WTM/AB/CFID/CFID_1/20686/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(2)(e), 11(4), 11(4A), 11B(1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

Noticee No.	Name of Noticees	PAN
1.	The Bombay Dyeing & Manufacturing Company Limited	AAACT2328K
2.	Scal Services Limited	AAACS9121P
3.	Mr. Nusli N Wadia	AAAPW0990M
4.	Mr. Ness N Wadia	AAAPW0814G
5.	Mr. Jehangir N Wadia	AAAPW0989N
6.	Mr. D S Gagrat	AACPG8665M
7.	Mr. N H Datanwala	AACPD5729K
8.	Mr. Shailesh Karnik	AISPK4123A
9.	Mr. R Chandrasekharan	AABPC3516A
10.	Mr. Durgesh Mehta	AAKPM9703A

*(Aforesaid entities are hereinafter individually referred to by their respective name or noticee number and collectively as "**the Noticees**".)*

In the *matter of* The Bombay Dyeing and Manufacturing Company Ltd.

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1. On the basis of certain complaints, SEBI has conducted a detailed investigation into the affairs of Bombay Dyeing and Manufacturing Company Ltd. (hereinafter referred to as '**BDMCL**') for the period covering FY 2011-12 to FY 2018-19 (hereinafter referred to as "**Investigation Period**" or "**IP**"). On the basis of the findings of investigation, a show cause notice dated June 11, 2021 (hereinafter referred to as

'**the SCN'**) was issued to the Noticees, calling upon them, to *inter alia* show cause as to why they should not be held liable for violation of Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), (4)(2)(k) and 4(2)(r) of SEBI (Prevention of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 2003 (hereinafter referred to as '**the PFUTP Regulations, 2003**') r/w Section 12A(a), 12A(b), 12A(c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**").

2. The SCN mentioned the following findings of investigation by SEBI:

Details of BDMCL

2.1. BDMCL, established in 1879, is situated at Neville House, J. N. Heredia Marg, Ballard Estate, Mumbai- 400 001. BDMCL is part of the Wadia Group and is engaged in the business of real estate, polyester and retail/ textile. The equity shares of BDMCL are listed at BSE and NSE.

2.2. The shareholding pattern of BDMCL as available and taken from the BSE website during the IP is as under:

Table 1

Financial Year	Promoter shareholding as on March 31 (%)	Public Shareholding as on March 31 (%)	Total
2011-12	52.07	47.93	100
2012-13	52.29	47.71	100
2013-14	52.35	47.65	100
2014-15	52.35	47.65	100
2015-16	53.69	46.31	100
2016-17	53.69	46.31	100
2017-18	53.69	46.31	100
2018-19	53.69	46.31	100

2.3. During the IP, the Promoters of BDMCL were a number of Wadia Group Companies along with Mr. Nusli N Wadia, Ms Maureen N Wadia, Mr. Ness N Wadia and Mr. Jehangir N Wadia.

Details of Scal Services Ltd. ('Scal')

2.4. Scal is an unlisted company incorporated in 1983 and had its registered office at Neville House, J. N. Heredia Marg, Ballard Estate, Mumbai- 400 001. During FY 2018-19, the registered office of Scal was shifted to Raheja Point I, Wing 'A', Pt. Jawaharlal Nehru Road, Vakola, Santacruz (E), Mumbai- 400 055 which is owned by Wadia Techno-Engineering Services Limited. During the IP, shareholding of Scal was held by various Wadia Group entities.

2.5. As submitted by Scal, it was primarily engaged in the business of (a) Real Estate and (b) Trading, during the IP. Pursuant to an order dated February 21, 2019 passed by the Hon'ble NCLT, Mumbai Bench, the Real Estate Business Undertaking of Scal was demerged and vested into BDMCL, with effect from July 01, 2018.

2.6. The financial performance of Scal as provided in its Annual Reports during the IP is as under:

Table 2

(Rs. in crores)

Financial Year	Revenue including other income	Expenses	Profit/ (Loss)
2011-12	6.88	3.98	2.90
2012-13	7.17	17.64	-10.47
2013-14	3.12	31.97	-28.85
2014-15	7.19	59.31	-52.12
2015-16	2.33	81.57	-79.24
2016-17	6.40	70.26	-63.86
2017-18	0.03	82.13	-82.10
2018-19*	5.33	5.47	-0.14

**After demerger of real estate business undertaking*

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Part A – Allegations of Misrepresentation of Financial Statements of BDMCL

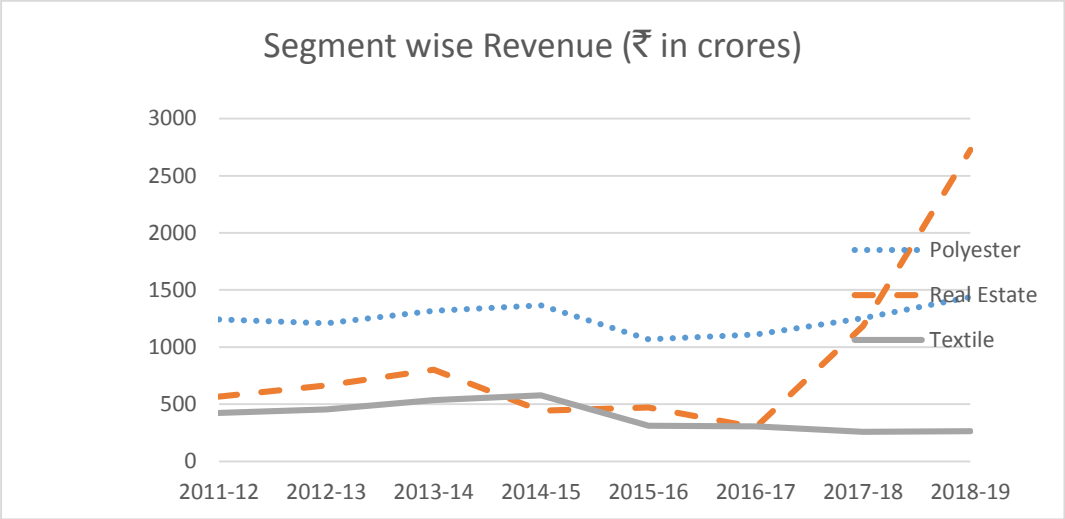
2.7. The consolidated financial performance of BDMCL, as provided in its annual reports during the Investigation Period, was as under:

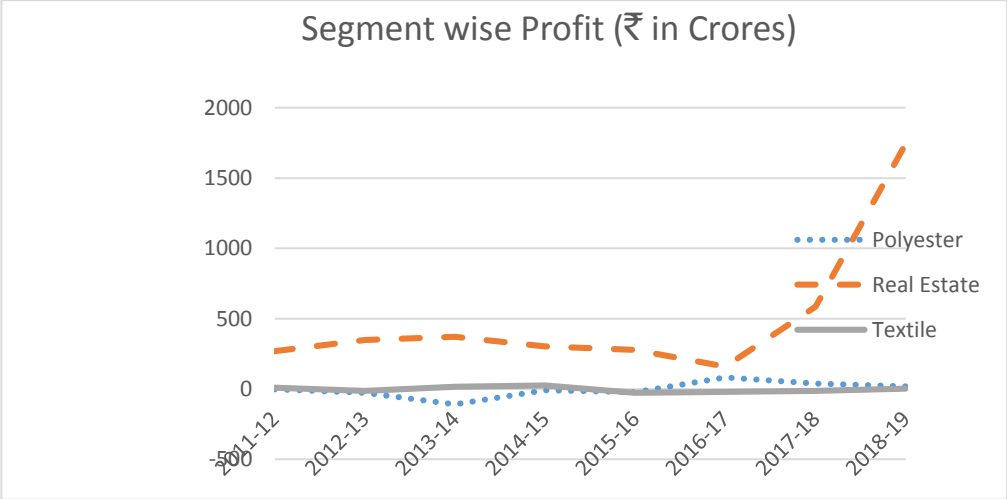
Table 3

(Rs. in Crores)

Financial Year	Segment	Segment Revenue	Segment Profit
2011-12	Textile	423.18	8.90
	Polyester	1241.18	(0.86)
	Real Estate	566.27	268.58
	Total	***2230.73***	***276.62***
2012-13	Textile	454.65	(12.34)
	Polyester	1208.82	(27.04)
	Real Estate	665.70	349.61
	Total	***2329.17***	***310.23***
2013-14	Textile	535.16	15.15
	Polyester	1317.59	(110.01)
	Real Estate	803.28	372.46
	Total	***2656.03***	***277.60***
2014-15	Textile	578.09	25.1
	Polyester	1366.75	(9.77)
	Real Estate	444.23	302.69
	Total	***2389.07***	***318.02***
2015-16	Textile	310.11	(26.3)
	Polyester	1069.12	(22.66)
	Real Estate	470.23	277.2
	Total	***1849.46***	***228.24***
2016-17	Textile	306.97	(19.65)
	Polyester	1110.15	82.02
	Real Estate	296.95	160.57
	Total	***1714.07***	***222.94***
2017-18	Textile	257.89	(14.4)
	Polyester	1251.95	39.68
	Real Estate	1182.91	586.43
	Total	***2692.75***	***611.71***
2018-19	Textile	263	1.84
	Polyester	1439.28	18.54
	Real Estate	2727.48	1742.42
	Total	***4429.76***	***1762.8***

2.8. The aforesaid financial performance of BDMCL by way of pictorial diagrams is shown below:





2.9. From the aforesaid figures and charts, it was noted that while real estate segment's contribution to the total revenue of BDMCL increased significantly in 2 out of last 5 years of IP, it contributed single handedly to the company's profits during the entire IP.

2.10. From the Annual Reports of BDMCL, it is seen that a major part of real estate revenue of BDMCL was derived from bulk sales made to Scal under the various MoUs. As submitted by BDMCL, total 11 MoUs worth Rs. 3,033 crores were

entered into between BDMCL and Scal for bulk purchase of flats/allotment rights during the period March 30, 2012 to March 27, 2014 in Project One Island City Centre **("One ICC")** and Project Two Island City Centre **("Two ICC")**. The details of these MoUs are as follows:

Table 4

MoU No.	MoU Date	Project	No. of Flats sold	Consideration for sale (Rs. in Crores)
1	March 30, 2012	One ICC	52	450
2	March 30, 2012	Two ICC	40	293
3	June 30, 2012	One ICC	9	82
4	June 30, 2012	Two ICC	8	61
5	September 27, 2012	One ICC	5	46
6	December 31, 2012	One ICC	10	91
7	March 29, 2013	One ICC	18	189
8	March 29, 2013	Two ICC	25	233
9	June 28, 2013	One ICC	12	127
10	March 27, 2014	One ICC	50	523
11	March 27, 2014	Two ICC	96	938
			325	**3,033**

2.11. A comparison of the revenue recognized by BDMCL from FY 2011-12 to FY 2017-18 along with the sales made to Scal during the same period is as follows:

Table 5

FY (A)	Revenue for real estate segment (Rs. in crores) (B)	Recognition of revenue based on MoU entered with Scal[1] (Rs. In crores) (C)	% of revenue recognized from Scal (D=C/B*100)	Operating Profit for Real Estate Segment (Rs. in crores) (E)	Profit Before Tax on sales made to Scal under MoUs (Rs. in crores) (F)	Page of Annual Report of BDMCL(G)
2011-12	566.27	341.32	60%	268.58	Not provided	56
2012-13	665.70	339.47	51%	349.61	203.96	33
2013-14	803.28	670.13	83%	372.46	355.45	41
2014-15	444.23	301.11	68%	302.69	224.49	53
2015-16	470.23	239.26	51%	277.20	158.63	56
2016-17	296.95	156.07	53%	160.57	102.63	53
2017-18	1182.91	445.58	38%	586.43	257.04	68
2018-19	The real estate business undertaking of Scal got merged with BDMCL.					

[1] As mentioned in the Auditor's Reports in respective Annual Reports of BDMCL

FY (A)	Revenue for real estate segment (Rs. in crores) (B)	Recognition of revenue based on MoU entered with Scal[1] (Rs. In crores) (C)	% of revenue recognized from Scal (D=C/B*100)	Operating Profit for Real Estate Segment (Rs. in crores) (E)	Profit Before Tax on sales made to Scal under MoUs (Rs. in crores) (F)	Page of Annual Report of BDMCL(G)
Total	**4429.57**	**2492.94**	**56%**	**2317.54**	**1302.20**	

During the IP, entire shareholding of Scal was held by BDMCL, Bombay Dyeing Real Estate Company Limited **("BDRECL")**, Pentafil Textile Dealers Limited **("Pentafil")**, Archway Investment Company Limited **("Archway")**, BDS Urban Infrastructures Pvt Ltd **("BDS")** and Springflower Investments Pvt Ltd, which were the companies of Wadia Group. An analysis of the shareholding pattern of Scal and its major shareholders from 2010-11 onwards is as follows *(shareholding as on March 31 of the FY)*[2]:

Table 6

	2010-11	**Shares held in**		
	Shares held by ↓	**Scal**	**Pentafil**	**Archway**
1	Scal	-	25.50%	25.50%
2	Pentafil	25.50%	-	25.50%
3	Archway	25.50%	25.50%	-
4	BDMCL	49%	49%	49%
	Total	**100%**	**100%**	**100%**

Table 7

	2011-12 and 2012-13	**Shares held in**			
	Shares held by ↓	**Scal**	**Pentafil**	**BDRECL**	**Archway**
1	Scal	-	25.50%	10%	25.50%
2	Pentafil	25.50%	-	40%	25.50%
3	BDRECL	30%	-	-	-
4	Archway	25.50%	25.50%	10%	-
5	BDMCL	19%	49%	40%	49%
	Total	**100%**	**100%**	**100%**	**100%**

Table 8

[2] Source: Annual Reports of Scal

	2013-14	Shares held in					
	Shares held by ↓	**Scal**	**Pentafil**	**BDRECL**	**Archway**	**BDS**	**Springflower**
1	Scal	-	25.50%	10%	25.50%	-	
2	Pentafil	19%	-	40%	25.50%	81%	
3	BDRECL	19%	-	-	-	-	
4	Archway	19%	25.50%	10%	-	-	
5	BDS	19%	-	-	-	-	
6	Springflower	5%	-	-	-	-	-
7	Havenkores Real Estate Pvt. Ltd	-	-	-	-	-	100%
8	BDMCL	19%	49%	40%	49%	19%	
	Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Table 9

	2014-15 to 2017-18	Shares held in				
	Shares held by ↓	**Scal**	**Pentafil**	**BDRECL**	**BDS**	**Springflower**
1	Scal	-	45.50%	45%	47%	-
2	Pentafil	19%	-	-	19%	-
3	BDRECL	19%	-	-	15%	-
4	BDS	38%	5.50%	15%	-	-
5	Springflower	5%	-	-	-	-
6	Havenkores Real Estate Pvt. Ltd[3]	-	-	-	-	100%
7	BDMCL	19%	49%	40%	19%	-
	Total	**100%**	**100%**	**100%**	**100%**	**100%**

Table 10

	2018-19	Shares held in			
	Shares held by ↓	**Scal**	**Pentafil**	**BDRECL**	**BDS**
1	Scal	-	45.50%	45%	47%
2	Pentafil	19%	-	-	19%
3	BDRECL	19%	-	-	15%
4	BDS	43%	5.50%	15%	-
5	BDMCL	19%	49%	40%	19%
	Total	**100%**	**100%**	**100%**	**100%**

[3] Please refer **Table 11** showing shareholding of Havenkores Real Estate Pvt. Limited as on March 31, 2018.

Table 11

S. No.	Name of Shareholder	Shares held in Havenkores	%
1	Nessville Trading Private Ltd.	15000	61.98%
2	Nowrosjee Wadia & Sons Ltd	5000	20.66%
3	Mr. Ness Wadia	1600	6.61%
4	Mr. Jeh Wadia	1600	6.61%
5	Mrs. Bachoobai Woronzow	1000	4.13%
	Total	**24200**	**100**

2.12. On an analysis of the aforesaid tables, it is noted that during FY 2011-12 to FY 2018-19, while BDMCL held a part of equity share capital of Scal, other Wadia Group entities held remaining shareholding of Scal. On analysis of shareholding of these other entities for the purpose of finding the ultimate owner of Scal, it is noted that BDMCL held directly/indirectly entire share capital of all these entities which held share capital of Scal. Various shareholders of Scal except BDMCL such as Pentafil, BDRECL, Archway and BDS were the investment companies of Wadia Group which did not carry on any business and whose revenue primarily consisted of dividend and interest income on Inter Corporate Deposits. An analysis of the shareholding patterns revealed that in all these complex and changing landscape of shareholding structures, BDMCL acted as a fixed/common point and directly/indirectly held entire shareholding of these companies. In other words, BDMCL directly/indirectly held entire share capital of Scal through a number of investment entities and was the ultimate beneficial owner of Scal.

2.13. As on March 31, 2011, BDMCL, Pentafil and Archway held 49%, 25.50%, 25.50% stake in Scal respectively. In FY 2011-12, till March 28, 2012, BDMCL held aforesaid 49% stake in Scal. Vide letter dated September 15, 2020, BDMCL submitted that on March 29, 2012, it sold 30% stake in Scal to BDRECL which was one of the Group Companies of BDMCL effectively bringing down its individual shareholding to 19% in Scal.

2.14. *Accounting Standard 23: Accounting for Investment in Associates in Consolidated Financial Statements (issued in 2001)* **("AS-23")** sets out

principles and procedures for recognizing, in the consolidated financial statements, the effects of the investments in associates on the financial position and operating results of a group. AS-23 requires that investment in an associate should be accounted for in consolidated financial statements under the Equity Method wherein unrealized profits and losses resulting from transactions between investor and the associate should be eliminated to the extent of the investor's interest in the associate. Unless specifically established, for categorizing an entity as an associate, the main entity should hold 20% or more shareholding of the first mentioned entity. Before the sale of 30% stake in Scal, BDMCL held 49% in Scal and categorized Scal as an Associate. It is alleged that by bringing down shareholding in Scal to 19%, BDMCL did not categorize Scal as an associate company and ensured that the transactions for recognizing revenue as well as the profit on the basis of MoU's to be entered into with Scal need not be consolidated which, if done, would nullify the entire *modus operandi* followed by BDMCL for artificial inflation of sales and profits.

2.15. Also, the consideration received by BDMCL from sale of 30% stake in Scal to BDRECL was Rs. 48 lakhs which was insignificant as compared to revenues/profits of BDMCL. In view of the same, BDMCL was advised to provide the purpose of the aforesaid sale of 30% stake in Scal. In response to the same, Noticee No. 3, 4 and 5 vide letters dated March 08, 2021, did not provide any specific reasons and stated that BDMCL as part of restructuring its investment portfolio reduced its shareholding in SCAL from 49% to 19% and the same may not be considered as illegitimate. As alleged above, by bringing down shareholding in Scal to 19%, BDMCL ensured that the transactions for recognizing revenue as well as the profit on the basis of MoU's to be entered into with Scal need not be consolidated. Incidentally, Mr. Durgesh Mehta who was the Joint Managing Director and Chief Financial Officer **("CFO")** of BDMCL at the time of aforesaid stake sale, vide his statement recorded on January 07, 2021, also stated that the purpose of the 30% stake sale to BDRECL was to ensure that accounts of Scal are not consolidated with BDMCL.

2.16. Thereafter, on March 30, 2012 *(just one day after reducing its shareholding in Scal by 30%)*, BDMCL entered into 2 MoUs with Scal for sale of flats/allotment rights in Project One ICC and Project Two ICC, Dadar, Mumbai amounting to Rs. 744 crores. In total, BDMCL entered into 11 MoUs with Scal during FY 2011-12 to 2013-14 for sale of flats/allotment rights in Project One ICC and Project Two ICC amounting to Rs. 3,033 crores. As submitted by BDMCL vide letter dated October 17, 2019, the idea of bulk sale to Scal by way of MoUs was to ensure upfront cash flow, which can be used for general corporate purposes and creating a framework for onward sales to third parties.

2.17. Thereafter, during each financial year from FY 2011-12 to FY 2017-18, BDMCL recognised revenue on the basis of the MoUs so entered with Scal based on Percentage of Completion Method in accordance with *Accounting Standard-7: Construction Contracts* which prescribes the accounting treatment of revenue and costs associated with construction contracts. BDMCL recognized revenue and operating profit of Rs. 4,429.57 crores and Rs. 2,317.54 crores, respectively, for real estate segment during FY 2011-12 to FY 2017-18. Out of the same, revenue and profit amounting to Rs. 2,492.94 crores and Rs. 1,302.20 crores, respectively, were recognized on the basis of MoUs entered into with Scal (as provided in **Table 5** above). However, as submitted by BDMCL, vide letter dated October 17, 2019, net amount received till date (October 17, 2019) with respect to MoUs entered into with Scal was Rs. 186 crores which was 7.46% of the revenue recognized by BDMCL during FY 2011-12 to 2017-18 with respect to MoUs entered into with Scal.

2.18. Before recognition of revenue in accordance with Accounting Standard 7, a real estate developer is required to satisfy the conditions specified in Guidance Note on Recognition of Revenue by Real Estate Developers (Issued 2006) issued by the Institute of Chartered Accountant of India **("Guidance Note 2006")**. Guidance Note, 2006 provides guidance on application of principles of *Accounting Standard 9: Revenue Recognition* to the real estate sales, particularly the transfer of risks and rewards of ownership to the buyer in a case where the seller has entered into an agreement to sell. Guidance Note, 2006

requires following three conditions to be complied with before recognition of revenue by real estate developers:

(i) transfer of all significant risks and rewards of ownership to the buyers;
(ii) not unreasonable to expect ultimate collection; and
(iii) non-existence of significant uncertainty regarding the amount of consideration.

2.19. As required by Para 7 of the Guidance Note, 2006, *all significant risks and rewards of ownership are considered to be transferred, if the seller has entered into a legally enforceable agreement for sale with the buyer*. Therefore, it was necessary for BDMCL to have, at least, legally enforceable agreements by which it could show that risk and rewards have been transferred. In view of the same, it is alleged that BDMCL entered into various MoUs with Scal, its Group Company which was directly/indirectly owned by BDMCL, to show transfer of risk and rewards enabling it to recognize revenue and profits thereon.

2.20. Considering that BDMCL reduced its shareholding to 19% in Scal and consequently entered into various MoUs with Scal, its group company, for recognizing revenue, it is alleged that by way of entering into such MoUs with Scal and not consolidating the transactions carried out with Scal, BDMCL was involved in the misrepresentation of its financial statements on a consolidated basis. It is further alleged that Scal, being directly/indirectly owned by BDMCL, was an extended arm of BDMCL which enabled BDMCL to recognize revenue and profits by entering into MoUs.

2.21. Following factors further indicate that BDMCL used Scal for artificially inflating its sales and profits during FY 2011-12 to FY 2017-18:

2.21.1. Scal was having negative net worth of Rs. 3 crores, Rs. 14 crores and Rs. 42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014, respectively, still BDMCL entered into various MoUs with Scal under which Scal was expected to make a payment of Rs. 3,033 crores over several years

based on the physical stage of construction of Project One ICC and Project Two ICC. With respect to the due diligence for selling flats to Scal considering its weak balance sheet, BDMCL submitted that Scal was a bulk purchaser and as per its business model, it was required to sell these apartments to retail customers (i.e. individuals and entities) and make payments to BDMCL. It is alleged that BDMCL was aware that Scal would not be able to pay to BDMCL if the flats are not actually sold by Scal to third parties. The same is also confirmed from the Annual Report of BDMCL for FY 2015-16 wherein BDMCL granted Scal deferment to milestone payments till June 2017 or till the sale of all the unsold flats. In this way, it is alleged that BDMCL fabricated a fraudulent scheme whereby it sold flats/allotment rights to Scal, a group company, and ensured that it continues to recognise the revenue based on MoUs entered into with Scal irrespective of whether or not the flats were further sold to retail customers by Scal.

2.21.2. As required under various MoUs, Scal was required to pay an amount equivalent to 10% of the total consideration within 60 days of the date of MoU. Being a negative net worth entity, Scal did not have funds of its own. The payment made by Scal towards booking amount was financed through borrowings from various group companies of BDMCL and external entities. As submitted by the Statutory Auditor of BDMCL vide letter dated February 12, 2021, till March 31, 2014 and March 31, 2015, Scal had made payment of Rs. 262 crores and Rs. 436 crores, respectively, to BDMCL towards purchase of flats under various MoUs. For making the aforesaid payments, funds to the tune of Rs. 113 crores and Rs. 266 crores were borrowed by Scal from various Wadia Group Companies as on March 31, 2014 and March 31, 2015, respectively. As seen from the financial statements of Britannia Industries Limited **("BIL")** "another group company of Wadia group" for FYs 2014-15 and 2015-16, the loan was advanced by BIL to Scal based on comfort letter from BDMCL.

2.21.3. Scal was a unique bulk buyer for BDMCL which was having its registered office in Neville House which was owned by BDMCL. During the IP, Scal did

not pay any kind of rent or lease charges to BDMCL for having its registered office in Neville House. Mr. Jehangir Wadia vide his letter dated March 08, 2021 submitted that no rent was charged to Scal as it was using a very small space for administrative purpose. During FY 2018-19, Scal shifted its registered office to Wing "A", Raheja Point I, Pt. Jawaharlal Nehru Road, Vakola, Santacruz (E) which was owned by Wadia Techno-Engineering Services Limited. As submitted by Mr. N H Datanwala, Scal's Director, vide statement recording dated January 21, 2021, Scal does not pay any rent/lease charges because it has been provided space again by a Wadia Group Company.

2.21.4. While BDMCL recognized revenue from sales made to Scal, it was noted that Scal did not record the corresponding purchases in its books of accounts. Also, instead of booking profit by showing gross sales and gross purchases, Scal has shown only upside/ downside (difference between sales and purchase price of flats) on sale of flats which was in the nature of commission. In view of the same, it is alleged that Scal was acting as an agent of BDMCL rather than acting on principal to principal basis.

2.21.5. Directors of Scal were already employed on payrolls of other Wadia Group Companies and these Directors did not draw any separate remunerations including sitting fees for performing their duties in Scal. For instance, while Mr. N H Datanwala drew an average remuneration of Rs. 62 lakhs per annum from Bombay Burmah Trading Company Limited during FY 2011-12 to FY 2017-18, he did not draw any kind of remuneration from Scal. Also, Mr. Shailesh Karnik, a Scal Director, was drawing remuneration only from Nowrosjee Wadia and Sons Limited. Apart from this, the Directors of Scal were not given any kind of appointment letters nor any specific responsibilities with respect to their appointment were provided by Scal and therefore, it is alleged that the directors of Scal were not acting in an independent manner and were rather acting on behalf of BDMCL/Wadia Group.

2.21.6. Scal entered into the MoUs with BDMCL only during the IP and incurred no marketing expenses for sale of flats/allotment rights bought from BDMCL for selling them to third parties. Scal stated that marketing of flats was carried out by the Developer (BDMCL in this case) and the same was recovered from Scal. Vide letter dated January 23, 2019, BDMCL also submitted that Scal is a lean and mean organization and apart from its own human resources, Scal is supported by network of brokers and traders and extended arms, who get paid on actual sales directly from BDMCL upon maturing sales.

2.21.7. The objective of a bulk buyer is to ensure that the Developer, BDMCL in this case, gets the cash flow required for construction which helps it to hedge the funding/project completion risk. However, Scal, which acted as a bulk buyer for BDMCL and contributed more than 50% of the revenue for real estate segment of BDMCL during FY 2011-12 to 2017-18 made payments amounting to Rs. 186 crores only which was 7.46% of the revenue recognized by BDMCL during FY 2011-12 to 2017-18 with respect to MoUs entered into with Scal.

2.21.8. A number of favourable terms were given to Scal by BDMCL which included deferment of payment, refund of advance given, payment of fees for cancellation of sale contracts etc. which were not provided to any other bulk buyer by BDMCL. The Statutory Auditor of BDMCL vide letter dated February 12, 2021 submitted that Scal was billed according to the schedule agreed in the MOUs until the same was amended in December 2015 by the Board of BDMCL by way of which the milestone payments were deferred and a refund of Rs. 271 crore was made to Scal.

2.21.9. BDMCL, in its submissions, showed Scal as a bulk buyer to whom BDMCL shall sell the flats, incur marketing expenses on its behalf and shall enter into cancellations of agreement of sale upon Scal finding a third party customer. With respect to the purpose of MoUs entered into by it with Scal, BDMCL vide letter dated October 17, 2019 provided that the idea of bulk sale to Scal

was to ensure upfront cash flow, which can be used for general corporate purposes and creating a framework for onward sales to third parties. However, both the Companies being pertaining to Wadia Group and also, BDMCL being a 19% shareholder in Scal, it is alleged that BDMCL was aware that Scal did not have funds of its own and therefore, it will not be possible for Scal to ensure upfront cash flow for BDMCL unless it is financed by Wadia Group Companies and/or external entities or flats are sold by Scal to the third parties. Therefore, while the purpose of ensuring upfront cash flow to BDMCL was not fulfilled, BDMCL was able to inflate its revenues and profits by entering into MoUs with Scal.

2.21.10. As on March 31, 2017, Scal was having outstanding borrowing from HDFC Limited, Archway and Pentafil for Rs. 169.98 crores, Rs. 216.55 crores and Rs. 18 crores, respectively. However, during FY 2017-18, all the aforesaid borrowings were repaid by availing Term Loan from DHFL. BDMCL, in its letter dated October 30, 2017 provided comfort to DHFL on behalf of Scal Services Limited stating that *"BDMCL shall ensure that Scal Services Limited will duly and punctually observe and perform all its obligations under the aforesaid term loan.*" In the said letter, BDMCL further confirmed to DHFL that till the time the aforesaid Term Loan to Scal Services Limited is not repaid in full, it shall not without DHFL's prior approval, dispose of any part of its shareholding in Scal Services Limited. While BDMCL held only 19% of Scal, providing a comfort letter and not disposing of its shareholding in Scal till the loan is repaid indicates that BDMCL was, in fact, in charge of the operations of Scal and based on the faith of that letter, DHFL sanctioned the aforesaid term loan to Scal, an entity whose net worth was Rs. 237.70 crores (negative) as on March 31, 2017 and which was making losses since last several years as provided in **Table 2** above.

2.22. On the basis of the above, it has been alleged that BDMCL, along with Scal, executed a 'well thought out and deliberate' fraudulent and manipulative scheme to record non-genuine sales made to Scal to the tune of Rs. 2,492.94 crores and profits to the tune of Rs. 1,302.20 crores during FY 2011-12 to FY 2017-18 by

fraudulently entering into MoUs with Scal, a Group Company. The entire shareholding of Scal was structured in a manner to camouflage the actual shareholding of BDMCL in Scal. This structured manner of devising the shareholding pattern reflects a deliberate attempt on the part of BDMCL/ its Promoters to mislead the non-promoter investors of the listed entity. By holding its entire shareholding in Scal through various other investment companies of Wadia Group, BDMCL ensured non-consolidation of transactions carried out with Scal although exercising absolute control over Scal. Based on the same, the consolidated financial statements of BDMCL are alleged to be untrue and misleading for the shareholders of the listed company during the IP.

2.23. Artificial inflation of sales and profits by any listed company impacts the market price of its scrip and has a direct bearing on the investment decision of an investor. Thus it is alleged that the activity of inflation of sales and profits of BDMCL had interfered with the normal mechanism of price discovery and integrity of securities markets and created a misleading appearance with respect to share price movement of BDMCL, thus effectively manipulating the share price of BDMCL. Financial statements published by BDMCL are relied upon by the investors in the securities markets to base their investment decisions and misrepresentation of the same is alleged to be fraudulent activity.

2.24. SCN alleges that Noticee No. 1 to 10 were involved in misrepresentation of financial statements of BDMCL. A summary of the allegations against each Noticee is as under:

2.24.1. **The Bombay Dyeing & Manufacturing Co. Ltd (Noticee No. 1 / BDMCL):**

2.24.1.1. BDMCL, a Wadia Group Company, was involved in recognizing revenue as well as profit based on MoUs entered into with Scal during FY 2011-12 to 2017-18.

2.24.1.2. BDMCL structured the entire shareholding of Scal in such a manner to camouflage the actual shareholding of BDMCL in Scal. By way of the structured manner of devising the shareholding pattern, BDMCL ensured

non-consolidation of transactions carried out with Scal although exercising absolute control over Scal.

2.24.1.3. Based on the same and various other corroborative evidences as provided above, BDMCL is alleged to have control over Scal and therefore, by non-consolidation of the same, BDMCL is alleged to have inflated its revenue and profit by Rs. 2,492.94 crores and Rs. 1,302.20 crores respectively during FY 2011-12 to FY 2017-18. Also, net amount received till date with respect to MoUs entered into with Scal was Rs. 186 crores which was 7.46% of the revenue recognized by BDMCL during FY 2011-12 to 2017-18 with respect to MoUs entered into with Scal. Based on the same, BDMCL is alleged to have deliberately deferred the billing and actual receipt of revenue to the extent of 92.54% by creating a schedule of billing in the MoUs in a manner that adversely affected the interest of shareholders of the Company.

2.24.1.4. Hence, it is alleged that BDMCL was involved in publishing untrue financial statements and constitute manipulative and fraudulent and unfair trade practices against the minority shareholders of BDMCL and the market at large.

2.24.1.5. Based on the above, BDMCL is alleged to have violated the provision of Regulations 3(b), (c) and (d) and 4(1), 4(2)(e), (f), (k) and (r) of the PFUTP Regulations, 2003 read with Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Clause 41 of the erstwhile Listing Agreement and Regulations 4(1)(c) and 33 of SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015, by way of submissions of financial statements which were misleading.

2.24.2. Scal Services Limited (Noticee No. 2):

2.24.2.1. Scal, whose entire shareholding was directly/indirectly held by BDMCL, was used by BDMCL as a vehicle to inflate its sales and profits. In view of the same, Scal had aided and abetted with BDMCL to mislead the minority shareholders of BDMCL regarding the actual financial position of BDMCL constituting manipulative and fraudulent and unfair trade

practices against the minority shareholders of BDMCL and the market at large.

2.24.2.2. Hence, Scal is alleged to have violated the provision of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1), 4(2)(e), (f), (k) and (r) of the PFUTP Regulations, 2003.

2.24.3. **Mr. Nusli N Wadia (Noticee No. 3):**

2.24.3.1. Mr. Nusli N Wadia is the promoter of the BDMCL and along with Ms. Maureen N Wadia, Mr. Ness N Wadia and Mr. Jehangir N Wadia, he held more than 50% shareholding of BDMCL at all the times during the IP.

2.24.3.2. Mr. Nusli N Wadia was inducted on the Company's Board in 1968. In 1970, he was appointed as its Joint Managing Director. Since April 1977, he has been the Chairman of BDMCL.

2.24.3.3. BDMCL has been referred to as a Wadia Group Company in its Annual Reports and being at the helm of affairs of the Company during the entire IP, Mr. Nusli Wadia was aware of the transactions of BDMCL with Scal especially when the transactions with Scal were with such a magnitude that it was not possible to ignore or not to be aware of the same. The statutory auditor has specifically referred, every year, in his report the quantum of sales made by BDMCL to Scal and profit recorded thereon by BDMCL.

2.24.3.4. In his submissions dated March 08, 2021, Mr. Nusli N Wadia submitted that since FY 2005-06, SCAL was a bulk purchaser and was successful in selling about 100 apartments in residential project of BDMCL by the name "Springs". However, while entering into MoUs with Scal amounting to Rs. 3033 crores, he did not consider it necessary, at any point of time, to assess the current capability of Scal, which was buying more than 50% of the total number of flats under Project One ICC and Two ICC, and merely relied on its past performance.

2.24.3.5. Since both BDMCL and Scal were the companies of Wadia Group, it stands to reason that transactions between BDMCL and Scal could not have happened without Mr. Nusli's knowledge and approvals.

2.24.3.6. Various entities acting as CFOs of BDMCL during the IP have submitted that Mr. Nusli Wadia and Mr. Jehangir Wadia were involved in day-to-day affairs of BDMCL. Being at the helm of affairs of BDMCL during the IP, Mr. Nusli N Wadia was aware of BDMCL's shareholding reduction in Scal, MoUs entered into with Scal, granting deferment of payment to Scal and not any other bulk buyer, no rent charged to Scal, non-realization of payments from Scal etc. and therefore, he is alleged to have aided and abetted in the fraudulent scheme devised by BDMCL. Despite being aware of the misrepresentation, Mr. Nusli Wadia signed the misleading and untrue financial statements of BDMCL in the capacity of Chairman of BDMCL and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices violating the provision Regulations 3(b), (c) and (d) and 4(1), 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b) and (c) of the SEBI Act, 1992.

2.24.4. **Mr. Ness N Wadia (Noticee No. 4):**

2.24.4.1. Mr. Ness N Wadia is the son of Mr. Nusli N Wadia and a promoter of the BDMCL. Along with Ms Maureen N Wadia, Mr. Nusli N Wadia and Mr. Jehangir N Wadia, he held more than 50% shareholding of BDMCL at all the times during the IP.

2.24.4.2. Mr. Ness Wadia has been actively associated for over 23 years with the Wadia Group and was inducted as a Non-Executive Director of BDMCL on April 01, 2011. Prior to that, he acted as Joint Managing Director of BDMCL.

2.24.4.3. BDMCL has been referred to as a Wadia Group Company in its Annual Reports and being at the helm of affairs of the Company during the entire IP, Mr. Ness Wadia was aware of the transactions of BDMCL with Scal especially when the transactions with Scal were with such a magnitude that it was not possible to ignore or not to be aware of the same. The statutory auditor has specifically referred, every year, in his report the quantum of sales made by BDMCL to Scal and profit recorded thereon by BDMCL.

2.24.4.4. In his submissions dated March 08, 2021, Mr. Ness N Wadia submitted that since FY 2005-06, Scal was a bulk purchaser and was successful in selling about 100 apartments in residential project of BDMCL by the name "Springs". However, while entering into MoUs with Scal amounting to Rs. 3033 crores, he did not consider it necessary, at any point of time, to assess the current capability of Scal, which was buying more than 50% of the total number of flats under Project One ICC and Two ICC, and merely relied on its past performance.

2.24.4.5. Since both BDMCL and Scal were the companies of Wadia Group, it stands to reason that transactions between BDMCL and Scal could not have happened without Mr. Ness' knowledge. Despite being aware of BDMCL's shareholding reduction in Scal, MoUs entered into with Scal, granting deferment of payment to Scal and not any other bulk buyer, no rent charged to Scal, non-realization of payments from Scal etc., Mr. Ness Wadia signed the misleading and untrue financial statements of BDMCL in the capacity of a Director of BDMCL and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices violating the provision Regulations 3(b), (c) and (d) and 4(1), 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b) and (c) of the SEBI Act, 1992.

2.24.5. **Mr. Jehangir N Wadia (Noticee No. 5):**

2.24.5.1. Mr. Jehangir N Wadia is the son of Mr. Nusli N Wadia and a promoter of the BDMCL. Along with Ms Maureen N Wadia, Mr. Nusli N Wadia and Mr. Ness N Wadia, he held more than 50% shareholding of BDMCL at all the times during the Investigation Period.

2.24.5.2. Mr. Jehangir Wadia has been managing the affairs of BDMCL as a Managing Director since April 01, 2011. He was appointed as the Managing Director of BDMCL for a period of five years from April 01, 2011 up to March 31, 2016. He was reappointed as the Managing Director of the Company for a further period of five years from April 01, 2016 to March 31, 2021.

2.24.5.3. BDMCL has been referred to as a Wadia Group Company in its Annual Reports and being Managing Director of the Company during the entire IP, Mr. Jehangir N Wadia was aware of the transactions of BDMCL with Scal especially when the transactions with Scal were with such a magnitude that it was not possible to ignore or not to be aware of the same. The statutory auditor has specifically referred, every year, in his report the quantum of sales made by BDMCL to Scal and profit recorded thereon by BDMCL.

2.24.5.4. A Managing Director, as defined in Section 2(54) of the Companies Act, 2013, means a director who is encrusted with substantial powers of management of the affairs of the company. The same implies a high level of accountability and knowledge of the overall functioning of the company.

2.24.5.5. In his submissions dated March 08, 2021, Mr. Jehangir N Wadia submitted that since FY 2005-06, SCAL was a bulk purchaser and was successful in selling about 100 apartments in residential project of BDMCL by the name “Springs”. However, while entering into MoUs with Scal amounting to Rs. 3033 crores, he did not consider it necessary, at any point of time, to assess the current capability/ net worth of Scal, which was buying more than 50% of the total number of flats under Project One ICC and Two ICC, and merely relied on its past performance.

2.24.5.6. Since both BDMCL and Scal were the companies of Wadia Group, it stands to reason that transactions between BDMCL and Scal could not have happened without Mr. Jehangir’s knowledge and approvals.

2.24.5.7. Various entities acting as CFOs of BDMCL during the IP have submitted that Mr. Nusli Wadia and Mr. Jehangir Wadia were involved in day-to-day affairs of BDMCL. Being acting as Managing Director of BDMCL during the IP, Mr. Jehangir was aware of BDMCL's shareholding reduction in Scal, MoUs entered into with Scal, granting deferment of payment to Scal and not any other bulk buyer, no rent charged to Scal, non-realization of payment from Scal etc. and therefore, he aided and abetted in the fraudulent scheme devised by BDMCL. Also, despite

being aware of the misrepresentation, Mr. Jehangir Wadia signed the misleading and untrue financial statements of BDMCL in the capacity of Managing Director of BDMCL and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices violating the provision Regulations 3(b), (c) and (d) and 4(1), 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and his actions have been detrimental and against the interest of the minority shareholders of BDMCL.

2.24.5.8. Besides this, CEO/CFO certification given by Mr. Jehangir N Wadia from FY 2013-14 to FY 2017-18 *inter-alia* stating that *"the financials of BDMCL presented true and fair view of its affairs and not contained any misleading statement"* was misleading and thus, he has violated the provisions of Clause 49(V) of the Listing Agreement; Clause 49(IX) of the Listing Agreement (post amendment dated April 17, 2014) read with Regulation 103 of the SEBI (LODR) Regulations, 2015 and Regulation 17(8) & 33(2)(a) of the SEBI (LODR) Regulations, 2015.

2.24.6. **Mr. D S Gagrat (Noticee No. 6):**

2.24.6.1. Mr. D S Gagrat joined Scal as a Director on February 25, 2005 and he has been acting as a Director of Scal till date. During IP, Mr. Gagrat was Director in a number of Wadia Group companies which included Oseaspire Consultants Limited, Springflower, Archway, Pentafil, Nessville Trading Private Limited and Neville Wadia Private Limited etc.

2.24.6.2. As submitted by Mr. Gagrat, he was not offered any kind of remuneration or sitting fees in Scal during the IP. He provided that he did not demand the remuneration as there was no such practice to pay remuneration and no remuneration was paid to any other director of Scal. In view of the same, when Mr. D S Gagrat was advised to provide the reasons/objective for joining Scal, he submitted that the then Board of Scal invited him to join Scal. It is also pertinent to note that Scal did not provide detailed roles and responsibilities for its directors and despite the same, Mr. Gagrat decided to join Scal as a director.

2.24.6.3. From the same, it is alleged that Mr. D S Gagrat did not join Scal on his own and was advised by the Wadia Group to act as a director in Scal. In view of the same, he was not acting as a director with independent judgment and working as per the directions of BDMCL/Wadia Group. By acting as a director of Scal as well as signing MoU, Noticee no. 6 aided and abetted BDMCL in manipulation of financial statements and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices which led to inflation of sales and profits of BDMCL, a listed entity.

2.24.6.4. Based on the same, Mr. D S Gagrat is alleged to have violated Regulations 3(b), (c) & (d), 4(1) and 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b), (c) of the SEBI Act, 1992.

2.24.7. Mr. N H Datanwala (Noticee No. 7)

2.24.7.1. Mr. N H Datanwala, CFO of Bombay Burmah Trading Company Limited, joined Scal as a Director on March 30, 2012 and he has been acting as a Director of Scal till date. During IP, Mr. Datanwala was a director in a number of Wadia Group companies which included Springflower, Neville Wadia Private Limited, Havenkores Real Estate Private Limited etc.

2.24.7.2. On the day of joining itself, i.e., March 30, 2012, Mr. N H Datanwala signed 2 MoUs with BDMCL amounting to Rs. 743 crores. Apart from the same, he also signed all the subsequent MoUs except MoU No. 6 which was signed by Mr. D S Gagrat.

2.24.7.3. As submitted by Mr. Datanwala, he was not offered any kind of remuneration or sitting fees in Scal during the IP. He provided that he did not demand the remuneration as there was no such practice to pay remuneration and no remuneration was paid to any other director of Scal. In view of the same, when Mr. Datanwala was advised to provide the reasons/objective for joining Scal, he submitted that the then Board of Scal invited him to join Scal. It is also pertinent to note that Scal did not provide detailed roles and responsibilities for its directors and despite the same, Mr. Datanwala decided to join Scal as a director.

2.24.7.4. From the same, it is alleged that Mr. N H Datanwala did not join Scal on his own and was advised by the Wadia Group to act as a director in Scal. In view of the same, he was not acting as a director with independent judgment and working as per the directions of BDMCL/Wadia Group. By acting as a director of Scal as well as signing MoU, he aided and abetted BDMCL, in manipulation of financial statements and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices which led to inflation of sales and profits of BDMCL, a listed entity.

2.24.7.5. Based on the same, Mr. N H Datanwala is alleged to have violated Regulations 3(b), (c) & (d), 4(1) and 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b), (c) of the SEBI Act, 1992.

2.24.8. Mr. Shailesh Karnik (Noticee No. 8)

2.24.8.1. Mr. Shailesh Karnik joined Nowrosjee Wadia & Sons in April 2012 as a General Manager-Corporate Affairs reporting to Mr. R Chandrasekharan. Later, he joined Scal as a Director on August 04, 2015. Apart from Scal, Mr. Shailesh Karnik also acted as a director in various Wadia Group companies during the IP which included Archway, Pentafil, Wadia Techno- Engineering Services Limited, Bombay Dyeing Real Estate Company Limited.

2.24.8.2. When Mr. Shailesh Karnik was advised to provide the reasons for joining Scal, he submitted that the then Board of Scal invited him to join Scal and he considered it an honour to be on the Board of Scal.

2.24.8.3. With respect to the remuneration, he submitted that he was not offered any kind of remuneration and have not demanded the same as there was no such practice to pay remuneration. Also, no remuneration was paid to any other director of Scal. It is also pertinent to note that Scal did not provide detailed roles and responsibilities for its directors and despite the same, Mr. Karnik decided to join Scal as a director.

2.24.8.4. From the same, it is alleged that Mr. Karnik did not join Scal on his own and was advised by the Wadia Group to act as a director in Scal. In view

of the same, during his tenure in Scal, he did not act as a director with independent judgment and worked as per the directions of BDMCL/Wadia Group. By acting as a director of Scal, he aided and abetted BDMCL in manipulation of financial statements and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices which led to inflation of sales and profits of BDMCL, a listed entity.

2.24.8.5. Based on the same, Mr. Karnik is alleged to have violated Regulations 3(b), (c) & (d), 4(1) and 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b), (c) of the SEBI Act, 1992.

2.24.9. Mr. R Chandrasekharan (Noticee No. 9)

2.24.9.1. Mr. R Chandrasekharan was the Vice President of BDMCL during FY 2009-10 and FY 2010-11. Later, he joined Scal as a Director on March 30, 2012 along with Mr. N H Datanwala. Apart from Scal, Mr. R Chandrasekharan acted as a director in BDRECL, Sunflower Investment and Textiles Limited (Promoter of BDMCL), Archway, N W Exports Limited, Nowrosjee Wadia and Sons Limited, Pentafil, Wadia Investments Limited, BDS Urban Infrastructure Private Limited, Wadia Techno-Engineering Services Limited.

2.24.9.2. As submitted by Mr. Chandrasekharan, he was not offered any kind of remuneration or sitting fees in Scal during the IP. He provided that he did not demand the remuneration as there was no such practice to pay remuneration and no remuneration was paid to any other director of SCAL. In view of the same, when Mr. Chandrasekharan was advised to provide the reasons/objective for joining Scal, he submitted that the then Board of Scal invited him to join Scal. It is pertinent to note here that while Scal did not provide detailed roles and responsibilities for its directors, Mr. Chandrasekharan decided to join Scal as a director.

2.24.9.3. From the same, it is alleged that Mr. R Chandrasekharan did not join Scal on his own and was advised by the Wadia Group to act as a director in Scal. In view of the same, he was not acting as a director with independent judgment and working as per the directions of

BDMCL/Wadia Group. By acting as a director of Scal, he aided and abetted BDMCL in manipulation of financial statements and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices which led to inflation of sales and profits of BDMCL, a listed entity.

2.24.9.4. Based on the above, Mr. R Chandrasekharan is alleged to have violated Regulations 3(b), (c) & (d), 4(1) and 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b), (c) of the SEBI Act, 1992.

2.24.10. Mr. Durgesh Mehta (Noticee No. 10)

2.24.10.1. Mr. Durgesh Mehta was associated with Wadia Group since December 01, 2006 as CFO of Britannia Industries Limited. After November 2008, he joined BDMCL as CFO till April 2010. From April 2010 to October 2012, he held dual positions of Joint Managing Director and CFO of BDMCL and thereafter, he acted as only Joint Managing Director upto February 15, 2014. As submitted by him, he reported to Mr. Nusli Wadia who was operationally involved in the affairs of real estate business of BDMCL.

2.24.10.2. Mr. Durgesh Mehta signed MoUs No. 1 to 9 on behalf of BDMCL. Also, during the tenure of Mr. Mehta, BDMCL reduced its shareholding in Scal by 30% for which Mr. Mehta submitted that stake in Scal was reduced to avoid consolidation of financial statements of Scal with BDMCL.

2.24.10.3. In view of the same, he aided and abetted BDMCL in manipulation of financial statements and therefore, he is alleged to have been engaged in manipulative and fraudulent and unfair trade practices which led to inflation of sales and profits of BDMCL, a listed entity.

2.24.10.4. Based on the above, Mr. Durgesh Mehta is alleged to have violated Regulations 3(b), (c) & (d), 4(1) and 4(2)(e), (f), (k) and (r) of PFUTP Regulations, 2003 read with Sections 12A(a), (b), (c) of the SEBI Act, 1992.

2.24.10.5. Besides this, CEO/CFO certification given by Mr. Mehta from FY 2011-12 to FY 2012-13 *inter-alia* stating that *"the financials of BDMCL presented true and fair view of its affairs and not contained any misleading statement"* was misleading and thus he has violated the provisions of Clause 49(V) of the erstwhile Listing Agreement.

2.25. Based on shareholding as well as status of Group Company accorded to Scal by BDMCL during IP, BDMCL had direct/indirect control over Scal and was in a position to influence the decision making of Scal during the Investigation Period. However, by reducing its stake in Scal to 19% and not categorizing Scal as an associate, BDMCL circumvented the provisions of related party disclosures and consolidation of financial statements as required under the provisions of the Companies Act, relevant Accounting Standards and Listing Agreement/ SEBI (LODR) Regulations, 2015.

2.26. Disclosure of related party transactions is vital for protection of the interests of minority shareholders, especially those of the retail shareholders. Considering that Scal was a related party of BDMCL based on the control as well as significant influence exercised by BDMCL by virtue of holding entire shareholding of Scal, transactions with Scal were required to be disclosed in accordance with Clause 49(VIII)(A) of the Listing Agreement (post amendment dated April 17, 2014) and Regulation 27 of the SEBI (LODR) Regulations, 2015. However, by non-disclosing the same, BDMCL is alleged to have violated Clause 49(VIII)(A) of the amended Listing Agreement and Regulation 27 of the SEBI (LODR) Regulations, 2015.

2.27. Based on the allegations as mentioned above, Noticee No. 1 to 10 are alleged to have violated the following provisions:

S. No.	Name of the Noticee	Violations
1.	Bombay Dyeing & Manufacturing Company Limited	Regulation 3(b), (c), (d), 4(1), 4(2)(e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003; Section 12A(a), (b), (c) of the SEBI Act, 1992; r/w. Sections 15HA of the SEBI Act, 1992

S. No.	Name of the Noticee	Violations
		Regulation 4(1)(c) and 33 of SEBI (LODR) Regulations, 2015 and Clause 41 of the erstwhile Listing Agreement; r/w. Section 15HB of SEBI Act, 1992. Clause 49(VIII)(A) of the erstwhile Listing Agreement (post amendment dated April 17, 2014) and Regulation 27 of SEBI (LODR) Regulations, 2015; r/w. Section 15HB of SEBI Act, 1992.
2.	Scal Services Limited	Regulation 3(b), (c), (d), 4(1), 4(2)(e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003; Section 12A(a), (b), (c) of the SEBI Act, 1992; r/w. Sections 15HA of the SEBI Act, 1992
3.	Mr. Nusli N Wadia, Promoter/ Chairman of BDMCL	For Noticee No. 3 to 9 Regulation 3(b), (c), (d), 4(1), 4(2)(e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003; Section 12A(a), (b), (c) of the SEBI Act, 1992; r/w. Sections 15HA of the SEBI Act, 1992 For Noticee No. 5 Clause 49(V) of the erstwhile Listing Agreement; Clause 49(IX) of the erstwhile Listing Agreement (post amendment dated April 17, 2014) read with Regulation 103 of the SEBI (LODR) Regulations, 2015 and Regulation 17(8) & 33(2)(a) of the SEBI (LODR) Regulations, 2015; r/w. Section 15HB of SEBI Act, 1992.
4.	Mr. Ness N Wadia, Promoter/ Non- Executive Director of BDMCL	
5.	Mr. Jehangir N Wadia, Managing Director, BDMCL	
6.	Mr. D S Gagrat, Director, Scal	
7.	Mr. N H Datanwala, Director, Scal	
8.	Mr. Shailesh Karnik, Ex-Director, Scal	
9.	Mr. R Chandrasekharan, Ex-Director, Scal	
10.	Mr. Durgesh Mehta, Ex-Joint Managing Director & CFO, BDMCL	Regulation 3(b), (c), (d), 4(1), 4(2)(e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003; Section 12A(a), (b), (c) of the SEBI Act, 1992; r/w. Sections 15HA of the SEBI Act, 1992 Clause 49(V) of the erstwhile Listing Agreement; r/w. Section 15HB of SEBI Act, 1992.

3. The Noticees were called upon to show cause as to why appropriate directions under Section 11B(1), 11(2)(e) and 11(4) read with Section 11(1) of the SEBI Act, 1992 including directions for debarring them from buying, selling or otherwise dealing in securities, for an appropriate period; directions to not be associated with

any listed entity or its material subsidiary or any intermediary, for an appropriate period; should not be issued against them for the alleged violations of provision of SEBI Act, 1992, SEBI (PFUTP) Regulations, 2003 and SEBI (LODR) Regulations, 2015, by them, as mentioned above.

4. I note that pursuant to the service of the SCN to the Noticees, seperate preliminary replies dated July 27, 2021, came to be filed by all the Noticees. Subsequently, an opportunity of inspection of documents was availed by Noticee no. 1, 3, 4, 5 and 10 on July 26, 2021, and Noticee no. 2, 6, 7, 8 and 9 on July 27, 2021. After completion of inspection of documents, a detailed reply dated August 9, 2021 came to be filed by Noticee no. 1 and 2, separately. Vide their letters dated August 9, 2021, Noticee no. 3, 4, 5 and 10, submitted to adopt the replies dated July 27, 2021 and August 9, 2021, filed by Noticee no. 1. Further, vide their letters dated August 9, 2021, Noticee no. 6, 7, 8 and 9, submitted to adopt the replies dated July 27, 2021 and August 9, 2021, filed by Noticee no. 2.

5. The first opportunity of personal hearing was granted to the Noticees on November 18, 2021, however, on receipt of request from all the Noticees seeking adjournment, the matter was adjourned to December 10, 2021. The counsels representing the Noticees were heard on January 10, 13 and 17, 2022. Subsequent to the conclusion of the hearing, the Noticees were given time to file their written submissions. Noticee no. 2, 6, 7, 8 and 9, have filed their joint written submissions dated January 31, 2022. Noticee no. 1 has filed its written submissions dated February 3, 2022. Noticee no. 3, 4 and 5, have also filed their joint written submissions dated February 3, 2022. Noticee no. 10, vide his letter dated February 3, 2022, has submitted that he shall adopt the written submissions filed by Noticee no. 1 and Noticee no. 3, 4 and 5.

6. Subsequent to the conclusion of hearing and filing of written submissions by all the Noticees, vide their letters dated February 22, 2022, the Noticees had sought inspection and certified copies of ‘records pertinaing to investigation’ carried out by SEBI in the instant matter. They had made this request after relying upon the judgement of the Hon’ble Supreme Court in the matter of ***T. Takano v. SEBI and***

Anr. I note that, none of these Noticees while availing inspection in the first instance in July 2021, had ever raised this request for 'inspection of records of investogation'. Neither, had they ever raised any objections in their replies or written submissions with regard to insufficiency of inspection of documents being granted to them. It was for the first time, after the conclusion of the hearing, that a request was received from the Noticees, for further inspection of documents. Nonetheless, in the interest of equity, transparency and fairness, and in compliance with the judgement of the Hon'ble Supreme Court, another opportunity for inspection of documents was granted to Noticee no. 1, 3, 4, 5 and 10 on April 12, 2022 and Noticee no. 2, 6, 7, 8 and 9, on April 13, 2022. The Noticees were also provided time to file additional replies, if any. Accordingly, vide their separate letters dated May 12, 2022, the Advocates representing Noticee no. 1, 3, 4, 5 and 10 and Advocates representing Noticee no. 2, 6, 7, 8 and 9, have filed their additional replies. I note that Noticee no. 1, 3, 4, 5 and 10, had requested for another opportunity of personal hearing, subsequent to the second 'inspection of documents' that was granted to them. I note that the said request was not acceded to because on perusal of their additional reply dated May 12, 2022, it was found that no substantively new argument/ contention, was raised by these Noticees, and therefore, no fruitful purpose would have been served by granting another opportunity of personal hearing to them.

7. Noticee no. 1, vide its reply dated July 27, 2021 and August 9, 2021, written submissions dated February 3, 2022, and additional reply dated May 12, 2022, has raised the following key contentions to the allegations in the SCN.

7.1. BDMCL submits that the SCN, insofar as it invokes the provisions of Regulations 3 and 4 of the PFUTP Regu]ations, 2003 and Section 12-A(a), (b) and (c), of the SEBI Act, 1992, is patently without jurisdiction as:

7.1.1. There is no allegation of the "purchase or sale of any securities", or any "*dealing in securities*" or any fraudulent or unfair trade practice "*in securities*"; and

7.1.2. There is no allegation of "fraud" (which, by its very definition, requires an "*act, expression, omission or concealment committed...while dealing in securities in order to induce another ...to deal in securities*" ; underlining supplied).

7.2. As set out above, the SCN alleges manipulation in the books of accounts of BDMCL (which is denied), without establishing any "*dealing in securities*". There also are no "findings or any facts relating to impact on trading in securities or these essential ingredients of *'fraud'* such as *'manipulation in securities'*, *'dealing in securities'*, *'inducement'*, etc."

7.3. Further, contrary to what is alleged in the SCN, none of BDCML's alleged actions may be so considered since;

7.3.1. There is no allegation, much less any finding that, BDCML's alleged non-consolidation of transactions with Scal induced others to deal in its securities; and

7.3.2. The fact that BDCML executed MoUs with Scal was fully disclosed in its financial statements from Financial Year 2012-13 onwards and those statements were, in the regular course, filed not only with the Ministry of Corporate Affairs, but also with the relevant Stock Exchanges, and thus, were always in the public domain.

7.4. The only allegations pertaining to securities, in the SCN are contained in paragraph 28, which proceed on an assumption that artificial inflation of sales and profits by a listed company impacts the scrip and has a direct bearing on investment decisions by investors. It is then assumed that this must have happened in BDMCL's case. There is, however, not an iota of material, fact or evidence that this in fact happened, or indeed of trading in BDMCL shares, much less any analysis whatsoever in the SCN that there was any impact at all on the price of BDMCL's securities and what that impact was.

7.5. Thus, no jurisdictional facts, requisite to allege a violation of the PFUTP Regulations, 2003, read with the SEBI Act, 1992, are present, and it is submitted, the SCN is patently without jurisdiction. In any event, it may also be noted that, the SCN contains no particularized charge under Regulation 3 or Regulation 4(2), at all. The SCN makes assertions (as aforesaid, and hereafter, without basis in fact or law) only and only as to Regulation 4(1). The other Regulations are inserted by number only, without any particulars, as afterthoughts.

7.6. Explanation to Regulation 4(1) of PFUTP Regulations, 2003, inapplicable:

7.6.1. The Explanation to Regulation 4(1) was inserted *vide* the SEBI (PFUTP) (Second Amendment) Regulations, 2020, w.e.f. 19 October 2020.

7.6.2. Those Regulations were made "in *exercise of powers conferred under Section 30 of the* SEBI Act". Section 30(1) gives SEBI the power to *"make regulations consistent with this Act...to carry out the purposes of this Acf';* and Section 30(2)(c) allows such regulations to provide for *"the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A".*

7.6.3. Firstly, and assuming, therefore, that Regulation 4(1) of the PFUTP Regulations, or an amendment to it, may lawfully be made, the Act does not, either *"expressly or by necessary implication",* give SEBI the power to make regulations having retrospective effect. Hence, to render it constitutional and valid, Regulation 4(1) must be so interpreted as operating only prospectively, i.e. to matters and transactions *post* 19 October 2020.

7.6.4. Secondly, Regulation 4(1), prior to its amendment, was predicated on a manipulative, fraudulent or an unfair trade practice *"in securities".* The

Explanation takes in, and effects to penalize, acts wholly unconnected to any "dealing in securities", thus introducing a substantively *"new concepf'* in the law (to wit, manipulative, fraudulent or unfair trade practices may occur by acts that do not, *ipso,* involve any trade in securities, at all), and thus an extension beyond the ambit of Regulation 4(1) prior to its amendment. The Explanation then, is not "clarificatory", for it introduces a new or extended concept, and thus, cannot permissibly be retrospective, at all. Hence, the Explanation can have no application to this case, the Relevant Period for which is *"FY 2011-12 to FY 2017-18",* only.

7.7. The SCN was issued on June 11, 2021, with respect to alleged actions that took place in FY 2011-12 to FY 2014-15, and were publicly disclosed throughout. There is, accordingly, gross and unexplained delay of upto 9 years, in the issuance of the SCN. It is submitted that where there has been such inordinate delay even in issuing a SCN, any imposition of penalty shall be highly unjustified, arbitrary and capricious.

7.8. During the Financial Year starting from 2011-12 and ending 2018-19 {i.e. throughout the Investigation Period) BDMCL did not own, directly or through any subsidiary, 20% or more of the voting power in Scal. During that time, BDMCL neither controlled Scal directly, nor did it do so indirectly, through one or more subsidiaries. Nor was BDMCL itself controlled by or under common control with Scal for the purposes of Accounting Standard 18. BDMCL and Scal also did not engage in any joint venture, or exert joint control over any economic activity. BDMCL did not have any right to participate in the financial and/or operating policy decisions of Scal, nor vice versa. Scal had no obligation to work with BDMCL under joint control relating to any of its (Scal's) business activities. All risks and rewards attached to the properties and/or rights transacted under the Subject MoUs were those of Scal alone. Scal earned / received all profits/ losses on flats sold by Scal during the investigation period. There was no agreement or other arrangement between BDMCL and Scal, empowering the former to appoint or remove the latter's

directors, nor vice versa. Neither BDMCL nor Scal exercised significant influence over each other within the meaning of AS-18.

7.9. BDMCL could not be said to have held the entire equity share capital of Scal much less be the holding company of Scal. During the Financial Years 2011-12 to 2017-18 (the period under reference), Scal was not a wholly owned subsidiary as is being suggested, or for that matter, a subsidiary at all.

7.10. Until March 28, 2012, BDMCL held 49% of the equity share capital of Scal. Scal was an associate company of BDMCL and the same was disclosed in the BDMCL's Annual Report for the financial year 2011-12 under related party disclosures. This was because of the requirement of Accounting Standards as explained hereinafter.

7.11. On March 28, 2012, during the meeting of the Board of Directors of BDMCL, the Board approved a resolution for disinvestment of 48,000 equity shares in Scal, on account of which BDMCL's holding in Scal was reduced to less than 20%. During the financial years 2012-13 and 2013-14, BDMCL did not own, directly or indirectly, 20% or more of the voting power in Scal. However, Scal was shown as an associate company purely out of abundant caution consequent to some ambiguity in the interpretation of the term. Although this disclosure was not strictly required under the law, considering the guidelines in AS-18, this disclosure was retained out of abundant caution.

7.12. A tabular statement of shareholding of BDMCL in Scal during Financial Years 2011-12 to 2017-18 is as under:

Financial Year	Shareholding (%)
2011-2012	49 (upto 28th March,2012} 19 (from 29th March,2012)
2012-2013	19
2013-2014	19
2014--2015	19
2015-2016	19

2016-2017	19
2017-2018	19

7.13. As may be seen from the table, right from March 29, 2012, and through 2017-18, BDMCL held less than 20% of the share capital of Scal. Thus, the contention that BDMCL could be a holding company is totally misplaced. There is nothing to suggest that BDMCL exercised control over the affairs of Scal, through direct shareholding or indirect shareholding through its subsidlary (ies). On this ground too, it is fallacious to suggest that Scal was a subsidiary of BDMCL.

7.14. There is no provision of law that requires computation of beneficial interest across companies for purposes of determining if a company is an associate of another. In that context, it should be noted that when the law declares a certain set of requirements to be met for a certain outcome and parties that adhere to meeting such requirements, they ought to have the stipulated outcome. Parties conduct their affairs according to known and declared law, and ought not to be visited with un-legislated requirements, purporting to be law. The SCN essentially indulges In stipulating requirements in this manner without any legislation to back it, when it states that BDMCL indirectly was the holding company of Scal - nothing can be farther from the correct position in law. This submission is elaborated in greater detail below.

7.15. That BDMCL did not have the power to exercise control over Scal is set out In further detail below.

7.15.1. As duly disclosed by BDMCL above, during Financial Years 2011-12 (from March 29, 2012 onwards) to 2017-18, BDMCL held 19% of the equity share capital of Scal.

7.15.2. As the Show Cause Notice self demonstrates, BDMCL also did not either have a majority stake in any of the other companies that held shares in Scal, or even otherwise exercise any control over them.

7.15.3. All relevant information was made available to the authorities/shareholders of BDMCL.

7.15.4. The directors of Scal held their respective offices in discharge of their fiduciary duties to Scal, and on their own merit. BDMCL did not control the composition of board of Scal. It, therefore, had no control over appointment of directors, much less the appointment of a majority of the directors. The directors of Scal were appointed without reference to or the approval of BDMCL and the directors of Scal took their independent decisions without any reference or recourse to BDMCL. BDMCL did not nominate any director on the Board of Scal nor did such directors act under the directions of BDMCL BDMCL had no say at the Board meetings of Scal.

7.15.5. BDMCL also did not control Scal in the sense of controlling the management or policy decisions of Scal by virtue of its shareholding, management rights or shareholders agreements or voting agreements or in any other manner.

7.15.6. Accordingly, during Financial Years 2011-12 (from March 29, 2012 onwards) to 2017-18, BDMCL has not been in a position to control Scal either directly or through any of its subsidiaries that held shares In Scal.

7.16. Scal and BDMCL had no holding-subsidiary relationship under the Companies, Act,1956:

7.16.1. Based on the definition in the Companies Act,1956, a holding-subsidiary relationship can be established either by way of direct ownership or through one or more subsidiaries of having more than 50% of total share capital (Equity & convertible preference shares) or by way of control over composition of the Board. Since, March 29, 2012, however, BDMCL held less than 20% of Scal's share capital.

7.16.2. An analysis of the share holding pattern of other companies which have invested in Scal, there was no holding-subsidiary relation between BDMCL, at the relevant time and such other companies, which have invested in Scal. Hence, the question of considering the minority shareholding of BDMCL in Scal is a concept alien to the law governing the determination of holding-subsidiary relationship.

7.16.3. Further, as set out above, there is no provision of law, contract, articles of association or any deed or contract that could have empowered BDMCL to control the composition of the Board of Scal, i.e. BDMCL neither had the right to appoint nor to remove the majority (or in fact any) of the directors of Scal. In fact, the directors of Scal were appointed without reference to or approval of BDMCL.

7.16.4. Hence, Scal did not qualify as a subsidiary of BDMCL under the provisions of the Companies Act, 1956, at the relevant time. Similarly, BDMCL was not a subsidiary of Scal, at the relevant time. From the shareholding pattern of Scal and BDMCL, it is also apparent that they were not subsidiaries of the same holding company, at the relevant time.

7.17. Scal and BDMCL had no holding-subsidiary relationship under the Companies, Act. 2013:

7.17.1. Based on the definition in the Companies Act, 2013, a holding-subsidiary relationship can be established either by way of ownership or through with one or more of its subsidiaries of more than 50% of total share capital (Equity & convertible preference shares) or by way of control over composition of the Board. BDMCL held less than 50% of Scal's share capital on its own and through its subsidiaries.

7.17.2. Broadly, therefore, the position under the two Acts {as material here) remains unaltered.

7.17.3. Hence, Scal did not qualify as a subsidiary of BDMCL under the provisions of the Companies Act, 1956, at the relevant time. Similarly, BDMCL was not a subsidiary of Scal, at the relevant time. From the shareholding pattern of Scal and BDMCL, it is also apparent that they were not subsidiaries of the same holding company, at the relevant time.

7.18. Scal and BDMCL had no holding-subsidiary relationship under Accounting Standard 21:

7.18.1. Paragraph 1 of Accounting Standard 21 (**'AS 21'**) provides that AS-21 shall be applied in the preparation and presentation of consolidated financial statements for a group of enterprises under the control of parent.

7.18.2. Based on the definition under AS-21, it can be seen that Scal was neither under the control of BDMCL nor was there any holding-subsidiary relationship between BDMCL and Scal, at the relevant time, for the following reasons:

7.18.2.1. From the financial years 2011-2012 (from March 29, 2012 onwards) till date, BDMCL held 19% of the equity share capital of Scal. BDMCL did neither have a majority stake in, nor did it exercise control over any of the other companies that held shares in Scal;

7.18.2.2. The directors of Scal held such office in discharge of their fiduciary duty to Scal at the pleasure of Scal's shareholders, without reference to BDMCL. BDMCL did not any point in time control the composition of board of Scal. Therefore, BDMCL had no control over the appointment of directors of Scal. The directors of Scal were appointed without reference to or the approval of BDMCL and the directors of Scal took their independent decisions without any reference or recourse to BDMCL. BDMCL did not nominate any director on the Board of Scal, nor did such directors act under the

directions of BDMCL. BDMCL had no say at the Board Meetings of Scal;

7.18.2.3. Neither the Boards of Directors, nor the Managing Director of BDMCL and directors of Scal were accustomed to act in accordance with the advice, directions or instructions of the other company or any director of the other company; and

7.18.2.4. There was no holding-subsidiary company relationship between BDMCL and Scal.

7.18.3. Clause 41 of the erstwhile Listing Agreement then required a company to provide consolidated financial results only if the company had subsidiaries. This requirement was also in line with AS-21 which specifies that when a company prepares consolidated financial statements, that is, if it has a subsidiary but not if it has only associates. Therefore, till FY 2013 – 2014. BDMCL did not have any subsidiary and accordingly no consolidated statements were prepared or required to be prepared by BDMCL. From FY 2014-2015, BDMCL was having a subsidiary namely, Archway Investments Company limited and accordingly, prepared consolidated financial statements in which the following entities Archway Investments Company limited (subsidiary) and Pentafil Textile Dealers limited, BDRECL and PT Five Star (as Associates) were consolidated.

7.18.4. For the reasons already given, Scal was not a subsidiary of BDMCL, at the relevant time. Accordingly, BDMCL was not required to prepare consolidated financial statements under the listing Agreement. It is on the fallacious premise that Scal was supposedly a subsidiary, that the allegation of the need for subsidiary consolidation has been levelled and it is on that basis that the erroneous allegation of over-statement of revenues has been levelled.

7.19. Scal and BDMCL were not associate companies under the Companies Act, 2013:

7.19.1. Based on the definition in the Companies Act, 2013, an associate relationship can be established by way of ownership of at least 20% of the total share capital (equity and convertible preference shares),which is not applicable to BDMCL and Scal, as BDMCL, throughout the Investigation Period (since March 29, 2021} held less than 20% of the total share capital in Scal.

7.19.2. BDMCL had no power or control on the business decisions taken by the Board of Scal. As set out above, BDMCL did not have any representation on Scal's Board and did not share common directors with Scal.

7.19.3. There is no provision under any contract, articles of association or any deed or law, that could have empowered BDMCL to control the composition of the Board of Scal, i.e. BDMCL neither had the right to appoint nor to remove the majority (or in fact any) of the directors of Scal. In fact, the directors of Scal were appointed without reference to or approval of BDMCL

7.19.4. The term 'Business Decision' has not been defined in the Companies Act, 2013. However,on a plain interpretation of the definition, there has to be control in the hands of one company over the business decisions of another company for the former to have significant influence. In order to meet the statutory test, there must exist the power of participation of BDMCL in business, financial and/or policy decisions of Scal. In the present case, there is nothing on record to show that BDMCL participated in business, financial and/or policy decisions of Scal.

7.19.5. There was no exchange of any essential technical information between BDMCL and Scal.

7.19.6. In view thereof, it may be noted that, save as explained above, there was no status of associate company between Scal and BDMCL under the Companies Act 2013.

7.19.7. Much is made of the fact that during Financial Years 2012-13 and 2013-14, BDMCL showed Scal as an associate company. This, as has already been pointed out prior to the issuance of the SCN, was purely out of abundant caution with some ambiguity in the interpretation of the term. Although this disclosure was not strictly required under the law, considering the guidelines in AS-18, this disclosure was retained out of abundant caution.

7.19.8. When the new Companies Act, 2013 was enacted (w.e.f. September 12, 2013), it was completely clear that Scal would not be an associate company, a term that was now (with the enactment of the said Act) defined in the law. From Financial Year 2014-15 onward, therefore, Scal was referred to as a 'group company' in the Notes to accounts. Since, Scal did not fit into the definition of an associate company under explicit law codified by Parliament, it was advisable from a disclosure perspective to make it clear that Scal was not a total stranger and therefore for want of a better phrase, Scal was depicted as 'group company'. The disclosure of the transactions with Scal was in any case contained in the Notes to accounts as well as the Auditor's Report, which in fact addressed the need for transparency as well.

7.20. Scal and BDMCL were not related parties under Accounting Standard 18:

7.20.1. It can be seen from the application of the aforesaid standards to the facts of the case that Scal and BDMCL were not related parties as defined In AS-18, for the following reasons:

7.20.1.1. During the financial years 2011-2012 (from March 29, 2012 onwards) BDMCL held 19% of the equity share capital of Scal. BOMCL did not

have a majority stake in or exercised control over any of the other companies that held shares in Scal.

7.20.1.2. BDMCL did not at any point in time have the power to control the composition of the Board of Directors of Scal.

7.20.1.3. The directors of Scal ere appointed without reference to or the approval of BDMCL and the directors of Scal took their decisions independently, without any reference or recourse to BDMCL.

7.20.1.4. BDMCL did not nominate any director on the Board of Scal, nor did such directors act under the directions of BDMCL.

7.20.1.5. BDMCL had no say at the Board Meetings of Scal.

7.20.1.6. None of the directors of either Scal or BDMCL was a director or held along with his relatives more than 2% of the paid-up share capital of the other company.

7.20.1.7. The Board of Directors or Managing Director of BDMCL and Scal are not accustomed to act in accordance with the advice, directions or instructions of the other company or any director of the other company.

7.21. Scal and BDMCL were not related parties under IndAS 24:

7.21.1. As set out above, BDMCL was not, at the relevant time, in a position to control or exert significant influence over Scal (in the absence of control over the latter's business decisions) and was not the parent or holding company of Scal. Neither (save as set out above) was Scal an associate company of BDMCL; nor was it at any time a joint venture of BDMCL; nor even were the two themselves joint ventures of any third company. In any event, Ind AS-24 came into force from April 01, 2017, and as such could only be applied from Financial Year 2017-18.

7.22. Scal and BDMCL were not related parties under the Companies Act, 2013:

7.22.1. That Scal and BDMCL were not related parties as defined in the Companies Act,2013, is borne out by the following reasons:

7.22.1.1. Scal and BDMCL were both public companies and none of the directors of either of these companies was a director or held along with his relatives more than 2% of the paid-up share capital of the other company;

7.22.1.2. Neither the Boards of Directors, nor the Managing Director of BDMCL and directors of Scal are accustomed to act in accordance with the advice, directions or instructions of the other company or any director of the other company. The directors of Scal were self-contained and individual directors with decades of experience. There is nothing to indicate that they acted under the control of BDMCL;

7.22.1.3. The submissions made above in relation to accounting standards are repeated herein by reference and in the interest of brevity are not being reproduced again - the analysis contained therein would be equally applicable to this section of this Reply too; and

7.22.1.4. There was no holding-subsidiary company relationship between BDMCL and Scal.

7.23. Scal and BDMCL were not related parties under the SEBI (LODR) Regulations, 2015:

7.23.1. For the reasons already given, Scal and BDMCL were not related parties either under Section 2(76) of the Companies Act, 2013 or under the applicable Accounting Standards, and were described as associates or 'group' concerns for the reasons explained above. For those reasons too, they were not related parties under the SEBI (LODR) Regulations, 2015.

7.24. BDMCL was not required to prepare consolidation financial statements under the erstwhile Listing Agreement:

7.24.1. Clause 41 of the erstwhile Listing Agreement then required a company to provide consolidated financial results only if the company had subsidiaries. This requirement was also in line with AS-21 which specifies that when

a company prepares consolidated financial statements, that is, if it has a subsidiary but not if it has only associates. Therefore, till the time BDMCL had a subsidiary (though may have associates), the question of preparing consolidated financial results did not arise.

7.24.2. For the reasons already given, Scal was not a subsidiary of BDMCL, at the relevant time. Accordingly, BDMCL was not required to prepare consolidated financial statements under the Listing Agreement. It is on the fallacious premise that Scal was supposedly a subsidiary, that the allegation of the need for subsidiary consolidation has been levelled and it is on that basis that the erroneous allegation of over-statement of revenues has been levelled.

7.25. BDMCL was not required to recognise the effects its investment In Scal (when it was an associate) in the Consolidated Financial Statements under Accounting Standard 23:

7.25.1. Accounting Standard 23 (**'AS-23'**) provides for recognition, in the consolidated financial statements, the effects of the investments in associates on the financial position and operating results of a group. However, compliance of AS-23 Is mandatory <u>only **if**</u> a company prepares consolidated financial statements by virtue of having a subsidiary.

7.25.2. During the financial years 2011-12 to 2013-14, BDMCL did not have any subsidiary. Thus, BDMCL was not required to prepare consolidated financial statements. Accordingly, at the relevant time when Scal was an associate of BDMCL i.e. prior to March 29, 2012, there was no requirement for preparing consolidated financial statements, thus recognition of the effects of the investment in Scal in the consolidated financial statements did not arise.

7.25.3. We therefore deny that BDMCL's sale of 30% of the shareholding of Scal was with the intention to further any alleged "*modus operandi*" for artificial inflation of sales and profits.

7.25.4. For each of the reasons given above, we submit, that there is no legal, accounting or auditing concept of considering ownership by a company after eliminating cross holdings amongst various group companies for determining control by such company. Even the stipulated standards and the prevailing accounting standards do not require such elimination of cross holdings amongst various group companies for determining control by a company. Thus, the elimination of the cross holdings amongst various group companies of Wadla Group to determine the alleged control of BDMCL over Scal (as relied upon in the SCN) is not in consonance with applicable legal, accounting or auditing principles of considering ownership by a company for determining control.

7.25.5. For the reasons herein above, we state that the cross holding of various group companies of the Wadia Group has been wrongly considered to establish the alleged control of BDMCL over Scal. The recognition of revenue of Rs.2492.94 crores and profit of Rs.1302.20 crores has been rightly recognised and accounted by BDMCL, as Scal was not a subsidiary of BDMCL at the relevant time and thereby, eliminating the requirement of consolidated financial statements.

7.25.6. On the strength of the aforesaid submissions, we deny that BDMCL held directly/indirectly the entire share capital of entities, which held share capital of Scal We deny that BDMCL acted as a fixed/common point or that it directly/indirectly held the entire share capital of Scal.

7.26. In any event, every case of '*single customer. supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business*', does not and cannot, merely because it may show *'economic dependence*', be a *'related party*' transaction, unless actual participation in the

financial and/or operations policy is shown. Certainly, in the facts of this case, no such participation can be made out.

7.27. There is, other than conjecture or surmise, no reasonable or lawful way to show that BDMCL and Scal were in a 'holding-subsidiary' relationship; or were 'related parties' or 'associates'; or exercised 'significant influence', within the meaning of AS-21, AS-23 and AS-24; the Companies Act, 2013, more generally; or even the LODR Regulations.

7.28. For the aforesaid reasons, there was no legal requirement for the consolidation of the financial statements of BDMCL and Scal.

7.29. As for the last of the Financial Years in question (Financial Year 2018-19), pursuant to an Order dated 21 February 2019, passed by the Hon'ble National Company Law Tribunal, Mumbai Bench ('NCLT'), a Scheme of Arrangement ('Scheme') between BDMCL and Scal came into effect (with the appointed date of July 1, 2018), under which the real estate undertaking of Scal was demerged and amalgamated with BDMCL. There is a judicial finding that the Scheme was *"fair and reasonable ...not in violation of any provisions of law and ...not contrary to public policy*"

7.30. As for the Subject MoUs, we submit. the same were entirely lawful transactions. and cannot, contrary to the assertions in the SCN. be termed ' 'non-genuine sales" or " fraudulent". Revenue recognition from ICC project commenced prior to 1st April, 2012. Consequently, BDMCL has continued to follow the guidance provided under the Guidance Note on Recognition of Revenue by Real Estate Developers issued by the Institute of Chartered Accountants in 2006. As stated in the Guidance Note 2006 and as reported in the financial statements of BDMCL during Financial Years 2011-12 to 2017-18, revenue from real estate activity has been recognised only when significant risks and rewards of ownership have been transferred to the buyers, it is not unreasonable to expect ultimate collection when no significant uncertainty exists regarding the amount of consideration.

7.31. It is submitted that the following, undisputed facts establish that the MoUs executed by BDMCL and Scal were lawful, genuine and enforceable agreements:

7.31.1. Pursuant to Clause 2 of the MoUs, Scal paid BDMCL an aggregate sum of INR 457 crore during Financial Years 2011-12 to FY 2013-14.

7.31.2. Any delay in payment was subject to interest under the MoUs [as provided under Clause 3] and BDMCL realized a sum of INR 3.72 crore from Scal on this account.

7.31.3. The MoUs expressly provided that although apartments were yet to be construed, all risks and rewards attached thereto were those of Scal from the date of execution, and its obligation to pay the balance consideration to BDMCL was final and absolute.

7.31.4. Under the MoUs, Scal was granted the right to sell the property to any new purchaser and retain any surplus profit therefrom; and, of course, it alone had to bear any deficit /loss.

7.31.5. Scal has the right to sue BDMCL in the case of breach of obligations under the MoUs.

7.31.6. The fact that BDMCL executed the aforesaid MoUs with Scal; that Scal was a "group company"; and that BDMCL recognized income from the MoUs was duly disclosed in BDMCL's financial statements right from Financial Year 2012-13 onwards. Thus, transparency was maintained at all times, even more than the strict requirement of law.

7.31.7. Prior to these MoUs entered into for Project ICC, BDMCL and Scal entered into similar MoUs for bulk sale of flats for a project named "Springs". Under

these MoUs, BDMCL sold 142 flats to Scal for a total consideration of INR 355 crore.

7.32. From the reading of the clauses in the MoUs, the MoUs was a composite document. The parties to the MoUs had identified each flat, area of such flat with proportionate consideration, the payment mode, etc. Furthermore, the clauses as detailed above, clearly transfers the risk and reward to Scal and made it abundantly clear that the MoUs were to be treated as legally binding and enforceable in law, notwithstanding the fact that it was contemplated to enter into a formal agreement at a future date. It was the intention of the parties to bind themselves through the MoUs.

7.33. As to refunds, it may be noted that during 2015-17, there was a major slowdown in the real estate sector and Change in Development Control Regulation (DCR), resulting into major change in the development plans of the Project. BDMCL was also involved in litigation which travelled right upto the Hon'ble Supreme Court, as a result of which its construction activities had to be halted. This litigation was initiated on account of a Stop Work Notice issued on site as there was an adverse order from High Court of Judicature, Bombay on 11th May, 2012 concerning surrender of land to MCGM Municipal Corporation of Greater Mumbai] and MHADA. This meant that sales of apartments in the ICC Project was not as robust as expected. BDMCL and Scal took a commercial decision coupled with their best business judgment to observe a moratorium until the market condition improved. Thus, BDMCL granted deferment of revenue to Scal, more so, in view of the fact BDMCL had received all its payments from Scal till Financial Year 2013-2014, as per the prescribed milestones.

7.34. The significant terms and conditions for sale of apartments under the MoUs were almost similar to the terms and conditions agreed with other retail buyers. Based on the terms and conditions agreed to under the MoUs, it can be reliably stated that all the risks and rewards of ownership were transferred to the buyer. It was significant that Scal was granted the right to sell

the property and retain any reward that may result therefrom. This was demonstrated over the period of time when several apartments were the subject of further sale and any surplus/profit or loss/deficit was on account of the purchaser, with the differential amount being paid or received. Moreover, since the price and total consideration under the MoUs was determined and agreed between both the parties, it can be said that no significant uncertainty exists regarding the amount of consideration Finally, it was also not unreasonable to expect ultimate collection as the terms of payment of balance consideration were all specified in the MoUs and the developer continued to be in possession of the property under the MoUs until the full consideration was received. The final title and possession would pass on to the purchaser only on receipt of full consideration agreed under the MoUs.

7.35. Further, as BDMCL was still in possession of the property and possession was to be handed over only on the final receipt of the entire sale consideration, there was reasonable certainty of collecting the entire sale consideration from Scal. Thus, BDMCL granted deferment of revenue to Scal. Moreover, this is not the first time that BDMCL is selling bulk apartments to Scal, as in FY 2005-06, Scal had been a bulk purchaser of apartment and had been successful in selling about 100 such apartments in another residential project of BDMCL called "Springs".

7.36. BDMCL, in fact, disclosed the factum of refunds, and the rationale for the same in its Annual Report for Financial Year 2015-16 at Note Number 37, Page 84, stating as under:

> *"The Company has agreed to sell several apartments in the proposed residential towers being constructed at Island City Centre to Scal Services Ltd, a Group company, in terms of various memorandum of Understanding (MOUs) entered between the companies till March 31, 2016. Based on the method of accounting (percentage of completion) followed by the company, net revenue of 239.26 crores (March 2015 301.11 crores) and*

the resultant profit before tax of 158.63 crores (March 2015 224.49 crores) has been recognised during the year ended March 31, 2016, in respect of the sales to Scal. During the year, SCAL has requested the company for certain concessions on grounds that due to the huge delays in construction by the Company, it had incurred substantial interest costs on account of its borrowing against the unsold inventory of flats, which could not be sold due to the delays in the project. Pursuant to the request, the Company considering the facts and circumstances that led to SCAL's inability to sell the flats, has granted SCAL deferment to milestone payments till June 2017 or till the sale of all the unsold flats, and also considering that SCAL was a bulk customer who had purchased a large number of flats and had not received the discounts given to other bulk purchasers, the Company reduced the advance payment made by SCAL to 7.5% resulting in refund of about 270.35 crore to Scal."

7.37. The giving of a comfort letter, by itself, was neither illegal nor inappropriate. Scal was desirous of availing loan from Dewan Housing Finance Corporation Umited {'**DHFL'**) by hypothecating the receivables of the apartments ICC Project. DHFL, as a lender, desired to have a comfort letter from BDMCL, as BDMCL was the developer of ICC Project. BDMCL saw no objection in acceding to the same and agreed to give the comfort letter, as a similarly placed lender would seek such comfort from a similarly placed developer. Additionally, the negative net worth would have turned positive on the sale of the flats to the ultimate buyer and would have enabled Scal, to repay the loan availed from DHFL Given this, it is denied that the giving of the comfort letter indicated that BDMCL was in charge of the operations of Scal.

8. Noticee no. 2, vide its reply dated July 27, 2021 and August 9, 2021, written submissions dated January 31, 2022, has largely re-iterated the arguments of Noticee no. 1. The other key contentions raised by Noticee no. 2 are as follows. I also note that Noticee no. 6, 7, 8 and 9, have stated to adopt the aforesaid two replies of Noticee no. 2.

8.1. If auditors of listed company were held not to be "*persons dealing in securities*", persons like Noticee no. 2, 6, 7, 8 and 9, who: (a) are not alleged to be associated with any securities directly or indirectly; (b) are not alleged to have dealt in any securities either directly or indirectly; (c) are not alleged to have fabricated or falsified or fudged the books of accounts of any listed company; (d) are not alleged to have induced someone and thereby played a fraud in the securities market; (e) are not alleged to have committed any act of inducement, certainly cannot be said to have violated Reg. 3 and 4 of PFUTP Regulations, 2003.

8.2. Scal itself is and was at all material times an unlisted company. At all such times moreover, it was involved in the business of real estate. It, therefore, had not even the remotest connection with "*investors in securities*" or with the "*securities market*". Likewise, the SCN does not even pretend to make a showing that Scal or any of its director Noticee, belongs, or at nay time, belonged, to class of persons referred to in Section 12 of the SEBI Act, 1992. The persons referred to in Section 12, all bear a direct relationship with the securities market. Any meaning to be ascribed to "*persons associated with the securities market*" under Section 11B(1) of the Sebi Act, 1992, thus, also must bear out such direct relationship.

8.3. As set out earlier, Scal is an unlisted company, its directors (former or present) are not alleged to have been involved in any "*business of selling and buying*" securities, ot to have transacted any "*business, whether as trader, or as an investor, of selling or buying the required script*". Accordingly, the invocation, of powers under Section 11(1), 11(2)(e), 11(4). 11(4A) or under 11B, is without jurisdiction, and unlawful.

8.4. It is to overcome this absence of a link between Scal's action and the securities marlet that SEBI foists upon it a charge of "aiding and abetting" BDMCL in its alleged violations of securities law- a charge that does not exist under the SEBI Act, 1992.

9. I note that Noticee no. 3, 4, 5 and 10, have stated to adopt the reply dated July 27, 2021 and August 9, 2021 of Noticee no. 1. I also note that Noticee no. 3, 4 and 5, have also filed their joint written submissions dated February 3, 2022, which has presented arguments substantively similar to the contentions of Noticee no. 1. For sake of brevity, they are not being reproduced herein, however, wherever necessary they have been appropriately been dealt with in the relevant part of this order. Noticee no. 10, vide his letter dated February 3, 2022, has submitted that he shall adopt the written submissions filed by Noticee no. 1 and Noticee no. 3, 4 and 5.

Consideration of issues and findings thereon:

10. I shall now proceed to examine the preliminary contention raised by the Noticees regarding delay in initiating action. I note that the alleged matter came to be investigated by SEBI, immediately after the receipt of a complaint in January 2019. I note that, after completion of detailed investigation by SEBI in June 2021, it was found that the alleged fraudulent scheme was perpetrated since FY 2011-12. I note that, the contention of inordinate delay cannot be sustained when the underlying violation is a '*single and continuous one'*, forming part of an alleged camouflaged '*grand scheme*', spreading its roots over a long span of time i.e. from FY 2011-12 to FY 2018-19. It is not the case of the SCN that the violations are separate and distinct for each Financial Years, rather the SCN proceeds on the premise that the Noticees were allegedly involved in perpetrating a fraudulent scheme *of misrepresentation of financials statements of BDMCL,* that originated in FY 2011-12 and continued till FY 2018-19, with the merger of real estate business of Scal with BDMCL. I note that had the merger not been in place, the alleged systematic scheme involving Scal and BDMCL, would have continued. From the replies of the Noticees, I also find that, none of the Noticees has raised any contention with regard to their inability in procuring any documents, information or record, due to alleged long passage of time. I note that the entire record of investigation, including the investigation report alongwith the Annexures thereon, was shared with the Noticees. Therefore, I find that, no prejudice has been caused to any of the

Noticees, which would hamper their ability to suitably defend their case. Thus, I find the contention of 'alleged inordinate delay in issuance of the SCN', is not sustainable in the facts and circumstances of the present case.

11. I note that the substantive case of the SCN is that the Noticees were involved in a fraudulent scheme of misrepresentation of financial statements of BDMCL, by inflating sales of Rs. 2,492.94 crores and profit of Rs.1,302.20 crores, arising from the alleged sale of flats (through MoUs), by BDMCL to Scal, over the period from FY 2011-12 to 2017-18. The SCN observes that the shareholding structure of Scal was deliberately designed in such a manner that though BDMCL directly held only 19% in the share capital of Scal, but through its indirect holdings in other shareholders of Scal, BDMCL was able to exercise complete control over the entire share capital of Scal. The SCN alleges that the direct shareholding of BDMCL in Scal, was deliberately by design kept at 19%, so as to ensure that definition of 'Associate Company' is not attracted and therefore, the financial statements of Scal would not be mandated to be consolidated with that of BDMCL. Had the financial statements of Scal been consolidated with BDMCL, the aforesaid sales and profits of BDMCL from transactions with Scal, **would not** have been reflected in the consolidated financial statements of BDMCL, since inter-se transactions between the two entities would have been eliminated from being reported in the consolidated financial statements in accordance with AS-23 and IndAS 28, as the case may be.

The shareholding structure of Scal and the allegation of direct/indirect 'control' over Scal by BDMCL:

12. It is the case of the SCN that though BDMCL only held 19% direct shareholding in Scal, on analysis of shareholding of the other members of Scal (for determining the ultimate owner of Scal) i.e. Wadia Group Companies, it is observed that BDMCL held directly/indirectly, entire share capital of all these Wadia Group Companies who held remaining share capital of Scal. Thus, the SCN concludes that BDMCL had control directly/ indirectly, over the entire share capital of Scal. To counter this allegation, the Noticees have contended that BDMCL has at no point in time, held

more than 49% share capital of the other shareholders of Scal. Thus, they were not the subsidiaries of BDMCL and consequently, their shareholding in Scal can not be attributed to BDMCL. It is their case that, BDMCL cannot be said to have influence over the decisions made by the investee companies (i.e. other shareholders of Scal) unless it is in a position to exercise voting power of more than 50% in these companies.

13. I have perused and analysed the shareholding pattern of Scal and other Wadia Group Companies entities namely, Pentafil, Archway, BDRECL, BDS and Springflower, as reproduced at Table 7, 8 and 9 of this order. For the sake of reference the same is being reproduced herewith:

Table 7

	2011-12 and 2012-13	**Shares held[4] in**			
	Shares held[4] by ↓	**Scal**	**Pentafil**	**BDRECL**	**Archway**
1	Scal	-	25.50%	10%	25.50%
2	Pentafil	25.50%	-	40%	25.50%
3	BDRECL	30%	-	-	-
4	Archway	25.50%	25.50%	10%	-
5	BDMCL	19%	49%	40%	49%
	Total	**100%**	**100%**	**100%**	**100%**

Table 8

	2013-14	**Shares held[4] in**					
	Shares held[4] by ↓	**Scal**	**Pentafil**	**BDRECL**	**Archway**	**BDS**	**Springflower**
1	Scal	-	25.50%	10%	25.50%	-	
2	Pentafil	19%	-	40%	25.50%	81%	
3	BDRECL	19%	-	-	-	-	
4	Archway	19%	25.50%	10%	-	-	
5	BDS	19%	-	-	-	-	
6	Springflower	5%	-	-	-	-	-
7	Havenkores Real Estate Pvt. Ltd	-	-	-	-	-	100%

[4] As on March 31 of the Financial Year

8	BDMCL	19%	49%	40%	49%	19%	
	Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Table 9

	2014-15 to 2017-18	**Shares held[4] in**				
	Shares held[4] by ↓	**Scal**	**Pentafil**	**BDRECL**	**BDS**	**Springflower**
1	Scal	-	45.50%	45%	47%	-
2	Pentafil	19%	-	-	19%	-
3	BDRECL	19%	-	-	15%	-
4	BDS	38%	5.50%	15%	-	-
5	Springflower	5%	-	-	-	-
6	Havenkores Real Estate Pvt. Ltd[5]	-	-	-	-	100%
7	BDMCL	19%	49%	40%	19%	-
	Total	**100%**	**100%**	**100%**	**100%**	**100%**

14. It is noted that during FY 2011-12 to FY 2017-18, while BDMCL held a part of equity share capital of Scal, other Wadia Group entities namely, Pentafil, Archway, BDRECL, BDS and Springflower, held remaining shareholding of Scal. I also note that, each of these Wadia Group companies (except Springflower), had cross-holding amongst themselves. For example, in FY 2013-14, shares of Scal were held by Pentafil (19%), BDRECL (19%), Archway (19%), BDS (19%) and BDMCL (19%); shares of Pentafil were held by Scal (25.50%), Archway (25.50%) and BDMCL (49%); shares of Archway were held by Scal (25.50%), Pentafil (25.50%) and BDMCL (49%); shares of BDRECL were held by Scal (10%), Archway (10%), Pentafil (40%) and BDMCL (40%).

15. From these intertwined shareholding pattern of Wadia Group Companies i.e. Pentafil, Archway, BDRECL, BDS and Scal, I find that, each of these companies were completely held, at any given point in time, in varying proportions, by two or more of the other members of the group. The single common shareholder for these companies, at all times throughout the Investigation Period, which was in turn, **not**

[5] Please refer **Table 11** showing shareholding of Havenkores Real Estate Pvt. Limited as on March 31, 2018.

held by any of these companies, was BDMCL. Thus, if the cross-holdings of these Wadia Group Companies amongst themselves is eliminated, then what is left is, BDMCL, as the single common fixed shareholder at all times. Therefore, I find merit in the case of the SCN that BDMCL had control, directly and indirectly, over the entire shareholding of Scal. I find that the shareholding structure of other shareholders of Scal, was deliberately designed in such an '*intertwined manner'*, in order to camouflage the absolute control of BDMCL over Scal. Reasons for adopting such structure is explained in the following paras.

16. I note that the Noticees have argued that, there is no accounting, auditing or legal principle that permits elimination of cross-holding amongst group companies for the purpose of determining the ultimate controller. I note that the concept of 'elimination of cross-holding' is not new. It is present in Accounting Standards 21[6], albeit in a different context, which mandates that while preparing consolidated financial statements, the recording of cross-holding between parent and subsidiary, be eliminated. This elimination is done to ensure that consolidated financial statements of the parent, do not present a bloated picture of the investments made by the parent. Therefore, it is noted that the concept of elimination of cross-holding is not alien. Notwithstanding, this fact, I note that, in the instant case, the SCN has levelled allegations of 'fraud' upon the Noticees. Therefore, I find that the principle of 'Separate Legal Entity', cannot be accepted as a plausible defence in the present case, because, as found out in the preceding paragraphs, the shareholding structure of the other shareholders of Scal, was so deliberately designed, in such an '*intertwined manner'*, as part of the broad 'Scheme of fraud', in order to camouflage the direct /indirect control of BDMCL over Scal so that financials of Scal are not required to be consolidated with that of BDMCL which would have nullified the effect of sales made to Scal by BDMCL.

<u>Re: Consolidation of Financial Statements of Scal with BDMCL.</u>

17. The Noticees have argued that BDMCL was not mandated under any provision of law or Accounting Standards, to consolidate Scal's financial statements with itself,

[6] Refer Para 13 of AS-21.

thus, the question of misrepresentation by inflation of sales and profits of BDMCL, does not arise. The Noticees have vehemently argued that Scal was not an 'associate company' or a 'subsidiary company' of BDMCL, thus, according to them, the question of BDMCL being able to exercise significant influence / control over the affairs of Scal and consequent consolidation of financials of Scal with BDMCL, does not arise. I note that it is not the case of the SCN that Consolidation of financial statements of Scal with BDMCL was mandatory, rather the SCN has a larger case that because of the deliberate design to directly hold 19% in the share capital of Scal and *de facto* entire share capital of Scal, BDMCL was able to eschew from the compliance of consolidation of financial statements, thereby being able to hatch a grand scheme of fraudulent misrepresentation of financial statements for inflating the sales and profits of BDMCL. I shall now to proceed to examine the various provisions of law applicable to BDMCL at the relevant time to determine at what stage BDMCL was required to consolidate the financial statement of Scal with itself.

18. The requirement of consolidation of financial statements of a listed company, emanates from Clause 41(I)(e) and Clause 32(a) of the Erstwhile Listing Agreement and Clause 50(a) of the Erstwhile Listing Agreement read with AS-21/ AS-23. I note that Clause 41(I)(e) stipulates that if a company has subsidiaries, it shall submit annual consolidated financial results to the stock exchange and may submit quarterly consolidated financial results to the stock exchange. Clause 32(a) stipulates that companies shall be mandatorily required to publish Consolidated Financial Statements in the annual report in addition to the individual financial statements. Clause 50(a) of the Erstwhile Listing Agreement stipulated that a company shall mandatorily comply with all the applicable Accounting Standards. I note that BDMCL did not recognize any subsidiary company until FY 2013-14, thus, BDMCL did not prepare consolidated financial statements in accordance with Clause 41(I)(e) and Clause 32(a) of the Erstwhile Listing Agreement, until FY 2013-14. Accounting Standard 21 dealing with Consolidated Financial Statements states that it shall be applicable to a company, if it is mandated by any law to prepare and present consolidated financial statements. In the instant case, as observed above, since BDMCL did not recognize any subsidiary compay, so until FY 2013-14, it was

not required to follow the stipulations under Clause 41(I)(e) and Clause 32(a) of the Erstwhile Listing Agreement that would have required it to prepare consolidated financial statements, thus, AS-21 also became inapplicable to BDMCL. Accounting Standard 23 dealing with "*Accounting for Investments in Associates in Consolidated Financial Statements*" also stipulates that AS-23 is applicable only if an enterprise prepares consolidated financial statements. In the instant case, until FY 2013-14, BDMCL did not prepare consolidated financial statements, because it did not have any subsidiary, thus, AS-23 was not followed by BDMCL until FY 2013-14.

19. I note that from April 1, 2014, Section 129 of the Companies Act, 2013 also came into force. Sub-section (3) of said section, stipulated that wherever, a company has any subsidiary or associate, it shall prepare consolidated financial statements of the company and all of its associates and subsidiary companies. As to what was meant by an 'Associate Company', the Companies Act, 2013, for the first time, had defined the said term. According to the definition, as given in Section 2(6) of the Companies Act, 2013, *"associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company."* As to what would constitute '*Significant Influence'*, the Explanation to the said definition at the relevant time read as "*For the purposes of this clause, "significant influence" means <u>control of at least twenty per cent of total share capital</u>, or of business decisions under an agreement".* I note that the SCN has alleged that the direct shareholding of BDMCL in Scal was deliberately kept at 19% in order to avaiod classification of Scal as an Associate'. I find merit in this allegation. I note that had BDMCL been holding 1% more in Scal, then it would have been required to reciognize Scal as 'an Associate' in terms of Section 2(6) of the Companies Act, 2013 and consequently it would have been required to consolidate the financial statements of Scal with its own financials due to the mandate in Section 129(3) of the Companies Act, 2013. However, since BDMCL held its shareholding in Scal at 19%, no such requirement for condolidation was triggered.

20. Without prejudice to the finding regarding circumvention from the compliance of Section 129(3) of the Companies Act, 2013, attention is also drawn to the provision of Section 129(1) of the Companies Act, 2013, Clasue 50(a) of the Erstwhile Listing Agreement and Regulation 48 of SEBI (LODR) Regulations, 2015[7]. All these provisions, stipulate that company shall comply with all the applicable Accounting Standards. As observed in the previous paragraphs, until FY 2013-14, BDMCL was not required to comply with Accounting Standard 23 (which deals with "*Accounting for investments in Associates in Consolidated Financial Statements*"), because, AS-23 stipulates that it shall be applicable only when consolidated financial statements were prepared by the company. I note that in FY 2014-15, Archway was made a subsidiary company of BDMCL, consequently, in compliance with mandate under Clause 41(1)(e) and Clause 32(a) of the Erstwhile Listing Agreement and the mandate under Section 129(3) of the Companies Act, 2013, BDMCL started preparing and presenting the consolidated financial statements from the FY 2014-15, but the financials of Scal were yet not consolidated with the financials of BDMCL. In view of the forgoing discussion, I note that AS-23 became applicable to BDMCL from FY 2014-15 itself, when it started preparing consolidated financial statements. AS-23 stipulates the manner in which financials of *'an associate'* will be accounted for in the consolidated financials of the parent. The definition of '*Associate*' in AS-23 provides that "*An associate is an enterprise in which the investor <u>has significant influence</u> and which is neither a subsidiary nor a joint venture of the investor".* AS-23 further defines '*Significant influence'* as "*the power to participate in the financial and/ or operating policy decisions of the investee but not control over those policies.*" Thus, the thrust of this definition is on "participation"(not govern) in financial and/or operating policy decisions of investee rather than the actual control over Investee Company by running its day to day affairs. In the present case such participation of BDMCL in financial and/or operating policy decisions of Scal is writ large as per Clause 9.1[8] of the MoUs

[7] From December 1, 2015, SEBI (LODR) Regulations, 2015 came into force, replacing the Erstwhile Listing Agreement. Thus, from the FY 2015-16, SEBI (LODR) Regulations, 2015, became applicable to BDMCL. Regulation 33(3)(b) and 33(3)(d) of SEBI (LODR) Regulations, 2015 was analogous to Clause 41(1)(e) of the Erstehile Listing Agreement and Regulation 48 of SEBI (LODR) Regulations, 2015 was analogous to Clause 50(a) of the Erstehile Listing Agreement.

[8] Clause 9.1 (b) of the MoU's, required Scal to obtain prior permission of BDMCL, before the onward sale of flat to a retail customer. Further, Clause 9.1 (a) also required Scal to notify the identity details of the new purchaser to BDMCL.

signed between BDMCL and Scal. I note that the definition of '*significant influence'* in AS-23 is much broader than the one in Section 2(6) of Companies Act, 2013. The concept of 'Significant Influence' in AS-23 is not limited to Share ownership. Para 4 of AS-23 states that while 20% or more share ownership in an investee will give rise to the presumption of 'significant influence' but it can be demonstrated otherwise. Simlarly, it also states that while shareowenership of less than 20% will give rise to the presumption of 'no significant influence', but the same can be demonstrated otherwise. Para 5 of AS-23 further throws light on the concept of 'Significant influence'. While further explaining the concept of '*significant influence'*, para 5 of AS-23, reads as: "*The existence of significant influence by an investor is usually evidenced in one or more of the following ways: (a)…….; (b) …….. (c) material transactions between the investor and the investee; …….*" I note that the said para 5 of AS-23, enumerates certain instances in which 'significant influence' exists. Among those instances, one such instance is "*material transactions between the investor and the investee".* Now, from analysis of Table 3 and Table 5, as produced in the SCN and reproduced in the paras 2.7 and 2.10 of this order, respectively. I find that, over the FY 2011-12 to 2017-18, the real estate business of BDMCL, single handedly contributed to the profits of BDMCL. The sale of flats to Scal during the Investigation Period, contributed to 56% of the total sales in real estate segment of BDMCL. Similarly, Scal carried out all of its transactions with BDMCL only, during the FY 2011-12 to 2017-18, and Scal recorded revenue on the basis of the same.[9] Thus, I find that the transactions between BDMCL and Scal were indeed material, and on this ground alone, BDMCL was said to have '*significant influence'* over Scal and thus Scal ought to have been recognized as '*an associate*' of BDMCL for the purposes of AS-23, and consequently the financial satatements of BDMCL ought to have been prepared as per AS-23 from the FY 2014-15 to FY 2016-17, which it has failed to do. I note that from the FY 2017-18, IndAS became applicable to BDMCL. I find that similar stipulations are prescribed in IndAS 28 for the definition of '*an Associate'* and explanation of 'significant influence'. Thus, I find that, Scal ought to have been recognized as '*an associate*' of BDMCL for the purposes of IndAS 28, as well, and consequently the financial satatements of BDMCL ought to have been prepared as

[9] Para 9.14 at Page 43-44 of the IR.

per IndAS 28 for the FY 2017-18, which it has failed to do. I note that, had the financial statements of BDMCL been prepared and disclosed as per stipulations in AS-23 and IndAS 28,then the inter-se transactions between Scal and BDMCL (i.e. the sales from BDMCL to Scal), would not have been recorded in the Consolidated financials of BDMCL, and consequently, the sales and resultant profit of BDMCL would have been accordingly, reduced to that extent.

21. From the analysis at para 17 to 18, I note that until FY 2013-14, BDMCL did not recognize any company as its subsidiary, hence, it was not subjected to the mandate to prepare consolidated financial statements, thus AS-23 was also not applicable which would have mandated the consolidation of financials of Scal with BDMCL. However, from 2014-15, BDMCL recognized Archway as its subsidiary, thus, it started preparing consolidated finanfcial statements, and consequently the mandate to record the invesmtnets of BDMCL in Scal as per AS-23, also became applicable. I note that BDMCL failed to comply with the mandate in AS-23, on the pretext that Scal was not 'an Associate' in terms of Section 2(6) of Companies Act, 2013. However, I find that, while Scal was not an Associate for the purposes of Companies Act, 2013, but it was 'an Associate' in terms of AS-23/ IndAS 28 and BDMCL was required to comply with AS-23/ IndAS 28, by virtue of the mandate under Section 129(1) of the Companies Act, 2015, Clause 50(a) of the Erstwhile Listing Agreement and Reg. 48 of SEBI (LODR) Regulations, 2015.

22. From the discussion in the preceding paragraph, I find that BDMCL had deliberately retained the shareholding in Scal at 19%, in order to circumvent the compliance with Section 129(3) of the Companies Act, 2013 and AS-23 r/w. Section 129(1) of the Companies Act, 2013, which if kept at 20% would have led to the consolidation of financial statements of Scal, with that of BDMCL from the FY 2014-15. I also note that despite being 'an Associate' in terms of AS-23/ IndAS-28, and despite AS-23 and IndAS 28 being made applicable to BDMCL from FY 2014-15, BDMCL deliberately failed to comply with the stipulations under these Accounting Standards, which would have mandated it to record the investments of BDMCL in Scal under the Equity Method (which would have eliminated the recoding of sales of BDMCL to Scal). I note that the plan to hold the shares in Scal

at 19% and the plan, not to follow the mandate in AS-23/ IndAS 28, was part of the broad 'Scheme of fraudulent misrepresentation of financial statements' to inflate the sales and profits of BDMCL.

23. I note that the SCN has alleged that the direct shareholding of BDMCL in Scal was deliberately held at 19% to avaiod compliance with the requirements to consolidate the financial statements of Scal. The SCN has further alleged that though direct shreholding of BDMCL in Scal was only 19%, but indirectly (through its interwined holdings in other shareholders of Scal), BDMCL was able to exercise control over the entire share capital of Scal. The SCN further alleges that the sales made by BDMCL to Scal were non-genuine. I shall now proceed to examine the nature of sales made by BDMCL to Scal.

<u>The nature of sales made to Scal:</u>

24. BDMCL entered into 11 MoU's with Scal during FY 2011-12 to 2013-14, for sale of flats/ allotment rights in Project One ICC and Project Two ICC, Dadar, Mumbai amounting to Rs. 3,033 crores. During each financial year from FY 2011-12 to FY 2017-18, BDMCL recognised revenue on the basis of the MoUs so entered with Scal based on Percentage of Completion Method in accordance with Accounting Standard-7: *Construction Contracts*. BDMCL recognized revenue and operating profit of Rs. 4,429.57 crores and Rs. 2,317.54 crores, respectively, for real estate segment during FY 2011-12 to FY 2017-18. Out of the same, revenue and profit amounting to Rs. 2,492.94 crores and Rs. 1,302.20 crores, respectively, were recognized on the basis of MoUs entered into with Scal. Scal, who acted as a bulk buyer for BDMCL and contributed to 56% of the revenue for real estate segment of BDMCL during FY 2011-12 to 2017-18, made payments amounting to only **7.46%** of the revenue recognized by BDMCL during FY 2011-12 to 2017-18 with respect to MoUs entered into with Scal. The following para examine the nature of sales made to Scal.

24.1. Scal continued to enter into MoU's with BDMCL, despite the stoppage of work on site, due to the Hon'ble Bombay High Court order dated May 11, 2012. I

note that, subsequent to this stoppage of work order, Scal had entered into 9 MoU's with BDMCL aggregating to value of Rs.2,290 Crores, between the period from June 2012 to March 2014. According to the minutes of the board meeting of BDMCL dated December 18, 2015, construction work at the Project had resumed in January 2015 only. Therefore, I find that despite the looming uncertainty, during the period from June 2012 to March 2014, Scal continued to execute its MoU's with BDMCL. This fact further raises doubts on the genuineness of the sale transactions between Scal and BDMCL. I further note that, while carving a unique exception for Scal, in December 2015, BDMCL decided to return a sum of Rs. 271 Crores to Scal on the purported pretext of 'there being inordinate delay in the scheduled construction work at One ICC and Two ICC'. Scal was also offered moratorium on future payments till June 2017 or until the sale of unsold flats by Scal. The incongruity between the terms of sale to Scal and other bulk buyers is glaring. While on one hand, being aware about the embargo on construction during the period from June 2012 to March 2014, Scal had continued to enter into MoU's with BDMCL, but on the other, in a span of 18 months (i.e. period from April 2014 to September 2015), Scal, has a change of heart and decides that the deals were unsustainable due to 'rising borrowing cost and unfavorable market conditions', and so it approaches BDMCL in September 2015, (especially when the construction had already resumed in January 2015), to request for refund of advance paid and moratorium from future payments. Be that as it may, BDMCL decided to refund a sum of Rs. 271 Crores and even agreed to provide a moratorium from further payments till June 2017 or till the unsold flats are sold. It is pertinent to note that, no such favorable 'return' option or 'moratorium' option was given to other bulk buyers of BDMCL.

24.2. BDMCL has stated that Scal was a bulk buyer. I note that the objective of a bulk sale to a bulk buyer, is to ensure that the Developer, BDMCL, in this case, gets the cash flow required for construction which helps it to hedge the funding/project completion risk. However, I find that, Scal, which was claimed to be a bulk buyer for BDMCL and contributed more than 50% of the revenue for real estate segment of BDMCL during FY 2011-12 to 2017-18, has made

net payments amounting to only 7.46% of the revenue recognized by BDMCL during FY 2011-12 to 2017-18. I find that, rather than bringing cash flows for the business of BDMCL, Scal itself was in the need of cash worth Rs. 271 Crores in the last quarter of FY 2015-16, which was delivered to it by BDMCL in the garb of 'refund'. I also note that on two occasions[10], BDMCL had acted as facilitators for the loan taken by Scal. Had BDMCL not issued the 'comfort letters' on both the occasions[10], Scal could not have managed to raise the loans because of its poor creditworthiness. Ultimately, one of the loans was used to meet the milestone payments obligations of Scal under the MoU's. In view of the above, I find that, though BDMCL claimed Scal as a 'bulk buyer', but BDMCL never derived any benefits of 'significant cash flows' out of Scal that a bulk buyer is expected to deliver. I find that, this apparent failure of Scal to deliver the desired results, was not the product of unfavourable circumstances, but part of a deliberate scheme which was designed to fail Scal as a 'bulk purchaser' from day one. Scal did not possess the necessary financial prowess to deliver the cash flows[11] and meet the expectations of a bulk buyer. I find that the only object of this design was to generate fictitious sales for BDMCL by showing voluminous sales of apartments to Scal and showing Scal as a 'Bulk Purchaser'.

24.3. While BDMCL has shown the flats sold to Scal as 'Revenue' in its books of accounts, but Scal has not shown these flats as 'Purchases' in its books of

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[10] **Occasion 1:** , SEBI investigation has found that untill March 31, 2014 and March 31, 2015, Scal had made payment of Rs. 262 crores and Rs. 436 crores respectively to BDMCL towards purchase of flats under various MoUs. For making the aforesaid payments, funds to the tune of Rs. 113 crores and Rs. 266 crores were borrowed by Scal from various Wadia Group Companies as on March 31, 2014 and March 31, 2015 respectively. As seen from the financial statements of Britannia Industries Limited ("BIL") for FYs 2014-15 and 2015-16, the loan was advanced by BIL to Scal based on comfort letter from BDMCL.

Occasion 2: As on March 31, 2017, Scal was having outstanding borrowing from HDFC Limited, Archway and Pentafil for Rs. 169.98 crores, Rs. 216.55 crores and Rs. 18 crores respectively. However, during FY 2017-18, all the aforesaid borrowings were repaid by availing Term Loan from DHFL. BDMCL, in its letter dated October 30, 2017 provided comfort to DHFL on behalf of Scal, stating that *"BDMCL shall ensure that Scal Services Limited will duly and punctually observe and perform all its obligations under the aforesaid term loan."* In the said letter, BDMCL further confirmed to DHFL that till the time the aforesaid Term Loan to Scal is not repaid in full, it shall not without DHFL's prior approval, dispose of any part of its shareholding in Scal.

[11] Scal was having negative net worth of Rs. 3 crores, Rs. 14 crores and Rs. 42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014 respectively. Still BDMCL entered into various MoUs with Scal under which Scal was expected to make a payment of Rs. 3,033 crores over several years based on the physical stage of construction of Project One ICC and Project Two ICC

accounts. I note that Scal has merely recorded, in its books of accounts, the 'upside/ downside' from sale of flats i.e. the difference between the purchase price and sale price of flats as 'profit/ loss'. This further raises doubts on the claims of Scal as a 'Bulk Buyer'. While one party (BDMCL) to the transaction treats the transaction as 'Sale', the other party (Scal) merely treats it effectively as 'Commission Income'. I note that if Scal was genuinely a 'bulk buyer', who buys flats in bulk from the developer with 'all the risks and rewards associated with the property', for the ultimate goal of selling it to retail customers at a profit, then it ought to have shown the unsold flats in its books of accounts as 'Inventory/ Stock-in-trade'. But, as observed during SEBI's investigation, Scal has not recorded the 'Purchase' and 'Sale' of flats in its books of accounts, and merely shown the difference between Purchase Price and Sale Price as 'Profit/ Loss'. Thus, I find that, by not recording the 'Purchase' of flats from BDMCL as 'Purchases', Scal is essentially accepting the fact that it was acting as an 'agent of BDMCL' and not as a Bulk Buyer of BDMCL. Now, one may ask, if Scal did not consider the flats as 'Purchases', then what was its role in the supply chain for which it made a 'Profit/ loss'? This question becomes more pertinent when we proceed to examine a related observation in the SCN which states that Scal did not incur any marketing expense for selling the flats and the marketing expenses were instead incurred by BDMCL.

24.4. I note that, Scal did not add any value in the supply chain. Apart from the factors discussed in the preceding paragraphs, this is also evident from the fact that, despite being the purchaser of flats for the purpose of ultimate sale to the retail buyers, Scal did not incur any marketing expenses for sale of flats/allotment rights bought from BDMCL. Scal stated that marketing of flats was carried out by BDMCL and the same was recovered from Scal. It is also pertinent to note that, vide letter dated January 23, 2019, BDMCL also submitted that, apart from its own human resources, Scal is supported by network of brokers and traders and extended arms, <u>who get paid on actual sales directly from BDMCL upon maturing sales.</u> Thus, I find that BDMCL used to directly pay commission on sale of flats to the brokers in the network of Scal. From the above discussion, I note that Scal neither incurred marketing expenses for sale of flats, nor incur

any brokerage payment for the onward sale of flats to retail buyers. Both these expenses were directly paid by BDMCL. Thus, the question that begs reply is that, what was the role of Scal in the supply chain? Why would BDMCL sell flats to Scal when the BDMCL was itself expected to do the entire ground work and incur the expenses in respect of sale of flats to the retail buyers. As pointed out in the previous paragraphs, the sale of flats to Scal as a 'bulk buyer' also failed to achieve the object of generating immediate cash flows for working capital requirement of BDMCL. In view of the above, I find that the sale of apartments to Scal was merely an eye-wash.

24.5. Scal never possessed the ability to pay for the flats being sold. Scal was a negative networth company for the entire period from FY 2011-12 to 2017-18. Scal was having negative net worth of Rs. 3 crores, Rs. 14 crores and Rs. 42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014, respectively, despite this BDMCL entered into various MoUs with Scal under which Scal was expected to make a payment of Rs. 3,033 crores over several years based on the physical stage of construction of Project One ICC and Project Two ICC. The Noticees have argued that Scal was not required to have positive networth since it would have made payment soon after the receipt of funds from the retail customers, after the sale of flats. I note that this argument runs counter to the contention of the Noticees that Scal was a 'Bulk Buyer', wherein Scal is expected to bring in immediate cash flows into BDMCL. I also note that Scal was required to pay an amount equivalent to 10% of the total consideration within 60 days of the date of MoU. Being a negative net worth entity, Scal did not have funds of its own. The payment made by Scal towards booking amount was financed through borrowings from various group companies of BDMCL and external entities. The Statutory Auditor of BDMCL, have submitted to SEBI during investigation that, till March 31, 2014 and March 31, 2015, Scal had made payment of Rs. 262 crores and Rs. 436 crores, respectively, to BDMCL towards purchase of flats under various MoUs. For making the aforesaid payments, funds to the tune of Rs. 113 crores and Rs. 266 crores were borrowed by Scal from various Wadia Group Companies as on March 31, 2014 and March 31, 2015, respectively. Therefore, I find that despite having such

precarious financial position, Scal was chosen as a Bulk buyer by BDMCL, and MoU's worth Rs. 3,033/- crores were executed with it, because the intention was never to consummate the complete sale of flats to Scal, rather the intention was to merely record the revenue from such dubious sales which were bound to fail from day one, without any possibility of receipt of full consideration from Scal. The Noticees have argued that Scal was not always expected to make the complete payment under the MoU's. Scal could have sold the flat to a retail customer, even before the completion of the construction and the remaining payment would have been made by the retail buyer as per the decided payment schedule. Be that as it may, I note that the financial position of Scal was so bad that it hardly had any money to make payment for the intial 10% of the installment amount, which was to be paid within 60 days of the execution of the MoU's, as it turns out was borrowed from Wadia Group Companies and some external lenders.

24.6. Scal was a unique bulk buyer for BDMCL which was having its registered office in Neville House which was owned by BDMCL and it shared the same telephone number as that of BDMCL. SEBI's investigation has revealed that during the Investigation Period, Scal did not pay any kind of rent or lease charges to BDMCL for having its registered office in Neville House. Noticee no. 5 had submitted that no rent was charged to Scal as it was using a very small space for administrative purpose. During FY 2018-19, Scal shifted its registered office to Wing "A", Raheja Point I, Pt. Jawaharlal Nehru Road, Vakola, Santacruz (E) which was owned by another Wadia Group Company - Wadia Techno-Engineering Services Limited. Scal did not pay any rent/ lease charges to occupy this space as well.

24.7. SEBI's investigation has revealed that directors of Scal were already employed on payrolls of other Wadia Group Companies and these directors did not draw any separate remunerations including sitting fees for performing their duties in Scal. I note that it is not the case of these directors that they came together with the common intention of offering honororary services for Scal, a Wadia Group Company. When posed with this query during SEBI's investigation, as to why

would they not draw any remuneration from Scal, all these directors submitted that Scal did not follow the practice of offering remuneration to any of its directors. SEBI's investigation has also revealed that none of the directors were offered any appointment letter or any details about their role and responsibilities in Scal. It is also pertinent to note that, as observed in the previous paragraphs of this order, BDMCL was directly/ indirectly in control of the entire share capital of Scal. What begs an answer is "why would these directors join the board of Scal without knowing their role and responsibility or without drawing any remuneration or sitting fees?" This unexplained anomalous behavior coupled with the fact that these directors were also simultaneously directors in other Wadia Group Companies and they were drawing remuneration from those respective Wadia Group Companies, clearly demonstrates that the board of Scal owed its allegiance to BDMCL/ Wadia Group.

25. From the discussion at para 24.1 to 24.7, I find that Scal was designed to fail as a 'Bulk Buyer' from day one. It did not possess the financial prowess to meet the obligations as a Bulk Buyer under the MoU's. Scal was having negative net worth of Rs. 3 crores, Rs. 14 crores and Rs. 42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014, respectively, despite this BDMCL entered into various MoUs with Scal worth Rs. 3,033 crores. During FY 2011-12 to 2017-18, Scal could make net payments amounting to Rs. 186 crores only which was 7.46% of the revenue recognized by BDMCL for the sales made to Scal. I note that Bulk Buyer is expected to provide immediate cash flow to the business of the seller. However, rather than bringing cash flows for the business of BDMCL, Scal itself was in the need of cash worth Rs. 271 Crores in the last quarter of FY 2015-16, which was delivered to it by BDMCL in the garb of 'refund'. On two occasions, BDMCL had acted as facilitators for the loan taken by Scal. Further, the incongruity between the terms of sale to Scal and other bulk buyers was glaring. Scal did not incur any marketing expense/ brokerage expense for selling the flats. These expenses were incurred by BDMCL and later adjusted from the payment due from Scal. This raises doubts on the role of Scal in the supply chain.The sale of flats to Scal did not add any value to the supply chain, especially when Scal failed to meet the expectations as a 'Bulk Buyer', as well. From the aforesaid discussion, <u>I find that the sale of flats,</u>

by BDMCL to Scal was merely an eye-wash. I find merit in the case of the SCN that the sale of apartments to Scal was shown merely to inflate the sales and profit of BDMCL over a period of seven years i.e. for a period from FY 2011-12 to FY 2017-18.

26. As observed in the earlier part of this order, the shareholding in Scal was deliberately designed in such a manner that even though BDMCL directly held only 19% in the share capital of Scal, but indirectly it was able to exercise control over the entire share capital of Scal. Further, as held in the preceding paragraph, the board of Scal was not independent, it was under the influence of BDMCL/ Wadia Group. Untill FY 2017-18, Scal and BDMCL had the same registered office address and Scal had the same telephone no. as that of BDMCL. Scal did not pay any rent/lease charges to BDMCL for the use of office premises. This shows that Scal was nothing but an extended arm of BDMCL itself. During the FY 2011-12 to 2017-18, Scal carried out all of its transactions with BDMCL only.[12] In view of the forgoing analysis and after consideraing the finding that the sale of flats to Scal was merely an eyewash, I find merit in the allegation of the SCN that a deliberate Scheme was devised to fraudulently misrepresent the financial statements of BDMCL, by recognizing revenue and booking profits, by showing sales of flats to Scal (which as it turned out were non-genuine), over the period from FY 2011-12 to FY 2017-18. Scal was an entity, whose share capital was entirely under the control of BDMCL. Noticee no. 1's direct shareholding in Scal was deliberately retained at 19% (i.e. 1% less than 20%), in order to circumvent the compliance with Section 129(3) of the Companies Act, 2013 and with AS-23 r/w. Section 129(1) of the Companies Act, 2013, which if kept at 20% would have led to the consolidation of financial statements of Scal, with that of BDMCL, thereby reducing the revenue and profit of BDMCL, since as per AS-23, sales from BDMCL to Scal cannot be recorded as part of revenue while preparing the consolidated financial statements of BDMCL.

27. I note that by hatching into this deliberate scheme of fraudulent misrepresentation of financial statements, BDMCL was able to inflate its sales by Rs. 2,492.94 Crores

[12] Para 9.14 at Page 43-44 of the IR.

and consequent profit by Rs. 1,302.02 Crores, over the period from FY 2011-12 to 2017-18. I note that investors rely on the financial disclosures made by the company, to make their investment / disinvestment decisions. Had the correct picture of the financial position of BDMCL been made public, the share price of BDMCL would not have maintained same trajectory as it did for the period from FY 2011-12 to FY 2017-18. In view of the above, I find that, by engaging in the act and practice of deliberate misrepresentation of financial statements, which operated as a fraud upon investors in the securities market, Noticee no. 1 has violated the provisions of Section 12A(c) of the SEBI Act, 1992 and Regulation 3(d) of the PFUTP Regulations, 2003. I also note that the act of deliberate misrepresentation of financial statements was also fraudulent and unfair trade practice in securities, thus, I find that, Noticee no. 1 has also violated the provisions of Regulation 4(1) of PFUTP Regulations, 2003. By recording those inflated sales and profits, BDMCL was able to put up the gloomy picture of a "consistent profit making enterprise, showing the promise of a thriving real estate business'and thus maintain its share price in the same trajectory for the period 2011-12 to 2017-18. I note that this amounted to manipulation of the price of the scrip of BDMCL and thus I find that Noticee no. 1 has violated the provisions of Regulations 4(2)(e) of PFUTP Regulations, 2003. I note that by publishing and reprting the financial statements of BDMCL to the stock exchange on quarterly and annual basis, which were misrepresented, I find that Noticee no. 1 has violated the provisions of Reg. 4(2)(f) of PFUTP Regulations, 2003. I note that the reporting of the misrepresented financial results of BDMCL on quarterly and annual basis to the stock exchange under Regulation 30 of SEBI (LODR) Regulations, 2015, tantamounted to an act of 'planting misleading news which may induce sale/ puchase of securities', thereby resulting into the voialtion of Regulation 4(2)(r) of PFUTP Regulations, 2003 by Noticee no. 1. I also note that Scal was the entity to whom the non-genuine sale of flats was shown to have been made. Scal acted as the independent 'Bulk Buyer', which ad it turns out from its financial position was not even fit to be a 'Bulk Buyer'. Therefore, I find that, by acting as the extended arm of BDMCL, Scal aided and abetted BDMCL, in the furtherance of the 'fraudulent scheme of misrepresentation of financial statements of BDMCL'.Thus, I find that alongwith Noticee no. 1, Scal is also responsible for violation of Regulation 3(d), 4(1), 4(2)(e),

4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 and Section 12A(c) of the SEBI Act, 1992

Fraud under SEBI (PFUTP) Regulations, 2003:

28. I note that the Noticees have raised certain contentions as to how they cannot be held responsible for violation of Regulation 3 and 4 of PFUTP Regulations, 2003; and Section 12A of the SEBI Act, 1992 read with Sections 15HA of the SEBI Act, 1992. The following is an extract of the aforesaid provisions:

SEBI Act, 1992:

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;

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher][13].

SEBI (PFUTP) Regulations, 2003:

2(1)(b) [14]["dealing in securities" includes:

(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act; (ii)

[13] Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

[14] Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018. w.e.f. from February 1, 2019.
Before the substitution the provision read as follows:
"dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act."

(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and
(iii) any act of providing assistance to carry out the aforementioned acts.]

2(1)(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not, by a person or by any other person with his connivance or by his agent, while dealing in securities, in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) are presentation made in a reckless and care less manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behavior by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government;
(b) the economic situation of the country
(c) trends in the securities market or
(d) any other matter of a like nature whether such comments are made in public or in private;

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

(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 [manipulative,][15] fraudulent or an unfair trade practice in securities [markets][15] above.

[15] Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 1, 2019.

[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.][16]

(2) Dealing in securities shall be deemed to be a [manipulative][15] above, fraudulent or an unfair trade practice if it involves 8[any of the following][17]:—

……

(e) any act or omission amounting to manipulation of the price of a security [including, influencing or manipulating the reference price or bench mark price of any securities][15];

(f) [knowingly][15] publishing or causing to publish or reporting or causing to report by a person dealing in securities any information 14[relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

……

(k) [disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities][18];

……

(r) [knowingly][15] planting false or misleading news which may induce sale or purchase of securities.

29. I note that Noticee no. 1 has contended that the SCN, insofar as it invokes the provisions of Regulations 3 and 4 of the PFUTP Regulations, 2003 and Section 12A (a), (b) and (c), of the SEBI Act, 1992, is patently without jurisdiction as there is no allegation of the "purchase or sale of any securities", or any "dealing in securities" or any fraudulent or unfair trade practice "in securities"; and that there is no allegation of "fraud" (which, by its very definition, requires an "act, expression, omission or concealment committed...<u>while dealing in securities</u> <u>in order to induce another</u> ...to deal in securities". In this regard, I would like to draw attention to para 28 of the SCN, which reads as follows:

[16] Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.

[17] Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 1, 2019.

[18] Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022 w.e.f. January25, 2022. Before the substitution the provision read as follows:"disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;"

The provisions was previously substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and UnfairTrade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019 and before the said substitution the provision read as follows: "an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors".

> *28. Artificial inflation of sales and profits by any listed company impacts the market price of its scrip and has a direct bearing on the investment decision of an investor. Thus it is alleged that the activity of inflation of sales and profits of BDMCL had interfered with the normal mechanism of price discovery and integrity of securities markets and created a misleading appearance with respect to share price movement of BDMCL, thus effectively manipulating the share price of BDMCL. Financial statements published by BDMCL are relied upon by the investors in the securities markets to base their investment decisions and misrepresentation of the same is alleged to be fraudulent activity.*

30. I note that the SCN has clearly stated that the alleged manipulation of financial statements by BDMCL has interfered with the normal mechanism of price discovery and integrity of securities market and created a misleading appearance of the share price movement of BDMCL. Thus, I find that the SCN is abundantly clear about the charge of "manipulation, fraudulent and unfair trade practice in securities". As regards, the question as to how the alleged manipulation of financial statements by BDMCL, has led to manipulation of share price of BDMCL, attention may be drawn to Table 3 of the SCN (reproduced in the earlier paras of this order and also part of the SCN), wherein segment-wise profit earned by BDMCL, during the period from FY 2011-12 to 2017-18, is shown. After analyzing this Table, the SCN also records the fact that the real estate segment of BDMCL was single handedly responsible for the profits of BDMCL during this period. I note that more than 50% of sales in the real estate segment were shown to be from Scal in all the FY's under review. I note that though the 'Polyster' and 'Textile' business segments of BDMCL had volumes in sales but these segments did not translate into profits, rather they incurred losses/ negligible profits during the period under investigation. Thus, when the financial statements of BDMCL for the period from FY 2011-12 to 2017-18, are found to present inflated figures of sales and profits, their disclosure as 'true and fair', is an act, patently fraudulent and unfair trade practice for the investors in securities, because investors rely on the financial disclosures made by the company, to make their investment / disinvestment decisions. Had the correct picture of the financial position of BDMCL been made public, the share price would not have maintained same trajectory as it did for the period from 2011-12 to 2017-18. I note that the Noticees have contended that, without showing any impact of the alleged financial misstatements, on the share price of BDMCL, the SCN has merely proceeded on the basis of assumption of possible impact on the share price. I note that the impact of 'concealment of a real picture and postulation of

artificial picture', on the share price of a scrip, can hardly be assessed and recreated without the actual events taking place in reality. In the instant case, BDMCL is accused of inflating its sales and profit over a consistent period of seven years, so the only question that needs to be answered is, had these sales to Scal, not been recorded in the books of BDMCL, [which infact constituted on an average more than 50% (it ranged from 84% to 38% across different FY's) of the real estate sales and real estate was the single handed profit making venture for BDMCL during the Investigation Period], then what would have been the impact on the share price of BDMCL. I note that no statistical analysis can be made on this aspect. It may not be possible to assess as to how a rational investor would have made his decision on the basis of such an information being made public by the company. Nonetheless the contention that the SCN is bereft of any price impact analysis is not entirely true. I note that the investigation Report at para 10.1 has presented a chart analyzing the price movement of the scrip of BDMCL over the Investigation Period. On the basis of this chart and on the basis of 'segment-wise profit analysis' as at Table 3, SEBI decided to proceed with the action under Regulation 3 and 4 of the PFUTP Regulations, 2003. I find that, if not for the sales to Scal, BDMCL would not have been able to put up the gloomy picture of a "consistent profit making enterprise, showing the promise of a thriving real estate business'. Thus, I do not find any merit in the contention of BDMCL that the SCN is bereft of jurisdictional facts and that the SCN fails to establish any nexus of the alleged misrepresentation of financial statements by BDMCL with the aspect of "fraud while dealing in securities'.

31. Here, I would also like to touch upon a related contention being raised by the Noticees that, 'Fraud' under PFUTP Regulations, 2003, only relates "to act, expression, omission or concealment committed...<u>while dealing in securities</u> <u>in order to induce another</u> ...<u>to deal in securities</u>". I note that such an interpretation emanates from a narrow reading of the definitions of 'fraud' under Regulation 2(1)(c) and 'dealing in securities' under Regulation 2(1)(b) of PFUTP Regulations, 2003. Firstly, both the definitions themselves start with the words, *""fraud" <u>includes</u>……." and* "*dealing in securities <u>includes</u>:…….*", thereby making it abundantly clear that they are inclusive definitions vis a vis an 'exhaustive'

definition. Secondly, while defining 'fraud' as "an act of inducing another person to deal in securities", the definition also deems certain acts as 'fraudulent' by mentioning them in a list of nine items which includes item no. 9, as relevant to the present case as, "*the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price."* Therefore, I do not agree with the interpretation of 'fraud' being sought to be given by BDMCL. I note that what can be said with certainty about 'fraud' under PFUTP Regulations, 2003 is that the consequence of the act must have the potential to 'induce another rational person to deal/ not to deal in securities'.

32. Now I turn to another contention being raised by the Noticees with respect to the 'Explanation' appended to Regulation 4(1) of PFUTP Regulations, 2003, which came to be inserted by an amendment to PFUTP Regulations, 2003 w.e.f. October 19, 2020. According to the Noticees, Regulation 4(1), prior to its amendment in October 2020, was predicated on a manipulative, fraudulent or an unfair trade practice *"in securities".* Subsequent to the amendment, Explanation takes in, and effects to penalize, acts wholly unconnected to any "dealing in securities", thus, introducing a substantively *"new concept"* in the law (to wit, manipulative, fraudulent or unfair trade practices may occur by acts that do not, *ipso,* involve any trade in securities, at all), and thus, an extension beyond the ambit of Regulation 4(1) prior to its amendment. It is the case of the Noticees that the Explanation, is not "clarificatory", for it introduces a new or extended concept, and thus, cannot permissibly be retrospective, at all. Hence, the Explanation can have no application to this case, the relevant period for which is *"FY 2011-12 to FY 2017-18",* only.

33. I note that Regulation 4(1) to the PFUTP Regulations, 2003 puts prohibits manipulative, fraudulent or unfair trade practice relating to securities market. The term 'fraud' has been defined in Regulation 2(1)(c) of PFUTP Regulations, 2003, and as observed in the previous paragraphs, the said definition is 'inclusive'. The terms 'Unfair trade practices' and 'manipulative' are not defined in the PFUTP

Regulations, 2003. However, it is not difficult to ascertain true meaning of these terms and consequent scope and ambit of Regulation 4(1), by reading the various terms defined in and the objective of, PFUTP Regulations, 2003, as a whole. In this context, Section 11(2)(e) of SEBI Act, 1992 which enumerates prohibiting fraudulent and unfair trade practice relating to securities market, as one of the functions of SEBI which was reinforced through Section 12A of the SEBI Act, 1992 in the year 2002, may also be referred to. In discharge of said function and power, SEBI had earlier framed SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995 (since repealed) which were later replaced by PFUTP Regulations, 2003. The Regulation 4(1) since coming into force of PFUTP Regulations, 2003, *inter alia* seeks to prohibit any act of diversion/ misutilisation/ siphoning off, of assets of a listed company or its concealment or any scheme to manipulate the books of accounts or financial statements of such a company that would directly/ indirectly manipulate the price of securities of that company. This is for the rreason that such acts are fraudulent as well as unfair trade practice relating to securities. Here, it is appropriate to refer to the judgments of Honb'le Supreme Court wherein the expression "unfair trade practice" was touched upon. The first such judgment is SEBI Vs. Kanaiyalal Baldevbhai Patel & Ors. (2017) 15 SCC 1 wherein following observations were made

> Per N. V. Rammanna J:
>
> "29. Although unfair trade practice has not been defined under the regulation, various other legislations[19] in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in

[19] Monopolies and Restrictive Trade Practices Act, 1969, Section 36A; The Consumer Protection Act, 1986, Section 2(1)(r); The Competition Act, 2002, Section 3; The Food Security and Standards Act, 2006, Section 24(2); Specific Relief Act, 1963, Section 20; Usurious Loans Act, 1918, Section 3.

the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'……"

Per Ranjan Gogoi J:

"……Coupled with the above, is thefact, the said conduct can also be construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities……"

34. Similarly, in SEBI Vs. Rakhi Trading and Others (2018) 13 SCC 753, while referring to its judgment in Kanaiyalal case (supra), Hon'ble Supreme Court observed as under:

Per Kurian Joseph J:

"35. Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market……."

Per R. Banumathi J:

"38. The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity andefficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law……"

35. Thus, the acts mentioned in the explanation were already covered under Regulation 4(1) as being fraudulent as well as unfair trade practice. What was earlier implicit has now been made explicit by adding 'Explanation' to Regulation 4(1) of PFUTP Regulations, 2003 w.e.f. October 19, 2020. I note that the aforesaid amendment, though introduced on October 19, 2020, does not make any substantive change in the ambit of Regulation 4(1). Act of large scale diversion/ misutilisation/ siphoning off, of funds of a listed company or any device, scheme or

artifice to manipulate the books of accounts or financial statement of such company, that would directly or indirectly manipulate the price of the securities of that company, thereby inducing the investors to deal in securities or to remain invested in the securities of that company, are undoubtedly fraudulent and unfair trade practice relating to securities market', which are covered by the rigor of Regulation 4(1) since July 17, 2003 itself i.e. the date of coming into force of PFUTP Regulations, 2003. Thus, I note that the 'Explanation' added to Regulation 4(1) merely clarifies that certain acts such as diversion of funds and/or manipulation of books of accounts or financial statements, shall be and shall always be deemed to have been manipulative, fraudulent and unfair trade practice relating to securities market and does not introuduce any new prohibition.

36. The Noticess have sought reliance on the decision of SEBI in the matter of V, B. Industries Ltd, decided on July 8, 2021. It is their case that the facts of the present case are similar to the facts of that case, and as SEBI had exonerated the Noticess in that case from the charge of violation of PFUTP Regulations, 2013, the present matter should also be treated with same parity. I note that no parity can be drawn for the present case with the decision in the matter of V. B. Industries. The latter case emanated from an enquiry which was instituted by SEBI, into the affairs of a suspected group of shell companies. SEBI had directed the stock exchanges to appoint a forensic auditor and the terms of reference was to examine whether there was any possible violation of SEBI (LODR) Regulations, 2015 by these suspected group of shell companies and not violation of PFUTP Regulations, 2003. Accordingly, the forensic report was only confined to violations of SEBI (LODR) Regulations, 2015. It was only after recipt of forensic audit report, SEBI had included the allegations of violation of PFUTP Regulations, 2003 without any commensurate findings by the forensic auditor on violation of PFUTP Regulations, 2003. Additionally, I note that in the V B Indistries case, the SCN and forensic report were bereft of any allegation of impact on the securities market or the direct or indirect impact on the price of the scrip due to the violations of PFUTP Regulations, 2003, alleged in the SCN. However, in the instant case, the SCN specifically alleges that "*..... the activity of inflation of sales and profits of BDMCL had interfered with the normal mechanism of price discovery and integrity of securities*

markets and created a misleading appearance with respect to share price movement of BDMCL, thus effectively manipulating the share price of BDMCL". In the earlier part of this order, it has also been found that had the correct picture of the financial position of BDMCL been made public, the share price would not have maintained at the same trajectory as it did for the period from 2011-12 to 2017-18 and it has impaired the investors from taking timely disinvestment decision. Thus, I find that the allegations in the SCN and the facts of the present case incorporate all the ingredients of 'fraud'. I also note that the case of V B Industries Ltd. was that of an infrequently traded scrip involving small number of investors, whereas the present matter is a case of a frequently traded scrip involving large no. of investors. In view of the above, I note that the contention of the Noticees is untenable.

37. I note that Noticee no. 2, 6, 7, 8 and 9, have contested that SEBI Act, 1992 or the PFUTP Regulations, 2003 does not provide for the charge of 'aiding and abetting'. Thus, the SCN is without jurisdiction. I do not any merit in this argument. I note that though Section 12A of the SEBI Act, 1992 or any provision of the PFUTP Regylations, 2003, do not explcitly mention the words 'aiding and abetting', but from the language of the statue and the nature of the offences covered theein, it is abunduntaly clear that the provisions apply with equal force to the 'principal' as well as the 'accomplice'. Attention is drawn to the definition of 'Fraud' in Reg. 2(1)(c) of PFUTP Regulations, 2003 which states that, *"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not, by a person or by any other person with his connivance or by his agent……..."* Similarly, reference may also be made to the provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992 (analogous to Regulation 3(b), 3(c) and 3(d) of PFUTP Regulations, 2003), which starts with the words "*No person shall directly or indirectly……"*, thereby incorporating within its ambit not just the persons directly involved in the fraud but also persons indirectly involved in the fraud. A further perusal of the provisions of suc-section (a), (b) and (c) of Section 12A, reveals that these provisions intend to prohibit all such '*Scheme, device, contrivance, artifice, practice, course of business*", which would operate as fraud upon investors in securities market. The nature of acts envisaged to be prohibited by Section 12A, indicates an elment of 'organised and systematic planning and execution' which may not be limited to one person,

but may also include the accomplices. Thus, from the nature of offences intended to be prohibited by Section 12A of the SEBI Act, 1992 and Regulation 3(b), 3(c) and 3(d) of PFUTP Regulations, 2003, it becomes clear that the provisions do not limit the jurisdiction of SEBI to take action only against the person involved in the act as 'principal', but SEBI is also empowered to take action against the 'accomplice'.

38. Noticee no. 2, 6, 7, 8 and 9, have raised another contention that Scal is an unlisted company, its directors (former or present) are not alleged to have been involved in any "*business of selling and buying*" securities, or to have transacted any "*business, whether as trader, or as an investor, of selling or buying the required script*". Accordingly, the invocation, of powers under Section 11(1), 11(2)(e), 11(4). 11(4A) or under 11B, is without jurisdiction, and unlawful. I note that, In the earlier part of this order, the financial statements of BDMCL, a listed company, has been found to have been misrepresented over a period of seven years. The sales of flat made by BDMCL to Scal and the resulting profit from such sales, has been found to be non-genuine. It is also found that the entire share capital of Scal was directly/indirectly under the control of BDMCL itself. Had it not been for the impugned sale of flats to Scal, how would have the financials of BDMCL been misrepresented. Thus, I find that Scal played a key role in the perpetration of the Scheme of misrepresentation of financial statement of a listed entity, which resulted in maintaninace of share price of BDMCL in the same trajectory, for the period from 2011-12 to 2017-18. Under this backdrop of the role played by Scal, I shall now proceed to examine whether SEBI has the power to take action against Scal and its directors. under Section 11(1), 11(2)(e), 11(4). 11(4A) or under 11B of SEBI Act, 1992. I note that in Karnavati Fincap matter, Hon'ble Gujarat High Court held that *Section 11(1) of the SEBI Act, 1992 imposes a paramount duty on the Board (SEBI) to protect the interest of investors in securities and to promote the development of, and to regulate the securities market, and for achieving this object, it gives plenary powers to resort to such measures as it thinks fit. Section 11(1) not only prescribes duties but confers powers as well, to effectively discharge those duties. Viewed in this way, sub-section (2) which commences with the words "without prejudice to the generality of the foregoing provisions" and proceeds to enumerate matters for which the Board may provide*

such provision, is to be read as illustrative and not exhaustive of the matters in respect of the measures which can be provided for by the Board in furtherance of the discharge of its duties referred to in sub-section (1).[20] Section 11(2)(e), specifically provides for power to take such meansures so as to prohibit fraudulent and unfair trade practices relating to securities markets. Section 11B(1) *inter alia* provides that, after making an enquiry, in the interest of investors or orderly development of securities market, SEBI may issue such directions to any person associated with the securities market. As to who will be considered as 'persons associated with securities market', reference may be made to para 5 of the judgement in ***Karnavati Fincap Ltd. And Alka ... vs SEBI, decided on May 6, 1996 by Hon'ble Gujarat High Court*** [1996 87 CompCas 186 Guj].

> "*The words "other persons associated with the securities market" have not been defined in the Act. The question then arises whether "persons associated with the securities market" takes its colour from persons enumerated in clause (ba)? If one has to go by the literal meaning, the interpretation which restricts the meaning of "persons associated with the securities market" to the persons enumerated in clause (ba) is not acceptable. In ordinary meaning, the persons associated with the securities market would include all and sundry who have something to do with the securities market. It is to be noted that the securities market in the sense is not confined to stock exchanges only. The words "persons associated with the securities market" are of much wider import than intermediaries."Persons associated with" denotes a person having connection or having intercourse with the other; in the present case that "other" with whom a person is to have connection or intercourse is the securities market"*

As held by the Hon'ble Gujarat High Court, the contention that "words 'persons associated with securities market' will draw its colour from the intial words of Section 11B(1)(a) i.e. 'to any person or class of persons referred to in section 12'", is not acceptable, as doing so would severely restrict the meaning of the words 'persons associated with the securities market'. I note that these words must be

[20] Para 4 in Karnavati Fincap Ltd. And Alka ... vs SEBI, decided on May 6, 1996 by Hon'ble Gujarat High Court [1996 87 CompCas 186 Guj]

interpreted in light of the pupose for which it can be exercised, which is mentioned in Section 11B (i), (ii) and (iii). These purposes *inter alia include 'in the interest of investors, or orderly development of securities market'.* Considering this purpose of exercise of power under Section 11B(1), and in the backdrop of the finding that how Scal played a key role in the perpetration of the Scheme of misrepresentation of financial statements of a listed entity, which resulted in mainipulation of share price of BDMCL, I find that Scal, falls within the purview of 'persons associated with the securities market'. Further, considering the role of the directirs of Scal, which is discussed in the later part of this order, I also find that, even Noticee no. 6, 7, 8 and 9, fall in the purview of 'persons associated with the securities market'. In view of the preceding discussion, the contentions of Noticee no. 2, 6, 7, 8 and 9, are untebnable.

39. The Noticees have raised another contention that BDMCL has been showing separately, in the 'Notes to Accounts' section of the financial statements, from the FY 2012-13 onwards, the amount of sales made to Scal on the basis of MoU and the resultant profit thereon. Thus, it is their case that the investors were amply aware about the nature of sales made to Scal, hence, no case is made out for 'fraud'. They have also argued that BDMCL had disclosed the factum of refunds made to Scal, and the rationale for the same in its Annual Report for Financial Year 2015-16. I do not find any merit in such an argument made by the Noticees for the following reason. I note that the factum of separate disclosure of sales made to Scal in the 'Notes to Accounts' section of the financial statements by BDMCL, does not even remotely reveal 'the entire scheme', perpetrated by the Noticees. I find that, (i) the fact that BDMCL held directl/indirect control over the entire shareholding of Scal; (ii) the fact that BDMCL was required to consolidate (which it failed to do) the financials of Scal with itself, from FY 2014-15 onwards, owing to the mandate stipulated under IndAS 28/ AS-23 read with Section 129(1) of the Companies Act, 2013; (iii) the fact that had the financials of Scal been consolidated with that of BDMCL, the sales made by BDMCL to Scal would not have been recorded while preparing the consolidated financial statements of BDMCL and consequently, the revenue and profit of BDMCL would have been reduced to that extent; (iv) The fact that, despite Scal having negative net worth of Rs. 3 crores,

Rs. 14 crores and Rs. 42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014, respectively, still BDMCL entered into various MoUs with Scal under which Scal was expected to make a payment of Rs. 3,033 crores over several years; (v) the fact that Scal, which claimed to be a bulk buyer for BDMCL and contributed more than 50% of the revenue for real estate segment of BDMCL during FY 2011-12 to 2017-18, has made net payments of only 7.46% of the revenue recognized by BDMCL during FY 2011-12 to 2017-18; (vi) the fact that rather than bringing cash flows for the business of BDMCL, Scal itself was in the need of cash worth Rs. 271 Crores in the last quarter of FY 2015-16, which was delivered to it by BDMCL in the garb of 'refund'; (vii) the fact that BDMCL had acted as facilitators for the loan taken by Scal, by issuing 'comfort letter' to BIL, on the basis of which loan was advanced by BIL to BDMCL and, ultimately, the money raised from the loan was used by Scal to make payments to BDMCL, under the MoU; <u>were never known to the investors</u>. I find that 'the entire scheme' was unearthed only upon a detailed investigation by SEBI. Therefore, the contention of the Noticees that 'there is no pre-meditated design of a fraudulent scheme of misrepresentation of financials' since, BDMCL had from time to time, made adequate disclosures in the financial statements, is not tenable.

40. Noticee no. 3, 4 and 5, have raised a common contention that the transactions referred to in the SCN were decisions of its board, which always comprised of approximately 65% independent directors and /or its Audit Committee. The accounts for the relevant year were approved in the respective year by the Audit Committee. The board from time to time has been guided by expert opinions from outside consultants and the accounts of BDMCL were subject to independent statutory Audit. It is their case that after the transactions were completed, the management prepared the Company's accounts. These accounts were submitted to the Company's Auditors who categorically advised that the same were fully compliant with applicable law and accounting standards and principles. Thus, according to these Noticees, it would be inappropriate for SEBI to do a post-facto analysis of the collective commercial decisions of the board of BDMCL, and hold them liable for the collective decisions taken by them, in the best interest of the shareholders of BDMCL. I do not find any merit in this argument. In the instant

case, I note that, Noticee no. 3, 4 and 5 have been impugned in the SCN, not merely because of the fact that they happen to be the promoter directors of BDMCL at the relevant time, but the SCN has alleged specific role played by each of these Noticees, while being the directors of BDMCL, in the perpetration of 'fraudulent scheme'. I note that, in the preceding paragraph of this order, it has been elaborately brought out, as to how the 'scheme of fraudulent misrepresentation of financial statements' was designed by deliberately holding only19% direct shares of Scal, but indirectly BDMCL was able to exercise control over the entire share capital of Scal (through the 'intertwined shareholding' of other members of Scal). All this was done to portray Scal as an independent Bulk Purchaser for the apaprtments from BDMCL, without the investors ever realizing that Scal was effectively wholly controlled by BDMCL itself. Had the financial statements of Scal been consolidated, the inter se sales of flats from BDMCL to Scal would not have been accounted for and therefore the 'sales' and 'profit' figures of BDMCL would have been reduced to that extent. I find that by propounding such arguments, all that these Noticees are attempting is to do is, to reduce the case of a 'deliberate and intentional fraud' to that of a mere 'commercial misadventure'. I note that merely because an action is supported by an 'external independent legal/ professional opinion', it does not legitimize the action. In the instant case, I find that the board of BDMCL had approached certain legal and professional experts to seek their opinion, but these opinions were limited to 'piece meal' legs of the entire 'Scheme' such as, opinions were sought on topics like "whether Scal should be recognized as an Associate for a certain Financial Year?" or "Whether Scal is a related party of BDMCL for a certain Financial Year", etc. The entire 'Scheme' was never up for review before these external experts and professionals. Thus, the argument that their actions were supported by independent expert advise, does not help the case of these Noticees. The said Noticees have also attempted to put the onus on the members of the Audit Committee who were responsible for reviewing the financial statements and the management of BDMCL who were responsible for preparing the financial statements. I note that 'approval and review of the financial statements' is just one leg of the grand 'Scheme of Fraud'. The substantive case of the SCN is that the Noticees were involved in designing a 'Scheme' to make non-genuine sale of apartments to Scal, an entity directly and

indirectly wholly owned by BDMCL itself, and thereby inflating the sales and profit of the real estate business of BDMCL over a continuous period of seven years. Thus, to say that merely because the Noticees were not involved in the 'preparation and reviewing' of the financial statements, they cannot be held liable, does not help their case in any manner, since in terms of Clause 41(ii)(a) and 41(II)(e) of the Erstwhile Listing Agreement and Regulation 33(2)(a) and Regulation 33(2)(d) of SEBI (LODR) Regulations, 2015, the board of directors is specifically responsible for approval of financial statements. The liability of the board with regards to the 'Financial statements' is very well crystalized in law.

41. I note that, Noticee no. 3, 4 and 5 have contested that they have been incriminated merely because they were the promoters of BDMCL. I do not find any merit in this argument. I note that the SCN has separately examined the role of Noticee no. 3, 4 and 5, in the perpetration of the 'Scheme'. While doing so the SCN has categorically recognized the positions held by these Noticees in the board of BDMCL and also noted the fact that these Noticees alongwith Ms. Maureen N Wadia (wife of Noticee no. 3), were holding more than 50% shareholding in BDMCL, during the entire Investigation Period. Thus, I find that the SCN has highlighted the fact that these Noticees did not merely have ownership of the majority share capital of BDMCL, but they also had control over the management of BDMCL through their positions in the board of dorectors. Therefore, this contention of the Noticees is not tenable.

42. I note that Noticee no. 3 was the Chairman of the board of BDMCL, during the Investigation Period. Noticee no. 4 and 5 are the sons of Noticee no. 3. Noticee no. 4 was the non-executive director on the board of BDMCL during the Investigation Period and Noticee no. 5 was the Managing Director of BDMCL, during the Investigation Period. I also note that on the basis of submissions of various entities who had acted as CFOs of BDMCL during the Investigation Period, the SCN has observed that Noticee no. 3 and 5 were involved in day-to-day affairs of BDMCL (a finding that has not been disputed by these Noticees). Thus, though Noticee no. 3 was designated as non-executive Chairman of BDMCL, but I find that he was involved in day-to-day affairs of BDMCL.

43. In view of the above, I find that Noticee no. 3, 4 and 5 were at the helm of affairs at BDMCL. Further, I note that, alongwith Ms. Maureen N Wadia, Noticee no. 3, 4 and 5 were also the persons in control of more than 50% voting power in BDMCL, at all times during the Investiogation Period. Since both BDMCL and Scal were Wadia Group Companies, it stands to reason that transactions between BDMCL and Scal could not have happened without Noticee no. 3, 4 and 5's knowledge and approvals. I note that the involvement of Noticee no. 3, 4 and 5, can be substantiated on the basis of their active involvement and passive role. I note that, the planned reduction of shareholding in Scal to 19% to avoid consolidation of financial statements of Scal, execution of non-genuine sales to Scal through MoU's, granting deferment of payment to Scal (and not any other bulk buyer), inflation of sales and profit of BDMCL, non-realization of payments from Scal etc., were all different legs of the broad 'Scheme of fraud' perpetrated under the supervision and control of Noticee no. 3, 4 and 5, while they were at the helm of affairs at BDMCL. At no point in time, these Noticees, ever raise any concern on the remakrs being made by the Statutory Auditor in each Financial Year, in his Audit Report in the 'Emphasis of Matter' para, about the nature of sales being made to Scal. Never did these Noticees question the financial ability of Scal to meet the obligation of payment of Rs. 3033/- Crores[21], nor did they question the favouravle treatment being metted out to Scal as a 'BulK Buyer' vis-à-vis other Bulk Buyers. These are instances of passive involvement. On the other hand, I find these Noticee directors, were actively involved in approving (in terms of Clause 41(II)(e) of the Erstwhile Listing Agreement and Reg. 33(2)(d) of SEBI (LODR) Regulations, 2015) and signing the annual financial statements of BDMCL, which as it turns out, were misrepresented. Additionally, for the FY 2013-14 to 2017-18, Noticee no. 5 has also issued certificates under Clause 49(V) of the Erstwhile Listing Agreement and Reg. 17(8) of SEBI (LODR) Regulations, 2015, which as it turns out, falsely certified that "*the financial statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading……these statements together present a true and fair view of*

[21] Scal was having negative net worth of Rs. 3 crores, Rs. 14 crores and Rs. 42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014, respectively, still BDMCL entered into various MoUs with Scal under which Scal was expected to make a payment of Rs. 3,033 crores over several years.

the Company's affairs and are in compliance with existing accounting standards, applicable laws and regulations". In view of the above, I find that, Noticee no. 3, 4 and 5, have played an active as well as a deliberate passive role, in the perpetration of the 'Scheme of deliberate misrepresentation of financial statements of BDMCL'. Thus, I find that, alongwith Noticee no. 1, they are also responsible for violation of Reg. 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of RFUTP Regulations, 2003 and Section 12A(c) of the SEBI Act, 1992. Here it is pertinent to note that Noticee no. 3, 4 and 5, have not been cheged by the SCN for them being merely a part of the board of directors of BDMCL, rather I find that they have been roped in the present proceedings for their individual roles in the perpetration of the 'Scheme'.

44. I note that the SCN has also called upon Noticee no. 5 to show cause as to why penalty should not be imposed under Section 15HB of the SEBI Act, 1992, for the violation of provision of Clasue 49(V) of the Erstwhile Listing Agreement and Clause 49(iX) of the Erstwhile Listing Agreement (post amendment dated April 17, 2014) and Reg. 17(8) and 33(2)(a) of the SEBI (LODR) Regulations, 2015, for issuance of a false certificate certifying that the financial statements of BDMCL reflect a 'true and fair' view in the FY 2013-14 to 2017-18. I note that Clasue 49 of the Erstwhile Listing Agreement only puts the obligation on the listed company to ensure that it complies with certain corporate governance requirements which aslo includes that the CEO/MD and CFO provide the requisite Certificate. I note that no direct legal obligation falls on the CFO, thus, I find that no penalty is attracted for the said violation by Noticee no. 5 in the instant case for the FY 2013-14 and 2014-15. However, for the FY 2015-16 to 2017-18, I find that because of the issuance of a false certificate by Noticee no. 5, under Reg. 17(8) and proviso to Reg. 33(2)(a) of the SEBI (LODR) Regulations, 2018, Noticee no. 5 has violated the aforesaid provision and is liable for appropriate penalty under Section 15HB of the SEBI Act, 1992.

45. I note that Noticee no. 6, joined Scal as a Director on February 25, 2005 and he has been acting as a Director of Scal till June 10, 2022. During the Investigation Period, Noticee no. 6 was Director in a number of Wadia Group companies which included Oseaspire Consultants Limited, Springflower, Archway, Pentafil, Nessville

Trading Private Limited and Neville Wadia Private Limited etc. I also note that, Noticee no. 7 joined Scal as a Director on March 30, 2012 and he has been acting as a Director of Scal till date. SCN states that, during the Investigation Period, Noticee no. 7 was a director in a number of Wadia Group companies which included Springflower, Neville Wadia Private Limited, Havenkores Real Estate Private Limited etc. Noticee no. 7 was also the signatory (on behalf of Scal) to 10 out of the 11 MoU's executed between Scal and BDMCL. Noticee no. 8 joined Scal as a Director on December 10, 2014.. Apart from Scal, Noticee no. 8 also acted as a director in various Wadia Group companies during the Investigation Period, which included Archway, Pentafil, Wadia Techno- Engineering Services Limited, BDRECL. I further note that Noticee no. 9 was the Vice President of BDMCL during FY 2009-10 and FY 2010-11. Subsequently, he joined Scal as a Director on March 30, 2012 along with Noticee no. 7. Apart from Scal, Noticee no. 9 acted as a director in BDRECL, Sunflower, Archway, N W Exports Limited, Nowrosjee Wadia and Sons Limited, Pentafil, Wadia Investments Limited, BDS, Wadia Techno-Engineering Services Limited.

46. I find that all these Noticee directors of Scal i.e. Noticee no. 6, 7, 8 and 9 were associated with Wadia Group companies, either as director or as CFO, at varying duration, during the Investigation Period. It is also an undisputed fact that these Noticees did not draw any remuneration or sitting fees for handling their duties as director of Scal. When posed with this query during SEBI's investigation, as to why would they not draw any remuneration from Scal, all these Noticee directors submitted that Scal did not follow the practice of offering remuneration to any of its directors. SEBI's investigation has also revealed that none of the directors were offered any appointment letter or any details about their role and responsibilities in Scal. It is also pertinent to note that, as observed in the previous paragraphs of this order, BDMCL was directly/ indirectly in control of the entire share capital of Scal. Therefore, after considering all the above factors, I find that, as directors of Scal, Noticee no. 6, 7, 8 and 9, were not acting with their independent judgement. Why would these directors join the board of Scal without knowing their role and responsibility or without drawing any remuneration or sitting fees? This unexplained anomalous behavior coupled with the fact that these Noticees were

also simultaneously directors in other Wadia Group Companies and they were drawing remuneration from those respective Wadia Group Companies, clearly shows that the board of Scal owed its allegiance to BDMCL/Wadia Group. In its reply dated July 27, 2021 (which also has been adopted by Noticee no. 6, 7, 8 and 9), Scal has stated that "*No specific duty was assigned to any director. All the directors, jointly, were responsible for the operations of Scal*". In view of the above, I find that, Noticee no. 6, 7, 8 and 9, were jointly in-charge and responsible for the conduct of the business of Scal. It stands to reason, that despite being members of the board of Scal, the involvement of Scal in the perpetration of the fraudulent scheme of misrepresentation of financial statements of BDMCL, took place without their knowledge and approval. I find that these Noticee directors deliebartely chose to remain silent on the practice of Scal undettaking huge obligations under the MoU's, especially considering the precarious financial position of Scal. The obligation of payment of 10% installment under the MoU's was also met by undertaking loan from Wadia Group Companies and other external sources. At the time of entering the MoU's, the construction of ICC Project was stalled and yet Scal continued to enter into MoU's with BDMCL. I find that none of these Noticees appear to have raised any objections to any of these practices. Thus, I note that involvement of Noticee no. 6, 7, 8 and 9, by being deliberate mute spectators to the onging 'Scheme of fraud' without being concerned about their fiduciary duty as director of a company, speaks a lot about the role being played by them, in the perpetration of this Scheme. In view of the above, I find that, Noticee no. 6, 7, 8 and 9, aided and abetted Noticee no. 1 in furtherance of the 'fraudulent scheme of misrepresentation of financial statement of BDMCL', and find them liable for violating the provisions Reg. 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of RFUTP Regulations, 2003 and Section 12A(c) of the SEBI Act, 1992.

47. Noticee no. 10 joined BDMCL as CFO in November 2008. From April 2010 to October 2012, he held dual positions of Joint Managing Director and CFO of BDMCL and thereafter, he acted as only Joint Managing Director of BDMCL upto February 15, 2014. I note that, on behalf of BDMCL, Noticee no. 10 had executed 9 out of the 11 MoU's with Scal. Additionally, for the FY 2011-12 and 2012-13, Noticee no. 10 has also issued certificates under Clause 49(V) of the Erstwhile

Listing Agreement, which as it turns out, were falsely certified that "*the financial statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading……these statements together present a true and fair view of the Company's affairs and are in compliance with existing accounting standards, applicable laws and regulations*". Being the Joint Managing Director/ CFO of BDMCL, I note that Noticee no. 10 was at the helm of affairs at BDMCL during the FY 2011-12 to FY 2013-14. SEBI's investigation has observed that the 'deliberate misrepresentation of financial statements' by BDMCL started in FY 2011-12 with the execution of the MoU's with Scal, and Noticee no. 10 had signed 9 out of 11 MoU's. It is also noted that the financial statements of BDMCL were being misrepresented since the FY 2011-12, and despite the same, Noticee no. 10 had issued certificates under Clause 49(V) of the Erstwhile Listing Agreement for the FY 2011-12 and 2012-13, falsely certifying the authenticity of those statements. Therefore, I find that the involvement of Noticee no. 10 in the impugned scheme of fraudulent misrepresentation of financial statement of BDMCL, is writ large. In view of the above, I find that, alongwith Noticee no. 1, Noticee no. 10 is also responsible for violation of Reg. 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of RFUTP Regulations, 2003 and Section 12A(c) of the SEBI Act, 1992. I note that the SCN has also called upon Noticee no. 10 to show cause as to why penalty should not be imposed under Section 15HB of the SEBI Act, 1992, for the violation of provision of Clasue 49(V) of the Erstwhile Listing Agreement for issuance of a false certificate. I note that Clasue 49 of the Erstwhile Listing Agreement only puts the obligation on the listed company to ensure that it complies with certain corporate governance requirements which aslo includes that the CEO and CFO provide the requisite Certificate. I note that no direct legal obligation falls on the CFO, thus, I find that no penalty is attracted for the said violation by the CFO in the instant case.

<u>Whether Scal a 'related party'?</u>

48. I shall now proceed to examine whether Scal was a 'related party' of BDMCL for the FY 2011-12 to FY 2017-18. I note that Scal was shown as a 'related party' of BDMCL during the FY 2011-12 to FY 2013-14. It is the case of BDMCL that such

disclosure was made by it, out of abundant caution due to an ambiguity in the interpretation of guidelines in AS-18. Since, Scal was already disclosed as a 'related party' for FY 2011-12 to FY 2013-14, thus, the limited question for examination before me is whether, Scal was a 'related party' of BDMCL for the FY 2014-15 to FY 2017-18. I note that for the FY 2014-15, the stipulations of related party disclosures were contained in the Erstwhile Listing Agreement (as amended from April 17, 2014) and for the FY 2015-16 to 2017-18, SEBI (LODR) Regulations, 2015, became applicable from December 1, 2015. As per Clause 49(VII)B of the Erstwhile Listing Agreement (as amended from April 17, 2014), a 'related party' is "*a person or entity that is related to the company. Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party, directly or indirectly in making financial and/or operating decisions* ". Now, as held in the earlier paragraphs of this order, BDMCL held directly and indirectly control over the entire share capital of Scal. Thus, I find that Scal was a 'related party' for the purposes of the Esrtwhile Listing Agreement for the FY 2014-15. I note that Reg. 2(zb) of SEBI (LODR) Regulations, 2015 (which became applicable w.e.f. December 1, 2015), defines related party to mean related party as defined in Companies Act, 2013 or as defined in the applicable Accounting Standards. I note that BDMCL was mandated to follow the 'Accounting Standarads' until FY 2016-17, subsequently, the Indian Accounting Standards became applicable from FY 2017-18. I shall now examine whether Scal was a 'related party' as per AS-18 for the FY 2015-16 and 2016-17. If we go to the definition of 'related party' in AS-18, I note that, para 10.1 in AS-18 defines 'related party' as "*parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.*" As to what constitutes *'significant influence'*, is also defined in AS- 18 itself, as "*participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies.*" I note that para 13 of AS-18 further states that, "*Significant influence may be exercised in several ways, for example, by representation on the board of directors, participation in the policy making process, material inter-company transactions, interchange of managerial personnel,…….*" I note that the said para 13 of AS-18, enumerates certain instances in which 'significant influence' exists. Among those

instances, one such instance is *"material transactions between the related party and the reporting entity".* Now, from analysis of Table 3 and Table 5, as produced in the SCN and reproduced in the previous paragraphs of this order, I find that, over the FY 2011-12 to 2017-18, the real estate business of BDMCL, single handedly contributed to the profits of BDMCL. The sale of flats to Scal during the Investigation Period, contributed to 56% of the total sales in real estate segment of BDMCL. Similarly, Scal carried out all of its transactions with BDMCL only, during the FY 2011-12 to 2017-18, and Scal recorded revenue on the basis of the same.[22] Thus, I find that the transactions between BDMCL and Scal were indeed material, and on this ground alone, BDMCL was said to have '*significant influence'* over Scal and thus Scal ought to have been recognized as a 'related party' of BDMCL for the FY 2014-15 to FY 2016-17. I note that from the FY 2017-18, IndAS became applicable to BDMCL. Thus, I shall now examine whether Scal was a 'related party' in accordance with IndAS 24. I note that Para 9(b)(ii) of IndAS 24 identifies an entity being related to a reporting entity if one entity is an associate of another entity. I note that the term 'associate' is not defined in IndAS 24, however, Reg. 2(1)(b) of SEBI (LODR) Regulations, 2015 draws the definition of 'associate' from Section 2(6) of Companies Act, 2013. As held in the earlier paragraphs of this order, since BDMCL held only 19% in the share capital of Scal, thus it did not fall under the definition of 'Associate' in terms of Section 2(6) of Companies Act, 2013. Thus, I find that Scal was not a 'related party' in accordance with IndAS 24 for the FY 2017-18.

49. In view of the aforesaid examination, it is clear that Scal was a 'related party' of BDMCL for the financial years from FY 2014-15 to 2016-17. I note that in accordance with the stipulations of Clause 49(VIII)A(1) of the Erstwhile Listing Agreement and Reg. 27(2)(b) of SEBI (LODR) Regulations, 2015, BDMCL was required to disclose all material transactions with Scal in the quarterly corporate governance compliance report, which, I find that, it has failed to disclose. I note that, as observed in the preceding paragraph, the transactions between BDMCL and Scal were indeed material. Therefore, I find that BDMCL has violated the provisions of Clause 49(VIII)A(1) of the Erstwhile Listing Agreement (as amended

[22] Para 9.14 at Page 43-44 of the IR.

from April 17, 2014) and Reg. 27(2)(b) of SEBI (LODR) Regulations, 2015. For the aforesaid violations, I find that BDMCL is liable to be imposed with appropriate penalty under Section 15HB of the SEBI Act, 1992 r/w. Reg. 103 of SEBI (LODR) Regulations, 2015

50. I note that all the Noticees have been called upon to show cause as to why penalty under Sections 15HA of the SEBI Act, 1992 should not be imposed on them. As in the present case, violations of Reg. 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of RFUTP Regulations, 2003 and Section 12A(c) of the SEBI Act, 1992. have been made out against Noticee no. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against all these Noticees. Further, Noticee no. 5 is found to have violated Reg. 17(8) and proviso to Reg. 33(2)(a) of SEBI (LODR) Regulations, 2015, for which is liable for imposition of appropriate penalty under Section 15HB of the SEBI Act, 1992. Further, BDMCL has violated the provisions of Clause 49(VIII)A(1) of the Erstwhile Listing Agreement (as amended from April 17, 2014) and Reg. 27(2)(b) of SEBI (LODR) Regulations, 2015. For the aforesaid violations, I find that BDMCL is liable to be imposed with appropriate penalty under Section 15HB of the SEBI Act, 1992 r/w. Reg. 103 of SEBI (LODR) Regulations, 2015.

51. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act,1992 provides as follows:

> "**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."

52. Regarding the factors of Section 15J of SEBI Act, 1992, I note that there is no assessment in the SCN regarding the amount of disproportionate gain or unfair advantage gained by the Noticees, as a result of the alleged violation. In fact no such assement is possible in facts of the present case. Further, the SCN also does not specify the amount of loss caused to investor or group of investors, rightly so, as observed in the earlier paragraphs of this order, the impact of 'concealment of a real picture and postulation of artificial picture', on the share price of a scrip, can hardly be assessed and recreated without the actual events taking place in reality. Thus, it is practically impossible to quantify the loss caused to investors in the event of mispresentation of financial statements. I note that there is no material on record to indicate that the Noticees have been found to have committed similar violations any time in the past. I note that because of the misrepresentation of financial statements of BDMCL, the revenues and profit of BDMCL were inflated by Rs. 2,492.94 crores and Rs. 1,302.20 crores, respectively, during the period from FY 2011-12 to FY 2017-18. Subsequently, Scal's real estate business was ultimately merged with BDMCL with effect from July 1, 2018. I also note that the SCN does not allege any diversion of funds/ misutilization or siphoning of assets of the listed company, for the benefit of promoters or directors of BDMCL/ Scal. I note that Noticee no. 3 was the non-executive Chairman, Noticee no. 4 was the non-executive director and Noticee no. 5 was the Managing Director of BDMCL, during the impugned period of default. I also note that Noticee no. 3 though was designated non-executive Chairman, but he was found to be involved in the day-to-day affairs of BDMCL. Noticee no. 10 was the joint Managing Director of BDMCL from April 2010 to Fevruary 2014. He was also the CFO of BDMCL from November 2008 to October 2012. On behalf of BDMCL, Noticee no. 10 had executed 9 out of the 11 MoU's with Scal. Further, as observed in the preceding paragraphs, Noticee no. 6, 7, 8 and 9, were the directors of Scal, during the impugned period, who were jointly responsible for all the functions of Scal.

Directions and monetary penalties:

53. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A),11B(1) and 11B(2) of SEBI Act, 1992 read with Section 19 and Section 11(2)(e) of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for holding inquiry and imposing penalty by adjudicating officer) Rules, 1995, direct as under:

(i) The Noticee no. 1, 3, 4, 5 and 10, are restrained from accessing the securities market in any manner whatsoever, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever, for a period of two (2) year, from the date of coming into force of this order;

(ii) The Noticee no. 2, 6, 7, 8 and 9, are restrained from accessing the securities market in any manner whatsoever, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;

(iii) The Noticee no. 3, 4, 5 and 10, are prohibited from being associated with the securities market in any manner whatsoever, including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI, for a period of one (1) year, from the date of coming into force of this direction;

(iv) The Noticee no. 1, 2, 3, 4, 5, 6, 7, 8, 9,10 and 11, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)

Noticee no. 1	The Bombay Dyeing & Manufacturing Company Ltd.	Section 15HA of the SEBI Act, 1992.	Rs.2,00,00,000/- (Rupees Two Crore Only)
		Section 15HB of the SEBI Act, 1992	Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only)
Noticee no. 2	Scal Services Limited	Section 15HA of SEBI Act, 1992	Rs. 1,00,00,000/- (Rpeees One Crore Only)
Noticee no. 3	Mr. Nusli N Wadia	Section 15HA of SEBI Act, 1992	Rs. 4,00,00,000/- (Rupees Four Crore Only)
Noticee no. 4	Mr. Ness N Wadia	Section 15HA of SEBI Act, 1992	Rs. 2,00,00,000/- (Rupees Two Crore Only)
Noticee no. 5	Mr. Jehangir N Wadia	Section 15HA of SEBI Act, 1992	Rs. 4,00,00,000/- (Rupees Four Crore Only)
		Section 15HB of the SEBI Act, 1992	Rs. 1,00,00,000/- (Rupees One Crore Only)
Noticee no. 6	Mr. D S Gagrat	Section 15HA of SEBI Act, 1992	Rs. 25,00,000/- (Rupees Twenty Five Lakh Only)
Noticee no. 7	Mr. N H Datanwala	Section 15HA of SEBI Act, 1992	Rs. 25,00,000/- (Rupees Twenty Five Lakh Only)
Noticee no. 8	Mr. Shailesh Karnik	Section 15HA of SEBI Act, 1992	Rs. 25,00,000/- (Rupees Twenty Five Lakh Only)
Noticee no. 9	Mr. R Chandrasekharan	Section 15HA of SEBI Act, 1992	Rs. 25,00,000/- (Rupees Twenty Five Lakh Only)
Noticee no. 10	Mr. Durgesh Mehta	Section 15HA of SEBI Act, 1992	Rs. 50,00,000/- (Rpeees Fifty Lakh Only)

(v) The said Noticees shall remit / pay the said amount of penalties within 45 days from the date of coming into force of this order. The said Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/

Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, CFID-SEC-2, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

54. The obligation of the Noticees, restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of coming into force of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

55. This Order comes into force with immediate effect, except for direction at para 53(iii), which shall come into force after one month from the date of this order.

56. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of mutual funds to ensure necessary compliance.

Sd/-

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: October 21, 2022
Place: Mumbai