stock exchanges before entering into the transaction? If informed to stock exchanges, then submit copy of board approval, other relevant document and intimation/disclosures to stock exchanges regarding all change in activity of business.*
- (c) Whether transaction with Trimax IT infrastructure/NBFCs (Sarnimal Investment) and the transactions in real estates are with related parties? If yes, whether due process (board approval, AGM approval etc.) was followed. Explain and submit the documentary proof thereof.*
- (d) Explain, why company had received advance from Century Business and Rishabh Shoes which were subsequently transferred back by the company to Century Business and Rishabh Shoes i.e. why the transactions/deal were cancelled.*
- (e) Submit the Contract agreement between SSL & Rishabh Shoes and between SSL & Century Business.*
- (f) Submit the contract agreement between SSL & Accessline Internet and Explain why the deal was cancelled.*
- (g) Why does the company have subsidiaries in real estate and herbs, when it is in business of Software and what is the business of these subsidiaries?*
- (h) Submit the updated Articles of Association/Memorandum of Association highlighting new businesses including lending to NBFC and real estate of company before the transaction of Real estate and lending.*

- (i) Relationship of the company with the controlling entities/ point of contact person of NBFCs (in which investment was done by the company) or its directors/promoters.*
- (j) Submit the copy of agreement entered into with the NBFCs highlighting the rate of interest received by the company for lending the money to NBFCs.*
- (k) Split up of Rs 1.99 crores of trade payables.*
- (l) When was the entry of provision of doubtful debt of Rs 4.65 crores (2005-06) repaid. Submit details and documentary proof for the same.*
- (m) Details of investment other than trade quoted of non-current investment (Rs 69.4 lacs) – (Number of companies, value and number of shares invested along with rationale of investment). Auditor's certificate w.r.t. basis of valuation for these companies.*
- (n) Rs 2.1 crores given to Vivid Herbs (non-current investment) – How is this money deployed and to whom is it paid, whether they are related party or not. If they are related party, whether proper procedure of trading with related party followed or not and letter of Auditor thereof.*
- (o) In FY 2016-17 Consolidated Balance sheet, Non-current investment of Rs 10.83 crores and as per note-9 Rs. 7.72 crores are investment in equity. Explain and submit the detail in this regard.*
- (p) In FY 2016-17 Consolidated Balance sheet, Split up of non-current investment (Rs 10.83 crores) and short term loans and advances (Rs. 9.67 crores), explain and submit the backup papers/documentary proof of all the transactions. (Contract agreement etc.). Which all transactions are with related parties? If with related parties, was it approved in board/AGM? If approved, copy thereof.*
- (q) Rs. 49 lakh: interest receivable (Sales of products and services). Whether it is overdue or not? Explain and submit the underlying document i.e. lending agreement. Whether it is related party transaction or not? If with related parties, was it approved in board/AGM? If approved, copy thereof.*
- (r) Company was also involved into commodity trading. Whether commodity trading transaction was disclosed/informed to exchange or not? If disclosed, then submit the disclosure made thereof. Company also submit whether before entering into this*

domain (commodity trading), did company disclose the same to BSE and took approval from its board?

12. SEBI vide email dated November 07, 2017 has also advised SSL to furnish the aforesaid information by November 13, 2017.

13. SSL vide its letter dated November 15, 2017 submitted the information sought by SEBI at the time of hearing and vide email dated November 07, 2017, which are *inter alia* as under:

“.....

- (a) That the details of the qualification of the employees of the company is attached. There are 7 employees in the company.*
- (b) That there is no change in the business activity of the company as the company has complied with its initial main objects as per the Memorandum and Articles of Association of the Company (attached). The Company is dealing in Supply of Software and Hardware services since inception and there is no change of activity in case of supply of education software and Hardware (Kindly refer Main object clause of the company as per MOA and AOA).*

That with regard to the real estate Investment, we wish to submit that the company is not involved in the real estate business so far and invested only its excess funds available with the company in Real estate as Investment not as business assets. Same was duly shown in Balance sheet as an Advance in Current Investment, which is also permitted by the objects clauses of Memorandum and Articles of Association of the company.

That with regard to the Lending activity we wish to submit that company is in the business of the lending since more than 15 years and the company had duly complied with all the requirements of disclosures to the Exchange for the various activities conducted by the company and this activity is also permitted by the object clause of Memorandum and Articles of the Company.

- (c) *That M/s Trimax IT Infrastructure & Services Ltd and M/s IITL-Nimbus, The Hyde Park, Noida to whom the business and real estate transactions were made, are not with related party., and with regard to the Transaction with NBFCs i.e. M/s Sarnimal Investment Ltd, it is submitted that one of the director of the company M/s Svam Softwares Ltd is also director of M/s Sarnimal Investments Ltd. However, same was duly approved by board and at a fair market rate. Our company had duly complied with all the statutory requirements for transactions. Copy of Agreement with M/s Trimax IT Infrastructure and M/s Sarnimal Investments is enclosed for your kind perusal. It is worthwhile to mention that all the amount of M/s Sarnimal Investments were duly received with Interest and there is no outstanding of any amount till date.*
- (d) *That with regard to the advance received from M/s Century Business Corporation and M/s Rishabh Shoes Private Limited we wish to submit:*
- That the Company had made transactions with M/s Century Business Corporation for supply of goods and services however the same contract was cancelled and we had refunded the amount. The deal was cancelled by the client for change in its requirement. We were unable to comply with the changed specification and hence deal was cancelled by the client.*
- That in case of the transactions with M/s Rishabh Shoes Pvt Ltd the company had made the agreement for sale of flats out of its Real estate Investment but the deal was cancelled due to poor market condition and unwillingness of M/s Rishabh Shoes Pvt Ltd.*
- (e) *That the Copy of Agreement with M/s Rishbah Shoes Pvt Ltd and M/s Century Business Corporation is enclosed.*
- (f) *That with regard to the transaction with M/s Accessline International Pvt. Ltd, we wish to submit that due to clerical mistake in our letter/ Email dated 01/11/2017, it was wrongly mentioned that the deal was cancelled, however, the deal is still alive and company is trying to comply with supply agreement. The copy of the agreement is enclosed. This fact was also submitted by our Authorized Representative at the time of personal hearing with Hon'ble WTM.*
- (g) *That in order to diversify its business in various growing sectors and catch market potential, Company had formed Subsidiaries to take over the other companies for each*

individual sectors. The main object to form subsidiaries was to look Joint venture or takeover possibility for each sector and to avoid any interference in existing company.

- (h) That copy of Memorandum and Articles of Association of the company highlighting business activities is enclosed.*
- (i) That Director of M/s SIL and M/s Aglow Financial Services Pvt Ltd are relative of directors of M/s Svam Software Ltd. However, our company has duly complied with all the statutory requirements with regard to the fair price valuations and services and safety of the fund.*
- (j) That the copy of Agreements entered into with NBFCs highlighting the rate of interest received by the company for lending the money to NBFCs is enclosed.*
- (k) Detailed Breakup of Trade Payable of Rs. 7.99 Crores are enclosed.*
- (l) That with regard to the provision of doubtful debts of Rs. 4.65 Crores (2005-06), we are unable to comment on accounts for the financial year 2005-06, However, on perusal of the balance sheets available with us, it is observed that these amounts were also recovered by year 2008 and no bad debts were written off by the company last twelve years.*
- (m) That Detail of Investment “other than trade quoted” of Non-Current investment (Rs. 69.4 Lacs) is attached. At Present the trading/Listing of the shares of the company (i.e. M/s Jolly Plastics Industries Ltd) in which the Investment has been made is suspended on stock exchange. Therefore, the valuation of the stock has been taken on cost and the last traded price was shown in Balance sheet separately.*
- (n) That with regard to the investment in 100% subsidiary of the company M/s Vivid Herbs Ltd, the amount was utilized to purchase the equity shares of Companies for the purpose of taking over the business of those companies. Further, there are no related party to whom the payment was made.*
- (o) That with regard to Non -Current investment of Rs. 10.83 Crores and as per the Note No 9 for Rs. 7.72 Crores as investment in equity, we wish to submit that due to oversightness the classification of amount of Rs. 7.22 Crore invested in as an advance towards purchase of the flats (i.e. for Real Estate) to M/s IITL-Nimbus, The Hyde Park, Noida, was erroneously shown in Investment in Equity trade unquote. The detail of the Investment of Rs. 10.83 Crore (including the amount of Rs. 7.22 Crore) are attached.*

- (p) *That the details of the short term loans and advances of Rs. 9.67 Crores are attached for your kind consideration and perusal. That there are no transactions with related Parties (Except mentioned above).*
- (q) *Rs. 49 Lakhs Interest receivable is outstanding income for the amount paid as Loans and advances to various entities. All necessary legal compliances were followed before granting any loans and advances. Detail of Parties for which interest is outstanding is enclosed along with lending agreements.*
- (r) *The Company was never involved in Commodity trading Business activity, however, with the intention to do the business of commodity trading the company had deposited advance for margin Money to M/s Century Commodities. But due to technical reason, it was observed that it is not possible for the company to do the business in commodity segment. Therefore, with in a period of less than 30 days, the company received back all its margin money as deposited earlier.*
.....”

14. It is observed that, SSL vide letter dated November 15, 2017 had furnished incomplete information. SSL also failed to furnish the complete supporting documents regarding the information sought at the time of hearing as well as through email dated November 07, 2017. Therefore, SEBI vide email dated November 20, 2017 had advised SSL to submit the following information by November 21, 2017:

- (a) *In response to question 3, company did not submit any documentary evidence like board approval/AGM approval reflected on BSE website.*
- (b) *In response to question 8, company did not submit the updated Articles of Association/Memorandum of Association highlighting new businesses including investment in Vivid herbs, lending to NBFC and real estate by company before the transaction of Real estate and lending.*
- (c) *In response to question 9, what is the exact relation of the relative with the directors of Svam Software Ltd. (e.g. brother, sister, wife, son, daughter, etc.)*

- (d) *In response to question 11, Company did not submit backup documentation and only submitted the split up of the amount. Company shall submit the bank transactions in effect of the said agreement and corresponding reversal, if any, once the contract was cancelled.*
- (e) *In response to question 15,*
- (i) *Company shall reconcile note 9 to consolidated annual statements (page 60 of AR 2016-17) with split up submitted by company in Annexure D.*
 - (ii) *Company may provide split up of Rs. 7.22 crores invested in equity (mentioned by company in its reply to question 15) and Rs. 8.12 crores mentioned by company in Annexure D of its response along with the share certificates (as documentary proof).*
 - (iii) *Out of total amount of Rs. 7.72 crores, company stated that it has only Rs 7.22 crores invested in equity, how is the remaining amount being balanced in balance sheet, company may provide the detailed treatment of the accounts and adjustments.*
- (f) *In response to question 16,*
- (i) *Company did not submit the backup documentation or any proof of the investment of Rs. 10.83 crores. Specifically, it did not submit the split up of the investment in other non-quoted companies worth Rs. 8.12 crores.*
 - (ii) *Also, annexure E submitted by the company shows total of Rs. 9.65 crores, however, the amount in financial statements is Rs. 9.67 crores, company may reconcile the difference.*
 - (iii) *Company mentioned “except mentioned above” in its response. W.r.t. this statement, which companies does SSL refer to w.r.t. related party transaction?*
- (g) *In response to question 17, company failed to submit the Annexure F.*
- (h) *Company has provided Annexure E including the ledger entries, however, in most of the ledger entries, there is no interest shown. Does that mean, company is giving the loan and advance interest free to these entities.*

15. SSL vide its letter dated November 21, 2017 submitted the information sought by SEBI vide email dated November 20, 2017, which are *inter alia* as under:

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(a) *We would like to submit that the transactions done with M/s Trimax IT Infrastructure & Service Ltd. for supply of IT related products are very much part of business activities of the company which are also covered in the main object clause of the MOA and AOA of the company. Therefore, no further board approval is required.*

That with regard to the lending and investment in real estate; these activities are also a part the object clause of MOA and AoA. However, the specific resolution for lending to the NBFCs which is related party i.e. Sarnimal Investment Ltd was very much with the approval of Board Resolution. Copy of the Board resolution is submitted.

(b) *With regard to your observation in point no.2 of letter dt 20/11/2017 we wish to submit that we have already submitted the copy of MOA highlighting the business activities to the company. Further, we once again submit that the company has not started new business with regard to herbs or real estates, and the investment in M/s Vivid Herbs and lending to NBFC's are very much part of original MOA and AOA which was submitted earlier.*

(c) *With reference to your query we hereby submitted the exact relation of the Director of Svam Software Limited with others:*

S.no	Name of company	Relationship
1.	Aglow Financial Services Pvt Ltd	One of the director of this Company i.e. Mr. Atul Kumar Agarwal is the brother of Mr. Sudhir Kumar Agarwal who is also director of Svam Software ltd
2.	Sarnimal Investment LTD	One of the director of the Company Mr. Rajeev Garg is also the director of Svam Software Ltd.

(d) *With regard to your observation in point no 4 of letter dt 20/11/2017, we wish to submit that the complete details with regard to the trade payable of Rs. 198.85 Lakhs was already submitted to your goodself with agreement with both the parties (M/s Accesslines International Pvt Ltd of Rs. 75 Laks and for M/s Trimax IT Infrastructure & Service Ltd of*

- Rs. 123.85 Lacs) and would also like to submit that the amount of M/s Accessline International Pvt Ltd is still outstanding and the Amount of M/s Trimax IT infrastructure was paid in full, Copy of the ledger account showing full payment through bank is attached.*
- (e) With reference to your observation in point no 5 of letter dt 20/11/2017, we wish to submit that:*
- (i) Further, Bifurcation of Non-current investments as per point no. 9 of Consolidated financial statements is enclosed.*
 - (ii) As earlier submitted by us that amount Rs. 7.22 Crore invested as advance towards purchase of the real estate flats to M/s IITL-Nimbus, the Hyde Park, Naida was erroneously shown in Investment in Equity Trade Unquoted. For which we have already submitted the ledger copy and agreement with this regard. Hence, Amount of Rs. 7.22 Crore was not Investment in Equity Shares. Further, split of Rs. 8.12 Crore is attached.*
 - (iii) That detail of remaining amount is attached.*
- (f) With reference to your query in point no 6 of letter dt 20/11/2017, we wish to submit:*
- (i) That Breakup documents and proof of Investments are attached. The split up of the investment in other Non-Quoted Companies worth Rs. 8.12 Crore is attached. Copy of Share Certificate is enclosed for your kind perusal.*
 - (ii) That the difference in two figures is merely of Mat Credit Amount. We would like to bring your kind attention towards Point 13 of the Consolidated financial statements wherein the Mat Credit of Rs. 2.91 Lacs is separately shown.*
 - (iii) That W.r.t. "except Mentioned above" we had referred to the transaction with M/s Sarnimal Investment Limited and M/s Aglow Financial Services Pvt Ltd.*
- (g) The copy of "Annexure F" is enclosed.*
- (h) That with respect to ledgers, we wish to submit that these are in the nature of advances which are outstanding from parties. The company is continuous following up to get the work completed or get the amount refunded.*
- "*

16. Pursuant to SEBI's letter dated August 9, 2017, BSE submitted its report dated November 01, 2017 stating that, Company has submitted the auditor certificate from M/s Moon & Company, Chartered Accountants. As per the Auditor Certificate, Company had filed annual income tax returns for the last 3 years and there is no dispute of the company with the Income Tax Department, Company had complied with Companies Act requirement and annual return filing for last 3 years, Company is a going concern and is working towards technical support and software developments for educational institutes. There are no default of the company wrt any bank / financial institutions. Company had complied with all the listing regulation requirements for last 3 years.

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

Consideration:

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

- (a) Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*
- (b) Whether there is prima facie evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*
- (c) In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

18. On the basis of documents available on record, my observations on above issues are as under:

Issue No. 1. *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible of violation of LODR Regulations by the company.*

Issue No. 2. *Whether there is prima facie evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*

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

(a) From the bank statement of SSL bank account number 05982740001153 with HDFC Bank for period April 01, 2016 to August 08, 2017 received by BSE from SSL, following is observed:

(i) SSL has done credit and debit transaction of Rs 5 lakhs each with Chrishmatic Developers Private Limited (CDPL) on August 20, 2016 and August 23, 2016 respectively. It is noted that SSL and CDPL have common directors, namely Mr. Sudhir Kumar Agarwal and Ms. Manisha Agarwal.

(ii) SSL received funds worth of Rs. 20 lakhs from Midas Global Securities Ltd. (MGSL) on September 22, 2016. It is noted that SSL and MGSL have common director, namely Mr. Sudhir Kumar Agarwal.

(iii) SSL received amount of Rs 9 lakhs, Rs. 44 lakhs and 3 lakhs from Shridhar Financial Services Limited (SFSL) on March 10, 2017, March 17, 2017 and March 31, respectively. It is noted that SSL and SFSL have common directors, namely Mr. Sudhir Kumar Agarwal and Ms. Manisha Agarwal.

(b) SSL (lender) had entered into a loan memorandum of understanding (MoU) dated May 11, 2016 with Sarnimal Investment Limited (SIL) (borrower) for an amount Rs. 100 lakhs for rate of interest of 9% per annum. It is noted that SSL and SIL have common director, namely Mr. Rajeev Garg.

SSL, in its submissions, had stated the transaction with SIL is a related party transaction and submitted the copy of board resolution dated April 05, 2016 for a loan amount of Rs. 2 crore. In the said board resolution, SSL did not specify about it being related party transaction and did not demonstrate that it is done at arm's length. Further, from the company's annual report of Financial Year (FY) 2016-17, it is noted that transactions with SIL is not reflected in the related party transaction of the company's annual report for FY 2016-17. Thus, SSL had not disclosed the related party transaction with SIL in annual report FY 2016-17. Thus, there is *prima facie* evidence of misrepresentation of financials by SSL.

- (c) From para 19(a) and 19(b) above, the transactions of SSL with CDPL, MGSL, SFSL and SIL are related party transactions. However, this was not disclosed in the Annual Reports. Thus, there is *prima facie* evidence of misrepresentation of financials and suspicion about the genuineness of these transactions and whether due process was followed by SSL in these transactions with related entities.
- (d) With respect to the interest receivable (sales of products and services) of Rs. 49 lakhs, during the course of hearing and vide email dated November 07, 2017, SSL was advised to explain and submit the underlying document i.e. lending agreement and whether it is related party transaction or not. SSL stated that Interest receivable of Rs. 49 Lakhs is outstanding income for the amount paid as Loans and advances to various entities. Further, SSL had submitted the list of entities from whom interest is outstanding, however it has failed to submit underlying documentation. Further, SSL was asked whether these entities were related party transaction or not and if yes, submit the copy of board approval. SSL has failed to state that whether these entities are related party transaction or not. Further, in the absence of underlying documents/contract, it raises a concern whether such transactions were actually done for the business of SSL or for some other purpose. Thus, there appears to be *prima facie* suspicion about the genuineness of the transaction and whether due process was followed by SSL to provide loans and advances to these entities.

- (e) SSL transferred an amount of Rs. 25 lakhs and 10 lakhs to Abhinav Leasing and Finance Ltd. (ALFL) on September 02, 2016 and December 22, 2016 and SSL had received an amount of Rs. 35 lakhs from ALFL on February 21, 2017. It is noted that Mr. Malikhan Singh Yadav, employee of company (office assistant) is director in ALFL, however, SSL stated that, on record, none of its employee is the director of ALFL. Thus, there appears to be *prima facie* suspicion about the genuineness of these transactions for the purpose of company's business.
- (f) SSL (lender) had entered into a loan MoU dated April 02, 2015 with Aglow Financial Services Pvt. Ltd. (AFSPL) (borrower) for an amount Rs. 250 lakhs for rate of interest of 9% per annum. The said loan MoU is valid for 12 months. It is noted that Mr. Atul Kumar Agarwal, director of AFSPL is the brother of Mr. Sudhir Kumar Agarwal, director of SSL. From the bank statement of SSL bank account number 05982740001153 with HDFC Bank for period April 01, 2016 to August 08, 2017, following transaction between SSL and AFSPL were noted:

	Date	Transaction
SSL to AFSPL	15.9.2016	-2,50,000
SSL to AFSPL	24.6.2016	1,46,03,359
SSL to AFSPL	28.2.2017	43,00,000
SSL to AFSPL	1.3.2017	27,00,000
SSL to AFSPL	3.3.2017	-2,70,00,000
SSL to AFSPL	10.3.17	-60,00,000
SSL to AFSPL	10.3.17	-10,00,000
SSL to AFSPL	15.3.17	27,00,000
SSL to AFSPL	27.3.2017	50,00,000
NET		-49,46,641

Form above table, it is observed that SSL has given net Rs. 49.46 lakhs to AFSPL, however, the MoU with AFSPL of SSL was only for 12 months from April 02, 2015 i.e. SSL gave funds to SSL beyond the expiry of 12 months period of MoU. Thus, there appears to be

prima facie suspicion about the genuineness of these transactions and possible misuse of funds.

- (g) From the documents available on record, company has submitted that it received advance from Century Business Corporation and Rishabh Shoes Private Limited which it subsequently transferred back to Century Business Corporation and Rishabh Shoes Private Limited i.e. transactions/deals were cancelled.

During the course of hearing and vide email dated November 07, 2017, SSL was advised to submit the contract agreement between SSL & Rishabh Shoes Private Limited (RSPL), SSL & Century Business Corporation (Century) and SSL & Accessline International Private Limited (Accessline). SSL had submitted the copy of Agreement with RSPL dated June 06, 2016, with Century dated May 25, 2016 & August 10, 2016 and with Accessline dated May 05, 2016. From the SSL agreement with RSPL, it is noted that SSL has agreed to sell flats to RSPL for consideration of Rs. 5.42 crores for 6 flats and RSPL has agreed to pay advance of Rs. 2 crores to SSL. However, it is noted that the agreements submitted by the company are not on stamp paper and thus the dates of agreements could not be validated.

- (h) During the course of hearing and vide email dated November 07, 2017, SSL was advised to submit the copy of agreement entered into with NBFCs highlighting the rate of interest. SSL had submitted the copy of agreement for lending money to NBFCs namely, Aglow Financial Services Pvt Ltd (AFSPL), Nachiketa Finvest Pvt. Ltd (NFPL) and Sarnimal Investment Limited (SIL). The rate of interest is 9% per annum. Further, it is noted that the agreements submitted by the company are not on stamp paper and thus the dates of agreements could not be validated.

- (i) During the course of hearing and vide email dated November 07, 2017, SSL was advised to submit the split up of Rs 1.99 crores of trade payables along with backup documentation. SSL stated that Rs. 123.85 lakh was due to M/s Trimax IT Infrastructure and Rs. 75 lakh was due to Accessline International Pvt. Ltd. as on March 31, 2017. SEBI vide email dated November 20, 2017 advised SSL to submit the bank transactions to reflect the said

agreement and corresponding reversal, if any, once the contract was cancelled. Company had submitted the copy of the ledger account showing full payment through bank. However, company did not submit the bank transactions to reflect the said agreements and corresponding reversals, if any. In the absence of submission of bank statement by company, it raises doubts about the genuineness of the said transactions. Thus, there appears to be *prima facie* suspicion of misuse of books of accounts.

- (j) From the Consolidated Balance sheet of FY 2016-17, it is noted that, SSL had Non-current investment of Rs 10.83 crores and as per note-9 Rs. 7.72 crores are investment in equity. During the course of hearing and vide email dated November 07, 2017, SSL was advised to explain and submit the detail in this regard. SSL stated that “due to oversightness the classification of amount of Rs. 7.22 Crore invested in an advance towards purchase of the flats (i.e. for Real Estate) to M/s IITL-Nimbus, The Hyde Park, Noida, was erroneously shown in Investment in Equity trade unquote. The detail of the Investment of Rs. 10.83 Crore (including the amount of Rs. 7.22 Crore) are submitted.” However, it is noted that company did not submit any corrigendum of Annual report to Stock Exchange to correct this error as confirmed by BSE vide email dated November 23, 2017.

From the Annual report, it is noted that, SSL mentioned that the investment in flats was through its subsidiary (note 9 to standalone financial statements of FY2016-17 on pg 46). However, the agreement of IITL Nimbus, The Hyde Park, Noida is with SSL and not its subsidiary. Thus, this is in contravention with what the company has submitted that the flat investment is through its subsidiary. From the agreement of SSL with IITL Nimbus, Hyde Park, Noida dated August 01, 2016, it is noted that SSL had agreed to purchase 22 flats from IITL Nimbus for total sale consideration of Rs 18.84 crores. From the said agreement, it is also noted that SSL has given advance of Rs 8.29 crores as advance against the total sale consideration of the amount which is Rs. 18.84 crores. However, in the standalone financial statements of SSL of FY 2016-17, it is noted that the investment towards flats is only 7.72 crores that too wrongly classified as non-current investment in equity. Thus, there appears to be *prima facie* evidence of misrepresentation of financials.

(k) From the Annual report, it is noted that, SSL mentioned that the flat investment was through its subsidiary (note 9 to standalone financial statements of FY2016-17 on pg 46). However, the agreement of IITL Nimbus, The Hyde Park, Noida is with SSL and not its subsidiary. Further, as per the agreement entered between SSL and IITL Hyde Park, Noida, the investment in real estate is worth Rs. 18.84 crores, which is 87% of its asset base and 26.9 times of its FY 2016-17 revenue. This prima facie raises a concern whether the company is inclined to deploy its funds towards its core business i.e. software development for educational institutes or not. Considering the amount of investments in real estate (flats) in terms of the asset base, this prima facie appears to be a material information which required to be disclose to stock exchanges as per Regulation 30 of LODR Regulations. Further, SEBI vide email dated November 24, 2017 had requested to BSE to confirm whether SSL had disclosed the said information. BSE vide mail dated November 24, 2017 confirmed that BSE has not received any such disclosure from SSL w.r.t. said investment. Thus, as per regulation 30 of LODR Regulations, SSL was, prima facie, required to make the disclosure of said information to stock exchanges, which it had failed to do so. Thus, prima facie it appears that SSL had violated regulation 30 of LODR Regulations.

(l) With regard to the investment in other non-quoted shares of Rs. 50 lakh in Ms/ Dipankor Ceroil Pvt. Ltd., it is noted that, Mr. Malikhan Singh Yadav (office assistant), is an employee of SSL and is a director of M/s Dipankor Ceroil Pvt. Ltd since September 03, 2015. From the annual report FY 2016-17 of company, on page 46 (notes to accounts of standalone financials), it is noted that the company did not hold any shares of M/s Dipankor Ceroil Pvt. Ltd. However, company in its submission stated that it holds shares worth Rs.50,00,000/- of M/s Dipankor Ceroil Pvt. Ltd. Further, from annual report FY 2016-17 of company, on page 46 (notes to accounts of standalone financials), it is also noted that the company held shares worth Rs. 50 lakh of Samriddhi Megastructure Pvt Ltd., however SSL in its submission to SEBI, did not mention that it is holding shares of Samriddhi Megastructure Pvt Ltd. Further, SSL had not submitted any shares certificates w.r.t investment in M/s Dipankor Ceroil Pvt. Ltd or Samriddhi Megastructure Pvt. Ltd despite

being given repeated opportunities to do so. This raises a suspicion about the genuineness of said investment. Thus, there appears to be *prima facie* suspicion of misrepresentation of financials and misuse of books of accounts/funds.

- (m) With regard to the non-current investment of Rs. 2.1 crore in 100% subsidiary of the company M/s Vivid Herbs Ltd, SSL stated that the amount was utilized to purchase the equity shares of Companies for the purpose of taking over the business of those companies. Company also stated that, there are no related parties to whom the payments were done. However, company did not mention the entities or companies to whom it made payments via its subsidiary to acquire business and the amount of payment made thereof.

20. From the above I note the followings:

- (a) That there are common directors between SSL & CDPL, SSL & MGSL, SSL & SFSL and SSL & SIL. The transactions of SSL with CDPL, MGSL, SFSL and SIL are related party transactions but have not been disclosed as such in the Annual Reports. Thus, there appears to be *prima facie* evidence of misrepresentation of financials and that related party transactions have been entered into without due process.
- (b) The transactions of SSL with AFSPL are inconsistent with the MoU signed between the two entities. Further, these two entities appear connected. This *prima facie* raises suspicion about the genuineness of these transactions and possible misuse of funds.
- (c) That the agreements submitted by SSL with AFSPL, NFPL, SIL, RSPL, Century and Accessline are not on stamp paper. Thus, the dates of agreements could not be validated.
- (d) That SSL has failed to submit the documents to substantiate its trade payables. Therefore, the transactions of SSL with M/s Trimax IT Infrastructure and Accessline International Pvt. Ltd. raises doubts about its genuineness. Thus, there appears to be *prima facie* suspicion of misuse of books of accounts.
- (e) That SSL had agreed to purchase 22 flats from IITL Nimbus for total sale consideration of Rs 18.84 crores and SSL has given advance of Rs 8.29 crores as advance against the total sale consideration. However, in the standalone financial statements of SSL of FY 2016-17, it is noted that the investment towards flats is only

7.72 crores that too wrongly classified as non-current investment in equity. Thus, there appears to be prima facie evidence of misrepresentation of financials

(f) As per regulation 30 of LODR Regulation, SSL was required to disclose material information to stock exchanges. The information pertaining to investment in real estate worth of Rs. 18.84 crores, which is 87% of its asset base *prima facie* appears to be material information which is required to be disclosed to stock exchanges in accordance with regulation 30 of LODR Regulations, which SSL had failed to do.

(g) Company had not submitted any shares certificates w.r.t investment in M/s Dipankor Ceroil Pvt. Ltd or Samriddhi Megastructure Pvt. Ltd. This raises a suspicion about the genuineness of said investment. Thus, there appears to be *prima facie* suspicion of misrepresentation of financials and possible misuse of books of accounts/funds.

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

Issue No. 3. *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

22. In view of the *prima facie* evidence on the misrepresentation of financials by the company as well as suspicion of misuse of funds/ books of accounts of the company, the persons who are in control of the company and the directors/promoters of the company are prima facie liable for action by SEBI and should not be permitted to exit the company at the cost of innocent shareholders.

23. The findings in this order have been rendered on the basis of the prima facie evidence available at this stage. Detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations and possible compromise of minority shareholders interest.
24. Further, pending enquiry/ audit, considering the interest of public shareholders involved in SSL, I find it is appropriate to revert the trading in the securities of SSL to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
25. In view of the above, I am of the view that following urgent interim actions are required to be taken, pending further enquiry/audit.

INTERIM ORDER

26. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby, modify, subject to para 26(iv) of this order, the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against M/s Svam Software Limited as under:

- i. The trading in securities of SSL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Exchange shall appoint an independent forensic auditor *inter alia* to further verify:
 - a. Misrepresentation including of financials and/or business by SSL, if any;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholders interest, if any.
- iii. The promoters and directors in SSL are permitted only to buy the securities of SSL. The shares held by the promoters and directors in SSL shall not be allowed to be transferred for sale, by depositories.

- iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s Svam Software Limited.
27. The '*directors*' for the purpose of direction mentioned at para 26(iii) above shall mean and include:
- (a) the persons who are acting as directors on the date of this order, or
 - (b) the persons who are acting as directors of this company as on August 07, 2017, who cease to be director, by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017.
28. Accordingly the representation of M/s Svam Software Limited is disposed of.
29. The above directions shall take effect immediately and shall be in force until further Orders.
30. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, M/s Svam Software Limited is advised to file its reply/objections to this interim order. The company, from the date of receipt of this Order, may file its reply, if any, receivable by SEBI within 30 days from such receipt, and may also indicate in the reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. In the event of M/s Svam Software Limited failing to file reply or requesting for an opportunity of personal hearing in its reply within the said 30 days, the preliminary findings of this Order and ad-interim directions at para 26 above shall stand confirmed automatically, without any further orders.
31. Copy of this Order shall be forwarded to the recognised stock exchanges & depositories for information and necessary action.

32. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

- Sd-

DATE: NOVEMBER 27, 2017

PLACE: MUMBAI

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