BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO: Order/PM/PA/2023-24/28369-28370

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:
Mr. Kapil Wadhawan
PAN: AAOPW6145L
and
Mr. Dheeraj Wadhawan
PAN: AAOPW4517G

In the matter of transaction of the shares held by DHFL in DHFL Pramerica Life Insurance Company Ltd. and related matters thereof

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A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) conducted an investigation into transfer of shares held by Dewan Housing Finance Corporation Ltd. (hereinafter referred to as "**DHFL**"/"**Company**") in DHFL Pramerica Life Insurance Limited *(erstwhile DLF Pramerica Life Insurance Company Limited)* (hereinafter referred to as **"DPLI"**) to its wholly owned subsidiary, DHFL Investments Limited (hereinafter referred to as "**DIL"**) and other related transactions to ascertain whether there was any violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and/ or SEBI (Prohibition of Fraudulent and Unfair Trade Practices

relating to Securities Market) Regulations, 2003 (hereinafter referred to as **“PFUTP Regulations”**). Mr. Kapil Wadhawan (hereinafter referred to as "**Noticee 1**") and Mr. Dheeraj Wadhawan (hereinafter referred to as "**Noticee 2**") (hereinafter collectively referred to as “**Noticees**”) were promoters and directors of DHFL during the relevant period.

2. The investigation period was taken from February 01, 2017 (incorporation date of DIL) to March 31, 2017 (completion date of the transaction *i.e.,* the sale of stake in DPLI by DHFL to DIL) (hereinafter referred to as **“IP”**). During the examination, SEBI observed that the Noticees did not comply with regulation 4(1)(e) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations”**) read with section 21 of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “**SCRA”**). Accordingly, SEBI initiated adjudication proceedings against the Noticees for the aforesaid violations.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as the Adjudicating Officer, under section 15-I of the SEBI Act and 23-I of the SCRA read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **“SEBI Adjudication Rules**”) and rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as “**SCRA Adjudication Rules”**) to inquire into and adjudge under section 23H of SCRA read with section 27 of the SEBI Act, for the alleged violation of regulation 4(1)(e) of LODR Regulations read with section 21 of the SCRA. The same was conveyed to the Noticees *vide* communique dated March 19, 2021.

C. SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. A common show cause notice having reference no. SEBI/HO/EAD-8/PM/AN/10040/2021 dated May 07, 2021 (hereinafter referred to as **“SCN”**) was issued to the Noticees under rule 4 of the SEBI Adjudication Rules and SCRA

Adjudication Rules, to show cause as to why an inquiry should not be initiated against the Noticees and why penalty, if any, should not be imposed on them. The said SCN was delivered to the Noticees. The allegations against the Noticees as stated in the SCN are reproduced below:

a) *DHFL acquired 50% of the equity share capital of DHFL Pramerica Life Insurance Limited (erstwhile DLF Pramerica Life Insurance Company Limited) (hereinafter referred to as **"DPLI"**) from DLF Limited in December 2013 and the said investment in DPLI (including the original cost of acquisition) was approx. Rs. 31.07 crores.*

b) *On March 31, 2017, DHFL sold its entire stake (i.e. 50% stake) in DPLI to DHFL Investments Limited (hereinafter referred to as **"DIL"**), a wholly owned subsidiary of DHFL, at a value of Rs. 2000.50 Crores. In order to fund the above acquisition in DPLI, DIL issued and allotted 190.10 Crores Compulsorily Convertible Debentures (hereinafter referred to as **"CCDs"**) of face value of ₹10 each to Wadhawan Global Capital Limited (hereinafter referred to as **"WGC"**), a promoter of DHFL. Further, WGC also invested in Optionally Convertible Debentures (OCDs) of DHFL Advisory & Investments Pvt. Ltd (hereinafter referred to as **"DAIPL"**) subsidiary of DHFL.*

c) *The above OCDs of a subsidiary of DHFL i.e. DAIPL were backed by a DSRA guarantee issued by DHFL to OCD holders and CCDs of a subsidiary of DHFL i.e. DIL were backed by a put option from DHFL to CCD holders. These OCDs and CCDs were further pledged by WGC to Mutual Funds for the purpose of raising funds.*

d) *In view of the nature of transactions and structuring thereof, SEBI conducted an investigation to ascertain whether there was any violation of provisions of SEBI Act and/ or SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) with respect to the transactions of the shares held by DHFL in DPLI with its wholly owned subsidiary, DIL and other related transactions.*

e) *The investigation period was taken as February 01, 2017 (Incorporation date of DIL) to March 31, 2017 (Completion date of the transaction i.e. the sale of stake in DPLI by DHFL to DIL) (hereinafter referred to as **"IP"**). During the IP, Noticee 2 was Chairman & Managing Director and Noticee 3 was Non-Executive Director of DHFL.*

f) *The chronology of events with regard to the transaction is given below:*

Date	***Event***
December 18, 2013	*With the approval of the board and the IRDA and NHB, DHFL enters into a JV with Prudential International Insurance Holdings Limited and acquires a 50% equity stake in DPLI from DLF Ltd.* *DHFL's investment in DPLI as on Feb 2017 was Rs. 31.07 crores.*
February 2, 2017	*DHFL incorporated a 100% subsidiary, DIL, investing Rs. 100.5 crore through equity capital. DIL was constituted with the intent of becoming a Core Investment Company.*
February 14, 2017	*DHFL's audit committee and board, subject to the approval of shareholders, approved to sell its stake in DPLI (representing 50% of the paid up equity share capital of DPLI) to DIL at a fair market value of Rs. 2000.50 crore as determined by an internationally reputed actuarial consultant. This was to unlock the value of DHFL's investment in DPLI.*
February 21, 2017	*The draft Share Purchase Agreement ("SPA") was executed between DHFL and DIL.*
March 17, 2017	*Shareholders approved the transaction on a majority of minority basis as it was constituted to be a RPT- Related Party Transaction.*
March 30, 2017	*The Finance Committee of DHFL's board approved the execution of the Option Agreement between DHFL and WGC, in order to ensure that the underlying shares of DPLI remain within the DHFL group.* *In order to fund the acquisition, over and above the equity contribution received from DHFL, DIL raised Rs. 1,901 crores by CCDs, convertible into equal number of equity shares of DIL after the expiry of 100 months from the date on which the CCDs were issued and mandatorily to be converted after the expiry of 110 months.* *WGC funded the acquisition of the CCDs through internal accruals and through a NCD issue of Rs.1900 crore to certain mutual funds.*
March 31, 2017	*On completion of the transaction, DHFL received Rs. 2000.5 crore from DIL on 31st March, 2017.* *It sold 18,70,30,934 equity shares of DPLI [equivalent to 50% of the paid-up share capital of DPLI] to DIL. The aforesaid total consideration received by DHFL was utilised for the purpose of its lending activities.* *Disclosures were made by DHFL to Stock Exchanges as per Regulation 30 of LODR Regulations.*

g) *In order to unlock the value of Company's (DHFL's) investment in DPLI, the Board of Directors and Members of the Company (DHFL) approved the sale* *of equity shares of DPLI to DIL at the fair market value of Rs. 2,000.50 crores, determined by an actuarial consultant namely Willis Towers Watson.*

h) *In order to fund the acquisition of DPLI from DHFL, DIL issued and allotted 190.10 crores Compulsorily Convertible Debentures (CCDs) of face value of ₹10 each to WGC. The CCDs were to be converted into equity shares of DIL after the expiry of 100 months and not later than 110 months, from the date on which the CCDs were issued, in accordance with the terms. As per the explanatory statement to the notice of postal ballot, WGC funded the acquisition of the CCDs through its internal accruals and through market borrowings. The aforesaid CCDs were pledged by WGC as collateral in favour of the lenders (i.e. Mutual Funds). Also, an unconditional put option was issued by DHFL in favour of the CCD holders. Investment of WGC in the CCDs of DIL was worth Rs. 1901 crores – part financed by ABMF investment of Rs.1100 crores in NCDs of WGC and by Franklin Templeton investment of 500 crores in NCD of WGC.*

i) *WGC would, post conversion of the CCDs, own a majority of the issued and paid-up share capital of DIL. Thus, after 100 months but not more than 110 months, WGC would hold more than 50% in DIL, which was wholly owned subsidiary of DHFL earlier.*

j) *Examination was undertaken for the issues such as whether all relevant details of the transactions were made available by DHFL to its shareholders so as to enable them to make an informed decision and whether the transactions were profitable and in favor of promoters of DHFL as against the interests of the public shareholders. Examination revealed that the shareholders were aware about the DHFL's investment in DPLI, reason for the proposed transfer, funding for the transaction etc. <u>However, no concrete details/ information regarding the Put options were available to the shareholders of DHFL while taking the decision for the related party transactions. The same can be seen from the content of the postal ballot, only the term used for options were "certain options or such options".</u>*

k) *The following information were not available to the shareholders of DHFL in the notice of postal ballot dated February 14, 2017:*

   i. ***The estimated size and amount of the CCDs issued by DIL was not disclosed by the company.*** *The method for funding for acquisition was known to the shareholders of the Company, however the size and amount was not known. The information related to the upcoming debt of DIL was not available to the shareholders and the cost of that debt also not known which ultimately needs to be borne by the shareholders of DHFL. So, complete and adequate information was not available for decision making for related party transaction.*

   ii. ***The conversion ratio of CCD to equity shares, shareholding pattern of DIL post conversion of CCD and the rate of interest on the CCDs were not disclosed by the company.*** *Conversion ratio of CCD to equity shares was not known and after conversion the shareholding pattern was also not clear to the shareholder. However, it was available that the majority will go to WGC but it was not known that what will be the non-majority part which is going to be with DHFL.*

   iii. ***Information about the options like terms of option agreement, cost or fee charged for the options, how CCDs would be transferred to DHFL and impact on the shareholders of DHFL if options exercised by WGC etc., were not disclosed by the company.*** *Terms and conditions of Put options were not available to the shareholders of DHFL. It was not known to the shareholder that these put options gives a right to WGC, to transfer the CCDs to DHFL and in that condition what cost would be borne by DHFL was also not known to the shareholders. Further, whether any cost or fee for these options was paid by WGC to the DHFL was also not available to the shareholders. It may be noted that consideration for the put option provided by DHFL was not paid by WGC to DHFL at the time of execution of the agreement. A fee of Rs. 1.9 crores were paid in June 2019, after around 2 years from the agreement execution date.*

So, the shareholders of DHFL was only informed about the company's investment in DPLI of Rs. 31.07 crores are getting converted into the range of 1690 crores to 2020 crores but the future cost of these put option which may be bigger than the abovementioned profit was not given to the shareholders. So, complete and adequate information was not available to the shareholder to take informed decision at the time of casting their vote in the resolution passed.

iv. ***The fair market valuation ranges for the shares proposed to be transferred from DHFL to DIL is between Rs. 1690 crores to Rs. 2020 Crores. However, the exact fair market value was not disclosed by the company.*** *The information related to the range of fair market valuation was provided in the notice of postal ballot. However, the exact fair market value for the transaction was not known to the shareholders.*

l) In view of the above, information available to the shareholders was not adequate for an informed decision. The information available to the shareholders was only related to that the Company's investment in DPLI of Rs. 31.07 crores which was getting converted into the range of Rs. 1690 crores to Rs. 2020 crores within a short span of time of around 3 years. The additional capital so raised by the company would be deployed towards expansion of the Company's core business and/ or prepayment of its high cost borrowings. It is a matter of concern when approval was sought for a series of transactions i.e. from stake sale of DPLI to DIL by DHFL, issuance of CCDs to WGC in order to fund such acquisition and pledging of these CCDs by WGC for raising funds for acquisition of CCDs of DIL, the only document which was available for the inspection of shareholders was the "Draft Share Purchase Agreement (SPA)", which only gives information about the stake sale of DPLI. The draft Share Purchase Agreement only gives information about the stake sale of DPLI but does not provide the information regarding estimated size and amount of CCDs issued by DIL, conversion ratio of CCDs, shareholding pattern of DIL post conversion of CCD, rate of interest of CCDs and the future cost would be borne by DHFL due to conditions of Put options etc. No documents/ information were available to the shareholders related to CCDs *and Options. When all the series of events were pre-decided, documents/ draft agreements should have been made available to the shareholders for each and every events in order to enable them to an informed decision. So, the complete and adequate information was not available to the shareholders of DHFL.*

m) *It was also examined whether the transactions were profitable and in favour of promoters of DHFL as against the interests of the public shareholders. To see the profitability of the transaction, there could be two scenarios on the basis of the probability of future performance of DPLI.*

***Scenario A:** In the event that DPLI did well and the value of DIL shareholding in it went up, say from Rs. 2000 crores to Rs. 4000 crores, WGC would extract this value through the conversion of its CCDs of Rs. 1901 crores and effectively after repaying its lenders along with interest and would be the 100% beneficiary of the profit. While the shareholders of DHFL would benefit in this scenario on account of their shareholding in DIL, they would have zero participation in the profit accruing in the CCDs.*

***Scenario B:** If DPLI failed and its value falls from Rs. 2000 crores to say, Rs. 1000 crores, the WGC would not be in a position to extract enough value through the CCDs and would potentially be unable to pay the NCD holders. In this scenario as per the put option agreement entered into with DHFL (which has not been placed before the shareholders), the Lender would put the CCD on DHFL, who would have to pay Rs. 1901 crores plus interest of 9.95% p.a, while getting in return, the CCDs of value of only Rs. 1000 crores approx. In this scenario the minority shareholders of DHFL would have to bear 62.62 % of the loss, accruing to the CCDs, the balance 37.38% being borne by WGC by virtue of their holding in DHFL. In view of the above, as against the benefit which they had already got from the stake sale of Rs. 31.07 crores to Rs. 2000.5 crores in DPLI, their net benefit would reduce. As mentioned above, possibility of both the scenario was there and depended on the future performance of the DPLI.*

n) As mentioned above, possibility of both the scenarios was there and depended on the future performance of the DPLI. In scenario 1, the minority shareholders of DHFL only gets profit by virtue of their shareholding in DIL, whereas WGC first enjoys the benefit of interest received on the CCDs issued by DIL and then profit by virtue of majority shareholding in DIL after the conversion of CCDs into equity shares of DIL. In scenario 2, the minority shareholder of DHFL would have to bear 62.62% of the loss, accruing to the CCDs and only 37.38% being borne by WGC by virtue of their holding in DHFL. With the put option, WGC will be in a win-win situation, if DPLI does well and makes profit, WGC will hold the majority stake in DIL after conversion of CCDs to the equity shares of DIL. However, in case DPLI does not perform well, CCDs of DIL will be transferred to DHFL and DHFL have to pay the consideration to WGC. So, the loss would be borne by the shareholders of the DHFL. The complete and adequate information was not presented before the shareholders of DHFL while taking the approval for the related party transaction. Benefit of the stake sale of DPLI of Rs. 31.07 crore to Rs. 2000.50 crore was showcased but the condition of put option and effects of the put option on the shareholders of DHFL was not disclosed to the shareholders. So the transaction with the put option of DHFL is asymmetric in favour of the promoters of DHFL and against the minority shareholders.

o) Thus, it was observed during the examination that the complete and adequate information was not disclosed to the shareholders of the Company. (Notice of Postal ballot and Share Purchase Agreement (SPA) are placed at Annexure-2). The whole chain of events/ series of events were designed in such a way as to give benefits to the promoters (WGC) of the Company and could cause future loss for the minority shareholders resulting into asymmetry in favor of the promoters & against minority shareholders of DHFL. Incomplete disclosure defeats the entire purpose of having the resolution approved by the shareholders and is against the principles of good corporate governance.

p) Noticee 1 was the Chairman and Managing Director of the Company, who was also a promoter and acted as Executive Director. The draft notice of the postal ballot was duly initialed by Mr. Kapil Wadhawan. The aforesaid draft *notice of the Postal Ballot contained, the draft resolution for entering into Related Party Transaction with WGC, a promoter entity and Wholly Owned Subsidiary incorporated under the name of DHFL Investments Limited. Noticee 2 is a brother of Noticee 1 and he was also a promoter and Non-Executive Director of the Company. (Minutes of the Board Meeting is placed at Annexure-3). Considering the position held by Noticee 1 and Noticee 2 as Promoter & Director in the Company, both are responsible for inadequate information provided in the notice of Postal Ballot by the Company.*

q) In view of the above, Noticees have violated the principles governing disclosures and obligations prescribed under Regulation 4(1)(e) of LODR Regulations r/w Section 21 of SCRA by not disclosing the information of CCDs and Put Options and taking the approval from the shareholders of the company for the subjected related party transaction without giving complete and adequate information as mentioned in aforesaid paras.

5. The SCN was sent through speed post acknowledgement due and the same were delivered to the Noticees at their addresses as available on record. Hearing opportunity was given to Noticees on July 09, 2021 *vide* email sent on June 28, 2021. The emails sent to kwadhawan1@gmail.com and drwadhawan@hotmail.com did not bounce back. However, Noticees did not avail this hearing opportunity. Thereafter, hearing opportunity was given to the Noticees on July 29, 2021 *vide* letter and email dated July 16, 2021. The said hearing notice sent to Noticee 1 was delivered, however, it returned undelivered for Noticee 2. *Vide* letter dated August 09, 2021, spouse of Noticee 2 and sister-in-law of Noticee 1 responded that the notices sent by SEBI were received by security guards at their address and that since the Noticees are in judicial custody pending investigation, she is returning the said notices. In response to the aforesaid letter, *vide* letter dated February 15, 2022, Noticees were requested to furnish their latest correspondence address for serving the hearing notice. Further, they were also asked to appoint any authorized representative to appear for the hearing on their behalf. The said letter returned undelivered.

6. *Vide* letter dated May 31, 2022, addressed to Jail Superintendent of Taloja Central Jail, the concerned Jail Superintendent was requested to deliver the enclosed hearing notice to the Noticees and forward acknowledgement of receipt of such notice. The hearing notice granted hearing opportunity to the Noticees on June 27, 2022 through video conferencing. The said letter was also sent by email. The letter and the email was delivered, however, no acknowledgement was received. Thereafter, *vide* letter dated July 11, 2022, an attempt was made to serve the said hearing notice to the Noticees through Inspection General of Prison (IGP), Prison Administration & Reform Services, Headquarter Lucknow, Prison Bhawan, Purani Jail Road, Lucknow-226 0065. The said letter was also sent by email. However, no response was received from IGP, Lucknow.

7. *Vide* letter dated September 20, 2022, Pooja Wadhawan (*i.e,* spouse of Noticee 2 and sister-in-law of Noticee 1) was requested to furnish latest correspondence address of the Noticees for serving the hearing notice. The letter was not delivered. *Vide* letter dated October 14, 2022, Superintendent of Tihar Jail, New Delhi was requested to deliver a hearing notice to the Noticees wherein they were granted a hearing opportunity on November 03, 2022. *Vide* letter dated October 17, 2022, the Deputy Superintendent of Tihar Jail responded that a copy of the notice was served on the Noticees on October 17, 2022. *Vide* letter and email dated November 02, 2022, Noticees responded that they have not received correspondences addressed to them by SEBI in 2021, May, 2022 and July, 2022. Further, they requested for time to collate documents and submit a reply.

8. Another hearing opportunity was granted to Noticee 1 on November 18, 2022 *vide* email sent on November 11, 2022 and to Noticee 2 on December 15, 2022 *vide* letter dated November 23, 2022. *Vide* letter dated November 16, 2022, authorized representatives (hereinafter referred to as "**ARs**") of Noticee 1 requested for time to submit a reply. In light of the said request, another hearing opportunity was granted to the Noticees on December 15, 2022 *vide* letter and email sent on November 23, 2022. *Vide* letter dated December 15, 2022, AR of Noticee 2 requested reply filed by Noticee 1 dated December 14, 2022 to be adopted with respect to Noticee 2 and requested for the said hearing to be rescheduled. *Vide* letter dated December 09, 2022, ARs of Noticee 1 requested for a clear copy of

Annexure 3 to the SCN and inspection of documents. *Vide* letter dated December 14, 2022, Noticee 1 submitted his reply.

9. *Vide* email sent on January 13, 2023, Noticees were granted opportunity of inspection on January 25, 2023. On the said date, the ARs of Noticees were granted inspection of investigation report and annexures to the investigation report. Another hearing opportunity was granted to Noticees on March 01, 2023 *vide* email sent on February 21, 2023. *Vide* email sent on February 28, 2023, AR of Noticee 1 requested for adjournment. Acceding to this request, the hearing was rescheduled to March 10, 2023. On the said date, the ARs of the Noticees appeared before me and requested for time to make additional submissions and another hearing opportunity, which was acceded to. Noticee 1 filed another reply *vide* letter dated March 13, 2023. *Vide* letter dated March 13, 2023, Noticee 2 requested reply filed by Noticee 1 dated March 13, 2023 to be adopted with respect to Noticee 2. Another hearing was conducted on March 14, 2023 wherein the ARs of the Noticees reiterated submissions made dated December 14, 2022 and March 13, 2023. They requested for further time to make additional submissions, which was acceded to. *Vide* email dated March 22, 2023, Noticee 1 filed his final submissions. *Vide* email dated March 22, 2023, Noticee 2 requested reply filed by Noticee 1 dated March 22, 2023 to be adopted with respect to Noticee 2.

10. As stated above, the Noticees have submitted replies dated December 14, 2022, March 13, 2023 and March 22, 2023. The relevant portion of the replies are reproduced below verbatim:

The SCN alleges breach of Section 23E against DHFL and consequently, by virtue of deeming fiction under Section 27 of the SEBI Act, the SCN proposes to take action against our client under Section 23H of the SCRA. To begin with the provisions of Section 23E are not even attracted by DFHL, and consequently, even provisions of Section 23H are not applicable in the present case.

It has been judicially determined that Section 23E of the SCRA would not at all be attracted for ongoing disclosure violations in the case of Suzlon v. SEBI. While

SEBI has appealed, the judgement has not been stayed. Therefore, the law is clear that the proceedings against DHFL on the ground of Section 23E being violated are untenable. When such proceedings are untenable, there is no question of basing that as the foundation for a proceeding under Section 23H of the SCRA.

That apart, Section 23E of the SCRA contemplates actions against a company or person managing collective investment scheme or mutual fund or real estate investment fund or infrastructure investment trust or an alternative investment fund. However, at the relevant time and even prior to CIRP of DHFL (commenced on 3rd December 2019), as far as our client is aware, DHFL was neither managing collective investment scheme nor mutual fund nor real estate investment fund nor infrastructure investment trust nor an alternative investment fund. In view thereof, having made no case to proceed against DHFL under Section 23E of SCRA, there is no question of proceeding against our client under Section 23H of SCRA.

Moreover, the SCN has sought to read Section 23E of SCRA with Section 21 of SCRA which is misconceived since it is a settled law that "listing conditions" under Section 23E of SCRA is not referable to "conditions of the listing agreement" under Section 21 of SCRA. Listing conditions are conditions such as compliance obligations imposed under the rules made under the SCRA such as Rule 19, which impose conditions to be met for obtaining a listing. There is not a whisper in the SCN on conditions of listing being not met.

As far as allegations of violation of 4(1)(e) of the LODR is concerned, it is submitted that at the relevant time (prior to Finance Act, 2018 coming into force), Section 27 of the SEBI Act (which is a deeming fiction making person in charge of the affairs of the company to be proceeded for contraventions by a company) did not contemplate any action against a person for contravention/breach of SCRA or LODR by company. The transaction in question having taken place much prior in February/March 2017, the amended provisions of Section 27 of SEBI Act contemplating actions under LODR and SCRA as well (brought into force in the year 2019) cannot be retrospectively invoked.

Without prejudice to the above, Regulation 4 of LODR envisages no mandatory obligation. The prescription under Regulation 4 can be at best termed as guiding principles on which disclosures of companies ought to be based. Therefore, no liability can be foisted under Regulation 4 of LODR.

Without prejudice to our client's rights and contentions that our client has not breached any of the provisions of SEBI or SCRA or regulations or rules framed thereunder, it is submitted that the offences inter alia alleged against our client is contravention of provisions of Section 21 of SCRA viz. violations of the conditions of the listing agreement. Despite the fact that Section 21 is a separate and independent offence, the penalty that is purported to be levied is under the residuary penalty provision under Section 23H of SCRA. In this regard, it is submitted that the residual penalty provision under Section 23H of SCRA is only applicable if "no separate penalty has been provided." Pertinently, the penalty for a violation of Section 21 of SCRA is already provided in Section 23(2) of SCRA. Therefore, no adjudication is permissible under Section 23H of SCRA for a violation of Section 21 of SCRA.

It is further submitted that whilst no time frame has been prescribed under the SEBI Act or SCRA, the SCN has been issued belatedly and suffers from gross delay and laches. Admittedly, the events pertained to 1st February 2017 to 31st March 2017 for which liability is sought to have been foisted in 2021/2022. This is despite all of the information and data being in the public domain. Nothing has been shown in the SCN to infer that such information was not available earlier. In any event, the basis of the SCN is entirely founded on conjectures and without any material information. There has been no averment that the disclosures have, in fact, caused any prejudice to any of the stakeholders. In view of the above, it is submitted that the SCN is grossly belated, has only been issued for reasons unknown to our client.

The entire SCN is based only on conjectures, surmises and unfounded hypothetical scenarios without any regard to correct facts and circumstances. The allegations are based on violations of provisions of Regulation 4(1) of LODR Regulations (Principles governing disclosures and obligations) basis subjective *connotation of the word "adequate" to allege that the "incomplete disclosures" were made.*

Briefly, the entire transaction in nutshell was entered into to unlock the value of the investment made by DHFL in a joint venture, DHFL Pramerica Life Insurance Company Limited ("DPLI"). The investment which was made for an amount of Rs.31.06 Crores in the year 2013 was proposed to be monetized on a fair value basis, which was estimated to be in between Rs.1620 Crores and Rs.2020 Crores. For the said purpose, DHFL was to transfer its shareholding in DPLI to its wholly owned subsidiary being DHFL Investments Limited ("DIV'). The DIL was to thereafter issue Compulsorily Convertible Debentures ("CCD") to Wadhawan Global Capital Private Limited ("WGC") which on conversion would enable WGC to become majority shareholder of DIL. It was further envisaged that on the happening of certain events, DHFL would purchase the CCDs, so that underlying shares remain in the DHFL group. All the aforesaid facts were adequately disclosed to the shareholders in the postal ballot notice.

A mere perusal of the above would indicate that the shareholders were adequately informed of:-

- *a. DHFL's investment in DPLI to the tune of Rs.31.06 Crores;*
- *b. the proposal to sell DHFL's investment in DPLI to DIL, a wholly owned subsidiary of DHFL, by way of a Share Purchase Agreement at fair market value which was estimated to be in the range of Rs.1690 Crores to Rs.2020 Crores;*
- *c. CCDs to be issued by DIL to WGC, which would convert into equity shares of DIL after the expiry of 100 months and that WGC would own majority shares of DIL;*
- *d. the said CCDs would be pledged with the lenders;*
- *e. certain options may be exercised requiring the CCDs to be transferred to DHFL to ensure that the underlying shares remain within the group;*
- *f. the exercise price for such options will be determined based on the funding availed by WGC and discussions with lenders in due course.*

In addition to the aforesaid information, the shareholders were also given adequate opportunity to send any query in relation to the proposed resolution by email as well as inspection of the all the relevant documents referred to in the postal ballot notice. Shareholders were provided a period of more than 30 days for the purpose aforesaid.

In view of the above, it is completely incorrect to suggest that the disclosures were incomplete. SEBI has selectively relied upon one clause of the postal ballot notice which refers to the draft of share purchase agreement to be available for inspection without referring to other clauses which provided for all the relevant documents referred to being available for inspection for over a period of more than 30 days — entirely in compliance with applicable law.

The aforesaid is apart from the fact (as more particularly set out hereinafter) that the said transaction was duly approved by the Reserve Bank of India ("RBI"), Competition Commission of India ("CCI") and Insurance Regulatory and Development Authority of India ("IRDAI"). In other words, these are transactions that were carried out in total transparency and in full public view and expansive regulatory scrutiny. On the basis of such approvals, DHFL, DIL and WGC entered into the said transaction. In view thereof, there is no basis whatsoever for alleging that the transaction with the put option of DHFL was asymmetric in favour of promoters of DHFL and against its minority shareholders.

Further, SEBI has referred to two hypothetical scenarios to allege that the proposed transaction was not in the interest of minority shareholders of DHFL, in itself a judgement call with SEBI substituting its judgement for business judgement of the Board of Directors of a listed company.

On February 14, 2017, a resolution was passed at the 188th meeting of the Board of Directors of DHFL approving the entering into definitive agreements for the sale of 100% of the shares held by DHFL in DPLI (equivalent to of the paid-up share capital of DPLI) at a fair market value to be ascertained by Willis Towers Watson, an internationally reputed actuarial consultant, to its wholly owned subsidiary DIL. The preliminary range of fair market value for the shares proposed *to be transferred was between Rs.1690 crore and Rs.2020 crore. The proposed transaction involved, inter alia, issuance of CCDs by DIL to WGC, also a Core Investment Company forming a part of the promoter group, in order to fund the acquisition. The Board also approved the Postal Ballot Notice to be issued to the Members of DHFL for seeking their approval for the proposed transaction. The e-voting was to commence on 16th February 2017 till 17th February 2017 and the results were proposed to be announced on or before 20th March 2017. The same was disclosed to the Bombay Stock Exchange Limited and National Stock Exchange of India Lirnited (collectively referred to as "Stock Exchanges") under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and uploaded on the public domain on 14th February 2017. Accordingly, all requisite disclosures and permissions were taken by DHFL under the applicable regulations.*

On February 14, 2017, In accordance with LODR and other applicable laws, a Notice of Postal Ballot along with the Explanatory Note was addressed to the members of DHFL for consent/ approval of the Members of DHFL in respect of the sale of equity stake held by DHFL in DPLI to DIL as a related party transactions and matters related thereto. Explanatory Statement and reasons for the proposed Resolution(s) pursuant to Section 102 of Companies Act, 2013 sets out all the material facts.

On February 21, 2017, a Share Purchase Agreement ("SPA") was executed between DHFL and DIL inter alia, agreeing that DHFL shall transfer its entire shareholding in DPLI i.e., 18,70,30,934 shares amounting to 50% of the total issued and paid-up share capital of DPLI ("Sale Shares") to DIL on a spot delivery basis, free and clear of any encumbrance for a consideration. The obligation of DHFL to sell the Sale Shares and the obligation of DIL to purchase the Sale Shares was subject to and conditional on approvals from the regulatory authorities.

On March 23, 2017, the SHA was amended by way of a tenth Amendment Agreement to incorporate, inter alia, DHFL's proposal to transfer its shareholding in DPLI to its wholly owned subsidiary DIL by way of the SPA ("Tenth Amendment

Agreement"). To acquire the Sale Shares, it was proposed that DIL would be financed by WGC. WGC would subscribe to CCDs of DIL for an amount ranging from Rs. 1550,00,00,000 to 1940,00,00,000 and the CCDs would have a maturity period of 100 months. Upon conversion of the CCDs, WGC would hold more than 50% of the total issued and paid up capital equity of DIL and DIL would cease to be a subsidiary of DHFL. WGC would in turn issue NCDs to lenders who would enter into a Private Placement Offer Letter and other Financing Documents to record the terms of the loan. Thereafter, WGC and DHFL would enter into an agreement that would entitle WGC to sell or otherwise put and require DHFL to acquire the Security for a purchase price that was sufficient to allow WGC to repay the outstanding amounts due under the NCDs in full upon maturity or an event of default.

On March 30, 2017, an Option Agreement was executed between WGC and DHFL in relation to the CCDs issued by DIL to WGC which set out the rights of WGC to require DHFL to purchase all of the CCDs, upon issuance of the Put Option 1 or Put Option 2 and the Accelerated Put Option 1 or Accelerated Put Option 2 available to WGC in each case in respect of the CCDs, pursuant to the Debenture Subscription Agreement ("Option Agreement"). The Option Agreement recorded that WGC would pay DHFL certain monies as payment towards fees which was mutually agreed upon in consideration of the Put Option granted by DHFL. As seen hereinabove, the regulatory authorities including IRDAI were intimated of the Option Agreement and DHFL's obligatory put option that could be exercised and the authorities had duly approved the same.

On March 30, 2017, DHFL made a disclosure to the Stock Exchanges in compliance with Regulation 30 of the LODR stating that the Finance Committee of the Board of Directors of DHFL, in exercise of the powers vested in it by the Board and Shareholders of DHFL, at its meeting held on the same date recorded and approved the valuation report dated 30th March 2017 prepared by an internationally reputed actuarial consultant setting out the fair market value for the Proposed Transfer as Rs.2000.50 Crores which was within the preliminary range indicated in the notice for postal ballot. DHFL further intimated that the

Proposed Transfer has received the applicable regulatory approvals of IRDAI, CCI and RBI.

On March 30, 2017, DHFL issued another disclosure in continuation to its earlier intimation of even date to the Stock Exchanges for the shareholders and the public. The disclosure recorded as under:

"Further to the above, and in continuation of our earlier intimations, we wish to inform you that the Finance Committee of the Board of Directors, in exercise of the powers vested in it by the Board and Shareholders of the Company, at its meeting held today i.e. 30th March, 2017, which commenced at 8.00pm and concluded at 8.20pm., inter alia, recorded and approved execution of an option agreement (and other deeds and documentation in relation thereto) with WGC, which option agreement provides for the exercise of certain put options by WGC on DHFL in connection with the CCDs (and matters connected therewith), in accordance with the terms and conditions set out under the option agreement, in order to ensure that the underlying shares of DPLI remain within the group."

DHFL had time and again made appropriate disclosures to the regulatory authorities and the Members/ shareholders of DHFL. The details of the option agreement and DHFL's liability in connection with the CCDs according to the Option Agreement was disclosed to the authorities, the shareholders/ Members and various credit rating agencies. The obligatory put option from DHFL was a matter of public knowledge, accessible on the public domain.

On March 31, 2017, DHFL disclosed to the Stock Exchanges, in order to intimate the Members of DHFL, that the sale of 100% of the shares held by DHFL in DPLI to DIL was completed at a total consideration of Rs.2000,50,00,000 (Rupees two thousand crores and fifty lakhs). It was further intimated that the Tenth Amendment Agreement has been executed to amend the SHA.

Pursuant to the approvals from the regulatory authorities, DHFL transferred/ sold its entire equity stake held in DPLI to DIL on 31st March 2017. The said transaction was explained in the Annual Report for the Financial Year 2016-17.

On June 29, 2019, pursuant to Clause 6.4 of the Option Agreement, WGC paid sums of IRS. 19,00,00,000 (Rupees nineteen crores) to DHFL by way of RTGS bearing reference number 000129342421 as payment towards fees for the put option granted by DHFL.

The aforesaid would only indicate a complete transparency in a transaction, which was in the interest of all the stakeholders as well as approved by all the authorities. The hypothetical allegation that with the put option, WGC will be in a "win-win situation" is entirely incorrect, as in June 2019, when one of the lenders i.e. Franklin Templeton sought to exercise its rights in the CCDs of DIL to the extent of 5000 NCDs issued to Franklin Templeton by WGC, WGC sold its shares in one Aadhar Housing Finance Limited and made a payment of Rs.640 Crores to Franklin Templeton to redeem the said NCDs.

Considering the totality of facts and circumstances, contrary to the allegations of SEBI, it would be clear that the put option was not an undue obligation upon DHFL without any benefit to it, but a considered commercial decision to retain ownership of valuable shares in DPLI within the DHFL group. DHFL transferred its entire shareholding in DPLI to DIL by way of the SPA at a fair market value for a consideration of Rs. 2000.50 crores.

DHFL's investment in DPLI (including the original cost of acquisition) was approximately Rs.31,06,89,296 (Rupees thirty one crore six lakhs eighty nine thousand two hundred and ninety six) resulting in profit of Rs. 1969.43 crores on the DPLI stake sale. The transaction has added Rs. 62.9 per share to DHFL's net worth. The aforesaid transaction was a commercial decision undertaken by DHFL in the best interest of the company and it drove the business for the next 2-3 years. DHFL entered into the Option Agreement with WGC to ensure that certain options may be exercised requiring the CCDs to be transferred to DHFL so that the underlying shares of DPLI remain within the group. Pertinently, the members/ shareholders of DHFL were even given the opportunity to seek inspection of all the relevant documents in the registered office of DHFL and were informed that options will be executed with WGC. The entire transaction was disclosed to the board of directors, audit committee, public shareholders and the regulatory *authorities. It is only pursuant to receiving all the requisite approvals that the transaction was consummated.*

As stated hereinabove, the shareholders of DHFL were made aware of all the available information as on 14th February 2017 and were further granted an opportunity to inspect all documents available and seek clarifications. Thereafter, the members/ shareholders of DHFL voted with a majority of 99.5033% in favour of the resolution passed for the proposed transaction. DHFL issued timely intimations to the stock exchanges as mandated under the LODR and informed the members of all the available information and agreements being entered into.

Considering the aforesaid redemption of Rs.640 crores by WGC, it cannot be stated that the whole chain was designed in a way to give benefits to WGC and could cause a future loss to the minority shareholders of DHFL without any basis and rationale.

The Corporate Finance Department ("CFD") in fact returned a positive finding that all requisite disclosures were made and no case for violation of LODR Regulations was made out (See Pages 4-5 of the Investigation Report ("IR") at Para 4(b)).

The matter was subsequently referred to the Investigation Department to examine whether there was a fraud under the PFUTP Regulations. No such case could be made out (See Page 6 of the IR @ Para 4(d)).

The matter ought to have fairly, reasonably and in furtherance of justice, ended there. However, a vague charge of "inadequate" disclosure, and indulging in speculative and hypothetical disclosure has been set up in the SCN.

Inexplicably, the CFID has suddenly concluded the disclosures were inadequate since:

(i) Estimated size and amount of CCDs issued by DIL was allegedly not disclosed.

(ii) *Conversion ratio of CCDs to equity shares, shareholding pattern of DIL post conversion of CCD and rate of interest on the CCDs were allegedly not disclosed*

(iii) *Information about the options like the terms of option agreement, cost or fee charged for the options, how CCDs would be transferred to DHFL and impact on the shareholders of DHFL if options exercise by WGC etc. were allegedly not disclosed by the company.*

In this regard, the views of the Mutual Funds (pertinently who were also minority shareholders holding 3.17% of the shares of DHFL, pg. 31 of the IR) who voted in favour of the resolution were also sought. The IR itself summarizes the opinion of the Mutual Funds that the disclosures were adequate.

The approach in the SCN is reflective of the contents of the IR, which has selectively picked just the views of a lone shareholder (Principal Mutual Fund) who voted against the transaction (See Page 33 @ Para 13.8.2 of the Investigation Report), ignoring the diametrically opposite and positive view of other mutual funds (See Page 33 @ Para 13.8.4 of the Investigation Report).

It is evident that the relevant material available on record was completely ignored. It cannot be countenanced that on one hand, the set of information the decision of mutual funds was termed as "judicious decision based on the information and their investment strategy" but, on the other the same information would be inadequate for another set of shareholders. Despite this information, the matter has been referred to adjudication for issuance of the SCN which now indulges in an evidently speculative analysis, of the future performance of DPLI, and a finding was returned whereby in one scenario viz. Scenario A (pg. 16-17 of the IR), the shareholders would benefit, whilst in the other viz. Scenario B (pg. 17 of the IR) they would not.

The basis of the finding was that adequate information was not available to minority shareholders. The above is completely controverted by the responses of Mutual Funds. In addition to the above, a detailed perusal of the responses of the Mutual Funds would reveal that:

i. Funding of the transaction at the promoter group company (WGC) was to be through market borrowings and internal accruals which kept the conflict of interest at the minimum. (Internal pg. 301 of Annexure 9)

ii. During the mentioned period due to demonetization, NBFCs and HFCs were undergoing liquidity pressures and the decision of sale of DHFL Pramerica Life Insurance Company Limited (DPLI) being a non core business of DHFL seemed to be a prudent decision at that point of time. This was to release capital and reduce leverage on the HFC book especially at a time when financial liquidity in the system was getting constraint. (Internal pg. 294 of Annexure 9)

iii. DHFL Pramerica was an insignificant player in the industry. Generally, leaders in capital intensive business can only manage long term profitability, while being a insignificant player generally does not result in any value creation. Given the difficult liquidity conditions post demonetization and rising risk of NPA due to low liquidity in the hands of borrowers, the focus of the company to release capital for sustaining its core business.

iv. This value was translating into an Equity Value/ Embedded value in the range of 2.9 to 3.5 which was in line with the value of top private Life Insurance Companies (HDFC Life - 3.2, ICICI Prudential - 3.0). The transaction of Bank of India offloading its 18% stake in Star Union Dai-ichi for INR 5.4 bn in June 2016 also translated in an Equity Value/ Embedded value of 3.8.

v. Report of Motilal Oswal dated 14th February 2017 mentions the monetization of DPLI will help DHFL to reduce leverage in the company. (Internal pg. 294 of Annexure 9)

vi. The sale was also well received by the equity markets and the performance of DHFL shares was also strong from that point. From a price of Rs. 317 in February 2017 (date of postal ballot), the stock was at Rs. 662 in November 2017 and Rs. 679 in September 2018. (Internal pg. 282 of Annexure 9)

vii. As per the Explanatory Statement, a transaction of this nature, would require regulatory approvals of IRDA, RBI and CCI and could take a significant time to *conclude. Interest rates on CCDs are also subject to the regulatory provisions under the Companies Act, 2013, Income Tax Act, and SEBI Regulations. (Internal pg. 279-280 of Annexure 9)*

viii Strong net worth addition of 30% will ensure dilution free growth until FY 20. Additionally, monetization of the stake will help the company to reduce the leverage on its balance sheet to —13x from FY 18. The transaction would also shore up the Tier-I ratio by 350-400 bps to —15% highest in past five years. Moreover, the entire proceeds will be capital gains and translate into higher capital adequacy ratio. (Internal pg. 277 of Annexure 9)

ix. The value of ultimate shareholding, even if less than the proportionate capital contribution, would have been far outweighed by the likely gains CRS. 16.6 bn to Rs. 19.7 bn) that DHFL stood to make on the stake sale. Therefore, the question pertaining to conversion ratio of CCDs, ultimate shareholding pattern and the rate of interest on CCDs was a gono-go factor in the voting decision. The capital gain made by DHFL on the transaction would not only strengthen its capital ratios but improve the business prospects for loan growth. (Internal pg. 277 of Annexure 9)

x. Outlook of the credit rating agencies in respect of the transactions (Internal pg. 260 of Annexure 9)

There is no whisper in the entire SCN as regard as any violation whatsoever of the SEBI (PFUTP) Regulations, 2003 by Noticee No.2. Investigations were re-opened by the IVD on the premise of investigating this angle, but indeed nothing has been found. Therefore, in the garb of investigating violations under the SEBI (PFUTP) Regulations, 2003, allegations about violating LODR Regulations have been levelled.

In any event, it is well settled in law that when there are two equally plausible views, an interpretation which does not penalize the noticee should be adopted.

The Postal Ballot Notice disclosed all material information available with DHFL

The Postal Ballot Notice indeed, truly and completely disclosed all material terms of the proposed transaction based on information that was available to DHFL at that point in time. Nothing material was withheld. Approval was sought from the shareholders to empower the Finance Committee – a subcommittee of the Board – to engage with lenders and enter into definitive terms. There was no "pre-decided" term that was not disclosed truthfully and completely as available at the time of the Postal Ballot Notice.

From the extracts of the Postal Ballot Notice (above), it would be evident that the following material terms were disclosed:-

- *i. The minimum and maximum consideration receivable by DHFL, upon conclusion of the sale and the fact that the actual consideration would be within the range – Rs. 1690 crores to Rs. 2020 crores. The final consideration of Rs. 2000.50 crores was also admittedly and indeed within this range;*
- *ii. The fact that the funding for the acquisition by DIL would come from the promoter, WGC, which would subscribe to such number of CCDs of DIL, that would, upon conversion, entitle WGC to hold a majority in DIL – evidently, the exact size of funding would depend on the exact size of the final consideration;*
- *iii. The fact that WGC would enter a put option agreement with DHFL which upon exercise by WGC, would result in CCDs being transferred to DHFL to ensure that DIL remains part of the group. The exercise price payable was to be based on funding arrangements to be finalized by WGC;*

All material information available at the time of the Postal Ballot Notice with DHFL was disclosed. The draft resolution also made it clear that approval was being sought from the shareholders to enable the Board to enter into binding commitments in connection with the put option;

The explanatory statement and the draft resolutions read together would make it clear to any reasonable shareholder that the terms of the CCDs or the put options, were not finalized and were the subject of negotiations, at the stage of the Postal Ballot Notice.

Information that did not exist at the time of the Postal Ballot Notice, is incapable of disclosure

The SCN errs by requiring disclosure of information which did not exist at the date of the Postal Ballot Notice such as – the exact consideration payable, the terms of issuance of the CCDs and the terms of the put option. WGC was in fact in discussions with lenders on securing funding arrangements. Only when these funding arrangements were crystallized, could the terms of the put option as well as the number of CCDs and the terms of the CCDs that would be issued by DIL to WGC, have been finalized. Therefore, any disclosure on these matters, at the stage of the Postal Ballot Notice, would have been premature and misleading;

When funding arrangements were finalized and binding commitments from lenders were contracted on March 30, 2017, disclosures were in fact duly made;

The SCN errs by requiring disclosure of "draft agreements', to the shareholders. Not only is such an approach fraught with large reaching implications for the market, but the terms of the funding were in fact being discussed by WGC, rendering any disclosure, premature;

Besides, the scheme of the LODR Regulations requires only binding agreements to be disclosed under Regulation 30 (See Part A of Schedule III to the LODR Regulations which lists certain agreements that are "binding"). Obviously, disclosure of draft agreements, at the stage of seeking approval of the shareholders, would be misleading since they are liable to undergo a change; Therefore, the very basis of the SCN – of suggesting hypothetical and speculative disclosures of potential scenarios is untenable.

Terms of the put option and the CCDs were not pre-decided

The SCN, based on a fundamentally erroneous conclusion in the investigation report, alleges without any basis, that these matters were "pre-decided". No evidence or material has been alluded to in support of this inference which is based on nothing more than conjecture and surmise;

The record shows that on the date of the Postal Ballot Notice, apart from the draft SPA, no binding commitments were entered into. In fact, approval of the shareholders was sought to empower DHFL to enter into suitable arrangements. The Postal Ballot Notice in fact alludes to WGC being in discussion with lenders for securing funding arrangements;

Indeed, the allegations about information allegedly not disclosed in the Postal Ballot Notice, appear to be based on responses of Principal Mutual Fund to SEBI explaining its rationale for its vote against the proposed transaction (See Page 33 @ Para 13.8.2 of the IR).

All other Mutual Funds including the two Mutual Funds that subscribed to NCDs of WGC, who voted in favour of the transaction no such claim even after SEBI sought their responses in light of the views expressed by Principal Mutual Fund (See Page 33 of the IR @ Para 13.8.4). Pertinently, the IR also rightly exonerates the mutual funds that voted in favour of the transaction based on an independent and objective view.

In other words, the conclusions in the investigation report which are repeated in the SCN are based on the subjective view of one shareholder who voted against the transaction, ignoring the views of several other shareholders who voted in favour of the transaction and did not make any grievance of a purported information asymmetry. Such an approach is therefore completely arbitrary;

Likewise, the exact consideration payable to DHFL for the acquisition was not finalized at the stage of the postal ballot notice. The SPA too only specified the minimum and maximum range – which was correctly disclosed in the Postal Ballot Notice with a statement that the consideration paid would be within this range. Admittedly, the actual consideration paid was within the range disclosed. Therefore, the charge that non-disclosure of the exact consideration deprived shareholders of an informed view is incorrect;

Listed companies cannot disclose information of a speculative, uncertain or contingent nature

The SCN has also erred in suggesting that the terms of the put option ought to have been disclosed, based on multiple scenarios that could potentially arise based on the future performance of DPLI. Listed companies cannot engage in crystal gazing when it comes to disclosure of material information;

The adequacy of disclosures cannot be tested with reference to the future prospect of a transaction. Such statements would in fact constitute forward looking statements – which are not only prohibited but would also have misled shareholders – and exposed DHFL to a charge under the PFUTP Regulations;

Regulation 4 of the LODR Regulations, wrongly invoked

Regulation 4 of the LODR Regulations is not a charging provision but merely sets out the principles that should be applied by a listed company when complying with the substantive provisions governing disclosures under the LODR Regulations. The opening sentence of Regulation 4 (not noticed in the SCN) makes this clear and is extracted below:-

"Principles governing disclosures and obligations.

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:"

The charge under Regulation 4 of the LODR Regulations is untenable as the CFD examined the issue and correctly came to a view that there was no breach of the LODR Regulations, and the matter was referred to the IVD for investigation as to whether there was a contravention of the PFUTP Regulations – which too has not been made out (See Pages 4-5 of the IR @ Para 4(b)).

The SCN does not set out the provision of the LODR Regulations that requires disclosure of the information allegedly withheld from the shareholders. On this ground too, the charges are liable to be dropped;

Likewise, the charge under Section 21 of the SCRA is also untenable insofar as they related to the Noticee. Section 21 applies to a person who makes an *application for listing of securities i.e. in this case DHFL, the listed company. It cannot apply to directors or individuals.*

As a result, DHFL did not violate Regulation 4(1)(e) of the LODR Regulations read with Section 21 of the SCRA. Therefore, the question of invoking the constitutional liability by invoking Section 27 of the SEBI Act against officer bearers of the Board or the promoters does not arise. The charge against the directors is untenable as the SCN simply charges them with liability merely because they were promoters and directors, without taking into account the fact that these were collective decisions taken by the Board of DHFL, based on professional advice.

No material has been adduced in the SCN to show that the Noticee had any role to play in the disclosure of information since these are matters left to the Compliance Officer, who has evidently done a compliant job.

11. In addition to the above, Noticees have placed reliance on the following cases:

 (i) SEBI vs. Sunil Krishna Khaitan and Others, (2023) 2 SCC 643;

 (ii) M/s Texmo Pipes and Products Ltd. vs. SEBI, order of the Hon’ble SAT dated September 30, 2022;

 (iii) Suzlon Energy Limited vs. SEBI, order of the Hon’ble SAT dated May 30, 2021.

D. CONSIDERATION OF ISSUES AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case, replies of the Noticees and the material available on record, the issues that arise for consideration in the present case are:

(1) Whether the Noticees have violated the provisions of regulation 4(1)(e) of the LODR Regulations read with section 21 of the SCRA?

(2) Do the violations, if any, on the part of the Noticees would attract monetary penalty under section 23H of SCRA read with section 27 of the SEBI Act?

(3) If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of SEBI Act and section 23J of SCRA?

13. Before moving forward, it is pertinent to refer to the relevant provisions of the LODR Regulations and SCRA which are alleged to be violated by the Noticees, which reads as under:

LODR Regulations

Principles governing disclosures and obligations

4(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

Section 21 of SCRA

Conditions for listing: *Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

14. I have examined the allegations against the Noticees mentioned in the SCN, the Noticees' replies in respect of the allegations and other material available on record.

15. The Noticees have contended that the SCN suffers from delay as the events pertain to the period from February 01, 2017 to March 31, 2017, however, the liability is sought to be fastened in 2021/2022 despite all the information being available in public domain. In relation to the above, I find that although the time taken and efforts involved in an investigation may vary from case to case, generally investigation per-se is a time consuming process that involves collection, scrutiny and careful examination of information and documents obtained from various entities including but not limited to the company, the auditors, the stock exchanges, the depositories, the brokers, the registrar to an agent *etc*. I note that in the present case the sequence of events that has led to the passing of the current adjudication order is as follows:

(i) As part of its regulatory exercise, SEBI started examining the present matter on January 31, 2019.

(ii) The undersigned was appointed as the adjudicating officer *vide* order dated March 16, 2021.

(iii) The undersigned issued the SCN to the Noticees on May 07, 2021.

(iv) The undersigned attempted serving the SCN and the hearing notices to the Noticees multiple times while they were in judicial custody during the years 2021 and 2022 as explained above in paragraphs 5 to 9.

16. I draw reference to the order passed by Hon'ble SAT in Pooja Vinay Jain vs. SEBI (Appeal No. 152 of 2019) decided on March 17, 2020, wherein, inter alia, the following was held:

"On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Mr. Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under….

The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the *facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.*

In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same."

17. I find that the argument of delay raised by Noticees in the current matter is weak as they have not been able to show how they were impaired in defending themselves due to the alleged delay, which is essential in view of the order referred above. Thus, I do not find this contention to be acceptable.

18. Another preliminary contention raised by the Noticees is that in the present case, section 23E of SCRA should not have been invoked as the said provision is not attracted *qua* DHFL due to the ongoing case of Suzlon vs. SEBI pending before Hon'ble SC. They have further argued that as section 23E is not attracted *qua* DHFL, section 23H cannot be made applicable to the Noticees. Noticees have also relied on the decision of *Texmo Pipes and Products Ltd. (supra)* to state that penalty under section 23E of SCRA for non-disclosure of Listing Agreement cannot be imposed. Thus, I note that Noticees have challenged whether section 23H of SCRA can be invoked against them for violations on the part of DHFL of LODR Regulations. In this regard, it is important to look at the text of section 23H of SCRA under which penalty against the Noticees, if any, may be imposed if the alleged violations are established. The said section reads as follows:

Penalty for contravention where no separate penalty has been provided.
23H. Whoever fails to comply with any <u>provision of this Act</u>, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate

penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

(emphasis supplied)

Thus, section 23H of SCRA may be attracted, when there is violation of SCRA. In the present case, violation of regulation 4(1)(e) of LODR Regulations read with section 21 of SCRA is alleged. Section 21 of SCRA reads as follows:

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Thus, both listing agreement and LODR Regulations would be covered within the ambit of section 21 of SCRA. Since no specific penalty has been provided in SCRA for violation of listing agreement or LODR Regulations, I find it apposite that section 23H is invoked with respect to the Noticees for alleged violation of regulation 4(1)(e) of LODR Regulations read with section 21 of SCRA. Therefore, this argument of Noticees merits dismissal.

19. Now I proceed to deal with the issues on merit in the matter.

Issue 1: Whether the Noticees have violated the provisions of regulations 4(1)(e) of the LODR Regulations read with Section 21 of the SCRA?

DISCLOSURES IN POSTAL BALLOT NOTICE

20. The short issue that arises for consideration in these proceedings is whether DHFL made adequate disclosures to its shareholders in the notice and explanatory statement dated February 14, 2017, when their approval by way of a postal ballot was sought for a proposed related party transaction ("**Postal Ballot Notice**"). As a consequence, whether the Noticees can be said to be liable for any alleged failing by DHFL of LODR Regulations and SCRA, is to be considered in the present case.

21. With respect to the chronology of events which led to sale of DHFL's stake in DPLI to DIL, I note the following:

a. **<u>Acquisition of DPLI by DHFL</u>**: DHFL acquired 50% of the equity share capital of DPLI from DLF Limited in December 2013 and the said investment in DPLI (including the original cost of acquisition) was approximately Rs. 31.07 crores.

b. **<u>Selling DPLI to DIL</u>**: On March 31, 2017, in order to unlock the value of DHFL's investment in DPLI, DHFL sold its entire stake (*i.e.,* 50% stake) in DPLI to DIL, a wholly owned subsidiary of DHFL, at a value of Rs. 2000.50 crores.

c. **<u>Issuance of CCDs by DIL to WGC and entering into put options</u>**: In order to fund the above acquisition in DPLI, DIL issued and allotted 190.10 crores CCDs of face value of Rs. 10 each to WGC, a promoter of DHFL. The CCDs were to be converted into equity shares of DIL after the expiry of 100 months and not later than 110 months, from the date on which the CCDs were issued, in accordance with the terms. WGC would, post conversion of the CCDs, own a majority of the issued and paid-up share capital of DIL. Thus, after 100 months but not more than 110 months, WGC would hold more than 50% in DIL, which was wholly owned subsidiary of DHFL earlier. As per the explanatory statement to the Postal Ballot Notice, WGC funded the acquisition of the CCDs through its internal accruals and through market borrowings. These CCDs were further pledged by WGC to mutual funds for the purpose of raising funds.

d. **<u>Draft SPA</u>**: On February 21, 2017, a draft SPA was entered between DHFL and DIL.

e. **<u>Shareholder approval</u>**: On March 17, 2017, shareholders of DHFL approved the transaction on a majority of minority basis as it was constituted to be a related party transaction.

f. **<u>Execution of option agreement</u>**: The CCDs of DIL were backed by an unconditional put option from DHFL to CCD holders. On March 30, 2017, the Finance Committee of DHFL's board approved the execution of the option agreement between DHFL and WGC, in order to ensure that the underlying shares of DPLI remain within the DHFL group.

g. **<u>Completion of transaction and disclosures to stock exchanges</u>**: On completion of the transaction, DHFL received Rs. 2000.5 crores from DIL on 31st March, 2017. It sold 18,70,30,934 equity shares of DPLI (equivalent to 50% of the paid-up share capital of DPLI) to DIL. The aforesaid total consideration received by DHFL was utilised for the purpose of its lending activities. Disclosures were made by DHFL to stock exchanges as per regulation 30 of LODR Regulations.

22. Further, I note that the following information as stated in Column C was not made available to the shareholders of DHFL for approval of the said transaction:

	Column A	**Column B**	**Column C**
#	**Information available in the Postal Ballot Notice**	**Text from the Postal Ballot Notice**	**Information not available in the Postal Ballot Notice**
1.	Amount of DHFL's investment in DPLI	*"..... Investment in DPLI (including the original cost of acquisition) is approximate Rs. 31,06,89,296..."*	
2.	Reason for the transfer of shareholding of DPLI	*"In order to unlock the value of the Company's investment in DPLI, the Company proposes to transfer its entire shareholding in DPLI to WOS..."*	
3.	Present value of the investment of DHFL in DPLI	*"The preliminary range of the fair market value of the shares proposed to be transferred, as provided by the actuarial consultants, is between Rs. 1690 crores (One thousand six hundred and ninety crores only) and Rs. 2020 crores (Two thousand and twenty crores only)."*	The exact fair market value was not disclosed by the Company.
4.	Additional capital raised proposed to be deployed by DHFL	*"The additional capital so raised by the Company will be deployed towards expansion of the Company's core business and/ or prepayment of its high cost borrowings."*	
5.	Method of funding the proposed acquisition	*"In order to fund such acquisition (over and above the equity contribution received from DHFL), WOS will issue CCDs to WGC. The*	The estimated size and amount of the CCDs issued by DIL was not disclosed by the Company.

	Column A	Column B	Column C
#	**Information available in the Postal Ballot Notice**	**Text from the Postal Ballot Notice**	**Information not available in the Postal Ballot Notice**
		CCDs would convert into equity shares of WOS after the expiry of 100 months from the date on which the CCDs are issued...." *"WGC proposes to fund the acquisition of the CCDs through its internal accruals and through market borrowings. The CCDs issued by WOS would be pledged by WGC as collateral in favour of the lenders. In connection with its market borrowings, certain options may be exercised requiring the CCDs to be transferred to DHFL in order to ensure that the underlying shares of DPLI remain within the group. The exercise price for such options will be determined based on the nature of funding availed by WGC and discussions with lenders in due course".*	The conversion ratio of CCD to equity shares, shareholding pattern of DIL post conversion of CCD and the rate of interest on the CCDs were not disclosed by the Company. Information about the options like terms of option agreement, cost or fee charged for the options, how CCDs would be transferred to DHFL and impact on the shareholders of DHFL if options were to be exercised by WGC etc., were not disclosed by the Company.

23. Regarding the information not made available to DHFL shareholders in the Postal Ballot Notice, I observe that:

(i) In the Postal Ballot Notice, terms such as *"certain options"* or *"such options"* were used. Further, information about the options like terms of option agreement, cost or fee charged for the options, how CCDs would be transferred to DHFL and impact on the shareholders of DHFL if options exercised by WGC etc., were not disclosed by DHFL. It was not known to the shareholder that these put options gives a right to WGC, to transfer the CCDs to DHFL, and in that condition what cost would be borne by DHFL was also not known to the shareholders. During investigation it was found that consideration for the put option provided by DHFL was not paid by WGC to DHFL at the time of execution of the agreement. A fee of Rs. 1.9 crores was paid in June 2019, after around 2 years from the agreement execution date. Hence, the shareholders of DHFL was only informed that DHFL's investment in DPLI of Rs. 31.07 crores were getting converted into the range of Rs. 1690 crores to Rs. 2020 crores but the future cost of these put option which may be bigger than the abovementioned profit was not given to the shareholders.

(ii) The estimated size and amount of the CCDs issued by DIL was not disclosed by the Company to its shareholders.

(iii) The method for funding for acquisition was known to the shareholders of the Company, however the size and amount was not known. The information related to the upcoming debt of DIL was not available to the shareholders and the cost of that debt also not known which ultimately needs to be borne by the shareholders of DHFL.

(iv) The conversion ratio of CCDs to equity shares, shareholding pattern of DIL post conversion of CCD and the rate of interest on the CCDs were not disclosed by Company. However, it was available that the majority will go to WGC but it was not known that what will be the non-majority part which is going to be with DHFL.

No concrete details/information regarding the put options were available to the shareholders of DHFL while taking the decision for the related party transactions. Hence, I note that complete and adequate information was not available to the shareholder to take informed decision at the time of casting their vote in the resolution passed.

24. The Noticees have argued that regulation 4 of the LODR Regulations is only a guiding principle, and it is not a mandatory obligation under which liability can be foisted. The Noticees have not adduced any reasoning or material to support the aforesaid submission. Thus, without going into details, I find the same to be without any merit.

25. Noticees have argued that the disclosures in the Postal Ballot Notice were adequate. Further, DHFL shareholders were given adequate opportunities to raise queries regarding the proposed resolution and seek inspection of documents. The details of option agreement were disclosed on March 30, 2017.

Even though the argument of Noticees appears to be attractive at first, on closer scrutiny, it has some flaws. The question to be determined is whether the details available in the Postal Ballot Notice satisfied the requirements of regulation 4(1)(e) of LODR Regulations and not whether other means were available to the shareholders to obtain the information which should have been made available to them in the first place. By only disclosing that *"certain options"* or *"such options"* would be exercised, crucial information such as number of option, fees charged for the options, exercise price *etc* were omitted and the shareholders were kept in dark. The Noticees argument that the details of option agreement were disclosed on March 30, 2017, does not help them, as at the time of seeking shareholders' approval on March 17, 2017, no agreement or even draft of such agreement was made available to them. The only document which was available for the inspection of shareholders was the draft SPA. The said agreement only gives information about the stake sale of DPLI but does not provide the information regarding any of the points discussed in paragraphs 22 and 23 above. No documents/information were available to the shareholders related to CCDs and options.

26. The Noticees have also argued that information relating to put options did not exist at the time of the Postal Ballot Notice, therefore, it was incapable of disclosure. Earlier disclosure would have been premature and misleading. As soon as binding commitments were entered into, disclosures were made. On the date of the Postal Ballot Notice, apart from the draft SPA, no binding commitments were entered. Approval of the shareholders was sought to empower DHFL to enter into suitable arrangements. I am of the view that when all the series of events were pre-decided, documents/draft agreements should have been made available to the shareholders for each and every affair in order to enable them to an informed decision. I find it difficult to believe that the terms relating to put option were not available at the time of shareholder approval on March 17, 2017, however within a matter of less than 15 days from the time of shareholder approval, the put option agreement was executed on March 30, 2017 and was disclosed to the stock exchange on March 31, 2017. In my view, selling a stake is a comprehensive process which involves due diligence, legal documentation, regulatory approvals, and shareholder consent, among other considerations.

Before taking such a huge transaction, the parties would have decided financial terms, rights and obligations of the parties, key milestones, conditions precedent, and any other significant provisions relevant to the specific transaction. For Noticees to claim that they did not have key terms such as exercise price or impact on shareholders determined is a shallow argument. I note that the only information available to the shareholders was that the Company's investment in DPLI of Rs. 31.07 crores was getting converted into the range of Rs. 1690 crores to Rs. 2020 crores within a short span of time of around 3 years and that the additional capital so raised by the Company would be deployed towards expansion of the Company's core business and/ or prepayment of its high cost borrowings.

27. Due to the put option agreement, I note that there could be two scenarios on the basis of the probability of future performance of DPLI.

Scenario 1: In the event that DPLI did well and the value of DIL shareholding in it went up, for example from Rs. 2000 crore to Rs. 4000 crore, WGC would extract this value through the conversion of its CCDs of Rs. 1901 crores and effectively after repaying its lenders along with interest, it would be the 100% beneficiary of the profit. While the shareholders of DHFL would benefit in this scenario on account of their shareholding in DIL, they would have zero participation in the profit accruing in the CCDs.

Scenario 2: If DPLI fails and for example, its value falls from Rs. 2000 crores to, Rs. 1000 crores, the WGC would not be in a position to extract enough value through the CCDs and would potentially be unable to pay the NCD holders. In this scenario, as per the put option agreement entered into with DHFL (which has not been placed before the shareholders), the lender would put the CCDs on DHFL, who would have to pay Rs. 1901 crores plus interest of 9.95% p.a, while getting in return, the CCDs of value of only Rs. 1000 crores approximately. In this scenario, the minority shareholders of DHFL would have to bear 62.62% of the loss, accruing to the CCDs, the balance 37.38% being borne by WGC by virtue of their holding in DHFL. In view of the above, as against the benefit which they had already got from the stake sale of Rs. 31.07 crore to Rs. 2000.5 crore in DPLI, their net benefit would reduce.

As mentioned above, possibility of both the scenario depended on the future performance of DPLI. With the put option, WGC will be in a win-win situation, if DPLI does well and makes profit, WGC will hold the majority stake in DIL after conversion of CCDs to the equity shares of DIL. However, in case DPLI does not perform well, CCDs of DIL will be transferred to DHFL and DHFL have to pay the consideration to WGC. So, the loss would be borne by the shareholders of the DHFL.

28. From the analysis above, I find that the complete and adequate information was not presented before the shareholders of DHFL while taking the approval for the related party transaction. Benefit of the stake sale of DPLI of Rs. 31.07 crores to Rs. 2000.50 crores was showcased but the condition of put option and effects of the put option on the shareholders of DHFL was not disclosed to the shareholders.

29. Noticees have also argued that the put option was not an undue obligation upon DHFL without any benefit to it, but a considered commercial decision to retain ownership of valuable shares in DPLI within the DHFL group. In this regard, while accepting the importance of management discretion in running the business, the objective of provisions in LODR Regulations regarding adequate, accurate, explicit and timely disclosures cannot be ignored. Management discretion in conduct of business cannot be exercised to render nugatory the underlying principles prescribed in LODR Regulations. It is also uncontroverted that crucial information relating to CCDs and put options were not made available to DHFL's shareholders at the time of obtaining their approval.

30. Noticees have relied on the decision of *Sunil Krishna Khaitan (supra)* to *inter alia* drive the point that (i) good regulation should promote and allow for effective risk management and not stifle risk-taking; (ii) general rule of interpretation of law states that unless explicitly mentioned, a law cannot presumed to be retrospective; (iii) every authority is required to exercise its power within a

reasonable period. With respect to (i) above, I note that promoting risk taking cannot be at the cost of shareholder interest. As regards to (ii), it is not clear which law in the present case is sought to be applied retrospectively. In relation to delay as stated in (iii) above, I have already dealt the said contention in the foregoing paragraphs.

<u>ROLE OF NOTICEES</u>

31. During the IP, Noticee 1 was the Chairman and Managing Director of the Company, who was also a Promoter in the Company. Noticee 1 was on the board of the Company since November, 1996. The draft Postal Ballot Notice was duly initialed by Noticee 1 as Chairman. The said draft Postal Ballot Notice contained the draft resolution for entering into a related party transaction with WGC, a promoter entity, and a wholly owned subsidiary incorporated under the name of DIL.

32. Noticee 2 is the brother of Noticee 1 and he was also a Promoter and Non-Executive Director in the Company during the IP. Noticee 2 was on the board of the Company since May, 2008. Noticee 2 was also present at the meeting of the board where the draft Postal Ballot Notice was approved. Considering the position held by Noticees as Promoters and Directors in the Company, both are responsible for inadequate information provided in the Postal Ballot Notice by the Company.

<u>CONCLUSION</u>

33. In view of the above paragraphs, I find that complete and adequate information was not disclosed to the shareholders of the Company as observed from the Postal Ballot Notice and draft SPA which was the responsibility of the Noticees. The Postal Ballot Notice was deficient *inter alia* regarding the terms of option agreement such as cost or fee charged for the options, how CCDs would be transferred to DHFL, impact on shareholders of DHFL if options were to be exercised by WGC *etc*. The series of events were designed in such a way as to give benefits to the Promoters of the Company (*i.e,* WGC) which may cause future loss for the minority shareholders of DHFL. Incomplete disclosure defeats the

entire purpose of having the resolution approved by the shareholders and it is against the principles of good corporate governance.

34. Adequate disclosure of the relevant information by companies is essential for maintaining transparency about the affairs of the company which helps in mitigating information asymmetry. Correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. Investors depend on the truth and fairness in disclosure of the transactions in order to make informed decisions.

35. In view of the above, I find that the Noticees have violated the principles governing disclosures and obligations prescribed under regulation 4(1)(e) of LODR Regulations read with section 21 of SCRA by not disclosing the information regarding CCDs and Put Options in the Postal Ballot Notice at the time of taking approval from the shareholders of the Company for the subject related party transaction.

Issue 2: Do the violations, if any, on the part of the Noticees would attract monetary penalty under section 23H of SCRA read with section 27 of the SEBI Act?

36. It has been established in the foregoing paragraphs that Noticees have violated the alleged regulation 4(1)(e) of LODR Regulations read with section 21 of SCRA, and therefore, the aforesaid violations committed by the Noticees attract monetary penalty under section 23H of the SCRA read with section 27 of the SEBI Act.

37. In this regard, the Noticees have argued that at the time the alleged violations were committed (*i.e.,* prior to Finance Act, 2018 coming into force), section 27 of the SEBI Act did not contemplate taking any action against a person for contravention/breach of SCRA or LODR Regulations. The transaction took place in 2017, hence amended section 27 of SEBI Act contemplating actions under LODR Regulations or SCRA cannot be retrospectively invoked. I note that the

term “Offence”, mentioned in pre-amended section 27 of the SEBI Act in the absence of definition of such term in the SEBI Act cannot be said to be limited in scope. It also included ‘contraventions’ of the provisions of SEBI Act and the regulations framed thereunder. Thus, the Noticees contention in this regard does not sustain.

38. In view of the above, I conclude that the Noticees are liable for monetary penalty under the provisions of section 23H of the SCRA read with section 27 of the SEBI Act.

Issue 3: If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act and section 23J of the SCRA?

39. While determining the quantum of penalty under the aforesaid sections, the following factors stipulated in section 15J of the SEBI Act and 23J of the SCRA, have to be given due regard:

(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; and

(c) the repetitive nature of the default.

40. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non-compliance committed by the Noticees. Material on record also does not show that the failure is repetitive in nature. I am of the view that by not disclosing adequate information in the Postal Ballot Notice, the Noticees created an information asymmetry regarding the actual implication of the transaction which was against the interest of

shareholders of DHFL. Hence, a penalty commensurate for the violations committed by the Noticees needs to be imposed.

E. ORDER

41. Having considered all the facts and circumstances of the case, the material available on record, the replies submitted by the Noticees and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under sections 15-I of the SEBI Act and section 23-I of the SCRA read with rule 5 of the SEBI Adjudication Rules and SCRA Adjudication Rules hereby impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) on each on the Noticees *viz.* Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan, under the provisions of section 23H of the SCRA read with section 27 of the SEBI Act for violation of regulation 4(1)(e) of LODR Regulations read with section 21 of the SCRA. I am of the view that the said penalty is commensurate with the default committed by the Noticees.

42. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website **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, the Noticees may contact the support at portalhelp@sebi.gov.in.

43. The Noticees shall forward the details/confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format given in table below:

1.	Case name	
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	Penalty

44. In terms of rule 6 of the SEBI Adjudication Rules and rule 6 of the SCRA Adjudication Rules, copies of this order are sent to the Noticees and to SEBI.

Date: July 31, 2023
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER