

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Surana Corporation Limited

In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices), 2003

In respect of

Serial no.	Entity Name	PAN	DIN
1.	Mr. Vijayraj Surana	AACPS3236N	00007313
2.	Mr. K E Devarajan	AAGPE3474J	07228715
3.	Mr. S Guruswamy	AAKPG5527G	02507376

CASE FACTS

1. *Background of the case:* Surana Corporation Limited, (hereinafter referred to as “The Company” or “SCL”) is a company having its registered office at No. 30, G N T Road, Madhavaram, Chennai, Tamil Nadu - 600110 and its securities are listed on the Bombay Stock Exchange (“**BSE**”) and National Stock Exchange Limited (“**NSE**”).

Order in the matter of Surana Corporation Limited

2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a reference dated January 21, 2015 from Chennai Zonal Unit - Directorate of Revenue Intelligence (DRI), Department of Revenue, Ministry of Finance against SCL wherein it was stated, based on a search conducted by DRI, that documents had been seized showing discrepancy in financial statements and documents pertaining to sale and purchase of goods and stock of goods.
3. Subsequently, DRI vide letter dated June 3, 2016, had intimated that Adjudicating Authority had passed an order dated April 29, 2016 confiscating gold of 5.243 kg valued at Rs. 139.37 lakhs and sale proceeds of Rs. 59,900 and ordered *inter alia* imposition of Rs. 70 lakh each on SCL and Mr. Vijayraj Surana, director of the Company, under Section 112(b) of Customs Act, 1962. As per the findings shared by DRI, the following discrepancies were noted in the stock maintained by SCL at the factory on the date of search conducted by DRI, i.e. October 13, 2014:

Sl. No.	Particulars	Stock in Kgs.
1	Gold Stock maintained at factory as per records maintained at factory	1147.988
2	Gold Stock maintained at factory as per records maintained at show room	106.988
3	Gold Stock at factory at the time of physical verification	NIL
4	Gold coated jewellery, tagged as 22 carat gold, kept in the factory premises	408.739

4. As there were allegation regarding falsification of gold purchase and sales in the books of SCL, an investigation was conducted by SEBI, for the years 2013-15, in respect of the related discrepancies observed in the findings of DRI. At the time of investigation, an explanation was

sought from SCL by SEBI vide summons dated February 3, 2016, to which the Company replied vide letter dated February 26, 2016. Mr. Vijayraj Surana was summoned to appear before the Investigating Authority (IA) on May 20, 2016. Thereafter, on June 9, 2016, Mr. Vijayraj Surana appeared with Mr. K E Devarajan.

5. Based on the evidence collected at the time of investigation, the following allegations in brief was levelled:
- i. As per the Annual Reports for the financial years 2012-13 to 2014-15 of SCL, following were the non-independent directors of SCL during the investigation period 2013-15 (hereinafter referred to as the “**Noticees**”):

Sl. No.	Name of the Director	Designation	Financial Yr.
1	Vijayraj Surana	Managing Director	2012-13 to 2014-15
2	S Guruswamy	Director	2012-13, 2013-14
3	K E Devarajan	Non-Executive Director	2014-15

- ii. The Company had no physical stock of gold (1147.988 kg) at the factory on October 13, 2014, i.e., the date of search. Therefore, the allegation leveled against the Company by DRI in this regard is true and correct. From the publicly available information, it is seen that gold rates in Chennai as on October 13, 2014 i.e. date of search by DRI was around Rs. 2,563/- per gram (approx.). Accordingly, the asset position, as regards gold stocks, in the books of accounts was overstated to the tune of Rs. 294.23Cr (1,147,988 grams x Rs. 2,563 per gram) as on October 13, 2014.

- iii. Further as per the DRI reference, documents were created by SCL to show sales to three firms, viz. M/s. Maruthi Corporation ("MC"), M/s. Marudhar Trading ("MT") and M/s. C & S Tools Private Limited ("CST"). Pursuant to the investigation conducted by SEBI, from accounting data maintained by SCL the following were noted:

Transactions with MC:

- (a) From the ledgers of MC as brought on record, for the financial year 2014-2015, it was noted as following:

Maruti Corporation A/c during the FY 2014-15			
Date	Particulars	Debit	Credit
Various dates	To Gold Sales 1% / Sales Credit 916 - 1% / Silver Sales incl. opening sales balance of Rs. 24 Cr and netting off reversal made on 16/10/2014 for Rs. 26,87,40,814/-	2,86,53,73,271	
Various dates	By Gold/ Gold ornament / Silver Purchase 1%		2,77,83,48,634
Various dates	To PNB / IDBI / SBI net of reversals of Rs. 2.44 Cr	1,96,74,300	
Various dates	By Receipts - PNB / IDBI / SBI net of reversals of Rs. 2.44 Cr		1,98,62,000
	By Closing Balance		8,68,36,937
	Total	2,88,50,47,571	2,88,50,47,571
	Receipt to Sales Ratio	0.69%	
	Payment to Purchase Ratio	0.71%	

- (b) It was noted that the total sales to MC during the period 2014-2015 was shown as Rs. 286.54 Crore, out of which payment was received only to the extent of Rs. 1.99 Cr. Accordingly, the receipt-to-sales ratio constituted only 0.69%.

(c) Further, it was noted that the total purchases from MC during the period 2014-2015 was shown as Rs. 277.83 Crore, out of which payment was made only to the extent of Rs. 1.97 Crore after netting off reversals to the tune of Rs. 2.44 Cr predominantly on the date of payment itself. Accordingly, the payment-to-purchase ratio constituted only 0.71%.

Transactions with MT:

(a) From the ledger of MT brought on record for the financial year 2014-2015, it was noted as following:

Marudhar Trading Account during the FY 2014-15			
Date	Particulars	Debit	Credit
Various dates	By SBI / PNB / net off reversals of Rs. 1,20,86,288/-	-	99,95,000
Various dates	To Gold Sales 1% / Sales Credit 916 - 1% of Rs. 345,54,21,915 less reversals made on 16/10/14 for Rs. 27,97,09,826/-, Rs. 60,41,698 on 31/10/14 and Rs. 60,44,590 on 31/12/14.	3,16,36,25,801	-
Various dates	To Gold / Gold Ornaments / Silver Purchase 1% net off opening balance of Rs. 8,06,30,653 as on 01/04/14 and reversal of Gold Bar / Silver purchase 1% of Rs. 28,53,151/- on 06/06/2014	-	3,31,51,96,918
Various dates	By SBI / PNB / Syndicate net off reversals of transfer to MT account of Rs. 315,36,30,801	16,15,66,117	-
	Total	3,32,51,91,918	3,32,51,91,918
	Receipt to Sales Ratio		0.32%
	Payment to Purchase Ratio		4.87%

- (b) It was noted that total sales to MT during the period 2014-2015 was shown as Rs. 316.36 Crore, out of which payment was received only to the extent of Rs. 0.99 Crore. Accordingly, the receipt-to-sales ratio constituted only 0.32%.
- (c) Further, it was noted that the net purchases from MT during the period 2014-2015 was shown as Rs. 331.52 Crore, out of which payment was made only to the extent of Rs. 16.16 Crore. Accordingly, the payment-to-purchase ratio constituted only 4.87%.

Transactions with CST

- (a) From the ledger of CST brought on record for the financial years 2013-2014 and 2014-2015, it was noted as following:

C & S Tools Pvt. Ltd. A/c during the FYs 2013-15			
Date	Particulars	Debit	Credit
05/07/2013	By Axis Bank - Receipts	-	36,00,000
06/12/2013	To Gold Sales 1%	8,47,77,944	-
02/01/2014	By Gold Purchase 1%	-	8,47,85,137
22/02/2014	To Gold Sales 1%	2,80,02,288	-
1 & 7 / 10/2014	To Gold Sales 1%	29,21,51,125	-
17/10/2014	By Reversal of Gold Sales 1%	-	29,21,51,125
	By Closing Balance	-	2,43,95,095
	Total	40,49,31,357	40,49,31,357
	Receipt to Sales Ratio	0.89%	
	Payment to Purchase Ratio	0.00%	

- (b) It was noted that the total sales to CST during the period of 2013-2015 was shown as Rs. 40.49 Crores, out of which payments received was only to the extent of Rs. 0.36 crores. Accordingly, the receipt-to-sales ratio constituted only 0.89%.
- (c) Further, it was noted that the total purchases from CST during the period of 2014-2015 was shown as Rs. 37.69 Crore, out of which no payment had been made. Accordingly, the payment-to-purchase ratio constituted 0%.
- iv. It was noted from the consolidated transactions between SCL and MT, MC and CST, for the period of 2013-2015, that the receipt-to-sales ratio and the payment-to-purchase ratio were 0.52% and 2.80 %, respectively. It was alleged that the parties have continued to transact on paper in spite of cash transactions being abysmally low. Therefore it is alleged

that the purchase transactions amounting to Rs. 647.05 Crores and sales transactions amounting to Rs. 643.39 Crores, entered into between SCL and MT, MC and CST were overstated in the books of accounts.

- v. Further, on perusal of the ledger pertaining to gold sales entries, for the financial year 2014-2015, as brought on record, the following are noted:

Ledger of Gold sales of SCL during the FY 2014-15			
Month	Debit(in Rs)	Credit(in Rs)	Closing Balance(Rs.)
Opening Balance			
April		1,53,85,97,133	1,53,85,97,133 Cr
May		1,48,00,646	1,55,33,97,779 Cr
June		2,05,20,54,051	3,60,54,51,830 Cr
July		9,24,93,423	3,69,79,45,253 Cr
August		11,64,61,026	3,81,44,06,279 Cr
September		17,54,63,032	3,98,98,69,311 Cr
October	832,278,976	8,877,33,838	4,04,53,24,173 Cr
November		84,28,887	4,05,37,53,060 Cr
December		7,52,15,285	4,12,89,68,345 Cr
January		46,03,780	4,13,35,72,125 Cr

February		15,93,22,293	4,29,28,94,418 Cr
March		2,06,43,48,477	6,35,72,42,895 Cr
Grand Total	83,2278,976	7,18,95,21,871	6,35,72,42,895 Cr

From the aforesaid table, it is noted that SCL has shown a gross sales turnover of Rs. 7,18,95,21,871/- for the financial year 2014-2015.

- vi. The details of the sales and the sales reversals to the tune of Rs. 83.22 crores in October 2014, are as following:

Date	Particulars	Debit	Credit
04/10/2014	By Gold Sales 1% - MT	-	27,69,40,422
16/10/2014	To Reversal of Gold Sales 1% - MT	27,69,40,422	-
06/10/2014	By Gold Sales 1% - MC	-	26,60,80,014
16/10/2014	To Reversal of Gold Sales 1% - MC	26,60,80,014	-
01/10/2014	By Gold Sales 1% - CST	-	22,15,04,612
07/10/2014	By Gold Sales 1% - CST	-	6,77,53,928
17/10/2014	To Reversal of Gold Sales 1% - CST	28,92,58,540	-
	Total	83,22,78,976	83,22,78,976

- vii. From the above table, it is noted that sales were reversed to the tune of Rs. 83.22 Crores on October 16 and October 17, 2014, i.e. immediately after the search operation conducted by DRI on October 13, 2014. Upon seeking comments for such sales reversals, during the recording of statement on June 9, 2016, the Managing Director of SCL stated that the sales

were reversed when SCL came to know that its proposal for Corporate Debt Restructuring (CDR) was taken up by the CDR-EG on October 22, 2016.

6. It was also alleged that the Noticees, as directors of SCL during the investigation period, have not diligently performed the role entrusted upon them to protect the interests of the stakeholders of the company by approving incorrect and misstated financial results declared by the company without exercising adequate due diligence. It was alleged that the Noticees were responsible for falsification of gold purchases and sales in the books of accounts of the company and was involved in accounting manipulations as alleged above and created a misleading picture in a deceitful manner to influence the decision of investors dealing in the securities of SCL, violating the provisions of Regulations 3(a), (c), (d), 4(1), 4(2) (e) (k) and (r) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “**PFUTP Regulations**”) read with Sections 12A (a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”).
7. In view of the above, SEBI issued a Show Cause Notice (“**SCN**”) dated December 7, 2017, which was delivered to the Noticees, calling upon them to show cause as to why suitable directions under sections 11B, 11(1) and 11(4) of the SEBI Act should not be issued against them, including but not limited to restraining them from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities directly or indirectly or being associated with the securities market in any manner, whatsoever, and holding any position, directly or indirectly, or being associated with any listed entity for an appropriate period of time as deemed fit.
8. *Service of SCN:* The SCN sent to the Noticees through Speed Post with acknowledgment were delivered to all the Noticees and acknowledgment received.
9. *Replies of the Noticees:* Vide letter dated December 30, 2017, Mr. K.E. Devarajan submitted his reply stating *inter alia* the following:

- i. He was appointed as the non-executive director of the Company on July 3, 2015, and that the financial results for the year ending March 31, 2015 was declared on May 31, 2015.
- ii. The investigation period in the present matter is from 2013-2015. Even though the SCN mentions that he was a Non-Executive Director of the Company for financial year 2014-2015, it was submitted that he was not a member of the Board during the financial years 2013-2015 and nor was he a director of the Company during 2014-2015.
- iii. He has resigned from the Board of Directors of the Company and filed the relevant Form DIR-11 on November 15, 2017, indicating his resignation with effect from October 10, 2017. In light of the same, he has no access to the books of accounts or any other records of the Company and accordingly, he is not in a position to defend any of the accounts related allegations in the SCN.

10. Vide letter dated December 30, 2017, Mr. Vijayraj Surana submitted his reply stating *inter alia* the following:

- i. He had resigned from his Directorship of SCL as on November 4, 2015 and has filed the relevant Form DIR-11. However, the Company is yet to file the Form DIR-12 and in its absence his name was appearing in the signatory details of the Company on the website of Ministry of Corporate Affairs (MCA).
- ii. Since he does not have access to the financial statements including the balance sheets made by the Company and also does not maintain a cordial relationship with the existing management, he is unable to verify or comment on the allegations in the SCN.

11. Vide letter dated January 1, 2018, Mr. Vijayraj Surana submitted another reply stating *inter alia* the following:

- i. The DRI matter which has been taken as the basis of the present proceedings is still pending for final order. The penalty imposed by the Adjudicating authority under the DRI, vide order dated April 29, 2016, has been reduced by the Appellate Authority vide order dated September 29, 2016 showing that the action of the Adjudicating authority

- was arbitrary and Mr. Vijayraj Surana claims to have filed a Writ Petition no. 5790 of 2017 before the Hon'ble High Court of Madras challenging the order of the Tribunal.
- ii. That Mr. Vijayraj Surana was only responsible for the overall matters of the Company and was not handling the day to day purchase and sales and hence was not aware of the alleged difference in stocks at the time of the search by DRI.
 - iii. The conclusions drawn by DRI are not based on any investigation by a duly constituted investigating authority or police authority even though allegations of fraud and misappropriation are offences under the Indian Penal Code, which need to be tried and proved before a Court of law and not before a quasi-judicial authority.
 - iv. There is no proof of any unfair gain to have accrued to the Noticees in this matter, nor is there a proof of artificial inflation of stock prices of the Company.

12. Vide reply dated December 27, 2018, Mr. S. Guruswamy filed his reply stating *inter alia* the following:

- i. All decisions on business, policies, sales, purchase, accounting, etc. were personally handled by Mr. Vijayraj Surana who was the Managing Director of the Company.
- ii. Mr. S. Guruswamy was responsible for looking into business development like launch of schemes for supply of gold to exporters and e-commerce opportunities for sale of gold/silver medallions. The allegations brought out in the SCN are beyond the knowledge of Mr. S. Guruswamy.
- iii. He resigned from the directorship of the Company on September 30, 2014.

13. *Hearing and submissions:* Vide letters dated January 18, 2018, hearing notices were sent to Mr. Vijayraj Surana, Mr. K.E. Devarajan and Mr. S. Guruswamy, granting them an opportunity of personal hearing on February 27, 2018. The said hearing notices were delivered to all the Noticees. Vide e-mail dated February 23, 2018, Mr. Vijayraj Surana sought for an adjournment of the personal hearing. Mr. K.E. Devarajan and Mr. S. Guruswamy neither appeared for the personal hearing nor sought for an adjournment. Vide e-mail dated April 4, 2018, Mr. Vijayraj Surana requested for the personal hearing to be rescheduled after April 20, 2018. Accordingly,

vide hearing notices dated April 24, 2018, another opportunity of personal hearing was granted to Mr. Vijayraj Surana, Mr. K.E. Devarajan and Mr. S. Guruswamy on May 22, 2018. The said hearing notices were also delivered to all the Noticees. Vide e-mails dated May 14, 2018 and May 18, 2018, Mr. Vijayraj Surana and Mr. K.E. Devarajan, respectively, requested for the personal hearing to be conducted in teleconference by video phone at the Southern Regional Office, Chennai and the same was granted to the said Noticees.

14. Mr. K. E. Devarajan and Mr. Vijayraj Surana appeared for the personal hearing and made *inter alia*, the following oral submissions:

- i. There was approximately 400 kg gold kept under CBI custody and the rest of the gold was in marketing. The same was reflected in a JJ Form.
- ii. Company had a running account with the counter parties, viz. Marudhar Trading, C&S Tools Private Limited and Maruthi Corporation, and the sales made to these entities by the Company were true.
- iii. The Company would sell gold bullion and purchase finished jewellery, with an additional making charge to the jeweler.
- iv. Company proposed for Corporate Debt Restructuring in August/September 2014 and thereafter, the Company proposed to reverse sales of Rs. 83.22 crores in October 2014.

15. The entities were advised to file their written submission by July 6, 2018, highlighting particularly, the Bank statements of the Company corresponding with the Ledger entries to show sale and purchase of bullion and jewellery respectively, VAT returns statements showing purchases, sales and reversal of trades, confirmation from CBI that gold stock of the Company was held in custody and third party confirmations on holding gold stocks at the time of DRI search.

16. Mr. S. Guruswamy failed to appear for the personal hearing. Accordingly, personal hearing was concluded with respect to all the Noticees. Vide reply dated July 6, 2018, Mr. Vijayraj Surana has submitted *inter alia* the following:

- i. The DRI Order based on which SEBI has levelled allegations in the SCN dated December 7, 2017, was passed without observance of the due process of law and the same has been challenged before the Commissioner of Customs (Appeals-II) and the Hon'ble High Court of Madras. It was further submitted that during the course of the investigation conducted by the DRI, the Adjudicating authority did not permit him to cross examine the persons whose statements were being relied upon and thus passed an order violating the principles of natural justice.
- ii. Since the basis for the entire SCN is being challenged before the Hon'ble High Court of Madras, he is not in a position to comply with the requirements in relation with the investigation initiated by SEBI in this regard until the aforesaid Writ Petition has been finally decided by the Hon'ble High Court of Madras.
- iii. Further, he had resigned from the post of the Director vide a letter dated November 4, 2015 and filed the Form DIR-11 with the Registrar of Companies (RoC) on June 23, 2016.
- iv. As per section 168(2) of the Companies Act, 2013, the resignation of a Director shall take effect from the date the resignation is received by the Company, and the same does not contemplate the acceptance of the resignation by the Company or by the Board of Directors. Therefore, the resignation had already come into effect from the date the Company received the resignation letter, i.e. on November 4, 2015.
- v. Further, it was submitted that regulation 8 of the PFUTP Regulations, expressly limits the duty of the director to produce books, registers, other documents and records relating to the Company that are in his powers or custody. Since the documents advised to be submitted are not in his custody due to his resignation, he is not in a position to produce the same.

17. I have considered the allegations, and materials brought on record. On perusal of the materials on record, the following issues arise for consideration. Each question is dealt with separately under different headings:

Issue no. 1: Whether there was any financial mis-statement or accounting manipulation in the books of accounts of the Company for the Financial Years 2013-2014 and /or 2014-2015.

Issue no. 2: If so, whether the Noticees had a role to play in such mis-statement and thus have violated Regulations 3(a), (c), (d), 4(1), 4(2) (e) (k) and (r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of the SEBI Act.

Issue no. 1: Whether there was any financial mis-statement or accounting manipulation in the books of accounts of the Company for the Financial Years 2013-2014 and /or 2014-2015.

18. I note that on October 13, 2014, DRI had carried out a search of the factory premises of SCL, and noted certain discrepancies in the physical stock of gold being maintained at the factory premises and the records for the same. DRI noted that as per the records maintained at the factory, gold stocks at the factory was 1,147.988 kg. However, DRI noted that upon physical inspection there was no gold stock at the factory at all and that as per the records maintained at the showroom, gold stock at the factory was 106.988 kg, gold coated jewellery tagged as “22 carat gold” was shown to be 408.739 kg.

19. Based on the alert received from DRI, SEBI carried out an investigation into the matter. I note that the Company vide letter dated February 26, 2016, to SEBI has explained that the stock of 1,147.988 kg of gold as shown in the records at the factory was a dry run data for the purpose of implementing the integrated inventory control at the factory, and was not official records. I note from the statement of Mr. Vijayraj Surana as recorded on May 20, 2016, before SEBI, that the stock of 1,147.988 kg of gold was sent for marketing to various customers through Company employees. I note that Mr. Vijayraj Surana requested for another opportunity to satisfactorily answer the queries of SEBI, and the same was acceded to. Mr. Vijayraj Surana appeared along with Mr. K.E. Devarajan on June 9, 2016 and stated that 106 kg gold was in the form of wastage at the factory premises and the balance was under marketing and was not

available at the factory premises. It was also stated that the overall stock levels disclosed in SCL's books of accounts were either at the factory premises or at marketing locations and the same are covered under Form JJ under the Tamil Nadu Value Added Tax Act, 2006. At the personal hearing on May 22, 2018, Mr. Vijayraj Surana and Mr. K.E. Devarajan reiterated that apart from 400 kg of gold stock which was in the custody of CBI, the rest was at various marketing locations, and which could be substantiated by the relevant Form JJ and confirmations from the marketing locations. From the statement of Vijayraj Surana as recorded on May 20, 2016, I find that he gave an explanation that stock of 1,147.988 kg of gold was sent for marketing to various customers. Therefore, it is clear that there is a claim by the Company that 1,147.988 kg gold existed. As per the allegation of SEBI 1,147.988 kg of the physical gold was not at all in existence. Therefore, the question is whether and where 1,147.988 kg of the physical gold was in existence.

As stated earlier, the stance of Vijayraj Surana is that the same were in existence though at marketing locations (show rooms). Despite being given an opportunity to substantiate the same, none of the Noticees have given any details of marketing locations, such as name and address of the places, or confirmations from the locations where such gold was claimed to be in existence. The Noticees were advised to provide documentary proof such as Form JJ (required to be prepared for movement of goods from the factory under the Tamil Nadu Value Added Tax Act, 2006) and confirmation from the various showrooms of gold held, since Mr. Vijayraj Surana and Mr. K.E. Devarajan at the time of statement recording on June 9, 2016 had stated that the Form JJ can substantiate the quantity of physical gold which were at marketing locations and during the hearing held on May 22, 2018 they had claimed that the marketing showrooms would confirm their holdings on the relevant date. However, no such Form JJ nor certificates from showrooms were submitted by the Noticees which clearly shows that there is no proof that 1,147.988 kg of physical gold was at different marketing locations. I find from the publicly available information, gold rates in Chennai as on October 13, 2014 i.e. date of search by DRI was around Rs. 2,563/- per gram (approx.). Accordingly, the asset position, as regards gold stocks, in the books of accounts was overstated to the tune of Rs. 294.23 Crores (1,147,988 grams x Rs. 2,563 per gram) as on October 13, 2014. In view of the same, I find that the Company had no actual gold stocks and had merely falsified such stocks

in its books of accounts and had inflated its asset position with respect to gold stocks to the tune of Rs. 294.23 Crores.

20. Further, I note from the accounting data obtained from the Company for the financial year 2014-2015, that the Company had shown total sales to MT as Rs. 316.35 Crores out of which payments received was only to the extent of Rs. 0.99 crores. I further note that purchases from MT was shown as Rs. 331.52 Crores however, the actual payment made was only Rs. 16.16 crores. Similarly, I note that the Company has shown sales of Rs. 286.54 crores to MC, out of which payments received was only to the extent of Rs. 1.99 Crores. I note that Rs. 277.83 Crores has been shown as purchases from MC, out of which only Rs. 1.97 Crores was paid by SCL. The Company has also shown sales to the extent of Rs. 40.49 Crores and purchase to the extent of Rs. 37.69 Crores in relation to CST during the period of 2013-2015. However, I note that once again, the actual receipt to sales was Rs. 0.36 crores, whereas there was no actual payment made to CST for the purchases given above. On perusal of the consolidated transactions of SCL with MT, MC and CST for the period 2013-2015, I note that the receipt to sales ratio is only 0.52% and the payment to purchase ratio is 2.80%.

21. Mr. K.E. Devarajan and Mr. Vijayraj Surana have submitted at the personal hearing that the Company had a running account with the counter parties, viz. Marudhar Trading, C&S Tools Private Limited and Maruthi Corporation, and the sales made to these entities by the Company were true. It was also submitted that the Company would sell gold bullion for the purpose of transforming them into jewellery and purchase the finished jewellery, with an additional making charge to the jeweler. It was submitted during the course of the personal hearing that the same was shown as sales and purchase respectively, in the books of accounts of SCL. Since the entries in the running account closely resembled entries for job work and not sales and purchases, in order to support their claim of sales and purchases the Noticees were advised to submit the relevant VAT receipts, bills of sale, delivery notes, Form JJ, payment receipts from the counter parties and/or any other relevant documents other than merely the ledger of the Company, to establish true sale. However, the Noticees failed to provide any documentary

evidence to this effect till date. I, therefore, find no merit in the said submissions of the Noticees and hold that the Company has in fact shown non-genuine sales in its books of accounts.

22. Further, I note from the ledger pertaining to gold sales entries for the financial year 2014-2015 that SCL had shown a gross sales turnover of Rs. 7,18,95,21,871/-. However, I note that sales reversal was carried out to the tune of Rs. 83.22 Crores on October 16 and 17, 2014. Mr. Vijayraj Surana and Mr. K.E. Devarajan submitted during the course of the statement recording on June 9, 2016 that sales wrongly entered into by operations team were reversed as and when the Company came to know that its proposal for Corporate Debt Restructuring (CDR) had been taken up by CDR-Empowered Group (EG) on October 22, 2014. However, I note that the said Noticees were unable to explain the rationale for reversing the supposedly wrong sales transactions and what the linkage was to the CDR proposal, particularly since the reversal happened on October 16 and 17, 2014, even before the proposal for CDR was taken up by CDR-EG on October 22, 2014.

23. During the personal hearing, Mr. Vijayraj Surana and Mr. K.E. Devarajan reiterated the aforesaid statement. I also note from the material available on record that Rs. 83.22 Crores were reversed on October 16 and 17, 2014, merely a few days after the inspection conducted by DRI, on October 13, 2014, indicating that the Company was eager to correct its mis-stated sales values pursuant to the same, and not because it could foresee that its proposal for CDR was to be taken up at the CDR-EG, the link to which in any case the Noticees failed to explain. I note from the table as given in the SCN dated December 7, 2017, that gold sales were shown to MT, MC and CST on October 4, 2014, October 6, 2014 and October 7, 2014 respectively. The same were reversed on October 16 and 17, 2014. As a result of the reversals, the net turnover was Rs. 6,35,72,42,895/-. I have already noted that the sales and purchase transactions entered into between SCL and MC, MT and CST were not genuine and were mere book entries or possibly job work. I therefore, find that the sales reversals to the tune of Rs. 83.22 Crores which were shown with respect to the transactions with MC, MT and CST during the financial year 2014-2015, also were not genuine. I also find that the sales reversals were done

immediately after the DRI inspection on October 13, 2014, indicating that the Company was merely trying to rectify its book entries of false transactions.

24. From the aforesaid, I find that the Company has falsified gold purchases and sales in its books of accounts for the financial years 2013-2014 and 2014-2015 and has shown inflated gold stocks in its books of accounts for the financial years 2013-2014 and 2014-2015. I note that separate adjudication proceedings have been initiated against the Company in this regard.

Issue no. 2: If so, whether the Noticees had a role to play in such mis-statement and thus have violated Regulations 3(a), (c), (d), 4(1), 4(2) (e) (k) and (r) of the PFUTP Regulations read with Sections 12A (a), (b) and (c) of the SEBI Act.

25. I note that the SCN alleges that Mr. Vijayraj Surana, Mr. S. Guruswamy and Mr. K.E. Devarajan were directors of SCL during the investigation period i.e. 2013-2015. In this regard, I have perused the MCA records. The appointment and resignation of the said directors as per the records available on the MCA website are as under :

Name	Date of joining	Date of cessation
Mr. Vijayraj Surana	March 4, 2004	Continuing*
Mr. K.E. Devarajan	July 3, 2015	Continuing
Mr. S. Guruswamy	January 28, 2009	September 30, 2014

**As per DIR-11 filed with MCA, Mr. Vijayraj Surana resigned from SCL on June 23, 2016*

26. Mr. K.E. Devarajan, vide letter dated December 30, 2017 contended that he was appointed as the non-executive director of the Company on July 3, 2015 and he was not a member of the Board during the financial years 2013-15 and nor was he a director of the Company during 2014-2015 and further stated he had resigned from the directorship of the Company and also filed DIR-11 with the RoC on November 15, 2017. It was submitted that the effective date of resignation was October 10, 2017. As regards the aspect of resignation by Mr. K.E. Devarajan,

on perusal of DIR-11 filed by Mr. K.E. Devarajan, I find that the said Noticee had intimated his willingness to resign vide e-mail dated July 6, 2017. The said e-mail states that he will “hand hold the transition extend all the support if any required from the side for a short period”. *“On acceptance by you, I will formally tender my resignation from the board of Surana Corporation Limited on the date of your convenience. But would also request you to release me from the board at the earliest”*. No evidence in support of formal resignation letter was placed as proof of resignation by Mr. K.E. Devarajan. The effective date of resignation shown in the DIR 11 as October 10, 2017 is not mentioned in the said e-mail dated July 6, 2017. In this regard, reference to the provision of law under section 168(1) of the Companies Act, 2013, made which is as follows:-

“A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same ...

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.”

27. In view of the contents of the e-mail dated July 6, 2017 (*supra*) and lack of proof of formal notice of resignation, I find that there is no sufficient proof that Mr. K.E. Devarajan has resigned from the Company. Therefore I am inclined to accept the MCA records tabulated above which shows that Mr. K.E. Devarajan was appointed as a director of the Company on July 03, 2015 and he is one of the present directors of the Company and is continuing as director. Even for the sake of argument, the said Noticee has actually resigned, I am of the view that the said fact has no bearing on the instant case. Though he has joined the Board of the Company on July 03, 2015, I note from the Annual Report for the year 2011-12 that Mr. K.E. Devarajan was acting as the AVP (Finance and Accounts) in SCL and was Vice President (Finance and Accounts) during the financial years 2012-2013 and 2013-2014. The said fact was also admitted by Mr. K.E. Devarajan at the time of personal hearing. Therefore, the fact that he joined as director in July 03, 2015 does not make a difference to his role in the

misrepresentation as found out earlier since he was the AVP and VP (Finance and Accounts) during the relevant period. Despite having knowledge and supervisory complicity in the misrepresentation during his tenure as AVP and VP (Finance and Accounts), Mr. K.E. Devarajan has not taken any steps to correct the misrepresented figures when he became a director. Instead he has let the misrepresented figures to continue in the financial statements after he became a director. Therefore, I find Mr. K.E. Devarajan is responsible for the charges of financial misstatement and accounting manipulations during the financial years 2013-2015.

28. As regards the appointment and resignation of Mr. S. Guruswamy is concerned, he has not contested the MCA Records. Therefore I find that he has joined and resigned as stated in the above table in Issue No.2. I find that Mr. S. Guruswamy vide his reply dated December 27, 2017 contended that he was not in charge of the overall management of the Company. In this regard, I note that a person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The Noticees therefore cannot escape from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Merely contending that he was not responsible for the day to day purchases and sales of the Company, or that his responsibilities did not entail a say in the daily management of the Company does not absolve him of his duty as a director of the Company. I, therefore, find that Mr. S. Guruswamy as a Director of SCL is liable for manipulation of books of accounts and misrepresentation of financial results declared by the Company as determined under Issue no. 1.

29. Mr. Vijayraj Surana vide letter dated December 30, 2017, contended that he had resigned from the directorship of the Company on November 4, 2015, and had filed the relevant DIR-11 with the RoC on June 23, 2016. In support of his claim of resignation, Mr. Vijayraj Surana has submitted his letter of resignation addressed to the Board of Directors of SCL with a Copy to one Mr. Dinesh Chand Surana along with copy of Acknowledgments. It was further submitted that since the Company failed to file the DIR-12 with the RoC, and his name was shown as a

continuing director on the portal of MCA, Mr. Vijayraj Surana vide letter dated October 14, 2016 intimated his resignation to various statutory authorities including SEBI. Further, he has submitted notification of his resignation in two newspaper publication in the dailies viz. "Thanthi" and "Deccan Chronicle" dated October 25, 2016.

From the perusal of MCA records, I find that on June 23, 2016, Mr. Vijayraj Surana had filed with RoC, DIR-11, Resignation letter and copy of acknowledgment bearing the seal of the Company as a proof of receipt of the same by the Company. In view of the same, I am inclined to accept the date of resignation of Mr. Vijayraj Surana with effect from June 23, 2016 (date of filing DIR-11 with RoC). However, I note that though he had resigned from the Company on June 23, 2016, he was nonetheless a director of the Company during the period of 2013-2015 and hence liable for the violations.

Further, from the reply dated January 1, 2018, filed by Mr. Vijayraj Surana, I note that it was submitted that he was only responsible for the overall matters of the Company and was not handling the day to day purchases and sales and hence was not aware of the alleged difference in stocks at the time of the search by DRI. I note that merely contending that he was not responsible for the day to day purchases and sales of the Company, or that his responsibilities did not entail a say in the daily management of the Company does not absolve him of his duty as a director of the Company. I therefore, find that Mr. Vijayraj Surana as a Director of SCL is liable for manipulation of books of accounts and misrepresentation of financial results declared by the Company as determined under Issue no. 1.

30. From the details of appointment and resignation of directors as given in paragraph 25, I find that the Noticees viz., Mr. Vijayraj Surana and Mr. S. Guruswamy who were the directors of SCL at the time of accounts manipulation committed by the Company. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

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

31. Vide replies dated January 1, 2018 and July 6, 2018, Mr. Vijayraj Surana has submitted that the DRI Order dated April 29, 2016 based on which SEBI has levelled allegations in the SCN dated December 7, 2017, was passed without observance of the due process of law and the same has been challenged before the Commissioner of Customs (Appeals-II) and the Hon'ble High Court of Madras. It was further submitted that during the course of the investigation conducted by the DRI, the Adjudicating Authority did not permit him to cross examine the persons whose statements were being relied upon and thus passed an order violating the principles of natural justice. It was also submitted that since the basis for the entire SCN is being challenged before the Hon'ble High Court of Madras, he is not in a position to comply with the requirements in relation with the investigation initiated by SEBI in this regard until the aforesaid Writ Petition has been finally decided by the Hon'ble High Court of Madras.

31.1 However, I note that SEBI had conducted its own investigation procedure to arrive at the conclusions as alleged in the SCN dated December 7, 2017, albeit the investigation was initiated after receiving a reference from DRI in this regard. I further note that the findings in the present order, under Issue no. 1, have been made on the basis of the facts also admitted by the Noticees during the statement recording on May 20, 2016, June 9, 2016 and during the personal hearing, and are not solely based on the findings of the DRI Order dated April 29, 2016.

31.2 I note that Mr. Vijayraj Surana has also submitted that the conclusions drawn by DRI are not based on any investigation by a duly constituted investigating authority or police authority even though allegations of fraud and misappropriation are offences under the Indian Penal Code, which need to be tried and proved before a Court of law and not before a quasi-judicial authority. However, the same has no bearing in the present matter, as the

present proceedings are not for testing the findings of DRI but for violation of securities laws in view of the accounts manipulation and misrepresentation of financial results.

31.3 It is further stated by Mr. Vijayraj Surana vide his aforesaid replies that he has filed a Writ Petition on the grounds that his right to cross examine at the stage of passing of the Order dated April 29, 2016 by DRI was denied. However, the same is not a matter to be considered before SEBI and neither are the present proceedings hampered due to this alleged denial of principle of natural justice, as the proceedings of SEBI, as demonstrated above, are independent of the DRI proceedings and have been initiated for entirely different cause of action, i.e., for violation of securities laws in view of accounts manipulation and misrepresentation of financial results. Therefore, I see no merit in the submission that Mr. Vijayraj Surana was unable to comply with the requirements in relation with the investigation initiated by SEBI till the aforesaid Writ Petition was disposed of.

32. I further note that it was submitted by Mr. Vijayraj Surana vide letter dated July 6, 2018 that regulation 8 of the PFUTP Regulations expressly limits the duty of the director to produce books, registers, other documents and records relating to the Company that are in his powers or custody. It was submitted that since the documents advised to be submitted by SEBI are not in his custody due to his resignation, he is not in a position to produce the same. Further, vide his reply dated December 30, 2017, Mr. K.E. Devarajan has submitted that due to his resignation on October 10, 2017 from the directorship of SCL he has no access to documents and records of the Company. In this regard, I note that regulation 8(2) of the PFUTP Regulations requires *“Managing Director, officer and other employee of the company and every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.”* It is noted that above said provision deals with the obligation of persons who are under investigation. The provision makes it mandatory to produce the documents mentioned in the provision to the

Investigating Authority or any person authorized by him. However, said provision does not apply to a scenario when the burden of proof of the case pleaded by the Noticees are to be discharged by the Noticees themselves. Therefore, I am of the view that the said provision cannot come to the aid of Noticees who are required to discharge the burden of proving their case. Noticees viz., Mr. Vijayraj Surana and Mr. K.E. Devarajan have also not given any proof of steps taken by them to seek the copy of the documents from the Company which according to them would have supported their case. Further, I note that though the Noticees viz., Mr. Vijayraj Surana and Mr. K.E. Devarajan contended that they cannot produce the documents since they resigned from the Company, during the course of personal hearing held on May 22, 2018, the said Noticees have stated that they would submit the documents in support of their case. However, they failed to submit any documents to substantiate their claims.

I, therefore, find that in the absence of any documentary evidence to show that the Company had in fact entered into genuine sales and purchase transactions during the period 2013-2015, and that gold stocks as declared were also at the factory or at different marketing locations, the Noticees are liable for the deliberate misrepresentations in the financial results declared by the Company.

33. I note that the regulations 3(a), (c), (d), 4(1), 4(2) (e) (k) and (r) of the PFUTP Regulations read with Section 12A of the SEBI Act, prohibits entities from employing any scheme or artifice that would amount to the dissemination of any incorrect or misleading information in relation with any scrip, which would operate as a fraud on persons dealing in such securities. The aforesaid provisions as existed during the period of 2013-2015, are reproduced hereunder for reference:

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003:

3. Prohibition of certain dealings in securities

“No person shall directly or indirectly—

- a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- b) ...*

- c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.”*

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) *“Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*

(e) any act or omission amounting to manipulation of the price of a security;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(r) planting false or misleading news which may induce sale or purchase of securities.”

SEBI Act.

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. *“No person shall directly or indirectly—*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder.”

34. On perusal of the aforesaid provisions of law, I find that the Noticees, viz., Mr. Vijayraj Surana Mr. S. Guruswamy as directors and Mr. K.E. Devarajan as AVP of (Finance and Accounts) of SCL are liable for manipulation of books of accounts and misrepresentation of financial results declared by the Company for the period of 2013-2015.

35. In this context the following observation of Hon’ble Supreme Court in *SEBI v. Kishore R. Ajmera*, (AIR 2016 SC 1079) are noteworthy: *“SEBI Act and the Regulations framed thereunder are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors’ confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors’ confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.”*

36. Further in the case of *N. Narayanan v. adjudicating Officer, SEBI* (AIR 2013 SC 3191) the Hon’ble Supreme court further reiterated *“Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve ‘market integrity’ and to prevent ‘Market abuse’. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly,*

healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers...

SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto."

37. In view of the above discussion on the facts and proposition of law, I find that the activities of the Noticees fall within ambit of 3(a), (c), (d), 4(1), 4(2) (e) (k) and (r) of the PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.
38. In view of the foregoing, in order to safeguard the interest of the investors and to further ensure orderly development of securities market, it becomes necessary for SEBI to issue appropriate directions against the Noticees for the said violations.

ORDER

39. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11B, 11(1) and 11(4) of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:

- i. Mr. K.E. Devarajan in the capacity of director of Surana Corporation Limited is directed to ensure that internal records of the Surana Corporation Limited reflect the correct data in respect of the transactions covered in this order and any consequential changes thereof, and publish forthcoming quarterly filings before the stock exchanges reflecting the changes.
- ii. Mr. Vijayraj Surana, Mr. K.E. Devarajan and Mr. S. Guruswamy are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in or associating with the securities market, directly or indirectly in whatsoever manner, starting from the date of this order till the expiry of **5 (five)** years from the date of compliance of directions at para 39(i).
- iii. Mr. Vijayraj Surana, Mr. K.E. Devarajan and Mr. S. Guruswamy are also restrained from associating themselves or holding any position with any listed public company and/or any public company which intends to raise money from the public, either directly or indirectly, or with any intermediary registered with SEBI, starting from the date of this order till the expiry of **5 (five)** years from the date of compliance of directions at para 39(i).

40. The show cause notice dated December 07, 2017 is disposed of accordingly.

41. A copy of this order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

DATE: September 07, 2018

PLACE: Mumbai

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