BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/19290]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Mr. Rana Kapoor
(PAN: AHIPK0411A)

In the matter of AT1 bonds of YES Bank Limited

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received multiple complaints from investors of Basel III compliant Additional Tier 1 Bonds (hereinafter referred to as '**AT1 Bonds**') issued by YES Bank Limited (hereinafter referred to as '**YBL/Company/Yes Bank/By Name'**) in respect of selling of these AT1 Bonds by YBL. Some of the complaints received by SEBI are highlighted as under;

Name of Complainant	Date of Complaint	Amount of investment (Rs)	Allegation by complainant
Shri Hari Prakash	18/11/2020	5,00,000/-	AT1 bonds were palmed off to innocent and gullible retail senior citizens under the guise of Super FDs. Invested in Nippon India Equity Hybrid Fund
Shri Kartik Sharma	21/10/2020	9,69,563/-	Incorrect details mentioned in the mandatory document for AT1 Application form

Shri N Ranamoorthy	05/07/2020	10,57,747/-	Yes bank was engaged in manipulative or fraudulent or deceitful or unfair trade practices
Qualichem industries Pvt Ltd	09/03/2020	80,00,000/-	It was informed that these bonds are safer then FD and equity shares of Yes Bank
Shri Rushabh D Rach	09/03/2020	51,60,000/-	Sold At-1 bonds by Yes First Wealth Management
Shri Himanshu D Rach	09/03/2020	50,00,000/-	Sold At-1 bonds by Yes First Wealth Management
Ms Rupali H Rach	09/03/2020	50,00,000/-	Sold At-1 bonds by Yes First Wealth Management
Shri Prithvi Dhaka	12/03/2020		Yes Bank Relationship manager lured to break FD and invest in AT1 bonds
Shri N Hari Praksh	15/03/2020	40,00,000/-	Was told that the investment is safe as it is issued by a very large bank with very strong credit rating
Shri Rabindranath Mukherjee	23/04/2020	50,00,000/-	RMs and the Managers concerned of Yes Bank branch, Russel Street, Kolkata sold the bonds explaining that it is normal FD with 5 year lock in period. The FD amount was renewed to purchase this bonds.

2. Subsequently, SEBI conducted an investigation in the matter of sale of AT1 Bonds by YBL for the period from December 01, 2016 to February 29, 2020 (herein after referred to as '**Investigation Period'**). The scope of the investigation was to ascertain whether the AT1 bonds of YBL issued initially to institutional investors were miss-sold to retail investors by YBL officials and to ascertain whether the sale of AT1 bonds by institutional investors which sold such bonds to retail investors through YBL resulted in violations of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), during the Investigation Period.

3. During the investigation, SEBI observed that under the instructions of Mr. Rana Kapoor (hereinafter referred to as "**Noticee/By Name**"), Managing Director of the YBL for the period between 2004 till January 31, 2019, Mr. Vivek Kanwar, head of Private Wealth Management Team (hereinafter referred to as '**PWM Team**'), Mr. Ashish Nasa and Mr. Jasjit Singh Banga, who were part of PWM Team at the relevant time facilitated (designed the process) reselling of AT1 Bonds of YBL, from institutional

Investors to individual investors. Further, SEBI observed that during the process of reselling of AT1 Bonds, the individual investors were not informed about all the risks involved in subscription of AT1 Bonds as required. Therefore, it was alleged that the AT1 Bonds were miss-sold to the individual investors and the YBL and its officials including Mr. Rana Kapoor violated provisions of Section 12A(b) and 12A(c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Regulations 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations read with Explanation (1) to Regulation 4(2) of the PFUTP Regulations.

4. Therefore, SEBI initiated adjudication proceedings against them under the provisions of Section 15HA of SEBI Act for the aforementioned violation of provisions of Section 12A(b) and 12A(c) of the SEBI Act and Regulation 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations read with Explanation (1) to Regulation 4(2) of the PFUTP Regulations. Subsequently, adjudication proceedings in respect of YBL, Mr. Vivek Kanwar, Mr. Ashish Nasa and Mr. Jasjit Singh Banga were concluded vide Adjudication Order dated April 12, 2021. With respect to Noticee i.e. Mr. Rana Kapoor, taking into account the fact that he was in jail, it was decided that adjudication proceedings will be conducted separately so that he would be able to get reasonable opportunity to contest the allegations levelled against him in the SCN and to enable him to make a proper representation of the case. The present Order is to conclude the adjudication proceedings initiated against Mr Rana Kapoor.

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI, vide Communiqué dated October 26, 2020, appointed Shri B. J. Dilip (hereinafter referred to as "**Erstwhile AO"**) as the Adjudicating Officer under Section 19 read with Section 15I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge the aforesaid violations alleged to have been committed by Yes Bank, Vivek Kanwar ,Mr. Ashish Nasa, Mr. Jasjit Singh Banga and Mr. Rana Kapoor under the provisions of Section 15HA of SEBI Act. Thereafter, pursuant to transfer of Shri B. J. Dilip, the undersigned was appointed as AO vide Communique dated December 31, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common Show-Cause Notice (hereinafter referred to as '**SCN**') dated October 28, 2020, was issued to the five entities named above, under rule 4 of the Adjudication Rules by the Erstwhile AO to show-cause as to why an inquiry should not be initiated against them and penalty, if any, not be imposed under relevant provisions of SEBI Act for the violations alleged to have been committed by them.

7. The SCN, *inter alia,* alleged the following:

   a. *Subsequent to "Yes Bank Limited Reconstruction Scheme, 2020" notified by the Government of India in its Gazette dated March 13, 2020, YBL filed a press release on the exchanges wherein it submitted that it has decided to fully write down its Basel III compliant AT1 Bonds aggregating to Rs.8415 crore.*

   b. *SEBI had received several complaints in the matter of AT1 bonds of YBL. The complainants have inter-alia raised the following issues:*

      i. *AT-1 Bonds being risky and volatile were not meant to be sold to individual investors. Individual investors were restricted to participate in the primary market during the issuance of AT1 bonds and hence the product should not have been sold to them in the secondary market also. As such, allegations of mis-selling of the bonds by YBL officials were mentioned in some of the complaints.*

      ii. *Individual investors were not provided with the Information memorandum/Term Sheet by YBL prior to investing in the AT1 Bonds of Yes Bank.*

      iii. *The individual customers of YBL were persuaded to shift their investments in Fixed Deposits to AT-1 Bonds. The AT-1 Bonds were offered to them as a super Fixed Deposit Product with high safety features, higher rate of return and a lock-in period of five years. The risk associated with such Bonds was never disclosed to the individual investors.*

      iv. *The Bondholders who had sought details of the investment, were informed by YBL officials that their investment would be reflected in their Demat Account and the same did not require any documentation.*

c. *In view of the above, SEBI conducted an investigation in the matter. The scope of the investigation was to ascertain whether the AT1 bonds of YBL issued initially to institutional investors were mis-sold to retail investors by YBL officials and to ascertain the role of institutional investors which sold such bonds to retail investors through YBL officials resulting in violations of provisions of PFUTP Regulations during the period December 01, 2016 to February 29, 2020.*

d. *During the course of investigation, Relationship Managers and Officials of YBL and Indiabulls Housing Finance ('IBHF') were called for statement recording. The following are inter-alia the submissions made by the said officials during statement recording:*

   I. *Mr. Arun Oberoi (Relationship Manager – YBL)*

   1) *Officials of Private Wealth Management Team ('PWM Team') of YBL introduced Relationship Managers ('RM') to AT1 Bonds via emails and con-calls. The emails shared by Mr. Arun Oberoi with SEBI have all the procedural details on how AT1 Bonds were sold to the investors. Prospective clients were approached. Once they agreed, an email was sent to Jasjit Singh Banga(Program Manager of PWM Team of YBL) or any other person assigned to block the bond deal. Subsequently, he shared ICCL registration cum bond application form, Client Master List (CML) copy of the Demat account, cancelled cheque and PAN card copy with Noticee 5. The clients received the bonds in their demat accounts within two days.*

   2) *Mr. Arun Oberoi stated that he has never told his investors that AT1 bonds are 'super FD' or safer than Fixed Deposits. Regarding approaching the investors, he approached High net worth individual clients of YBL. He met those customers and probed them on their existing wealth products and risk appetite. After understanding the time horizon of investment and risk appetite, he pitched AT1 bonds to them.*

   3) *Mr. Arun Oberoi stated that he informed the clients about the credit risk of the bonds verbally and explained loss absorbency feature to them. No such documents were signed by the customers in this regard. This was not part of the sale process.*

4) *Selling of AT1 bonds which is part of Mr. Arun Oberoi's portfolio investment used to help him to generate revenue which helped him to achieve his target set by the bank for him. Meeting target gives monetary incentive to Relationship Managers.*

II. *Narendranath T G (Relationship Manager – YBL)*

1) *Narendranath stated that he got the intimations regarding sale of AT1 bonds from Wealth management team and was asked to meet the investors regarding the said product.*

2) *Narendranath stated that he never told his investors that AT1 bonds are 'super FD' or safer than Fixed Deposits.*

3) *Narendranath stated that he had sold these bonds to only one client and he had informed the clients that it is an unsecured bonds and it depends on the health of bank and can be written off. He does not have supporting documents for the same.*

4) *He explained the loss absorbency features to the clients. No signatures were obtained in this regard.*

III. *Ashish Nasa, i.e., Noticee 4 (Heading OPDT – Part of PWM Team in YBL)*

1) *Ashish Nasa stated that he was heading department of OPDT (Owner, Promoter, Director and Top Management) part of PWM Team which was inter-alia handling secondary distribution/ sale of AT1 bonds.*

2) *The initial subscribers of the bond would approach the Debt and Capital Market Team ('DCM') to sell their bonds. DCM would then approach Vivek Kanwar and/or Ashish Nasa of PWM Team to down sell or distribute the bonds through the secondary market. Mr. Rajat Monga being the CFO was heading the DCM along with Nirav Dalal.*

3) *PWM Team was not selling to the institutional investors in secondary market and was primarily selling to individual investors.*

4) *Bonds pricing were agreed between PWM Team and DCM Team based on the trend in the secondary market.*

5) *Noticee 3, Ashish Nasa and Jasjit Singh Banga designed the process to sell AT1 bonds.*

6) *Risk profile of the customers were not taken while selling the AT1 Bonds. Also, there were no instructions to not sell such bonds to customers with low risk appetite.*

7) *Risk differential between AT1 bond and FD is missing in the sales pitch since it is not a pure numerical number and was to be explained by way of credit event clauses in the term sheet.*

8) *Return differential as benchmark to FD was taken considering the similarity of income tax applicability of FD and debenture coupons. Since the credit event clause need to be explained and same was communicated through term sheet. Risk differential between FD and AT1 bond was covered in training and not part of sales and verbal pitch to RMs. In verbal sales pitch there is a reference to CET 1*

9) *Reference to marquee names including Government Owned Entities, Insurance Companies, Public Trust Entities like Mutual Funds and even Employee Provident Funds in the sales pitch was explained to give the broad indication on the profile of institutional investors since it had come in few questions from prospective investors about the quality of institutional investors holding the bonds. The idea of adding this was not from investors' products suitability perspectives.*

10) *Earlier minimum ticket size was Rs 50 Lacs and RM activation was very low. To increase the RM activation, regional heads requested for reduction of ticket size so that more RMs could showcase the instrument to their clients at low value.*

IV. *Jasjit Singh Banga, i.e., Noticee 5 (Program Manager of PWM Team in YBL)*

1) *Term sheets were shared with the RMs in turn they were informed to share it with the clients as it contained all the features including the risk features of the bond. However, there was no instruction or process at YBL to ensure that the same was being shared or informed to the client.*

2) *Earlier minimum ticket size was Rs 50 Lacs and on the request of the RMs the ticket size was reduced to Rs 30 lakhs as they were receiving demands from clients at lower value.*

3) *To the knowledge of Noticee 5, AT1 bonds were not sold as Super FD and there were no such instructions.*

V. *Vivek Kanwar, i.e., Noticee 3 (Head of PWM Team in YBL)*

1) *The role of YBL was to facilitate sale of AT1 bonds in secondary market from the institutions who were holding these bonds mainly from primary subscription. YBL believed that it was a good product for its customers since it enjoyed very high rating and would also create market for such bonds. DCM facilitated from where these bonds will be sold to the HNI customers of the Bank.*

2) *These bonds enjoyed very good rating. They were always AA and hence, it was perceived to be a low risk product. In spite of that all risks associated with bonds were informed to the customers. Confirmation in this regard was taken from some customers.*

3) *At the time of selling these bonds, since these bonds were low risk product, risk profiling was not mandatory for low risk products. However, some of the customers who may have been common for products like PMS, AIF would have risk profiling done. Risk profiling was made mandatory later on. Also, there was no such instructions to not sell such bonds to customers with low risk appetite especially senior citizen.*

4) *Universally, Government of India bonds and FDs are considered benchmarks for rate comparison. Hence, it was compared with FDs. However, full disclosures regarding the risk associated with bonds including term sheet were shared with customers.*

5) *The fact that the marquee institutional investors including mutual funds who invested more than 2000 crore in these bonds in their various debt schemes was an indication to convey attractiveness of this bond. The mutual fund schemes which were holding to these bonds were in the 'moderate risk' category (as per SEBI classification). Therefore, these bonds were perceived to be having 'moderate risk'.*

6) *RMs requested for a lower ticket size in order to ensure wider participation.*

7) *To the knowledge of Noticee 3, AT1 bonds were not sold as Super FD.*

8) *AT1 bonds were offered to individual investors in order to create shelf space for institutional investors who had subscribed to AT1 bonds in primary market so that they could subscribe to future issuances of YBL.*

VI. *P Rakesh (Group President - Debt Capital Market Team in YBL)*

1) *As per the instructions received from then MD & CEO – Mr. Rana Kapoor, i.e., Mr. Rana Kapoorto facilitate distribution of bonds held by certain identified institutional investors mainly IBHF, DCM Team explored if any buying interest from institutional investors in secondary market and retail team explored buying interest in the retail and HNI clients space. To the best of his knowledge, there was no profit/commission sharing model for facilitating such sale. All profit/ losses were accounted by the bondholders themselves.*

2) *Since, there was explicit instruction from Noticee 2, the team reached out to the identified primary subscribers (mainly IBHF) in order to check whether they wanted to sell and facilitated a transaction as and when there was a buyer.*

3) *Going by the email communications from Noticee 2, the reason behind facilitating this sale was to free up limits/create shelf space for the identified institutional subscribers in order to enable them to subscribe to any future issuance by the Bank.*

4) *DCM would give guidance on the price range immediately after the roll out of the sales by retail team. Post that initial phase, it was largely based on the demand/ supply and feedback from the retail team. The trading on the BSE exchange platform used to be very low volumes and hence that price was not considered as fair reflection.*

5) *Referring to an email during statement recording, P Rakesh submitted that Granular Distribution – basically means distribution to non-institutional investors (mainly public at large i.e. individual investors)*

VII. *Nirav Dalal (Head of Debt Capital Market Team in YBL)*

1) *Yes Bank facilitated the distribution of these bonds held by a few specific primary subscribers namely IBHF, DHFL and Reliance Mutual Fund. They were told by the then Mr. Rana Kapoor to do so as it would help create shelf space for follow on primary issuances of AT1 Bonds of the bank.*

2) *The DCM team was told by Mr. Rana Kapoor to facilitate the sell down of the YBL AT1 bonds held by specific primary subscribers, particularly IBHF. On being thus instructed, the DCM team reached out to the said subscribers.*

3) *The pricing was largely determined based on the demand/supply of the bond and feedback from the retail team.*

4) *Distribution Update was sought by Mr. Rana Kapoor on a weekly basis. Noticee 2, vide mail dated on April 25, 2017, urged best efforts in ensuring that these investors made profits, in aggregate, on sale of their AT1 bonds. In response to Noticee 2's aforesaid email, he provided*

his comments. The bank had till then facilitated the sale of Rs. 760 crore of the YBL AT1 bonds held by IBHFL. Of these, bonds aggregating Rs. 600 crore were bought by Templeton MF while the remaining Rs. 160 crore were sold by the PWM team to the bank's retail/ HNI clients. The sale in the institutional segment was at a yield higher than where it was sold in the retail/HNI segment (the yields in the institutional segment are invariably higher than in the retail/HNI segment as the institutional investors seek the benefit of economies of scale, i.e., buying in bulk). The feedback received from the PWM team was that they were confident of down selling, at a profit, the residual AT1 bonds aggregating Rs. 240 crore held by IBHFL. In light of this feedback from the PWM team and the waning demand in the institutional segment, it was anticipated that the bank would be able to facilitate the sale of the residual bonds through the PWM team, at a profit.

VIII. Rajat Monga (CFO in YBL)

1) *Yes Bank facilitated the distribution of these bonds held by a few specific primary subscribers particularly IBHF. They were told by Mr. Rana Kapoor to do so as it would purportedly help create shelf space for follow on primary issuances of AT1 Bonds of the bank.*

2) *The DCM team was told by Mr. Rana Kapoor to facilitate the sell down of the YBL AT1 bonds held by specific primary subscribers, particularly IBHF purportedly to help create shelf space for follow on primary issuances of AT1 Bonds of the bank. However, he was not sure whether someone from YBL contacted the sellers or vice-versa.*

IX. Harshil Suvarnkar (AGM/DGM Treasury in Indiabulls Housing Finance)

1) *Harshil Suvarnkar's role was to execute the instructions received from DMD/Investment Committee of IBHF for purchasing/selling AT1 bonds. Other AT1 Bonds/Bank Bonds were also purchased and sold by IBHF.*

2) *Investment Committee decided to purchase the bonds and he was only instructed to do so by the DMD. The decision to sell was taken at a higher level but reason to sell in his view was*

that a carry adjusted loss (opportunity cost vs investing in liquid funds) would not have been made and generally treasury of IBHF used to churn its investments.

3) *They were mainly coordinating with the DCM – Team for selling the bonds and then they used to connect us to the Retail Team of YBL.*

4) *Harshil Suvarnkar was approached by YBL for coordinating the sale at the same time he was also informed by his boss (Ashwini Kumar – DMD) that YBL will call him for doing the needful.*

5) *To the best of the knowledge of Harshil Suvarnkar, there was no formal/informal agreement between YBL and IBHF that YBL will facilitate the sale of bonds in the secondary market.*

6) *The main benefit for selling the AT1 bonds was to get liquidity back on the balance sheet of IBHF and it was helping to churn the investments.*

7) *Harshil Suvarnkar stated that he was not sure whether YBL was taking special efforts to recoup losses for IBHF but as he understands most of the secondary market transactions might have resulted in capital loss for IBHF especially for Yes Bank 2017 AT1 Bonds as the yield had increased during that period and Yes Banks financial position had deteriorated.*

8) *While selling the bonds through the Retail Team – YBL, they would approach them with a price and they would check us whether IBHF is ok with this price for selling the bonds. Also, while selling the bonds through the DCM Team of Yes Bank, the prices were determined on a case to case to basis.*

9) *AT1 bonds were also sold without the involvement of Yes Bank through brokers, directly to institutional clients, etc.*

10) *IBHF had also approached institutional buyers directly for the secondary market sale of Yes Bank AT1 bonds.*

11) *As per his understanding, IBHF did not receive any placement fee from Yes Bank for subscribing to the bonds during the primary issue.*
12) *There were no commissions given by IBHF to Yes Bank for facilitating the secondary market sale of AT1 Bonds.*

13) *AT1 bonds are riskier compared to any other debt product.*

e. *YBL, vide emails dated July 31, 2020, August 26, 2020, September 18, 2020, October 08, 2020, October 24, 2020 and other emails, inter-alia made the following submissions:*

(i) *YBL raised Rs 3,000 crore and Rs 5,415 crore through private placement of AT1 Bonds in the nature of debentures on December 23, 2016 ('Issue I') and October 18, 2017 ('Issue II'), respectively. Subsequent to allotment, the AT1 Bonds were listed on Bombay Stock Exchange of India Limited.*

(ii) *The AT1 Bonds were initially issued only to Institutional Investors. Pursuant to listing of the AT1 Bonds, certain Retail Investor(s) have bought it from the Institutional Investors, which is a secondary market transaction. The Bank had facilitated purchase of AT1 Bonds for certain Retail Investor(s). In such secondary market transaction, no monies are received or paid to the Bank by such Retail Investors, as it is a bilateral transaction between the relevant Institutional Investor and the Retail Investor. The Retail Investor(s) seem to have bought the AT1 Bonds considering the higher returns and knowing fully well the risks associated to AT1 Bonds, as indicated in their respective Information Memorandum(s) ('IM') for Issue I & Issue II.*

(iii) *The Bank as a value added service had facilitated the transaction for such investors [i.e., introducing the buyer and seller or facilitating purchase through Stock Exchange / Indian Clearing Corporation Limited ('ICCL')]. Hence, the AT 1 Bonds were neither issued nor sold to the Retail Investor(s) directly by the Bank and all such transactions were secondary market transactions. The AT1 Bonds were purchased by the Retail Investor(s) through the platform provided by Stock Exchange and settled by ICCL.*

(iv) AT1 Bonds could be purchased by the Retail Investor(s) only in the secondary market. Thus, all trades by the Retail Investor(s) were done through the platform provided by Stock Exchange and settled through the ICCL.

(v) Since the trades were settled through ICCL, the purchaser [i.e. Retail Investor(s) in the present case] was required to transfer their funds to ICCL where the trades were matched. Once trades were matched, the seller received the funds, while the AT1 Bonds would get credited to the purchaser's demat account. The demat account could be with the Bank's Depository Participant or any other Depository Participant as per the choice made by the purchaser at the time of investing in the AT1 Bonds.

(vi) AT1 Bonds were issued in terms of their respective IM(s), which were filed with the Stock Exchange by the Bank at the time of listing and as such were publicly available to all persons desirous of investing in such bonds. The said IM(s) clearly highlighted the underlying risk, in the risk disclosure / disclaimer that investment in debt and debt related securities involve a degree of risk and investors should not invest any funds in the debt instruments, unless they can afford to take the risks attached to such investments. Further, the investors were advised under the IM(s) to read the risk factors carefully before taking an investment decision in relation to Issue I & Issue II. The Retail Investor(s) who had invested in the AT1 Bonds are deemed to have invested with full knowledge and awareness of the risk factors and the terms and conditions of the AT1 Bonds. Like any other market securities/instruments, the AT1 Bonds are also subject to market risks. Hence, the Bank submits that there has been no mis-representation by the Bank of the nature of instruments or benefits thereof. The Retail Investor(s) have invested in the AT1 Bonds with full knowledge of its facts, risks and the terms associated therewith.

(vii) YBL also submitted the list of initial investors of AT1 bonds, details of the bond holder as on March 13, 2020 being the date of notification of the YES Bank Reconstruction Scheme and investment in the AT1 Bonds facilitated by Yes Bank relationship managers in the secondary market.

(viii) DCM team was only facilitating the sale from pre-identified sellers and were not arranging the sellers as indicated in the query. The then MD & CEO, i.e., Mr. Rana Kapoor instructed the DCM team to facilitate sale of AT1 bonds held by certain institutional investors. Accordingly, DCM team facilitated the same to other institutional investors as well as to Private Wealth Management groups in secondary market. In short, DCM only facilitated a transaction between a willing buyer and a willing seller, on the terms mutually agreed between them.

(ix) The bank had not taken any fees either from the Seller or Buyer of AT1 bonds. Mr. Rana Kapoor was of the view that it is important to free up the limits/shelf space of institutional investors (who subscribed in the primary issuance), so that they can participate in the subsequent issue(s), as and when launched by the Bank.

(x) There was a push from Mr. Rana Kapoor to facilitate secondary market sale. The same is evident from his remarks on the update mails directing various teams in the bank to explore facilitation of secondary market sale.

(xi) Mr. Rana Kapoor instructed DCM team to primarily facilitate sale of AT1 bonds held by IBHF and DHFL and sought distribution updates on a regular basis.

(xii) The Bank has only 'facilitated' sale of bonds in the secondary market for few institutional investors, who had participated in the primary issuance. Hence, it is denied that the bank decided to down sell the bonds 'only' to individual investors in the secondary market. The Bank facilitated the secondary sale to Institutional Investors as well. As per market practice and in the absence of any legal/regulatory restrictions, these bonds are freely traded and bought by Retail and HNI investors in the secondary market. All transactions in secondary market were reported and settled on either ICCL platform of BSE or NSCCL platform of NSE. AT1 Bonds of YES Bank & other banks were sold by other broking/wealth management outfits as well in Secondary market.

(xiii) *Formal Risk profiling was not mandatory for products/instruments, which were considered low risk. YBL AT1 Bonds enjoyed "AA" rating when the sale was facilitated to PWM clients of the Bank. As per rating definitions of ICRA, "AA" rating indicates "high degree of safety regarding timely servicing of Financial Obligation. Such instruments carry very low credit risk".*

(xiv) *All products including AT1 Bonds were facilitated with full disclosures to all customers including senior citizens. YBL AT1 Bonds enjoyed "AA" rating while their sale was facilitated to PWM clients of Bank. RMs were duly instructed to communicate about the "perpetual nature" of the instruments and were informed about the first available "call option", given the long term nature of the Bonds; coupon discretion; loss absorbency feature, etc. Nomination facility was also available in this instrument through Demat account. The Bank did not target a particular customer segment. It was facilitated in general to all the customers who were desirous of investing in the AT1 Bonds.*

(xv) *With respect to the 'Verbal Pitch for Tier 1 Bond' prepared by YBL's PWM team for the Relationship Manager highlighted the higher interest rate of AT1 Bonds vis-à-vis the FDs, but it is silent on the higher risk of AT1 Bonds vis-à-vis the FDs, YBL had, inter-alia, submitted that Bonds issued by Government of India and Fixed Deposits of various banks are universal benchmark for communicating rate differential (i.e., spread) that other instruments offer over them vis-à-vis the risk that is associated with those instruments. The spread offered is the reward that customer is willing to take; for the risk that they would be taking. Full disclosure regarding the risk associated with AT1 Bonds were made in the "Term Sheet", which was duly shared with customers. Further, the income tax treatment for interest on Fixed Deposit & coupon on Debentures is same including the "Head of Income" under which income is considered. Since most High Net worth Individuals compare post tax returns for taking investment decision, hence the benchmark was considered appropriate from return comparison perspective. RMs were instructed to communicate about term sheet clauses including "Coupon discretion", "Dividend stopper" and "Loss Absorbency" to all clients and the same was explained to RMs in detail over training program(s) conducted by the Bank.*

Only after the RMs received confirmation of interest from the concerned customer on terms including price, the transactions were facilitated by the Bank. Hence, the Bank did not adopt a selective approach while facilitating the down sell of AT1 bonds in the secondary market, as all the relevant risks were explained to the potential customers.

(xvi) W.r.t. SEBI queries that YBL had no system in place to ensure that the term sheet of AT1 bonds were shared with the clients before AT1 bonds were sold to them, YBL, inter-alia, submitted that the Bank had given clear instruction to all its RMs on the sales pitch and documents to be shared with all clients. The very first line of all introductory emails and "Step by Step Process" refers about sharing the term sheet. RMs were mandated to speak with the client and to share the "introductory email" along with "Term Sheet". The email mentioned amongst other things mentioned in reasonable detail the (i) nature of the Bonds; (ii) coupon; (iii) pricing and term sheet; (iv) brief summary of the product; (v) offer of Investor to sell Bond in Secondary Market; (vi) Perpetual Nature of the Bond and (vii) loss absorbency feature, etc. The "Term Sheet" mentioned all the terms and conditions including risks associated with investments in the Bonds.

(xvii) W.r.t. SEBI query "submissions made by certain officials/ex-officials of PWM Team of YBL that confirmation was not taken from all the customers that they have understood the risks associated with the bond", YBL, inter-alia, submitted that the Bank had shared all the information and documents as required by the customers to take an informed decision. Further, the offer document was freely available on the stock exchanges for perusal by all prospective investors. The Bank assumed that the customer evincing interest in purchasing the bonds have read and understood the terms and risks associated with it and are taking an informed decision to invest in the bonds. Few customers who had doubts/queries, approached the Bank to explain the product features in detail. It is pertinent to note that none of the RMs were provided any direct incentive/special incentive to push AT1 bonds to their customers.

(xviii) The AT1 bonds were never sold as "Super FD" or "as safe as FD" and the Bank has not come across any such instance which said "AT1 Bonds" were "Super FDs" or "as safe as FD".

(xix) *W.r.t. SEBI query "in various emails it was observed that instruction was given by PWM team of YBL to RMs that while pitching for AT1 Bonds the RMs should tell the clients that "The superior quality of the bond generated high interest from some government entities as well. Some of the investors include marquee names including Government Owned Entities, Insurance Companies, Public Trust Entities like Mutual Funds and even Employee Provident Funds."… Given that the product suitability of institutional investors are different from that of individual investors, why was YBL invoking product interest of institutional investors to down sell comparatively risky product to individual investors?" , YBL had , inter-alia, submitted that the Bank from the queries received and communication with the customer that an instrument bought by such entities are considered as worthwhile for investment as these large institutional investors would have done thorough evaluation before investing in such bonds. Few customers in their verbal interactions had enquired, if there were any large institutional investor holding in the bonds. It is important to note that only those Institutional investors like Mutual Funds, PFs etc were referred, which had retail investors as the eventual beneficiaries. Hence, it was not out of context to give such an example.*

(xx) *W.r.t SEBI query "Whether the loss absorbency features of the AT1 bonds were clearly explained to the individual investors and investors sign off for having understood these features and other terms and conditions of the bond were obtained from the investors in terms of RBI Circular?", YBL had, inter-alia, submitted that the RMs were advised to share the "Term Sheet" with all the potential customers. The Term Sheet very clearly articulated the Risk Factors including the "Loss Absorbency" features etc., in unequivocal terms. Customers were also specifically informed about the perpetual nature of the instrument; unsecured nature of the instruments; only call option; coupon discretion etc.*

(xxi) *W.r.t. SEBI query "Whether the bank officials asked the individual investors to break their fixed deposits and/or other investment products to invest the money into these AT1-bonds while assuring that the instruments were safe" YBL had, inter-alia, submitted that there was no such instruction from the management team of the bank.*

(xxii) Noticee 3, Ashish Nasaand Jasjit Singh Banga(Senior Officials of PWM Team) were involved in designing the step by step procedure and other materials (like Sale pitch, FAQs, etc.) to sell AT1 bonds to retail individual investors.

(xxiii) Yes Securities Limited (YSL) - Associate company of YBL has not sourced AT 1 bonds from any institutional investors or otherwise to down sell to any investor (retail or otherwise) in secondary market. As a prudent governance measure, YSL does not recommend nor have any coverage on any Yes Bank instruments/securities. This includes YBL AT1 bonds. Only if there is a specific request from a YSL client to buy a YBL AT1 bond, does YSL execute/facilitate a transaction in the said bonds, that too on the Exchange platform.

(xxiv) Yes Bank was also requested to share the data with respect to the numbers of clients with whom term sheet was shared. In this regard, they have submitted that they have not maintained such data.

(xxv) Yes Bank has also provided data of the RMs who had facilitated the secondary market sale of AT1 bonds.

(xxvi) Further, Yes Bank also submitted copy of their internal review report where, inter-alia, they have noted the following:

- *On examining 30 sample transactions, it was observed that prescribed email with term sheet and standard email wording w.r.t. 'the documentation and process w.r.t. recommendation of the AT1 bonds to retail & HNI investors, including agreements, if any, done by Yes Bank with the primary investors of the AT1 bonds for the said recommendations' were sent by the RMs for 5 transactions. For the balance 25 transactions, (i) the concerned RMs have mentioned that they had explained the clients the necessary details and handed over the necessary supporting documents to the clients (22 transactions). (ii) RM has mentioned that prescribed email was sent, client* *was met personally to explain about AT1 bonds and deal confirmation was shared (2 transactions), (iii) RM was not able to provide the prescribed email but provided circumstantial email in this regard (1 transaction).*

- *Further, as per the internal review report, on examining additional 79 transactions, for 6 transactions prescribed email without IM/TS were sent to the clients by RM and for 45 transactions they were unable to comment regarding the sharing of the term sheet with the clients as the RMs have left the services of the bank and they were unable to retrieve the emails sent to the clients.*

(xxvii) *Further, as per the internal report, 'the revenue credit for AT1 bonds bought by YES Bank clients that was facilitated for by YES Bank Retail sales RM was in the range of 1% to 1.5% of the underlying transaction volume and was similar to any other bonds (both primary & secondary) of other banks and organizations, Mutual Funds, PMSs and AIFs, any other investment products sold by YES Bank Retail sales team. The revenue credit against AT1 bonds bought by interested clients was considered as part of the fee income in the RMs goal sheet and was counted against their overall Investment Fee income target'.*

(xxviii) *YBL, vide email dated October 24, 2020, has also submitted the details regarding individual investors as below:*

	Total No. of Individual investors	***No. of Individual investors who were already existing customers of Yes Bank***	***How many Individual investors had existing FDs with the bank***	***For how many Individual investors who had existing FDs with the bank, the FDs were prematurely closed and the same was invested in AT1 bonds***
No. of Individuals	*1346*	*1311*	*789*	*277*
No. of transactions	*1712*	*1680*	*1004*	*305*

Value of Bonds Sold (rounded off to nearest crore)	*679 Cr*	*663 Cr*	*387 Cr*	*80 Cr**

** The aggregate amount of bonds held by these customers were Rs.101 crore however only Rs.80 crore of that investment was funded by pre mature withdrawal of FD's held with the Bank. Aggregate amount FD's held by these Customers with the Bank was Rs.177 crore.*

f. Axis Trustee Services Limited ('Axis Trustee'),vide emails dated July 27, 2020, August 26, 2020, September 04, 2020 and October 09, 2020, had inter-alia made the following submissions:

(i) Axis Trustee was appointed to act as the debenture trustee for the YBL-AT1 bonds

(ii) Axis Trustee in line with its fiduciary responsibility filed on March 16, 2020 the Writ Petition (No. 850/2020) in the Hon'ble High Court, Bombay against the decision of YBL to fully write down the aforesaid bonds aggregating Rs.8415 crores. Apart from YBL, Union of India - Ministry of Finance, RBI, Administrator - YBL, NSDL and CDSL have also been made respondents. The petition has sought inter-alia for the following reliefs:

- *Writ of Certiorari to quash/set aside the Impugned decision of write off of the AT-1 Bonds;*
- *Writ of Mandamus to reverse the effect of any accounting entries, notings, write off, cancellations undertaken pursuant to such decision; and*
- *Ad- Interim Reliefs to restrain the respondents from taking any action in furtherance of the Impugned decision to the write off the AT -1 Bonds.*
- *Additional affidavit seeking reliefs against alleged mis-selling of AT-1 Bonds to retail investors by Yes Bank has also been e-filed with the High Court Registry on May 23, 2020*

(iii) The Hon'ble High Court has passed an order on March 16, 2020 that any action or steps taken by the respondents shall be subject to further orders passed by the Court. Thereafter, in view of the disruptions owing to the lockdown declared, the Hon'ble High Court passed an order on June 15, 2020, July 15, 2020, August 31, 2020 and September 30, 2020 directing continuation of its interim orders to remain in force till October 31, 2020.

(iv) Further Axis Trustee submitted, inter-alia, the details of initial allotment subscribers and benpos data as on 30.06.2020.

g. IndiaBulls Housing Finance Ltd ('IBHF'), vide email dated October 15, 2020 (copy enclosed as Annexure 6), has inter-alia made the following submissions:

(i) The investment in the AT1 bonds was made as a part of their treasury operations and as per standard procedure followed by the Investment Committee of IBHF. The investment in AT1 bonds was in line with our active liquidity deployment in bank/govt. securities in order to reduce/limit negative carry on surplus cash. The decision to invest in AT1 bonds was further strengthen by the higher yield offered on the AT1 bonds.

(ii) The main objective of IBHF's treasury team for selling the AT1 Bonds is to maximise yields on debt instruments and to manage its cash resources with an intention to book gains by actively trading in such debt instruments. However, please note that cash is stock and trade for IBHF; and therefore, in order to meet their short term and mid-term liquidity requirement coupled with the demand for the AT1 bonds, IBHF made partial sales of its holding from time to time.

(iii) The sale of AT1 bonds through YBL was only 12% of the total sales in AT1 bonds. The balance sale of 88% was made through other channels.

(iv) There was no formal/informal agreement between YBL and IBHF for YBL to facilitate the sale of the AT1 bonds in the secondary market.

(v) IBHF did not receive any fee from YBL for subscribing to the AT1 Bonds and also there was no warehousing facility provided by IBHF to YBL in relation to the AT1 bonds.

(vi) IBHF continues to hold AT1 bonds aggregating to Rs. 661.8 crores which were subscribed to in 2016 and 2017. IBHF has also filed a writ petition before the High court of Bombay challenging the AT1 bonds being written down by RBI appointed administrator on the grounds that YBL made gross misrepresentation and incorrect disclosures in the AT1 Bonds offer document.

(vii) The only benefit for IBHF in executing the secondary market sales of the all bonds was to maximise income generated from these bonds and book gains.

(viii) There were no benefits and/or incentives for YBL from IBHF in relation to such secondary market sales of the AT1 bonds. Further, IBHFL did not pay any commission and/or fee in relation to the AT1 bonds sales.

(ix) There was no such assurance from YBL that IBHF will earn profit in aggregate for the secondary market sale transactions facilitated by YBL. There were many instances where IBHF had declined the offers made by the potential buyers of the AT1 bonds which were introduced to IBHF by YBL as such offers were commercially inferior to the offers received through other channels.

(x) The sales prices were determined by us based on offers that we found commercially suitable.

(xi) They had no knowledge of the prospective buyers.

(xii) Further, they have reiterated there were sales to institutional and other investors without the involvement of YBL and this comprised 88% of total sales of the AT1 bonds, and the sales through YBL comprised only 12%.

h. During the course of investigation, copy of certain emails were also provided by YBL and some of the officials of YBL during statement recording. The following was observed from the said emails:

(i) 'Step by step process' for down selling the AT1 Bonds was shared via email by PWM team with RMs which included the Term Sheet. In the said email along with the Term sheet, other documents like application form, standard email to be shared with the investors, FAQs, etc. were also shared with the RMs.

(ii) Vide email dated February 07, 2017, Vivek Kanwar informed his team that 'although we have done systematic decimation of information on these bonds, I still find that many RMs are still not able to make a strong pitch probably this being a new instrument. I am thus enclosing the sales pitch which can be used to open the conversation with customers while pitching these bonds'. In the said verbal pitch shared by the PWM team with their RMs, they have compared the return difference of FD and AT1 Bonds. In the said pitch they have

highlighted that the product should have reasonable liquidity and have also highlighted the interest of various institutional investors in the said bonds.

(iii) *Mr. Rana Kapoor asked his team to go for granular distribution for the AT1 bonds vide its email dated January 13, 2017. Noticee 2, vide email dated March 25, 2017, asked his team that 'With YBL- new capital of 5000cr/potential upgrade selling these bonds should be a cakewalk. Also, ICRA addl AA rating now in place. Please make Hanumanianan efforts.' Subsequently, there is an email dated November 13, 2017 from Mr. Rana Kapoor to his team where he has mentioned 'YBL AT1: (Most imp to selldown granularly)'.*

(iv) *Mr. Rana Kapoor also used to take regular updates (weekly) through emails with respect to the status of the down sale of the AT1 bonds in the secondary market and used to give his comments on the same to his team. Mr. Rana Kapoor through his various emails has shown urgency to down sell the bonds held by the institutional buyers in order to create shelf space in order for them to subscribe to a subsequent issuance of YBL bonds, if any.*

(v) *PWM has reduced the lot size of the bond gradually from Rs 50 Lakhs to Rs 10 lakhs. In this regard, there is an email dated December 02, 2017 from Ashish Nasa where he has asked his team 'Opening of 30 Lac Ticket Size – This was the biggest request item from almost all of you. In order to facilitate this, we have arranged for additional bandwidth at corporate office. While the ticket size is open right away, the volume management at corporate office will go through teething issues till December 11. You may have to bear with bandwidth issues for a week, nonetheless, make the most of the opportunity with lower minimum ticket size.'*

(vi) *Copy of certain emails while dealing in the AT1 bonds were provided by RMs where they had shared the pricing sheet and other documents with the individual investors.*

(vii) *P Rakesh has shared details of the data of down sell of AT1 Bonds made by YBL. Brief details of the same is as under:*

Rs. In Crore

ISIN	Buyers		
	Institutional Clients	**PWM**	**Retiral Trusts**
INE528G08352	1160.00	499.60	169.50
INE528G08394	950.00	423.30	0.30

In view of the above, it was observed that around Rs 923 Crore (11% of Rs. 8415 crores) worth of AT1 bonds were sold to around 1300 individual investors through the PWM Team in the secondary market. The same was done through 650 RMs of YBL.

i. *Investigation observed from the submission of YBL and from the statements on oath by the officials /ex-officials of YBL that YBL was facilitating the sale of bonds in the secondary market for few institutional investors (mainly IBHF), who had participated in the primary issuance, without taking any fee either from the Seller or Buyer of AT1 bonds. Mr. Rana Kapoor was of the view that it was important to free up the limits/shelf space of institutional investors (who subscribed in the primary issuance), so that they can participate in the subsequent issue(s), as and when launched by YBL.*

j. Investigation also observed that PWM Team was facilitating the sale of AT 1 bonds to individual investors in the secondary market and it is observed that Noticee 3, Ashish Nasa and Jasjit Singh Banga were involved in designing the 'step by step process' to down sell the bonds to the individual investors. This 'step by step process' was shared by the PWM team with the RMs wherein they were asked to share the term sheet with the investors. Also, additional material like 'Verbal/sales pitch', FAQs, etc. were also provided to RMs. Further, YBL has submitted that full disclosure regarding the risk associated with AT1 Bonds were made in the "Term Sheet", which was duly shared with customers. Term Sheet clearly articulated the risk factors including the "Loss Absorbency" features etc. However, the following points were observed during the course of investigation:

(i) YBL and senior officials of PWM submitted that there was no system in place to ensure that the term sheet of AT1 bonds were shared with the clients.

(ii) Further, RMs who were called for statement recording failed to provide proof of sharing the term sheet with all the clients to whom they have down sold.

(iii) Further, YBL has submitted that they have not maintained any data with respect to the numbers of clients with whom term sheet was shared. This implies that YBL had no system in place to monitor whether the Term Sheet was being shared by the RMs with the individual investors or not.

(iv) During the course of investigation many individual investors/complainants have also confirmed to SEBI that they have not received any term sheet.

(v) Further, internal audit team of YBL has noted that some of the RMs were not able to provide the proof of sharing the term sheet with the client and also for some RMs they are unable to retrieve the emails as the relevant RMs has left the organization.

k. YBL submitted that there was a push from Mr. Rana Kapoor to facilitate secondary market sale with a view to free up the limits/shelf space of institutional investors. Further, he had asked PWM team to go for granular distribution which means to target non-institutional investors, mainly public at large, i.e., individual investors. It is also observed from the emails that Mr. Rana Kapoor was asking its team to expedite the secondary market sale and was taking regular updates from them. Further, it is also observed that the ticket size was reduced gradually from Rs 50 Lakhs to Rs 10 lakhs to facilitate the sales of the AT1 bonds to individual investors as compared to institutional investors in order to ensure wider participation from individual investors. In this regard, investigation observed that the said push led PWM team to recklessly sell the bonds to individual investors without doing adequate due-diligence by inter-alia reducing the ticket size, not ensuring that the term sheet was being shared with the investors, risk profiling of the individual investors not done, etc. Noticee 2, by taking regular updates and asking the team to expedite the sale, was overseeing the entire activity.

l. YBL has also submitted that formal risk profiling was not mandatory for products/instruments, which were considered low risk as YBL AT1 Bonds enjoyed "AA" rating when the sale was facilitated. The officials from PWM Team confirmed during statement recording that risk profiling for individual clients were not done while selling AT1 bonds to them. However, in this regard, investigation observed that AT1 bonds is a perpetual debt instrument with no put option available *to the investors and issuer has the discretion to make coupon payment and also the option to call the bond. Further, the bonds also had loss absorbency features which means that the bonds could have been written off to a nil value. The said features of AT1 bonds have inherent risks associated with it and make it comparatively riskier than a bank's fixed deposit. Further, it is observed from the rating history of AT1 bonds (as available on www.indiaratings.co.in) that the rating of the AT1 bond started deteriorating since November 02, 2018 from "IND AA/Negative" to "IND BBB+/RWN(Rating watch negative)" by December 18, 2019. Also, it is observed from the letters of Credit rating firms viz., CARE Ratings and India Ratings & Research firm to YBL during primary issuance (as available in IM) that that these ratings are opinion on credit quality and not recommendations or suggestion, directly or indirectly, to any person to buy, sell, make or hold any investment. It is further observed from the aforesaid letter that the CRA advised the issuer to get the rating revalidated in case the issue was not made within a period of six months, which implies that credit rating is temporary in nature. Copy of credit rating related documents are enclosed as Annexure 8. Also, Vivek Kanwar during statement recording has submitted that AT1 bonds were perceived to be having moderate risk. Despite that it is observed that risk profiling was not done for the individual investors even who were more than 70/80/90 years old. Further, it is also observed from the submissions made by YBL that they have made risk profiling framework essential for all investment products from September, 2019 which further establishes that YBL was not examining the suitability of a client to particular product especially the AT1 bonds for quite a long period.*

m. The investors in their complaints have alleged that AT1 Bonds of YBL were sold to them as 'Super FD', 'as safe as FD', etc. In this regard, YBL has submitted that the AT1 bonds were never sold as "Super FD" or "as safe as FD" to the individual investors, however, many of the investors during investigation confirmed to SEBI that the bonds were sold to them as "Super FD" and/or "as safe as FD". This is also substantiated by the fact that there was push from the top management of YBL to down sell these bonds at the earliest. Further, Investigation observed that there was also an incentive scheme for the RMs to sell the product which would have led them to make these claims to the investors that these bonds are 'as safe as FD' and/or 'Super FD' without highlighting the risk differential. The same was done by the RMs as the AT1 bonds was a new instrument for them as well as the investors and they were not able to make strong pitch to the investors (Refer *email dated February 07, 2017). In view of the above, Investigation observed that RMs highlighted that the bonds were offering higher interest rate than normal FD to generate interest of the individual investors in order to fulfil the requirement imposed by the top management of YBL. Further, such act was possible because the senior officials of PWM Team had not put any system in place to ensure that the term sheet were being shared with the investors.*

n. YBL has also submitted that Bank had shared all the information and documents as required by the customers to take an informed decision. However, during investigation YBL could not provide any confirmation taken from the investors w.r.t. their understanding of the features and risks associated with the bond. Further, the bank has submitted that the document was also available in public domain as these bonds were listed. In this regard, Investigation observed that YBL was facilitating the sales of the product like an intermediary which puts a fiduciary responsibility on YBL to share the documents with the buyers (including individual investors) explaining all the risk features associated with the bond. Further, in terms of RBI circular (RBI/2014-15/201 dated September 01, 2014), if these bonds were sold to the individual investors in the primary market then the bank was supposed to take specific sign off from the investors that they have understood the product and in particular 'the loss absorbency features' have been explained to them. Investigation observed that, although, the product was not sold to the individual investors in the primary market but the inherent risk associated with the bonds remained the same and therefore it did not absolve YBL from its obligation to obtain the sign off from the investors that they understood the features and risk associated with the bond. Further, Investigation observed from the investors' complaints that the investors were buying the bonds (some of them after breaking their FDs) based upon their trust with a scheduled commercial bank –YBL and 'verbal pitch' by RMs wherein the product was shown comparable to FD without disclosing the risks associated with it.

o. YBL had submitted that three senior officials of PWM Team viz. Vivek Kanwar, Ashish Nasa and Jasjit Singh Banga were involved in designing the 'step by step procedure' and other materials (like 'Sale/verbal pitch', FAQs etc.) to down sell the AT1 bonds to individual investors. In this regard, Investigation noted the following from the 'verbal/sales pitch' and 'step by step procedure' shared by PWM team with the RMs:

(i) AT1 bonds were compared with fixed deposit on rate differential only, but omitted the risk differentials which led the investors to look only at the higher interest rate on the AT1 bonds without realising that these bonds have inherent risk associated with it.

(ii) YBL cited interest of institutional investors in the product to down sell the same to individual investors which were unsuitable/ comparatively risky for them. The same also led the investors to believe that since such big institutions are buying the product, the same shall also be suitable for them without realising that risk taking capacity of institutional investors and individual investors are quite different.

(iii) Also, as per the first step of the 'step by step procedure', RMs were supposed to share the term sheet with the clients but the senior officials of the PWM team did not have a system in place to ensure that the term sheet was being shared with the clients and as mentioned above there are certain cases where the term sheet was never shared with the individual investors.

(iv) Also, in this 'step by step procedure' there was no provision for the RMs to take any confirmation from the investors w.r.t their understanding of the features and risks associated with the bond which lead the RMs to sell the AT1 bonds recklessly.

p. Investigation observed that aforesaid transactions (down-sell of AT1 Bonds) were not negotiated between buyers and sellers individually. The same was facilitated by Yes Bank for around 1300 individual investors most of which were existing customers of Yes Bank. Further, it may also be noted that lack of commercial wisdom on part of one investor may be comprehensible as lapse of judgment. However, the same cannot be said about all individual investors who have invested on the premise of systematic misrepresentation of information by the officials of YBL.

q. In view of the foregoing, investigation observed that:

(i) YBL represented the product as 'Super FD' and 'as safe as FD'

(ii) Term Sheet was not shared with many investors

(iii) No confirmation taken from the investors w.r.t their understanding of the features and risks associated with the bond.

(iv) Risk Profiling of individual clients not done especially investors more than 70/80/90 years old.

(v) In the 'verbal pitch' shared by PWM team with the RMs, the AT1 bonds were compared with Fixed deposit on rate differential only, but omitted the risk differentials.

(vi) YBL cited interest of institutional investors in the product to down sell the same to individual investors which were unsuitable/ comparatively risky for them

(vii) Lot size of the bond was reduced to facilitate down sale to individual investors

(viii) Push from the MD & CEO of YBL to down sell the AT1 bonds which led the PWM team to recklessly sell the bonds to individual investors.

r. In view of the above, it is alleged that Mr. Rana Kapoor was actively pushing its team for the down sell of YBL AT1 Bonds in the secondary market and was giving direct instructions to them to go for granular distribution. The same led the senior officials of the PWM Team of YBL viz. Vivek Kanwar, Ashish Nasa and Jasjit Singh Banga to recklessly sell the bonds to the individual investors without doing adequate due diligence.

s. It is further alleged that the senior officials of PWM Team viz. Vivek Kanwar, Ashish Nasa and Jasjit Singh Banga on behalf of YBL were involved in the misrepresentation, manipulation and mis-selling the AT1 bonds of YBL to the individual investors. It is further alleged that Mr. Rana Kapoor was also responsible for the said actions of the aforesaid senior officials of the PWM Team as he was overseeing the entire activities, taking regular updates from the team and giving them further instructions to expedite/ increase the sales.

t. It is also alleged that YBL had misrepresented the AT1 bonds by comparing them with a fixed deposit without disclosing the inherent risks associated with the bonds and thereby manipulated the investors into buying such risky bonds. The said action on the part of YBL was a

(i) knowing misrepresentation of the truth or concealment of material fact in order that another person to act to his detriment;

(ii) an active concealment of a fact having knowledge or belief of the fact; and

(iii) a representation made in a reckless and careless manner,

falling under the definition of 'fraud' under 2(1)(c)(1), 2(1)(c)(3) and 2(1)(c)(5) of PFUTP Regulations.

In view of the foregoing, it is alleged that YBL, Rana Kapoor, Vivek Kanwar, Ashish Nasa and Jasjit Singh Banga have violated the provisions of Regulation 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP

Regulations read with Explanation (1) to Regulation 4(2) of PFUTP Regulations and Section 12A(b) & 12A(c) of the SEBI Act, 1992.

8. The SCN was sent to Noticee through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') and the same was served at Noticee's residence. Vide letter dated November 13, 2020, Authorised Representative(ARs) of Noticee, Mr Tomu Francis/Mr. Manish Chhangani, Khaitan & Co. Advocate, requested the erstwhile AO to keep the adjudication proceedings in abeyance citing Noticee was lodged in Taloja Jail and limited access was being granted to ARs to consult Noticee due to Covid Pandemic. Vide the said letter, ARs also requested for complete inspection of documents in the matter. After the appointment of undersigned as AO in the matter, SCN along with a hearing notice dated February 26, 2021 was served on Noticee through Jail Superintendent, Taloja Jail through SPAD. Vide letter dated March 19, 2021, ARs of Noticee reiterated their earlier request for inspection of documents and to keep proceedings in abeyance made vide their letter dated November 13, 2020. The aforementioned request for inspection of documents was acceded to by the undersigned vide email dated March 23, 2021 and Noticee was granted inspection of documents on March 25, 2021. Vide the same email, Noticee was directed to file his reply to SCN, if any, by April 16, 2021. On the scheduled day of inspection, ARs appeared for inspection and copies of SCN and Annexures therein was shown to the ARs. Vide, email dated March 26, 2021, copies of documents requested by ARs of Noticee were provided to them except a copy of the investigation report, Information Memorandum (IM) as the said document was available in the public domain, attachment of Rana Kapoor's mail as provided in page 277 of Annexure 4 of SCN, as the same was not available with SEBI at that time. SEBI provided further documents on April 20, 2021 (information memorandum as requested by ARs of Noticee vide email dated March 19, 2021) and April 24, 2021 (attachment of email of Rana Kapoor dated January 14, 2017). Meanwhile, Noticee filed a Writ Petition (L) No. 10156 of in the Hon'ble High Court of Bombay in April 2021, *inter alia*, to seek injunction from continuance of the proceedings under the SCN against Noticee. Vide Order dated May 4, 2021, the Hon'ble High Court of Bombay passed an order, *inter alia*, granting Noticee extension of time to file a reply to SCN by three months from the date of aforementioned Order for Noticee i.e. till August 04, 2021. Subsequently, vide email dated July 01, 2022, a copy of investigation report in the matter was also provided to Noticee.

9. Vide email dated June 22, 2022, it was informed by Mr Rushin Kapadia that he was appointed as new AR of Noticee and vide the same email, he requested for inspection of documents and cross examination of witness. Vide email dated July 6, 2021, the undersigned rejected aforementioned request of Noticee stating that statement of witnesses would not be relied on while determining alleged violations against Noticee and all relevant extracts of investigation report had been narrated in detail in SCN. Vide email dated July 13, 2021, AR of Noticee reiterated the request for cross examination made vide his email dated June 22, 2022. In this regard, vide email dated July 14, 2021, it was informed to AR of Noticee that his request of cross examination was already responded to vide email dated July 06, 2022. Aggrieved by rejection of his request for cross examination, Noticee filed Appeal No. 525 of 2021 with Hon'ble SAT, *inter alia*, challenging the decision of the undersigned made vide aforementioned email dated July 6, 2021. The Hon'ble SAT, vide its Order dated August 06, 2021, disposed of the appeal with direction to Noticee to submit reply to SEBI by August 20, 2021 and thereafter, make a fresh application for cross-examination of witness. Vide the said Order, the Hon'ble SAT directed AO that "*If such an application is filed indicating reasons for cross examination, the same shall be considered by the Adjudicating Officer and appropriate orders will be passed by giving reasons without being influenced by the earlier order passed by him on July 06, 2021*." Mr. Rana Kapoor vide letter/email dated August 20, 2021 filed his reply to the SCN. Subsequently, vide email dated August 03, 2022, Noticee amended and restated his earlier reply dated August 20, 2021.

10. Vide letter/email dated August 25, 2021, Noticee made another application for seeking cross examination of following individuals:
    (a) Mr. Arun Oberoi (Relationship Manager of YBL)
    (b) Mr. Narendranath TG (Relationship Manager of YBL)
    (c) Mr. Ashish Nasa (Heading OPDT – Part of Private Wealth Management Team in YBL)
    (d) Mr. Jasjit Singh Banga (Program Manager of Private Wealth Management Team in YBL)
    (e) Mr. Vivek Kanwar (Head of Private Wealth Management Team in YBL)
    (f) Mr. P Rakesh (Group President – Debt Capital Market Team in YBL)
    (g) Mr. Nirav Dalal (Head of Debt Capital Market in YBL)
    (h) Mr. Rajat Monga (CFO in YBL)

(i) Mr. Harshil Suvamkar (from Indiabulls Housing Finance);

(j) All the officials of YBL, whose submissions through various emails have been relied upon by SEBI at paragraphs 6, 9, 10 and 12 of the SCN; and

(k) All other statements, complaints referred at paragraph 2 of the SCN, emails, etc. relied upon by SEBI to frame a charge in the SCN against Noticee No. 2.

11. Vide email dated October 04, 2021, the undersigned rejected the application for cross examination of the witnesses*, inter alia,* stating that charges against Noticee was not based on the statement of witnesses specified in the aforementioned application but based on independent evidences. On October 12, 2021, Appeal No. 669 of 2022 was filed by Noticee with Hon'ble SAT, *inter alia,* challenging the refusal of cross-examination by the undersigned. Vide Order dated March 25, 2022, aforesaid appeal was allowed by Hon'ble SAT and a direction was passed by the Hon'ble SAT to undersigned reconsider the application of cross examination made by Noticee. The extract of the aforementioned SAT judgment is reproduced hereunder:

   "…………..10. In view of the statement given by the learned senior counsel it becomes essential for the AO to reconsider the matter de novo because in our opinion a finding has been given that the statement of witnesses being a statement of fact is not required to be cross-examined which prima facie in our opinion appears to be incorrect. Further, if the statement of the witnesses is not being considered by the respondent while adjudicating the matter the respondent is further required to consider whether the e-mails issued by these witnesses are required to be cross-examined or not on those e-mails. The AO is further required to consider whether the e-mails of these witnesses can be considered without considering the statement of the witnesses and if the e-mails of these witnesses are being considered as a statement of fact then whether the appellant is entitled to cross-examine the said witnesses on those e-mails.

   11. In view of the aforesaid, without going into the legalities and the findings given by the AO in the impugned order we set aside the impugned order and remit the matter to the AO to re-decide the application of the appellant for crossexamination of the witnesses in the light of the statement made by the senior counsel for the respondent, namely, that the statement of the witnesses will not be relied upon by the respondent in the adjudication proceedings. While deciding the application the AO will take into consideration the *decisions that may be placed by the appellant including the recent decision of the Supreme Court in the case of T. Takano. The AO will pass a fresh order in accordance with law after giving an opportunity of hearing within three months. The appeal is allowed………………………………….."*

12. In accordance with the aforementioned decision of the Hon'ble SAT, an opportunity of hearing was granted to Noticee on April 26, 2022 to consider the application for the cross examination dated August 25, 2021 filed by Noticee vide email dated April 19, 2022. In light of the request of Counsel for Noticee to reschedule the aforementioned hearing either at 5pm on April 26, 2022 or on April 27, 2022 at 2pm, the hearing was rescheduled to April 27, 2022 at 2 pm. On the scheduled date, ARs of Noticees, Mr Somasekhar Sundaresan, Mr Rushin Kapadia, Mr. Hetay Vora appeared for hearing and highlighted the principles laid down in the decision of Hon'ble Supreme Court of India in T Takano v SEBI, decision of Hon'ble SAT in Bharat Jayantilal Patel vs. SEBI and also stated that the statements of witness were relied upon by SEBI to establish charges against Noticee. Pursuant to the same, vide email/letter dated May 23, 2022, the undersigned allowed cross examination of statements/emails made by following individuals as requested by Noticee in his aforementioned application:
    i) Arun Oberoi with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.
    ii) Mr. Narendranath TG with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.
    iii) Mr. Ashish Nasa with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.
    iv) Mr. Jasjit Singh Banga with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.
    v) Mr. Vivek Kanwar with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.
    vi) Mr. P Rakesh with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.
    vii) Mr. Nirav Dalal with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.

viii) Mr. Rajat Monga with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.

ix) Mr. Harshil Suvamkar with respect to statement made by him during investigation and which form part of Annexure 3 of the SCN.

x) Mr. Shivanand Shettigar (Company Secretary of YBL) who made submissions on behalf of YBL to SEBI

xi) Mr. Hiren Shah (who belonged to the Company Secretarial Department of YBL during the investigation period.) who made submissions on behalf of YBL to SEBI.

13. Further, vide the said email, it was also informed the said cross examination was scheduled on June 02, 2022. The schedule of conducting cross examination was also informed to witnesses vide email dated May 23, 2021. However, AR of Noticee vide his email dated May 26, 2022 requested adjournment of cross examination scheduled on June 02, 2022 to second half of June 09, 2022 and June 10, 2022 citing the unavailability of Counsel appearing in the matter on June 02, 2022. Further, Counsel of Mr Rana Kapoor vide said email also intimated that Mr. Rana Kapoor would like to attend the cross-examination of witness. In this regard, it was intimated by the said mail by Counsel for Rana Kapoor that "*my client will have to make an application to the appropriate court to attend the cross examination on the said dates, given that it is essential for him to remain present for the cross examination…..*" In regard to the aforementioned request of Noticee vide email dated May 27, 2021, cross examination of witness was rescheduled to June 09, 2022 and June 10, 2022. Vide the same email, it was informed to Counsel for Noticee that though presence of Rana Kapoor is not essential for cross examination of witness considering the presence of his Counsels, Mr Rana Kapoor may attend the cross examination of witness if he so desires. It was also informed that cross examination of witness shall not be adjourned/ rescheduled on account of non-appearance/non availability of Mr. Rana Kapoor. Vide email dated May 31, 2022, apart from Mr. Harshi Suvarnkar, all other witnesses have requested to withdrawing the notice for attendance of cross examination. Vide email dated June 02, 2022, it was clarified to witnesses that their statement was considered relevant for the instant adjudication proceedings against Noticee.

14. Thereafter, cross examination with respect to Mr. Arun Oberoi, Mr. Vivek Kanwar, Mr. Shivanand Shettigar, Mr. Hiren Shah, Mr Rajat Monga, Mr. Narendranth TG, Mr P Rakesh, Mr. Ashish Nasa, Mr. Nirav Dalal was scheduled on June 09, 2022 and cross examination with respect to Mr. Jasjit Singh Banga and Mr. Harshil Suvarnkar was scheduled on June 10, 2022. Vide email dated June 08, 2022, AR of Noticee requested the undersigned to conduct the entire cross-examination through Video Conference(VC), given the increasing number of Covid-19 cases in Mumbai and the same was acceded to. On June 09, 2022, cross examination with respect to Mr Arun Oberoi, Mr.Vivek Kanwar, Mr. Shivanand Shettigar, Mr. Hiren Shah, Mr Rajat Monga was conducted through Cisco Webex. Due to paucity of time, cross examination of Mr. Narendranath TG, Mr P Rakesh, Mr. Ashish Nasa and Mr. Nirav Dalal could not be completed on June 09, 2022 and the same was rescheduled to June 10, 2022. However, one of the Counsels for Noticee, Mr. Rushin Kapadia sought adjournment of cross examination scheduled on June 10, 2022 just 2 hours before the scheduled time of cross examination citing counsel for Noticee, Mr Somasekhar Sundaresan was part heard in Hon’ble SAT. In order to give equity to Noticee, the said request was acceded to. Considering the convenience of witnesses in the matter, cross examination in the matter was rescheduled to July 06, 2022. On July 06, 2022, Counsel of Noticee, Mr. Somasekhar Sundaresan, conducted the cross examination of witnesses namely, Mr. TG, Mr P Rakesh, Mr. Ashish Nasa, Mr. Jasjit Singh Banga, Harshil Suvarnkar and Mr. Nirav Dalal through videoconferencing via Cisco Webex platform. On conclusion of cross examination, vide cisco webex link, Noticee was provided video recording of the cross examination conducted on July 06, 2022 and June 09, 2022 on July 06, 2022.

15. Thereafter, in the interest of natural justice, an opportunity of personal hearing was granted to Noticee on August 04, 2022 vide email dated July 19, 2022. Further, vide the same email, an opportunity of making additional written submissions on or before August 04, 2022 in the matter was provided to Noticee in the present matter. Vide the same email, record of cross examination conducted on June 09, 2022 and automated transcript of the cross examination of witness conducted on July 06, 2022 was provided to Noticee. It was also informed to Noticee, vide the said email, that video recording of the aforementioned cross examinations conducted on June 09, 2022 and July 06, 2022 through cisco webex platform had already been shared vide a link on July 06, 2022. In this regard, AR of Noticee vide his emails dated July 21, 2022, July 22, 2022 and July

25, 2022 stated that automated transcript of the cross examination of witness conducted on July 06, 2022 was riddled with errors and mistakes and had to be cross verified with video recording at every stage and could not be treated as official recording and asked the undersigned to provide official record of proceeding of July 06, 2022 in the same manner as prepared by SEBI for the cross examination held on June 09, 2022. In light of the aforementioned request of Noticee, minutes of cross examination held on July 06, 2022 was shared with Noticee vide email dated July 29, 2022. Further, a CD containing video recordings of cross examination conducted on June 09, 2022 and July 06, 2022 was hand delivered to AR of Noticee, Mr. Rushin Kapadia on July 26, 2022.

16. On scheduled date of hearing i.e. August 04, 2022, Counsels of Noticee, Mr Rushin Kapadia and Mr Somasekhar Sundaresan appeared on behalf of Noticee. Mr Somasekhar Sundaresan explained and reiterated contents of Noticee's amended and restated reply dated August 03, 2022 which amended Noticee's earlier reply dated August 20, 2021.

17. In the instant case, multiple opportunities of hearing was granted to Noticee and the details of hearing opportunity provided to Noticee are as given hereunder:

SL No	**Hearing Notice**	**Mode of delivery**	**Date of Hearing**	**HN delivered/not**	**Attended/Not attended**	**Comments**
1	January 27, 2021	SPAD/Emai-address-427-428, 27th floor Penthouse, Samudra Mahal, Dr Annie Besant worli, mumbai	February 11, 2021	Not delivered by SPAD Delivered through email	Not attended	HN not served on Noticee vide SPAD.
2.	February 26, 2021	Custody of Jail Superintendent, Taloja Jail-SPAD	March 26, 2021	Delivered	Not attended	SCN also delivered vide the said letter

3	April 09, 2021	Counsel for Rana Kapoor, hand delivery/digitally signed email	April 17, 2021	Delivered	Not attended	Requested for adjournment of hearing acceded to by the undersigned.
4	April 14, 2021	Served on Counsel for Rana Kapoor, Mr. Arka Saha vide email dated April 14, 2021	April 19, 2021	Delivered	Not attended	AR of Noticee informed that Writ Petition has been filed in Hon’ble Bombay High Court with respect to the adjudication proceedings
5	April 20, 2020	Served on Counsel for Rana Kapoor, Mr. Arka Saha vide email dated April 20, 2020	May 10, 2021	delivered	Not attended	Vide the same email, also extended timeline for filing reply to May 03, 2021. Vide email dated May 08, 2021, hearing scheduled on May 10, 2021. Noticee was requested to file reply to SCN latest by August 04, 2021 as

						directed by Bombay High Court.
6	October 04, 2021	Served on Counsel for Rana Kapoor, Mr Rushin Kapadia, vide email dated October 04, 2021	October 12, 2021	delivered	Not attended	AR of Noticee vide email dated October 09, 2021 requested for adjournment of email. Hearing Adjourned to October 29, 2021 on request of Noticee made vide email dated October 09, 2021
7	October 12, 2021	Served on Counsel for Rana Kapoor, Mr Rushin Kapadia, vide email dated October 12, 2021	October 29, 2021	delivered	Not attended	Adjourned on request of Noticee made vide email dated October 28, 2021
8	December 08, 2021	Served on Counsel for Rana Kapoor, Mr Rushin Kapadia, vide email dated	December 22, 2021	delivered	Attended by Counsel for Rana Kapoor, Mr Rushin Kapadia	Hearing conducted on the matter. Sought for further hearing in the matter subject to

		December 08, 2021				decision in the SAT in reference to Appeal filed by Noticee against communication of AO dated October 04,2021 refusing the cross examination of witness. AR of Noticee reitearated contents of Noticee's earlier reply dated August 20, 2021
9	April 19, 2022	Served on Counsel for Rana Kapoor, Mr Rushin Kapadia, vide email dated April 19, 2022	April 26, 2022 at 11.30 AM	Delivered	Attended by Counsel for Rana Kapoor, Mr Rushin Kapadia and Somasekhar Sundaraesan	Hearing with respect to application for cross examination dated August 25, 2021.
10	July 19, 2022	Served on Counsel for Rana Kapoor, Mr Rushin Kapadia, vide	August 04, 2022,	Delivered	Attended by Counsel for Rana Kapoor, Mr Rushin Kapadia and	

		email dated July 19, 2022			Somasekhar Sundaraesan.	

<u>Reply filed by Noticee dated August 03, 2022 which amended Noticee's earlier reply dated August 20, 2021</u>

- *Noticee had been denied proper inspection despite SEBI counsel having promised the Hon'ble Bombay High Court that all material relied upon would be given. Noticee has been denied access to his own email backup, which would provide full context and shed light on Noticee's role in relation to AT1 Bonds. Denying access to the same, renders these proceedings violative of fundamental principles of fairness and objectivity and renders the conduct of these proceedings vulnerable to being seen as premeditated with a foregone conclusion having been reached with lip service to natural justice principles by seeking a reply even while crippling the ability to effectively reply; In the absence of a full and complete opportunity to verify and inspect the entire email back up, Notice's right and ability to defend himself has been gravely prejudiced and impaired, and that alone is sufficient ground for the proceedings under the SCN to be set aside.*
- *As regards cross-examination, even though the same was provided to Noticee, SEBI curtailed questioning of the witnesses. Noticee has a right to test the veracity of statements against him. Questions with reference to documents on record to which these witnesses had personal knowledge, ought to have been allowed. The entire basis of the charge in the SCN is evidently the statements of certain officials of YBL. Unless those persons are allowed to be cross-examined effectively by putting questions to them on the basis of their emails and other material on record, it would defeat the whole purpose of a cross examination - and prevent a determination of the truth which is the goal of these quasi-judicial proceedings rather than a pre-determined outcome. These include emails that formed part of the correspondence in which these very witnesses had engaged. The right of cross-examination is aimed at arriving at the complete truth rather than being a technical exercise where material on record is not permitted to be put to the witnesses.*
- *The case against Noticee is built on an edifice of conjectures and surmises. There is not a single email from Noticee that called upon his team to suppress or withhold any information from investors, whether institutional, HNI or retail, on the risks associated with investing in AT1*

Bonds. Even in the constrained cross-examination which was allowed by the SEBI, this has been confirmed by all the concerned witnesses;

- *One of the witnesses which the SCN relies on (Mr. Jasjit Banga) to advance this "push" theory against Noticee, has confirmed that he has never had any interactions with Noticee (Please see response "No, sir. I was too junior. I never had" to Question "Okay. One last question. Have you personally had to take any instructions from Mr. Rana Kapoor? Have you had interactions with him in the course of the AT 1 bonds sell down?") – belying the case setup against Noticee;*
- *Most of the emails being relied upon pertain to officials of YBL informing Noticee that they had managed to sell the AT1 Bonds. That fact has been extrapolated to build a house of cards – that Noticee purportedly sought to suppress information from the potential purchasers of these bonds – a totally untenable proposition;*
- *Even the selective emails annexed to the SCN only show that Noticee was only encouraging his team to down sell the AT1 Bonds so that institutional investors could participate in future capital raising by YBL (which he refers to as freeing up "shelf-space" – see email dated April 25, 2017, for example) – which multiple witnesses have testified to, stating there was nothing wrong or illegal;*
- *Nothing in these emails even remotely show that Noticee instructed or encouraged either the relationship managers ("RMs") or the wealth-management team who had a well-established multilayered organizational hierarchy to refrain from apprising potential purchasers of the risks associated with AT1 Bonds or worse, mislead them, as is conjectured and falsely alleged;*
- *Noticee has been made a scapegoat – because SEBI believes it has to demonstrate some action being taken owing to complaints from investors who knew or ought to have known of the risks associated with these bonds – all of which were in the public domain – which SEBI has not disputed or assailed. It is pertinent to note that a Division Bench of the Hon'ble Madras High Court headed by the Hon'ble Chief Justice has arrived at the aforesaid finding, as a matter of judgement in in Piyush Bokaria & Ors. v Reserve Bank of India & Ors. (2020) 2 Writ LT 570), dismissing a challenge to the constitutional validity of the RBI Master Circulars which empowered the write-off of the AT1 Bonds issued by YBL. The Hon'ble Madras High Court has categorically held the following:-*

"………all investors in AT 1 bonds were informed about the features of these bonds by disclosures in the information memorandum. In spite of such disclosures the Petitioners and other investors chose to run the risk of investing in an instrument loss absorption features…"

- *Absent any evidence of Noticee's role in suppressing any risks associated with the AT1 Bonds or mischaracterizing of these bonds, the SCN clutches at straws by attributing alleged defaults by other Noticees (and several other senior stakeholders involved in YBL particularly senior management DCM team who have not been named in the SCN) who are alleged to have engaged in mis-selling, to Noticee;*
- *Even the so called "push" from Noticee stands disproved as Mr. Shivanand Shettigar (Group Company Secretary and one of the KMP's in YBL), in his cross-examination, refused to stand by the very statement and emails (See Responses to Questions 10 and 16) – which form the basis on which the SEBI has alleged active push by Noticee No. 2. In the circumstance, since one of SEBI's own key witnesses, has not stood by his earlier statement of there being an active push from Noticee No. 2, the charge too must be dropped;*
- *Indeed the step-by step process for sale of AT1 Bonds did envisage disclosure of the risk factors and sending of the term sheet to potential investors. The fact that officials of YBL (mainly 650 RMs reporting to senior group president Mr. Pralay Mondal) who interacted with potential investors, are alleged to have failed to do so, cannot simply be attributed to Noticee(if they did fail) without evidence that Noticee was either aware of the same or caused them to do so or required them to do so;*
- *Besides, the SCN conveniently overlooks the fact that AT1 Bonds were listed on the wholesale-debt market segment of the BSE and issued in accordance with applicable regulations issued by the Reserve Bank of India ("RBI") and the SEBI including in particular the SEBI (Issue and Listing of Debt Regulations), 2008 ("ILDS Regulations");*
- *All information required to be contained in the private placement memorandum under the ILDS Regulations including the risks associated with purchase of AT1 bonds, was incorporated and this document was disclosed by YBL to the stock exchanges and was available to the public on an ongoing basis – which too has been confirmed by witnesses in the cross-examination. SEBI has not found, much less alleged, that these disclosures were inadequate or misleading;*

- *The private placement memorandum issued by YBL in connection with each of the AT1 Bond issuances, in fact, specifically and explicitly disclosed that "potential investors assume the risk that the Bank may not be able to satisfy their obligations under the Debenture".*
- *If disclosures available in the public domain in relation to the primary issue of the AT1 Bonds are admittedly adequate and truthful and contained disclosures of the risks, the charge of suppression and non-disclosure of the risks, when it comes to the sale of the very same bonds in the secondary market, is a non-starter and suffers from complete non application of mind.*
- *AT1 Bonds issued by YBL like any other security was traded on the BSE with ample liquidity and could have been purchased by any investor. There was no bar on any person purchasing it. Therefore, creating a faux distinction between institutional investors and individual investor is untenable. As such, the SEBI has also erred in equating individual investors with retail investors. The record clearly shows that the AT1 Bonds were sold to ultra HNIs and HNIs, who are very well-informed investors, and are a distinct, knowledgeable segment of investors;*
- *Investors investing in listed debt instruments like any investment in a listed security, are required to exercise requisite due diligence and apprise themselves of information available in the public domain. In particular, these being debt instruments carried a greater risk (than for example an investment in an equity instrument) for which detailed disclosures were made on the terms of these bonds and the risks associated with investing in them;*
- *The fact that YBL facilitated the sale of these bonds to investors, does not mean that the bonds were meant to be a risk-free proposition and the requirement of the investor to satisfy himself of the risks associated with these bonds stood dispensed with. Even a cursory reading of information in the public domain would show that the risks were well disclosed and investors would be well aware of the same.*
- *Indeed, the very purpose of requiring the legally approved and compliant private placement memorandum even for debt instruments that are private placed, to be disclosed to the stock exchanges and available to investors, under the ILDS Regulations, is to ensure that investors are appraised of all material information, to enable them to take an informed decision in case of an onward sale of these debt instruments to the secondary market.*
- *It is clear that SEBI has simply in a knee-jerk reaction to a headline-grabbing development like complaints made by investors aggrieved by the AT1 Bonds being written down under the*

Scheme (for which Noticee cannot be held responsible), has sought to accuse Noticee of a vague charge of "actively pushing" towards mis-selling these bonds. Indeed, had there been no write-down of the AT1 Bonds under the Scheme, the SCN would never have been issued. In other words, a charge of fraud is being levelled merely because investors are crying foul over a write down in connection with investments, they knew and ought to have known, carried a risk.

- *In the banking sector when the disclosure of this risk is widely known, such a risk and outcome is common. For example, in the case of United Western Bank, the entire equity share capital issued just prior to the forced merger of that bank with IDBI Bank was written down to NIL. On the other hand, YBL has not even faced such a forced merger and the write down of the AT1 Bonds under the Scheme is being extrapolated into a baseless (and vague) allegation of aggressive push to mis-sell.*
- *Implicit in the SCN is the baseless assumption that investors in AT1 Bonds (who according to YBL were HNIs) are ignorant and do not have any duty of exercising ordinary prudence when it comes to investing in AT1 Bonds. All investments carry a degree of risk and even more so, debt instruments and consequently Noticee cannot be held liable for purported non-disclosure of the risks associated with AT1 Bonds, when the risks associated with investing in these bonds was available in the public domain. Multiple witnesses have also testified stating that these bonds were not marketed in any literature of YBL as "Super FDs" or safer than FD (See Response to Second last Question of testimony of T. Narendranath and Response to unnumbered Question 8 of testimony of Jasjit Banga);*
- *Piquantly, a charge of fraud is sought to be levelled against Noticee for allegedly encouraging the sale. Yet there is no charge of fraud either against the seller of the AT1 Bonds or the approximately 650 RMs of YBL who directly interacted with customers of YBL and are purported to have misled them;*
- *If the persons who facilitated the sale of the bonds are allegedly guilty of fraud, they would have been agents of the principals for whom they sold. It is piquant that the investor for whom the sale is made is not guilty but someone who facilitated the sale is accused of being guilty. In other words, both the hitherto owner of the asset purportedly sold on the basis of alleged mis-statements and the persons who are alleged to have made the false disclosures (the RMs) are not charged with fraud. Yet, the MD & CEO of a large banking entity that allegedly facilitated*

the sale and who ensured the disclosures of the risks associated with investments in AT1 Bonds are available in the public domain, is charged with fraud. This is an irreconcilable contradiction that the SCN can never overcome.

Consideration of Issues, Evidence and Findings

18. I have carefully perused the oral and written submissions of Noticee and the documents available on record. The issues that arise for consideration in the present case are:

    I. Whether the Noticee have violated the provisions of Regulation 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations read with Explanation (1) to Regulation 4(2) of PFUTP Regulations and Sections 12A(b) & 12A(c) of the SEBI Act?
    II. Do the violations, if any, attract monetary penalty under Section 15HA of SEBI Act?
    III. If so, what should be the quantum of monetary penalty?

19. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations and SEBI Act, which are reproduced as under:

PFUTP Regulations:

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;

…

(c) Employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

….

(s) mis-selling of securities or services relating to securities market;

Explanation-For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i) knowingly making a false or misleading statement, or

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer

Explanation–1 For the purposes of this sub-regulation, for the removal of doubts, it is clarified that the acts or omissions listed in this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3, notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category of persons in this sub-regulation.

SEBI Act

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

12A. No person shall directly or indirectly—

…

(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;

……

20. Before proceeding into the merits of the case, I find it appropriate to deal with the preliminary objections raised by Noticee in his reply to the SCN. It has been contended by Noticee that even though cross examination of witness was provided to Noticee, same was curtailed by the undersigned. Noticee in his reply to SCN submitted that cross examination of contents of "Annexure A" email series attached to communication dated October 08, 2020 from YBL to SEBI was denied by SEBI. Noticee in his reply has stated that such denial of cross examination of "Annexure A" email series was *"ex facie absurd and against the directions issued by the Hon'ble SAT through its order dated March 25, 2022."* Noticee contended that Hon'ble SAT has categorically stated that there was a need to cross-examine the emails of the witnesses. Noticee further submitted that though the existence of the "Annexure A series" emails was not disputed but the purported interpretation of the same by the SEBI has been questioned by Noticee both in his reply of August 20, 2021 and application for cross examination dated August 25, 2021.According to Noticee, the purpose of cross-examining the witness on the contents of the emails would bring out the real context and meaning of the email. Further, Noticee in his submissions has contended that questions with reference to documents on record to which witness had personal knowledge ought to have been allowed and that includes emails that formed part of correspondence in which the witnesses had been engaged.

21. With respect to the above submissions made by Noticee, I note that Hon'ble SAT in its decision dated March 25, 2022 (Appeal No. 669 of 2021) even while directing the undersigned to consider *de novo* the application of the cross examination of witness made by Noticee has not directed the undersigned to provide the cross examination of the emails issued by the witnesses. The Hon'ble SAT in its aforementioned Order has directed "*Further, if the statement of the witnesses is not being considered by the respondent while adjudicating the matter the respondent is further required to consider whether the e-mails issued by these witnesses are required to be cross-examined or not on those e-mails. The AO is further required to consider whether the e-mails of these witnesses can be considered without considering the statement of the witnesses and if the e-mails of these witnesses are being considered as a statement of fact then whether the appellant is entitled to cross-examine the said witnesses on those e-mails*." In compliance with the

aforementioned Order of the Hon'ble SAT, after hearing the Noticee and examining the statements made by witness and the emails received from YBL to SEBI during investigation which form part of the record, the undersigned had allowed for cross examination of witnesses as mentioned in the preceding paragraphs vide letter/email dated May 23, 2022. In light of the same, I am unable to agree with the contention of Noticee that by not providing the cross examination of "Annexure A email series" there was violation of directions given by Hon'ble SAT in its Order dated March 25, 2022.

22. Further, vide letter/email dated May 23, 2022, it was informed to Noticee that contents of "Annexure A email series" which is attached to email dated October 08, 2020, sent on behalf of YBL by Mr Shivanand Shettigar, Group Company Secretary of YBL group to SEBI is not subject to cross examination. The extract from the aforementioned letter is reproduced hereunder:
*"I note that "**Annexures A series"** to the reply attached in the aforementioned email contain series of workplace email communications amongst YBL officials including those made by Rana Kapoor, i.e. Noticee. Further, **"Annexure B"** to the said reply are work related email communications made by YBL officials concerning sale of AT1 bonds. I note that aforementioned emails are in nature of documentary evidence and do not partake in nature of deposition. I note " Annexure A series" and "Annexure B" might be relevant in determining the issue involved in the present adjudication proceedings. I note that principles of natural justice has been met in the present case by providing the copy of the aforementioned mails to Noticee. The aforementioned Annexures being in the nature of documentary evidence, I do not find there exists any need to prove the contents of the same by cross examining the persons involved in these emails especially since Noticee in its reply to the SCN dated August 20, 2021 nor in its application for cross examination have not specifically denied the contents of the aforementioned Annexures. I find that there would be huge strain on adjudication proceedings if every documents in the record had to be proved by the cross examining the author of the documents. Thus, I note that the contents of Annexure A series and Annexure B by itself is not subject to the cross examination. However, if reference made to the above Annexures at the time of cross examination by the witness, the same may be examined so far as the reference is concerned."*

23. I note that every one of the emails contained in the Annexure A email series either originated from Noticee (he was the author of the email) or was received by him. Considering that author of most of these emails were Noticee himself, I cannot agree with Noticee's contention that cross examination of the witness on the contents of the emails would bring out the real context and meaning of emails. I note that Noticee is not a third party to these email communications but these are email communications in which he was part of either as an author or as a recipient. Noticee has also not disputed the existence of these emails. Therefore, Noticee's contention that in order to understand the true interpretation of the emails there need to be cross examination of people who are part of these email (especially considering there are large number of people copied in most of these email communications) cannot be accepted and is of no merit. Further, I also note that Mr Shivanand Shettigar during his cross examination has stated that Annexure A emails exist and are genuine. Therefore, I also cannot agree with Noticee's submission that SEBI had not allowed cross-examination only because "*there would be huge strain on adjudication proceedings if every documents in the record has to be proved by cross examining the author of the documents".* In light of the above reasons, I cannot agree with contention of Noticee that cross examination of witness was curtailed and a farcical cross examination was allowed by SEBI. Moreover, In light of the above, I also cannot agree with contention of Noticee that the "Annexure A series" emails attached to the October 8, 2020 email cannot be relied upon as cross-examination was not allowed on the same.

24. Further, it is pertinent to mention here that Noticee was informed about denial of cross examination of Annexure A series by the letter dated May 23, 2022 and not at the time of cross examination as portrayed by Noticee in his submissions.

25. I also note that Noticee in his submissions has contended that transcript sent by SEBI has errors and do not correctly record the objections made by the Counsel for Rana Kapoor. Noticee, in his submission, has stated that based on the video recording made available by SEBI, Noticee had prepared a transcript which was enclosed as Annexure 9 to his reply. In this regard, I note that Noticee has not pointed out any errors in the record of the cross examination at the time of receipt of the same and further, even in the reply to the SCN, Noticee has not specified or pointed out the supposed errors/omissions in the record of the cross examination provided to him.

26. I also note that Noticee in his submissions has contended that Noticee was denied proper inspection despite SEBI counsel having promised the Hon’ble Bombay High Court that all material relied upon would be given. Noticee in his submission has stated that vide letter dated July 06, 2021, undersigned had refused to provide copy of investigation report to Noticee. Further, Noticee contended that SEBI have denied Noticee access to his own email backup.

27. With regard to the aforementioned contentions raised by Noticee, I note that an inspection of documents (SCN and annexures of SCN) was conducted by SEBI and the same was attended by ARs of Noticee. Further, vide emails dated April 19, 2021 and April 24, 2021, excluding the investigation report in the matter, documents specified by Noticee in his letter dated March 19, 2021 was provided to Noticee. Further, vide email dated July 01, 2022, a copy of the investigation report was also provided to Noticee. With respect to Noticee’s contention that he was denied access to his email back up, I note that SEBI is not in possession of entire email backup of Noticee and therefore, it cannot be said that SEBI has denied the access of Noticee to his email backup as stated by him. Moreover, all the relevant material pertaining to present adjudication proceeding including investigation report in the matter has already been provided to Noticee. Therefore, I note that no prejudice has been caused to Noticee and principles laid down by decision of Hon’ble Supreme Court in T. Takano vs. SEBI have been duly complied with.

28. Noticee has contended that SEBI has acted in haste and pinned a charge of PFUTP Regulations without conducting a proper and complete investigation as SEBI has not attempted to seek explanation from Noticee with regard to alleged misselling of AT1 Bonds. In this regard, I note that from Noticee’s submission that on March 08, 2020, Noticee was arrested by the Enforcement Directorate and was lodged in judicial custody in Taloja Jail, Navi Mumbai. I note from Noticee’s own submission at the time of Covid-19 pandemic, there was only limited access to Noticee. Thus, during the course of investigation in the matter by SEBI, it might not have been easy to seek explanation from Noticee. Further, there is no requirement under law that before initiating investigation in the matter, reply of Noticee has to be obtained. In cases like this when access to Noticee is restricted, I find that no fault can be found with the investigation team for not seeking

reply from Noticee before concluding the investigation in the matter especially considering the fact that investigation team was able to collect other independent relevant evidence.

29. Further, Noticee in his reply to the SCN has contended that SEBI was proceeding against Noticee with haste ignoring the fact that he was lodged in Taloja jail for more than 28 months. Noticee has also contended that it was brought to the notice of SEBI that around July 2020, jail authorities introduced a system of short family calls of four to five minutes (as opposed to short physical mulakats or meetings) for the first time from jail due to Covid -19 pandemic and legal Mulakats are permitted only once a week for about 20 minutes on Jail premises telephonically. Noticee in this regard has also inter alia submitted that "In *these circumstances, it would be clear to any reasonable person, that the circumstances are not conducive for any conduct of proceedings and if SEBI were to insist on proceeding despite the same, and that too in the absence of any emergent need to proceed, it would only point to a premeditated decision to damn Noticee No. 2, regardless of due process, and amount to a gross violation of the principles of natural justice*". Noticee in his reply to SEBI has also urged SEBI to keep the present adjudication proceedings in abeyance up until Noticee has been granted bail and is able to able to effectively put in a reply.

30. In regard to the aforementioned contention of Noticee, I note that due consideration has been given to the fact that Noticee was in jail as can be seen from the fact that even though Adjudication Order was passed in respect of other entities charged in the SCN, the same was not passed with respect to Noticee considering limited access of Noticee to his counsel and other aggravating circumstances as highlighted by ARs to Noticee. I note that SCN in the matter was issued on October 28, 2020 and thereafter sufficient opportunity was given to Noticee to represent himself in the matter and the same was also availed by Noticee through his legal representatives. I note that Noticee has filed his reply to the SCN, availed hearing opportunities, inspection and opportunity of the cross examination of witnesses in the matter and that Noticee in the present matter was adequately represented by his legal representatives. In this regard, I find no prejudice was caused to Noticee and sufficient opportunities for making/defending his case has been provided to Noticee.

31. Noticee in his submissions has also contended that the Hon'ble SAT in its order dated May 21, 2021 in an appeal filed by YBL and others (Appeal No. 373 of 2021) against the order dated April 21, 2021 passed by the Learned Adjudicating Officer has stayed the proceedings and observed that "*the risk factor was already existing on the website and it was in the knowledge of everyone*". In this regard, I note from the aforementioned Order of Hon'ble SAT that no stay has been imposed with respect to present adjudication proceedings initiated against Noticee.

32. Before I proceed to deal with the allegations made against the Noticee, I would like to give a brief background information relating to AT1 bonds of YBL.YBL issued Additional Tier 1 Bonds in the nature of debentures of Rs. 10, 00,000/- each on December 31, 2013, December 23, 2016 and October 18, 2017. Vide a notification dated March 5, 2020, the Ministry of Finance, Government of India, acting on the recommendation of the Reserve Bank of India (RBI), imposed a moratorium on YBL and imposed restrictions on the banking activities to be carried out by it in terms of Section 45 of the Banking Regulation Act, 1949 ('BR Act') and appointed an Administrator, superseding the Board of Directors. Thereafter, on March 13, 2020, the RBI notified the Yes Bank Ltd Restructuring Scheme 2020 and reconstituted the Board of Directors.

33. On March 14, 2020, the Administrator appointed by RBI noted that since Section 45 of the BR Act had been invoked by the RBI and the Scheme had been notified, YBL is deemed to be non-viable or approaching non-viability and accordingly, the triggers for a write-down of the AT1 Bonds had been triggered and that the AT1 bonds would have to be fully written down permanently before any reconstruction of the Bank is undertaken. In view of the above, the Administrator ordered that "... the Perpetual Subordinated Basel Ill Compliant Additional Tier I Bonds issued by the Bank for an amount of Rs. 3000 crores on December 23, 2016 and the Perpetual Subordinated Basel Ill Compliant Additional Tier I Bonds issued by the Bank for an amount of Rs. 5415 crores on October 18, 2017 be fully written down and shall and extinguished with immediate effect."

34. I observe from the records that subsequent to writing down of these AT1 Bonds issued by YBL, SEBI received multiple complaints from the investors of these bonds alleging misrepresentation by YBL and other entities in selling these AT1 bonds. Thereafter, SEBI investigated the matter and the instant Adjudication proceedings were initiated in the matter.

35. Considering the factual matrix of the case, it is also worthwhile to give a brief narration on AT1 Bonds and its applicable circulars. RBI issued the 'Guidelines on Implementation of Basel III Capital Regulations in India' vide circular DBOD.No.BP.BC.98/21.06.201/2011-12 dated May 02, 2012. In the APPENDIX 5 of aforesaid RBI Circular, Criteria for Inclusion of Perpetual Debt Instruments in Additional Tier 1 Capital were defined. Thereafter, the aforesaid guidelines along with subsequent amendments were incorporated in the Master Circular DBOD.No.BP.BC.6/21.06.201/2014-15 dated July 1, 2014 (hereinafter referred to as " **RBI Master Circular dated July 01, 2014**") , on 'Basel III Capital Regulations' issued by RBI. Annexure 4 of the aforesaid circular defines Criteria for Inclusion of Perpetual Debt Instruments (herein after referred to as 'PDI') in Additional Tier 1 Capital. Some of the distinguishing criteria of PDI mentioned in two aforesaid RBI Circulars are reproduced as under:

"*The Perpetual Debt Instruments that may be issued as bonds or debentures by Indian banks should meet the following terms and conditions to qualify for inclusion in Additional Tier 1 Capital for capital adequacy purposes:*

1. Terms of Issue of Instruments Denominated in Indian Rupees

….

1.4 Maturity Period

The PDIs shall be perpetual i.e. there is no maturity date and there are no stepups or other incentives to redeem.

…..

1.6 Optionality

PDIs shall not have any 'put option'. However, banks may issue the instruments with a call option at a particular date subject to following conditions:

a. The call option on the instrument is permissible after the instrument has run for at least ten years;

b. To exercise a call option a bank must receive prior approval of RBI (Department of Banking Operations & Development);

c. A bank must not do anything which creates an expectation that the call will be exercised;
…..

Th*e use of tax event and regulatory event calls may be permitted. …..*

1.7 Repurchase / Buy-back / Redemption

(i) Principal of the instruments may be repaid (e.g. through repurchase or redemption) only with prior approval of RBI and banks should not assume or create market expectations that supervisory approval will be given....
……

1.10 Loss Absorption Features

PDIs may be classified as liabilities for accounting purposes (not for the purpose of insolvency as indicated in paragraph 1.9 above). In such cases, these instruments must have principal loss absorption through either (i) conversion to common shares at an objective pre-specified trigger point or (ii) a write-down mechanism which allocates losses to the instrument at a pre-specified trigger point. The write-down will have the following effects: a) Reduce the claim of the instrument in liquidation;
b) Reduce the amount re-paid when a call is exercised; and
c) Partially or fully reduce coupon payments on the instrument.

1.8 Coupon Discretion

(a) The bank must have full discretion at all times to cancel distributions/payments

(b) Cancellation of discretionary payments must not be an event of default

(c) Banks must have full access to cancelled payments to meet obligations as they fall due ………

36. Subsequently, RBI reviewed the guidelines further with a view to facilitate raising of non-equity regulatory capital instruments by banks under Basel III framework. Accordingly, certain specific eligibility criteria of such instruments were amended which were circulated/made public vide RBI circular DBOD.No.BP.BC.38/21.06.201/2014-15 dated September 01, 2014 on 'Implementation of Basel III Capital Regulations in India – Amendments' (hereinafter referred to as "**RBI Circular dated September 01, 2014**"). Such amendments which are deemed relevant for the instant proceedings are as under-

…..

6. Non-equity Regulatory Capital Instruments (Additional Tier 1 and Tier 2) - Issuance to Retail Investors

…..

6.2 Further, as indicated in paragraph 4.2.4.1B(ii) of the Master Circular, banks are prohibited from issuing Additional Tier 1 capital instruments to the retail investors. It is advised that banks may now issue Additional Tier 1 capital instruments to the retail investors, subject to the approval of their Board.

However, with a view to enhancing investors' education and awareness of risk characteristic of Additional Tier 1 instruments, banks should also adhere to the investor protection requirements analogous to those contained in paragraph 1.17 - issuance of Tier 2 debt capital instruments to retail investors of the Annex 5 of the Master Circular. In particular, the loss absorbency features of the instrument should be clearly explained and the investor's sign-off for having understood these features and other terms and conditions of the instrument should be obtained.

Relevant Paragraphs of Annex 5 of the Master Circular

1.17 Debt Capital Instruments to Retail Investors

With a view to enhancing investor education relating to risk characteristics of regulatory capital requirements, banks issuing subordinated debt to retail investors should adhere to the following conditions:

(a) …...

(b) The requirement for specific sign-off as quoted below, from the investors for having understood the features and risks of the instrument may be incorporated in the common application form of the proposed debt issue.

"By making this application, I / We acknowledge that I/We have understood the terms and conditions of the Issue of [insert the name of the instruments being issued] of [Name of The Bank] as disclosed in the Draft Shelf Prospectus, Shelf Prospectus and Tranche Document ".

(c) All the publicity material, application form and other communication with the investor should clearly state in bold letters (with font size 14) how a subordinated bond is different from fixed deposit particularly that it is not covered by deposit insurance.

Relevant Paragraphs of Annex 16 of RBI Circular dated September 01, 2014

III. Treatment of AT1 Instruments in the event of Winding-Up, Amalgamation, Acquisition, Re-Constitution etc. of the Bank

2.15 If the relevant authorities decide to reconstitute a bank or amalgamate a bank with any other bank under the Section 45 of BR Act, 1949, such a bank will be deemed as non-viable or approaching non-viability and both the pre-specified trigger and the trigger at the point of non-viability for conversion / write-down of AT1 instruments will be activated. Accordingly, the AT1 instruments will be fully converted / written-down permanently before amalgamation / reconstitution in accordance with these rules.

37. From the above, I note that initially, AT1 bonds were allowed to be issued only to institutional investors. Thereafter, vide its circular dated September 01, 2014, RBI allowed Banks to issue AT1 Bonds to individual investors but also mandated issuers to appropriately disclose to the investors, the unique features along with the risks associated with the bonds. The issuer was necessarily required to take specific sign-off from the investors for having understood the features and risks of the instrument. Further, vide aforesaid circular, RBI also instructed that all the publicity material, application form and other communication with the investor should clearly state in bold letters (with font size 14) how a subordinated bond is different from fixed deposit, highlighting that it is not covered by deposit insurance. Thus, I find RBI clearly intended to prevent individual investors from investing in these AT-1 bonds without first understanding the instrument and its underlying risks.

38. In this respect, I note that the SEBI (Issue and listing of Non -convertible Preference Shares) Regulations, 2013 provide a regulatory framework for AT- 1 bonds that are proposed to be listed and issued by banks wherein their issuance is governed by RBI. The objective of these Regulations is to ensure that necessary disclosures are made so that investors are aware of the risk while taking investment decisions with respect to these AT1 bonds. In addition to that the Regulations also provides requisite safeguards to the investors.

39. On October 06, 2020, SEBI, vide circular dated October 06, 2020, prescribed an additional framework for Issuance, listing and trading of Perpetual Non-Cumulative Preference Shares (PNCPS) and Innovative Perpetual Debt Instruments (IPDIs)/ Perpetual Debt Instruments (PDIs) (commonly referred to as Additional Tier 1 (AT 1) instruments) (hereinafter "AT-1 circular") to discourage participation by individual investors in these Basel III compliant instruments. Vide the said circular, interalia, the following was mandated:

    a. Issuance of AT 1 instruments i.e. PNCPS, IPDIs/PDIs shall be done mandatorily on the Electronic Book Provider (EBP) platform irrespective of the issue size;

    b. Only QIBs are allowed to participate in the issuance of AT 1 instruments.

    c. The minimum allotment and trading lot size of AT 1 instruments shall not be less than Rs.1 crore and

d. Certain disclosures pertaining to conditions upon which call option will be exercised, risk factors including inherent features of AT 1 instruments, Point of Non-Viability (PONV) clause, etc. are to be disclosed by the issuer in Information /Private Placement Memorandum.

40. It has been alleged in the SCN that Noticee was actively pushing officials of YBL for the down sell of AT1 Bonds in the secondary market and was giving direct instructions to officials of YBL to go for granular distribution. The same led the senior officials of the PWM Team of YBL to recklessly sell the bonds to the individual investors without doing adequate due diligence. It has also been alleged in the SCN that the senior officials of PWM Team namely Mr Vivek Kanwar, Mr. Ashish Nasa and Mr. Jasjit Singh Banga on behalf of YBL were involved in the misrepresentation, manipulation and mis-selling the AT1 bonds of YBL to the individual investors and Noticee was also responsible for the said actions of the aforesaid senior officials of the PWM Team as he was overseeing the entire activities, taking regular updates from the team and giving them further instructions to expedite/ increase the sales. It has been alleged that YBL had misrepresented the AT1 bonds and thereby manipulated the investors into buying such risky bonds.

41. With respect to the allegations in the SCN relating to YBL, Vivek Kanwar, Jasjit Banga and Ashish Nasa, vide Adjudication Order dated April 12, 2021, it has been concluded that YBL had misrepresented the AT1 bonds to its customers and members of PWM team i.e. Mr. Vivek Kanwar, Mr. Jasjit Singh Banga, Mr. Ashish Nasa were involved in designing and perpetrating such fraud on customers. The present adjudication proceeding against Noticee is to examine his role, if any, in the above fraud perpetrated by YBL and members of PWM Team.

42. As mentioned earlier in the Order, act of misrepresentation, manipulation and misselling of AT1 Bonds by YBL and abovementioned officials of YBL has already been established by Adjudication Order dated April 12, 2021. In this regard, I note that charges against Noticee also rises from aforementioned act of misrepresentation, manipulation and misselling of AT1 bonds by YBL.Therefore, in order to address the contentions raised by Noticee disputing the misrepresentation, manipulation and misselling of AT1 Bonds, I find there is a need to examine/specify the misrepresentation, manipulation and misselling of AT1 Bonds by YBL.

43. In order to deal with misrepresentation, manipulation and misselling of AT1 bonds by YBL, I find that there is a need to first understand the procedure and modalities adopted by YBL while facilitating the sale of AT1 bonds from institutional investors to its individual clients. I note from the Report of the Internal Audit Department on the Yes Bank AT-1 Bonds that AT1 bonds were offered to retail and institutional clients and was a part of bouquet of products offered by YBL. I note that PWM team of YBL was managing the downsell of AT1 Bonds to individual clients. I note from the email dated June, 2017 of Jasjit Singh Banga to his team in YBL that there was a documented step-by-step process (hereinafter referred to as "**Step by Step Process**"**)** which was to be followed by all the YBL Retail Sales Relationship Managers (hereinafter referred to as "**RMs**") in sale of these AT1 bonds. In this regard, I note from the statement of Mr. Vivek Kanwar recorded during the investigation that members of PWM Team, namely, Mr Vivek Kanwar, Mr. Jasjit Singh Banga and Mr. Ashish Nasa designed the aforementioned Step by Step Process to sell AT1 Bonds to individual customers of YBL. The details of the aforementioned Step by Step process to be followed by RMs for the sale of AT1 bonds is as given hereunder:

Step 1*: Speak to the client about the Bond and share the attached email along with the Term sheet. (****Yes Bank Tier I Bond - IRR up to 8.70% for 5 Years)***
Step 2*: Once the client has confirmed his interest, open the attached pricing sheet (YBL Basel Tier I ~ Price Sheet) and fill the investment amount and the deal date to calculate the Total Consideration Amount/RTGS amount. Then send an email to Jasjit Singh Banga/Abhishek Singhal with the client and purchase details along with the documents mentioned below. The email format is attached. (****TIER I Bond Purchase****).The reporting format is added to the mail.*
 # Please note that this should be done atleast a day prior to the date of execution before 4:30PM and the amount / no of bonds cannot be changed post this confirmation.

- *ICCL Registration cum Bond Application Form (Take signatures for all holders)*
- *Client Master List copy for the Demat account (self attested and certified true copy)# Bank statement for the last 2 months (self attested and certified true copy) from where the RTGS will be affected.*
- *Cancelled Cheque (from where the RTGS will be executed) for IFSC Code Details.*

- *Pan card Copy (self attested and certified true copy)-In case of joint holders pan card copy of all the holders.*
- *Adhar Card copy (self attested and certified true copy)-In case of joint holders*
- *pan card copy of all the holders*
- *FATCA Declaration (form attached)*
- *Passport Copy (self attested and certified true copy) - only in case of NRIs.*

 # The holding pattern in the order form; Bank Account and the Demat Account has to be exactly the same.

Please note that for non individual customers the additional documentation to be collected is attached.

***Step 3:** On Trade Date, customer will have to transfer the funds to ICCL via RTGS through their bankers on the following Bank Account details with clear mention in narration "TIER I Bond Purchase ", **# RTGS** has to be executed exactly upto two decimals of the confirmed amount and UTR number should be shared with Jasjit/Abhishek before 12:00 PM*

- *Beneficiary Name: ICCL*
- *RTGS Settlement Account No.: 8715962*
- *Account Type: Current*
- *IFSC Code: ICLLO000001*

44. Further, I note vide email dated February 07, 2017, Mr. Vivek Kanwar had introduced to members of his team in YBL, a verbal sales pitch that was to be used by RMs of YBL to open conversation with customers while pitching the AT1 bonds. The verbal sales pitch as circulated by Mr. Vivek Kanwar vide his aforementioned email is reproduced hereunder:

VERBAL PITCH for TIER I Bond

Greetings !!

As an esteemed customer of Yes Bank, we are happy to introduce you a unique investment opportunity which would allow you to earn interest rate of as high as 9.06% p. a, that too in an environment of falling interest rates. Not only this, you would be able to enjoy this high interest rate for next 5 yrs too. As you are aware Bank FDs of 1 to 5 yrs maturity are offering rate of approx 6.5% pa.

If you allow me, I would like to tell you more about this opportunity.

This opportunity comes to you with YES Bank Tier 1 Bonds which were privately placed in Dec 2016 at 9.50% coupon and are currently available/ trading at 9.06-9.10%. Yes Bank's issue of these bonds was subscribed by institutional investors on the first day of placement itself and against the issue size of Rs 2100 crs, the bank had garnered 3000 crs. These superior quality bonds which are rated AA by ICRA & CARE, generated high interest from some marquee institutional investors including Government Owned entities, Insurance Companies, Public Trust Entities like Mutual Funds and even Employee Provident Funds.

Basis your interest we can arrange these bonds for you as one of the original investor has agreed to sell the bonds in the secondary market which offers an opportunity to buy the bond at an IRR of 9.06% for a minimum period of 5 years.

The tenure of the bond is perpetual with a call option with Yes bank in Dec 2021. Hence the minimum tenure left in the Bond is 5 years from now. In all likelihood Yes Bank would exercise the call option at the end of 5 years.

For a Bank to exercise call option and release principle, it needs to maintain CET I capital of 6.125%. For Yes Bank, this is almost theoretical point as the CET1 capital of Yes Bank is 10.2% as on 31st December 2016.

45. I also note from the email dated October 30, 2017 from Ashish Nasa to officials of YBL that sales docket provided to RMs with respect to AT1 bonds contained the following:
    a. Sales Pitch (This was to be sent to client only when RMs have already completed first round of verbal discussion)
    b. Pricing Sheet
    c. Term Sheet of the Investment Instrument
    d. FAQs on the Product for domestic investors
    e. FAQs on the Product for NRIs investors with country specific DTAA rates

46. I note that there were several misstatements/misrepresentations and suppression of material facts in the verbal sales pitch, email sent to customers as part of Step by Step Process of YBL and FAQs sent to RMs as part of the sales docket. The misstatements/suppression of material fact as noted in the aforementioned documents are as given hereunder:
    I. I observe that the following is stated in the 'Verbal Sales Pitch' document "*In all likelihood the YES Bank would exercise the call option at the end of the 5 years".* I also note that in the email sent to customers as part of Step by Step Process of YBL also it has been stated that "*The tenure of the bond is perpetual with a call option with Yes bank in Dec 2021. Hence the*

minimum tenure left in the Bond till call option with Yes Bank is 5 years from now (as provided in the Price Sheet -Attached Excel)." Further, I note that even in the "*FAQs-YES BANK TIER I Bonds*" which is part of sales docket provided to RMs it has been provided as :

"*Q2: When is the tenure of the bond? Ans: The bond is perpetual which means exact maturity date is not defined. However, YES BANK can call off the bond after the minimum committed period of 5 years starting 18 October 2017. Hence earliest maturity date (Call Option Exercise) is 18 October 2022 (5 Years). General market practice is that all such bonds are called off at the first option."*

In this regard, I note from the term sheet and RBI Master Circular dated July 01, 2014 that to exercise call option even after a period of five years, YBL had to fulfil certain conditions including obtaining approval of RBI. I also note that aforementioned Circular has specifically stated that *A bank must not do anything which creates an expectation that the call will be exercised.* I note that the statements in the verbal sales pitch, email in the Step by Step process and FAQs which form part of sales docket clearly give an impression to the customer that the call will be exercised and is clear violation of directions in the RBI Master Circular dated July 01, 2014 .

II. The 'Verbal Sales Pitch' document further states that "*you would be able to enjoy this high interest rate, i.e., upto 9.06% p.a., for the next five years too.*" I note that in the email sent to customers as part of Step by Step Process of YBL also it has been stated that…….." *The calculation of the interest rates including exact dates when issuer will release interest is also provided in the excel sheet…"* Further, I note that even in the "*FAQs-YES BANK TIER I Bonds*", it has been provided as :

Q3: What is the frequency of the coupon payment and what are the Payment dates?

Ans: The interest will be paid out annually with the First Interest Payment date as 18th October 2018.

1st Interest Payment date 18-Oct-2018

2nd Interest Payment date 18-Oct-2019

3rd Interest Payment date 18-Oct-2020

4th Interest Payment date 18-Oct-2021

5th Interest Payment date 18-Oct-2022

In this regard, I note that it has been clearly mentioned in the term sheet that coupon service would be subject to coupon discretion and or loss absorbency. I note that aforementioned statements in the verbal sales pitch, email in the step by step process and FAQs which form part of sales docket clearly give an impression that there would be assured coupon payment with respect to AT1 bonds.

III. Further, in the "*FAQs-YES BANK TIER I Bonds*" it has been stated that :

Q11: Are the Bonds secured?

Ans: Bank bonds are always unsecured as per regulatory environment. This is irrespective of the Issuing Bank. Hence, all Banks can only issue unsecured bonds. However, despite being unsecured, the bonds enjoy high credit worthiness due to sound financial system in the country.

I note that the above statement clearly downplayed the intrinsic risk elements associated with the AT1 Bonds.

47. Noticee in his submissions has further contended that sales pitch covered explanations on the risk of prospective customers. In this regard, I note from the perusal of the Verbal Sales Pitch and email shared with clients by YBL RMs as part of the First Step of Step by Step Process that the same only highlighted the attractive features of AT1 bonds and was silent about the risks associated with these bonds. There is not a whisper in these documents regarding the risk elements of AT1 Bonds like loss absorbency feature of the bond, coupon rate etc. On the contrary, I find from perusal of the aforementioned documents that AT-1 bonds were compared by YBL with fixed deposits (FDs) only on rate differentials. In this regard, Noticee in its submission has contended that during cross examination,multiple witnesses have testified stating that these bonds were not marketed in any literature of YBL as "Super FDs" or "safer than FD".To highlight few of the instances in Verbal Sales Pitch and Email to customer which is the part of First Step of Step by Step Process where AT1 bonds were compared with FD are as given hereunder:

<u>Extract from the Verbal Sales Pitch</u>

we are happy to introduce you a unique investment opportunity which would allow you to earn <u>interest rate of as high as 9.06% p. a, that too in an environment of falling interest rates. Not only</u>

this, you would be able to enjoy this high interest rate for next 5 yrs too. As you are aware Bank FDs of 1 to 5 yrs maturity are offering rate of approx 6.5% pa.

Extract from the Email which was the part of First Step of Step by Step Process

…………………

"• *If you compare this product TODAY with 1-5 Year Bank FD at an interest rate of say 6.8% (Annual Yield of - 7.0%) - this product offers incremental comparable Yield close to 2.1%.*

48. Further, I note that in his email dated February 28, 2018 sent by Ashish Nasa to officials of YBL with subject heading " *YBL Tier I Bond –Important Announcements*"- he has stated that *" In the last few weeks we have witnessed changes in the overall Bond and FD Pricing. YBL Tier I bond has been positioned as an advantage over traditional fixed income instruments and hence, to retain the positing, I am pleased to inform that we have improved the yield on instrument slightly with effect from March 01, 2018."* I also note that in his email dated November 07, 2017 to his team in YBL, Ashish Nasa stated the following: …. " *Sending you additional Yield Calculator incorporating post tax impact/comparison with NRE FD. I hope the additional calculator will help you solicit higher amount from NRI clients. You can send this calculator to clients as well with usual email disclaimers…"* In my view, these emails clearly indicate that there was a clear comparison of AT1 bonds with that of FDs by YBL officials and AT1 bonds were pitched by them as superior alternative to FDs. In light of the observations in the preceding paragraphs, I find that contention of Noticee that AT1 bonds were not marketed as "Super FD" is of no merit.

49. Further, I observe from the email dated October 24, 2020 received from YBL by SEBI that out of 789 individual investors of AT1 bonds who had existing FD with the YBL, 277 of them prematurely closed their FDs with the bank. The details of the same are as given hereunder:

	Total No. of Individual investors	No. of Individual investors who were already existing customers of Yes Bank	How many Individual investors had existing FDs with the bank	For how many Individual investors who had existing FDs with the bank, the FDs were prematurely closed and the same was invested in AT1 bonds.
No.of Individuals	1346	1311	789	277
No.of transactions	1712	1680	1004	305
Value of Bonds Sold (rounded off to nearest Cr)	679 Cr	663 Cr	387 Cr	80 Cr*

* The aggregate amount of bonds held by these customers were Rs.101 Cr however only Rs.80 Cr of that investment was funded by pre mature withdrawal of FD's held with the Bank. Aggregate amount FD's held by these Customers with the Bank was Rs.177 cr. The period considered for Pre Mature withdrawal is 7 days prior to the actual Bond transaction date.

50. The Noticee has further submitted that all investment instruments carry risks which SEBI has failed to point out. Noticee in this regard contended that even bank FDs and deposits are jeopardized if and when a bank collapses and even the insurance cover for the same is not unlimited. I note that with respect to risk factors, AT1 bonds can in no way be compared to FD. In this respect, I note from Noticee's own submission that in case YBL were to fail, FD, to the extent of Rs 5 Lacs per depositor, is safe and secured by virtue of the insurance protection under the Deposit Insurance and Credit Guarantee Corporation (prior to April 1, 2020, the amount was Rs 1 lakhs). Further, RBI in its master circular has specifically directed the banks to state in bold letters (with font size in their publicity material, application form and other communication with the investor 14) how AT1 bonds is different from fixed deposit particularly that it is not covered by deposit insurance. Further, I also note from the term sheet and information memorandum relating to AT1 bonds that the claim of AT1 bond holders is subordinated to the claim of FD holders.

51. Noticee in his reply to SCN has contended that YBL followed appropriate procedures while downselling the AT1 bonds to retail investors/HNIs. Noticee in his reply has also contended that

YBL had provided all the information and documents to the customers to make an informed decision about investing in the AT1 Bonds. Noticee contended that all the RMs were duly instructed to explain the risks of AT1 Bonds to all the customers and, full disclosures regarding the risk associated with AT1 Bonds were made in the term sheet. Noticee has contended that term sheet which form part of the Step by Step Process provide risk elements attached with the Bond in terms of RBI circular (RBI/2014-15/201 dated September 01, 2014). I note from perusal of term sheet that though term sheet contained risk elements attached with the bond, it did not highlight those risk elements. Moreover, I note from YBL's own communication to SEBI that there was no system in place in YBL to ensure that the RMs were actually sharing the Term Sheet with all the customers. From the internal review report placed on record, it is observed that in a sample of 30 and 79 transactions, RMs could produce evidence of only 5 and 6 emails, respectively, through which the Term Sheets along with other documents were sent to their customers. It is clear that the 'Step by Step' process adopted by YBL and designed by Mr Ashish Nasa, Mr. Vivek Kanwar and Jasjit Singh Banga failed to devise a process to ensure that all the relevant documents including the said Term Sheet were being shared or informed to all the customers. Moreover, I note that RBI Circular dated September 01, 2014 mandates that if these bonds were sold to the individual investors in the primary market then the bank was supposed to take specific sign off from the investors that they have understood the product and in particular 'the loss absorbency features' have been explained to them and the same was not done by YBL. I note that although, the AT1 bonds were not sold to the individual investors in the primary market but the inherent risk associated with the bonds remained the same and therefore it did not absolve YBL from its obligation to obtain the sign off from the investors that they understood the features and risk associated with the bond. Further, vide aforesaid circular, RBI also instructed that all the publicity material, application form and other communication with the investor should clearly state in bold letters (with font size 14) how a subordinated bond is different from fixed deposit, highlighting that it is not covered by deposit insurance. Therefore, I find that the aforementioned contentions of Noticee lacks merit.

52. Moreover, Noticee also contended that while executing the AT1 bonds transaction in online platform called ICCL, the terms and conditions relating to these bonds were presented to the

investors. In this regard, I note that no documentary evidence was produced by Noticee to support the aforementioned contention that at the time of execution, terms and conditions of AT1 bonds were presented to investors. Therefore, I find that aforementioned contention of Noticee lacks merit.

53. I note that Noticee has submitted that in the report of Internal Audit Committee of YBL on AT1 bonds it was found that requisite processes and documentation were in place with respect to facilitation of sale of AT1 Bonds in the secondary market to Retail and HNI investors and the same was in line with the applicable regulatory framework. With regard to aforementioned contention of Noticee, I note that no internal controls where in place in YBL to ensure that all risk factors were communicated to Noticee and there were manifest misrepresentations in the Step-by-Step process formulated by YBL. Therefore, I am not able to accept the aforementioned contention of Noticee.

54. Further, I note that Noticee even in his submission had tried to downplay the risk elements associated with the product and had stated that AT1 bonds are low risk bonds. Noticee has also contended that premise in the SCN that AT1 bonds were not meant for retail investors is without any foundation. I note that the allegation in the SCN against YBL and its officials arose not because YBL facilitated the sale of AT1 bonds to retail investors but in respect of misselling or fraud involved in such sale. Noticee in his reply has submitted that even during the cross-examination of certain witnesses, it was clearly brought out that the risk-associated with the AT1 Bonds was no different from other debt instruments. In this regard, I note that AT1 bonds possess certain unique features which are given as under:

a. These bonds are perpetual, i.e. there is no maturity date and there are no step-ups or other incentives to redeem. There is no put option.
b. These bonds are subordinated to depositors, general creditors and subordinated debt of the bank.
c. These bonds are neither secured nor covered by a guarantee of the issuer or related entity or other arrangement that legally or economically enhances the seniority of the claim vis-a-vis bank creditors.

d. These bonds may be callable at the initiative of the issuer only after a minimum of five years subject to conditions that are specified therein.

e. Any prepayment of principal [e.g. through repurchase or redemption] must be with prior supervisory approval and banks should not assume or create market expectations that supervisory approval will be given.

f. The instrument cannot contribute to liabilities exceeding assets if such a balance sheet test forms part of national insolvency law.

I note that the aforementioned features of the bond make it a high risk product and distinct from other debt instruments and therefore, I find that contention of Noticee that AT1 bonds is not high risk bond of no merit.

55. Further, the fact that AT1 bonds are of high risk can also be seen from the fact that initially, AT1 bonds were allowed to be issued by RBI only to institutional investors. Thereafter, vide its circular dated September 01, 2014, RBI allowed Banks to issue AT1 Bonds to individual investors but also mandated issuers to appropriately disclose to the investors, the unique features along with the risks associated with the bonds. I also note that Hon'ble Madras High Court too in its decision in Piyush Bokaria vs Reserve Bank of India (Decision dated 30 September, 2020) has considered AT1 bonds as high risk investments. In this regard, Hon'ble Madras High Court has stated that *"The present imbroglio, in our view, makes out a case RBI to revisit the Master Circular as regards direct retail participation in <u>instruments that carry such high risk.</u> In addition, in co-ordination with the Securities and Exchange Board of India, measures may be taken to avert retail participation when the terms of issue do not permit the same. While making these observations, we are conscious that ultimately it is for the RBI to take a calibrated decision on carrying out a risk-benefit analysis."*

56. Noticee in his submissions has tried to place reliance on statements of Mr. Ashish Nasa and Mr. Vivek Kanwar to show that AT1 bonds are low risk products. In this regard, I note that Mr. Vivek Kanwar and Ashish Nasa are co-noticees in the adjudication proceedings initiated vide Show Cause Notice dated October 28, 2020 and were imposed a penalty under Adjudication Order dated April 12, 2021 for their part in misselling of AT1 bonds by YBL. In light of the same, I am of the

view that solely placing reliance on statements of these individuals by Noticee to contend that AT1 bonds are not high risk products is misplaced. Further, Harshil Suvarnkar, one of the witness who was cross examined also considered AT1 Bonds as a high risk product.

57. Noticee in his submission has contended that Mr. Rajat Monga, erstwhile CFO of YBL during cross examination has stated that individual investors were not allowed to participate in primary issuance of AT1 bonds only due to administrative hassle and not due to any risks associated with the product. In this regard, I note that this is an individual opinion. In any case, it can't be denied that they are High Risk Bonds. Further, I note that RBI had not initially allowed retail investment in AT1 bonds due to intrinsic risk associated with the Bond and, even while RBI allowed retail investment in AT1 bonds, stringent checks were placed on Banks to ensure risk factors were communicated to Noticee. Therefore, I find that aforementioned contention of Noticee lacks merit.

58. Noticee in his submission has also contended that there was no requirement under law to undertake risk profiling for products/ instruments such as the AT1 Bonds, which were considered low risk. In this regard, I note that it is already established that AT1 bonds are high risk products and cannot be considered as low risk and therefore, a prudent practice would have been to assess the risk profile of potential subscribers before downselling them the bonds.

59. Noticee in his submission has contended that risks associated with AT1 bonds were already in the public domain as the information memorandum was available in the website. Noticee has contended that the private placement memorandum issued by YBL in relation to AT1 Bonds was also available in public domain for perusal of all the prospective investors. Noticee has further submitted that due to availability of information memorandum in public a presumption is created that that all potential investors of AT1 bonds had perused the information, including the risk associated with AT1 Bonds before investing in the AT1 Bonds. In this regard, Noticee has also stated that RBI circular (Ref: DBOD.No.BP.BC.38/21.06.201/2014-15) dated September 1, 2014 while allowing issue of AT1 Bonds to retail investors categorically provides that "*both Additional Tier 1 and Tier 2) issued by banks must have a provision that requires such instruments, at the option of the Reserve Bank of India, to either be permanently written off or converted into common shares upon the occurrence of the 'Point of Non-Viability (PONV)' trigger event*". In this regard, I

note that issue involved in the present case is whether there was any misrepresentation, manipulation and misselling of AT1 bonds by YBL and its officials and the questions like investors of AT1 bonds could have checked the information memorandum which is available in public or RBI circulars regarding AT1 bonds is of no significance in the present proceeding as SEBI's case is not whether individual investors had access to IM but that of the role played by YBL and Noticee in perpetrating fraud on these investors when brokering the sale of the AT1 bonds. I note that in the present matter there was not only a deliberate concealment of material information but also misleading information was provided to customers of AT1 bonds such as comparison to FDs which had induced these customers to invest in AT1 bonds Therefore, YBL's act of suppression of material information and providing misleading information relating to AT1 bonds did have the effect of inducing certain customers in investing in such high risk bond like that of AT1 bonds. Further, I am of the view that since YBL was facilitating the sales of the product like an intermediary, there was a fiduciary obligation on it to highlight the risk factors associated with the AT1 bonds and also to not to indulge in circulation of misinformation regarding the bond. Therefore, I am unable to accept the aforementioned contention of Noticee.

60. It has been contended by Noticee that issue in the matter has already been decided by the Hon'ble Madras High Court in Piyush Bokaria & Ors. v Reserve Bank of India & Ors. (2020) 2 Writ LT 570. Noticee also submitted that Hon'ble Madras High Court in Piyush Bokaria & Ors. v Reserve Bank of India & Ors. (2020) 2 Writ LT 570 had held that prospective investors of AT1 bonds were well aware of the risks associated with investing in AT1 bonds. In this regard, I note that aspect of misrepresentation, manipulation and misselling of AT1 bonds by YBL was never in issue before Hon'ble Madras High Court. The legal issue involved before the Hon'ble Madras High Court in the aforementioned case refer to the validity of Master Circular dated July 01, 2015 issued by RBI in respect of AT1 bonds. Therefore, issue involved in the present matter is quite distinct from that before Hon'ble Madras High Court and so the aforesaid contention of Noticee is found to be untenable.

61. In light of observations in the preceding paragraphs, I find that YBL deliberately misrepresented the AT1 bonds as being more attractive than the FDs, by suppressing the inherent risks of these bonds and distorting facts to mislead their customers and manipulated them into investing in these

risky bonds. Through the aforesaid scheme and deliberate acts of misrepresentation and manipulation by YBL, some of the customers were even influenced to switch their investments in FDs of YBL to these risky AT-1 bonds.

62. Noticee in his submissions has submitted that AT1 bonds were only downsold to ultra HNIs/ HNIs and ultra HNIs/ HNIs are considered as very well-informed investors. In this regard, Noticee has placed reliance on the deposition made by Mr Vivek Kanwar. The same is as given under:

"3. Now, so can I take you to question number four? Where you basically explained the role of Yes Bank in selling of the AT1 bonds. Would you elaborate on this, a little more, with particular context of what does the type of customers of the bank to whom these bonds would be sold?

Answer: So these bonds were sold to HNI customers who were part of the wealth management program.

4. What would your understanding be here of what is an HNI?

Answer: HNI in our definition 30 Lakhs NRV who had with the bank but I go strictly by the regulatory definition then, the retail customer is as per SEBI less than two Lakhs. And that's how they define retail. So I think anything else can be HNI, super HNI.

5. For your purposes, for the bank's purposes, What sort of a client would form an HNI client?

Answer: 30 Lacs NRV (net relationship value, which included mutual funds, Casa, FD, wealth with the bank."

63. Noticee in his submissions has stated that if HNI/ultra HNI investors are given full information of the risk, the decision-making by them is akin to how corporates make investment decisions. With respect to aforementioned contention, I note that even though Noticee states in one part of his reply that AT1 bonds were sold only to HNIs/ultra HNI, in other parts of his submission he has admitted that they were sold to retail individuals. Further, I note from the Review by the Internal Audit Department of YBL on the Yes Bank At-1 Bonds that AT1 bonds were sold by YBL to both retail investors as well as HNI investors. I am of view that when sold to both retail & HNIs, the risks associated with these bonds should have been clearly explained to them, which was not done by YBL. Even if it was assumed that the AT1 bonds were sold to HNIs only, the same cannot excuse the misrepresentation, manipulation and misselling of the AT1 bonds by YBL and in turn that by Noticee.

64. With regard to Noticee's role in misrepresentation, manipulation and misselling of AT1 bonds by YBL and PWM team of YBL during the downsell of AT1 bonds from institutional investors to individual investors, I note from the Annexure A email series and statement of Mr Rajat Monga during investigation that downselling of AT1 bonds from few specific institutional investors like IBHF (Indiabulls Housing Finance Ltd), DHFL (Dewan Housing Finance Ltd.) who subscribed to primary issue of AT1 bonds to retail /HNIs investors in secondary market was done at the instance of Noticee . In this respect, I note that Mr Rajat Monga in his statement recorded on September 23, 2020 before Investigating Authority, SEBI has stated the following:

"Q.4 Explain the role of YBL in selling its AT1 Bonds in the secondary market.
A.4. <u>Yes Bank facilitated the distribution of these bonds held by a few specific primary subscribers particularly Indiabulls Group. We were told by the then MD & CEO to do so as it would purportedly help create shelf space for follow on primary issuances of AT1 Bonds of the bank</u>. To the best of my knowledge, there was no profit/commission received by YBL for facilitating such sale."

65. I note that the aforementioned statement of Mr. Rajat Monga remained unassailed even after the cross examination of Mr Rajat Monga conducted on June 09, 2020. Further, I also note from the aforementioned statement of Mr. Rajat Monga and Annexure A email series that Noticee was of the view that it was important to free up the limits/shelf space for certain institutional investors who subscribed in the primary issuance so that they can participate in subsequent issues of AT1 Bonds as and when launched by YBL.

66. I note from Annexure A emails that YBL's role was not mere facilitation of sale from institutional investors to individual investors as the bank was actively approaching these institutional investor and the same was done under the instance of Noticee. Extracts from some of the emails are reproduced hereunder:

From: Nirav Dalal (FM)
Sent: Monday, April 24, 2017 12:15 PM
To: Rana Kapoor (MD & CEO)

Cc: Rajat Monga (MGMT); Arun Agrawal (1B); Nikhil Sahni (GB); Kanwar Vivek (Br. B}); P Rakesh (FM); Sushil Budhia (FM)

Subject: RE: Distribution Update

D/Rana:

……………………………………………………………

DHFL is presently holding Rs. 390 cr of the AT1. <u>Last week, we approached DHFL to fulfill an additional demand from Templeton MF of Rs. 200 cr at par.</u> DHFL (Santosh Sharma, CFO) told us that they are not looking to sell the paper now. He also confirmed that henceforth, it will be DHFL's call on timing the distribution and that the distribution and the corresponding profit or loss will be their responsibility.

67. I also note from Annexure A emails series that while downselling AT1 bonds from specified institutional investors, Noticee was instructing officials in YBL to focus on "*granular distribution of AT1 bonds"* . I note from the statement recorded on Oath of P Rakesh during investigation that the term "Granular Distribution" – basically means distribution to non-institutional investors (mainly public at large i.e. individual investors). I also note from the Annexure A email series that there has been repetitive stress placed by Rana Kapoor on officials of YBL to go for granular distribution of AT1 bonds. This can be seen from the words used by Noticee in his emails to officials of YBL like " *MOST imp to sell down granularly", "although REAL Test is to sell down with granularity", "Now for the latest AT-1 for granular distribution"* etc.

68. I also note from Annexure A email series that there was close monitoring of sales facilitated by YBL from institutional investors by Noticee as he was asking for weekly updates on the distribution of AT1 bonds from YBL officials. In this regard, I note from email dated April 25, 2017 that even when officials of YBL recommended reduction of frequency of updates to Noticee concerning distribution of AT1 bonds from weekly to fortnightly, Noticee had insisted on keeping the distribution updates to weekly stressing the importance of downsell of AT1 Bonds by YBL and creation of shelf space. The extract of the aforementioned email is reproduced here:

<u>IBHFL</u>

IBHFL now holds a residual amount of Rs.240 cr of the AT1 bonds. We expect the same to be sold to PWM clients gradually, by June end. Distribution to PWM clients should entail profits on sale, thereby helping recoup the loss of Rs. 1.32cr incurred on sale of the Rs. 760cr so far.

RK: Have we sold the 760CR? Please confirm. Loss of 1.32 CR - I assume from IB account. Please confirm.

Distribution Update

We recommend reducing the frequency of the updates from weekly to fortnightly as only IBHFL's outstanding amount of Rs. 240cr requires our involvement for distribution, albeit granularly in the PWM space.

RK: Please keep it weekly as this market making is imp, the form is standardized. We have to square off IB, and offer to sell DHFL as well in order to create more "shelf space" for future AT1 offerings. Please try to ensure "best efforts" that these investors make profits in aggregate, apart from the attractive 9.5% coupon."

69. This clearly indicates not only the active involvement of Noticee in the downsell of AT1 Bonds but indicates the pressure put by Noticee by asking for such frequent updates on distribution of AT1 Bonds on his subordinate officials in YBL including Vivek Kanwar, head of PWM team (who was one of the persons involved in the design of step-by-step process and who created Verbal Pitch), who were sent the said email for making wider and accelerated downsell of AT1 Bonds. Moreover, I note from aforementioned email that Noticee was even instructing the officials to ensure that institutional investors like IBHF make some profit/ recoup their losses on the sale of AT1 bonds facilitated by YBL. The pressure put by Noticee on officials of YBL can also be seen from the words used by Noticee in his emails to them like "*Need more success and achievement on this front. Please make Hanumanian efforts."* (Email dated January 14, 2017 from Rana Kapoor to P Rakesh, copying Sushil Budhia, Nirav Dalal, Rajat Monga), " *Please make Hanumanian efforts (Email dated March 25, 2017 from Mr Rana Kapoor to P Rakesh, copying Sushil Budhia, Nirav Dalal, Kanwar Vivek; Rajat Monga; Arun Agrawal ; Surendra Jalan; Jaideep Iyer ; Nikhil Sahni)*

70. Further, I also note that apart from the receiving updates regarding distribution of AT1 bonds from institutional investors, Noticee was also providing instructions to officials of YBL regarding the sale of AT1 bonds based on distribution updates received by him. For instance, the email dated March 14, 2017 from Rana Kapoor to P Rakesh and copying Rajat Monga, Nirav Dalal, Arun Agarwal, Surendra Jalan, Sushil Bidha, Haideep Iyer, Vivek Kanwar states the following 1) *Overall distribution progress needs considerably more efforts/outcomes. 2) Get ICRA rating as well for member (refer recent) email-why so slow?"* I note that great stress was placed by Noticee in fully downselling AT1 bonds held by institutional investors like IBHF and thereby create shelf space in these institutional investor for creation of future AT1 bonds sales. This can be seen from the contents of emails sent by Noticee to officials of YBL like "*Imp to fully sell down our AT1 maiden issue successfully (after 2-2.5 vears). This will be great for the future"* [Email dated June 25, 2016 from Rana Kapoor to Surendra Jalan , copying Rajat Monga, Nirav Dalal , Rajesh Jhunjhunwala, Vivek Kanwar]

71. Further, I note from the Annexure A email series that Noticee was repetitively asking officials of YBL to accelerate the sales of AT1 bonds facilitated by them. This can be seen from the wordings in emails sent by Noticee and which form part of Annexure A email series like "*V.V.Imp. Most imp to show traction/process on IB/DHFL sales." "we need to accelerate", "Imp to get this entire IB-AT1 YBL bonds fully soonest", "This is really pittance. Please augment/accelerate efforts".*

72. Considering the observations in the preceding paragraphs, I am of the view that entire Step by Step Process and verbal sales pitch was designed to meet Noticee's objectives for creation of shelf space for specific institutional investors, granular distribution of the AT1 bonds and to accelerate the sale of AT1 bonds. This can be seen from the fact that Step by Step Process and verbal sales pitch were formulated at the time when Mr Rana Kapoor was stressing on granular distribution of the bonds/creation of shelf space even though YBL was selling AT1 bonds even before that. Besides, verbal sales pitch and Step by Step Process were clearly formulated with the intention to accelerate the downsell of YBL Bonds as can be seen from the fact that only attractive features of AT1 Bonds were only stated in the aforementioned documents. In this regard. I also note that Mr Vivek Kanwar, vide his email dated February 07, 2017 to officials of YBL with subject

: RE: New YBL Tier I - Region Wise Sales Report (Please ignore previous email), has stated as under:

> *"Kindly note that we are not seeing enough build up on down selling of new YBL Tier 1 Bonds. Since it is a great proposition for customers, I was expecting a much better response. Although we have done systematic decimation of information on these bonds, I still find that many RMs are still not able to make a strong pitch probably this being a new instrument.*
>
> *I am thus enclosing the sales pitch which can be used to open the conversation with customers while pitching these bonds.*
>
> *Hope this would help us in ramping up the nos.* ………"

73. I note that Mr Vivek Kanwar who was head of the PWM team was copied in most of the emails from Noticee wherein he was giving instructions to team regarding the sale of AT1 bonds and emails wherein Noticee was stressing the importance of creation of "shelf space" for institutional investors and granular distribution of AT1 bonds. I also note that Mr. Ashish Nasa and Jasjit Banga, who was also involved in the design of Step by Step Process was reporting to Mr. Vivek Kanwar. In this regard, I note that Noticee in his reply to SCN has contended that he had no interactions with PWM team. In light of above observation, I clearly cannot agree with aforementioned contention of Noticee.

74. With regard to observations against him in the SCN, Noticee in his submission has stated that there was no push from Noticee to officials of YBL to aggressively sell the bonds. Noticee in his reply to the SCN has contended that the reliance on the email of YBL dated October 8, 2020, where it has been stated that Noticee pushed officials of YBL to down-sell AT1 Bonds, cannot be relied upon by the SEBI as the author of the said email, Mr. Shivanand Shettigar (being a Group Company Secretary and Compliance Head), refused to depose on the contents of October 8, 2020 email during cross examination on the grounds of having no personal knowledge in the matter. Noticee has further contended that Mr. Shivanand Shettigar, being a representative of YBL and author of email dated October 8, 2020, ought to have given his views on the contents of the said email but since no confirmation was given by Mr. Shettigar, the contents of the email dated October 8, 2020 cannot be relied upon insofar as it pertains to allegations made against Noticee.

75. With regard to aforementioned contention of Noticee, I note that Mr Shivanand Shettigar, Group Company Secretary of YBL, on behalf of YBL, vide email dated October 08, 2020 to SEBI had stated that "*There was a push from the then MD & CEO - Mr. Rana Kapoor, to facilitate secondary market sale. The same is evident from his remarks on the update mails directing various teams in the bank to explore facilitation of secondary market sale. The emails from Mr. Kapoor are appended in a chronological manner as Annexure A series*." During the cross examination of Mr Shivanand Shettigar with respect to statements made by him vide his aforementioned email, it was stated by him that he had no personal knowledge regarding the statements made in his email dated October 08, 2020 and the same was prepared by collating information provided by respective teams of YBL. Considering the above fact, the statement that Mr. Shivanand Shettigar, ought to have given his views on the contents of the said email is unjustified. With regard to the "push" from Rana Kapoor as stated in email dated October 08, 2020, Mr Shivanand Shettigar stated that said statement was received from Mr. Vivek Kanwar. I note that even if so called "push" as stated in email dated October 8, 2020 is ignored, the observations in preceding paragraphs clearly establishes that there was pressure from Noticee on his subordinates including Mr. Vivek Kanwar to down sell AT1 bonds expeditiously.

76. Further, Noticee in his reply has contended that the undersigned did not allow further cross-examination of Mr. Vivek Kanwar, with respect to finding the truth about the so-called "push" on a specious ground that Mr. Vivek Kanwar's statement before undersigned had not said anything about "push" from Noticee whereas as per Mr. Shivanad Shettigar, it was Mr. Kanwar who had responded through October 8, 2020 email that there was a push from Noticee to down-sell AT1 Bonds. In this regard, I note that there was no specific restrain on the cross examination of Mr Vivek Kanwar regarding the aspect of "push". In the order of the cross examination, the cross examination of Mr Vivek Kanwar was completed before the cross examination of Mr.Shivanand Shettigar. After the cross examination of Mr Shivanad Shettigar, no request was put in by Counsel for Noticee for further examing Mr. Vivek Kanwar. Therefore, the contention of Noticee that undersigned did not allow cross examination of Mr. Vivek Kanwar is incorrect. Noticee in his submissions has further contended that Vivek Kanwar has categorically stated that he had not received any push from Rana Kapoor. In this regard, I note from the record of the cross examination dated June 09, 2022 that no specific question was asked to Mr Vivek Kanwar as to

whether there was any push from Noticee with respect to sale of AT1 Bonds. I also note that Mr. Vivek Kanwar in his reply during cross examination has nowhere stated that there was no push from Noticee in sale of AT1 bonds. Be that as it may, as already stated in earlier part of Order, it is clear that there was pressure from Noticee in sale of AT1 bonds on certain officials of YBL including Mr. Vivek Kanwar. Therefore the aforesaid contention of Noticee is also incorrect.

77. Noticee in his reply to the SCN also contended that there was no push from him and he as MD and CEO of bank was merely encouraging and appreciating his team in their sale of AT1 bonds and that he had no part in the aggressive sale of AT1 bonds by YBL officials. With regard to aforementioned contention of Noticee, I find that it is clear from the Annexure A emails that Noticee was not passively receiving distribution updates regarding sale of AT1 bonds but was in fact playing active role in the sale of AT1 bonds by doling out instructions regarding the sale of the AT1 bonds. Therefore, I am unable to accept the aforementioned contention of Noticee. Further, Noticee in his submission has contended that Mr. P Rakesh in his statement during the cross examination conducted on July 06, 2022 stated that there was no personal push from Noticee. In this regard, from perusal of the aforementioned statement of Mr. P Rakesh, I note that said statement does not provide answer to the question as to whether there was any push from Noticee to Mr P Rakesh/officials of YBL with regard to sale of AT1 bonds.

78. Noticee in his reply to the SCN also contended that it was not Noticee's decision to down-sell the AT1 Bonds. The decision was taken by the senior management of YBL and the approval to do the same also came from an internal committee of YBL which not only approved the primary issuances but also approved facilitation of secondary market sale. Noticee also contended that he was not part of any such committee which gave the above referred approval for secondary sale of AT1 bonds as the same was a standard procedure spearheaded by the Treasury leadership team. With regard to aforementioned contention of Noticee, I note that no documentary evidence has been placed on record by Noticee to support his aforementioned contention. In light of the same, I am unable to accept the aforementioned contention of Noticee.

79. Further, Noticee has contended that YBL had only facilitated the selling of a small quantity of the AT1 Bonds in the secondary market. In this regard, I note that the objective of YBL and Noticee

was not to facilitate the downsell of entire AT1 bonds sold by YBL to institutional investors in primary market issuance but to facilitate the distribution of AT1 bonds held by few specific subscribers like IBHF. Further, quantity of AT1 bonds sold does not have any bearing on the charge of misselling of AT1 bonds alleged against Noticee.

80. Noticee in his reply to SCN has further contended that the updates about sale of AT1 Bonds were sent to Noticee by officials of YBL in ordinary course of business and this was the case for most business lines of YBL as they would have management MIS reports regularly for best practices/ ongoing reviews. As already mentioned, Noticee was taking weekly updates from his team in YBL regarding distribution of AT1 bonds from institutional investors. This clearly cannot be considered to be said to have done as per the MIS especially considering the fact that officials of YBL had requested Noticee to reduce the frequency of the aforementioned distribution updates from weekly to fortnightly which was not agreed to by Noticee.

81. Noticee in his submissions has further contended that Noticee as an MD & CEO, was not required to oversee the procedural aspects of how the sales pitch was made. Noticee also contended that at no point of time, did Noticee gave any instructions/ inputs in relations to the sales pitch. In this regard, I note that SCN does not allege that Noticee had designed the sales pitch. The charge against Noticee in the SCN is based on the fact that he was overseeing the entire downsell of AT1 bonds from institutional investors to individual investors (mostly customers of AT1 bonds) and was giving instructions to the YBL officials in this regard. With regard to Noticee’s contention that no instructions/inputs was provided by Noticee with regard the sales pitch, I note that just because Noticee didn’t design the sales pitch doesn’t automatically mean that he had not given any instructions regarding the sales pitch. Further, I note that there was lack of systems in place in YBL to ensure that all risk factors were communicated to investors of AT1 bonds. In this regard, I am of view that Noticee as the M.D and CEO of the YBL at the relevant time failed to create a system to ensure that Term Sheet was shared by RMs with clients.

82. Noticee in his reply to SCN has contended that sale of AT1 bonds were done in ordinary course of business. I am of the view that act of YBL in actively approaching institutional investors who subscribed to their primary issuance of AT1 bonds and facilitating the sale of AT1 bonds in their

possession cannot be said to be in ordinary course of business of YBL. Especially since there was no formal agreement in place with these institutional investors for facilitating sale of AT1 bonds in their possession. I also note from the material available on record that YBL was also not receiving any commission from these institutional investors with respect to sale of AT1 bonds made on behalf of these institutional investors by YBL using their banking channel and customer base. I also note that YBL went out of way in trying to ensure that a profit is made by these institutional investors with regard to sale of these AT1 bonds. In light of the above observations, I am of view that trying to create shelf space for these institutional investors for subscribing to future AT1 bonds issuance of YBL does not fall within ordinary business of YBL.

83. Noticee in his reply to SCN has contended that no evidence is adduced in the SCN to suggest that Noticee encouraged his team to downsell the AT1 bonds illegally or manipulating the individual investors. Noticee in his submission has further contended that there is not a single email from him that called upon his team to suppress or withhold any information from investors, whether institutional, HNI or retail, on the risks associated with investing in AT1 Bonds. Noticee in his reply to SCN has also submitted that allegations of fraud cannot be based on wild allegations without any convincing evidence. In support of the aforementioned contention, Noticee placed reliance on decision of Hon'ble SAT in the matter of KSL & Industries Ltd. v. SEBI (Order dated January 13, 2005, Appeal No. 91/2003), decisions of Hon'ble Supreme Court in SEBI v. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1, Union of India v. Chaturbhai M. Patel & Co (1976) 1 SCC 747, Nandakishore Prasad v. State of Bihar (1978) 3 SCC 366 and Hanumat v. State of Madhya Pradesh AIR 1952 SC 343. With regard to aforementioned contentions of Noticee, I note that evidence on record clearly shows verbal sales pitch and step by step process for sale of AT1 bonds was created in order to accelerate the granular distribution of the AT1 bonds and to create profits/make good the loss for these institutional investors so as to create shelf space for institutional investors to subscribe for the future AT1 bonds subscriptions. I also note from the emails that downsell of AT bonds from specific institutional investors like DHFL/IBHF to individual investors were done under the instructions of Rana Kapoor and there was close monitoring and instructions for the team to accelerate the sales. Thus, since the whole scheme was devised to meet the objective laid down by Rana Kapoor for creation of shelf space, the aforementioned argument of Noticee that there was not a single email from Noticee to suppress/withhold any

information from investors to YBL officials cannot be accepted. Further, in this regard, I also note that in cases of fraud and manipulation, direct evidence may not always be possible. In this context, I find it pertinent to refer to decision of the Hon'ble Supreme Court of India in the matter of SEBI v Kishore Ajmera (order dated February 23, 2016), wherein it was held that :"*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion there from. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion*....".Therefore, I find the above contention of Noticee is not tenable.

84. Noticee in his submissions has further contended that there was no intention on part of the Noticee to missell the AT1 bonds. In this regard, I note that the reckless selling of AT1 bonds was undertaken by YBL to create shelf space in certain institutional investors like IBHF, DHFL etc for future AT1 bonds issuances by YBL and the same has been reiterated multiple times by Noticee in his emails to YBL officials. Therefore, I am of the view that contention that there was no intention on part of Noticee to perpetrate fraud lacks merit.

85. Noticee in his submissions has contended that SEBI had not demonstrated the exact role or involvement of Noticee in relation to the alleged violations in the SCN and charges against Noticee is only on account of him being the Managing Director of YBL at the relevant time under the principle of vicarious liability. In this context, Noticee has placed reliance on decision of Hon'ble Supreme Court in the matter of Sunil Bharti Mittal v. Central Bureau of Investigation (*Order dated January 9, 2015 of the Hon'ble Supreme Court in Criminal Appeal No. 34 of 2015*), Rahul Shah v. SEBI (*Order dated September 15, 2004, Appeal No. 133/2003)* and decision of Learned Whole Time Member, SEBI in the matter of Home Trade Limited (SEBI Order dated February 16, 2006).

86. With regard to the above, I note that it has been clearly established in the preceding paragraphs that Noticee was overseeing the entire downsell of AT1 bonds from certain institutional investors to individual investors and was receiving updates and providing instructions in this regard. Further, it has also been established that Noticee was urging his team to expeditiously sell these bonds. Further, use of verbal sales pitch and step-by-step process clearly indicate there was aggressive sale of AT1 bonds by YBL and same was done to meet the objective laid down by Noticee to create shelf space in certain institutional investors which led to misselling of AT1 bonds by officials of YBL. Therefore, I note that involvement of Noticee is clearly seen in the earlier process of downselling of AT1 bonds of YBL. Therefore, I am unable to agree with the aforementioned contention of Noticee.

87. In light of the observations in the preceding paragraphs, I find that Noticee by his constant monitoring of sales distribution of AT1 bonds made by officials of YBL including PWM Team, by his continuous stress on the importance of creation of shelf space for specific institutional investors and importance of granular distribution of AT1 bonds in his email to officials of YBL including Mr. Vivek Kanwar and by his frequent instructions to accelerate the down sell of AT1 bonds had created pressure on officials of YBL including Mr. Vivek Kanwar to accelerate the down sell of AT1 bonds to individual investors which led to misrepresentation, manipulation and misselling of AT1 bonds by officials of PWM Team. Therefore, it is clear that Noticee, as the MD and CEO of the YBL at the relevant time was responsible for the acts of YBL and officials of PWM Team in reckless sale of AT1 bonds to individual investors without due safeguards and misstatements/suppression of material facts regarding AT1 bonds to the customers.

88. It has already been established by Adjudication Order dated April 12, 2021 that that YBL had misrepresented the AT1 bonds by comparing them with FDs without disclosing the inherent risks associated with the bonds and thereby manipulated the investors into buying such risky bonds. The said action on the part of YBL was a

i. knowing misrepresentation of the truth or concealment of material fact in order that another person to act to his detriment;

ii. an active concealment of a fact having knowledge or belief of the fact; and

iii. a representation made in a reckless and careless manner,

fall under the definition of 'fraud' under 2(1)(c)(1), 2(1)(c)(3) and 2(1)(c)(5) of PFUTP Regulations. I note that in the aforementioned Adjudication Order, it was held that YBL, Mr. Vivek Kanwar, Mr. Ashish Nasa and Mr. Jasjit Singh Banga violated Regulations 3(a), 3(c), 3(d) 4(1), 4(2)(s) of PFUTP Regulations, read with Explanation (1) to Regulation 4(2) of PFUTP Regulations and Sections 12A(b) & 12A(c) of the SEBI Act.

89. In light of the observations in preceding paragraphs, I find that that as Noticee was overseeing the entire activities relating to secondary sale of AT1 bonds, taking regular updates from the team and giving them further instructions to expedite/ increase the sales, thus creating a pressure on the officials to ramp up the sales, was responsible for acts of misrepresentation/suppression of material facts, manipulation and misselling of AT1 bonds of YBL to the individual investors i.e. Noticee pressurized officials of the PWM team to device devious scheme to dump the AT1 bonds on hapless customers of YBL/individual investors. Therefore, I find that allegation in the SCN that Noticee has violated Regulations 3(a), 3(c), 3(d) 4(1), 4(2)(s) of PFUTP Regulations, read with Explanation (1) to Regulation 4(2) of PFUTP Regulations and Sections 12A(b) & 12A(c) of the SEBI Act stands established.

<u>Issue No. II- Does the violation attract monetary penalty under Section 15HA of SEBI Act?</u>

90. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......*".

91. Therefore, in view of the above judgment and considering that Noticee violated Regulation 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations read with Explanation (1) to Regulation 4(2) of PFUTP Regulations and Section 12A(b) & 12A(c) of the SEBI Act, as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15HA of the SEBI Act. The text of Section 15HA of the SEBI Act is reproduced below:

SEBI Act

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.

<u>Issue No.III - What should be the quantum of monetary penalty</u>?

92. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, 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 of an adjudicating officer 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.*

93. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. I note that material available on record does not indicate that violation of Noticee is repetitive in nature. Further, in the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee. However, I note from the SCN that 1346 Individual Investors had invested approximately Rs. 679 crores in the AT1 bonds, out of which 1311 individual investors were existing customers of YBL, who invested approximately Rs. 663 crores in these AT1 Bonds. Further, I note that 277 customers had existing Fixed Deposits with YBL and they prematurely closed their existing Fixed Deposits and reinvested an amount to the extent of Rs. 80 crores in these AT1 bonds which were subsequently written down. The sale of AT1 bond started in 2016 and continued till 2019. Considering the large number of investors impacted and the quantum of sales achieved through this scheme, I am of the opinion that this act of Noticee deserves penalty commensurate with the severity of violation and would be a deterrent.

ORDER

94. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 2 Crore (Rupees Two Crore only) on Noticee i.e. Mr. Rana Kapoor, under the provisions of Section 15HA of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

95. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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 AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

96. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

97. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

98. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Mr. Rana Kapoor and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: September 07, 2022 **ADJUDICATING OFFICER**