

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of –

SL. NO.	NOTICEE(S)	PAN
1.	Pawan Singh	AEUPS9882E
2.	Rajib Kumar Mishra	ACTPM1580A

(The aforesaid entities are hereinafter referred to by their respective names or Noticee number and collectively as “the Noticees”.)

In the matter of Corporate Governance Issues in PTC India Financial Services Ltd.

Background

1. In the wake of receipt of letters of resignation of three Independent Directors (**IDs**) of PTC India Financial Services Ltd. (**PFS**/ **Company**) and one ID of PTC India Limited (**PTC**) between January 19-21, 2022, which raised several allegations with regard to the corporate governance issues in PFS, Securities and Exchange Board of India (**SEBI**) examined the issues raised by the IDs, for the period April 1, 2021 to December 31, 2022 (**Examination Period**) to look into the possible violations of the provisions of the SEBI Act, 1992 and, *inter alia*, SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015 (**LODR Regulations, 2015**). Further, wherever deemed necessary, references were made to the period outside the examination period.
2. The examination *prima facie* revealed breach of various norms of corporate governance applicable to listed companies. In view thereof, a Show Cause Notice dated May 08, 2023 (**SCN**) was issued to the Noticees. The details mentioned in the SCN are as under:

Facts of the Case and the Allegations in the SCN:

3. PFS, which was incorporated on September 8, 2006, is a licensed Non-Banking Finance Company ('NBFC') classified as '*Infrastructure Finance Company*' by the Reserve Bank of India ('RBI'). Its shares are listed on the Bombay Stock Exchange ('BSE') and the National Stock Exchange ('NSE') since March 30, 2011. Pawan Singh ('**Noticee 1**') was the Managing Director and Chief Executive Officer ('MD-CEO') of PFS during the Examination Period. Rajib Kumar Mishra ('**Noticee 2**') has been PFS's Non-Executive Chairman from November 08, 2021. PFS is a material subsidiary of PTC, which holds 64.99% shares in PFS.

4. On January 19, 2022, three IDs of PFS, viz. Santosh B. Nayar, Thomas Mathews and Kamlesh Shivji Vikamsey resigned from PFS. In their resignation letters, which were also forwarded to SEBI, the said three IDs had raised several allegations of violation of corporate governance norms at PFS, pertaining to the following issues:
 - Mr. Ratnesh, Board appointed Whole Time Director ('WTD') & Director - Finance, not being allowed to join PFS;
 - Delayed disclosure of Forensic Audit Report ('FAR') on loans to Nagapatnam Power and Infratech Pvt. Ltd. to the Board of PFS after 2 years of completion of forensic audit;
 - Inaction on corporate governance issues highlighted by former Chairman - Mr. Deepak Amitabh, in the Board meeting dated August 05, 2021;
 - Unilateral change in conditions of loan extended to Patel Darah-Jhalawar Highway Pvt. Ltd., without prior approval of the Board;
 - Independent Directors' communication blatantly being ignored by the management; and
 - Limited or no information shared by the management with the Board.

5. Consequent to the resignation of the IDs in PFS, the Board of the Company on January 19, 2022, became non-functional and as a result, all the other Board Committees, viz. Nomination and Remuneration Committee (NRC), Risk Management Committee (RMC), Stakeholder Relations Committee (SRC) and

Corporate Social Responsibility Committee (CSRC), were also rendered inoperable. On January 21, 2022, Rakesh Kacker, an ID in both PTC and PFS (tenure as ID in PFS ended on December 31, 2021) also resigned from the Board of PTC citing similar concerns raised by the three IDs of PFS in their resignation letters to PFS.

6. Thereafter, PFS scheduled a Board meeting for January 22, 2022, without having a valid quorum for the same. Subsequently, vide e-mail dated January 22, 2022, SEBI intervened and directed PFS to first address the corporate governance issues raised by the resigning IDs before scheduling any Board meeting, and further, prohibited the Board meeting from taking place without a valid quorum. Further, PFS was directed to file an Action Taken Report ('ATR') on the corporate governance issues raised by the resigning IDs. Subsequently, vide e-mail dated February 8, 2022, PFS submitted ATR to SEBI, which failed to satisfactorily address the corporate governance issues as highlighted by the IDs. Thereafter, SEBI directed PTC to examine the corporate governance issues in PFS. PTC, the promoter of PFS with 64.99 % shareholding, had Nominee Directors on the Board of PFS, which implied that PTC was aware of the corporate governance issues in its subsidiary.
7. Meanwhile, to enable PFS to carry on its usual business and to satisfy the conditions in relation to the composition of the Board and its Committees, PTC vide a corporate announcement dated March 30, 2022 appointed four of its IDs, viz. (i) Ms. Sushma Nath, (ii) Mr. Ramesh N Misra, (iii) Mr. Devendra S. Saksena and (iv) Mr. Jayant P. Gokhale, to the Board of PFS. Further, PTC reconstituted its RMC to look into corporate governance issues in PFS. The RMC of PTC comprised of (i) Shri R N Misra (Chairman of the RMC and ID, PFS & PTC), (ii) Ms. Parminder Chopra (Nominee Director, PTC), (iii) Shri Jayant Gokhale (ID, PFS & PTC) and (iv) Ms. Preeti Saran (ID, PTC).
8. Further, on the recommendation of its Audit Committee, PFS, vide corporate announcement dated April 27, 2022 disclosed the appointment of M/s CNK & Associates LLP as forensic auditor, to carry out third party independent forensic audit of the financials of PFS. The forensic auditor was also asked to look into

the corporate governance issues highlighted by the three IDs in their resignation letters.

9. Subsequently, it was observed that PFS attempted to modify the composition of the Board without addressing the corporate governance issues and therefore, SEBI vide its e-mail dated May 13, 2022 advised PFS not to change the structure and composition of the Board till the completion of forensic audit by M/s CNK & Associates LLP and submission of Report by RMC of PTC.
10. Meanwhile, the RMC of PTC examined the corporate governance issues in PFS and submitted its Report (RMC1 Report) to SEBI, vide letter dated June 29, 2022. It was noted that the conclusion arrived at in RMC1 Report was not acceptable to two members of the RMC, viz. Mr. Jayant Gokhale and Ms. Preeti Saran. Subsequently, these two members of RMC submitted a separate Report ('RMC2'), which was at variance with RMC1 and had opposite findings. It was informed that RMC 1 Report had been adopted by majority of the PTC Board. However, the majority which supported RMC 1 Report consisted of only Nominee Directors and one ID, viz. Shri R. N. Misra and no other ID supported the findings of the RMC 1 Report. The findings of the RMC 2 Report were supported by all the IDs of PTC.
11. Although the forensic auditor was appointed in April 2022 by PFS, it could commence its work, with considerable delay, on July 18, 2022, after intervention by SEBI. It concluded on November 4, 2022 and its findings were disclosed on November 9, 2022. A copy of the Forensic Audit Report (**FAR-2022**) along with the comments of the Audit Committee and PFS Board was received by SEBI on November 16, 2022, which led to examination by SEBI, as referred to in Para 1 above.
12. The examination by SEBI was based on the minutes and video recordings of Board meetings, RMC 1 and 2 Reports, information received from PFS including internal communications of the Company, correspondence with SEBI, forensic audit Report and corporate announcements made by the Company. The findings of the examination have been brought out in subsequent paragraphs.

Mr. Ratnesh not being allowed to join PFS as WTD and Director (Finance)

13. Mr. Ratnesh was appointed by the Board of PFS as WTD and Director (Finance) after following its Board's laid down process. However, he could not join as a WTD and Director (Finance). It was observed that PFS's NRC, in its 43rd meeting held on July 17, 2021 had approved the conditions of appointment and an advertisement was issued accordingly. Pursuant to the same, in the 138th Board meeting held on August 28, 2021, the Board of PFS decided to appoint Mr. Ratnesh. In the said Board meeting, a mention was also made (as recorded in the minutes) that the applicants were allowed to come on deputation/ lien from their parent organisations. It was observed from the minutes that while the Board decided to approve the appointment of Mr. Ratnesh, Mr. Pawan Singh (Noticee 1), the MD & CEO of PFS, recommended that the appointment should only be '*on absorption basis*'. However, the then Chairman (Mr. Deepak Amitabh) overruled the said recommendation, stating that the process duly allowed for deputation/ lien which had already been completed (in line with the invitation for application) and that joining '*on absorption basis*' would be considered while finalizing the terms and conditions of the candidates. The same was recorded in the minutes and can be observed from video recordings of the said meeting.

14. As per the process, the decision to appoint Mr. Ratnesh as Director (Finance) was also placed before the 74th Audit Committee meeting of PFS held on Sept 13, 2021. Mr. Pawan Singh, who was not part of the Audit Committee, raised concerns about Mr. Ratnesh not having adequate work experience in the NBFC sector which, according to him, could be a major constraint in dealing with issues at PFS. However, the committee approved the appointment of Mr. Ratnesh. Further, as per the minutes of the 139th Board meeting, NRC informed the Board that Mr. Ratnesh would be joining on absorption basis. While the Board approved the appointment of Mr. Ratnesh in the said meeting, the MD & CEO of PFS again expressed dissent on the appointment of Mr. Ratnesh, owing to lack of working experience in the NBFC sector.

15. The appointment letter was issued to Mr. Ratnesh on September 07, 2021 and the same was accepted by Mr. Ratnesh on September 09, 2021. Accordingly, in line with Regulation 30 of LODR Regulations, 2015, the appointment of Mr. Ratnesh, as WTD designated as 'Director (Finance) and CFO', was disclosed to exchanges on September 14, 2021. Later, an addendum to the appointment letter was also issued to Mr. Ratnesh on September 16, 2021, revising the total compensation. The appointment letter (including the addendum), advised Mr. Ratnesh to submit a release order from his employer (i.e., NTPC) and self-attested copies of qualifications & experience certificates, at the time of joining PFS.
16. It is noted that on the day of joining i.e., October 29, 2021, a report was submitted by Mr. Ratnesh to the then Chairman of PFS, Mr. Deepak Amitabh, who by way of a noting in the said joining report, directed Mr. Pawan Singh (Noticee 1) to accept the joining of Mr. Ratnesh. However, Noticee 1 did not accept the joining of Mr. Ratnesh, without specifying any reason. Additionally, it is noted from e-mail dated November 24, 2021, sent by Mr. Ratnesh to PTC HR, that the documents required to be submitted at the time of joining as per the appointment letter, were not accepted by any official of PTC/ PFS. The same was also mentioned in the RMC 1 Report.
17. It was observed that for the 142nd Board meeting of PFS, held on November 8, 2021, no notice was given to Mr. Ratnesh, even though he had already been appointed Director-Finance and his appointment had been disclosed to the stock exchanges on September 14, 2021 itself. In this regard, objections were raised by the Chairman of the meeting (Mr. Rakesh Kacker) and other IDs. It was noted from the minutes of the said meeting that Mr. Rajib Kumar Mishra and Mr. Pankaj Goel (both nominees from PTC), who were yet to join PFS Board formally and whose appointment was disclosed on the stock exchanges' website only on November 9, 2021, were invited to the said Board meeting. At the said meeting, the Board was informed by Mr. Pawan Singh that the joining formalities of Mr. Ratnesh were not complete and therefore, he had not been invited for the meeting. Mr. Singh's statements were supported by Mr. Rajib Kumar Mishra. Further, Mr. Pawan Singh apprised the Board that Mr. Ratnesh

had sought 15 days' time to complete the joining formalities on November 8, 2021 and once the joining formalities were complete, he would be invited. It was pointed out by Mr. Rajib Kumar Mishra that “*Mr. Ratnesh had requested for time up to Nov 22, 2021 to complete the joining formalities, which had been circulated to Board members. He was therefore not a Board member.*”

18. Further, Mr. Nayar, one of the IDs, stated that it would have been better to invite Mr. Ratnesh for the meeting and if he did not want to attend, he could ask for leave of absence. The IDs were of the view that PFS might inform Mr. Ratnesh of the required documents, which could be submitted in due course. Further, Mr. Nayar stated that as Mr. Ratnesh had joined on October 29, 2021 and his joining Report was signed and circulated to the Board members, PTC and PFS should have asked the required documents from him, however, not doing so by PTC and PFS did not make his appointment invalid. It was decided that the meeting could be held only after sending the notice of the meeting to all the directors including Mr. Ratnesh. The meeting was declared invalid.
19. It was observed from NTPC Order dated December 13, 2021 that Mr. Ratnesh re-joined NTPC on December 6, 2021. The same was informed by NTPC to PTC on December 24, 2021 and subsequently PTC informed the same to PFS on January 03, 2022, which informed its Board on January 04, 2022.
20. From the above facts, it was observed that the MD & CEO, from the very beginning, was not in favour of the appointment of Mr. Ratnesh, as he tried to oppose the appointment of Mr. Ratnesh in several meetings either by citing reasons of his having no working experience in the area of NBFCs or by insisting on appointment 'on absorption basis' only, despite approval from the NRC, Audit Committee and the Board of PFS.
21. As already pointed out above, the events leading to Mr. Ratnesh not being allowed to join PFS were examined by the RMC of PTC and thereafter two Reports, viz. RMC 1 Report and RMC 2 Report were prepared. As per RMC 1 Report, the reasons noted by PFS management for not accepting Mr. Ratnesh's joining report were incomplete documentation (non-furnishing of relieving order

and Director 2 form at the time of joining PFS) and that PTC-HR, which was coordinating the recruitment process, was responsible for collecting the documents from Mr. Ratnesh. The RMC 2 Report noted that the deficiencies, if any, in the documents submitted by Mr. Ratnesh, were not seen by any one in PFS at the given time. It further observed that as regards the details of the person who had identified such deficiencies, no such person was identified.

22. Further, the FAR-2022 stated that the PFS management was trying to ensure that Mr. Ratnesh was not appointed and that lapses, if any, in his appointment, were merely technical in nature and curable. The stance of the PFS management that Mr. Ratnesh did not provide complete documents for his joining, also appeared incongruous in light of the findings of the RMC 1 Report that the documents were never collected from Mr. Ratnesh on the day of joining. Additionally, RMC 1 Report recorded that the RMC Chairman in the deliberations noted that Mr. Ratnesh had made available the documents to PTC-HR on the day of joining. The RMC 2 Report recorded that on the day of joining, Mr. Ratnesh was carrying the relevant documents required for joining but no one accepted the same.
23. It was therefore inferred that on the date of joining, Mr. Ratnesh was carrying all the documents as mentioned in the appointment letter.
24. In the Board meeting held on November 09, 2021, it was informed by Mr. Pawan Singh (Noticee 1) (as recorded in the minutes of the meeting) that Mr. Ratnesh had sought leave of absence from the meeting. However, the RMC 1 Report showed that he was repeatedly prevented from joining PFS Board by Noticees 1 and 2 who asked him to seek time to complete the joining formalities and take leave of absence for the November 9, 2021 Board meeting. Further, FAR-2022 also found that Mr Ratnesh was forced to seek leave of absence for the Board meeting held on November 9, 2021.
25. Subsequent to the Board meeting held on November 9, 2021, Mr Ratnesh, by way of e-mails dated November 17 and 18, 2021, again submitted the relieving order and copies of educational/ experience certificates, in response to a phone

call received from HR Manager-PTC. Mr. Ratnesh, additionally requested PTC-HR to inform him of any other administrative/ joining formalities which were required to be completed. However, the subsequent emails exchanged between Mr. Ratnesh and HR Manager-PTC showed that the latter informed the former that his joining formalities stood incomplete due to non-submission of the pre-requisite documents within the stipulated time for which the appointment letter issued and the joining had been kept in abeyance. It was also informed that no further communication would be entertained in that regard.

26. It appeared that additional documents (other than those mentioned in the appointment letter) viz. vigilance clearance and unconditional relieving letter, were sought by PTC-HR as a pre-requisite for joining. The same were sought for the first time by PTC in the e-mail dated November 22, 2021. In this regard, RMC 2 Report concluded that the entire time-consuming exercise of finding deficiencies in the documentation was an afterthought. The FAR-2022 also noted that efforts were made to thwart the filling up of the said position.
27. It was noted that as per the relieving order dated October 28, 2021, NTPC had allowed Mr. Ratnesh to have lien on the post of CGM in NTPC till September 30, 2023. In this regard, the RMC 1 Report noted that the said fact was not disclosed to PTC/ PFS till Nov 17, 2021. The RMC 1 Report further recorded that since the appointment was 'on absorption basis' (as decided in the 139th Board meeting), Mr. Ratnesh's joining efforts were not in terms of the appointment letter. In this regard, it was noted that the relieving letter issued to Mr. Ratnesh on October 28, 2021 was made available by him to PTC-HR on the day of joining i.e., October 29, 2021, which indicated that the condition of 'lien' mentioned therein had been disclosed to PTC/PFS. Further, in the appointment letter dated Sep 7, 2021, that there was no mention of joining 'on absorption basis' and the advertisement published in respect to the post also mentioned that 'Deputation/ Lien for applicants from PTC and its promoter companies was allowed.' Also, it did not appear that the condition that the appointment was 'on absorption basis', was communicated to Mr. Ratnesh. It therefore emerged that the deficiency regarding the nature of employment of

Mr. Ratnesh with PFS, if any, was technical in nature and the same could have been cured provided such deficiency was communicated to Mr. Ratnesh.

28. It was observed that a legal opinion was taken from ASG (Shri Chetan Sharma) on November 8, 2021 w.r.t joining of Mr. Ratnesh wherein the ASG was given a list of 12 documents which was required for formal joining. The ASG opined that *prima facie* the joining process of Mr. Ratnesh remained incomplete and non-compliant. Further, another opinion was taken on November 20, 2021 from ASG (Shri Chetan Sharma) on '*whether the joining of Mr. Ratnesh as whole time director (Finance) & CFO of PFS was complete and compliant with the appointment terms & conditions, especially in view of the relieving order October 28, 2021*'. No information was shared with the IDs while seeking the legal opinions. In this regard, the FAR-2022 has observed that the legal opinion did not cover all the aspects related to Mr. Ratnesh's appointment.
29. It was observed that the list of documents referred by ASG in his opinion on November 8, 2021 was not as per the appointment letter. Further, there were no records to show that this list of documents was communicated to Mr. Ratnesh. Further, wrong dates were quoted in the legal opinion obtained on November 20, 2021 which was modified twice (November 26, 2021 and November 30, 2021). From the above, it was clear that the legal opinion was obtained in haste only to prevent Mr. Ratnesh from joining the Board of PFS.
30. The above facts showed that Noticee 1 unilaterally disregarded PFS Board's decision to appoint Mr. Ratnesh by arbitrarily putting on hold his joining, despite Mr. Ratnesh carrying the requisite documents mentioned in the appointment letter. Further, the fact that Mr. Ratnesh's appointment was put on hold was not even informed to the PFS board, as the email dated January 4, 2022 from PTC to PFS Board showed that very limited information was disclosed to the Board regarding Mr. Ratnesh re-joining NTPC on Dec 24, 2021 and no sufficient reasoning/ explanation was provided for the same. Further, the fact that Mr. Ratnesh's joining as WTD of PFS was put on hold/ in abeyance was not disclosed to the stock exchanges.

31. The Noticee 1, by obstructing the joining of Mr. Ratnesh as WTD (Finance) and CFO, failed to fill a critical vacancy. On top of that, he failed to appoint a standby candidate unanimously recommended by the NRC, in case selected candidate was unable to join.

***Loan to NSL Nagapatnam Power and Infratech Pvt. Ltd.
(‘NSL’/‘NNPIPL’)***

32. PFS had approved a bridge loan of Rs.125 Crore to NSL to set up a coal-based power project in January 2014, and the same was disbursed in March 2014. The repayment of the bridge loan was to start after a moratorium of 12 months, in 4 instalments or to be converted into long term loan. NSL defaulted on the first repayment as the post-dated cheques issued by NSL towards interest payment were dishonoured. Hence, the account became irregular and was declared NPA on March 31, 2017.
33. Subsequently, insolvency proceedings were initiated on NSL and the promoters of NSL came up with a One Time Settlement ("OTS") offer of Rs.90 Crore against the bridge loan of Rs.125 Crore. The same was placed before the Business Committee of PFS in March 2020. On December 16, 2020, a revised agenda was circulated in respect of the NSL loan, along with a Forensic Audit Report dated November 26, 2018 (FAR-2018), prepared on the instruction of PFS with regard to NSL's loan account. The FAR-2018 was disclosed to the Board for the first time in 2020, i.e., after two years of its completion. The Board took cognizance of the same in the Board meeting on December 19, 2020 and recommended NSL Loan account to be Reported to RBI as a suspected fraud.
34. From the minutes of the 130th Board meeting of PFS held on December 19, 2020, it was observed that Nominee Directors of PTC had made specific queries to PFS on non-disclosure of the FAR-2018 of NSL for which no satisfactory response was provided. Further, on an independent legal opinion dated Dec 15, 2020 on FAR-2018 obtained from a senior counsel by PFS management, the Board members opined that it brought out certain suspicious activities in the account. The Board decided that the matter should be Reported

to RBI as a case of suspected fraud. Additionally, a two-member committee of IDs (CoIDs) consisting of Ms. Pravin Tripathi and Mr. Thomas Mathew was constituted to examine the governance, compliances and reporting related issues of non-disclosure of FAR-2018. The minutes of the 130th Board meeting noted the dissent of Noticee 1 on constitution of the said committee. Further, Noticee 1 submitted that the legal opinion dated Dec 15, 2020 was based on incomplete inputs and further, circulated for consideration a second legal opinion dated December 18, 2020 obtained by PFS which, according to Noticee 1, was based on all available facts and information.

35. As per the minutes of 137th Board meeting held on August 05, 2021, Mr. Deepak Amitabh (former Chairman of PFS) had raised concern on not scheduling meeting of Audit Committee to discuss a 'suspected fraud' in a particular loan account despite insistence of Chairman, Audit Committee. Additionally, the minutes of the Audit Committee meetings dated July 19, July 30 and August 4, 2021 showed that as per the decision in the Board meeting dated May 17, 2021, the matter of NSL should have been Reported to RBI as a case of suspected fraud, in consultation with the Audit Committee ('AC'). However, the draft letter to RBI was not placed as an agenda in the 71st AC meeting. The Committee expressed its displeasure on the same. Further, there was already a significant delay in the meeting of the Audit Committee. The draft letter to RBI was placed before the 72nd AC meeting and was found to be unsatisfactory, as the intent of the Board's decision and the important findings of FAR-2018 were not incorporated and the element of suspected fraud was not captured clearly.
36. The CoID came out with its Report on April 21, 2021, which noted that the overall reading of the FAR-2018 indicated that there existed diversion and mis-utilisation of funds disbursed under the bridge loan. The CoID further noted that the FAR-2018 highlighted sufficient irregularities which raised a clear suspicion of fraudulent activities in the account of NSL. However, due to non-cooperative attitude of NSL, the auditors could not draw a clear conclusion of fraud. The CoID Report also noted that FAR-2018 was neither disclosed in any committee nor to the Board for 2 years. The non-disclosure of FAR-2018, which brought

out financial irregularities and case of suspected fraud, amounted to dereliction of duty by the PFS management. The CoID recorded that PFS had a 'Fraud Monitoring & Prevention Policy' approved by the PFS Board in May 2018, which was not followed by PFS in the case of NSL. The CoID, however, was of the view that the non-disclosure and non-compliance might not have been deliberate or mala-fide but occurred due to negligence, weak systems and lack of controls. This incident was a collective failure of the PFS management and was a failure of the corporate governance mechanism in PFS. The CoID Report lastly recommended to the PFS management to report the suspected fraud in the case of NSL, to the RBI.

37. The RMC 2 Report was in line with the findings of the CoID's Report. The RMC 2 Report found that the delay in the placement of FAR-2018 Report before the Board was a clear corporate governance failure. Further, the FAR-2022 was in effect a reiteration of the findings brought out in the CoID Report and the RMC 2 Report. FAR-2022 clearly put the responsibility on Noticee 1. As observed from the findings of the FAR-2022, the disbursement and monitoring responsibility of the NSL loan account lay with Noticee 1. The FAR 2022 clearly brought out corporate governance lapses in respect of the NSL loan account and Noticee 1 of PFS being responsible for it. RMC 2 had indicated serious fault in the conduct of PFS management, especially Noticee 1.
38. From the above, it was clear that there was significant delay on the part of Noticee 1 in putting up the FAR-2018, which contained material information pertaining to the NSL loan account, before the Board. It also appeared that several red flags were ignored and disbursements towards NSL were made despite full knowledge of imperfect security creation and its delicate financial position. Further, there was considerable delay on the part of Noticee 1 in providing inputs/ information in respect of the NSL loan account to CoID formed by the Board to examine non-disclosure related issues. There were delays attributable to Noticee 1 in scheduling the Audit Committee meetings to discuss the NSL matter. Further, even after clear direction from the PFS Board to Report the NSL Loan account as 'suspected fraud', there was a significant delay in Reporting the matter to RBI. The Reporting of suspected fraud to RBI was

done vide letter dated August 12, 2021 i.e., around 3 months from the date of decision to Report the same was taken by the Board.

Inaction on Corporate Governance issues highlighted by Ex-Chairman (Mr. Deepak Amitabh)

39. In the 137th Board meeting held on August 05, 2021, ex-Chairman Mr. Deepak Amitabh highlighted certain issues pertaining to the governance of PFS. In the same meeting, Noticee 1 provided his rebuttals. The said issues were as under:
- (a) Not scheduling meeting of audit committee to discuss a 'suspected fraud' account of NSL despite insistence of chairman, audit committee.
 - (b) Director (Marketing) declining to sign the duplicate deed of covenants as he might have had certain issues relating to governance at PFS and might not be comfortable signing the same.
 - (c) Presentation provided to PTC was different from the one made by Noticee to RMC of PTC.
 - (d) Inputs required to be given by PFS management to the Committee of IDs on NSL issues were considerably delayed.
 - (e) Information/ data sought by PTC was either delayed or not given.
 - (f) Agenda items of PFS did not contain the required information/ disclosure.
40. Additionally, it is observed from the minutes of the Audit committee meeting held on November 9, 2021 that the statutory auditor had taken note of the abovementioned issues raised by the then Chairman, Mr. Deepak Amitabh. During the said meeting, PFS management asserted that none of these observations raises any concern of the Board on financial prudence of the Company. The statutory auditor was of the opinion that all issues raised by the then Chairman should be addressed by the Board not later than the year-end. It was further noted that the statutory auditor had indicated that if the points raised by the Ex-Chairman were not addressed, the statutory auditor would likely have faced challenges in issuing an un-modified/ unqualified opinion on the financial statements.

41. It was observed that Noticee 1, being the executive functionary and member of the Board, had not made any attempt in addressing the issues as raised by the then Chairman. He had *prima facie* failed in monitoring the effectiveness of PFS's corporate governance practices and did not adhere to the internal controls and system of Reporting.

Change in the terms and conditions of loan granted to Patel Darah – Jhalawar Highway Pvt. Ltd.

42. PFS extended a term loan of Rs.150 Crore to Patel Darah-Jhalawar Highway Pvt. Ltd. for four-laning of Darah-Jhalawar-Teendhar section of NH-12 in the state of Rajasthan under the Hybrid Annuity Model. The board approved the said loan at its 130th Board meeting held on December 19, 2020. It is observed from the minutes of the said meeting, that the Board while approving the term loan of Rs. 150 Crore, had specifically stated that any modification in the terms and conditions of the said loan be made with the approval of the Board only.
43. It was alleged that Noticee 1 unilaterally changed the conditions of a loan agreement despite an explicit direction by the Board that any changes need to be first approved by the Board. It was further alleged that by flouting the Board's terms of sanction for the Term Loan, Noticee 1 has blatantly ignored corporate governance norms.

Ignoring communication of Independent Directors and Providing no or limited/incomplete information to the Board Members.

44. Certain IDs, namely, Mr. Santosh Nayar, Mr. Rakesh Kacker, Mr. Thomas Mathew and Mr. Kamlesh Vikamsey by way of their resignation letters *inter alia* stated that numerous communications addressed by them to the PFS management, raising various issues concerning the Company, were not acted upon/ responded to. The specific issues raised by the IDs pertained to request for professional legal counsel for IDs as per Sec. 149 of the Companies Act, 2013; documentation pertaining to appointment and joining of Mr. Ratnesh; withdrawal of nomination of Ms. Renu Narang from the Board of the Company, which made the NRC dysfunctional; calling for meeting of NRC to fill up the

vacancy of woman ID; and the convening of the Board and committee meetings.

45. It was alleged by the IDs in their resignation letters that the information sought by the IDs, 144th especially the complete documentation with regard to the appointment of Mr. Ratnesh was not placed before the Board; and the note regarding the circular resolution dated January 10, 2022 for waiver of special conditions to IL&FS Tamil Nadu Power Company Ltd. ('ITPL') did not highlight the important fact of fraud by the borrower as well as its impact on the Balance sheet of the PFS, which was required to be Reported to the Board.
46. Additionally, the IDs alleged that the notice dated January 14, 2022, scheduling the 144th Board meeting on January 22, 2022, was not addressed to all the Directors and also did not contain any agenda item for discussion regarding the various corporate governance issues which the IDs had repeatedly raised.
47. It was *prima facie* found that Noticee 1 failed to fulfil his responsibilities of providing all necessary information sought by the Board of Directors including the IDs (so as to enable them to function on a fully informed basis). He also failed to inform the IDs of PFS or SEBI, the reasons for withdrawal of Ms. Renu Narang from the directorship of PFS and the deviations made from the Board's decision.
48. Further, Noticees 1 and 2 allegedly failed to ensure sufficient number of non-executive members on the committees by failing to appoint one independent woman director and re-constitute the NRC post the withdrawal of Ms. Renu Narang, convene NRC meetings and provide legal help to the IDs, as sought for by them.
49. Further, it was alleged that Noticee 1 unilaterally decided to give effect to the cessation of Mr. Ratnesh as a director of PFS, without giving prior intimation to the PFS Board. Further, as regards the issues of loan to ITPL, there was arbitrary application of materiality policy and selective disclosure of material events by PFS. Since all disclosures were being made with the approval of

Noticee 1, the responsibility for not making adequate disclosure rested with Noticee 1.

50. The IDs had consistently raised issues before Noticee 2, who was the Chairman of PFS. Considering that all IDs had resigned citing corporate governance issues, the same showed failure on the part of Noticee 2, as Chairman of PFS, in ensuring effective functioning of the Board. By disregarding the communication of all IDs, Noticee 2 has been ineffective in his role as the Chairman. Further, he failed in conducting the board meetings and acting as a conciliatory element in the event of conflict among the Board members. In November and December 2022, three more IDs resigned from the Board of PFS citing corporate governance issue, further supporting the allegations/issues raised by 4 IDs who resigned in January 2022. The frequent resignations of IDs, highlighted the failure of Noticee 2 in effectively discharging his role as a Chairman of the Board. Noticee 1 by not providing proper legal assistance sought by the IDs hampered the independent functioning of the IDs.

Additional Issues Observed During Examination

51. Apart from the above issues, the examination by SEBI revealed other issues related to corporate governance, which are summarized hereunder.

Board meeting Scheduled on January 22, 2022 without a Valid Quorum

52. PFS issued a notice dated January 14, 2022 convening a Board meeting on January 22, 2022. However, on January 19, 2022, all the IDs of PFS resigned citing corporate governance issues. As per Regulation 17(2A) of the LODR Regulations, 2015, at least one ID was required for a valid quorum. Disregarding the regulations, PFS did not withdraw the notice of the said board meeting and made a request to SEBI for exemption from the applicability of Regulation 17(2A) of LODR Regulations, 2015. SEBI intervened and directed the Company to first address the corporate governance issues raised by the resigning IDs before scheduling any Board meeting and thereby, prohibited the Board meeting from taking place without a valid quorum. A press conference was also called by Noticees 1 and 2, wherein they were dismissive of the issues

raised by the resigning IDs and reiterated their view of holding the said Board meeting. The said behaviour showed the undermining of authority of IDs by Noticees 1 and 2 and their apathy towards corporate governance issues as the MD& CEO and the Chairman respectively of PFS.

Incorrect Reporting in Corporate Governance Report

53. The examination carried out by SEBI revealed that PFS had not filed the Corporate Governance Report for the September quarter of 2022. Further, as per the Corporate Governance Reports available for the March and June quarters of 2022, two IDs who had resigned in January 2022, were shown as part of Stakeholder's Relationship Committee ("SRC"). In this regard, stock exchanges levied fine for non-compliances under the SOP Circular issued by SEBI.

Delays in commencement of Forensic Audit and non- cooperation with forensic auditor

54. The forensic auditor was appointed on April 27, 2022 based on the decision of the Audit Committee. The Audit Committee itself had to sign the letter of engagement due to non-cooperation from Noticee 1 in appointing the forensic auditor. Noticees 1 and 2 also questioned the authority of Audit Committee in respect of the said decision and tried to go against the decision of the audit committee by appointing some other forensic auditor than the one suggested by the audit committee. It also appeared that Noticee 1 instructed the employees not to share any information with the auditor.
55. The forensic audit could commence only on July 18, 2022, even though the forensic auditor (CNK & Associates LLP) was appointed as early as April 27, 2022. As per the information shared by the forensic auditor, the PFS management did not cooperate with the forensic auditor and the actual flow of information started only in the month of August 2022. Also, the forensic auditor has recorded in the FAR-2022 that information concerning loan accounts of earlier periods was provided by PFS after much resistance, and in many cases, was provided in bits and pieces, making the verification of Loan Accounts difficult.

56. It was observed that due to delay in the commencement of forensic audit and non- cooperation by Noticee 1 with the forensic auditor, there was delay in preparation of the Forensic Audit Report and consequently delay in finalizing financial results of PFS for FY22. Consequently, in terms of SEBI Circular dated January 22, 2020, the scrip of PFS was shifted to 'Z Category', impacting the price of the scrip.

Reconstitution of Audit committee prior to submission of the FAR-2022

57. By way of an e-mail dated May 13, 2022, SEBI had directed the Company to not change the structure and composition of the Board till completion of the forensic audit. However, in breach of the instructions of SEBI and disregarding the objections by the Audit Committee Chairman, PFS reconstituted its Audit Committee. Vide e- mail dated October 24, 2022, PFS informed SEBI about the reconstitution of the Audit Committee. The Forensic Audit Report (FAR-2022) was completed on November 04, 2022.

Issues related to disclosure of Forensic Audit Report

58. PFS vide its corporate announcement dated November 8, 2022 had disclosed to the exchanges that the forensic audit initiated on April 27, 2022 had been completed and accordingly, the final Report had been issued by the forensic auditor. However, the Company did not disclose the FAR-2022. Subsequently, on the exchange's insistence, the Company disclosed the FAR-2022 along with PFS Management's response and remarks of Ernst & Young LLP to the FAR-2022 in one composite document as 'General Updates' on November 9, 2022. It was observed that the FAR-2022, as disclosed by PFS, was not machine readable and the quality of the scan was poor, rendering the Report unreadable. Also, some of the exhibits placed in the Report were difficult to comprehend. Consequently, the exchange advised the Company to separately do the filing of FAR-2022 under Regulation 30 of the LODR Regulations, 2015.
59. It appeared that PFS with an intention to soften the impact of the findings of FAR-2022, deliberately disclosed the FAR-2022 as a 'General Update' whereas other announcements had been made under Regulation 30 of LODR

Regulations, 2015. Also, the FAR-2022 was disclosed as part of a consolidated document, wherein the first two sections highlighted PFS Management's response and remarks issued by Ernst & Young LLP followed by the FAR-2022. It was noted that all the disclosure, which were approved by Noticee 1, and were not done in an objective manner and there was a deliberate attempt to underplay the impact of the Report.

Delay in disclosing the Resignation of Ms. Sushma Nath (ID of PFS)

60. Vide corporate announcement dated November 24, 2022 (17:42:36), PFS informed that one of its IDs (Ms. Sushma Nath) had resigned on November 22, 2022. It was observed from the resignation letter that the same was intimated to the Company on November 22, 2022 at 11:00 am by Ms. Sushma Nath. This showed that the disclosure was made with a delay of more than 24 hours. No explanation has been provided by the Company for such delay. Since all the disclosure were being done with the approval of Noticee 1, he was responsible for ensuring the disclosures in a timely manner.

Functioning of Audit Committee

61. By way of an e-mail dated May 26, 2022, Mr Jayant Gokhale raised multiple concerns regarding the functioning of the Audit Committee on the following issues:
- (a) Financials (Dec 31, 2021) presented before the Audit Committee did not include numerous provisions which in the opinion of the auditors were necessary for the financial results to reflect the true picture of the Company.
 - (b) Noticee 1 was not in agreement with the views of the auditors and the same was not fully brought out in the presentation made to the audit committee;
 - (c) The finance team/CFO and the management were expressing different views related to provisioning before the Audit Committee.
62. From the examination of records, it appeared that -
- (a) Issues relating to the functioning of the Audit Committee had been raised much prior to the resignations of two IDs, viz. Mr. Jayant Gokhale and Mr. DK Saksena, on December 2, 2022;

- (b) SEBI communication had not been Reported to the Audit Committee/Board by the management in a timely manner;
 - (c) Attempts were made by the PFS management to record the minutes in a manner that was not a true and correct depiction of the deliberations in the Committee; and
 - (d) On certain occasions, Noticee 1 failed to provide adequate and complete information to the Audit Committee, posing a great challenge before them to function properly.
63. Noticees 1 and 2 allegedly posed impediments to the Audit Committee in discharging its responsibilities.

Legal Provisions allegedly violated by Noticees 1 and 2:

64. In view of the above, it was alleged in the SCN that Noticee 1 had violated the provisions of Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(7), 4(2)(f)(ii)(8), 4(2)(f)(iii)(3), 4(2)(f)(iii)(6), 4(2)(f)(iii)(7), 4(2)(f)(iii)(8), 4(2)(f)(iii)(12), 4(2)(f)(iii)(13), 4(2)(f)(iii)(14), Clause E of Part A of Schedule II read with Regulation 17(7), Regulation 26(3), Regulations 30(4)(i)(a) and 30(12) read with Regulations 4(2)(d)(iii) & 4(2)(b) and Regulations 30 (2) and 30 (6) read with Clauses 7 & 17 of Schedule III of Part A and Regulations 4(1) (d), 4(2) (e) of LODR Regulations, 2015 and Clauses 4 (ii), (vii), (ix), 5(iii), (vi), (vii), (viii), (xii), (xiii), (xv), (xvii) of Code of Conduct of PFS.
65. The SCN further alleged that Noticee 2 had violated the provisions of Regulations 4(2)(f)(iii)(3), 4(2)(f)(iii)(6), 4(2)(f)(iii)(8), 4(2)(f)(iii)(12), 4(2)(f)(iii)(13), 4(2)(f)(iii)(14) and 26(3) of LODR Regulations, 2015 read with Clauses 5 (iii), (vi), (vii), (xii), (xiii), (xv) of Code of Conduct of PFS.
66. The SCN called upon the Noticees to show cause as to why directions under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992, including directions for restraining them from accessing the securities market and associating with any listed company or registered intermediary should not be issued against them. The Noticees were also called upon to show case as to why penalty under Sections 11(4A) and 11B(2) read with Section 15HB of the SEBI Act, 1992 pursuant to an inquiry in terms of Rule 4 of SEBI (Procedure for Holding Inquiry

and Imposing Penalties) Rules, 1995 (“**Adjudication Rules, 1995**”) for the abovementioned alleged violations should not be imposed on them.

Inspection of Documents, Personal Hearing, and Replies of the Noticees

67. The SCN was duly served on the Noticees. Shri Pawan Singh (Noticee 1) replied to the SCN vide his letters dated May 24, 2023; June 02, 2023; June 30, 2023; October 07, 2023 and April 06, 2024. Shri Rajib Kumar Mishra (Noticee 2) replied to the SCN vide letters dated May 08, 2023; July 12, 2023; July 13, 2023; July 14, 2023 and July 28, 2023.
68. Noticees also sought certain documents. Accordingly, relevant and relied upon documents were provided to the said Noticees. Further, inspection of documents was also provided to the Noticees 1 and 2 on October 05, 2023 and October 13, 2023 respectively.
69. The Noticees were provided opportunities of personal hearings. While Shri Pawan Singh, through his authorized representative, attended the hearings on July 14, 2023; July 25, 2023; August 01, 2023, December 19, 2023 and March 21, 2024, Shri Rajib Mishra, through his authorized representative, attended the hearings on July 14, 2023 and December 19, 2023.
70. The submissions made by the Noticees in their respective replies are summarized hereunder.
71. Shri Pawan Singh (Noticee 1), in his replies listed above, has submitted *inter alia* the following:
 - (a) The Company has not been arrayed as a party to the SCN, which is contrary to the principles codified in Section 27 of the SEBI Act, 1992. Further, appropriate procedure was not followed for issuance of the SCN, as measures contemplated under Sections 11(1), 11(4) and 11B could be passed against any person only after an investigation or inquiry. However, no investigation was conducted in the present matter in consonance with Section 11C.
 - (b) SEBI failed to disclose all material documents and information on which reliance was sought to be placed. Documents relied upon in the SCN were

not complete and readable. Further, documents relied upon for preparing the Examination Report was not provided. The report of the enquiry conducted by SEBI in terms of Section 11B was also not provided. SEBI also did not communicate its decision of the SEBI Board appointing an Adjudicating Officer in terms of Rule 3 of the Adjudication Rules, 1995 and no opportunity to inspect documents was provided.

- (c) The SCN violated the principles of natural justice, as the provisions of law under which examination was conducted was not provided and appropriate internal authorisation for appointment of ad hoc examining authority and the procedure followed by such ad hoc examining authority while conducting the examination was not specified. Further, the SCN was issued without following the procedure prescribed under Rule 4(1) of the Adjudication Rules, 1995. SEBI also failed to comply with Rule 5 of the Adjudication Rules, 1995, while issuing the SCN.
- (d) Opportunity to cross examine certain witnesses on whose statements, SEBI has relied upon, has not been provided to the Noticee.
- (e) With respect to the appointment of Mr. Ratnesh, the Noticee had no role in the selection, appointment and joining of Mr. Ratnesh and the Noticee did not object to his appointment. The Noticee's observations regarding manner of appointment of Mr. Ratnesh was favourably considered by the Board, which directed his appointment on 'absorption' basis. As Mr. Ratnesh never completed his joining formalities and the documents required for joining formalities were not made available by him to PTC, PTC-HR decided to put his appointment on hold. Consequently, at the time of the 142nd board meeting of PFS, Mr. Ratnesh was not a Director on the Board of PFS. Only on the insistence of the IDs of PFS, Mr. Ratnesh was invited to join the meeting of PFS Board held on November 09, 2021. At the instructions of one of the IDs, Mr. Ratnesh sought leave of absence from the meeting. Mr. Ratnesh re-joined NTPC Ltd. without any intimation to PFS or the Noticee.
- (f) The PFS Management's response was approved by the Board of PFS, at its 159th and 166th board meetings held on November 13, 2022 and February 03, 2023 respectively, in the presence and with the consent of sitting IDs. The Board had thus found and confirmed that there was no

attempt by the PFS Management to ensure that Mr. Ratnesh was not appointed, and that the lapses, if any in his appointment, were merely technical.

- (g) FORM DIR-12 was a statutory requirement under the Companies Act, 2013 for appointment of any person as a director of a company, confirming his consent to act as such director. That the same was not mentioned in the Appointment Letter issued to Mr. Ratnesh was irrelevant, as the mandate of law could not be denuded by the letter.
- (h) The appointment of Mr. Ratnesh was on absorption basis. As he retained lien on his position with NTPC Ltd., his joining could not be considered as absorption, which would have been contrary to the express mandate of the Board of PFS.
- (i) The opinion of Additional Solicitor General (ASG) of India was not obtained to prevent Mr. Ratnesh from joining as a Director on the Board of PFS. The same was obtained by PTC and it came to Noticee's knowledge when the same was shared with PFS.
- (j) Mr. Deepak Amitabh, the then Chairman of PFS, had not directed the Noticee to facilitate the joining of Mr. Ratnesh, which was borne out from the email dated October 29, 2021 of Mr. Rajiv Malhotra to the Noticee, which was also marked to Mr. Deepak Amitabh.
- (k) Obligations regarding compliance with the LODR Regulations, 2015 and disclosures were primarily of the Compliance Officer. However, no action for violation of disclosure obligations had apparently been initiated either against the Company, or against the Compliance Officer.
- (l) Non-joining of Mr. Ratnesh or his re-joining NTPC Ltd. did not amount to any change in the Board of the Company and therefore would not require disclosure in terms of Regulation 30 of the LODR Regulations, 2015 read with Schedule III, Part A, Clause 7. The Noticee had no role in the delayed communication by PTC of Mr. Ratnesh re-joining NTPC, as he came to know of this fact only upon receipt of email from PTC on January 04, 2022.
- (m) The Noticee was not responsible for the non-filing of the position of Director (Finance)/WTD/Chief Financial Officer. The Noticee had himself approached 40th NRC at its meeting on July 10, 2020 to request that necessary senior personnel ought to be hired, but NRC chose not to do so.

The resigning IDs did not raise this issue at any point in time except immediately prior to their resignation and had in fact found the PFS's performance in maintaining communications with the IDs as "excellent" even as late as October 05, 2021.

- (n) Various provisions of LODR Regulations, 2015, referred to in the SCN, did not cast any obligation on any individual director, but on the board as a whole. Nothing in the factual narrative established that the board of directors failed to discharge its duties. At any rate, any alleged deficiencies in the conduct of the board as a whole, could not be ascribed to the Noticee. The minutes of the meeting of the IDs of the Company in terms of Regulation 25(4), reviewing performance of the Noticee, abundantly established that he had always acted in good faith, on a fully informed basis with due diligence and care, and in the interest of PFS and its shareholders. Further, the facts of the case do not establish that the Noticee, in any manner, failed to commit himself to his responsibility or impeded other members of the board from having access to accurate, relevant and timely information. Thus, the allegations against the Noticee are not established.
- (o) The availability of necessary systems of compliance of laws was evaluated on a quarterly basis by the Internal and Statutory Auditors of the Company, who confirmed the existence and sufficiency of the same.
- (p) The non-joining of Mr. Ratnesh was not an instance of recruitment or remuneration of a senior officer just below the level of board of directors to fall within the scope of Clause E of Part A of Schedule II read with Regulation 17(7) of the LODR Regulations, 2015. At any rate, all information on the selection, appointment and joining of Mr. Ratnesh, as and when the same became available to PFS, was promptly shared with all members of the Board, including the Noticee.
- (q) The two biggest instances of corporate mis-governance were done by the previous Chairmen of PFS. The first was when two persons from PTC, who were conflicted because of their past association with M/s Athena Chattisgarh Power Limited ('**ACPL**') and M/s East Coast Energy Private Limited ('**ECEL**'), were made nominee Directors on the Board of PFS. ACPL and ECEL were PFS's largest defaulters. These Nominee Directors were Mr. Deepak Amitabh, the ex-Chairman of PTC & PFS and Mr. Rajiv

Malhotra, the CRO of PTC. The second was when Mr. Deepak Amitabh and the erstwhile ID breached the arms-length relationship between PTC and PFS by transferring two key operational functions of PFS to PTC, namely HR and Risk Management. The aforesaid had been deprecated by RBI in its Supervisory Report dated June 04, 2021.

- (r) The recordings of 137th Board Meeting (August 05, 2021) show that the Noticee had raised his concern regarding the appointment of a person, with no NBFC background, prior to any selection/consideration of candidature of Mr. Ratnesh. Besides, it was evident that PTC-HR/Director, Mr. Rajiv Malhotra was taking charge of the process. The Noticee's inputs were tabled and Mr. Amitabh had his response. This was how corporate governance functioned – by deliberation. There was nothing in the said Board Meeting to suggest anything untoward to have relevance for adverse regulatory proceedings.
- (s) The recordings of 138th Board Meeting (August 28, 2021) show that the Noticee's recommendation with respect to appointment on absorption basis was tabled and taken into account by Mr. Deepak Amitabh, though no approval was given at that stage.
- (t) The recordings of 139th Board Meeting (September 13, 2021) show that the Noticee was not part of the appointment process and in fact, he was not even part of the meeting when terms and conditions were discussed. Besides, Mr. Deepak Amitabh had stated that the Noticee had accepted the selection and the decision was unanimous. He appreciated the opinion on the need for induction on an absorption basis. There was nothing to suggest disobedience of the decision of the Board.
- (u) The recordings of 142nd Board Meeting (November 08, 2021) show that apart from recording that Mr. Ratnesh had sought another 15 days to join (eventually he never joined), the Noticee had no role in the said Board Meeting. The entire discussion was about whether without having joined, Mr. Ratnesh was to attend the meeting or if he could be given leave of absence. The Compliance Officer could not have sent notice of the Board meeting to Mr. Ratnesh and sharing of unpublished price sensitive information could not have been done since he had not joined yet. In any

case, there was nothing adverse to infer about the Noticee from the said meeting.

Loan to NSL Nagapatnam Power and Infratech Pvt. Ltd. (“NSL”/ “NNPIPL”)

- (v) At the 133rd Board Meeting, the Board had directed the Company to report the account of NNPIPL as “suspected fraud” in consultation with the Audit Committee. There was no direction to the management at this meeting that the draft letter to be submitted to RBI was required to be submitted as part of the agenda of the coming meeting of the Audit Committee.
- (w) Reporting of fraud by NBFC was governed by the mandate of the Master Direction - Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016 issued by the RBI (RBI Master Directions).
- (x) The Noticee had no role in the approval and disbursement of the loan to NNPIPL. Mr. R N Malla was the MD&CEO at that time and Mr. Ashok Haldia was Director Operation, In-charge of credit. The Company had taken multiple steps for recovery of the funds from NSL after the account had become irregular. This included appointment of GSA & Associates (‘GSA’) to undertake forensic audit of the NNPIPL Account (‘FAR - 2018’).
- (y) The Noticee was still the Director (Finance) of PFS when a draft report prepared by GSA (FAR 2018) was put up for acceptance by way of a note dated 17.09.2018. While considering the same, the Noticee had directed the Legal Department to “*see if cause of action exists*”. The then Compliance Officer (who was the Company Secretary and who was also the officer in the Legal Department) sent the file back to the Noticee with the comment - “*may be looked by the concern department*”, indicating that the issue was not related to the Legal Department. The Legal Department (also the member of the Legal department in the Company and the Compliance Officer) did not deem that FAR-2018 required any reporting in accordance with the Master Direction - Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016 issued by the RBI.
- (z) It was informed to the Noticee that the relevant department was the Special Asset Resolution Cell (SARC), which was headed by the Director (Operations). Thereupon, the Noticee called upon the SARC to discuss FAR-2018. After discussions, the Noticee directed the Company to approach NCLT (as had been advised in FAR- 2018). However, as the

resolution professional did not accept PFS as a financial creditor and did not give PFS any seat in Committee of Creditors ('COC') in the resolution process of NNPIPL, PFS first approached NCLT and then NCLAT, and finally the Hon'ble Supreme Court for getting a seat in the COC. The Hon'ble Supreme Court in May 2022 gave its landmark judgement wherein PFS got a seat in COC. Therefore, till May 2022, it was not possible for the officers of the Company to complete the forensic audit of NNPIPL.

- (aa) The Compliance Officer was fully aware of FAR-2018. He, as Company Secretary, was tasked with the preparation of the agenda for the Board and other Committee meetings. He chose not to disclose FAR-2018 to the Board contemporaneously, having taken a view that the same was not conclusive of any fraud, which required reporting.
- (bb) There was no significant delay in providing documents and information requested by the CoID. There was some time lag in providing the information sought as the Company was operating with limited resources on account of the second wave of COVID-19. The Report of the CoID ('CoID Report') itself did not record any such delay.
- (cc) The allegation in the SCN that an independent legal opinion on the FAR-2018 of NNPIPL was obtained from a senior counsel by PFS management (circulated to Board members) was not true. The said legal opinion was obtained by PTC on their own from the senior counsel selected by them in gross violation of basic principle of maintaining arm's length relationship between two listed companies, and nominee director of PTC circulated the same to Board. This was a motivated attempt to influence the Board of PFS to conclude that there was misconduct on the part of the PFS Management, based on that legal opinion. Thereafter, PFS was forced to obtain a legal opinion from a senior advocate of Supreme Court and Ex- Chief Justice of India, so that correct legal position and views of leading legal luminaries were placed before the Board of PFS to enable it to take an unbiased view.
- (dd) The displeasure of the Audit Committee at the 72nd and 73rd Audit Committee Meetings, while dealing with the draft of the letter proposed to be submitted to RBI, to report the NNPIPL account as a "suspected fraud", was again not directed at the Noticee. Further, neither the GSA Associates'

Comments nor the CoID Report had found the Noticee to be responsible for the alleged delay in presenting FAR-2018 to the Board of PFS.

(ee) As regards 130th Board Meeting (19 December 2020), the SCN had cherry-picked facts to state that the Noticee had recorded his dissent regarding the formation of the CoID. However, the rationale behind such statements had not been considered. The Noticee, during the Board Meeting categorically stated that any sort of enquiry would demoralise the staff and lead to failure of the One Time Settlement ('OTS') that was being mooted in respect of the NNPIPL account. The reasons stated by the Noticee had not been factored in at all. Taking such adverse positions about bona fide discussions in the Board of a listed company was detrimental to investor interest and it would adversely affect deliberations of listed companies in their governance.

(ff) The recordings of 132nd Board Meeting (9 March 2021) show that there was no deliberate attempt by the Noticee or the management to cause delay in the sharing of information with the CoID. The Noticee requested for a formal extension due to involvement in other ongoing projects. At no point, the Board of PFS was of the view that there was intentional delay by the Noticee, for the SCN to justifiably draw such an inference.

(gg) At no point, the recordings of 133rd Board Meeting (17 May 2021) show that the Noticee showed any reluctance in disclosing the matter to RBI. At multiple instances, he had stated that everything should be disclosed to RBI. Therefore, the questions of overruling by Mr. Deepak Amitabh did not arise. The debate was about whether there was any scope for disclosure of 'suspected fraud' as against 'fraud'.

(hh) The recordings of 137th Board Meeting (5 August 2021) show that in contradiction to what has been stated in SCN, the draft response was placed before the 71st Audit Committee meeting even though no directions in that regard were given during 133rd meeting of the Board of PFS.

Inaction on Corporate Governance issues highlighted by Ex-Chairman (Mr. Deepak Amitabh)

(ii) SEBI, while sharing the recordings of other meetings, had chosen not to share the recordings of the 76th Audit Committee meeting or the transcript

of the discussion sought to be relied upon. A review of the discussions would show that the narrative at Paras 107 and 108 of the SCN did not reflect the true and correct summarization of the discussions. In fact, during the discussions, the Statutory Auditors specifically noted that basis the discussions of the 137th Board Meeting, there was scope to improve the internal controls, but there was nothing that was impacting the financials of the Company. A review of the Examination Report and the SCN reflected that SEBI failed to even seek the views of the Statutory Auditor of the Company, while ascribing certain statements and opinions to him.

- (jj) The fact of the RMC report is that Mr. Jayant Gokhale and Mrs. Preeti Saran had commented only on three points related to Mr. Ratnesh, NNPIPL account and KPMG report. On other points raised by the resigning IDs, they did not offer any comments or disagreement with RMC report (RMC 1 Report as per the SCN). Thus, there was unanimity amongst all four members of RMC of PTC on the rest of the RMC report, and the points mentioned under the heading “Inaction on Corporate Governance issues highlighted by Ex-Chairman (Mr. Deepak Amitabh)” formed part of the same.
- (kk) While CNK had asserted that “...*despite Board direction as above, legal files do not seem to have been routed through the legal functional head but are approved by MD & CEO*”, not a single instance had been identified of the legal files of the Company not being routed through the legal functional head. Neither had SEBI identified any such instance, while recording this as its *prima facie* finding.
- (ll) SEBI had, without specifying reasons, chosen to adopt the CNK Report as true and correct, overlooking the specific rebuttals of the Company in this regard. There was no attempt by SEBI to even evaluate the correctness of the observations in the CNK Report, despite identification of multiple factual inaccuracies by the Company.
- (mm) CNK’s reading of the minutes of the 137th Board Meeting to observe that the Board/Chairman was not satisfied with the replies of MD&CEO is again incorrect, as borne out from the recordings of the meeting. Further, the allegations in Para 114 of the SCN were completely contrary to the

discussions at the 76th Audit Committee meeting and were belied by the recordings of the same.

(nn) The recordings of 137th Board Meeting (5 August 2021) show that the Noticee had addressed all the issues raised by Mr. Deepak Amitabh during the Board Meeting itself, unlike the allegation raised in the SCN. Further, Mr. Deepak Amitabh mentioned that those were not allegations, but merely concerns which he would like to address. Moreover, Mr. Deepak Amitabh did not raise any of these concerns earlier, but during one of his last board meetings.

Change in the terms and conditions of loan granted to Patel Darah - Jhalawar Highway Pvt. Ltd.

(oo) The pre-disbursement condition of obtaining approval from the National Highways Authority of India ('NHAI') for Scheduled Commercial Operation Date ('SCOD') extension approved by the Board for granting loan to Patel Darah – Jhalawar Highway Pvt. Ltd. ('Patel Darah') had been captured as pre-disbursement condition in the loan agreement. It was abundantly borne out from a bare perusal and comparison of the Agenda-cum-Appraisal Note and the Loan Agreement finally executed between the Company and Patel Darah. Pursuant to the approval of the terms of the agenda cum appraisal note by the Board, documentation had been carried out by the PFS legal team without any further reference to the Noticee. Therefore, the Noticee neither approved the terms at the first instance nor did he approve any alterations.

(pp) The Internal Auditor of PFS had reviewed the Agenda-cum-Appraisal Note and the Loan Agreement (as executed), and confirmed that there was no deviation from the terms approved by the Board in the Loan Agreement. Further, the Sanction Letter dated December 31, 2020 issued by PFS to Patel Darah sanctioning the loan specifically recorded the following as one of the "Pre-Disbursement Conditions": "*Borrower should have received Extension of Timeline (EOT) approval from NHAI related to project milestone which should result in extension in commissioning of the project on or before 31st July 2021*" Thus, the subject precondition had been duly incorporated in the Sanction Letter issued by PFS.

- (qq) Pursuant to the Sanction Letter, Amendment Agreement No. 3 dated March 04, 2021 was executed to amend the existing Facility Agreement dated April 13, 2018 among the other consortium lenders and Patel Darah to include PFS as a lender. Clause 14 of the Facility Agreement set out the “Conditions Precedent to Initial Disbursement”
- (rr) The Noticee had no role in the drafting of the terms of the Sanction Letter and Amendment Agreement No. 3. This was done by the Legal team in accordance with the applicable DOP.
- (ss) The Internal Auditor in the Internal Audit Report for Q3 FY 21-22 had specifically confirmed that the Subject Precondition was captured as a “Pre-Disbursement Condition” in the Facility Agreement and this position had been confirmed by Luthra & Luthra, the legal counsels.
- (tt) The Board at its 146th Board meeting held on May 16, 2022 had noted the above ATR without any observation or comments from any of the members of Board, and thus the Board was clearly in complete agreement with the management and the issue raised by the Board in its 140th Board meeting as to whether there was any deviation taken from Board decision had thus received finality.
- (uu) Clause 14.19 of the Facility Agreement (as incorporated by Amendment Agreement No. 3) required Patel Darah to obtain extension of timeline for commissioning of the project “*which should result in extension in commissioning of the project on or before 31st July 2021*”. This extension was received prior to the issuance of the Sanction Letter and execution of Amendment Agreement No. 3. Since the subject Precondition already stood fulfilled as Patel Darah had received an extension in commissioning of the project for 180 days from original SCOD i.e. till May 18, 2021 (i.e. before July 31, 2021), there was no reason for amending the language to permit Patel Darah to obtain such extension by July 31, 2021.
- (vv) All changes in terms and conditions were to be approved by the Director, Operations, who was the competent authority in this regard. No approval was sought from the Noticee. Therefore, the Noticee was not empowered to change the terms and condition.
- (ww) The recording of 130th Board Meeting (December 19, 2020) show there was nothing untoward and there was no subsequent modification of

terms at all. Further, recordings of 140th Board Meeting (September 29, 2021) show that the Board did not raise any allegations and in fact, Mr. Deepak Amitabh mentioned that they believed the MD, and therefore, the Noticee was asked to enquire into the issue and submit an ATR.

Communications of Independent Directors Ignored

- (xx) The assertion that any resignation letter was submitted by Mr. Kacker to resign from his position as an Independent Director of PFS was factually incorrect. Quite to the contrary, he demitted office as an ID due to the completion of his tenure on December 31, 2021. Incidentally, prior to the completion of his tenure, the IDs, as well as Mr. Kacker, were keen to have his tenure extended, and made no complaints to the effect that the management had ignored their communications.
- (yy) The Company had duly responded to the allegations by way of the February 2 Response, which had been completely overlooked in alleging that the Noticee was responsible for regulatory or statutory violations arising from the allegations in the January 19 Resignation Letters.
- (zz) The issue of reconstitution of the NRC of PFS had been raised in Annexures K4 and K6 of the SCN, when the Company sought to reconstitute the NRC by way of a circular resolution on December 31, 2021. However, the Independent Directors themselves defeated the resolution, refusing to permit reconstitution. It was as a consequence of this that a Woman ID could not be appointed prior to January 12, 2022.
- (aaa) Documents were sought from the Noticee, which either did not exist or were not available/ in the possession or control of the Noticee. Despite being aware of these circumstances, by way of emails, the Noticee was perversely called upon to submit documents pertaining to the selection, appointment and joining of Mr. Ratnesh and the legal opinion dated November 08, 2021 received from the Additional Solicitor General.
- (bbb) The SCN, at Para 160, was factually incorrect to the extent that – (i) it blamed the Noticee for PTC recalling Ms. Renu Narang from being its nominee on the Board of PFS; (ii) the Company failed to comply with the requirements of Regulation 19(1) and 19(2) of the LODR for June 2022 and

(iii) the fine levied by the stock exchange for the quarter ending in December 2021 was still outstanding.

Providing no information or limited/incomplete information to the Board

- (ccc) It is factually incorrect to state that the minutes of the 131st Board meeting, which were confirmed at the 132nd meeting of the Board of PFS held on March 09, 2021 did not record any direction to the management to obtain any separate confirmation or place any ATR on the same.
- (ddd) SEBI had selectively chosen extracts from the FAR without any independent examination.
- (eee) RBI had permitted restructuring of the loan account of ITPL by the consortium irrespective of whether there was fraud in the loan account or not. SEBI had overlooked the same.
- (fff) The materiality policy of PNB was not in the knowledge of the Noticee.
- (ggg) PFS declared the account of ITPL as fraud on February 12, 2022. However, the same was not reported to the stock exchanges under Regulation 30 as the same was not considered material for the purposes of reporting in terms of the Materiality Policy by the then Compliance Officer.

Additional Issues

- (hhh) *Board Meeting Scheduled on January 22, 2022 without a Valid Quorum* – The 144th Board Meeting of PFS came to be scheduled for January 22, 2022 by way of the Notice dated 14.01.2022. The Resigning IDs resigned on January 19, 2022 i.e. after the Board Meeting had been called and notice/agenda for the same had been circulated. Thus, on the date on which the Board Meeting was called, valid quorum for the meeting was available.
- (iii) *Wrong Reporting in corporate governance report* – In terms of Regulation 6 of the LODR Regulations, PFS had appointed a Compliance Officer. The Compliance Officer was responsible for ensuring conformity with the regulatory provisions, which were applicable to PFS as a listed entity. The Noticee was not the Compliance Officer of PFS. No action for any alleged wrong reporting in the corporate governance report had been initiated

against the Compliance Officer of the Company, or for that matter the Company.

- (jii) *Reconstitution of Audit Committee prior to submission of the Forensic Audit Report by CNK and Associates (“FAR-2022”)* – The email dated May 13, 2022 of SEBI to PFS advising it to not change the structure and composition of the Board was in the nature of an advisory, issued by the Corporate Finance Department – II and was not in the nature of an order issued by SEBI, in accordance with the SEBI Act. No justification for this injunction on any modification to the structure and composition of the Board was offered. At any rate, the email dated May 13, 2022 had only advised PFS to abstain from altering the structure and composition of its Board. No advisory was issued *qua* the composition of the committees of its Board.
- (kkk) *Issues related to disclosure of Forensic Audit Report* – There was no delay. Due to the size of the document and it not being in machine-readable form, the uploading of the same on the websites of BSE and NSE took time. Accordingly, on November 22, 2022 itself, the Compliance Officer reached out to BSE and NSE for necessary actions. Accordingly, the FAR-2022 was resubmitted as directed but had to be uploaded from the backend by the exchanges.
- (lll) *Delay in disclosing the Resignation of Ms. Sushma Nath (ID of PFS)* – On November 22, 2022 at 11 am, Ms. Sushma Nath had communicated that she was resigning from her position as an ID of PFS. Since certain documents/information were insufficient to undertake filings, the same was sought and obtained from Ms. Nath. The same were received by email at 16.42 pm on November 22, 2022. While the Company was required to make a disclosure of the resignation within 24 hours i.e. by 16.42 pm on November 23, 2022, due to inadvertence, the same could be done on November 24, 2023 at 17.42 pm. There was thus a delay of 25 hours only.
- (mmm) *Functioning of the Audit Committee* – The assertions of Mr. Gokhale, and the allegations levelled therein, did not reflect the complete picture regarding the functioning of the Audit Committee. The allegations made in the resignation letters of Mr. Gokhale and Mr. D.S. Saxena had been denied by the Company, and detailed responses had been submitted to the exchanges in that regard. Despite the same being available, SEBI had

chosen to overlook the same. Further, no allegation had been raised by the other two IDs, and the circumstances complained of by Mr. Gokhale and supported by Mr. Saksena were largely a creation of Mr. Gokhale.

72. The Noticee 1 in his replies, *inter alia*, relied on the case laws in the following case laws in *T. Takano v. SEBI (2022) 8 SCC 162*, *Kashinath Dikshita v. Union of India & Ors. (1986) 3 SCC 229*, *State of U.P. v. Shatrughan Lal, (1998) 6 SCC 651*, *Natwar Singh v. Director of Enforcement, (2010) 13 SCC 255* and *Reliance Industries Ltd v SEBI & Ors (2022) 10 SCC 181* to contend that SEBI was obligated to disclose all material documents and information on which reliance was sought to be placed. Further, he has referred to the case of *SEBI v Kishore R Ajmera (2016) 6 SCC 368* to contend that the Examination Report by failing to look at the totality of the facts surrounding the allegations, while making the assertions, had contradicted the settled position of law. He has also referred to *Balram Garg v SEBI (2022) 9 SCC 425* and *Pranshu Bhutra v SEBI (2022) SCC Online S AT 938* to contend that the burden of proof to substantiate the violations alleged rested on SEBI.
73. Shri Rajib Kumar Misra (Noticee 2), in his replies, submitted *inter alia* the following:
- (a) The Noticee was Director (Marketing and Business Development) in PTC. He was given the additional responsibility of Chairman and MD of PTC, by virtue of which he become the Non- Executive Chairman of PFS during the period of examination. This was an important condition for considering the span of control and authority.
 - (b) Upon the resignation of the three IDs on November 09, 2021, which resulted in the Board of PFS coming to a standstill, the Noticee met senior officials of SEBI and the RBI to resolve the issue. Consequently, four IDs from PTC India were temporarily assigned to operate as IDs of PFS. On SEBI's direction, on January 27, 2022, the Board of PTC directed the Risk Management Committee ("**PTC-RMC**") to go into the details of the governance issue in PFS. The PTC-RMC submitted its report on May 23, 2022 at the 168th board meeting of PTC India. Additionally, the Board of PFS authorised a forensic audit by CNK & Associates LLP, which also

examined the governance issues alleged in the resignation letters of the three IDs of PFS. FAR 2022 was also shared with the regulators.

Role of Noticee 2 in PFS

- (c) The Noticee had joined as a Non-Executive Nominee Director and Chairman of PFS on November 09, 2021 upon the resignation of Mr. Deepak Amitabh, the erstwhile Non-Executive Chairman of PFS, who held the position for a period of nine (9) years (October 16, 2012 – November 06, 2021).
- (d) The Noticee was not a shareholder, promoter, WTD or a Key Managerial Personnel (“KMP”) of PFS. He was a Non-Executive Director and was not responsible for managing the day-to-day affairs of the Company. Accordingly, he could not be said to have been ‘in charge of’ and ‘responsible for’ the conduct of the business of PFS. The SCN had not proceeded against the other directors, i.e., the Nominee Directors and IDs on the principle that they were non-executive and were not overseeing the day-to-day functioning of the Company. The same principle should be made applicable to the Noticee.
- (e) Every executive decision of the Board of PFS was taken through a majority vote, and, thus, such decisions could not be imputed solely to the Noticee in his individual capacity. Further, compliance with Regulation 4(2)(iii)(14) of the LODR Regulations was purely the responsibility of the Board and not of an individual Nominee Director. The non-obstante clause in Section 149 (12) of the Companies Act, 2013 specifically provided exemption in case of a non-executive director, not being promoter or KMP, from liability in respect of any act of omission or commission by a company.

Risk Management Report, Forensic Audit Report and E&Y Report

- (f) On January 27, 2022, subsequent to directions from SEBI, the Board of PTC resolved that the RMC of PTC should go into the details of all the governance issues of PFS arising out of the resignations of the three IDs of PFS and the RBI’s Risk Assessment Report dated June 04, 2021. Consequently, on May 23, 2022, the RMC of PTC submitted the report to

SEBI. Further, the PFS Board appointed CNK & Associates LLP for carrying out a forensic assessment. The said firm submitted the forensic audit report, which was subsequently submitted by PFS to SEBI. Further, the audit firm, E&Y, was appointed by the PFS-Management to assess FAR 2022. E&Y analyzed FAR 2022 and presented the same to the PFS Board. None of the mentioned three reports imputed any wrongdoing on the part of the Noticee while considering the alleged violations raised by the ex-IDs of PFS in their resignation letters.

Issue of Re-appointment/ Extension of Tenure of Rakesh Kacker, Non-executive Independent Director, PFS

- (g) Mr. Rakesh Kacker had been appointed as a Non- executive Independent Director of PFS on June 23, 2020. Subsequently, his term expired on December 31, 2021. Prior to the end of his tenure, all the then IDs of PFS (including Mr. Rakesh Kacker) vide their email dated December 15, 2021 addressed to the Noticee, raised the issue of extension / reappointment of Rakesh Kacker, which was referred to by the IDs as the most important issue.
- (h) PFS' policy for selection of IDs required that an ID identified should not be less than 55 years and more than 67 years. Mr. Rakesh Kacker was not eligible for reappointment as he was 69 years, thereby exceeding the stipulated age for reappointment as per the policy by two (2) years.
- (i) The IDs should have addressed their concerns to the Board of PFS through an agenda item for a future Board meeting. Also, the IDs were well aware of the fact that the Company Secretary was the nodal point for communication with the IDs.
- (j) Email correspondence addressed to the Noticee by the then IDs of PFS for the extension of tenure/reappointment of Rakesh Kacker, while being well aware of the Policy of the Company on appointment of an ID, was *mala fide*.
- (k) There was no statutory violation of either the Companies Act or the LODR Regulations due to Mr. Kacker's tenure as an ID not being extended.

Issue of Withdrawal of Renu Narang from the Board of PFS

- (l) Ms. Renu Narang was originally nominated by her principal employer – NTPC to the board of PTC, the holding company of PFS. On June 21, 2021, Mr. Deepak Amitabh further nominated Ms. Renu Narang to the Board of PFS as a Nominee Director, without the prior approval of her employer, NTPC — a Public Sector Undertaking of the Government of India ('CPSU'). Subsequently, Ms. Renu Narang was also nominated and inducted as the Chairperson of the Business Committee of PFS' Board.
- (m) Rule 13 of the NTPC (Conduct Discipline and Appeal) Rules dated May 25, 2019 mandated prior sanction of NTPC if any employee was to take part in the management of a company.
- (n) The fact that Ms. Renu Narang was a Nominee Director on the Boards of PTC as well as PFS, posed a major compliance risk in so far as maintaining arm's length distance between the functioning of the two companies was concerned. Also, a letter dated November 05, 2021 was received from the Ministry of Power, whereby it was directed that PTC India and PFS should comply with the RBI's Risk Assessment Report dated June 04, 2021 and reverse all such decisions that impair the maintenance of suitable arm's length distance between the functioning of the two companies.
- (o) The recalling/withdrawal of the nomination of Renu Narang was the sole administrative decision of NTPC, and PFS or PTC had no control whatsoever in the making of such decision.

Issue of reconstitution of the Audit Committee

- (p) During the resignation of the IDs of PFS, the IDs of PTC, namely, Ms. Sushma Nath, Mr. Devendra Swaroop Saxena, Mr. Ramesh Narain Misra and Mr. Jayant Purshottam Gokhale were inducted as IDs of PFS as an interim measure on March 28, 2022. The above-mentioned four directors along with Mr. Pankaj Goel (Nominee Director of PTC) were made part of the Audit Committee, and Jayant Gokhale was appointed Chairman of the said committee. Thereafter, the Board of PFS wanted a forensic audit in respect of the allegations made by the resigning IDs of PFS, and accordingly such appointment was made.
- (q) In the interregnum, SEBI by email dated May 13, 2022 directed PFS to not change the structure and composition of the PFS Board, till the completion

of forensic audit and submission of report by the RMC of PTC. Similar emails were also sent by SEBI on June 3, 2022 and June 28, 2022. This resulted in the PFS Audit Committee and the Board not being able to finalize the accounts of PFS for several quarters. Also, the DEMAT account of the promoter of PFS, PTC and the promoters of PTC, namely, NTPC, PFC, Powergrid and NHPC were frozen by NSE and BSE due to such non-finalization and publishing of the quarterly and annual accounts of PFS.

- (r) Considering the above circumstances, the MD & CEO met senior SEBI officials to update them on the status, and Noticee 2, by way of a note informed that after being appraised of the facts and circumstances, SEBI had not restrained PFS from reconstituting the Board including the Audit Committee.
- (s) The Chairman of the Audit Committee, Jayant Gokhale wrote to SEBI regarding the issue of reconstitution of the Audit Committee seeking clarification regarding the directions issued by SEBI vide its email dated May 13, 2022. Consequently, PFS was advised to comply with the directions of SEBI contained in its email dated May 13, 2022 in letter and spirit, and maintain status quo.
- (t) SEBI's email dated May 13, 2022 did not cover in its ambit the structure and composition of the committees and sub-committees. Also, the Board reversed its decision to reconstitute the Audit Committee in compliance with SEBI's directions vide its email dated October 25, 2022. So, no breach of any direction issued by SEBI, or any provisions of any statute had been committed by the reconstitution of the Audit Committee by the PFS Board.

Issue regarding the lack of information being provided to the Board

- (u) The RMC Report (RMC 1 Report) had recorded the efforts made by the Noticee in trying to facilitate the unhindered flow of information and stated that the allegation by the ex-IDs on this count were specious and not backed by any proof.
- (v) Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribed that the Company Secretary of a company was responsible for providing guidance to the directors of such company. Therefore, the Company Secretary was the nodal point of

communication for the independent directors, and any issue regarding lack of information/poor quality of information was therefore attributable to the Company Secretary and the management of PFS.

- (w) Further, as per Regulation 42(2)(f)(iii)(14) of the LODR Regulations, the responsibility was of the Board and senior management of the company to facilitate independent directors in performance of their specific roles. So, even as per the LODR Regulations, such responsibility is not saddled solely on the Non-Executive Chairman of the Board.

Mala fide vested interests at play

- (x) The resignation letters of the former IDs of PFS bore the same date and were identical in content. IDs ought to be independent and demonstrate varied views and opinions. The identical nature of the resignation letters was noted in the RMC 1 Report. The same made it clear that there was a conspiracy amongst the former IDs of PFS.
- (y) The Economic Times had run a story with the title, “*Sebi, RoC to Now Probe Alleged Wrongdoings at PTC India Fin*”. The issuance of the SCN to the present Noticee was not otherwise in the public domain. This was demonstrative of a targeted campaign by certain vested interests against the Noticee and an abuse of the process of law.

74. The Noticee 2 in his replies has, *inter alia*, relied on the cases of *Shailendra Swarup v. The Deputy Director, Enforcement Directorate, (2020) 16 SCC 561* and *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Ors. (2005) 8 SCC 89* to contend that only such person who at the time the offence was committed, was in charge of and was responsible to the Company for the conduct of business of the Company, could be made liable for the offence, and that specific averment ought to be made in the complaint that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. He has also referred to the case of *Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1* to contend that even though a Non-Executive Director was a custodian of the governance of the Company he was not involved in the day-to-day affairs of the running of its business and only monitors executive activity, and simply because a person

was a Director of a Company, he would not be liable. Further, he referred to case of *Maksud Saiyed v. State of Gujarat and Ors. (2008) 5 SCC 668* to contend that vicarious liability of a Managing Director or Director would arise, provided any provision exists in that regard in the statute.

Consideration of Issues and Findings:

75. Before I proceed with to deal with substantive allegations made in the SCN, I deem it fit to first deal with the preliminary issues raised by the Noticees.
76. Noticee 1 has contended that measures contemplated under Sections 11(1), 11(4) and 11B could be passed against any person only after an investigation or inquiry had been conducted, which was not done in this case. He has also contended that the provisions of law under which the examination was conducted, the appointment of such examining authority was internally authorized and the procedure followed by such examining authority while conducting the examination had not been specified.
77. I have considered the submissions of the Noticee 1. I note that the provisions of Section 11(1) do not mention either investigation or inquiry and do not restrict SEBI from taking measures without an investigation/inquiry. Further, Section 11C, which is the provision in respect of investigation, was added to the SEBI Act only in 2002 whereas Section 11 (1) has been part of the SEBI Act since its enactment in 1992. Additionally, Section 11B (1), which was originally incorporated in 1995 as Section 11B, also does not mention investigation. It is only Section 11(4) that contains reference to both investigation and inquiry. However, the said reference is broad enough to have within its ambit fact-finding exercises, not being investigation under Section 11C, such as, examination. Such a view has been upheld by the Hon'ble SAT in the matter of *Soumen Ghosh and Another V. G. Mahalingam, WTM, SEBI in Appeal Nos. 171 and 172 of 2020* (Order dated March 07, 2022). Accordingly, I do not find any merit in the submissions of Noticee 1.
78. Noticee 1 has also contended that the report of the enquiry conducted by the Board (SEBI) in terms of Section 11B had not been provided. Also, the decision of the Board appointing an Adjudicating Officer in terms of Rule 3 of the

Adjudication Rules, 1995 had not been communicated and no opportunity to inspect documents been provided. Additionally, it has been averred that the documents relied upon in the SCN were not complete and readable and that the documents relied upon for preparing the Examination Report were not provided.

79. As pointed out above, the exercise of powers under Sections 11(4) and 11B can be done on the basis of a fact-finding exercise, which in this case was the examination. As the Examination Report was made available to the Noticees, their claim that the report of the enquiry conducted by the Board in terms of Section 11B was not been provided is factually incorrect. Further, the monetary penalty for the alleged violations in this case are sought to be imposed under Sections 11(4A) and 11B(2) of the SEBI Act, which has clearly been specified in the SCN. Accordingly, I find Noticees' contentions in this regard to be erroneous.
80. Further, the claim that the documents provided with the SCN were not complete and readable is not factually correct. All documents annexed to the SCN have been provided by SEBI to the Noticees. Noticee 1's specific grievance appears to be that transcripts of the recordings that were part of the annexures of the SCN were not provided. I note that the recordings of meetings forming part of the documents annexed to the SCN were provided to the Noticees as digital files. However, Noticee 1 demanded that the same should be given in the form of transcripts. I note that there is no legal obligation to provide the material in any particular format, so long as the content thereof is clearly accessible and decipherable. Accordingly, I do not find merit in the contentions of Noticee 1.
81. Additionally, the Noticee 1 has contended that all the documents relied upon for preparing the Examination Report have not been provided to him. In this regard, he has referred to the judgment of Hon'ble Supreme Court in the matter of *T. Takano V. SEBI*. I note that the Hon'ble Supreme Court in that matter had observed - "*the actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication*". The Hon'ble Court, while deciding what is relevant for purpose of adjudication, placed reliance on the

standard of relevancy as determined in *Khudiram Das vs. State of West Bengal*, which held that a) the material must have a nexus with the order and b) the material might have influenced the decision of the authority. Applying the above test, I find that all relevant material relied upon in the instant proceedings have been provided to the Noticees, which is evident from the records.

82. The other preliminary issue raised by the Noticees is that no action has been initiated against the Company, the Compliance Officer and other Directors. I have dealt with this issue later in this Order.
83. I now proceed to deal with the substantive issues raised in the SCN. In this regard, I deem it important to refer to the provisions of law allegedly violated by the Noticees. The said provisions are quoted below:

“LODR Regulations, 2015

Principles governing disclosures and obligations.

4(1) (d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

4(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(b) Timely information: The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:

(i) sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.

(ii) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership.

(iii) rights attached to all series and classes of shares, which shall be disclosed to investors before they acquire shares.

(d) Role of stakeholders in corporate governance: The listed entity shall recognise the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:

(iii) Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.

(e) Disclosure and transparency: The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:

(i) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.

(ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.

(iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making

(ii) Key functions of the board of directors-

(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(8) Overseeing the process of disclosure and communications.

(iii) Other responsibilities:

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

(7) The board of directors shall exercise objective independent judgement on corporate affairs.

(8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.

(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

(13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information

(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors

Board of Directors.

17 (7): The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

Obligations with respect to employees including senior management, key managerial personnel, directors and promoters.

26 (3) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.

Disclosure of events or information.

30 (2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

30 (6) The listed entity shall first disclose to the stock exchange(s) all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:

(i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;

(ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;

(iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity:

Provided that disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines:

Provided further that in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay.

30(12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.

SCHEDULE II: CORPORATE GOVERNANCE

PART A: MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS

E. The information on recruitment and remuneration of senior officers just below the level of board of directors, including appointment or removal of Chief Financial Officer and the Company Secretary.

SCHEDULE III

PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), senior management, Auditor and Compliance Officer.

17. Initiation of Forensic audit: In case of initiation of forensic audit, (by whatever name called), the following disclosures shall be made to the stock exchanges by listed entities:

- a) The fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available;*
- b) Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any.*

Code of Conduct for Board of Directors and Senior officials (KMPs and officers placed in the Grade one level below the Board) of PFS

4. KEY FUNCTIONS OF THE BOARD

The board should fulfil certain key functions, including:

- ii. *Monitoring the effectiveness of the company's governance practices and making changes as needed.*
- vii. *Ensuring the integrity of the company's accounting and financial reporting systems, including the independence of audit, and that appropriate systems of control are in place, in particular, financial and operational control, and compliance with the law and relevant standards.*
- IX. *Overseeing the process of disclosure and communications.*

5. RESPONSIBILITIES OF THE BOARD

- III. *Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.*
- VI. *The Board should apply high ethical standards. It should take into account the interests of stakeholders.*
- VII. *The Board should be able to exercise objective and independent judgement on corporate affairs.*
- VIII. *The Board should consider assigning a sufficient number of non-executive Board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest.*
- XII. *Board members should be able to commit themselves effectively to their responsibilities.*
- XIII. *The Board and Senior Officers should facilitate the Independent Directors to perform their role effectively as members of the Board and also as members of any committee.*
- XV. *The Board should ensure that the Company has a system for compliance of laws.*
- XVII. *The Board and senior executive personnel should conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture for good decision-making.”*

84. It has been alleged in the SCN that Noticee 1, through his acts, ensured that Mr. Ratnesh, who had been chosen by the Board of PFS as the WTD and Director (Finance), did not join the Board of PFS. Before proceeding, it would be prudent to refer to the chronology of events which have given rise to the said allegation. The same is provided below:

Date	Event
March 09, 2021	The NRC of PFS at its meeting held on March 09, 2021 decided to fill the vacancies of Director (Finance) and Director (Operations). The NRC and the Board of PFS further decided that the aforesaid posts should be advertised to the four (4) promoter companies of PTC, namely, NTPC Ltd., Power Grid Corporation of India (“ PowerGrid ”), Power Finance Corporation Ltd.(“ PFC ”) and NHPC Ltd. along with REC Ltd.
July 20, 2021	Letters issued by Mr. Deepak Amitabh, Chairman, PFS to NTPC, PFC, REC, PowerGrid and NHPC inviting applications for Director (Finance) and Director (Operations). The last date for receipt of applications was set for August 06, 2021.
August 13, 2021	44th NRC Committee meeting- 14 applications received- Nine candidates shortlisted for interview (Seven for Director (Finance) & CFO and Two for Director (Operations) position.
August 28, 2021	Interviews held on 28 th August, 2021. Mr. Ratnesh (NTPC) was selected for the post of Director (Finance) and Mr. P K Sinha (REC) was selected for the post of Director (Operations). Interviews were held and Mr. Ratnesh was recommended for the post of Director (Finance) by NRC.
August 28, 2021	NRC recommended the name of Mr. Ratnesh as Director Finance & CFO of PFS. The Board decided to appoint Mr. Ratnesh as Director Finance & CFO of PFS at the 138 th meeting of the Board of PFS held on the said date.
September 07, 2021	Issuance of appointment letter to Mr. Ratnesh by PFS.
September 09, 2021	Acceptance of the appointment by Mr. Ratnesh.
September 13, 2021	The decision to appoint Mr. Ratnesh as Director (Finance) was placed before the 74 th Audit Committee meeting held on the said date.
September 14, 2021	PFS vide announcement dated September 14, 2021, informed BSE and NSE about appointment of Mr. Ratnesh as Director (Finance).
September 16, 2021	An addendum to the appointment letter was issued to Mr. Ratnesh revising the total compensation.
October 28, 2021	NTPC issued a provisional relieving letter to Mr. Ratnesh.
November 06, 2021	Mr. Deepak Amitabh ceased to be the Chairman of PFS on expiry of his term. He was succeeded by Noticee 2 as Chairman of PFS.
November 08, 2021	Since there were certain administrative/ joining formalities which needed to be completed, Mr. Ratnesh vide email dated November 08, 2021 to Mr. Rajib Kr. Mishra of PTC (and new Chairman of PFS), asked for extension of time up to November 22, 2021 to complete the same. Further, a legal opinion was obtained from ASG, Shri Chetan Sharma, with respect to the joining of Mr. Ratnesh.

November 09, 2021	On the insistence of the Board, invite was sent to Mr. Ratnesh to 143rd Board meeting dated November 09, 2021 where he had requested the Board for granting leave of absence. Accordingly, the leave of absence was granted to him.
November 17-18, 2021	Vide e-mails dated November 17, 2021 and November 18, 2021 Mr. Ratnesh submitted the provisional relieving order issued by NTPC and his educational qualifications.
November 20, 2021	Company sought another legal opinion from Mr. Chetan Sharma, Additional Solicitor General of India, regarding completeness and compliance of Mr. Ratnesh with the appointment terms and conditions especially in the view of NTPC's release order dated October 28, 2021. ASG vide legal opinion dated November 20, 2021 concluded that Mr. Ratnesh's appointment was under a legal cloud.
November 22, 2021	HR representative of PTC, vide email dated November 22, 2021 communicated to Mr. Ratnesh that since his joining was incomplete as per Appointment letter, further processing of his joining had been put on hold. In the same e-mail, the HR representative also mentioned the following <i>"..the requisite documents including the unconditional Relieving letter including Vigilance clearance has not been submitted till date..."</i>
November 24, 2021	Mr. Ratnesh vide email dated November 24, 2021 replied to the email addressed to him and placed the version of events as recorded by him.
November 25, 2021	PTC vide email dated November 25, 2021 informed PFS that in light of non-submission of pre-requisite documents and non-completion of formalities, Mr. Ratnesh's joining at PFS was being kept in abeyance and no communication in that regard should be entertained.
December 06, 2021	Mr. Ratnesh re-joined NTPC

85. From the above chronology of events, it is clear that the appointment of Mr. Ratnesh was recommended by the NRC of PFS and consequently, its Board adopted the same. On that count, the appointment of Mr. Ratnesh did not suffer from any infirmity. It is also a matter of record that the Board's decision to appoint Mr. Ratnesh was informed to the stock exchanges.
86. It is noted from the minutes of the 138th Board meeting that a mention was made that the applicants could join on deputation/lien from their parent organisations. It is also noted from the minutes that while the Board decided to approve the appointment of Mr. Ratnesh, Noticee 1 opined that the appointment should be on 'absorption basis'. In this regard, the then Chairman (Mr. Deepak Amitabh)

stated that the process allowed for appointment on deputation/lien basis which had already been completed (in line with the invitation for application) and that joining on absorption basis would be considered while finalising the terms and conditions of the candidates. From the above, it is clear that at the 138th Board meeting of PFS where the recommendation of the appointment of Mr. Ratnesh was finalised, the process allowed for the candidates to join on deputation/lien from their current organisations. Further, it is noted that the advertisement issued by PFS pursuant to which Mr. Ratnesh applied for the post of WTD (Finance), also mentioned that *'Deputation/Lien for applicants from PTC and its promoter companies is allowed.'*

87. It is noted that appointment letter dated September 07, 2021, was issued by Mr. Deepak Amitabh to Mr. Ratnesh, subsequent to the Board' decision on August 28, 2021 regarding his appointment. The said letter can be broadly divided into three parts: a) the compensation that the position would offer; b) the principles that Mr. Ratnesh would have to abide by while discharging his duties / functions; and c) the documents/procedure that he would be required to submit/undergo at the time of joining. Parts a) and b) found mention in paragraphs 1 to 13 and 15 of the appointment letter and part c) found mention in paragraphs 14 and 16. While paragraph 14 stated that PFS might require Mr. Ratnesh to undergo a medical check-up by *"the Registered Medical Practitioner"*, paragraph 16 provided as under:

"At the time of joining PFSL, you shall submit a Release Order from the last organisation you were working with. You will also submit self-attested copies of your qualification and experience certificates. In case any declaration given by you at the time of your appointment/joining is found to be wrong or you are found to have willfully suppressed any material information, the appointment itself would be deemed to be void and your services shall be liable to termination."

88. Subsequent to the above letter of appointment, an addendum letter dated September 16, 2021 was issued to Mr. Ratnesh, whereby the compensation

offered to Mr. Ratnesh was revised. Except for the said revision, the addendum letter clearly stated that “*all other terms & conditions of the subject referred letter [appointment letter dated September 07, 2021] not specifically mentioned herein shall remain unaffected and apply to the Addendum.*”

89. From a reading of the letter of appointment and the addendum thereto dated September 16, 2021, it is noted that the documents that Mr. Ratnesh was required to provide at the time of joining were: a) a Release Order and b) self-attested copies of certificates relating to his educational qualifications and experience.
90. Consequently, NTPC issued a relieving letter to Mr. Ratnesh dated October 28, 2021. Thereafter, Mr. Ratnesh submitted a joining report dated October 29, 2021 to the Chairman, PFS (Mr. Deepak Amitabh) stating therein that he was joining as Director (Finance) and Chief Financial Officer in the forenoon of the said date. It is noted from the joining report that upon receiving the said report, Chairman PFS made a noting, “*Accept the joining in terms of decision of the PFS Board in 138th & 139th Board meeting.*” and marked the same to the MD of PFS. Copy of the joining report was also marked to the Company Secretary, Executive Director (HR) and all Board Members of PFS.
91. It is noted that until October 29, 2021, no new communication was made to Mr. Ratnesh, except the appointment letter and the Addendum thereto. However, as is evident from records, even though Mr. Ratnesh submitted a joining report for taking up the position of Director (Finance) and CFO, his joining was not given effect. Although clear instructions were given by the Chairman of PFS to the MD for accepting Mr. Ratnesh’s joining, no action was taken by the MD. There is nothing available on record to demonstrate as to what were the reasons for not following the said instructions. Mr. Deepak Amitabh demitted office on November 06, 2021.
92. Further, Mr. Ratnesh vide email dated November 08, 2021 to Mr. Rajib Kumar Mishra of PTC (and new Chairman of PFS), asked for extension of time up to November 22, 2021 to complete the joining formalities. Interestingly, on the

same day i.e., November 08, 2021, Noticee 1 received an opinion from Mr. Chetan Sharma, Additional Solicitor General (ASG) of India, regarding the joining of Mr. Ratnesh. The said opinion, addressed to Noticee 1, was silent on the date on which Mr. Sharma received the query regarding the joining of Mr. Ratnesh in PFS. While it is not known as to what records/documents were made available to the ASG for giving an opinion regarding the completion of joining formalities by Mr. Ratnesh, the said opinion stated, “*the record as available does not seem to suggest full and complete compliance thereof.*” Additionally, the said opinion provided a list of some of the documents that were required to be submitted at the time of formal joining with PFS. The said list is reproduced hereunder:

Sl. No.	Reference
1.	<i>Offer Letter issued by the Company- Accepted copy</i>
2.	<i>Prior Medical Check up</i>
	<i>-Letter from Hospital about Fitness</i>
	<i>- Report(s)</i>
3.	<i>Appointment Letter issued by the Company - Accepted copy</i>
4.	<i>Self-Attested Copies of qualification certificate(s) as mentioned in CV</i>
5.	<i>Experience Certificate (s) as mentioned in CV</i>
6.	<i>Copy of resignation submitted to last organisation, Release/Experience Letter and terms of release with lien, etc. issued by the last organisation</i>
7.	<i>Vigilance Clearance Report in case issued by employer (for Central/State Govt./PSU/Autonomous/Govt. bodies) or background checks to be conducted by the Company</i>
8.	<i>Copy of Passport/Identity Certificate/Character Certificate from previous Org.</i>
9.	<i>Self-attested Copy of Pan Card</i>
10.	<i>A copy of cancelled Cheque for opening salary account</i>
11.	<i>Joining Application from Candidate</i>
12.	<i>Photographs (4 Nos.) of Candidate and One Photograph of each of the Medical Dependents</i>

93. Even after the abovementioned opinion was received by Noticee 1, no new communication was made to Mr. Ratnesh, except the original appointment letter and the Addendum thereto. Mr. Ratnesh, on his part, in line with prior assurance, by way of e-mails dated November 17, 2021 and November 18, 2021, submitted the relieving order issued by NTPC and his educational

qualifications. Two days thereafter i.e., on November 20, 2023, PTC India received a legal opinion again from Mr. Chetan Sharma, ASG, regarding the issue of compliance with the appointment terms and conditions by Mr. Ratnesh.

94. It is noted that Mr. Ratnesh had sought time till November 22, 2021 to fulfill the formalities. Noticee 1 received an opinion on November 08, 2021 wherein a list of documents to be submitted was enumerated. Similarly, on November 20, 2021, PTC under the chairmanship of Noticee 2 received an opinion that stated that the joining formalities of Mr. Ratnesh were incomplete. It would have been possible for Noticee 1 to inform Mr. Ratnesh about the set of documents that he was required to submit and, in the same manner, Noticee 2 could have informed Mr. Ratnesh about the set of documents that he was required to submit by November 22, 2023. Yet, neither of them sent any communication to Mr. Ratnesh, even though they had clear information as to what were the documents required from Mr. Ratnesh to regularize his joining. On the contrary, Noticees 1 and 2 were busy gathering legal opinions to establish that the joining of Mr. Ratnesh was incomplete.
95. It is important to note that by November 08, 2021, Noticee 1 had received a legal opinion that went to the extent of illustrating the documents that were required to be submitted by any person at the time of joining. Even after this, Noticee 1, as the MD and CEO of PFS, did not communicate the same to Mr. Ratnesh. Till November 22, 2021, the two documents that Mr. Ratnesh was asked to submit were: a) a Release Order and b) self-attested copies of certificates relating to his educational qualifications and experience. The above points towards a clear mala-fide on the part of Noticee 1 to obstruct and stall Mr. Ratnesh from taking up the position of WTD and CFO of PFS.
96. Noticee 1 has claimed that it was PTC that carried out the process of recruitment/appointment and he had no involvement in the same. While it is true that PTC India's HR Department was involved in the selection process; however, once the selection was done, the process of appointment, as demonstrated in the chronology brought out above, was in fact carried out by PFS and Noticee 1 had played a direct role in the same. Thus, the claim of

Noticee 1 that he was not at all involved with the appointment of Mr. Ratnesh is untrue. It is equally surprising that while Noticee has claimed that process of appointment was done by PTC, yet, he got an opinion on November 08, 2021 from ASG, which opined that joining formalities of Mr. Ratnesh were incomplete.

97. Apart from the above, the involvement of PTC's HR Department in the intervening events between September 07, 2021 (appointment letter issued to Mr. Ratnesh) and November 25, 2021 (PTC's email to PFS) looks suspicious. It is noted from the minutes of the 43rd meeting of the NRC of PFS held on July 17, 2021 that one of the items discussed at the said meeting was item no. 43.2 relating to "*Finalization of Detailed Job Description and Advertisements for closing of Board Level Positions in PFS*". In this regard, the decision of the NRC of PFS was as under:

"After detailed discussions, the Committee decided the followings: -

- 1. Age of superannuation for both vacancies of WTDs shall be 62 years. Minimum age of 45 years and maximum age of 58 years may be fixed for the eligibility criteria*
- 2. Person on deputation/lien may be allowed for both the vacancies of WTDs from PTC, its Promoter Companies and REC.*
- 3. Total salary package (including PRP and other benefits) calculated at the middle of the pay range for the positions WTDs shall be mentioned in job description.*
- 4. Time period of 3 weeks may be allowed for the application;*
- 5. A letter in this regard may be sent under the signature of the Chairman PFS to the PTC, its promoters companies i.e. NTPC, NHPC, PGCIL and PFC;*
- 6. Further process in this regard may be carried on by PTC HR team in consultation with the Committee."*

98. It is evident from the above that the NRC of PFS at its meeting on July 17, 2021 had clearly set out the eligibility criteria (including permitting a person on deputation/lien eligible to be appointed as WTD) and remuneration for the WTDs to be appointed. The fact that the NRC had stated that the "*process in this regard may be carried on by PTC HR team in consultation with the Committee*" demonstrates that the role of PTC HR was merely secretarial,

which is also corroborated by the chronology of events subsequent to the NRC meeting of July 17, 2021, provided earlier in this Order. That the role of PTC HR team was merely secretarial is also established by Item No. 43.4 deliberated and decided at the said meeting of the NRC, which dealt with the matter of “*Restoration of Human Resource (HR) functions of PFS with the PFS Management*”. The relevant portions from the minutes of the NRC’s meeting in respect to the above are provided below:

“The Committee was of the view that as decided by the NR Committee in its 38th meeting the approval of Director (HR) PTC was required only in case where the appointments were made apart from the approved management plan and in case of the issue related to transfer, posting, promotion at the level of functional head and one level below that would be done with prior intimation to Director (HR), PTC.

Sh.SB Nayar, Chairman of the Committee apprised the Committee that the Independent Directors in their meeting had taken a view that since the divestment by PTC is on hold, then the HR functions may be restored with PFS management.

The Committee discussed the various aspects related to the agenda item and was of the view that as earlier Sh. Naveen Kumar (WTD) was looking after HR functions of PFS and post his superannuation, no senior person is in PFS HR department of PFS. Therefore, till the time new WTDs assume charge in PPS, the specific items requiring approval of/ prior intimation to Director(HR), PTC may be vested with the N&R Committee i.e. reference of Director (HR) PTC in the minutes of 38th meeting of the Nomination & Remuneration Committee, may be read as “Nomination & Remuneration Committee of PFS”.

99. As has already been brought out, the eligibility and conditions for the appointment of two WTDs were determined, which allowed for appointment on lien, and thereafter appointment letters were sent to the prospective WTDs. It is noted that Mr. Surinder Sharma, HR Manager at PTC India, vide email dated December 13, 2021 addressed to Ms. Nidhi Saini of NTPC stated that Mr. Ratnesh’s application had not been received through proper channel. The said

email also mentioned that PTC India did not have the No-Objection Certificate issued by NTPC, which was required to be produced at the time of interview or latest at the time of appointment. However, it is noted that the records don't reveal how PTC India had determined as to what documents were required to be submitted by Mr. Ratnesh and under what powers. Further, the said email while making a reference to the appointment letter dated September 07, 2021 stated that *"Shri Ratnesh was supposed to submit the pre-requisite documents including unconditional Release letter from the current employer on the date of his joining i.e., on 29th October, 2021."* It is noted that while the document referred to in the appointment letter was a *"Release Order"*, PTC's HR Manager, had added the words *"unconditional"* before *"Release Order"* which did not find mention in the appointment letter. Similarly, I find that the mention of *"Vigilance Clearance"* in PTC HR Manager's email dated November 22, 2021 was beyond what was mentioned in the appointment letter.

100. The RMC 1 has recorded incomplete documentation, including non-submission of Director 2 Form, as one of the reasons for non-acceptance of the joining report of Mr. Ratnesh. In this regard, I note that the requirement of submitting Director 2 form was not mentioned in the Appointment letter dated September 07, 2021. Through RMC1 has referred to the said form, there is nothing on record to show that the said form was ever asked from Mr. Ratnesh.
101. Further, it is pertinent to refer to the comments of the Chairman of the NRC, Mr. Santosh B. Nayar and the ultimate decision of the Board regarding the recommendation by the NRC of the appointment of Mr. Ratnesh at the 139th Board meeting of PFS held on August 28, 2021, which are provided below:

"Sh. Santosh B. Nayar. Chairman of the N&R Committee stated that when any recruitment is done, it is hard to find a person with 100% perfect candidature as the business dynamics keeps on changing. The person's ability to adapt, ability to lead. how will they extract work from other people / team, their potential were also considered at the time of recruitment. He further stated that these candidates are absolutely fit and proper to become the Directors of the Company. The rest of Board agreed with the views of the Chairman N&R Committee."

After discussions on the points raised by MD, the rest of the Board accepted all the recommendations of the N&R Committee and of the Audit Committee (for Sh. Ratnesh as Director Finance & CFO) as mentioned hereunder and approved the appointment of Sh. Ratnesh as Director (Finance) & CFO and Sh. Pranab Kumar Sinha as Director (Operations) of the Company, on the terms of the appointment as per the recommendations of the N&R Committee for a period of five years or the date of superannuation (which at present is 62 years), whichever occurs earlier w.e.f. their respective dates of joining:-

1. Terms of appointment of both Sh. Pranab Kumar Sinha (Director Operations) and Sh. Ratnesh (Director Finance & CFO);
2. Total compensation to both Sh. Pranab Kumar Sinha (Director Operations) which includes Fixed CTC of Rs. 73 lacs (apart from LTA and other benefits at WTD level) and Sh. Ratnesh (Director Finance & CFO) which includes fixed CTC of Rs. 67.50 lacs (apart from LTA and other benefits at WTD level);
3. Recommendation of the Audit Committee for the appointment of Sh. Ratnesh as Director Finance & CFO.
4. Payment of gratuity to Sh. Ratnesh on his superannuation from PFS, which would be after a tenure of about four years;
5. The post-retirement medical scheme benefit to Sh. Pranab Kumar Sinha to be at par with PFC.

The Board further desired that as acceptance of terms of appointment had been received from both the candidates, therefore, PFS may also give the necessary intimations to stock exchanges and/ or the regulators as may be required for their appointment.”

102. From the above, it does not appear that there was any change whatsoever in the terms and conditions of the appointment of Mr. Ratnesh. However, the minutes of 139th Board meeting of PFS reveals *inter alia* the following:

“Shri Rajiv Malhotra, HR-Head PTC and Nominee Director in PFS, informed the Board that further to the decisions in the 138th meeting of the Board held on 28th August, 2021, the terms of appointment as decided by Chairman- PFS were offered to both the selected candidates i.e. Sh. Pranab Kumar Sinha and Shri Ratnesh.

Sh. Rajiv Malhotra also informed the Board about the terms of appointment offered to the both the selected candidates. It was further informed to the Board that both Sh. Pranab Kumar Sinha and Sh. Ratnesh have sent in their acceptance of the same. The Committee was further informed that both the

candidates are joining on absorption basis. This is also on the lines of the suggestions of MD & CEO, PFS in the previous meeting.” (emphasis supplied)

103. The minutes further recorded: “*The Chairman appreciated that the Board had given a unanimous decision in the selection of the candidates. He further stated that, as suggested by the MD & CEO, both the candidates are joining on absorption basis.*” (emphasis supplied)
104. The candidates had accepted the terms contained in the appointment letters issued pursuant to the 138th meeting of the Board of PFS, which in turn had concluded the process of selection of WTDs, as recommended by the NRC at its meeting held on July 17, 2021. As already brought out above, NRC at its meeting held on July 17, 2021 had specifically allowed for the appointment on deputation/lien, which continued at the time of the issuance of appointment letters and their acceptance by the concerned individuals. Further, it I noted that though the minutes of 139th Board meeting had recorded that the appointment was ‘on deputation basis’, the said condition was apparently never communicated to Mr. Ratnesh. Also, there is nothing on record, especially from Mr. Ratnesh, indicating his intent of joining on ‘absorption basis’.
105. In view of the above observations, I find that Noticee 1 made a concerted effort to seek additional documents, beyond what was required, to prevent Mr. Ratnesh from joining as Director (Finance) at PFS and deliberately did not implement the decision of the Board of PFS in this regard. There was clear failure on the part of Noticee 1 to fill a critical vacancy in PFS. Further, the standby candidate for the position of WTD (Finance) and CFO was not appointed. Accordingly, I find that Noticee 1 violated the provisions of Regulations 4(2)(f)(ii)(2) and 4(2)(f)(ii)(8) of the LODR Regulations by not meeting the expectations of operational transparency to stakeholders through failure to implement the Board decision, keeping the Board in the dark through non-disclosure of critical information, by hindering the smooth functioning of the Board, thereby affecting the interests of all stakeholders through subversion of the decision of the Board regarding joining of Mr. Ratnesh. I also find that Noticee 1 violated Clause E of Part A of Schedule II read with Regulation 17(7)

of the LODR Regulations, 2015 by disclosing very limited information, and not placing all relevant facts (including the reasons for keeping on hold Mr. Ratnesh's joining and seeking additional requirements like vigilance clearance, unconditional relieving order) related to the removal/cessation of Mr. Ratnesh before the Board of PFS. It must be mentioned here that the timing of the opinion of ASG relating to the appointment was suspicious.

106. I find that Noticee 1 violated Regulation 4(2)(f)(iii)(3), 4(2)(f)(iii) (12), 4(2)(f)(iii) (13), read with Regulation 4(2)(f)(iii)(14) of the LODR Regulations as he did not provide the Board access to accurate, relevant and timely information. He failed to share complete information with the Board regarding the appointment of Mr. Ratnesh, including legal opinion obtained from ASG and the reasons for Mr. Ratnesh's appointment being kept on hold. Furthermore, Noticee 1, failed to ensure sufficient number of non-executive members on the committees and Board, as various committees of PFS became defunct due to resignation of IDs. By failing to implement the recommendation of the NRC of PFS of appointing the stand-by candidate as CFO, in case Mr. Ratnesh did not join, and ensuring the continued vacancy of a critical position, Noticee 1 has violated Regulation 4(2)(f)(iii)(8) of the LODR Regulations, 2015. Lastly, Noticee 1 by failing to discharge the key functions and responsibilities of the Board and duties of directors failed to comply with Regulation 26(3) of the LODR Regulations read with Clauses 4 (ii), (ix), 5(iii), (viii), (xii), (xiii), (xv) of Code of Conduct of PFS.

Disclosure of FAR 2018 in respect of the loan to "NNPIPL" / "NSL"

107. As per SCN, in January 2014, a bridge loan was approved in respect of NSL to the tune of Rs.125 Crore for setting up a coal-based power plant, and the same was disbursed in March 2014. The repayment of the bridge loan was to start after a moratorium of 12 months. NSL defaulted on payment of first instalment as the post-dated cheques issued by NSL towards interest payment were dishonoured. Consequently, the account became irregular and was declared NPA on March 31, 2017. Thereafter, PFS appointed GSA & Associates, a Chartered Accountancy firm, to carry out a forensic audit in respect of the said account. GSA & Associates submitted its report in November 2018 (i.e. FAR-2018).

108. It has been alleged in the SCN that FAR 2018, which contained information regarding the NSL loan account, had not been disclosed to the Board of PFS in a timely manner. In this regard, it has been specifically alleged that there was significant delay on the part of Noticee 1 in putting up the FAR 2018, which contained material information pertaining to the NSL loan account, before the Board.
109. The Noticee 1 has contended that he was not involved in the sanctioning of the loan in respect of NSL.
110. Before considering the allegations against Noticee 1, it is pertinent to refer to the chronology of the events provided hereunder:

Sl.No.	Date	Event
1.	February 11, 2013	A term loan of Rs. 150 Crore was sanctioned by PFS as a part of consortium, to NSL.
2.	February 28, 2014	A bridge loan of Rs. 125 Crore was sanctioned to NSL by PFS.
3.	March 2014	Disbursement of the bridge loan of Rs. 125 Crore
4.	March 31, 2017	The NSL loan account turned NPA
5.	November 02, 2017	PFS appointed GSA & Associates to conduct forensic audit of NSL
6.	January 18, 2018	NSL filed for bankruptcy under Section 10 of IBC. PFS also filed its claim but the same was rejected by IRP citing PFS not being a creditor.
7.	November 26, 2018	GSA & Associates submitted their report to PFS (FAR -2018)
8.	December 15, 2020	PTC sought a legal opinion that stated that non-reporting of FAR by concerned persons of PFS must be viewed suspiciously and reporting to RBI would be required.
9.	December 16, 2020	2 nd meeting of Business Committee where One Time Settlement (OTS) of Rs. 90 Crore for principal outstanding of Rs. 125 Crore was considered. It is in this proposal that FAR-2018 was placed before the Board committee for the first time.
10.	December 18, 2020	PFS obtained a legal opinion on FAR-2018.
11.	December 19, 2020	The FAR was placed before the Board. The Board constituted a committee of IDs (CoIDs) to look into the matter.
12.	May 05, 2021	The company, suo-moto, sought a legal opinion dated May 05, 2021 from former CJI, Justice K G Balakrishnan.

13.	May 17, 2021	CoID places its report before the Board.
14.	August 12, 2021	The NSL account is reported to RBI as suspected fraud

111. It is noted that Noticee 1 has acknowledged that he being the Director (Finance) at the relevant time, FAR-2018 was placed before him. He marked the same to the Compliance Officer of PFS who was also handling the Legal Department of PFS. Noticee 1 has submitted that the Compliance Officer of PFS, pursuant to the receipt of FAR-2018, wrote, “*may be looked by the concern department*” (sic). He has further submitted that consequent to the above; he approached the Special Asset Resolution Cell, which in turn approached the NCLT and the Hon’ble Supreme Court of India. The Hon’ble Supreme Court thereafter allowed PFS to be part of the Committee of Creditors.
112. Noticee 1 has further claimed that he did not instruct the officials of PFS to not disclose FAR-2018 to the Board of PFS. According to him, the Compliance Officer/Legal Department reviewed FAR-2018 and did not recommend any disclosure. Noticee 1 has also contended that there was no policy of and no provision in the Delegation of Powers (“**DOP-PFS**”) for placing of a forensic report before the Board of PFS. The Noticee has further stated that there was no company policy for placing an inconclusive report before the Board. Additionally, the RBI had at no point raised queries with regard to the procedures in PFS.
113. I note that forensic accounting/forensic audit is distinct from the periodic audit of financials that is carried out in compliance with statutes, namely, the Companies Act etc. In this regard, I note that there is a set of 20 Forensic Accounting and Investigation Standards (“**FAIS**”) issued by the Institute of Chartered Accountants of India upon culmination of the standard setting process initiated by way of an Exposure Draft on the said subject issued in 2020. The FAIS define Forensic Accounting as the “*gathering and evaluation of evidence by a professional to interpret and report findings before a Competent Authority.*” It is further clarified in the FAIS that “*the overriding objective of Forensic Accounting is to gather facts and evidence, especially in the area of financial transactions and operational arrangements, to help the*

Professional report findings, to reach a conclusion (but not to express an opinion) and support legal proceedings.” Thus, it is quite clear that a forensic accounting assignment is a special accounting process geared towards unearthing facts/evidence in respect of financial transactions.

114. Therefore, it cannot be said that FAR-2018 was just another document that had been placed on the table of the MD & CEO. A forensic audit was initiated by the PFS into the loan account of NSL precisely because the Company was deeply concerned about the conclusions or facts that might emerge as a consequence of the forensic audit. Accordingly, once the forensic audit was completed and the report finalised, the same should have been placed before the Board. If there was no need/requirement for FAR-2018 to be placed before the Board, then by same logic there should not have been a requirement for initiating a forensic audit in the first place.
115. Further, the following facts brought out in the FAR-2018 should have been an appropriate guide on the question as to whether the same was required to be placed before the Board or not.
116. At the time of seeking the bridge loan from PFS, NNPIPL / NSL had provided the following expenditure schedule:

S. No.	Particulars	Amount (Rs. in Crore)
1	Balance Land Acquisition	43.37
2	33/11 KV Substation at Project Site	5.15
3	Bay extension at Chainpal Sub Station	3.20
4	Construction of 33 KV feeder line from 132/33 KV Substation at Chainpal to 33/11 KV substation at Project	3.60
5	Land for RailwayTrack corridor for 45 acres for a length of 6 kms	9.00
6	Site Office at Angul	8.08
7	Godown for storage	7.85
8	Temporary Township for Contractor Staff	13.50
9	Internal Roads in the Project Site	4.25
10	Balance Boundary Wall construction	9.00
11	Restoration of Communal facilities	6.00
12	Diversion of power lines	2.50
13	R & R Colony Development Work	7.00
14	CSR	2.50
Total		125.00

117. FAR-2018, based on the table of fixed assets as appearing in the schedule to the balance sheet, found that most of the expenditure as stated in the original request, had not been incurred.
118. FAR-2018 recorded that in the year 2012, Tata Projects Ltd. (“**TPL**”) placed an Inter-Corporate Deposit (“**ICD**”) Rs.170 Crore with NNPIPL / NSL at an interest rate of 10% for developing 2 X 660 MW Tentulei Thermal Power Project in Odisha. FAR-2018 noted that no project work had been undertaken. FAR-2018 further observed that while NNPIPL did provide ICD interest for FYs14, 15 and 16, it reversed the interest paid earlier, stating that the interest on inter-corporate borrowing was not payable. Also, the inter-corporate deposit of Rs.170 Crore was reversed in anticipation of a favourable arbitration award. Additionally, as a consequence of the anticipated favourable arbitration award, NNPIPL / NSL reversed project liabilities amounting to Rs.47.26 Crore, as the same were not acknowledged as debt in books of account as per the disclosure. Interestingly, NNPIPL in its books showed Rs.121.35 Crore as advances given to TPL for capital goods. However, no capital goods appeared to have been delivered. The account was subsequently reversed. On the basis of the above, FAR-2018 concluded that the nature of transaction of advances against capital goods and receipt of Rs.170 Crore as ICD appeared in the nature of round tripping.
119. FAR-2018, on the analysis of NNPIPL’s bank account bearing number 912020021XXXX1 with Axis Bank, recorded that there were many related party transactions. The movement of funds to and from the related parties in the account of NNPIPL revealed that fund transfers were moving to facilitate the payment needs of NNPIPL, which probably was required to demonstrate the infusion of capital as per the requirements of lending institutions. Mandava Holdings Pvt. Ltd., through its step-down subsidiary, was required to infuse Rs.345.54 Crore in the project at the stage when PFS was approached for the sanction of bridge loan. Another amount of Rs.382.89 Crore was expected to be infused in NNPIPL over next 2 years. This stage never arose as the project was largely stalled. Based on the above, FAR-2018 stated that related party

payments against the receipts from related parties indicated diversion of funds by entities related to NNPIPL.

120. Based on the above factual findings, the following conclusions were *inter alia* made in FAR-2018:
- (a) Loans to related parties/entities tantamount to diversion of funds.
 - (b) The group followed a step up and circular approach using several intermediate layers for share capital of various group companies. All the investor companies and holding companies had very little capital funds. This approach resulted in concealing the actual source of capital as cause of fund flows amongst related parties appeared difficult to map for the genuine project expenditure on an Arm's length distance.
 - (c) The company's accounting practices with regard to transactions with Tata Projects Limited are not considered commercially prudent. Payment of advance even when the commercial contract and EPC terms were not finalised and the receipt of advance bearing interest for the company appeared to be strange and prejudicial to the interests of the company.
121. These were stark factual findings and conclusions and any reasonable person would have thought it prudent to place it before the Board. However, the same was not considered by Noticee 1, who was Director (Finance) at the material time, as he occupied the said position from February 02, 2012 until he proceeded on compulsory leave on the instructions of RBI in June 2023 (in addition to his being MD & CEO from October 2018).
122. A contemporaneous account giving a background to such dereliction is found in the minutes of the 25th NRC meeting dated January 23, 2018. The minutes noted that "the monitoring team headed by Dr. Pawan Singh did not track the utilization for a period of as long as eighteen months post disbursement....the disbursement and monitoring team including Dr. Pawan Singh and the then MD & CEO are responsible for issues relating to NSL loan....Further, Dr. Rajib Mishra and Shri C. Gangopadhyay also pointed out that assigning the role of monitoring to Director (finance) who was responsible for disbursement was a questionable decision. They further informed that they are also not absolving

Dr. Pawan Singh from this case and suggested issuance of caution for being vigilant so that transaction like NSL should not recur in Future.....the entire team was responsible for NSL case and Dr. Pawan Singh being one of the Key Managerial Personnel in the team is also accountable for the same'.

123. From the above, it is clear that the monitoring of the bridge loan to NNPIPL was the responsibility of the then Director (Finance) i.e., Noticee 1.
124. Post the disclosure of FAR-2018 in 2020, the same was noted and commented upon in the report of CoID, which noted that FAR-2018 had in fact indicated that there was diversion and mis-utilisation of funds disbursed under the bridge loan. The same view was reiterated in RMC2 Report as well as FAR-2022. Additionally, the legal opinion of Mr. Abhinav Vasisht, Senior Advocate, dated December 15, 2020, in response to a query by PTC-India, opined that *“From the observations made in the Forensic Audit Report as reproduced above and in the light of the Explanation defining the meaning of the word ‘fraud’ in Section 447 of the Companies Act, 2013, I am of the considered opinion that the Forensic Audit Report discloses details of highly suspicious activities in the accounts of the borrower, NNPIPL, which would tantamount to fraud, once proved in accordance with law.”*
125. An argument has been made by Noticee 1, presumably on the basis of the legal opinions mentioned above, that the guiding principle in such matters was the Master Direction – Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016 issued by the Reserve Bank of India. I note that while reporting of instances of ‘fraud’ by NBFCs to the RBI was to be guided by the said Master Direction, the same could not be a guiding tool for what information/document was to be presented before the board of a company. That matter ought to be guided by the duties entrusted to the Directors of a company under Section 166 of the Companies Act, 2013 which include the duty to act in good faith and in the best interests of the company and the duty of reasonable care, skill and diligence. In my view, no reasonable person furnished with the information as contained in FAR-2018 would have thought it unnecessary for FAR-2018 to be placed before the board of PFS. However, Noticee 1 acted otherwise, and by

doing so, exhibited a clear and abject dereliction of the duty cast on him under law.

126. Also, post the Board gaining knowledge of FAR-2018, contrary views were expressed by different legal opinions. In this regard, Noticee 1 has drawn attention to the legal opinion of Mr. U.K. Chaudhary, Advocate, who opined that since GSA & Associates did not have access to all the books of account and other information relating to NNPIPL, FAR-2018 could not be considered as a forensic audit report. Similarly, Noticee 1 has also drawn attention to the legal opinion of Mr. Justice K.G. Balakrishnan (Retd.) which noted that FAR-2018 was not in the nature of a Forensic Audit Report since the forensic auditors were not able to gather adequate information/documents due to the non-cooperation of NNPIPL/the Resolution Professional. Also, the RMC 1 Report stated that the same did not reflect a corporate governance default, although it recommended certain changes in the internal systems in place.
127. In respect of the above, I note that the abovementioned legal opinions were given post the Board of PFS gaining knowledge of the existence of FAR 2018. Given the same, Noticee 1 cannot claim that his decision not to place FAR 2018 before the Board of PFS was guided by such opinions. Clearly, Noticee1 did not act in a bonafide manner. It appears that he was clearly conflicted in the matter as he was Director (Finance) in PFS, when the bridge loan to MMPIPL / NSL was sanctioned and later, disbursed.
128. The SCN has also alleged that after the disclosure of FAR-2018 to the Board of PFS -
- (a) there was considerable delay on the part of Noticee 1 in providing inputs/ information in respect of the loan account to CoID formed by the Board to examine non-disclosure related issues of the NSL loan account;
 - (b) there were delays attributable to Noticee 1 in scheduling the Audit Committee meetings to discuss the said matter; and

- (c) even after clear direction from the PFS Board to report the NSL Loan account as 'suspected fraud', there was a significant delay in Reporting the matter to RBI.
129. I note that CoID, comprising of Ms. Pravin Tripathy and Mr. Thomas Mathews was constituted pursuant to the 130th meeting of the Board of PFS held on December 19, 2020 *"to examine the Governance and Compliance, and report related issues of Non-disclosure of Forensic Audit Report of NSL Nagapatnam Power & Infratech Ltd (NNPIL), in its present form and opinion of senior counsels"*. With respect to the alleged delay in providing inputs / information by Noticee 1 to the CoID, Noticee 1 has submitted that there was no significant delay in providing information, but some time lag, which was on account of the second wave of COVID-19, and that the CoID Report did not record any delay.
130. I note that while FAR 2018 did not specifically mention any delay in the receipt of documents/information, the email of Ms. Pravin Tripathi (member of the CoID) dated February 19, 2021 to Noticee 1 seeking information/relevant documents in respect of the NNPIPL matter mentioned that the information sought for should be provided within a week. It is noted from records that a reply to the said email was sent by Noticee 1 on February 27, 2021, promising that the response to the queries raised would be provided shortly. In the said reply, Noticee 1 mentioned that *"while the response to the queries is being prepared by the SARC team you may kindly bring to your notice that this same small team of two persons is also involved in the bidding process of another NPA account i.e. NRSS XXXVI, which, as of now has reached critical stage – the bids have been received and being evaluated for Technical Qualification, subsequent to which Financial bids of the technically qualified bidders would be opened."* It is noted that by the time this reply was sent, a week had already elapsed.
131. Further, from the minutes of the 132nd Board Meeting held on March 09, 2021, it is noted that the members of the CoID *"informed about the process followed by them and they further informed to the Board that they are yet to receive a response from PFS on certain queries that were sent on 19th Feb."* The minutes of the meeting recorded that PFS management offered the same response

regarding the delay that was mentioned in the email dated February 27, 2021 addressed to Ms. Pravin Tripathi. Further, there was no mention of any constraints due to COVID. Subsequently, after almost one month of earlier email, on March 26, 2021 another email was sent by Noticee 1 to Ms. Pravin Tripathi stating therein that the responses to the “*query (raised by way of email dated February 19, 2021) have been prepared and are enclosed herewith*”. The sequence of the emails clearly reflected the delay in information being provided to the CoLD.

132. As regards the allegation of delay in scheduling the Audit Committee meetings and delay in issuance of letter to the RBI, I note from the minutes of the 137th Board meeting of PFS held on August 05, 2021 that the then Chairman of PFS, Mr. Deepak Amitabh, while raising issues “*primarily related to governance in PFS*” that remained unaddressed, stated - “*The Board had earlier desired that the information regarding suspected fraud in a particular loan account be sent to RBI in consultation with the Audit Committee, and therefore the meeting of the Audit Committee was to be held by the first week of July, 2021. This was pertaining to a decision taken in the Board during the month of May. As per a communication copied to him by the Chairman, Audit Committee (ACB), it was apparent that the Chairman, ACB had followed up on his request for the meeting of the Audit Committee but the same was not scheduled by the first week of July.*” In response to this, Noticee 1 submitted that he had received an email from the Chairman of the Audit Committee and had replied to the same stating that a discussion on Expected Credit Loss Policy (ECL policy), which was pending from quite some time, was also needed. It was further informed that a meeting of the Audit Committee was held on July 19, 2021.
133. Additionally, the minutes of the 137th Board meeting record, “*He (Noticee 1) further stated that the draft was submitted to the Audit Committee. Audit Committee later gave its suggestions, and based on the same, letter shall be sent to RBI.*” Interestingly, upon perusal of the minutes of the 71st Audit Committee meeting of PFS, it is noted that the Committee specifically noted that in the agenda placed before it, there was no draft letter to be send to RBI and it contained a status note only. The Committee further noted that there had

already been a significant delay in the meeting of the Audit Committee and stated that matter should be reported to the RBI, in line with the decision of the Board, as suspected fraud. Additionally, the Committed stated that a draft reply to be sent to RBI, along with the complete documents, should be circulated to the Audit Committee for its review by the weekend, and the next meeting of the Audit Committee was to be held in the next week latest by July 30, 2021.

134. At the 72nd Audit Committee meeting held on July 30, 2021, the Committee had the opportunity to consider the draft letter proposed to be addressed to the RBI. Upon consideration of the same, the Committee was of the view that mere conversion of the earlier note as placed before the Committee in its last meeting into a letter was not the intent of the Committee, as it did not capture the true spirit of the decision of the Board. Accordingly, the Committee recommended various modifications to the draft letter, namely, that the letter should be sent to RBI stating the loan account to be as a case of Suspected Fraud; findings of FAR 2018 and its conclusions in detail; findings of FAR 2018 regarding utilisation of funds disbursed by PFS and finding of the report of the CoID.
135. Shortly thereafter, at the 73rd Audit Committee meeting held on August 04, 2021, the Committee again had the opportunity of considering the draft letter to be addressed to the RBI. From the minutes of the Audit Committee meeting, it is noted that the Committee was not satisfied with the drafting of the letter and was of the view that major aspects of the FAR 2018 had not been covered, and the element of suspected fraud should have been captured clearly.
136. It is noted from available record that the letter to RBI on the matter was finally sent on August 12, 2021, which was almost three months after the Board of PFS had resolved that PFS management should report the matter to RBI as a case of suspected fraud.
137. Noticee 1 has claimed that there was no intentional delay in scheduling the Audit Committee meeting and issuance of letter to RBI, as alleged in the SCN. He has further claimed that there was no clarity if a draft letter had to be placed before the Audit Committee, as the Board of PFS at its 133rd Board meeting

decided that the “*the matter should be reported to RBI as a suspected fraud, the reporting to be done by the management in consultation with the audit committee.*” Having considered the contention of the Noticee. I find the same to be fallacious. In my view, the Board’s mandate to report the matter as suspected fraud “*in consultation with audit committee*” meant that the management (i.e. Noticee 1) was required to place all necessary documents, including the draft letter, before the Audit Committee. However, there was considerable delay in doing so, which a responsible and reasonable person should have avoided. Considering the above, I infer that Noticee 1’s acts and omissions caused significant delay in reporting the matter of loan to NNINPL as suspected fraud to RBI, as mandated by PFS’s Board.

138. In view of the above, I conclude that Noticee 1 did not act in the best interests of PFS and its shareholders through the concealment and non-disclosure of critical material information contained in FAR-2018 up until 2020. Further, he failed to fulfil his role and responsibility as a Board member by delaying the supply of information to the CoLD and consistently delaying the implementation of Board decisions and non-disclosure of the FAR-2018. Accordingly, I conclude that Noticee 1 has violated the provisions of Regulation 4(2)(f)(ii)(7), 4(2)(f)(ii)(8), 4(2)(f)(iii)(6), 4(2)(f)(iii)(7), 4(2)(f)(iii) (12), 4(2)(f)(iii) (13) and Clauses 4(vii), (ix), 5(vi), (vii), (xii), (xiii), (xv) of the Code of Conduct framed by PFS read with Regulation 26(3) of the LODR Regulations, 2015.

Inaction with respect to the corporate governance issues highlighted by the Ex-Chairman of PFS, Mr. Deepak Amitabh

139. The SCN has alleged that no action had been taken by Noticee 1 regarding the following issues relating to the corporate governance of PFS, highlighted by the Ex-Chairman of PFS, Mr. Deepak Amitabh:
- (a) Not scheduling meeting of audit committee to discuss a ‘suspected fraud’ account of NSL despite insistence of Chairman, Audit Committee.
 - (b) Director (Marketing) declining to sign the duplicate deed of covenants as he might have had certain issues relating to governance at PFS and might not be comfortable signing the same.
 - (c) A presentation provided to RMC of PTC was different from the one provided by Noticee 1 to PTC.

- (d) Correspondences addressed to the Chairman, PFS, did not reach his office.
 - (e) Inputs required to be given by PFS management to the committee of IDs on NSL issues were considerably delayed.
 - (f) Information/ data sought by PTC was either delayed or not given.
 - (g) Agenda items of PFS did not contain the required information/ disclosure.
140. While the issues at points (a) and (e) have already been dealt with earlier in this Order, the issues at points (b), (c), (d), (f) and (g) need consideration.
141. In respect of the above, Noticee 1 has submitted *inter alia* the following:
- (a) the Statutory Auditors had specifically noted, on the basis of the discussions of the 137th Meeting, that there was scope to improve the internal controls, but there was nothing that impacted the financials of the Company;
 - (b) SEBI has failed seek the views of the Statutory Auditor of the Company, while ascribing certain statements and opinions to the Statutory Auditor.
 - (c) Mr. Jayant Gokhale and Mrs. Preeti Saran had commented only on three points i.e., appointment of Mr. Ratnesh, NSL and the KPMG report, though on other points raised by the resigning IDs, they did not offer any comments or disagreement with RMC 1 Report;
 - (d) no single instance had been identified of the legal files of the Company not being routed through the legal functional head;
 - (e) SEBI had chosen to adopt the CNK Report (FAR 2022) as true and correct, overlooking the specific rebuttals of the Company;
 - (f) the reading of the minutes of the 137th Meeting to observe that the Board/Chairman was not satisfied with the replies of MD&CEO was incorrect; and
 - (g) The allegations contained in paragraph 114 of the SCN was completely contrary to the discussions at the 76th AC meeting and were belied by the recordings of the same.

142. As regards the issue of Director (Marketing) declining to sign the duplicate deed of covenants on concerns relating to the governance at PFS and as such not being comfortable signing the same, I note from the minutes of the 137th Board meeting held on August 05, 2021 that the said issue was deliberated in the said meeting, and the same was considered in the RMC1 Report as well as FAR 2022. RMC1 Report characterised the issues raised in the said meeting as administrative issues and not as issues of corporate governance. RMC1 Report further stated that Mr. Rajib Mishra had confirmed that he had been misquoted. RMC1 Report further noted that the reporting made in minutes that *“Dr. Rajib Mishra may have certain issues relating to governance at PFS and may not be comfortable signing the same”* was out of context and not true. Additionally, I note that at the time of 137th Board meeting held on August 05, 2021, Mr. Rajib Mishra had ceased to be a Nominee Director in PFS, which meant that he could not have been present in the said meeting when reference to him was made. Further, while FAR-2022 made general statements on the running of PFS, the issue of Mr. Rajib Mishra being reluctant to sign documents due to concerns regarding corporate governance was not specifically dealt with. In view of the above, I am inclined to give the benefit of doubt to Noticee 1 in this regard.
143. As regards the issue of a presentation provided to PTC being different from the one made by Noticee 1 before the RMC of PTC, I note that RMC 1 Report records, on the basis of the minutes of PTC-RMC’s meeting of June 14, 2021, that during the course of the presentation the members of PTC-RMC had observed that PFS would require infusion of capital in the form of equity. With respect to the said observation, Noticee 1 had provided his response. The RMC 1 Report asserts that to bring one of the slides in line with the statement made by Noticee 1 during the presentation, few words from one sentence were deleted. This stance finds reflection in the response of Noticee 1 to the assertions of Mr. Deepak Amitabh, as recorded in the minutes of the 137th Board meeting of PFS. The Board meeting referred to in the 137th meeting was the 135th Board meeting of PFS, during which Shri Rakesh Kacker, Independent Director, informed the Board that though approval had been taken for equity infusion of Rs.500 Crore, in a presentation to PTC RMC the PFS management had taken a contrary stance. In this respect, a response was

provided by Noticee 1. It appears to me from the above facts that no specific issue of corporate governance had emerged. Accordingly, no adverse inference is drawn.

144. As regards the issue of correspondences addressed to the Chairman, PFS not reaching his office, I note from the minutes of the 137th Board meeting of PFS that Mr. Deepak Amitabh raised the issue of more than one correspondence related to the RBI Inspection Report addressed to the Chairman not reaching his office. The first time it came to his notice when the same were directly placed before the Board as part of the Board agenda(s). In this regard, it has been stated in the RMC 1 Report that there was no permanent office of the Chairman, and therefore the correspondence could not have been placed before the Chairman. The RMC 1 Report did not consider it as a breach of corporate governance norms. However, in my view, the communications relating to RBI Inspection Report were important information/documents from the regulator, which should have been brought to the notice of the Chairman without delay. I thus find that Noticee 1 by failing to place the said communications from RBI before the Chairman has violated the provisions of Regulation 4(2)(f)(i)(2) of the LODR Regulations, 2015.

145. As regards the issue of information/data sought by PTC either being delayed or not given, I note from the minutes of the 137th Board Meeting of PFS that Noticee1, in respect of this issue submitted that the data sought by PTC was pertaining to divestment process. He further submitted that there were issues, which were resolved, and the data outflow was happening well. The minutes further show that the Ex-Chairman acknowledged that though, undoubtedly, there were certain improvements, more needed to be done. From the above, it appears to me that the matter pertained to a particular instance. In view thereof, I am willing to give the benefit of doubt to Noticee 1.

Changes in terms and conditions of the loan granted to Patel Darah - Jhalawar Highway Pvt. Ltd. without the approval of the Board of PFS

146. PFS at its 130th Board meeting held on December 19, 2020 granted a term loan of Rs. 150 Crore to Patel Darah-Jhalawar Highway Pvt. Ltd. for four-laning of

Darah-Jhalawar-Teendhar section of NH-12 in the state of Rajasthan under the Hybrid Annuity Model. Subsequently, a follow-on proposal was placed before the Board of PFS at its 140th Board Meeting of PFS held on September 29, 2021, for extension of Schedule Commercial Operation Date (“**SCOD**”) along with the consequential shift in the repayment schedule and other related modifications regarding the term loan of Rs. 150 Crore extended to Patel Darah-Jhalawar Highway Pvt. Ltd. In the said meeting, the Board enquired as to whether there had been any modification to the terms and conditions approved by it (at the 130th Board meeting). It was informed by the management that as per the sanctioned terms, the condition relating to extension of timeline from NHAI was stipulated as a pre-disbursement condition; however, in the loan agreement the said condition was not a pre-disbursement condition. It is alleged in the SCN that Noticee 1 changed the terms and conditions, under which the term loan of Rs. 150 Crore was originally sanctioned, without the approval of the Board of PFS.

147. In response to this allegation, Noticee 1 has *inter alia* submitted as under:
- (a) the pre-disbursement condition of obtaining approval from NHAI for SCOD extension had been captured as pre-disbursement condition in the loan agreement;
 - (b) pursuant to the approval of the terms of the agenda cum appraisal note by the Board, documentation has been carried out by PFS legal team without any further reference to the Noticee;
 - (c) the Sanction Letter dated 31.12.2020 issued by PFS to Patel Darah sanctioning the loan has specifically recorded the condition adopted by the Board as one of the ‘Pre-Disbursement Conditions’;
 - (d) pursuant to the Sanction Letter, Amendment Agreement No. 3 dated 04.03.2021 was executed to amend the existing Facility Agreement dated 13.04.2018 among the other consortium lenders and Patel Darah to include PFS as a lender, and Clause 14 of the Facility Agreement set out the “Conditions Precedent to Initial Disbursement”; and

- (e) Clause 14.19 of the Facility Agreement (as incorporated by Amendment Agreement No. 3) required Patel Darah to obtain extension of timeline for commissioning of the project “which should result in extension in commissioning of the project on or before 31st July 2021”, and the extension was received prior to the issuance of the Sanction Letter and execution of Amendment Agreement No. 3.
148. In respect of the above, I note from the minutes of the 130th Board meeting held on December 19, 2020, where the term loan of Rs.150 Crore was originally sanctioned, that the Board of PFS in the said meeting resolved that “*a term debt of Rs. 150 crores (Rupees One Hundred Fifty Crores) to Patel Darah Jhalawar Highway Pvt. Ltd. (PDJHPL) for Four Laning of Darah-Jhalawar section of NH-12 (New NH-52) in the state of Rajasthan on the terms and conditions as mentioned in the agenda note, be and is hereby approved subject to condition that any modification in the terms and conditions may be made with the approval of the Board only.*” Thus, the term loan of Rs.150 crore came to be sanctioned in favour of Patel Darah Jhalawar Highway Pvt. Ltd. as per the terms and conditions mentioned in the Agenda Note.
149. In the Executive Summary of the Agenda Note, it is mentioned that – “*Under the Atmanirbhar Package, NHAI has issued the circular for extension in SCOD by 3-6 months for all under-construction projects due to Covid-19 impact. A pre-disbursement condition has been stipulated that borrower should have received Extension of Timeline (EOT) approval from NHAI related to project milestone which should result in extension in commissioning of the project on or before 31st July 2021.*” Similarly, in the Conclusion of the Agenda Note, it is mentioned that -“*A pre-disbursement condition has been stipulated that borrower should have received Extension of Timeline (EOT) approval from NHAI related to project milestone which should result in extension in commissioning of the project on or before 31st July 2021.*”
150. Further, in the Risk Report part (page 6 of 13) attached to the Agenda Note, it was mentioned under the heading Suitable Pre-disbursement conditions that – “*Borrower should have received Extension of Timeline (EOT) approval from*

NHAI related to project milestone which should result in extension in commissioning of the project on or before 31st July 2021.”

151. From the above, it is evident that the Agenda Note had specifically brought out the approval from NHAI for extension of timeline as a Pre-disbursement condition. Pursuant to the approval of the term loan, Sanction Letter was issued by PFS to Patel Darah Jhalawar Highway Pvt. Ltd. Additionally, Amendment Agreement No. 3 dated 04.03.2021 was executed to amend the existing Facility Agreement dated 13.04.2018, which had been signed among the other consortium lenders and Patel Darah Jhalawar Highway Pvt. Ltd. to include PFS as a lender. It is noted that the Amendment Agreement No. 3 dated 04.03.2021 *inter alia* added Clause 14.19 with the heading – Extension of Timeline Approval. The said clause read, “*The borrower shall have received, on or prior to July 31, 2021, the extension of timeline approval from the Concessioneing Authority in relation to project milestones thereby resulting extension in the date of commissioning of the project.*”
152. Now, the moot question is whether the condition as incorporated in the Amendment Agreement 3 was reflective of the condition adopted by the Board of PFS while approving the loan granted to Patel Darah Jhalawar Highway Pvt. Ltd.
153. It is noted from available records that two legal opinions were sought regarding this above-mentioned question. The legal opinion of L&L Partners dated February 15, 2022 categorically stated that the condition pertaining to extension for commissioning of the Project stipulated in the Sanction Letter had been appropriately captured in the Facility Agreement. Similarly, by way of an email dated January 20, 2022, Dhir Associates opined that “*based on the review of the Amendment Agreement, we understand that the condition related to ‘Extension of Timeline Approval’ has been duly captured as Clause 14.19 of the Amendment Agreement No. 3 to the Facility Agreement, which is part of the Conditions Precedent of Initial Disbursement.*”

154. The RMC 1 Report, while considering this aspect, has also stated that the deviation as pointed out in the 140th Board meeting had not been made by the PFS management in the loan agreement.
155. A contrary stance, however, was taken by FAR 2022, which noted that as per the terms of original sanction, the borrower, before the initial disbursement, should have submitted the extension of timeline for commissioning of the project up to July 31, 2021. However, the amended term captured in the loan agreement indicates that such extension of timeline can be obtained by the borrower up to July 31, 2021.
156. The two sets of conditions viz., condition approved by the Board of PFS and condition as finding mention in the Amendment Agreement 3 are placed hereunder for comparison:

Condition approved by the Board of PFS	Condition as finding mention in the Amendment Agreement 3
Borrower should have received Extension of Timeline (EOT) approval from NHAI related to project milestone which should result in extension in commissioning of the project on or before 31 st July 2021.	The borrower shall have received, on or prior to July 31, 2021, the extension of timeline approval from the Concessioneing Authority in relation to project milestones thereby resulting extension in the date of commissioning of the project.

157. Having considered both the clauses, as mentioned in the Table above, I am of the view that the condition approved by the Board meant that the project, after extension of timeline by NHAI, had to be commissioned by July 31, 2021, whereas the clause as mentioned in the Amendment Agreement 3 provided for obtaining extension of timeline from NHAI by July 31, 2021. While in the first case, the project was to be commissioned by July 31, 2021, in the latter case, merely extension of timeline had to be obtained by that date. I thus find that the Clause in Amendment Agreement 3 has substantially altered the condition approved by the Board of PFS.

158. In view of the above, I find that Noticee 1 violated the provisions of Regulation 4(2)(f)(ii)(2), 4(2)(f)(iii)(3), 4(2)(f)(iii)(6), 4(2)(f)(iii)(12) and 4(2)(f)(iii)(13) of LODR Regulations, 2015 and failed to comply with Clauses 4 (ii), 5(iii), (vi), (xii), (xv) of the Code of Conduct framed by PFS read with Regulation 26(3) of LODR Regulations, 2015.

Communications received from the Independent Directors

159. The SCN has alleged that certain IDs, namely, Mr. Santosh Nayar, Mr. Thomas Mathew and Mr. Kamlesh Vikamsey by way of their resignation letters had addressed numerous communications to Noticees 1 and 2, raising various issues concerning the Company, which were not acted upon/responded to. The specific issues raised by the above-named IDs and Mr. Rakesh Kacker, as recorded in the SCN, are provided hereunder:
- (a) Request for professional legal counsel for IDs as per Sec. 149 of Companies Act, 2013;
 - (b) Entire documentation pertaining to the appointment and joining of Mr. Ratnesh;
 - (c) Withdrawal of nomination of Ms. Renu Narang from the Board of the Company which made NRC non-functional;
 - (d) Calling for meeting of NRC to fill up the vacancy of lady ID; and
 - (e) Requests made for the convening of Board and committee meetings.

Request for professional legal counsel for IDs

160. Section 149(8) of the Companies Act, 2013 provides that a company and its independent directors should abide by the provisions of Schedule IV, which contains the code for guiding the functions of IDs, including the duties of IDs. One of the duties as contained in the said code is to “*seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company*”. Thus, it is evident that there is a provision in the Companies Act, 2013, enabling the IDs to seek external professional advice in respect of matters concerning a company, if found necessary. Accordingly, the IDs had made request for seeking professional legal counsel. Regarding this

request, the exchange of communications between the PFS Management and the IDs is tabulated hereunder:

Sl. No.	Date	Communication Details
1.	December 07, 2021	E-mail addressed by the IDs, namely, Mr. Rakesh Kacker, Mr. Santosh Nayar, Mr. Thomas Mathew and Mr. Kamlesh Vikamsey to Noticee 1 <i>inter alia</i> stating that they wished to seek legal advice from a lawyer of their choice in line with the provisions of Section 149 of the Companies Act, 2013.
2.	December 13, 2021	E-mail addressed by Noticee 1 to the IDs <i>inter alia</i> stating that the attention of the Chairman (Noticee 2) had been drawn to issue.
3.	December 13, 2021	E-mail addressed by Mr. Rakesh Kacker to Noticees 1 and 2 noting that even though e-mails dated December 10, 2021 and December 13, 2021 had been received from the Noticees; no instruction had been given to the Company Secretary to render assistance for legal advice, which had to be done by Noticee 1.
4.	December 15, 2021	E-mail addressed by the IDs, namely, Mr. Rakesh Kacker, Mr. Santosh Nayar, Mr. Thomas Mathew and Mr. Kamlesh Vikamsey to Noticee 1 <i>inter alia</i> stating that they required immediate legal assistance for discharging their responsibilities, and that they were going ahead with the appointment of an Advocate, whose name was being separately shared with the Chairman, MD, Company Secretary and Other Directors.
5.	December 17, 2021	E-mail of Noticee 2 to the IDs stating therein that any legal consultation by the Independent Directors would be premature, and the need for the same may be considered in case there was any ambiguity.
6.	April 05, 2022	E-mail of Mr. Kamlesh Vikamsey addressed to Noticee 1 informing of the legal expenses incurred in getting legal counsel.

161. From a perusal of the exchange of communication between the IDs and the PFS management, it is noted that the IDs had specifically sought directions to be issued to the Company Secretary by Noticee 1 so that he would issue direction and help them in seeking external legal counsel. However, even after reminders by the IDs, there was no direction/instruction given to the Company

Secretary by Noticee 1 to assist the IDs in getting external legal advice. Even further, when the IDs vide e-mail dated December 15, 2021, informed of their decision to go ahead with the appointment of an external legal counsel, Noticee 2 in his reply stated that any separate legal consultation by the IDs was premature.

162. In view of the above, I conclude that Noticees 1 and 2, by not supporting the efforts made by the IDs to seek external legal advice, failed in their duty.

Documentation pertaining to the appointment and joining of Mr. Ratnesh not provided.

163. As already brought out earlier in the Order, the joining of Mr. Ratnesh as WTD and Director (Finance) could not be effected, even though the Board of PFS had approved his appointment. In this regard, the IDs had sought for the full documentation pertaining to the appointment and joining of Mr. Ratnesh from Noticees 1 and 2. A summary of such communication is provided below.

Sl. No.	Date	Communication Details
1.	December 07, 2021	E-mail addressed by the IDs, namely, Mr. Rakesh Kacker, Mr. Santosh Nayar, Mr. Thomas Mathew and Mr. Kamlesh Vikamsey to Noticee 1 <i>inter alia</i> stating that the IDs required all documents pertaining to the appointment, joining, including all correspondence addressed by PFS to Mr. Ratnesh and received from him as well as correspondence involving PTC India .
2.	December 10, 2021	E-mail addressed by Noticee 2 to the IDs <i>inter alia</i> stating that since the process of selection, appointment and joining of Mr. Ratnesh had been handled by HR of PTC India, the e-mail dated December 07, 2021 had been marked to him by Noticee 1, and he had issued necessary Instructions to the concerned officials in PTC for a holistic examination of the issue and address it on priority.
3.	December 15, 2021	E-mail addressed by the IDs, namely, Mr. Rakesh Kacker, Mr. Santosh Nayar, Mr. Thomas Mathew and Mr. Kamlesh Vikamsey to Noticee 1 <i>inter alia</i> stating that not a single document had been shared on the joining of Mr. Ratnesh and subsequent developments.

164. As already pointed out earlier, the terms and conditions with respect to the appointment of Mr. Ratnesh was done by PFS. PTC India – HR Dept. was to provide secretarial assistance for the selection. It has already been established earlier that the whole process of appointment was not run by PTC India. On the contrary, the terms and conditions for the position, circulation of the advertisement through letters of Deepak Amitabh, and the selection process was carried out by PFS. It was only in the last leg i.e., the joining of Mr. Ratnesh that the role of PTC India HR was seen. Also, the role of PTC India – HR came about because of the board resolution of PFS incorporating their role. However, even though the process was predominantly handled by PFS, necessary documents relating to that process were not provided by Noticees 1 and 2 to the IDs. Accordingly, it is concluded that Noticees 1 and 2 deliberately ignored the request of the IDs without giving any plausible reasons.

Withdrawal of nomination of Ms. Renu Narang from the Board of PFS, which made NRC dysfunctional and not calling for meeting of NRC to fill up the vacancy of Woman ID and ignoring requests made for the convening of Board and committee meetings

165. It has been alleged in the SCN that the Noticees 1 and 2 failed to call for a meeting of the NRC to fill up the vacancy of a woman ID, which rendered the NRC dysfunctional. A summary of the correspondence exchanged between the IDs and the PFS management on the above issue is provided below:

Sl. No.	Date	Communication Details
1.	November 25, 2021	E-mail addressed by Mr. Santosh Nayar to the Company Secretary and Noticee 1 (MD& CEO of PFS) requesting for the scheduling of a meeting of the NRC in the first week of December to appoint a woman ID to the Board of PFS.
1.	December 10, 2021	E-mail addressed by Mr. Thomas Mathew to Santosh Nayar (with a copy to Noticees 1 and 2) conveying his surprise with the postponement of the NRC meeting scheduled on December 10, 2021, and conveying that there were urgent items to be transacted, like Board appointments.

2.	December 11, 2021	E-mail addressed by Santosh Nayar to Noticee 2 <i>inter alia</i> stating that the withdrawal of Ms. Renu Narang, the Nominee Director of PTC on the Board of PFS appeared to ensure that the meeting of the NRC did not take place.
3.	December 15, 2021	E-mail addressed by the IDs, namely, Mr. Rakesh Kacker, Mr. Santosh Nayar, Mr. Thomas Mathew and Mr. Kamlesh Vikamsey to Noticee 1 <i>inter alia</i> raising the issue of appointment of a woman ID on the Board of PFS.

166. From the details of emails dated November 25, 2021 and December 10, 2021 as provided in the table above, it is apparent that pursuant to the request of Mr. Santosh Nayar, a meeting of the NRC was scheduled for December 10, 2021. However, the said meeting was adjourned to a future date. It is noted from records that since no response was received either from Noticee 1 (MD&CEO) or Noticee 2 (Chairman) to email dated November 25, 2021, the Chairman of NRC scheduled a meeting for December 10, 2021 and requested the Company Secretary (vide email dated December 07, 2021) to make the necessary arrangements. In response to the same, PFS management (issued with the approval of the MD) stated that *'there was no agenda attached for the meeting and any committee meeting may be finalized in consultation with Chairman, PFS and management of the company...'* In consideration of the same, Mr. Santosh Nayar, vide email date December 09, 2021, communicated to the management for postponement of the NRC meeting to December 16, 2021 to enable the management to submit any agenda item for the said meeting. However, on December 10, 2021, Ms. Renu Narang (member of NRC & Nominee Director of PTC in PFS) was withdrawn from the PFS Board, rendering the NRC non-functional as only two members remained and thus, there was no quorum to hold the NRC.
167. The Noticees have claimed that Ms. Narang was withdrawn from the Board of PFS by NTPC, her parent organisation, that no role could be attributed to the Noticees with respect to her withdrawal and that this view is echoed in the RMC 1 Report which states that it was the prerogative of NTPC.

168. It is seen that in the 154th Board meeting of PTC dated September 16, 2021, Ms. Renu Narang (one of the nominee directors in PFS) acknowledged the governance lapses in PFS and had urged PTC to take a more active role in managing the governance lapses in PFS including giving suitable directive to the Company. An agenda note for discussion in the 154th Board meeting was also prepared by the Nominee directors (of PTC) on PFS Board, covering various governance matters of PFS. As Ms. Renu Narang was a director on both the Boards (PTC as well as PFS), she had raised concern on the functioning of PFS before the PTC Board and emphasized on taking the issue of corporate governance in PFS seriously. Ms. Narang was a nominee Director on the Board of PFS since June 21, 2021.
169. As Ms. Narang was withdrawn from the Board, it rendered the NRC of PFS dysfunctional as minimum quorum of three members was required. This, in effect, stalled important appointments including that of a woman ID to the Board of PFS. Vide e-mail dated December 11, 2021, Mr. Nayar (ID, PFS) had informed the Chairman of PFS (Mr. Rajib Mishra) that pursuant to the withdrawal of Ms. Renu Narang, as Nominee Director of PTC in PFS, the NRC of PFS had been rendered dysfunctional. He also stated that since NRC was a statutory committee, Board would have to reconstitute the committee first. Accordingly, he requested to convene a Board meeting immediately for this purpose. However, no response was received from the Chairman of PFS, Mr. Rajib Mishra, and no corrective action was taken. Similar observation has been made in the FAR-2022, which noted that even the Company Secretary of PFS had e-mailed Noticees 1 and 2, fore- warning them of possible non-compliance, if the NRC meeting was not held in a timely manner.
170. It has been argued by the Noticees that their attempt to reconstitute the NRC through a circular resolution on December 31, 2021, was turned down by the IDs, one of the grounds being that the said resolution had not been sent to Mr. Ratnesh. However, it is important to note that that Ms. Pravin Tripathi's tenure (as woman ID on the Board of PFS) got over on October 14, 2021. The Noticees have failed to explain as to why the resolution was brought so close to the date of compliance, even though the Chairman of the NRC, Mr. Santosh Nayar had

made an e-mail request on November 25, 2021, for convening a meeting of the NRC to appoint a woman ID to the board. The FAR-2022 also records that all IDs of PFS along with NRC Chairman (Shri Santosh Nayar) had repeatedly requested that the NRC meeting be convened for appointment of a woman ID (vacancy arose after completion of Mrs. Pravin Tripathi's tenure) and appointment of whole-time directors. However, the said requests were not acceded or responded to either by Noticee 1 or Noticee 2.

171. It has already been brought out that in the absence of any response from MD&CEO or Chairman to his e-mail of November 25, 2021, the Chairman of the NRC, Mr. Santosh Nayar scheduled a meeting on December 10, 2021 and requested the Company Secretary to make necessary arrangements for convening the meeting. However, the said meeting could not go through at the instance of the PFS management (issued with the approval of the MD) on the ground that there was no agenda attached for the meeting. The RMC 1 Report also acknowledged that the reconstitution of NRC could have been done promptly.
172. From the above, it is clear that Noticees 1 and 2 failed to convene the meetings of the NRC and failed to make appointments to the NRC to complete its quorum in a timely manner.
173. In view of the observations and findings in the above paragraphs, I conclude that the Noticees 1 and 2 failed to perform their duties towards the Board of PFS and violated the provisions of Regulations 4(2)(f)(iii)(3), 4(2)(f)(iii)(6), 4(2)(f)(iii)(8), 4(2)(iii)(12), 4(2)(f)(iii)(13) and 4(2)(f)(iii)(14) of LODR Regulations, 2015 and Clauses 5 (iii), (vi), (vii), (xii), (xiii), (xv) of Code of Conduct of PFS read with Regulation 26(3) of LODR Regulations, 2015.

Providing no information or limited/incomplete information to the Board

174. It has been alleged in the SCN that information, when sought by the Board members, was not provided, and in cases where information was provided, the same was either limited or incomplete. In this regard, the SCN has cited certain examples:

- (a) complete documentation with regard to the appointment of Mr. Ratnesh was not placed before the Board;
 - (b) the note regarding the circular resolution dated January 10, 2022 for waiver of special conditions to IL&FS Tamilnadu Power Company Limited ('ITPL') did not highlight the important fact of fraud by the borrower as well as its impact on the Balance sheet of the PFS, which was required to be reported to the Board; and
 - (c) Notice dated January 14, 2022 scheduling the 144th Board meeting for January 22, 2022 was not addressed to all the Directors, and did not contain any agenda item for discussion regarding the various corporate governance issues which the IDs had repeatedly raised.
175. As regards full documentation concerning the appointment, selection and joining of Mr. Ratnesh not being placed before the Board, it has been established that the same was not presented before the Board, at least till the time the IDs had resigned.
176. As regards Circular resolution dated January 10, 2022 concerning ITPL, it is observed from records that PFS had sanctioned a total loan of Rs.200 Crore to ITPL under a consortium arrangement led by PNB at its 64th meeting of the Board held on January 15, 2015, and subsequently a 5/25 restructuring scheme was approved at the 98th meeting of the Board on December 28, 2018.
177. It is noted that vide order dated October 15, 2018, the NCLAT *inter alia* granted a stay on the institution or continuation of suits/proceedings by any person/company/bank against IL&FS and its 348 Group companies. Consequently, ITPL had requested for restructuring of its debt in accordance with the extant RBI guidelines. In line with the lead Bank (PNB), PFS also approved the restructuring plan at its 130th Board meeting held on December 19, 2020.
178. There were essentially two conditions of the restructuring plan: a) ITPL/ IL&FS to obtain all necessary approvals under the IL&FS to ensure that the account is not classified as "Amber" category and facilitate release of payments to the

lenders; and b) special dispensation to be obtained from Reserve Bank of India on restructuring of debt of ITPL under change in ownership.

179. With regard to condition a) above, necessary application was filed for approval of restructuring plan, and thereafter the NCLAT approved the implementation of the restructuring plan as per the term sheets put by the consortium. In addition, the Borrower was to further approach the NCLAT for classification of the account from ‘Amber’ to ‘Green’ so that the entity would be allowed to meet all its obligations i.e., payments to financial creditors and operational creditors.
180. The second condition, of the restructuring plan required that the resolution plan would be implemented only after getting the dispensation from RBI to treat the exposure as standard upon restructuring, considering it as a change in ownership in compliance with RBI guidelines. When the matter was taken up, RBI did not give a dispensation on the ground that the framework under which dispensation was being sought would not apply to IL&FS and its subsidiaries.
181. It is noted from the agenda note that a consortium meeting was held on December 06, 2021. In the consortium meeting, the Lead Bank – PNB informed that it had already waived the second condition i.e., resolution plan would be implemented only after getting RBI’s dispensation. Accordingly, an agenda item was placed before the Board for waiver of the condition requiring special dispensation from the RBI for the implementation of the restructuring of the debt of ITPL through circular resolution. It is noted that the agenda note itself did not contain any reference to fraud. The mention of fraud only appeared in the documents annexed to the main agenda note. An extract of the agenda note is provided below:

“ In line with the lead bank – PNB, the following is proposed:

Existing Condition	Proposed Condition
<i>Special dispensation to be obtained from Reserve Bank of India on restructuring of debt of ITPL under change in ownership.</i>	<i>Waiver of the existing Condition i.e., Special dispensation to be obtained from Reserve Bank of India on restructuring of debt of ITPL under change in ownership.</i>

“

182. Additionally, the agenda note had proposed the following resolution:
 “ “ **RESOLVED THAT** proposal for waiver of the existing Condition i.e. Special dispensation to be obtained from Reserve Bank of India on restructuring of debt of ITPL, under change in ownership, for 2X600 MW Coal Based Thermal Power Project in Cuddalore District, Tamil Nadu (M/s IL&FS Tamil Nadu Co. Ltd.) be and is hereby approved.”
183. It is relevant to note that the agenda note had been placed for a waiver of the second condition on the ground that the lead bank-PNB had accorded a similar waiver. In this regard, it is noted that PNB, vide an email dated December 06, 2021 addressed to all the members of the consortium, including PFS, had communicated the change in the conditions of the resolution plan. The said communication read as under:

“ Dear Sir

Our bank has approved following modification in the approved Resolution plan:

1.

Existing Terms & Conditions	Approved terms & conditions
<p>We had requested RBI vide our letter dated 18.07.2020 for dispensation to treat the exposure as Standard upon restructuring considering it as a change in ownership in compliance with RBI guidelines even if the account is finally treated as fraud.</p> <p>Accordingly, Resolution Plan will be implemented only after getting the said dispensation from RBI (Para No. 24 of RBI's 7th June 2019 Circular)</p>	<p>Waiver of existing condition i.e., Resolution Plan will be implemented only after getting RBI's dispensation.</p> <p>Our bank had requested RBI for dispensation to treat the exposure as Standard upon implementation of the restructuring plan. RBI has allowed dispensation to restructure the account even if there is fraud angle. However RBI has not permitted to upgrade the account to Standard on implementation of restructuring plan.</p> <p>The account can be upgraded after the completion of Monitoring Period i.e., 12 months from implementation of the resolution plan.</p>

184. From the above, it is apparent that while the waiver granted by PNB contained reference to fraud, in the waiver proposed by PFS, fraud was conspicuously absent. I am of the view that the potential fraudulent nature of the account not

being mentioned in the body of the Agenda Note cannot be considered as an oversight or slip.

185. The above facts have to be looked at in appropriate context. Since the Agenda Note of January 10, 2021 by circulation was not adopted, the said matter was placed as an agenda item for the Board meeting scheduled for January 22, 2022. A portion of the said agenda item stated - *“Final Forensic Audit report was submitted in October 2021. No decision on declaring fraud has been taken by the consortium. Subsequent to the consortium declaring and deciding that fraud has occurred in the instant loan account, PFS shall take actions as per regulatory norms including reporting to RBI and to the Audit Committee of Board and Board of Directors.”*
186. It is noted from records that within three months i.e., on March 15, 2022, PNB had informed stock exchanges of the fraud of Rs.2,000 Crore in respect of the loan granted to ITPL, under Regulation 30 of LODR Regulations, 2015. It is relevant to note that PNB had disclosed the default of ITPL as a material event despite the loan amount accounting for only 2.16 % of its total consolidated turnover and 2.27 % of its net worth. In contrast, PFS did not make any such disclosure, even though the loan accounted for 17.5% of its total consolidated turnover and 9.43% of its net worth.
187. Provisioning of Rs.200 Crore due to declaration of fraud in the loan account of ITPL would have had a significant impact on the profitability of the Company, as Rs.107 Crore was its net profit for the first two quarters of FY 2021-22. Interestingly, on December 05, 2021, PFS had informed stock exchanges that it was to get Rs.125 Crore as a part of the resolution amount in the loan account of ITPL, following which the price of PFS scrip rose by over 3%. Similarly, the Company had disclosed on March 25, 2022 the news of it receiving an income tax refund of Rs.50.97 Crore, even though income-tax refunds are generally annual occurrences and are therefore routine in nature. The above indicated Company's tendency to report positive news while ignoring negative news from disclosure.

188. It is noted that the Company's Materiality Policy, itself provided that such information shall be considered as material which would result in the alteration of the information already available publicly. The information that a loan was extended to ITPL and that the Company was to get Rs.125 Crore as a part of the resolution amount in the loan account of ITPL was already available in public domain. The information that a forensic audit had detected fraud in the loan account of ITPL would have clearly resulted in the alteration of the information already available publicly. So, the materiality condition was satisfied. Further, since the loan amount of Rs.200 Crore extended to ITPL accounted for 17.5% of the Company's total consolidated turnover and 9.43% of its net worth, any disclosure of fraud in the said loan account would have adversely impacted share price of the Company. Thus, it is evident that there was a material event that was not disclosed.
189. As regards the allegation in the SCN that the notice dated January 14, 2022 of the Board Meeting scheduled on January 22, 2022 did not contain any agenda/material for discussion, I note that the said notice, issued by the Company Secretary of PFS and addressed to all the directors barring Mr. Ratnesh, did not carry any agenda, but rather stated that the agenda would be circulated separately. I further note that in response to the said notice, Mr Santosh Nayar, vide email dated January 16, 2022 informed that
- a. no invitation had been sent to Mr. Ratnesh, and he being Board appointed, his cessation, if any from the Board had to be through the Board's approval;
 - b. without that, any Board meeting without notice to Mr. Ratnesh would be invalid and
 - c. all background papers on the Ratnesh matter including correspondence from Mr. Ratnesh to PTC/PFS would have to be placed before a validly convened Board to enable the Board to take decision.
190. Subsequently, PFS by way of an email dated January 17, 2022, which had been issued with the approval of Noticee 1, stated that PTC HR had informed that Mr. Ratnesh had re-joined NTPC, and an official could not be in whole time

employment at two places at the same time. He further stated that the approval for cessation of a Director from the Board would be required only in case a director was removed by the Board. Further, it would be prudent if all the matters relating to Mr. Ratnesh were discussed at the scheduled board meeting, and till such time, it would be prudent to not send any communication to Mr. Ratnesh. Noticee 1 also stated that PFS had requested PTC for a detailed note on Mr. Ratnesh as the entire recruitment process was handled by PTC, which had been circulated to the Board on January 16, 2022.

191. Consequently, Mr Santosh Nayar, vide email dated January 18, 2022 addressed to PFS stated that Mr. Ratnesh had been unilaterally terminated from PFS without information or decision of the PFS Board. He further stated that other than forwarding the correspondence from PTC, which was completely inadequate, there was no agenda from PFS management in this matter and, as such, it was not possible to discuss the matter in the scheduled Board meeting.
192. It appears from the above that full documentation regarding the appointment of Mr Ratnesh had not been provided to the Board, at least till January 19, 2022. It thus emerges that no prior intimation was given to the Board about cessation of Mr. Ratnesh as director of PFS. It also appears that MD&CEO unilaterally decided to give effect to the cessation without any knowledge of the Board.
193. It is noted from records that the IDs had written letters to Chairman and MD during December 2021 and raised certain issues. RMC 1 Report in its findings has recorded that it had not been specifically mentioned in the Board minutes that issues raised by the IDs should be brought as an agenda item. However, I am of the view that as the issues were raised multiple times by the IDs, it was imperative that the same required a detailed examination and discussion before the Board. It is not necessary to specifically mention in the minutes that any such issue should be put up as an agenda item for a matter to be brought up for discussion before a company's board.
194. The RMC 1 Report also recorded that the management refuted the allegation that the notice dated January 14, 2022 for the Board meeting scheduled for

January 22, 2022 was incorrect as the IDs were having all the relevant information related to appointment and joining of Mr. Ratnesh and therefore their objection was without any basis. I find the above observation to be contradictory. In the email dated January 17, 2022 of PFS, it was mentioned that 'detailed note' received from PTC on the process had been circulated by the PFS management to the Board members, whereas, the IDs had sought for complete documentation relating to the process and copies of the full correspondence. In my view, a detailed not cannot be said to have sufficed for complete documentation sought by the IDs.

195. The instances described highlight a larger issue with the information flow between the management and the Board of PFS and raises questions about corporate governance. The FAR-2022 also brought out facts with respect to information/documents not being placed before the Board even after explicit instructions. In this regard, I note that in respect of the 131st Board meeting (Feb 04, 2021), the FAR-2022 noted that the Chairman had asked for Internal Auditor Confirmation relating to Loan matters that were presented to the Board of Directors. In the same meeting, it was decided that an independent body should also investigate loan matters and give compliance to the Audit committee, to the Board and to MD. However, the FAR-2022 noted that they were *'unable to find any agenda related to the confirmation from the internal auditors with respect to loan matters presented to the Board or Audit Committee and the same is not recorded in the minutes.'*
196. Additionally, the FAR-2022 brought out a list of instances where the flow of information to the Board was impeded or absent. A sample list of such instances is reproduced hereunder:
- (a) the policy approved by the company was not followed;
 - (b) alteration in documents;
 - (c) minutes of an internal committee of directors for loan recovery were not presented to the Board;
 - (d) debt service reserve account invoked without permission of co-lender & not placed before the board;

- (e) Asset liability committee (“ALCO”) meetings were not held on time, and the minutes were either not approved or approved with delay by MD& CEO, and no intimation was made to the Board where disbursement was made through utilisation of HQLA (“High Quality Liquid Assets”) and not from utilisation of sanctioned limits of banks and financial institutions.
197. The FAR-2022 also observed that the minutes of the 138th, 139th and 140th Board meetings, held respectively on August 28, 2021, September 13, 2021 and September 29, 2021, were confirmed only on November 09, 2021, indicating delay in sharing of important information with the Board.
198. The observations in the preceding paragraphs show that the IDs had consistently raised issues before Noticee 2, who was Chairman of the Board. However, he failed to act on the same. Noticee 1 and Noticee 2, as members of the Board of directors, failed to discharge the key functions of the Board, responsibilities of the Board and duties cast upon directors. Therefore, I find that Noticee 1 and Noticee 2 (as Board members) violated the provisions of Regulations 4(2)(f)(iii)(6), 4(2)(iii)(14), 4(2)(f)(iii)(13), 4(2)(f)(iii)(12) of the LODR Regulations, 2015 and Regulation 26(3) of LODR Regulations, 2015 read with Clauses 5(vi), (xii), (xiii), (xv) of code of conduct of PFS.
199. It has already been shown above that on the issue of ITPL, there was arbitrary application of materiality policy and selective disclosure of material events by PFS. Since all disclosures were being made with the approval of Noticee 1, the responsibility for not making adequate disclosure lay with him. Accordingly, I find that by not disclosing a material event, Noticee 1 violated the provisions of Regulations 30(4)(i)(a) and 30(12) read with Regulations 4(2)(d)(iii) and 4(2)(b) of the LODR Regulations.

Delays in commencement of Forensic Audit and non- cooperation with forensic auditor

200. It has been alleged in the SCN that Noticee 1 acted in a manner so as to delay the commencement of the forensic audit and did not cooperate with the auditor. In this regard, Noticee 1 has submitted that the decision to initiate the forensic

audit was taken *suo moto* by the Company, and without the insistence of any external agency. Upon consideration of various auditors, Alvarez & Marsal was identified by the Company.

201. However, the Chairman of the Audit Committee (Mr. Jayant Gokhale) unilaterally appointed CNK & Associates LLP as the forensic auditor. The Noticee has stated that he raised doubts about the manner in which the Audit Committee had exercised its powers to appoint CNK & Associates LLP. He further submitted that the management did not delay the commencement of the forensic audit and that it provided information in a timely manner.
202. In respect of the above, I note that the forensic auditor was appointed on April 27, 2022 by the Audit Committee, based on the decision of the Audit Committee. However, the forensic auditor could commence its work only on July 18, 2022. In this regard, Noticee 1 has contended that a detailed list of dates was provided as part of the management comments to the draft forensic report, which established that there was no delay. However, I note from records that the actual flow of information started only in the month of August 2022. Also, the forensic auditor has recorded in FAR-2022 that information concerning loan accounts of earlier periods was provided by PFS after much resistance, and in many cases, was provided in bits and pieces, making the verification difficult.
203. Further, the forensic auditor while describing the limitations and challenges has noted that in minutes of meeting of the Audit Committee dated 30th July 2021, there was a reference to a report on HR related matters by PWC that was presented at that meeting. However, the management did not provide such report, and in fact, denied the existence of such report in PFS. Additionally, Agenda and Minutes for Board and other Committee meetings held from 1st April 2022 as well as data regarding payments made through company-corporate cards (though company had given mail confirmation that no transaction was above Rs.5 Lakh during the period), approvals and adherence to policy for major expenses like payments to consultants, business promotion, travelling, etc. for the period 1st April 2019 to 30th June 2022, review of which

was essential from the perspective of corporate governance, had not been provided. This showed a clear attempt on the part of PFS management led by Noticee 1 to impede the smooth conduct of the comprehensive forensic audit.

204. Furthermore, even though managerial aspects relating to the Company were to be dealt with by the MD & CEO, the Audit Committee had to sign the letter of engagement themselves. This further showed Noticee 1's reluctance to give effect to the forensic audit. The non-cooperation extended the duration of the forensic audit, which in turn resulted in delay in preparation of the FAR 2022 and the consequent delay in finalizing financial results of PFS for FY22. The same led to the scrip of PFS being shifted to 'Z Category', in terms of SEBI Circular dated January 22, 2020. The same adversely impacted the share price of PFS price of the scrip.
205. In view of the above, I find that Noticee 1, by not extending adequate cooperation to the forensic auditor, did not act in the best interests of the Company and its shareholders and as such violated Regulation 4 (2)(iii)(6) and Clause 5 (vi) of the Code of Conduct framed by PFS read with Regulation 26(3) of LODR Regulations, 2015.

Reconstitution of the Audit Committee prior to submission of the FAR 2022

206. SEBI by way of an e-mail dated May 13, 2022, had directed the Company to not change the structure and composition of the Board till completion of the forensic audit. It is alleged in the SCN that the Audit Committee was reconstituted in violation of the instructions of SEBI.
207. It is noted from records that by way of an e-mail dated October 28, 2022, the Company had requested SEBI to withdraw the directions contained in e-mail dated May 13, 2022. A legal opinion dated October 27, 2022 of Dr. U.K. Chaudhary, Senior Advocate, was also provided by the Company in support of its stance that the directions issued on May 13, 2022 only restricted any change in the structure and composition of the Company's board. It is noted that Dr. Chaudhary had opined that as per Regulation 2(1)(g), the Audit Committee did

not fall within the ambit of 'Board' or 'Board of Directors' and accordingly, the reconstitution of the Audit Committee vide board meeting dated October 22, 2022 did not breach SEBI's directions contained in email dated May 13, 2022. Additionally, it was also opined that the direction of *status quo* issued by SEBI vide its email dated 25th October, 2022, would be effective from October 25, 2022, and as such PFS would not be able to change the composition of its board, its committees and its various sub-committee with effect from October 25, 2022.

208. In addition to the above arguments, Noticee 1 has asserted that SEBI's email dated May 13, 2022 was in the nature of an advisory and could not have been an order issued by SEBI. He has also argued that no official below the rank of Whole Time Member or Chairman had powers to pass directions under the SEBI Act.
209. I note that the LODR Regulations, 2015, framed by SEBI in exercise of powers *inter alia* under Section 11(1) of the SEBI Act, 1992, specify *inter alia* various compliances for a listed company to ensure good corporate governance practices, which are in addition to the corporate governance provisions prescribed under the Companies Act. The Hon'ble Supreme Court in the case of *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI*. while talking about Section 11(1) *inter alia* held that the measures to be adopted by SEBI in carrying out its obligations were couched in open-ended terms having no prearranged limits. I thus find that the direction issued by SEBI vide email dated May 13, 2022 fell within the powers of SEBI and the same were aimed at preventing the affairs of the company from being conducted in a manner detrimental to the interest of the investors.
210. As regards Noticee1's contention that no official below the rank of Whole Time Member or Chairman has the power to issue directions under the SEBI Act, 1992, I note that the Hon'ble Supreme Court in the matter of NSDL V. SEBI in Civil Appeal Nos. 5173 of 2006 and 186 of 2007, had clearly distinguished between SEBI's administrative order and a quasi-judicial order. As the direction contained in email dated May 13, 2022 was in the nature of an administrative

order, it cannot be said that the same should have been issued only by a Whole Time Member or Chairman (as in the case of a quasi-judicial order), even though necessary approvals would have been received for the issuance of such administrative orders.

211. The second aspect to be considered is the scope of the instructions contained in the emails dated May 13, 2022 and October 25, 2022 (sent after the composition of the Audit Committee had been changed). I note that the email dated May 13, 2022 had instructed PFS not to change the structure and composition of PFS Board, till the completion of forensic audit by M/s CNK & Associates LLP and submission of report by RMC of PTC India Ltd.”
212. Section 2(10) of the Companies Act, 2013, defines ‘Board of Directors’ and ‘Board’ as *“Board of Director’ or ‘Board’, in relation to a company, means the collective body of the directors of the company”*. Further, Regulation 2(g) of the LODR Regulations, 2015 defines ‘Committee’ as *“committee’ shall mean committee of board of directors or any other committee so constituted.”*
213. I note that Section 177 of the Companies Act, 2013 provides that the Audit Committee shall be constituted by the Board and that it shall act in accordance with the terms of reference specified by the Board. Thus, the Audit Committee cannot be construed as a committee separate and distinct from the Board, but rather a sub-set or extension of the Board, designed and organised to make the Board more effective in the governance of a company. Thus, it was imperative for the Company to follow SEBI’s direction to not change the composition and structure of Audit Committee.
214. As regards the contention that SEBI’s direction to not change the *status quo* issued by way of email dated October 25, 2022 was effective from the said date i.e., October 25, 2022, I note that the email dated October 25, 2022 specifically mentioned that it intended to clarify the direction issued on May 13, 2022. Accordingly, the Company was obligated to maintain *status quo* from May 13, 2022, and not October 25, 2022.

215. From the above, I find that Noticees 1 and 2, by reconstituting the Audit Committee, contravened the directions of SEBI and also the authority of the Audit Committee by completely ignoring the views of the Chairman of the said Committee. I therefore conclude that Noticees 1 and 2 have violated Regulation 4(2)(f)(iii)(14) of LODR Regulations, 2015 and Clauses 5 (xiii) & (xv) of the Code of Conduct framed by PFS read with Regulation 26(3) of LODR Regulations, 2015.

Issues related to disclosure of Forensic Audit Report

216. It is alleged in the SCN that PFS vide its corporate announcement dated November 08, 2022 informed that the forensic audit initiated on April 27, 2022 was complete and accordingly, the final report was issued by the forensic auditor. However, the Company did not disclose the FAR 2022. Subsequently, on November 09, 2022 the Company disclosed the FAR-2022 along with PFS Management's response and remarks of Ernst & Young LLP to the FAR-2022 in one composite document as 'General Updates'.

217. I note from records that subsequent to the corporate announcement declaring the completion of forensic audit, FAR-2022 was filed with the exchange on November 09, 2022. Noticee 1 has argued that the delay was only due to the large size of the document involved. I find that even if the said argument is accepted, it remains inexplicable as to why FAR-2022 was disclosed as a 'General Update' whereas other announcements were made under Regulation 30 of LODR. From the records, it is seen that the exchange had then advised the Company to separately do the filing of the FAR-2022 under Regulation 30. Further, it is noted that the FAR-2022, as disclosed by PFS, was not machine readable and the quality of the scan was poor, rendering the report indecipherable. Also, some of the exhibits placed in the report were difficult to comprehend. PFS re-submitted the report subsequently on November 22, 2022, i.e. two weeks after the completion and submission of FAR 2022.

218. From the above, it appears that PFS, with an intention to blunt the impact of the findings of FAR-2022, had deliberately disclosed the FAR-2022 as a 'General Update' whereas other announcements had been made under Regulation 30

of LODR. Also, the FAR-2022 was disclosed as part of a consolidated document, wherein the first two sections highlighted PFS Management's response and remarks issued by Ernst & Young LLP followed by the actual FAR-2022.

219. From records, it is seen that all the disclosures were being done with the approval of Noticee 1. Accordingly, he was responsible for ensuring that such disclosures were made prudently and in an objective manner. As Noticee 1 failed to do so, I find that he violated Regulations 30(2) and 30(6) read with Clause 17 of Para A of Part A of of Schedule III and Regulations 4(1) (d) & 4(2) (e) of LODR Regulations, 2015.

Delay in disclosing the Resignation of Ms. Sushma Nath (ID of PFS)

220. It is alleged in the SCN that the resignation of Ms. Sushma Nath, an Independent Director on the Board of PFS was disclosed after a delay of more than twenty-four hours. It is noted from records that Ms. Sushma Nath (IAS Retd) intimated her resignation from the position of Independent Director on the Board of PFS on November 22, 2022 at 11:00 am. However, the information regarding the resignation of Ms. Sushma Nath was disseminated only on November 24, 2022 at 17:42:36, i.e. a delay of more than 24 hours.
221. Noticee 1 in his reply has submitted that since certain documents/information were insufficient to undertake the filings, the same were sought from Ms. Nath, which took time. However, I note that Noticee has himself admitted that the documents/information sought from Ms. Nath were received by email on November 22, 2022 at 16: 42 hrs itself. Since the information/documents as sought from Ms. Nath had been received on the same day i.e., on November 22, 2022, the delay in the disclosure of her resignation on November 24, 2022 remains unexplained.
222. As all disclosures were being done with the approval of Noticee 1, I find that Noticee 1, by delaying making the abovementioned disclosure, has violated Regulation 30(2) and 30(6) read with Clause (7) Para A of Part A of Schedule 111 and Regulations 4(1) (d) & 4(2) (e) of LODR Regulations, 2015.

Functioning of the Audit Committee

223. It is alleged in the SCN that impediments were placed by Noticees 1 and 2 in the proper and effective functioning of the Audit Committee. On the basis of email dated May 26, 2022 sent My Mr. Jayant Gokhale, the SCN alleged that—
- (a) The issues relating to the functioning of the Audit Committee had been raised much prior to the resignation of two IDs on December 02, 2022;
 - (b) SEBI communication had not been reported to the Audit Committee/Board by the management in a timely manner;
 - (c) Attempts by the PFS management to record the minutes in a manner that were not a true and correct depiction of the deliberations in the Committee; and
 - (d) On certain occasions Noticee 1 failed to provide adequate and complete information to the Audit Committee, posing a challenge before them to function properly.
224. As regards the issue relating to the functioning of the Audit Committee having been raised much prior to the resignations on December 02, 2022, I note that Mr. Jayant Gokhale, by way of an e-mail dated May 26, 2022, raised multiple concerns regarding the functioning of the Audit Committee and proceedings of the Audit Committee meeting held on May 24, 2022. The issues *inter alia* raised by Mr. Gokhale were as under:
- (e) The financials for the year ending December 31, 2021 presented before the Audit Committee did not include numerous provisions which in the opinion of the auditors were necessary for the financial results to reflect the true picture of the Company;
 - (f) Noticee 1 was not in agreement with the views of the auditors and the same was not fully brought out in the presentation made to the Audit Committee; and
 - (g) The finance team/CFO and the management were expressing different/contrary views related to provisioning before the Audit Committee.
225. Mr. Jayant Gokhale noted in the email dated May 26, 2022 that during the meeting on May 24, 2022, deliberations continued for more than six hours, yet,

they were unable to clear a single item. In light of the above, Mr. Gokhale implored the PFS management to place certain documents, which would result in the deliberation of May 24, 2022 to be productive. In this regard, Mr. Gokhale sought *inter alia* the following documents:

- (a) A note stating clearly whether all the recommendations of the auditor had been incorporated in the financial results or there were certain points of deviation;
- (b) Clarification from the Company on the non-appointment of the forensic auditor since the statutory auditor, in its Report, had stated that the Company was in the process of appointing a forensic auditor whereas the forensic auditor had already been appointed and intimated to the stock exchange in April 2022;
- (c) Status of the RMC Report as the factual position mentioned in the Report of the statutory auditor was not complete;
- (d) Copy of the presentation made to the audit committee; and
- (e) Additional justification for the Audit Committee to consider making a departure from its view taken in its earlier meeting that it was not advisable to accept a disclaimed review Report.

226. Consequent to the email dated May 26, 2022 of Mr Jayant Gokhale, Noticee 1 vide e-mail dated May 26, 2022 (02:54 PM) provided information regarding the queries relating to the appointment of the forensic auditor, RMC Report, presentation made to the Audit Committee, appointment of Sanjay Rustagi as the CFO and the copy of the documents submitted to the statutory auditors. Additionally, it was mentioned in the e-mail that other points raised by Mr. Jayant Gokhale by way of his e-mail dated May 26, 2022 would be clarified during the Audit Committee meeting.

227. Subsequently, Mr. Gokhale, by way of an e-mail dated May 30, 2022 (addressed to Noticee 1), *inter alia* brought out that the e-mail sent by Noticee 1 on May 26, 2022 was only in partial compliance of the concerns raised and had been sent just 5 minutes before the commencement of Audit Committee meeting on May 26, 2022. He further pointed out that there were certain

inconsistencies between information furnished by Noticee 1 and his understanding of the facts of the matter, which as per him was one of the reasons why the Audit Committee unanimously decided neither to adopt nor recommend the Q3FY22 financial results of the Company, while submitting the same to the Board for its consideration.

228. It is noted from records that Mr. Jayant Gokhale resigned as an ID of PFS on December 02, 2022 along with Mr. D.S. Saksena. The two IDs had, in their resignation letters, brought out in general the issues relating to the governance of the Company, and Annexure B of the resignation letter of Mr. Jayant Gokhale listed the following specific instances relating to the Audit Committee:

(a) SEBI's communication (dated June 03, 2022) enquiring into the Audit Committee's reasons for 'non-adoption & non-recommendation of Q3 results by the Audit Committee', was not placed before the Audit Committee. The same came to the knowledge of all the directors on June 28, 2022 after SEBI issued a follow –up email,

(b) Minutes were drafted in a manner which failed to accurately capture the actual proceedings and revealed a bias in the drafting;

(c) Attempts to reconstitute the Audit Committee despite advice to the contrary from SEBI; and

(d) seeking numerous legal opinions, post-facto, in order to justify the stand taken by the management earlier.

229. From the above, it is evident that the issues relating to the functioning of the Audit Committee were raised by Mr. Gokhale repeatedly over a period of time and not just at the time of his resignation.

230. In respect of the above, Noticee 1 has submitted that that no allegation was raised by the other two IDs and that the allegations were factually incorrect. He has further submitted that the matters highlighted by Mr. Gokhale (and supported by Mr. Saksena) were largely created by Mr. Gokhale. He also stated that specific reply had been given by the Company in response to the

allegations and the same should also be considered as his response to the allegations.

231. Further, Noticee 1 has submitted that Regulation 4(2)(f)(iii)(14) of the LODR Regulations and Clause 5(xiii) of the Code Conduct put onus on the Board and the senior management, and the responsibility could not be cast upon a particular individual Director. Further, Clause 5 (xv) of the Code of Conduct of PFS required the Board to ensure that a system was put in place to ensure compliance of laws. He has further contended that RBI, which carried out regular inspection of the Company, had not found the Company lacking in having a system for compliance of laws.
232. In this regard, I note that PFS vide its letter dated December 09, 2022 to stock exchanges, had responded to various allegations made by the IDs. The relevant portions of the responses are summarised in the following paragraphs.
233. One of the allegations was that SEBI communication dated June 03, 2022 enquiring into the Audit Committee's reasons for 'non-adoption and non-recommendation of Q3 results by the Audit Committee' was not reported to the Audit Committee/Board by the management. In this regard, PFS submitted that – *“the relevant communication/queries received from the regulatory authorities were addressed to the Company and were accordingly responded to by the Company. Since even the draft minutes of the meetings of audit committee were not got circulated by Chairman Audit Committee, the responses were issued based on the discussions in the Audit Committee, which were attended by management of the Company. As such, the queries from the regulatory authorities were duly brought to the notice of the Directors.”*
234. The relevant communication mentioned in the Company's response of December 09, 2022 related to above-mentioned communication of SEBI. From the Company's response, it is clear that SEBI communication of June 03, 2022 was not brought to the attention of the Audit Committee. Additionally, it is noted that replies to SEBI were issued without the draft minutes of the meetings of the Audit Committee being circulated. I find that since the query raised in SEBI Communication was specifically with respect to the reasons behind a particular

action/position taken by the Audit Committee, it was the responsibility of the management of the Company to bring the said communication to the knowledge of the Audit Committee, even though the said communication was addressed to the Company and not to the Audit Committee. I find that the reasons cited for failure to do so cannot be accepted. There clearly appeared to be an effort on part of the management of not being transparent with its Board / Committees.

235. The other allegation regarding the functioning of the Audit Committee was that there was an attempt by the PFS management to record the minutes in a manner which did not correctly depict the deliberations in Committee meetings. In this regard, the Company in its response of December 09, 2022 had stated the same was an attempt by Mr. Gokhale to deflect from his primary responsibility of ensuring issuance of the minutes of the Audit Committee, which he had failed to do. The response has also noted that the Draft Minutes for each meeting were duly prepared by the then Company Secretary and sent to Mr. Gokhale for approval. However, as per the Company, *“aside from simply remarking that the drafts were inadequate, made no attempts whatsoever to finalise the same.”* The Company had also submitted that the recordings of the Audit Committee meetings were provided to Mr. Gokhale.
236. I note that an email dated December 29, 2022 was addressed by Mr. Jayant Gokhale to the then Company Secretary of PFS, in response to the revised drafts of the Audit Committee meetings (79th to 85th), sent to him for approval by way of email dated December 22, 2022. Mr. Gokhale, by way of his email, categorically stated - “I DO NOT APPROVE OF THE SAID MINUTES”. Additionally, Mr. Gokhale, in a detailed communication by way of email dated December 29, 2022, brought out various instances of changes in the draft of minutes of various Audit Committee meetings.
237. I note that Mr. Gokhale provided various instances of modification in the draft of minutes of the Audit Committee meetings, where attempts were made to tweak the minutes of the Audit Committee with careful additions and omissions by the management of PFS. I find that the response of the Company, as

adopted by the Noticee, was couched in generalities and were superficial. It is abundantly clear that there were attempts by the PFS management to record the minutes in a manner that was not a true and correct depiction of the deliberations in the Committee.

238. Lastly, it is alleged in the SCN that there was a practice of calling for meetings at short notice without proper back-papers, which resulted in the failure of the PFS management in providing adequate and complete information to the Audit Committee.
239. In this regard, the Company had submitted that after the resignation of its Directors in January 2022, the Company was functioning under unprecedented conditions and that considering the urgency of matters, it was only natural for the Company to call meetings at a shorter notice than usual. It further submitted that it was incorrect to allege that no proper agendas were being circulated for the meetings. As per the Company, the Companies Act allowed for calling of urgent meetings with presence of at least one Independent Director.
240. In respect of the above, I note that Mr. Jayant Gokhale, in his letter of resignation dated December 02, 2022, submitted that almost all meetings of the Board and its important Committees were called at short notice, and that the said pattern continued for 13 meetings of the Board and 10 meetings of the Audit Committee. Mr. Gokhale also presented a list of meetings where there was no agenda or there was delay in providing the agenda. The same is reproduced hereunder:

Sl. No	Meeting	Date of Notice	Date of Agenda
1.	144 th Board Meeting (April 06, 2022)	April 01, 2022	April 05, 2022 (evening)
2.	145 th Board Meeting (April 08, 2022) Meeting adjourned	-	No agenda
3.	77 th Audit Committee Meeting (April 08, 2022)	April 07, 2022	April 07, 2022 (late night)

4.	78 th Audit Committee Meeting (April 26, 2022)	April 23, 2022	April 23, 2022
5.	47 th Nomination and Remuneration Committee Meeting (April 28, 2022)	April 27, 2022	No agenda
6.	48 th Nomination and Remuneration Committee Meeting (May 05, 2022)	April 29, 2022	May 02, 2022
7.	146 th Board Meeting (May 05, 2022) Meeting adjourned	April 29, 2022	No agenda

241. It was further stated by Mr. Gokhale that during a meeting of the Audit Committee held on November 13, 2022, notice for a meeting of the Board to consider the FAR 2022 was issued at 11.38 AM scheduling the meeting at 12.00 PM. Since the meeting of Audit Committee was extended to 1.10 PM, it was only when he was in transit after the Audit Committee meeting for attending a personal function that he came to know that a meeting had been convened and the same was in progress. An objection by way of emails dated November 13 and 14, 2022 was sent by Mr. Gokhale to PFS Company Secretary.
242. From the above facts, it is evident that there were instances when the agenda was not shared with the notice but shared later, with very little time for consideration by the directors on the Board. The essential argument placed by Noticee 1 is that there were issues of urgency. However, it must be stated that 'urgency' cannot be an overriding and continuing consideration in the running of company affairs for a prolonged period of time. In this regard, it is noted from the minutes of the Board meeting of the Company held on June 25, 2022 that Mr. Jayant Gokhale had raised objections regarding the inclusion of the induction of three IDs onto the Board of PFS on the ground that the same was not urgent and that the same was being done without prior agenda item being placed.
243. From the abovementioned facts and specific instances brought out in the above-mentioned paragraphs, it is clear that Noticee 1 had persistently used the 'urgency' argument for holding meetings, including that of the Audit

Committee, with very short notice and agenda items being included at the last moment. This shows that meetings were scheduled without adequate and complete information to the Audit Committee. I note that though Noticee 2 was aware of all the happenings in this regard, he did not take any corrective steps to remedy the situation. Accordingly, I find that Noticees 1 and 2 have violated Regulation 4(2)(f) (iii) (14) and Clause 5 (xiii), (xv) of the Code of Conduct framed by PFS under Regulation 26(3) of LODR Regulations, 2015.

Summary of findings

244. From the observations and findings recorded in the preceding paragraphs of this Order, it is clear that Noticee 1 had grossly misused his position as the MD and CEO of PFS to prevent Mr. Ratnesh from joining as WTD (Finance) and CFO, which was approved by the Board of PFS. The MD & CEO in a company, though sitting at a high position within the management hierarchy, is duty-bound to follow the decisions of the Board of his company and cannot exercise his power unilaterally in an unfettered manner. However, in this case, the MD & CEO employed all the tricks to defeat the decision of PFS Board to appoint Mr. Ratnesh, thereby keeping a critical vacancy in the Company unfilled.
245. Further, the fact that Noticee 1 did not disclose to the Board for two years the FAR-2018 (pertaining to loan account of NSL) and delayed the supply of information to CoID and implementing the decision of the Board of PFS to inform the matter as a case of suspected fraud further shows that Noticee 1 was running the Company as a private concern where his writ run large, even if it was to the detriment of the Company. Further, the observations and findings recorded above show that Noticee 1 deliberately glossed over the issues of corporate governance highlighted by the IDs, who were persons of repute, which ultimately led to the IDs resigning from the Company in quick succession. Interestingly, it must be mentioned that Noticee 1 was Director (Finance) of PFS since 2012. Noticee 1 not only undermined the Board process by not being transparent with the Board and working against its decisions, he also flouted SEBI's direction not to change the structure and composition of the Board. The said acts of disregarding regulators' directions reflected poorly on the conduct of Noticees 1 and 2, as Board members of PFS.

246. The blatant manner in which Noticee 1 functioned to work at cross purposes with the Board and IDs shows that all that Noticee 1 was interested in was asserting his authority within the Company and having his way in crucial matters, at the cost of Company's interests. Such tendencies, when adopted by the persons occupying highest positions within a company, are bound to have negative repercussions, which is evident from the fact that two sets of IDs resigned in quick succession from the Company. The independent directors in any listed company act as a watchdog and the management is bound to address the issues raised by them. However, it is apparent that Noticee 1 was repeatedly acting in a confrontational manner with the IDs and was engaging in an act of one-upmanship. This had a telling impact on the performance of PFS. During the period FY19 to FY23, the assets of PFS fell from Rs.13,193 Crore to Rs.7,634 Crore. It is also worth noting that PFS's holding company is PFS (having 64.99% shares), in which four Public Sector Undertakings, viz. NTPC Ltd., NHPC Ltd, Power Grid Corporation of India Ltd. and Power Finance Corporation Ltd., together hold 16.20% shares (each having 4.05% in PTC).
247. As regards Noticee 2, it has been found that he was acting as a willing accomplice of Noticee 1. Noticee 2, being the Chairman of PFS, had all the authority to set things right by looking into the issues raised by the IDs. He had a duty to ensure effective functioning of all Board Committees by enabling healthy discussions in meetings. Further, he was duty bound to ensure that the IDs were able to function independently in a conducive environment while at the same time ensuring that the Board decisions were effectively implemented. However, he looked the other way while Noticee 1 ran the Company as per his wishes, disregarding the concerns raised by the IDs. Accordingly, the role of Noticee 2 in flouting the norms of corporate governance in this matter is well established.
248. Noticees 1 and 2, in their submissions have contended that the SCN had contemplated no action against the Company, the Compliance Officer and other Directors, while considering action against Noticees 1 and 2. In this regard, I note that Noticee 1 with a long tenure of more than 10 years starting from

February 01, 2012 entrenched himself in the affairs of the Company in such a manner that he became synonymous with the Board of the Company. The non-adherence to the decision of the Board to appoint Mr. Ratnesh as WTD (Finance) and the reluctance to report the matter of NNPIPL as a case of suspected fraud are just some examples of the Noticee 1 having absolute control. In this endeavor, he was actively aided by Noticee 2 who, being the Chairman of PFS, had the power to bring necessary course-correction but chose to be a silent spectator and collaborator in the acts of Noticee 1.

249. In these circumstances, the notion of 'Board' as appearing in the LODR Regulations, 2015, in the present case, has become synonymous with Noticee 1 and Noticee 2, and as such, they were made parties in the SCN. It is, however, obvious that a differentiation has been made in the allegations against Noticee 1 and Noticee 2. Noticee 1, being the MD and CEO, was at the forefront of this endeavor to impede and frustrate the Board process, while Noticee 2 provided the active support in that process.

250. Considering the violations established against Noticees 1 and 2, I deem it fit to issue appropriate directions against the Noticees. While issuing the directions, I have considered that the present matter has not brought out any detail pointing to manipulation of the market or its abuse.

251. I further note that the violations established against the Noticees make them liable for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992. While imposing monetary penalty under the said provision, I have considered the factors mentioned under Section 15J of the SEBI Act, 1992, which reads as under -

"Factors to be taken into account while adjudging quantum of penalty. 15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

252. I note that the SCN has not brought out any profit/gain being made by the Noticees.

Directions:

253. I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, hereby issue the following directions:

- (a) Pawan Singh (Noticee 1) is hereby restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of two (2) years from the date of this Order.
- (b) Sanjib Kumar Mishra (Noticee 2) is hereby restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of six (6) months from the date of this Order.
- (c) The Noticees are hereby imposed with monetary penalties as specified hereunder:

Noticee	Provisions under which penalty imposed	Amount of Penalty (Rs.)
Pawan Singh (Noticee 1)	Section 15 HB of the SEBI Act, 1992	25,00,000
Rajib Kumar Mishra (Noticee 2)	Section 15 HB of the SEBI Act, 1992	10,00,000

(d) Noticees 1 and 2 are directed to pay the respective penalties as detailed above within forty-five (45) days from the date of service of this order through online payment by using the pathway: www.sebi.gov.in/ENFORCEMENT → Orders → Orders of Chairman/ Members → Click on PAY NOW or by using the web link: <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>.

Noticees 2 and 3 shall forward the details/confirmation of penalty so paid through e-payment to “**The Chief General Manager, CFD-SEC-2, Securities and Exchange Board of India, SEBI Bhavan I, Plot no. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051**” in the format given in the table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

254. This Order shall come into force with immediate effect.

255. A copy of this Order shall be served upon the Noticees, PTC, PFS, the recognised Stock Exchanges, the depositories and the RTAs for information and compliance.

PLACEe: MUMBAI

ASHWANI BHATIA

DATE: JUNE 12, 2024

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA