WTM/MPB/ISD/42/2018

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

Sl. No.	NAME	PAN
1.	M/s Adhunik Industries Limited	AAACB4506D

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

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 companies identified as "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 companies categorized as 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 (hereinafter referred to as **"KMP"**)

4. SEBI was also of the view that investors should be alerted on the possible enforcement actions 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 Adhunik Industries Limited (hereinafter referred to as **"AIL" / "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. AIL vide its letter dated August 09, 2017 had made a representation to SEBI submitting *inter alia* as under:

"……

(a) *We are shocked and surprised, and state and submit that the real fact is on the contrary as our company is a fully operation steel manufacturing company producing TMT Bars, Wire Rods and HB Wire and factory is located in Raturia, Angadpur, Durgapur, West Bengal. The products of the company has a well established and renowned brand in the Eastern India and the products are being supplied to Government Organizations for their projects as well as other housing and infrastructure projects. The factory employs a large number of workers. It may also be noted that during the last three financial years we pay an amount*

of over Rs. 48.51 crores toward electricity bills to The Durgapur Projects Limited towards power expenses for the said manufacturing activities.

(b) *Our company has been regularly operating its day to day business and has been filing statutory returns a from time to time required to be filed under various laws.*

(c) *It may be noted that in the last there years the company has a gross turnover of Rs. 1,316.75 crores, EBIDTA of Rs. 86.29 crores. Moreover we have paid an excise duty of Rs. 121.11 crores in the last three years. The copies of the annual reports for the years 2014-15, 2015-16 and the financial results as on 31.03.2017 as submitted to NSE, BSE & CSE are enclosed.*

(d) *It may further be noted that there are no investor complaints which are pending and we have at all times complied with rules and regulations as well as various provisions of the listing agreement and have been filing all required documents within the stipulated time with the concerned authorities.*

(e) *We therefore request you to consider our above facts and submissions and withdraw such directions qua our company and place the same under normal trading as was being done.*

……"

9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and Stock Exchanges, AIL filed an appeal No. 215 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**). The Hon'ble SAT vide order dated September 21, 2017 directed the following:-

"……

2. It is not in dispute that on August 9, 2017 appellant had made a representation to SEBI against the impugned communication of SEBI dated August 7, 2017. Since no action was taken on the said representation dated August 9, 2017, appellant filed the present appeal.

3. *On September 6, 2017 this Tribunal directed SEBI to file its reply and adjourned the matter to September 21, 2017. In the meantime, SEBI offered personal hearing to the appellant on September 15, 2017 wherein appellant was called upon to furnish certain information.*
4. *It is the case of the appellant that some of the particulars sought by the Whole Time Member ('WTM' for short) of SEBI have already been furnished and the remaining information sought by the WTM of SEBI vide e-mail dated September 18, 2017 would be furnished by the appellant to SEBI on or before by September 25, 2017.*
5. *After hearing counsel on both sides, in the peculiar facts of present case, and in view of facts set out in para 5 of the memorandum of appeal, in our opinion, it would be just and proper to direct SEBI as also NSE and BSE to forthwith reverse their decisions all dated August 7, 2017 qua the appellant, which were all passed without hearing the appellant. Accordingly we direct SEBI and also the stock exchanges to reverse their decisions all dated August 7, 2017 qua the appellant forthwith.*
6. *It is made clear that this order shall not come in the way of SEBI as also the stock exchanges to investigate the case of the appellant company further and initiate 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.

11. SEBI vide letter dated August 31, 2017 had advised AIL to provide the following information:

(a) Summary of dealings of the company with or through Mr. Devesh Upadhyaya and Mr. Maha, either directly or indirectly, including the nature and quantum thereof. Provide details of the all transactions along with supporting documents.

(b) Details of Association of the company, whether direct or indirect, with Mr. Devesh Upadhyaya and Mr. Maha.

(c) Details of employees on the rolls of the Company, their respective roles, remuneration received, qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar, junior management, Middle management, senior management, may be given in a consolidated manner.

12. AIL vide its letter dated September 05, 2017 submitted a reply to SEBI's letter dated August 31, 2017, as under:

"……

(a) With regard to para 1 of the letter it is submitted that, we have not entered into any transaction with Mr. Devesh Upadhyaya and Mr. Maha either directly or indirectly in the FY 2016-17 or in the FY 2015-16.

(b) With regard to para 2 of the letter it is submitted that, we have no association with Mr. Devesh Upadhyaya and Mr. Maha either directly or indirectly during the FY 2016-17 or in the FY 2015-16.

(c) Requisite details of direct and indirect employees of the Company for FY 2016-17 is as under:

Category	*Number of Employees (Note 1)*	*Qualification*	*Experience (in years)*	*Roles*	*Remuneration paid during the FY 2016-17 (Rs. in Lacs)*
Blue Collar	*206*	*No Qualification required as such for the post*	*2-15*	*Invloved in the actual production of the Company at core level*	*106.96*
Junior-level Management	*19*	*Graduate and Under Graduate Level*	*5-15*	*Involved into managing basic day to day affairs of the Company*	*13.75*
Mid-level Management	*19*	*Professional as well as Graduate Level*	*7-30*	*Involved into managing day to day crucial matters of the Company*	*70.21*
Senior Management	*11*	*Professional Qualification as well as very Experienced person*	*11-40*	*Involved into managing strategic level decisions of the Company*	*100.12*
Total	***255***				*291.02*

Note -1) There are some employees who had been associated with the Company for the part of the year only during FY 2016-17.

2) The employees shown in the blue collar category includes labour employed on contract basis.

.....”

Hearing and Reply:

13. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, in the interest of natural justice, SEBI vide communication dated September 11, 2017 granted an opportunity of hearing to AIL on September 15, 2017. On September 15, 2017, Mr. Mustafa Doctor (Senior Counsel), Mr. Aditya Bhansali, Mr. Amit Dey, Mr. Jitesh Maheshwari, Mr. Mahesh Agarwal, Mr. Bharat Agarwal and Mr. Sanjay Kumpawat, Authorized Representatives (hereinafter referred to as **"ARs"**) on behalf of AIL appeared for hearing and made oral submissions and ARs/AIL were advised to submit the following information latest by September 25, 2017:

(a) *Was there any corporate event in the month of April 2012 in relation to Adhunik Industries Ltd. If so, provide details thereof.*

(b) *There was a spurt in the trading volume in the scrip during the period June 23, 2017 to August 07, 2017. Whether the management is aware of any reason as to why it happened.*

(c) *Whether Adhunik Industries Ltd. had any transaction with Mr. Devesh Upadhyaya or Mr. Maha either directly or indirectly or with or through its associated entities. Provide an unequivocal response to SEBI's letter dated August 31, 2017.*

(d) *An affidavit from Mr. Jugal Kishore Agarwal stating whether he knew or had ever spoken either with Mr. Devesh Upadhyaya or Mr. Maha and if yes, when and in what context.*

(e) *Details of proposal to audit committee relating to Arm Length pricing for the transaction of Rs. 34 crore done with related parties during the F.Y. 2016-17. Also provide ledger statement and bank statement highlighting the receipts of funds and/or payments made for sale and/or purchase transactions carried out with related parties in the F.Y. 2016-17 and 2015-16. If the amount is due, provide the contract giving the*

credit terms. If the contract is not available, provide the invoices having details of payment terms.

(f) Details along with full breakup and documents with respect to the following balance sheet items for FY 2015-16:

(i) Short term borrowings

(ii) Trade Payables

(iii)Other short term liabilities

(iv) Trade receivables including age-wise analysis

(v) Short term loans and advances

(g) Top 10 suppliers for purchase of goods and top 10 clients for sale of goods for the F.Y. 2015-16 along with details and documents.

(h) Bank statements for the F.Y. 2015-16

(i) Copy of PPA Agreements justifying the business and services income of Rs. 51 crore reported in the F.Y. 2015-16.

(j) Role of Mr. Mohanlal Agarwal in the company"

14. SEBI vide email dated September 18, 2017 has also advised AIL to furnish the aforesaid information by September 25, 2017.

15. AIL vide its letters dated September 20, 2017 and September 25, 2017 submitted the information sought by SEBI at the time of hearing and vide email dated September 18, 2017, which are *inter alia* as under:

(a) With regard to point no. (a) of email dated September 18, 2017, as per the records of the Company, there was no corporate event in the month of April 2012 in relation to the Company. At the relevant time, Company was listed only at Calcutta Stock Exchange. The following filings were made with the Calcutta Stock Exchange Limited.

(i) Shareholding pattern for the quarter ended 31st March 2012, as per clause 35 of the listing agreement.

(ii) Compliance Report on Corporate Governance report for the quarter ended 31st March 2012 as per clause 49 of the listing agreement.

(iii) Compliance certificate for the half year ended 31st March 2012 as per Clause 47(c) of the listing agreement.

(b) With regard to point no. (b) of email dated September 18, 2017, the management has no specific reasons as to why there was spurt in the volume in the scrip during the period June 23, 2017 to August 07, 2017. However, there is no change in Promoter's holding during the period under review.

(c) With regard to point no. (c) and (d) of email dated September 18, 2017, on the basis of records, papers, books of account available with the Company, it is stated that the Company has not entered into any transaction with either Mr. Devesh Upadhyaya and/or Mr. Maha in last 10 years. In this regard, an affidavit from Mr. Jugal Kishore Agarwal has been attached.

(d) With regard to point no. (e) of email dated September 18, 2017, the proposal submitted to Audit committee relating to the approval of transaction to be entered into with related parties during the F.Y. 2016-17 at Arm Length price is enclosed. Copy of ledger statement along with invoices and bank statements duly highlighting the receipt of funds or payments made for sale or purchase transactions respectively carried out with Related Party M/s Adhunik Corporation Limited for the F.Y. 2015-16 and F.Y. 2016-17 are collectively enclosed.

(e) With regard to point no. (f) of email dated September 18, 2017, full Break up and documents with respect to Short term borrowings, Trade payables, other short term liabilities, Trade receivables including age wise analysis and short term loans and advances for the FY 2015-16 are as under:

(i) Copy of details of short term borrowings as on March 31, 2016 along with copy of sanction letter from bankers from whom working capital facilities have been availed by the Company are enclosed. The extract of details of Short Term Borrowings are as under:

S.No.	Particulars	Amount in Rs.
1	Bank of India (3031) – AIL	27,234,447
2	Cash Credit (Bank of Baroda) - AIL	64,706,707
3	Canara Bank (6450) – AIL	40,452,841
4	Cash Credit (OBC) – AIL	24,357,339
5	Cash Credit (PNB) – AIL	63,531,382
6	Cash Credit (SBI) – AIL	391,083,129
7	Cash Credit (SBM) (64078191907) – (AIL)	999,426
	TOTAL	**612,365,271**

(ii) Copy of details of Trade Payables as on March 31, 2016 are enclosed.

(iii) The details of other short term liabilities as on March 31, 2016 are enclosed. The extract of details of Other short term liabilities are as under:

S.No.	Particulars	Amount in Rs.
1	Current maturities of long term debt	6,44,26,087
2	Advance from customers	12,46,21,290
3	Unpaid/unclaimed dividends	2,04,0000
4	Statutory dues	2,66,08,660
	TOTAL	**21,58,60,037**

(iv) Details of Trade Receivables including age-wise analysis as on March 31, 2016 are enclosed.

(v) Details of short term loans and advances as on March 31, 2016 along with applicable details such as copies of challans of payment of taxes etc. are enclosed. The extract of details of Short term loans and Advances are as under:

S.No.	Particulars	Amount in Rs.
1	Security Deposits (Sales Tax Department)	8,59,80,000
2	Advance recoverable in cash or in kind (Amount of Rs. 9.46 crores as Input VAT)	9,83,13,367
3	Prepaid Expenses	1,35,552
4	Advance Payment to Supplier (Gagan Ferrotech 8.27 crores)	9,86,41,959
5	Balance with IT Authorities (Net Provision for taxation)	2,34,19,633
6	Balance with statutory/government authorities (Amount of Rs. 10.35 crores as Cenvat Credit for raw materials)	11.02.30.269
	TOTAL	**41,67,20,780**

(f) With regard to point no. (g) of email dated September 18, 2017, copies of Invoices for sale of goods to top 10 clients and purchase of goods from top 10 suppliers during the F.Y. 2015-16 are collectively enclosed.

(i) Top 10 clients for sale of goods are as under:

S.No.	Name of Customer	Amount of Sale (in Rs.)
1	Amit Metaliks Ltd	207,108,663
2	Steel Syndicate	206,195,525
3	Kritika Wires (P) Ltd	190,902,274
4	UIC Udyog Ltd	174,402,255
5	Innova Steel	127,121,637
6	R.K. Wire Prod. Ltd	113,988,285
7	Paul Brothers	107,903,858
8	Adhunik Corporation Ltd	103,420,647
9	Radhey Enterprises	97,489,266
10	Hari Om Sales Corporation	96,545,840
	TOTAL	**1,425,078,250**

(ii) Top 10 suppliers for purchase of goods are as under:

S.No.	Name of Customer	Amount of Purchase in Rs.
1	Shree Parasnath Re-Rolling Mills Ltd	97,79,97,424
2	Brahm (Alloys) P. Ltd	48,69,83,210
3	Satyam Smelters Pvt. Ltd	40,05,33,439
4	Steelex Electrocast Pvt Ltd	31,96,37,789
5	Gagan Ferrotech Limited	17,61,68,253
6	Adhunik Corporation Ltd	16,29,81,859

7	Ispat Damodar Limited	15,00,72,014
8	Shakambari Ispat and Power Ltd	13,83,88,004
9	R. S. Concast Ltd	12,97,86,844
10	Shivam Meltech Pvt Ltd	8,94,08,962
	TOTAL	**3,031,957,798**

(g) With regard to point no. (h) of email dated September 18, 2017, copies of Bank statement of all bankers including working capital bankers for F.Y. 2015-16 are enclosed.

(h) With regard to point no. (i) of email dated September 18, 2017, the copy of the power purchase agreement with the Maharashtra State Electricity Distribution Co. Ltd and other work orders along with other relevant papers are collectively enclosed.

(i) With regard to point no. (j) of email dated September 18, 2017, Mr. Mohan Lal Agarwal is one of the promoters and non-executive director of the Company. His role does not include any executive functions relating to the day to day management of the Company.

16. Meanwhile, pursuant to SEBI's letter dated August 9, 2017, NSE submitted its report vide email dated August 24, 2017 stating that Company is compliant with five clauses of Listing Regulations specified in SEBI Circular dated November 30, 2015 on Standard Operating Procedures. As per the Auditor Certificate dated August 14, 2017:

(a) Company had complied with the requirement of Companies Act, 2013 and had filled its annual returns during the last years i.e. FY 2013-14, 2014-15 and 2015-16 within due date,

(b) Company had filled its annual income tax returns for the year 2014-15, 2015-16 within due date with Income Tax Department (ITD) and there are no pending disputes with ITD,

(c) Company is a going concern engaged in business of steel manufacturing,

(d) The working capital account of the Company are overdrawn as on date and are recognized by working capital bankers under consortium arrangement as Standard under SMA-2 category.

Consideration:

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

(a) Whether there is prima facie suspicion / 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 suspicion / 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, any measures similar to those envisaged in SEBI letter dated August 7, 2017 needs to be taken by SEBI.

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 suspicion / 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 suspicion / 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) Related Party Transactions:

(i) With respect to the related party transactions, SEBI vide email dated December 20, 2017 had advised Company to submit documents - copy of shareholder's resolution, board resolution, approved proposal of audit committee etc. for all the related party transactions carried out during the F.Y. 2015-16 and FY 2016-2017. In response to it AIL vide letter dated December 30, 2017 has submitted the extracts of resolution passed in the Audit Committee meeting and Board meeting for the F.Y. 2015-16 and Extracts of resolution passed in Audit Committee meeting, Board meeting and special resolution for the material related party transactions to be entered in the F.Y. 2016-17. The details are as under:

Date	Resolution	Remarks	Amount (In Rs.)
29/05/2015	Audit Committee Meeting	Omnibus approval of Related Party Transaction during the F.Y. 2015-16	35,00,06,000
29/05/2015	Board Meeting	Omnibus approval of Related Party Transaction during the F.Y. 2015-16	35,00,06,000
27/05/2016	Audit Committee Meeting	Omnibus approval of Related party transaction during the F.Y. 2016-17	41,00,00,000

27/05/2016	Board Meeting	Omnibus approval of Related Party Transaction during the F.Y. 2016-17	41,00,00,000
12/08/2016	Audit Committee Meeting	Approval of Related party transaction during the F.Y. 2016-17	1,52,00,06,000
12/08/2016	Board Meeting	Approval of Related party transaction during the F.Y. 2016-17	1,52,00,06,000
21/09/2016	Special Resolution	Approval of Related party transaction during the F.Y. 2016-17	1,52,00,06,000

(ii) On the basis of above table for FY 2015-16, out of aggregate amount of Rs. 35 crores approved in the board meeting and Audit committee, it is observed that 32 crores stood for Adhunik Corporation Ltd. Further, Annual Report for FY 2015-16 also indicated that the company had major related party transactions with Adhunik Corporation Ltd. as brought out below. On the analysis of the bank statements for FY 2015-16 submitted by the company and the Ledger statement as provided by company vide reply dated September 25, 2017, the amount credited / debited from / to Adhunik Corporation Ltd. during the FY 2015-16 as per both the documents are as under:

Particulars	**Amount as per Ledger statement as provided by company vide reply dated September 25, 2017(in Rs.)**	**Amount as per Annual Report of FY 2015-16 (in Rs.)**	**Amount as per Bank statements (in Rs.)**
Amount received	10,38,20,432	-	2,05,49,95,000 *(approx.)
Amount Paid	12,34,84,962	-	2,34,62,53,663 *(approx.)

Particulars	Amount as per Ledger statement as provided by company vide reply dated September 25, 2017(in Rs.)	Amount as per Annual Report of FY 2015-16 (in Rs.)	Amount as per Bank statements (in Rs.)
Sale Amount	10,34,25,392	10,34,20,647	-
Purchase Amount	16,29,81,921	16,29,81,859	-
Amount receivable	0	0	-
Amount Payable	4,48,82,087	4,48,82,087	-

**Amount as per Bank Statements submitted by the Company. This approximate amount is as reflected in the entries against the name of 'Adhunik Corporation Ltd' seen in 23 bank accounts statements submitted by the company. There may be possibility of more such entries without the name of Adhunik Corporation Ltd' being reflected in the narration of such entries.*

(iii)On analysis of ledger statements of Adhunik Corporation Limited submitted by the company, *prima facie* it is observed that the company received Rs. 10.38 crores and paid Rs. 12.34 crores during the F.Y. 2015-16 on account of sale and purchase of products respectively. However, as per bank statements of 23 bank accounts submitted by the Company for the F.Y. 2015-16, *prima facie*, it is observed that the company received more than Rs. 200 crores and paid more than Rs. 200 crores from/to Adhunik Corporation Limited during the F.Y. 2015-16.

(iv) In this regard, SEBI vide email dated April 19, 2018 has advised AIL to provide the details of the nature of transactions for the receipt (of more than Rs. 200 crores) and transfer of funds (of more than Rs. 200 crores) entered with Adhunik Corporation Limited along with its comments for any non-disclosure in the Annual Report of F.Y. 2015-16. AIL vide its letter dated April 27, 2018 submitted that *"these on-account payments received from and made to Adhunik Corporation Limited was occasioned mainly due to cash credit limit of the company being overdrawn when temporary*

interest free accommodation was arranged from Adhunik Corporation Limited to maintain the continuity of the operation of the Company. There being no sales or purchase of goods, the temporary accommodation was reflected in the books of accounts but not in the regular sale and purchase account."

(v) From the Company's Annual Report for the F,Y. 2015-16, *prima facie*, it is observed that the several funds transfer with Adhunik Corporation Limited amounting to more than Rs. 400 crores are not reflected in the related party transactions.

(vi) As per regulation 2 (1) (zc) of LODR regulations, Related party transactions means "*a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:*" Thus, transfer of resources between a listed entity and a related party falls under the definition of related party transactions.

(vii) As per the explanation furnished in Regulation 23(1) of LODR Regulations "*A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.*" Therefore, the receipt of more than Rs. 200 crores and transfer of more than Rs.200 crores totaling to more than Rs. 400 crores of such transfers between AIL and Adhunik Corporation Limited in the F.Y. 2015-16 amounts to more than 97% of the annual turnover of AIL during the F.Y. 2014-15 (Revenue from operation is Rs. 411 crores) which exceeds 10% of Annual consolidated turnover of AIL and thus it is a material related party transaction in terms of Regulation 23(1) of SEBI(LODR) Regulations. It is noted that company's claim of temporary interest free accommodation has not been verified. However, even if the argument of the company is considered, still the transactions of

AIL of approximately Rs. 200 crores with Adhunik Corporation Limited is a related party transaction and is a material related party transactions that should have relevant approvals and disclosures.

(viii) As per regulation 23(4) SEBI (LODR) Regulations, 2015 *"All material related party transactions shall require approval of the shareholders through resolution."* Company vide its reply dated April 27, 2018 did not provide any reply for any non-disclosure in the Annual Report of F.Y. 2015-16 which was sought vide SEBI email dated April 19, 2018. Also, it is observed from the extracts of resolution passed in the Board meeting and Audit Committee meeting dated May 29, 2015 furnished vide its reply dated December 30, 2017, that omnibus approval of related party transaction with Adhunik Corporation Ltd. was obtained for 'Sale of Finished Goods' for Rs. 12 crores and 'Purchase of Goods' for Rs.20 crores. Hence, requisite Audit Committee Approvals, Board Approvals and Shareholders' approval were not obtained by the company while executing such funds transfers amounting to more than Rs. 400 crores with Adhunik Corporation Ltd. Thus, there is a *prima facie* evidence that AIL was not in compliance with regulation 23(4) SEBI (LODR) Regulations, 2015.

(b) Advance from customers:

(i) During the course of hearing as well as SEBI vide email September 18, 2017 advised AIL to submit the details of full break up and documents with respect to other short term liabilities for FY 2015-16. AIL vide letter dated September 25, 2017 submitted the following details of other short term liabilities:

S.No.	Particulars	Amount in Rs.
1	Current maturities of long term debt	6,44,26,087
2	Advance from customers	12,46,21,290

S.No.	Particulars	Amount in Rs.
3	Unpaid/unclaimed dividends	2,04,0000
4	Statutory dues	2,66,08,660
	TOTAL	**21,58,60,037**

(ii) Upon analysis of documents submitted by AIL with respect to the details of other short term liabilities i.e. as per Annexure D of the reply dated September 25, 2017, it is observed that Rs. 12.46 crore was advance from 103 customers. Considering the large number of customers, SEBI vide email dated December 20, 2017 advised AIL to provide the details of top 5 advance received from customers out of the list of 103 customers. AIL vide its reply dated December 30, 2017 provided the bank statement highlighting the receipt of advance and the copy of purchase order containing contract terms. The details provide by the company are listed below:

S. No.	Name of Customers	Amount received as on March 31, 2016 (as per reply dated September 25, 2017) in Rs.	Advance received from customers as per highlighted bank entries (vide reply dated December 30, 2017) in Rs.
1	Rameshwar Iron and Steel Pvt Ltd	2,41,58,420	2,57,13,788
2	Vivekananda International University	94,13,969	1,39,52,700
3	Kritika Wires (P) Ltd	1,36,43,990	1,39,51,471
4	Ravi Steel Pvt. Ltd	52,23,732	60,00,000
5	Radhika Enterprises	2,92,305	10,00,000

(iii) On analysis of highlighted entries in the bank statements provided by the company (vide its reply dated December 30, 2017) w.r.t top 5 advances received from customers, it appears that most of the advances have been received by the company during the F.Y. 2015-16 except the advance of Rs. 1.39 crore received from Vivekananda International University in the month of February 2014 in two tranches which is outstanding (Rs. 94,13,969) as on March 31, 2016. AIL replied that they had received ad-hoc payment on regular basis for supply of material as per the Purchase order. AIL vide its reply dated December 30, 2017 has also submitted email correspondences with Vivekanada International University.

(iv) SEBI vide email dated April 19, 2018 advised AIL to provide comments on differences in the details of Advance received from customers as on March 31, 2016 in terms of the reply dated September 25, 2017 and December 30, 2017 as mentioned in the table above. AIL vide letter dated April 27, 2018 submitted the copy of statement for reconciliation of differences in the amount of advances received and further submitted that the differences is because the partial amount of advance received is adjusted with the earlier sales made.

(v) It is noted that AIL vide its reply dated April 27, 2018 has not provided the current status w.r.t. the advance received from Vivekananda International University which is outstanding (Rs. 94,13,969) for more than two years as on March 31, 2016.

(vi) AIL have also submitted that they received Rs. 60,00,000 as advance from Ravi Steels Pvt Ltd and made a sales of Rs. 7,76,267 during the F.Y. 2015-16 and the amount of Rs. 52,23,732 is still lying with AIL because the order is under hold. It is noted AIL vide its reply dated April 27, 2018 has not provided the current status w.r.t. the same.

(vii) Thus, advances received from Vivekananda University and Ravi Steels Pvt. Ltd. *prima facie* do not appear to be in line with normal commercial practice. Thus, there is *prima facie* suspicion of misrepresentation of financials of AIL.

(c) Advance payment to Supplier:

(i) During the course of hearing as well as SEBI vide email September 18, 2017 advise AIL to submit the details of full break up and documents with respect to Short term Loans and Advances for FY 2015-16. AIL vide letter dated September 25, 2017 submitted the following details of Short term loans and Advances:

S.No.	Particulars	Amount in Rs.
1	Security Deposits (Sales Tax Department)	8,59,80,000
2	Advance recoverable in cash or in kind (Amount of Rs. 9.46 crores as Input VAT)	9,83,13,367
3	Prepaid Expenses	1,35,552
4	Advance Payment to Supplier (Gagan Ferrotech 8.27 crores)	9,86,41,959
5	Balance with IT Authorities (Net Provision for taxation)	2,34,19,633
6	Balance with statutory/government authorities (Amount of Rs. 10.35 crores as Cenvat Credit for raw materials)	11.02.30.269
	TOTAL	**41,67,20,780**

(ii) Upon analysis of documents submitted by AIL with respect to the details of Short term loans and Advances, it is noted that out of the total amount of Rs.9.86 crores for Advances to Suppliers, 8.27 crores pertained to only one entity i.e. Gagan Ferrotech

Ltd. Therefore, SEBI vide email dated December 20, 2017 advised AIL to provide the bank statement highlighting the payment of Rs. 8.27 crores to Gagan Ferrotech Ltd. including contract terms, agreement copy along with documentary evidence and subsequent transactions.

(iii) AIL vide letter dated December 30, 2017 submitted that the company has made ad-hoc payment of Rs. 10.15 crore to Gagan Ferrotech Limited during the period March 08, 2016 to March 22, 2016 and Rs. 8.27 crore was balance amount lying in the books of account in the ordinary course of operations of the Company following adjustments on FIFO basis method. The details of advance payment of Rs. 10.15 crore made by AIL to Gagan Ferrotech Limited as submitted by AIL is as under:-

S. No.	Date of payment of amount	Bank Name	Amount (Rs.)
1	08-03-2016	Letter of Credit	2,50,40,000
2	09-03-2016	State Bank of India, CAG Branch, Kolkata	1,55,00,000
3	15-03-2016	State Bank of India, CAG Branch, Kolkata	1,50,00,000
4	18-03-2016	State Bank of India, CAG Branch, Kolkata	2,00,00,000
5	22-03-2016	Letter of Credit	2,59,87,500
	Total		10,15,27,500
	Amount outstanding as on 31-03-2017		**8,27,34,285**

(iv) AIL further submitted vide letter dated December 30, 2017 that "*the company had not made purchases from the party and the amount get subsequently refunded*". The

details of the refund (received from Gagan Ferrotech Limited) during the period April 12, 2016 to June 08, 2017 as submitted by AIL is as under:-

S. No.	Date of refund of amount	Bank Name	Amount (Rs.)
1	12-04-2016	Punjab National Bank, Shakespeare Sarani Branch, Kolkata	1,79,00,000
2	25-04-2016	Punjab National Bank, Shakespeare Sarani Branch, Kolkata	2,46,00,000
3	06-05-2016	Punjab National Bank, Shakespeare Sarani Branch, Kolkata	1,80,00,000
4	02-07-2016	Canara Bank, Brabourne Road Branch, Kolkata	25,00,000
5	04-07-2016	Canara Bank, Brabourne Road Branch, Kolkata	26,90,000
6	05-07-2016	Canara Bank, Brabourne Road Branch, Kolkata	20,00,000
7	05-06-2017	HDFC Bank, Rasoi Court Branch, Kolkata	50,00,000
8	07-06-2017	HDFC Bank, Rasoi Court Branch, Kolkata	50,00,000
9	08-06-2017	HDFC Bank, Rasoi Court Branch, Kolkata	50,00,000
10	08-06-2017	HDFC Bank, Rasoi Court Branch, Kolkata	50,00,000
	Total		**8,76,90,000**

(v) Upon analysis of documents submitted by AIL vide letters dated September 25, 2017 and December 30, 2017, SEBI observed that the purchase order (issued to Gagan

Ferrotech Limited) attached with the reply dated December 30, 2017 is of March 2015 and the advance for the supply of material has been paid in March 2016 (by AIL). Therefore, SEBI vide email dated April 19, 2018 advised AIL to explain the same. AIL vide letter dated April 27, 2018 submitted that AIL issued purchase order (to Gagan Ferrotech Limited) on March 2015 for huge quantity and supplier (i.e. Gagan Ferrotech Limited) was initially not able to supply the goods at the price of order so Company was each and every time revalidating the order and finally in March 2016 the indicative price got settled and AIL made advance payment to Gagan Ferrotech Limited.

SEBI observed that AIL has not submitted any documentary evidence in support of the revalidation of order during the period March 2015 to March 2016 and also has not submitted the final purchase order (issued to Gagan Ferrotech Limited) or Proforma invoice to substantiate that the order finally got revalidated in March 2016.

(vi) Upon analysis of documents submitted by AIL, SEBI observed that the amount of advance outstanding was Rs. 8.27 crores as on March 31, 2016. However, AIL vide reply dated December 30, 2017 submitted that they received Rs. 8.76 crores (from Gagan Ferrotech Limited) since no transactions were carried out. Therefore, SEBI vide email dated April 19, 2018 advised AIL to explain about the excess amount so received by AIL.

With respect to receipt of excess amount of Rs. 8.76 crores (from Gagan Ferrotech Limited) against the advance payment of Rs.8.27 crore, AIL vide letter dated April 27, 2018 submitted that they had regularly been doing transaction with the party (i.e. Gagan Ferrotech Limited) and the amount of Rs. 0.49 crores is an excess amount that get settled in due course with transaction at a future dates.

SEBI observed that AIL has only paid advance to Gagan Ferrotech Limited and got refund back the amount from Gagan Ferrotech Limited in more than a year without

executing the purchase order dated March 30, 2015. It is also observed that there is huge delay in recovering the advance of more than Rs. 8 crores without any specific reasons pointed out and the last refund received was on June 08, 2017 against the purchase order of March 2015 and the advance payment made in the month of March 2016. It is also observed that no interest has been recovered by AIL for the delay.

(vii) SEBI observed that AIL vide its reply dated December 30, 2017 have stated that two letter of credit have been issued to Gagan Ferrotech Limited, however, no relevant documentary evidence was submitted. Therefore, SEBI vide email dated April 19, 2018 advised AIL to provide the copy of letter of credit dated March 08, 2016 and March 22, 2016. AIL vide letter dated April 27, 2018 submitted the copy of letters of credit.

SEBI observed that the advance payment of Rs. 10.15 crores in the month of March 2016 (Rs. 8.27 crores outstanding as on March 31, 2016) includes issuance of Letter of credit to Gagan Ferrotech Limited amounting to Rs. 5.09 crores. From the reply of the Company, it appears that AIL may have allowed the realization of letter of credit amounting to Rs. 5.09 crores to Gagan Ferrotech Limited without even receiving the material against the purchase order of March 2015.

(viii) Thus, from the above, it is noted that AIL had made advance payment of Rs. 10.15 crores to Gagan Ferrotech Limited in the month of March 2016 (Rs. 8.27 crores outstanding as on March 31, 2016) with respect to purchase order issued to Gagan Ferrotech Limited in the month of March 2015. It is also noted that the said amount was subsequently refunded back to AIL by Gagan Ferrotech Limited during the period April 12, 2016 to June 08, 2017 (i.e. during the period of approximately 15 months) as no purchases were made by AIL. Thus, there appears to be *prima facie* suspicion of misuse of books of accounts / funds of AIL.

20. From the above I note the following:

(a) That requisite Audit Committee Approvals, Board Approvals and Shareholders' approval were not obtained by AIL while executing funds transfers amounting to more than Rs. 400 crores with Adhunik Corporation Ltd (related party). Thus, there is a *prima facie* evidence that AIL was not in compliance with regulation 23(4) SEBI (LODR) Regulations, 2015.

(b) The advance received from Vivekananda International University which is outstanding (Rs. 94,13,969) for more than two years as on March 31, 2016 and the amount of Rs. 52,23,732 received as advance from Ravi Steels Pvt Ltd is still lying with AIL *prima facie* do not appear to be in line with normal commercial practice. Thus, there is *prima facie* suspicion of misrepresentation of financials of AIL.

(c) It is noted that AIL had made advance payment of Rs. 10.15 crores to Gagan Ferrotech Limited in the month of March 2016 (Rs. 8.27 crores outstanding as on March 31, 2016) w.r.t. purchase order issued to Gagan Ferrotech Limited in the month of March 2015. It is also noted that the said amount was subsequently refunded back to AIL by Gagan Ferrotech Limited during the period April 12, 2016 to June 08, 2017 (i.e. during the period of approximately 15 months) and no purchases were made by AIL. It is observed that AIL had failed to give adequate explanation for the same. Thus, there appears to be *prima facie* suspicion of misuse of books of accounts / funds of AIL.

21. Thus, there is a *prima facie* evidence that AIL was not in compliance with SEBI (LODR) Regulations, 2015 and there is *prima facie* suspicion of misrepresentation of business/financials as well as suspicion of misuse of 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 of its transactions.

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, any measures similar to those envisaged in SEBI letter dated August 7, 2017 needs to be taken by SEBI.*

22. In view of the *prima facie* evidence that AIL was not in compliance with SEBI (LODR) Regulations, 2015 and *prima facie* suspicion of misrepresentation of business/financials as well as suspicion of misuse of 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 shareholder interest.

24. In view of the above, I am of the view that following interim actions are required to be taken, pending further enquiry/audit.

INTERIM ORDER

25. 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, direct, against M/s Adhunik Industries Limited that:

    i. Exchange shall appoint an independent forensic auditor *interalia* to further verify:

        a. Misrepresentation including of financials and/or business by AIL, if any;

b. Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if any.

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

26. The '*directors*' for the purpose of direction mentioned at para 25(ii) 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.

27. Accordingly the representation of M/s Adhunik Industries Limited is disposed of.

28. The above directions shall take effect immediately and shall be in force until further Orders.

29. 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 Adhunik Industries 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 Adhunik Industries 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 25 above shall stand confirmed automatically, without any further orders.

30. Copy of this Order shall be forwarded to the recognised stock exchanges & depositories for information and necessary action.

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

Madhabi puri buch

DATE: SEPTEMBER 21st, 2018

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA