BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/VC/2024-25/31074-31080)

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

In respect of:

Noticee No.	Name and PAN of the Noticee
1	M/s. Jaiprakash Power Ventures Ltd. [PAN – AAACJ6297K]
2	Mr. Suren Jain [PAN – AASPJ5976A]
3	Mr. Sunil Kumar Sharma [PAN – ABKPS1549R]
4	Mr. Manoj Gaur [PAN – AAOPG1931A]
5	Mr. Praveen Kumar Singh [PAN – ABKPS1556J]
6	Mr. M K V Rama Rao [PAN – AACPR4808D]
7	Mr. R K Porwal [PAN - AECPP5769B]

In the matter of Jaiprakash Power Ventures Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigation in the matter of Jaiprakash Power Ventures Limited (hereinafter referred to as the **'Company'** or **'JPVL'** or **'Noticee-1'**), to ascertain the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **'SCRA'**), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations,

2003 (hereinafter referred to as **'PFUTP Regulations'**) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **'LODR Regulations'**). The investigation was conducted for the period of FY 2018-19, FY 2019-20 and FY 2020-21 (hereinafter referred to as **'Investigation Period'** or **'IP'**). However, wherever deemed necessary, references have been made to the events / timeframes outside this period.

2. Based on the findings of investigation, SEBI initiated adjudication proceedings against M/s. Jaiprakash Power Ventures Limited (**'Noticee-1'**), Mr. Suren Jain (**'Noticee-2'**), Mr. Sunil Kumar Sharma (**'Noticee-3'**), Mr. Manoj Gaur (**'Noticee-4'**), Mr. Praveen Kumar Singh (**'Noticee-5'**), Mr. M K V Rama Rao (**'Noticee-6'**) and Mr. R K Porwal (**'Noticee-7'**) {hereinafter together referred to as **'Noticees / you'**} for violating the provisions of the following Acts and Regulations:

Table No. 1

Noticee No.	**Name of the Noticee**	**Alleged Violations**	**Adjudication proceedings under the provisions**
1	M/s. Jaiprakash Power Ventures Ltd.	• Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (For FY 2012-13 to FY2021-22).	• Section 15HA of SEBI Act for violations of PFUTP Regulations
		• Regulations 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations (For FY 2015-16 to FY 2021-22). • Regulations 4(1)(a), (b), (h), (i), 4(2)(e), (i), 23(8), (9) and 34(3) of LODR Regulations (For FY 2015-16 to FY 2021-22). • Circulars Nos. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 and CIR/CFD/POLICY CELL/7/2014 dated September 15, 2014.	• Section 15HB of SEBI Act for violations of LODR Regulations and SEBI Circulars

Noticee No.	Name of the Noticee	Alleged Violations	Adjudication proceedings under the provisions
		• Clause 41(I)(a) and para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15).	• Section 23H of SCRA for violation of Listing Agreement
2	Mr. Suren Jain	• Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations read with Section 27 of SEBI Act (For FY 2012-13 to FY 2021-22).	• Section 15HA of SEBI Act for violations of PFUTP Regulations
		• Regulations 4(1)(a), (b), (c), (e) (g), (h), (j) 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (For FY 2015-16 to FY 2021-22). • Regulation 17(8) of LODR Regulations (For FY 2015-16 to FY 2021-22).	• Section 15HB of SEBI Act for violations of LODR Regulations
		• Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15). • Para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15).	• Section 23H of SCRA for violation of Listing Agreement
3	Mr. Sunil Kumar Sharma	• Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations read with Section 27 of SEBI Act (For FY 2012-13 to FY 2021-22).	• Section 15HA of SEBI Act for violations of PFUTP Regulations

Noticee No.	Name of the Noticee	Alleged Violations	Adjudication proceedings under the provisions
		• Regulations 4(1)(a), (b), (c), (e) (g), (h), (j) 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (For FY 2015-16 to FY 2021-22). • Regulation 17(8) of LODR Regulations (For FY 2015-16 to FY 2021-22).	• Section 15HB of SEBI Act for violations of LODR Regulations
		• Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15). • Para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15).	• Section 23H of SCRA for violation of Listing Agreement
4	Mr. Manoj Gaur	• Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations read with Section 27 of SEBI Act (For FY 2012-13 to FY 2021-22).	• Section 15HA of SEBI Act for violations of PFUTP Regulations
		• Regulations 4(1)(a), (b), (c), (e) (g), (h), (j) 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (For FY 2015-16 to FY 2021-22).	• Section 15HB of SEBI Act for violations of LODR Regulations
		• Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15).	• Section 23H of SCRA for violation of Listing Agreement
5	Mr. Praveen Kumar Singh	• Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations read with Section 27 of SEBI Act (For FY 2012-13 to FY 2021-22).	• Section 15HA of SEBI Act for violations of PFUTP Regulations

Noticee No.	Name of the Noticee	Alleged Violations	Adjudication proceedings under the provisions
		• Regulations 4(1)(a), (b), (c), (e) (g), (h), (j) 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (For FY 2015-16 to FY 2021-22).	• Section 15HB of SEBI Act for violations of LODR Regulations
		• Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15).	• Section 23H of SCRA for violation of Listing Agreement
6	Mr. M K V Rama Rao	• Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations read with Section 27 of SEBI Act (For FY 2012-13 to FY 2021-22).	• Section 15HA of SEBI Act for violations of PFUTP Regulations
		• Regulations 4(1)(a), (b), (c), (e) (g), (h), (j) 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (For FY 2015-16 to FY 2021-22).	• Section 15HB of SEBI Act for violations of LODR Regulations
		• Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (For FY 2012-13, 2013-14 and FY 2014-15).	• Section 23H of SCRA for violation of Listing Agreement
7	Mr. R K Porwal	• Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2(1)(c)(1) of PFUTP Regulations read with Section 27 of SEBI Act (For FY 2019-20, 2020-21 and 2021-22).	• Section 15HA of SEBI Act for violations of PFUTP Regulations

Noticee No.	Name of the Noticee	Alleged Violations	Adjudication proceedings under the provisions
		• Regulations 4(1)(a), 4(1)(b), 4(1)(e) and 48 of LODR Regulations read with Section 27 of SEBI Act (For FY2019-20, 2020-21 and 2021-22). • Regulations 4(2)(f)(i)(2) and 17(8) of LODR Regulations (For FY2019-20, 2020-21 and 2021-22).	• Section 15HB of SEBI Act for violations of LODR Regulations

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Mr. Shashi Kumar Valsakumar, CGM as the Adjudicating Officer (hereinafter referred to as **'AO'**), vide order dated January 25, 2024, under Section 19 of the SEBI Act, read with Section 15-I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules'**) and under Section 23-I of the SCRA read with Rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'SCR Adjudication Rules'**), to inquire into and adjudge under the provisions of the Section 15HA and 15HB of the SEBI Act and Section 23H of the SCRA, for the violations alleged to have been committed by the Noticees. Thereafter, pursuant to transfer of erstwhile AO, Mr. Shashi Kumar Valsakumar, the undersigned was appointed as AO in the matter vide order dated July 22, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice bearing reference no. SEBI/HO/EAD-8/SKV/VC/14084/1-7/2024 dated April 10, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticees in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act; and Rule 4(1) of the SCR Adjudication Rules read with Section 23-I of the SCRA, requiring the Noticees to show cause as to why an inquiry should not be held against them and why

penalty, if any, should not be imposed upon the Noticees under Section 15HA and 15HB of the SEBI Act and/or Section 23H of the SCRA for the alleged violations as mentioned hereinabove.

5. I note that SCN issued to the Noticees was duly served upon them and it was acknowledged by the Noticees. The details of the delivery and the mode of delivery of the SCN to the Noticees are given below:

Table No. 2

Sr. No.	**Entity**	**SCN Delivery status: Yes / No**	**Mode of the delivery**
1	Noticee-1	Yes	E-mail and Speed post Acknowledgement Due ("**SPAD**")
2	Noticee-2	Yes	E-mail and SPAD
3	Noticee-3	Yes	E-mail and SPAD
4	Noticee-4	Yes	E-mail and SPAD
5	Noticee-5	Yes	E-mail and SPAD
6	Noticee-6	Yes	E-mail and SPAD
7	Noticee-7	Yes	E-mail and SPAD

6. Therefore, from the above table, I note that the service of SCN to all the Noticees was completed and sufficient notice was given to them.

7. Vide letter dated April 22, 2024, Noticees requested for inspection of the documents in the matter, which was granted to them on May 09, 2024. Vide the said letter dated April 22, 2024, Noticees also requested for 8 weeks' time to submit their response to the SCN. Considering the request of Noticees, an additional time of 21 days (i.e. till May 30, 2024), was granted to the Noticees for filing their reply to the SCN. Once again, vide e-mail / letter dated May 27 and 28, 2024, Noticees requested for additional time of 3 weeks to submit their response to the SCN. Considering the request of Noticees, an additional time of 3 weeks was again granted to the Noticees and they advised to furnish their response to the SCN by June 17, 2024. Thereafter, all the Noticees submitted their replies to the SCN through their respective letters/ e-mails dated July 13, 2024. Further, vi*de* e-mails

dated August 29, 2024, Noticee-1 also made the additional submissions w.r.t. judgments relied on by it in the instant matter.

8. In the interest of natural justice, an opportunity of hearing on June 03, 2024 was granted to the Noticees by erstwhile AO, Mr. Shashi Kumar Valsakumar, vide Hearing Notice dated May 16, 2024. However, hearing was postponed due to multiple request of extensions by the Noticees as mentioned in above para. After transfer of erstwhile AO, an opportunity of hearing on August 22, 2024 was granted to the Noticees by the undersigned, vide Hearing Notice dated August 01, 2024, which was re-scheduled on August 29, 2024. On August 29, 2024, Authorised Representatives of the Noticees (**'ARs'**) attended the hearing through video-conference on Webex platform and made the submissions on behalf of the Noticees. ARs reiterated the submissions made by the Noticees vide letter dated July 13, 2024.

9. Background of the Company and the allegations levelled against the Noticees in the SCN are summarised as under:

9.1. ***Background of the Company:***

(a) JPVL is part of the Jaypee Group of companies and it was incorporated on December 21, 1994 as Jaiprakash Hydro Power Limited ('JHPL') with the object, inter-alia, to set up hydro-electric or Thermal power projects and for the supply of Electric power. The Certificate of Commencement of Business was granted to the Company on January 9, 1995. Pursuant to Scheme of Amalgamation approved by Hon'ble High Court of Himachal Pradesh, erstwhile JPVL was amalgamated into JHPL. Subsequent to the merger the name of JHPL was changed to Jaiprakash Power Ventures Limited w.e.f. December 23, 2009. (Source: Annual Report of the company for the FY 2020-21 and information on the company's website https://www.jppowerventures.com).

(b) As per MCA website, BSE website and Annual reports of the company for FY 2018-19, 2019-20, 2020-21 and 2021-22, the detail of Noticees who served as directors of the Company during the relevant period (investigation period and thereafter) is as under:

Table No. 3

S N	Name of the Director	Designation	DIN (PAN)	From	To
1	*Manoj Gaur*	*Chairman & Director*	*00008480 (AAOPG1931A)*	*10.12.2002*	*Continuing****
2	*Sunil Kumar Sharma**	*Director & Vice Chairman*	*00008125 (ABKPS1549R)*	*27.12.1997*	*Continuing****
3	*Suren Jain***	*Managing Director & CEO/ Chief Financial Officer (CFO)*	*00011026 (AASPJ5976A)*	*12.01.2010*	*Continuing****
4	*Praveen Kumar Singh*	*Whole Time Director*	*00093039 (ABKPS1556J)*	*30.10.2010*	*Continuing****
5	*M K V Rama Rao*	*Whole Time Director*	*03257012 (AACPR4808D)*	*09.12.2016*	*09.12.2019*
6	*R. K. Porwal***	*CFO*	*AECPP5769B*	*27.01.2020*	*Continuing****

(Source: MCA Website, BSE Website and Annual Reports of company for FY2018-19, 2019-20, 2020-21 and 2021-22.)

** Sunil Kumar Sharma - CEO till 27.07.2019.*

*** Suren Jain - CFO till 27.07.2019 & CEO w.e.f. 28.07.2019. R. K. Porwal – Appointed as CFO w.e.f. 27.01.2020.*

**** Continuing - These directors were still continuing as directors as on November 30, 2023.*

(c) *Further, as per annual reports of the Company, Shri Sunil Kumar Sharma was on the Board as Vice-Chairman and Chief Executive Officer. He was also the Executive Vice-Chairman of JAL.*

9.2. ***Books of accounts of the Company did not reflect true and fair view as per prevailing accounting standards, w.r.t. accounting treatment for corporate guarantees given/provided to lenders of its associate/subsidiary companies:***

9.2.1. ***Corporate Guarantee of USD 1500 Lacs by JPVL to State Bank of India for the loan availed by Jaiprakash Associates Limited:***

(a) *It was observed that JPVL had provided corporate guarantee of USD 1500 Lacs to State Bank of India (**SBI**) for the loan availed by Jaiprakash Associates Limited (**JAL**). JAL was holding company of JPVL at the time when JPVL provided corporate guarantee to SBI. From replies of SBI, it was observed that the aforesaid loan of USD 1500 Lacs availed by JAL was classified as Non-Performing Asset (**NPA**)* *(refer footnote 1) on March 08, 2016. Thereafter, it continued to be doubtful as JAL was not able to repay the loan amount. On March 08, 2017, it was classified as "Doubtful 1", on March 08, 2018, it was classified as "Doubtful 2", and on March 08, 2020, it was classified as "Doubtful 3" (refer footnote 2). Thereafter, the loan was continued as "Doubtful 3". Therefore, it was clear that JAL was not able to repay its loan obligations timely.*

(b) *On examination of annual reports of the Company, it was observed that JPVL disclosed the aforesaid corporate guarantee by way of notes to accounts in FY2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. In FY 2017-18, FY2018-19, FY2019-20, FY2020-21 and FY2021-22 the said corporate guarantee was disclosed as "Contingent Liability". The statutory auditors qualified the accounting treatment of aforesaid corporate guarantee for five consecutive financial years i.e. FY2017-18, FY2018-19, FY2019-20, FY2020-21 and FY2021-22.*

(c) *As per Accounting Standard- 29, JPVL was required to disclose the aforesaid corporate guarantee as contingent liability for the FY2012-13, FY2013-14 and FY 2014-15 i.e. the years when loan was not declared NPA, however JPVL failed to do so. For the next financial year in which loan was declared NPA i.e. in FY 2015-16, the company was required to make necessary provision as per Accounting Standard- 29, however company failed to do so. Further, as per Ind-AS 109 (applicable for FY 2016-17 to FY 2021-22) the company was required to recognize the aforesaid corporate guarantee as financial guarantee liability and the same should have been measured at fair value. However, from annual reports of the company it was observed that JPVL failed to do so. Hence, it was alleged that the Company has not done fair valuation and has not made proper provisioning w.r.t. given/provided corporate guarantee of USD 1,500 lacs for loans granted by the lenders to JAL as per prevailing accounting standards.*

(d) *The accounting treatment of aforesaid corporate guarantee was not in accordance with the requirements of Accounting Standard- 29 (for FY 2012-13 to FY 2015-16) and Ind-AS 109 read with Ind-AS 113 (for FY 2016-17 to 2021-22).*

[1] As per RBI Master circular dated 31.03.2001 read with circular dated 30.08.2001 an asset shall be classified as non-performing asset when amount to be received remains overdue for a period of more than 90 days.

[2] Doubtful 1 – Asset has remained NPA for more than 12 months, Doubtful 2 – Asset has remained doubtful for 1 to 3 years and Doubtful 3 - Asset has remained doubtful for more than 3 years.

9.2.2. ***Other Corporate guarantees and their accounting treatment in the books of JPVL:***

(a) *JPVL had given another two Corporate Guarantees in favour of SBI as collateral security for total loan of Rs.1100 Crore (loan of Rs. 500 Crore availed in FY 2015-16 and loan of Rs. 600 Crore availed in FY 2016-17) taken by Prayagraj Power Generation Company Limited (**PPGCL**). The said two corporate guarantees for said Rs. 1100 Crore loan were executed on November 21, 2015 and November 15, 2016 respectively. In addition to that, one more corporate guarantee was given by JPVL to SBI for short term loan of Rs.500 Crore availed by PPGCL in FY2014-15.*

(b) *During FY2014-15, 2015-16 and 2016-17, JPVL was promoter of PPGCL and was holding 87.74% of shareholding in PPGCL. Therefore, PPGCL was subsidiary of JPVL at the time when corporate guarantees were given by it to lenders of PPGCL. On examination of financial statements of the Company for FY2014-15 onwards, it was observed that for these corporate guarantees also JPVL failed to make proper accounting treatment as required by Accounting Standard- 29 and Ind-AS 109.*

(c) *For the long term loan of Rs.1100 Crore the outstanding amount as on March 31, 2017, March 31, 2018 and March 31, 2019 was Rs. 1100 Crore. Therefore, it was clear that PPGCL was not repaying its loan during the FY2016-17 to FY2018-19. Further, w.r.t. long term loan of Rs. 1100 Crore statutory auditors of the Company, M/s Lodha & associates in their audit report for FY2017-18 and 2018-19, qualified the opinion.*

(d) *From replies of SBI, it was observed that the aforesaid loan of Rs. 1100 Crore given by SBI to PPGCL was classified as sub-standard on November 02, 2016. Thereafter it continued to be sub-standard as PPGCL was not able to repay the loan amount. In the year 2017-18, it was classified as “Doubtful -1” and the status of loan was same as on March 31, 2018. Thereafter, in the year 2018-19, it was classified as “Doubtful - 2” and as on March 31, 2019, the status of loan was “Doubtful - 2”. The said loan account was closed in December 2019. Therefore, it was clear that PPGCL was not able to repay its loan obligations timely.*

(e) *On examination of annual reports of the Company, it was noted that JPVL disclosed aforesaid corporate guarantees by way of notes to accounts in FY 2015-16, 2016-17, 2017-18 and 2018-19. In FY 2017-18 and FY2018-19, the statutory auditors of the Company qualified the disclosure of said corporate guarantees. JPVL did not* *re-measure the financial guarantee liability at the amount of 'actual liability' in accordance with Ind-AS 109 and Ind-AS 113.*

9.2.3. In view of above para 13.1.1 and 13.1.2, it was alleged that the Company misrepresented its books of accounts by way of not following correct accounting treatment for Corporate Guarantees given by it to lenders of its associate/parents/subsidiary companies during the FY2012-13 to FY2021-22. Thus, due to not carrying out the accounting treatment of the corporate guarantees as per applicable accounting standards of relevant time, the financial statements of the Company during the FY2012-13 to FY2021-22 did not reflect true and fair view. Full time directors (MD/ED/WTD) and CFO of the Company were alleged to be liable for aforesaid misrepresentation in the books of accounts of the Company during the FY2012-13 to 2021-22.

9.2.4. ***JPVL not obtained the shareholders' approval in terms of SEBI circular No. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 w.r.t. corporate guarantees given by it to lenders of JAL and PPGCL:***

(a) As per BSE website, as on September 30, 2012, JAL was holding 67.93% shareholding in JPVL, hence JPVL was subsidiary of JAL. Subsequently on reduction of shareholding of JAL in JPVL, JAL became associate company of JPVL w.e.f. February 18, 2017. Further, PPGCL was subsidiary of JPVL since December 14, 2009. Thereafter, it continued to be subsidiary of JPVL and ceased to be subsidiary on December 18, 2017. Therefore, JAL and PPGCL were allegedly related parties of JPVL as per applicable accounting standards during the relevant period.

(b) From the clauses of corporate guarantee of USD 1500 Lacs, it was seen that the corporate guarantee was unconditional guarantee given to lenders of JAL which gave 100% obligation on guarantor in case of default in repayment of loan. There was no agreement entered between JAL and JPVL and no price was charged by JPVL for aforesaid corporate guarantee. However, obligation was undertaken by JPVL. Therefore, in the instant matter as per applicable accounting standards, the corporate guarantee of USD 1500 Lacs given by JPVL to lenders of JAL was allegedly a related party transaction.

(c) Similarly, for the instant loan of Rs.500 Crore also there was no agreement entered between PPGCL and JPVL and no price was charged by JPVL for aforesaid corporate guarantee. However, obligation was undertaken by JPVL. Therefore, in

the instant matter as per applicable accounting standards, the corporate guarantee of Rs.500 Crore given by JPVL to lenders of PPGCL was also allegedly a related party transaction.

(d) *In terms of SEBI Circulars Nos. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 and CIR /CFD/POLICY CELL/7/2014 dated September 15, 2014 respectively and the Listing Agreement, the Company was required to seek the ratification/approval of shareholders by way of a special resolution in first General Meeting subsequent to October 01, 2014. However, it was observed that JPVL failed to do so.*

(e) *In view of the above, it was alleged that by not taking shareholders' approval in first General Meeting subsequent to October 01, 2014 w.r.t. corporate guarantee of USD1500 Lacs and Corporate Guarantee of Rs.500 Crore given by the Company to lenders of its promoter holding company i.e. JAL and subsidiary company i.e. PPGCL, respectively, the Company failed to comply with the requirements of SEBI Circulars Nos. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 and CIR /CFD/POLICY CELL/7/2014 dated September 15, 2014.*

9.2.5. ***Company not made the disclosures / not obtained the required approvals as per Erstwhile Listing Agreement and LODR Regulations w.r.t. corporate guarantees given to lenders of JAL and PPGCL:***

(a) *The aforesaid corporate guarantees of USD1500 Lacs and Corporate Guarantee of Rs.500 Crore given by the Company to lenders of its promoter holding company i.e. JAL and subsidiary company i.e. PPGCL, respectively, were not disclosed as "Related Party Transaction" in Annual Reports of the Company. The Company continued with this practice for 10 years i.e. during the FY2012-13 to FY2021-22.*

(b) *Further as per LODR Regulations, for the Corporate Guarantees of Rs.1100 Cr given in FY2015-16 and 2016-17 there was requirement of approval of audit committee also.*

(c) *It was alleged that the Company failed to follow correct accounting practices by way of not disclosing corporate guarantees as related party transactions and failed to take the necessary approvals from Audit Committee before giving the PPGCL corporate guarantee Rs.1100 Cr given in FY2015-16 and 2016-17.*

9.3. ***Company mis-stated its books of accounts during the FY2012-13 to FY2018-19 by not doing fair valuation of its investments in JPVL Trust and therefore the books of accounts of the Company did not reflect true and fair view:***

(a) *It was observed from Annual Report of JPVL for FY2011-12 that pursuant to Scheme of Amalgamation of erstwhile Jaypee Karcham Hydro Corporation Limited (**JKHCL**) and erstwhile Bina Power Supply Company Limited (**BPSCL**) with the Company, sanctioned by the Hon'ble High Court of Himachal Pradesh at Shimla, JPVL Trust was created on June 03, 2011 to hold Equity Shares allotted upon amalgamation in accordance with the share exchange ratio in terms of the said Scheme. Upon sanction of the said Scheme, the cross holdings were not cancelled and were transferred to JPVL Trust in which the JPVL was the sole beneficiary. Accordingly, 21,70,00,000 equity shares in respect of erstwhile JKHCL and 12,70,76,923 equity shares in respect of erstwhile BPSCL held by the Company, were transferred to JPVL Trust, as per the approved share exchange ratio and as on March 31, 2012 to March 31, 2019, JPVL trust was holding a total of 34,40,76,923 shares on behalf of JPVL.*

(b) *Accordingly, the said investment was shown as non-current investment valued at Rs.1985.94 Crore. On examination of annual reports of the Company, it was noted that from FY2011-12 to FY2018-19, the Company continued to show the investment at Rs.1985.94 Crore without valuing the investment as per applicable Accounting Standard / Ind-AS.*

(c) *The Company adopted Ind-AS from FY2016-17 onwards. Therefore, Accounting Standard- 13 was applicable for FY2012-13, 2013-14, 2014-15 and 2015-16 and Ind-AS-109 & Ind-AS-113 were applicable for FY2016-17, 2017-18 and 2018-19. As per erstwhile Accounting Standard- 13, if there is a decline in value of investments, the carrying amount of investments shall be reduced to recognise the decline and the same shall be charged to profit and loss account. Subsequently, as per Ind-AS-109 read with Ind-AS-113, after initial recognition, an entity shall measure a financial asset at fair value.*

(d) *In view of applicable account standards i.e. Accounting Standard- 13 and Ind-AS 109 & 113, the Company should have carried out valuation of investments every year and the same must have appropriately reflected in financial statements of the Company in financial years i.e. FY2012-13, FY2013-14, FY2014-15, FY2015-16, FY2016-17, FY2017-18 and FY2018-19. However, in these 7 financial years, the*

Company failed to carry any assessment/fair value the investment made in JPVL Trust. In the FY2019-20, fair valuation of aforesaid investment was carried out by JPVL and the investment of Rs.1965.29 Crore (out of Rs. 1985.94 Crore) was written off by the Company. In FY2017-18 and FY2018-19, the statutory auditors of the Company expressed the qualified opinion w.r.t. said investment of Rs.1985.94 Crore. Even after auditor qualification in FY2017-18 and FY2018-19, management failed to do fair valuation of investment in JPVL.

(e) In view of the above, it was alleged that the Company overstated its books of accounts by not adopting the correct accounting practices. By not measuring investments at fair value during FY2012-13 to FY2018-19, profit and loss account and balance sheet of the Company did not reflect true and fair view. If the correct accounting practices were followed by the Company, its loss of Rs. 1965.29 Crore (Rs.1985.94 Crore– Rs.20.65 Cr) charged to Profit & Loss account in FY2019-20 would have been changed in previous seven financial years i.e. FY2012-13 to FY2018-19. Therefore, it was alleged that the Company misrepresented its books of accounts during FY2012-13 to FY2018-19.

(f) It was also alleged that Mr. Manoj Gaur, Mr. Sunil Kumar Sharma, Mr. Suren Jain, Mr. Praveen Kumar Singh and Mr. M K V Rama Rao were fully involved/aware for mis-presentation of financial statements of the Company, thus they were alleged to be equally liable for aforesaid misrepresentation in the books of accounts of the Company during the FY2012-13 to 2018-19.

9.4. ***Company mis-stated its books of accounts during the FY2012-13 to FY2021-22 by not making provisions for diminution in value of certain long-term investments amounting to Rs. 78,915 lacs and therefore the books of accounts of the Company did not reflect true and fair view:***

(a) On examination of annual reports of the Company, it was observed that the Company had made certain investments in subsidiaries as follows:

Table No. 4

Sr. No.	***Particulars***	***Amount of Investment (in Rs. Crore)***
1	*Investment in Sangam Power Generation Company Limited*	*552.07*
2	*Investment in Jaypee Arunachal Power Ltd.*	*228.62*

3	*Investment in Jaypee Meghalaya Power Ltd.*	*8.41*
Total		***789.10***

(b) *On further examination of annual reports of the Company, it was observed that the Company continued to value these investments at cost and failed to do appropriate valuation as required by Accounting Standard- 13 till FY2015-16 and impairment testing as required by Ind-AS 36 for FY2016-17 to 2021-22.*

(c) *The auditors of the Company qualified the same in audit reports of FY2017-18, FY2018-19, 2019-20, 2020-21 and 2021-22.*

(d) *In view of applicable account standards and Ind-AS, the Company should have carried out valuation of investments every year and the same must have appropriately reflected in financial statements of the Company. However, the Company failed to carry any assessment/fair value the investment made in aforesaid three subsidiaries. Even till FY 2021-22, the Company failed to carry out impairment testing as required under Ind-AS 36.*

(e) *Therefore, it was alleged that the Company has failed to carry out fair valuation of its investment during the FY2012-13 to FY2015-16 and failed to carry out impairment testing of its long term investments during the FY2016-17 to FY2021-22.*

(f) *It was also alleged that Mr. Manoj Gaur, Mr. Sunil Kumar Sharma, Mr. Suren Jain, Mr. Praveen Kumar Singh, Mr. M K V Rama Rao and Mr. R K Porwal were fully involved/aware for mis-presentation of financial statements of the Company during the FY2012-13 to FY2021-22. Thus, by overstating books of accounts of the Company (Profit & Loss Account and Balance Sheet) for FY2012-13 to 2021-22 by failing to carry out correct valuation/ fair valuation of its investments and failing to carry out impairment analysis of its investments in subsidiaries in terms of Accounting Standard- 13/Ind-AS 36, above-mentioned directors/CFO of the company were also alleged to be equally liable for aforesaid misrepresentation in the books of accounts of the Company.*

9.5. ***Violations w.r.t. audit qualifications made in independent auditor's report for FY2018-19, FY2019-20 and FY2020-21:***

(a) *During investigation, it was observed that statutory auditors of the Company, Namely M/s Lodha & Co. qualified their audit reports for FY2018-19 to FY2020-21.*

(b) *In this regard, Company was advised to provide its comments. The point wise response of the Company is as follows:*

Table No. 5

Sr. No.	***SEBI Query***	***Reply of the Company***
1	*The Company had made investment of Rs. 2,890.38 Crore (Including Investment and loan component of compound financial instrument - Optionally Convertible Preference Shares) (261.92 Crore Equity Shares of Rs. 10/- each fully paid and 27 Crore Optionally Convertible Preference Shares of Rs.10/- each fully paid) in Prayagraj Power Generation Company Ltd. (PPGCL) (erstwhile Subsidiary Company). The entire shares were pledged with Security Trustees, SBICAP Trustee Company Ltd., as collateral security for the financial assistance granted by lenders to PPGCL. Security Trustee for lender(s) of PPGCL has invoked the entire pledge of Equity and Preference Shares of PPGCL on December 18, 2017 held by the Company due to default in payment of interest to banks/ financial institutions because of unsatisfactory operations mainly due to paucity of working capital limits etc. Consequent upon invocation of entire pledged shares, PPGCL ceased to be subsidiary of the Company w.e.f December 18, 2017. The company booked loss of investment in PPGCL in FY 2019-20. In this regard, the Company was advised to provide the reason as to why loss of investment/impairment was not booked in*	*That time, the Company was in active discussion with the lenders of PPGCL for debt restructuring and the Company was confident that the management will be able to get back the PPGCL shares by way of Debt Resolution etc. therefore no provision was taken into consideration.* *As the change of management was happened on December 04, 2019 therefore financial implication was booked in FY 2019-20.*

Sr. No.	SEBI Query	Reply of the Company
	financial statements for FY2017-18 itself as per applicable Ind-AS.	
2	*The Company had not provided for interest on outstanding Foreign Currency Convertible Bonds (FCCBs) amounting to Rs. 148.30 Crore (previous year Rs. 46.18 Crore) and penal interest on certain loans of amounting to Rs. 105.77 Crore (previous year Rs. 30.41 Crore) (Including interest of Rs. 52.68 Crore on FCCBs for the period up to 31st March, 2017 reversed during the year and shown as exceptional item). Had the interest provision been made the loss for the year ended 31st March 2019 of the Group would have increased by the above stated amount. The same is violation of applicable Ind-AS. In this regard, the Company was advised to provide the reason of not making interest provision.*	*The company was in discussion with bond holders for settlement/conversion and they were in principle agreeable to convert their entire principal outstanding of US$ 101 million into equity and waive off the entire accrued interest. Therefore, the Company did not provide interest on outstanding FCCBs in FY 2018-19.*
3	*The Company had not provided interest on unsecured loan of amounting to Rs. 95.48 Crore. Had the interest provision been made the loss for the year ended 31st March 2019 of the group would have increased by the above stated amount. The same is violation of applicable Ind-AS. In this regard, the Company was advised to provide the reason of not making interest provision*	*The company was under discussion with lender who had provided unsecured loan for its full and final settlement including waiver of interest on the said unsecured loan. Therefore, the Company did not provide the interest of Rs. 95.48 Crore in the financial statement of FY2018-19 which was subsequently waived by the said unsecured lender in full and final settlement.*

(c) On examination of reply of the Company, it was observed that the Company failed to provide any valid reason for not adopting correct accounting practices w.r.t.

valuation of investments in subsidiary and not providing provisions for outstanding interest on FCCBs and unsecured loan. The same was also qualified by statutory auditors of the Company.

Violations for not providing outstanding interest on FCCBs (Rs. 148.30 Crore and penal interest - Rs. 105.77 Crore) and unsecured loan (Rs. 95.48 Crore):

(d) Discussion with lenders/bond holders who had provided unsecured loan for its full and final settlement including waiver of interest on the said unsecured loan/bonds does not absolve the company's contractual obligation of interest payment against the loans taken. The interest on loans taken, which is a borrowing cost for the borrower, is required to be recognized as an expense under IND-AS 32 and IND-AS 24. The second leg of the transaction would appear on liability side of the balance sheet under interest payable, in case the interest was not paid by the company. As per the definition of 'Financial Liability' under IND-AS 32, the loans taken and the interest payable to banks would qualify as a financial liability of the company.

The journal entry to be passed for recognition of interest would be as under:

Interest expense (Dr.) *(Effect under profit and loss account – expense)*

To Interest Payable (Cr.) *(Effect under Balance sheet – liability side)*

(e) As per IND-AS 109, the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. In the instant case, the company submitted that it was in discussion with bondholders/trustees/lenders and nothing was materialized in the FY2018-19. Filing of an application/discussions for waiver of interest liability cannot be a said to be a definite proof that the bondholders/lenders shall accept the proposal of the Company and the interest liability shall be waived off. Also, from the reply of the company itself, it was noted that the aforesaid requests of waiver of interest was not approved by trustees/bondholders/lenders till the publication of financial statements of the company for FY2018-19. The FCCB holders in meeting held on December 13, 2019 considered the request of the Company. Further, the waiver of interest was approved by JSW Energy Ltd vide letter dated November 28, 2019. Therefore, the financial liability of the company for the interest component

was not extinguished at the time of publishing of financial statements during the Investigation Period.

(f) *Since the lenders/FCCB holders had not waived off the interest liability of the company at the time of publishing of financial statements, the financial liability of the company could not be considered as extinguished and the same had to be accounted for in the books of accounts and disclosed in the financial statements by the company.*

Violations for not providing for impairment in investment in subsidiary (Rs. 2928 Crore):

(g) *It was observed that PPGCL ceased to be subsidiary of the Company in FY2017-18, when invocation of the pledged shares of PPGCL were effected by lenders of PPGCL, amounting to Rs. 2928 Crore. Consequent upon invocation of entire pledged shares, PPGCL ceased to be subsidiary of the Company w.e.f. December 18, 2017. Pending disposal/ transfer of shares by the Lenders in favour of the interested party due to pending certain approvals, the company had shown the such investment as "current investments". However, no provision was made in FY 2018-19. The same was alleged to be a violation of Ind-AS 109 read with Ind-AS 113. The said non-provisioning was also qualified by auditors of the Company.*

(h) *In view of the aforesaid, it was alleged that the Company overstated its books of accounts by way of not providing interest on FCCBs and other unsecured loan in FY2018-19. Further, in the same FY the Company also allegedly failed to make any provision w.r.t. current investments made in equity instrument of PPGCL. Hence, the financial statements of the Company have not reflected true and fair view. Further, full time directors (MD/ED/WTD) and CFO of the Company were alleged to be liable for aforesaid misrepresentation in the books of accounts of the Company during the FY2012-13 to 2021-22.*

10. Replies of the Noticees submitted by their respective letters / e-mails are summarised as under:

10.1. Reply of Noticee-1:

(a) *Noticee-1 submitted that SEBI conducted an investigation for the period from FY 2018-19 to FY 2020-21 (Investigation Period), the Notice travels beyond the*

Investigation Period and requires Noticee to show cause in respect of matters going back to FY 2012-13, i.e. 12 years ago. It is well settled that a Noticee must be given detailed particulars of the charge they are required to answer, including the time period and all details of the alleged offences. Although the Notice claims that the Investigation Period is limited to 3 years, the charges the Noticees are required to meet are much beyond the time period for which the investigation was conducted and on that ground alone the Notice ought to be withdrawn.

(b) *The Notice suffers from delays and laches in so far as it relates to allegations which go back as far as FY 2012-13. The transactions in respect of which such Notice has been issued relate back to 2012- 2013 and were admittedly disclosed by JPVL contemporaneously as part of its disclosures to the stock exchanges. The Notice contains no explanation whatsoever for the delay. It is well settled that any show cause notice issued with inordinate delay is prejudicial to the Noticees, more so, if the information on which the notice is premised, was available in the public domain. Pertinently, even the Companies Act, 2013 and the Income Tax Act, 1962 do not mandate maintenance of records beyond a period of 8 years and any attempt to now allege contravention would be gravely prejudicial since the record and data may be incomplete. Moreover, the auditor has also since then changed and the erstwhile auditor who was aware of the relevant facts is now deceased. In the circumstances, the Notice stands vitiated on this ground alone and must be withdrawn.*

(c) *The proposition of law that inordinate delay vitiates proceedings has also been upheld in SEBI v. Sunil Krishna Khaitan (2023) 2 SCC 643; Commissioner of Central Excise Customs & Service Tax v. Firomenich Aromatics India Pvt. Ltd 2015 SCC OnLine Bom 3949; ICICI Bank Ltd. v. SEBI Appeal No. 583 of 2019; HB Stockholdings Ltd. v. SEBI 2013 SCC OnLine SAT 127 and in the Hon'ble Securities Appellate Tribunal's judgment in Appeal No. 23 of 2019 in the matter of Apollo Tyres Ltd. V/s. SEBI, which was also upheld by the Hon'ble Supreme Court by its Order dated December 4, 2023.*

(d) *JPVL submitted that it acted properly and lawfully as per the advice of its auditors and professionals regarding the correct interpretation and understanding of the accounting standards and its accounts as more particularly set out below.*

10.1.1. *Issue I – Whether books of accounts of JPVL reflected true and fair view as per prevailing accounting standards, w.r.t. accounting treatment for corporate guarantees provided by JPVL to lenders of its associate / subsidiary companies:*

(a) *The corporate guarantee dated September 5, 2012 from JPVL to JAL's lender, SBI, Hongkong, for a Foreign Currency Term Loan of USD 150 million (which was then converted into a Rupee Term Loan amounting to Rs. 889.07 crores (approx.) pursuant to a Sanction letter dated December 28, 2016 issued by SBI, CAG Group II, New Delhi) (**JAL Corporate Guarantee**).*

The JAL Corporate Guarantee is not a related party transaction:

(b) *The JAL Corporate Guarantee cannot be construed as a related party transaction since :-*

- *The transaction was not between JAL and JPVL; the transaction was between the lender (State Bank of India) and JPVL who are not related parties;*
- *There was no transfer of resources, services or obligations between JPVL and JAL;*
- *The obligation to pay would only be transferred from JAL to JPVL if and when the guarantee was invoked and not otherwise.*

(c) *Significantly, at the time of approving the JAL Corporate Guarantee, the Board contemplated whether shareholder approval was required. At the relevant time, the LODR Regulations were not in force.*

(d) *The erstwhile Section 372A of the Companies Act, 1956 which was applicable when the JAL Corporate Guarantee was provided, dealt with inter-corporate loan, investment, guarantee and securities in connection with loan and prescribed taking approvals of shareholders in certain circumstances. JPVL did not obtain shareholder approval since it squarely fell within the exception of Section 372A(8)(i) of the erstwhile Companies Act, 1956 as applicable then.*

(e) *JPVL being a power generation company falls under the definition of infrastructure company, which was exempted from obtaining the shareholders' approval in terms of Section 372A of the Companies Act, 1956.*

The SEBI Circulars:

(f) *The SEBI Circular dated 17 April 2014 bearing no. CIRF/CFD/POLICY CELL/2/2014 (SEBI Circular 1) revised the Listing Agreement and provided that a* *related party transaction "is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged." By a circular dated 15 September 2014, the SEBI Circular 1 was made applicable with effect from 1 October 2014.*

(g) *Significantly, the SEBI Circular 1 provided that only 'material' related party transactions were required to be disclosed. It is submitted that the JAL Corporate Guarantee was not a related party transaction, still less a material related party transaction, and JPVL had nonetheless disclosed the JAL Corporate Guarantee in the notes to the financial statements.*

(h) *The SEBI Circulars were issued to ensure alignment with the Companies Act, 1956 and therefore have to be read in consonance with Section 372A of the Companies Act, 1956. Consequently, the JAL Corporate Guarantee which was given to a financial institution by an infrastructure company was exempt under law. The JAL Corporate Guarantee in 2012 was approximately Rs. 840 crores and has since then declined and is as on date Rs. 115 Crores.*

The JAL Corporate Guarantee was not a contingent liability under AS 29:

(i) *Significantly, the JAL Corporate Guarantee was payable on demand in the event of default. Consequently, there never was any liability of payment cast on JPVL since the JAL Corporate Guarantee was never invoked at the relevant time.*

(j) *Between FY 2010-2013, when the JAL Corporate Guarantee was provided, JAL was doing well financially. In FY 2014, the lenders of JAL formed a Joint Lenders' Forum (JLF) and the Comprehensive Reorganization and Restructuring Plan (CRRP) was being considered. In view of the deliberations, JPVL could not reliably ascertain or estimate the probability of the JAL Corporate Guarantee being invoked, or the amount of the obligation. The RBI Master Circular dated July 2, 2012 on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances provided that a restructuring plan could not be considered by banks unless there was certainty of the borrower making payment.*

(k) *The IEC in its meeting dated June 12, 2017 and two meetings held on June 19, 2017 evaluated the techno-economic viability of the residual business of JAL and Jaypee Cement Corporation Ltd (JCCL), a 100% subsidiary of JAL and concluded that the residual business of JAL and JCCL combined was economically and operationally viable. The certainty in JAL making payments was therefore established.*

No provision required on March 8, 2016 (when JAL was declared NPA):

(l) *Consequently, the lenders were confident in JAL's ability to make repayment and as a result JPVL was also advised not to make any provision for the JAL Corporate Guarantee or treat it as a contingent liability as the possibility of the JAL Corporate Guarantee being invoked was too remote. The RBI Master Circulars contained this relevant provision till 2016 and thereafter provided that lenders may restructure loans and advances depending on their policies after running a proper analysis of financial risk and difficulties. Since the lenders approved restructuring, it was clear that the lenders were satisfied of JAL's ability to pay and for this reason, JPVL did not account for the JAL corporate guarantee as a contingent liability or make provision for the same as advised by the then statutory auditor even when JAL was declared an NPA on March 8, 2016.*

(m) *That JAL had adequate resources to meet its debts obligations and had a positive substantial net worth throughout.*

Re: - Ind-AS 109

(n) *Even under Ind-AS 109, JPVL was not required to make any provision for impairment in respect of the JAL Corporate Guarantee since the lenders had expectations that JAL would repay amounts and such expectation was reasonably certain, even though the account had been declared NPA. The lenders had agreed to release the JAL Corporate Guarantee as herein below stated.*

(o) *JPVL initially recognised the JAL Corporate Guarantee by carrying out fair valuation. Relevant disclosures were made in the form of notes to the Annual Reports of JPVL. [i.e. - In the respective financial statements Note - Nos. 27, 36, 43, 45(iii), 51(a) for FY 2016-17; Note Nos. 25, 30, 34, 45(e)(i) for FY 2017-18; Note Nos. 25, 30, 34, 44(e)(i) for FY 2018-19; Note Nos. 34, 44(e) for FY 2019-20; Note No. 44(e) for FY 2020-21; Note No. 44(e) for FY 2021-22] Pertinently, the full and complete disclosures of the relevant facts were made by the aforesaid notes in the annual reports of the respective years and the same amounted to the disclosure of the fair value of the said JAL corporate guarantee. More importantly, JPVL's response to the auditors' qualifications are also accurate since JPVL has not made any payments under the JAL Corporate Guarantee till date and the liability thereunder has reduced to Rs. 115 Crores which is not "material".*

(p) *From FY 2016-17 to 2019-20, the notes to the financial statements expressly disclose as to what would have been the potential impact of the corporate guarantees on the profit and loss of JPVL [Note 45(iii) of JPVL's financial statements ending March 31, 2017, Notes 25, 34, 30 and 67 for FY 2017-18, Notes 25, 30, 34, 65 for FY 2018-19 and Notes 25, 30, 34, 65 for FY 2019-20]. Therefore, the investors were clearly informed as to what could be the potential impact, even though there was in fact, no such impact since the JAL Corporate Guarantee was not invoked at the relevant time. The said disclosures in the annual reports in effect amounted to complete compliance with the disclosure of the possible liability and its impact on the accounts and therefore in any event there was no violation as alleged or otherwise nor did JPVL overstate its books of accounts as alleged in the Notice or otherwise.*

<u>No shareholder approval was required for the JAL Corporate Guarantee:</u>

(q) *Although JPVL is an associate of JAL and therefore a related party, shareholders' approval was not necessary since the JAL Corporate Guarantee was issued to State Bank of India and not to JAL. Further, no such approval was required in view of Section 372A of the Companies Act, 1956.*

<u>No obligation to obtain approval or disclose under the LODR Regulations:</u>

(r) *When the LODR Regulations were brought into force, entities were obligated to place existing material related party contracts prior to the LODR Regulations being notified and which may continue beyond such date, for shareholder approval.*

(s) *The meaning of related party transactions also was identical to the SEBI Circulars. Consequently, as demonstrated above, the JAL Corporate Guarantee did not fall within the definition of a related party transaction.*

<u>No shareholder has ever objected to or complained about the JAL Corporate Guarantee:</u>

(t) *The JAL Corporate Guarantee was disclosed in JPVL's financial statements from FY 2012 to FY 2022. Till date, no shareholder has come forward to either contest, challenge or object to the provision of the JAL Corporate Guarantee and no complaint whatsoever has been made against JPVL for providing this JAL Corporate Guarantee. Consequently, JPVL's shareholders have impliedly consented to the JAL Corporate Guarantee.*

<u>JPVL made appropriate disclosures in its accounts to reflect a true and correct view of the matter:</u>

(u) *JPVL made disclosures in its accounts and had no intention to deceive its shareholders or manipulate its accounts in any manner.*

(v) *A perusal of the disclosures reveals that:*

- *Although JPVL did not consider the JAL Corporate Guarantee a contingent liability, it made a disclosure of the "Corporate Guarantee" from FY 2012-13 onwards and even cross referenced the same under the "Related Party Disclosures" caption by way of abundant precaution;*
- *The financial statements were placed before JPVL's shareholders for approval and the shareholders were therefore clearly aware of and approved the JAL Corporate Guarantee by approving the financial statements year after year;*
- *The auditors did not issue any qualified opinions at least till FY 2016-17 in respect of the JAL Corporate Guarantee and JPVL's Board relied on the auditor's guidance.*

(w) *Although the new auditors issued a qualified opinion in FY 2017-18 till FY 2021-22 in relation to the fair value of the JAL Corporate Guarantee, as explained above, fair valuation was initially carried out. The subsequent disclosures tantamounted to disclosure of fair value. Pursuant to the restructuring which was being undertaken as per the agreement between JPVL and its lenders, the same did not provide for invocation of the guarantee while providing for other means of repayment of lenders' liability by JAL itself. In fact, as part of the JPVL restructuring arrangement, SBI had in principle agreed to release the JAL Corporate Guarantee and therefore JPVL had even pursued SBI for such release inter alia by its letters dated August 18, 2018, October 18, 2019, June 8, 2020, June 12, 2020, June 24, 2020, July 29, 2020, August 28, 2020, March 18, 2023, January 20, 2024. SBI never disputed or denied that they had to release the said JAL Corporate Guarantee. The same proves that there was no expectation of the JAL Corporate Guarantee being invoked at the relevant time and therefore there was no need to make any provision for the same or to treat it as a contingent liability as correctly advised by JPVL's auditors at the relevant time.*

(x) *In any event, as set out above, JAL was JPVL's holding company at the relevant time and therefore, JPVL was best positioned to assess the ground realities and* *the situation with JAL's lenders as well as the repayments made by JAL in respect of the facility obtained. JPVL's disclosures and accounting treatment were therefore proper and appropriate.*

10.1.2. ***PPGCL Corporate Guarantees:***

(a) The PPGCL Corporate Guarantees were provided as follows:-

- *On November 21, 2015, JPVL provided a Corporate Guarantee to PPGCL's lenders' facility agent - SBICAP Trustee Company Limited - in relation to Optionally Convertible Sub-Debt of Rs. 500 crores, for which the primary security was a second charge over the Project Assets of PPGCL;*
- *On November 15, 2016, JPVL provided a Corporate Guarantee to PPGCL's lenders' facility agent- SBICAP Trustee Company Limited - in relation to optionally convertible short term loan of Rs. 600 crores, for which the primary security was-*

  (i) Pledge of 87.96% shares of PPGCL as held by JPVL; and

  (ii) Personal Guarantee of Mr. Manoj Gaur, the Promoter Director of JPVL.
- *On November 21, 2015, JPVL provided a Corporate Guarantee to PPGCL's lenders' facility agent - SBICAP Trustee Company Limited - in relation to a short term loan of Rs. 500 crores.*

(b) The PPGCL Corporate Guarantees were also approved by JPVL's Board of Directors and Finance Committee.

(c) JPVL made a corporate disclosure vide its letter dated November 27, 2017 to National Stock Exchange of India, intimating that SBICAP Trustee Company Limited had given a notice to PPGCL that in the event of PPGCL's failure to pay its interest dues, SBICAP Trustee Company Limited on behalf of lenders would invoke the pledged shares of JPVL and did not specifically state that they would invoke the PPGCL Corporate Guarantees which was provided by JPVL.

(d) The pledge of the said shares was invoked by the lenders / SBICAP Trustee Company Limited on December 18, 2017 pursuant to which PPGCL ceased to be a subsidiary of JPVL. Thereafter, the PPGCL loans have been restructured and PPGCL was sold to Renascent Power Ventures Pvt. Ltd., a wholly owned subsidiary of Resurgent Power Ventures Ltd. and the sale consideration was utilised by the lenders to fully recover and extinguish the debt and therefore, by

letters dated January 2, 2020 and July 10, 2020, the PPGCL Corporate Guarantees were released.

<u>The PPGCL Corporate Guarantees were not contingent liabilities</u>

(e) *As set out above, the PPGCL Corporate Guarantees were never invoked and never constituted any present obligation. Further, the security trustee had expressly not recorded that they would be invoking the PPGCL guarantees. The same was even disclosed to the National Stock Exchange vide the corporate announcement dated November 27, 2017. Therefore, the PPGCL Corporate Guarantee did not constitute a contingent liability nor was any provision required to be made.*

(f) *Approx. 88% of JPVL's shareholding in PPGCL were pledged to the lenders and PPGCL's net worth was Rs. 3000 crores when the PPGCL Corporate Guarantees were issued, JPVL had no reason to believe that the PPGCL Corporate Guarantees would be invoked.*

(g) *As set out above, on December 18, 2017 the pledge on the shares was invoked by PPGCL's lenders and JPVL's shareholding was transferred to the lenders. PPGCL was no longer a subsidiary of JPVL. However, the management continued until the pledged shares forming 88% of PPGCL shareholding was sold to Resurgent Power Ventures Pvt. Ltd. by the lenders and the lenders had kept the management informed about all the steps in this regard.*

(h) *The PPGCL Corporate Guarantees were disclosed in the annual reports and the shareholders and public were therefore kept informed of the same.*

<u>The PPGCL Corporate Guarantee is not a related party transaction</u>

(i) *The PPGCL Corporate Guarantees could not be construed as a related party transaction, much less a material related party transaction since:*

- *There was no transfer of resources, services or obligations;*
- *The obligation to pay would only be transferred from PPGCL to JPVL when the guarantees were invoked and not otherwise.*

(j) *Since the transaction was not a related party transaction, no shareholder approval was required for the PPGCL Corporate Guarantee.*

(k) In any event, at no point in time has any shareholder objected to or complained in respect of the PPGCL Corporate Guarantees even though the shareholders were aware of such PPGCL Corporate Guarantees. Consequently, the shareholders have impliedly consented to such PPGCL Corporate Guarantees.

(l) Therefore, no shareholder approval was required for the PPGCL Corporate Guarantee.

(m) Pertinently, the violation alleged of the SEBI Circulars is only with respect to the Rs. 500 crores short term loan.

<u>JPVL made appropriate disclosures in its accounts to reflect a true and correct view of the matter</u>

(n) JPVL made disclosures in its accounts and had no intention to deceive its shareholders or manipulate its accounts in any manner whatsoever.

(o) A perusal of the disclosures from FY 2015 to FY 2020 reveals that:

- *Although JPVL did not consider the PPGCL Corporate Guarantees a contingent liability, it had disclosed the same as a 'Corporate Guarantee' and even cross referenced the same under the "Related Party Disclosures" caption by way of abundant precaution.*
- *The financial statements were placed before JPVL's shareholders for approval and the shareholders were therefore clearly aware of and impliedly approved the PPGCL Corporate Guarantees by approving the financial statements.*

(p) It is submitted that JPVL had initially carried out fair valuation of the PPGCL Corporate Guarantees. The Security Trustee confirmed that it was not invoking the PPGCL Corporate Guarantees and therefore further fair value assessment was not required. Although the new auditors issued qualified opinions in FY 2017 – 18 and FY 2018 – 19 in relation to the fair value of the PPGCL Corporate Guarantees, as explained above, JPVL was unable to ascertain the fair value of the PPGCL Corporate Guarantee since restructuring was being considered both in respect of JPVL and PPGCL. JPVL however made appropriate disclosures in the form of notes in the financial statements.

(q) In any event, JPVL's disclosures were proper and the PPGCL Corporate Guarantees were not invoked and have been released.

(r) In the circumstances, no penalty ought to be levied on JPVL, particularly since JPVL's management acted on the advice of its erstwhile statutory auditors who were experts in the field and aware of the proper compliance of the relevant accounting standards required for the purpose of JPVL's financial statements. In any event, even when the new auditors qualified their opinions, proper disclosures were made as stated above and of course, the new auditors qualifications were also disclosed in the financial statements of JPVL and thereby informed to the shareholders and the public at large. Therefore there was no suppression of any relevant facts nor were the financial statements misleading or misrepresented.

10.1.3. Issue II - Whether the Company mis-stated its books of accounts during FY-201213 to FY 2018-19 by not doing fair valuation of its investments in JPVL Trust and whether the books of accounts of the Company reflected a true and fair view:

(a) Pursuant to a Scheme of Amalgamation (Scheme) between erstwhile Jaypee Karcham Hydro Corporation Limited (JKHCL) and erstwhile Bina Power Supply Company Limited (BPSCL) with JPVL, which was duly sanctioned by the Hon'ble High Court of Himachal Pradesh, the JPVL Trust was created to hold the cross holdings of equity shares and thereby get and hold the equity shares of JPVL allotted upon such amalgamation of JKHCL and BPSCL into JPVL, in accordance with the share exchange ratio in terms of the said Scheme. Prior to the Scheme, JPVL held 108,50,00,000 equity shares in JKHCL and 82,60,00,000 equity shares in BPSCL. Upon sanction of the said Scheme, the cross holdings of JPVL shares were not cancelled and were instead transferred to JPVL Trust in which JPVL is the sole beneficiary. Accordingly, 21,70,00,000 equity shares of JVPL in respect of erstwhile JKHCL shares (in the exchange ratio of 1:5 – i.e. - 1 share of JPVL for every 5 of JKHCL) and 12,70,76,923 equity shares of JVPL (in the exchange ratio of 2 : 13 – i.e. - 2 shares of JPVL for every 13 shares held in BPSCL) aggregating to 34,40,76,923 shares of JPVL, were vested in the JPVL Trust. The purpose of JPVL Trust was to hold equity shares of JPVL allotted upon amalgamation in accordance with the share exchange ratio in terms of the said scheme for the benefit of JPVL. The said investment was shown as non-current (long term) investment valued at Rs. 1,985.94 crores.

(b) AS 13 stipulates that long term investments are usually carried at cost. The said investments held by the JPVL Trust were always intended to be long term investments and were therefore correctly carried at cost. Further, AS 13 also

provides that if there is a decline in value which is temporary then the decline does not need to be recognised. It is submitted that the decline in the market value of JPVL shares was temporary and the same has thereafter revived as is evident from the share price of JPVL from 2015 to June 2024.

(c) *JPVL is the sole beneficiary of the JPVL Trust and the 34,40,76,923 shares of JPVL were kept in the JPVL Trust as a long term investment. JPVL had no intention of selling off the same in the foreseeable future. Pertinently: -*

- *Hydro power projects typically have a long gestation period of approximately 8-10 years whereas thermal power projects have a gestation period of about 7-8 years before any of these projects are profitable. These projects are capital intensive and the gestation period is also dependent on the supply of reasonably priced coal. A regular supply of coal is essential for the running of thermal power plants. The Bina and Nigrie TPPs of JPVL took 6-7 years to start production whereas the Vishnuprayag HEP Project, Karcham HEP Project and Wangtoo HEP Project took 7-8 years to start production. Once these plants are set up, it takes time to obtain optimum production capacity since there are several other commercial aspects involved in production and transmission of power. In view of cancellation of coal block allocations by the Hon'ble Supreme Court of India, production and stabilization of Nigrie and Bina TPP's took longer than expected.*
- *The power generation industry is also cyclical in nature and in fact when Nigrie and Bina TPP were commissioned, the Indian economy was not doing well and resultantly the power sector was also at a low ebb with no new Power Purchase Agreements (PPAs) and very unremunerative power tariffs.*
- *On the other hand all the aforesaid were obviously temporary set backs. Obviously the demand for power / electricity has always been increasing and will continue to increase. The business was therefore bound to pick up and the share prices were bound to improve over the said time span. The temporary fall in prices therefore did not justify or merit a revaluation of the investment, which is now back at the original levels as aforesaid.*

(d) *As per the terms of the Trust, the said shares held by the JPVL Trust could only be used for the benefit of JPVL by utilizing the sale proceeds of the shares for capital expenditure of the projects of JPVL at that time or repayment of existing loans. The JPVL Trust has not sold these shares till date. Moreover, since JPVL's projects did* *not pick up because of the coal block cancellations by the Supreme Court as well as the downturn in the Indian economy, the shares in JPVL Trust were not sold as the Trustees felt that when all the projects of the Company would stabilise and power tariff in the market would substantially improve, the performance of JPVL and consequently the share price would go up beyond the book value as prevalent at the time of amalgamation. It was felt the fluctuations in share price was temporary and the management accordingly made no adjustments.*

(e) *JPVL's management's assessment was true and correct since it was in the business and fully aware of the long gestation periods and cyclical nature of the power project industry. This is also borne out by the trajectory of JPVL's share price. Although, SEBI has attempted to demonstrate a fall in share price, the graphical representation above, clearly demonstrates the cyclical nature of the industry and the increase in share price back to its previous levels.*

(f) *In FY 2019-20, after restructuring the loans, especially after the outbreak of Covid19, it was felt by the management that it would take substantial time for the share price of JPVL to reach a level beyond its erstwhile book value and accordingly fair valuation was undertaken of the said investment by which an investment of Rs. 1,965.29 crores out of Rs. 1,985.94 crores was written off by JPVL.*

(g) *Therefore, there was no breach on the part of the Noticees as alleged in the Notice.*

10.1.4. *Issue III - Whether the Company mis-stated its books of accounts during FY2012-13 to FY2021-22 by not stating the fair value or doing impairment testing in respect of certain long-term investments:*

(a) *The books of accounts of JPVL reflected a true and fair view. This fact is supported and certified by the independent auditor's report in the annual reports for FY 2012-13 to FY 2016-17, wherein the independent auditor made no qualifications with respect to the said issues alleged in the Notice and opined that in conformity with the accounting principles generally accepted in India, the financial statements of JVPL give a true and fair view of the state of affairs of JPVL.*

(b) *The diminution in value of the long-term investments in Sangam Power Generation Company Limited (SPGCL), Jaypee Arunachal Power Limited (JAPL) and Jaypee Megalaya Power Limited (JMPL) was due to various circumstances surrounding each of JPVL's investments in SPGCL, JAPL and JMPL in view of various stages* *of claims and future prospects for recovery of investments. It is pertinent to mention that such investments were not market related investments. The value and quantum of diminution would therefore be very subjective and would not reflect the actual circumstances of each of such assets as elucidated herein below.*

(c) The following true and correct facts as set out herein below qua each such investment proves the veracity of the reasons why diminution of long-term investments as per AS-13 and impairment testing as per Ind: AS 36 was not possible or necessitated :-

(1) <u>With reference to SPGCL</u>:

(i) SPGCL was incorporated on February 13, 2007 by Uttar Pradesh Power Corporation Limited (UPPCL) as a Special Purpose Vehicle (SPV) to implement a 1320 Mega Watt TPP namely Karchana TPP in Tehsil Karchana of district Allahabad, Uttar Pradesh.

(ii) UPPCL invited bids for implementation of Karchana TPP. By way of Share Purchase Agreement dated July 23, 2009, JPVL acquired SPGCL from UPPCL through a competitive bidding process.

(iii) SPGCL became a subsidiary of JPVL and commenced the process of developing the 1320 MW Power Project at Karchana, which was awarded by UPPCL on a Build, Own, Operate and Maintain (BOOM) basis.

(iv) As per the Request For Proposal (RFP) dated September 24, 2008 and the PPA dated October 17, 2008, UPPCL had to provide 583 Ha. of land to SPGCL within the stipulated period and free from all encumbrances. The said land was to be used for setting up the said TPP / project.

(v) However, the land owners / farmers filed proceedings before the High Court of Allahabad against UPPCL and the Government of Uttar Pradesh to challenge the land acquisition. The Hon'ble Court vide its order dated 13 April 2012 allowed the petitions of the land owners / farmers by declaring the land acquisition as void.

(vi) Accordingly, UPPCL failed to handover any unencumbered land to SPGCL and the project could not commence. SPGCL wrote to UPPCL and all power procurers stating that the PPA's were rendered void and unenforceable and requested amicable settlement of SPGCL's claims and closure / cancellation of the agreements. UPPCL formed a committee to resolve the matter, but the matter remained unresolved and under review for years.

(vii) Owing to UPPCL's delay in resolving matters, on March 13, 2018, SPGCL withdrew all their undertakings given to UPPCL and lodged their claim based on expenditure with UPPCL which was left undecided.

(viii) Thereafter, SPGCL filed a petition before the Uttar Pradesh Electricity Regulatory Commission (UPERC) for release of its performance guarantee and payment of claims including a refund of its investment in the project.

(ix) Vide its order dated June 28, 2019, UPERC allowed part / certain claims of SPGCL; directed UPPCL to release SPGCL's performance guarantee and held that the PPA and the share purchase agreement dated July 23, 2009 would stand terminated and consequently UPPCL would become the owner of SPGCL.

(x) UPPCL and SPGCL challenged the decision of UPERC by filing separate appeals before the Appellate Tribunal for Electricity (APTEL).

(xi) APTEL vide its order dated July 14, 2021 upheld UPERC's order and directed UPERC to verify the relevant documents of claim filed by SPGCL.

(xii) Subsequently, SPGCL filed an application before the UPERC for verification of expenditure and payment thereof and for release of the performance bank guarantee.

(xiii) Meanwhile, aggrieved by the order of the APTEL, UPPCL and SPGCL filed separate appeals before the Hon'ble Supreme Court of India.

(xiv) The Supreme Court vide its order dated 14 December 2021, stayed the order of APTEL.

(xv) Since UPPCL's claim was pending before the Supreme Court of India, there was no diminution in value of the investment in SPGCL. Furthermore, JPVL was advised that SPGCL had a meritorious case and still does. For this reason, the management did not make any provision for diminution in value of investment in SPGCL.

(xvi) However, given that 3 years had passed since the Supreme Court appeals had been filed and considering the status and the fact that settlement of claims is likely to take longer than expected, for the financial year ended 31 March 2024, JPVL has written off Rs. 33,025 lacs against the investment in SPGCL.

(xvii) The aforementioned facts indicate that SPGCL had every reason to believe that it could recover its entire investment in SPGCL in view of the failure of UPPCL

to perform its obligation to provide the land for the project thereby frustrating the contract. The said issue is now pending before the Hon'ble Supreme Court. Therefore, the financial statements represented a true and fair picture of JPVL's books of accounts. JPVL partly wrote off the investment when the recovery was not forthcoming despite all its efforts. There was no breach by the Noticees as alleged in the Notice.

(2) <u>With reference to JAPL</u>:

(i) The government had decided to set up a 2700 MW Lower Siang hydroelectric project and 500 MW Hirong hydroelectric project in the state of Arunachal Pradesh and same was allotted to NHPC Ltd. for implementation. However, the government then decided to give it to the private sector and same was allotted to JPVL on the condition that it would set up an SPV for implementation of the project. Consequently, JAPL was incorporated as an SPV on April 23, 2008 as a wholly owned subsidiary of JPVL, and the project was allotted to JAPL. However, there was a considerable delay in the state government granting the requisite approvals and also in obtaining the requisite approvals of the final Detailed Project Report (DPR). In the meanwhile, substantial expenditure was incurred in preparing the DPR, pursuing the other approvals as well setting up other site offices on the project land which had been handed over to JAPL.

(ii) For various reasons, In FY 2021-22, the Government of India decided that the said project should be implemented by central Public Sector Undertakings (PSUs).

(iii) One of the PSUs had discussions with JAPL for the takeover of the project, but the same did not fructify. Subsequent to the review meetings with the Government of Arunachal Pradesh, JAPL was informed vide a letter dated November 14, 2023 that the DPR would not be useful to the PSU, implying thereby that the PSU was no longer interested in taking over the project.

(iv) Till then, JPVL was confident that it would be able to recover the entire investment made in JAPL and it is for this reason that no provision was made for diminution in value of investment in JAPL.

(v) Subsequently, for the year ending March 31, 2024, given the continuous reluctance by the PSUs to take over the said projects and pay JAPL for the same, JPVL has written off the entire investment.

(3) <u>With reference to JMPL:</u>

(i) The government had decided to set up 270 MW Umngot hydroelectric power project and 450 MW Kynshi-II hydroelectric power project on Build, Own, Operate and Transfer (BOOT) basis. JMPL was incorporated on August 26, 2010 as an SPV to implement the said projects and is presently a wholly owned subsidiary of JPVL.

(ii) The Umngot hydroelectric power project in Meghalaya was opposed by the local population and the work on the project had come to a standstill. JMPL had pursued the matter with the State Government to ensure that the work could be resumed despite the opposition and agitation by the local population. However, the State Government instead purported to terminate the agreement. JPVL vide its letter dated November 6, 2019 raised a claim for refund of the up-front fee paid and expenses incurred in relation to the project. However, the Government of Meghalaya purported to contend that it was forfeiting the up-front fees paid by JPVL.

(iii) The Kynshi hydroelectric project got suspended by the Government of Meghalaya because uranium deposits were discovered in the area of the project. However, they failed to refund JMPL's deposits or to pay compensation for cancelling the project.

(iv) JPVL pursued the matter with the Government of Meghalaya for refund of investments made and the management was confident that it would be able to recover the investments made in JMPL.

(v) However, in FY 2021, it became evident that the State Government would not reimburse the entire cost of investment and therefore, in JPVL's financial statement for FY 2020-21, the investment was partly written off.

(vi) On April 20, 2022, the Government of Meghalaya in its meeting with the independent power producers including JMPL recorded that in view of the discovery of the uranium deposits and the long delay in the matter, the Government of Meghalaya decided to terminate the contract but made no commitment to pay any compensation to JMPL. Consequently, in the FY 2022-23, the management wrote off the entire investment in JMPL.

(d) The annual reports had disclosed the investment in these three SPVs which were the subsidiaries of JPVL and the relevant particulars were also disclosed in the

annual reports. For the reasons as aforesaid, the accounting treatment for the investment in the said three subsidiaries was in fact true and fair and no investor had ever complained that he had been misled. It is also pertinent to note that if the valuation of the investments in the said three subsidiaries had been impaired in JPVL's books of accounts at an earlier stage, it would obviously have harmed and prejudiced the JPVL's ability to demand reimbursement / compensation for the full investment. For this reason also the accounting treatment was fair, appropriate and correct.

10.1.5. Issue IV - Whether there was any violation w.r.t. audit qualifications made in the independent auditor's report for FY2018-19, FY 2019-20 and FY202-21:

(a) With reference to the audit qualifications for FY 2018-19 to 2021-22 regarding the JAL loans of USD 1,500 lacs as covered in Issue I above, and certain long-term investments of Rs. 78,915 lacs as covered in Issue II above, Noticee-1 reiterated its submission as mentioned hereinabove and denied the allegations.

(b) In response to allegation that JPVL ought to have booked the loss of investment in respect of the shares held by JPVL in PPGCL in FY 2017-18 itself as per applicable Ind-AS on account of the said PPGCL shares being pledged to SBICAP Trustee Company (Security Trustee) who invoked such pledge on December 18, 2017, JPVL submitted that:

i) JPVL had made an investment of Rs. 2,890 crores (including investment and loan component of compound financial instrument by way of optionally convertible preference shares) (261.92 crores fully paid equity shares of Rs. 10/- and 27 crores fully paid optionally convertible preference shares of Rs. 10/- each) in PPGCL.

ii) All shares of PPGCL held by JPVL were pledged with the Security Trustee, as collateral for the financial assistance granted by lenders to PPGCL. PPGCL pursued restructuring of its debt with its lenders so as to protect the business value of PPGCL and JPVL.

iii) On December 18, 2017, the Security Trustee invoked the entire pledge of equity and preference shares of PPGCL held by JPVL due to default in payment of interest to the lenders. Since the shares were held in dematerialised form, the said shares were transferred from JPVL to the Security Trustee on invocation of the pledge. Notably, at the relevant time, *upon invocation of the said pledge, the shares were being held by the Security Trustee in trust.*

iv) *After the invocation of the said pledge, the shares were not then immediately sold and JPVL was in active discussions with the lenders of PPGCL for restructuring the debt and return of the said pledged shares of PPGCL to JPVL. However, the said negotiations did not fructify and ultimately the said shares were sold by the Security Trustee to Resurgent Power in December 2019. Accordingly, in view of the ongoing attempts to recover of the said shares, no provision was made by JPVL in its accounts in FY 2017-18.*

v) *Once the shares were sold and there was no possibility of recovering the said shares, JPVL booked the loss in its said investment.*

vi) *Most pertinently, the fact of the pledge of the said shares was clearly disclosed in all the relevant annual reports. The invocation of the pledge by the Security Trustee was also disclosed in the annual report for FY 2017-18 in which value of the investment by JPVL in the said shares of PPGCL was also clearly disclosed. The invocation of the pledge was also disclosed by way of contemporaneous corporate announcements to the stock exchanges. Therefore, the financial statements of the company were in fact true and fair and there was no violation by JPVL as alleged or otherwise.*

(c) With reference to the audit qualifications regarding not providing interest on Foreign Currency Convertible Bonds (FCCBs) and reversing interest which was earlier provided for, Noticee-1 submitted that: -

i) *JPVL issued the FCCBs during FY 2009-10 for USD 200 million. Over time, JPVL partially redeemed the FCCBs along with interest.*

ii) *JPVL was in discussion with the FCCB holders to try and get them to agree to convert the bonds into equity shares and to waive all claims to interest thereon. Pursuant thereto, by standstill agreements dated February 11, 2016 and March 15, 2017, between the FCCB holders and JPVL, it was inter alia agreed that the parties would be negotiating the matter and therefore the status quo would be maintained pending the negotiations and proceedings would not be filed by the FCCB holders for recovery or otherwise.*

iii) On August 14, 2018, the advocates for the FCCB holders informed JPVL and the core committee of banks about their willingness to convert the principal amount of the bond / debt into equity and waive all interest on the FCCBs.

iv) On September 20, 2019, a Bond Equitization Term Sheet was executed between JPVL and the FCCB holders' representative inter alia setting out the said agreed terms for conversion of the bonds to equity shares and for waiver of the interest. Pertinently, one of the requirements was that JPVL had to obtain consent of all other lenders of JPVL for such conversion.

v) On December 13, 2019, the FCCB holders passed a resolution to mandatorily convert all outstanding FCCBs to equity shares of JPVL at a conversion price of Rs. 12/- per equity share of Rs. 10/- each and the entire interest due by JPVL thereon was waived off by the FCCB holders.

vi) On January 17, 2020, JPVL's board of directors allotted 49,26,78,462 equity shares to the said FCCB holders at the agreed price. And as on date, there are no outstanding FCCBs and the entire interest liability stands waived / deleted.

vii) It is in view of the aforesaid true and correct facts that JPVL correctly did not provide for interest on the outstanding FCCBs and had reversed the interest which had previously been accounted for in the accounts. Therefore, the accounts had reflected a true and correct position and there was no violation by JPVL as alleged or otherwise.

viii) As regards the allegation that no provision was made for penal interest on certain loans amounting to 105.77 crores, Noticee-1 submitted that it did not provide for penal interest since the lenders / banks did not confirm balances and did not charge penal interest inter alia since the loan was classified as NPA. There was no loss caused to the shareholders of JPVL and consequently there was no breach by the Noticees as alleged in the SCN.

(d) With reference to the audit qualifications for FY 2018-19 regarding not providing for interest of Rs. 95.48 crores on an unsecured loan, Noticee-1 submitted that:

i) JSW Energy Limited (JSWEL) had provided an unsecured loan to JPVL for which interest amounting to Rs. 95.48 crores was outstanding.

ii) JPVL was in active discussions during FY 2018-19 with JSWEL for a full and final settlement of its dues including waiver of interest.

iii) JPVL and JSWEL initially entered into a Framework Agreement (FA) dated April 18, 2019 which inter alia envisaged conversion of JSWEL's debt into equity.

iv) JSWEL vide its letter dated November 28, 2019 confirmed waiver of interest.

v) JPVL and JSWEL entered into a Debt Resolution Agreement (DRA) dated January 2, 2020 to restructure JSWEL's outstanding loans and for waiver of the previous accrued interest.

vi) On July 8, 2022, JSWEL issued its no dues certificate to JPVL.

vii) It is in view of the aforesaid true and correct facts that JPVL correctly did not provide for interest on the said unsecured loan. Therefore, the accounts reflected a true and correct position and there was no violation by JPVL as alleged or otherwise.

(e) JPVL further submitted that since the amount could not be ascertained or quantified and since there were active discussions for settlement / conversion of the loans, it correctly made no provision for those transactions.

10.1.6. With reference to the alleged violations, other submissions made by Noticee-1 are briefed as under:

(a) JVPL has not violated any rules or regulations as alleged in the Notice or otherwise.

(b) JPVL did not indulge in any manipulative, fraudulent and, or unfair trade practices in the securities markets; it did not divert, mis utilise or siphon off any assets or earnings; it did not manipulate its books of accounts or financial statements or adopt any device, scheme or artifice as falsely alleged or otherwise.

(c) JPVL made complete disclosures in its financial statements and there was no direct or indirect manipulation of JPVL's shares prices.

(d) Any violation related to accounting standards to be termed as manipulative, fraudulent or an unfair trade practice in the securities market, it must directly or indirectly result into manipulation of the price of securities of that company.

(e) The Notice does not contain even any allegation of manipulation or any impact on the share price of JPVL. allegations of fraud ought to be specifically pleaded and identified in respect of each of the Noticee, each of whom must be able to know the exact charge alleged in order to be able to properly defend the charge and prove their innocence.

(f) For allegations of 'fraud' under the PFUTP Regulations, it is incumbent upon SEBI to demonstrate with full particulars what alleged act, expression, omission or concealment was committed 'while dealing in securities' and SEBI must demonstrate with proper evidence as to what the 'inducement' was that caused others to deal in securities. The allegations set out in the Notice do not contain any such findings of facts in relation to 'dealing in securities' or of any fraud whatsoever. In this regard, JPVL relied upon the observation of Hon'ble Supreme Court in the matter of SEBI and Ors. v. Kanaiyalal Baldevbhai Patel and Ors. - (2017) 15 SCC 753.

(g) JPVL did not commit any 'fraud' as defined under the PFUTP Regulations or otherwise, nor did it knowingly misrepresent the truth or conceal material facts nor did it induce any other party to act to their detriment.

(h) JPVL did not publish any information which was not true nor did it knowingly plant any false or misleading news which may have induced sale or purchase of securities.

(i) The management was confident of JAL and PPGCL servicing their respective debts and that there was no risk of the guarantees being invoked at the relevant time.

(j) JPVL has not made any misrepresentations or disseminated any misleading information. It has made disseminations in accordance with the regulations and circulars, and the same were adequate, explicit and timely.

(k) JPVL's standalone and consolidated financial results were prepared as per generally accepted accounting principles in India and as per the guidance and advice of the then auditors.

(l) JPVL's books of accounts provided a true and fair picture of the financial position of the company.

(m) The references in paragraphs 108 to 110 of the SCN are irrelevant to the facts of the present case and apparently do not consider that the lenders have waived the

interest. It is incorrect and denied that even if the lender agrees to waive all claims to interest, the company still has a contractual obligation of interest payment which has to be provided in the accounts. This contention is untenable.

10.1.7. Noticee-1 also relied on the observation of Adjudicating Officer in the matter of Radha Madhav Corporation Ltd., [Order: no. EAD-2/SS/SK/2019-20/2875-2880], where the Adjudicating Officer dealt with an instance where the company had a qualified opinion on the basis of non-provision / non accounting of interest payable.

10.1.8. Noticee-1 further submitted that the alleged incorrect accounting treatment as referred to in the SCN in any event does not justify or merit imposition of any penalty inter alia since: -

(a) JPVL had no intention to deceive or act in breach of the SEBI Regulations and, or any other law / accounting standards;

(b) JPVL acted bona fide and in interests of all stakeholders;

(c) JPVL acted on advice of expert professionals, i.e., its independent auditor;

(d) All relevant particulars were in fact disclosed in the annual reports and as corporate announcements as aforesaid;

(e) There was in fact no fraud, manipulation, deceit or unfair practice; and

(f) JPVL did not make any gains nor did any shareholder make any losses.

(g) There have been no investor complaints that any investor was misled by the annual reports of JPVL.

10.2. <u>Reply of Noticee-2, 3, 4 and 5:</u>

Noticee-2, 3, 4 and 5 adopted, confirmed, repeated, and reiterated the contents of the reply of Noticee-1 dated July 13, 2024 and denied the allegations. Noticee-2, 3, 4 and 5 further submitted that the Board of Directors acted unanimously in the interests of JPVL and to ensure that JPVL remains a solvent entity.

10.3. <u>Reply of Noticee-6:</u>

(a) Noticee-6 was a whole time director of Noticee-1 from December 9, 2016 to December 8, 2019. He is an engineer by profession with a degree in B.Sc Engineering (Mechanical) from the National Institute of Technology, Rourkela,

Odisha and the Indian Institute of Technology, Kharagpur and was appointed as a director on the Board of Directors of JPVL solely on account of his technical expertise. Noticee-6 was inter alia responsible for efficient operation of Noticee-1's coal-based and hydro-electric power stations.

(b) *The SCN alleges violations by Noticee-6 in respect of issues which are unrelated to his technical expertise as also alleges violations which were during when Noticee-6 was neither a whole time director nor in charge of JPVL's affairs, i.e. beyond the period between December 9, 2016 to December 8, 2019. Consequently, and to this extent, his role is limited and the Notice ought to be withdrawn in respect of him.*

(c) *Noticee-6 further submitted that so far as concerns the allegations in the SCN relating to matters between December 9, 2016 to December 8, 2019, he adopted, confirmed, repeated, and reiterated the contents of the reply of Noticee-1 dated July 13, 2024 and denied the allegations. Noticee-6 further submitted that as a whole time director he remained an employee on its Board of Directors who acted unanimously in the interests of JPVL and to ensure that JPVL remains a solvent entity.*

10.4. <u>Reply of Noticee-7:</u>

(a) *Noticee-7 commenced his employment at JPVL in the finance and accounts department on June 8, 2003. He was appointed as the Chief Financial Officer (CFO) of JPVL on January 27, 2020.*

(b) *The SCN alleges violations by him in respect of issues which are during the period when he was neither the CFO in JPVL nor in charge of JPVL's affairs. Consequently, to this extent, his role is limited and to this extent the Notice ought to be withdrawn in respect of him.*

(c) *Noticee-7 further submitted that so far as concerns the allegations in the SCN relating to matters post January 27, 2020, he adopted, confirmed, repeated, and reiterated the contents of the reply of Noticee-1 dated July 13, 2024 and denied the allegations. Noticee-7 further submitted that as CFO, he remained an employee of JPVL and the final determination lay with the Board of Directors. The Board of Directors acted unanimously in the interests of JPVL and to ensure that JPVL remains a solvent entity.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticees in the SCN, submissions made by the Noticees and material available on record. The issues that arise for consideration in the present case are as follows:

    I. Whether the Noticees have violated the regulatory provisions of the SEBI Act, PFUTP Regulations, LODR Regulations and erstwhile Equity Listing Agreements as mentioned in para 2 hereinabove?

    II. Does the violation, if any, attract monetary penalty under Section 15HA and 15HB of the SEBI Act and Section 23H of the SCRA?

    III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules, and Section 23-J of the SCRA read with Rule 5(2) of the SCR Adjudication Rules?

12. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

SEBI Act:

Contravention by companies:

Section 27(1): Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Section 27(2): Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

<u>Erstwhile Listing Agreement:</u>

<u>Clause 41(I)(a) and of erstwhile Listing Agreement:</u>

“Clause 41(I)(a) of erstwhile Listing Agreement states that “The company shall be prepared the financial statements on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods”

<u>Para V of clause 49 of the listing agreement is reproduced below:</u>

“The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person leading the finance function discharging that function shall certify to the Board that:
(a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
(i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
(ii) these statements together present a true and fair view of the company’s affairs and are in compliance with existing accounting standards, applicable laws and regulations.”

<u>PFUTP Regulations:</u>

4. Prohibition of manipulative, fraudulent and unfair trade practices:

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

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

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

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

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

Regulations 2(1)(b) of the PFUTP Regulations states that:

"dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act."

Regulations 2(1)(c)(1) of the PFUTP Regulations states that:

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

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

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behavior by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price."

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:*

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognized stock exchange(s) and investors is not misleading.

(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.

(g)The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

4. (2) (e) Disclosure and transparency:

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

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

4. (2) (f) Responsibilities of the Board of Directors:

(i) Disclosure of information:

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

(ii) Key functions of the Board of Directors –

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

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

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

(8) Overseeing the process of disclosure and communications.

(iii) Other responsibilities:

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

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

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

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

Related party transactions.

23 (8) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date *shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.*

23 (9) The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website

Board of Directors

17 (8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

And Part B of Schedule II states as under:

"The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

……

B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct."

Financial Results – Regulation 33(1):

(1) While preparing financial results, the listed entity shall comply with the following:

(a)The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

(c)The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India.

Annual Report.

34(3). The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations

Accounting Standards.

48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

13. Based on perusal of the material available on record, giving regard to the facts and circumstances of the case and submission of the Noticees, I record my findings hereunder:

Issue I. Whether the Noticees have violated the regulatory provisions of the SEBI Act, PFUTP Regulations, LODR Regulations and erstwhile Equity Listing Agreements as mentioned in para 2 hereinabove?

14. Before I proceed to deal with the matter on merits, I would like to address certain preliminary issues raised by the Noticees. Noticees contended that the SCN travels beyond the Investigation Period and requires them to show cause in respect of matters going back to FY 2012-13 (i.e. 12 years ago), and SCN suffers from delays and laches in so far as it relates to allegations which go back as far as FY 2012-13, hence the inordinate delay is prejudicial to the Noticees since the record and data may be incomplete. In this regard, I note that the Noticees have mainly contented that the IP of the instant proceedings is limited to 3 years i.e. FY 2018-19 to FY 2020-21, however the SCN travels beyond the IP and SCN was issued to them on April 10, 2024. In this regard, I note that 3 years' financial statements i.e. FY 2018-19, FY 2019-20 and FY 2020-21 were selected for the investigation and the items where adverse inferences were observed, were investigated for the period even outside the IP also. Thus, the investigation report and SCN also clearly mentioned that *"The investigation was conducted for the period of FY 2018-19, FY 2019-20 and FY 2020-21 (**Investigation Period**). However, wherever deemed necessary, references have been made to the events / timeframes outside this period".*

15. With regard to contention of the delay, I note that the investigation was conducted with respect to financial statements of the company for FY 2018-19 to FY 2020-21. I note that in the instant case, NSE examined the matter of JPVL based on their internal alert and vide email dated June 13, 2022, NSE provided its examination report to SEBI. In view of the NSE findings, a preliminary examination of financial statements of the Company was carried out by the SEBI. Based on the findings of the preliminary examination, the matter was taken up for detailed investigation. As

it was decided to investigate the matter, an Investigating Authority was appointed, summonses were issued to directors of the company and data/ information/ records were sought from the company, its directors & CFO and its lenders. Thereafter, investigation in the matter was conducted, which involved examination of various issues in said 3 years' financial statements and Investigating Authority submitted the investigation report dated December 29, 2023. Subsequently, initiation of adjudication proceedings was approved on January 02, 2024 and the case was assigned to Shri Shashi Kumar Valsakumar, CGM as AO, vide order dated January 25, 2024, and SCN in the matter was issued on April 10, 2024. Hence, there was no inordinate delay in issuance of SCN, as argued by the Noticees. Further with regard to the contention of delay, it is pertinent to mention the judgment of Hon'ble Supreme Court in the case of ***Adjudicating Officer, SEBI vs. Bhavesh Pabari*** (2019) SCC Online SC 294; wherein it was held that:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time will depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc."

16. In respect of the contention of the delay, I note that delay itself may not be a ground that would vitiate the instant proceedings. However, it is required to examine whether delay has caused any prejudice as contented by the Noticees that the record and data may be incomplete. Here, I also note that Noticees submitted that the information on which the SCN is premised, was available in the public domain. Hence, it appears that the records, data and information related to the instant matter was available with the Noticees. Further, I note that Noticees have not placed anything on record regarding any specific and particular details of the incomplete record and/or data which was required to defend them in the matter and which was not in their possession.

17. Further, I note that since all relevant and relied upon documents were supplied to the Noticees, including the investigation report, copy of examination report of NSE, copy of all communication with SBI, copies of ICAI email and MCA letter etc. as

annexures to the SCN and hence, in my view the Noticees had sufficient material to defend their case. In fact, they were able to put forth their defense in detail, as is apparent from their replies and submissions. Therefore, I don't consider that delay has caused any prejudice to the Noticees. In this regard, I note that the Hon'ble SAT in the matter of ***Pooja Vinay Jain Vs. SEBI*** (SAT Appeal No. 152 of 2019, decided on March 17, 2020) held as follows:

"13. 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. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analysed by SEBI which took some time."

18. Further, in ***Ravi Mohan & Ors. v. SEBI*** decided on August 08, 2013, Hon'ble SAT, Mumbai while referring to its own decision in ***HB Stockholdings Ltd. v. SEBI*** (Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in ***Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)*** reported in 2003 (158) ELT 129 (S.C.), observed as under:

"...Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (supra) it was contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) (supra) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

19. This apart, it is to be noted that the SEBI Act and regulations framed thereunder have got a larger public purpose in the form of investor protection and the regulation and development of the securities market. These purposes would stand defeated if the manipulators are allowed to go scot-free just because of delay, if any, in initiating action against them. In view of the above facts, I find that no prejudice has been caused upon the Noticees nor they have been able to make out a case of prejudice due to the alleged delay in initiation of the proceedings. In view of this, it cannot be said that there is an inordinate delay in issuance of the SCN and hence the said contention of the Noticees cannot be accepted.

20. Further, I note that Noticee-6 submitted that he was a Whole Time Director of Noticee-1 from December 9, 2016 to December 8, 2019, hence his role w.r.t. the violations alleged in the SCN is limited to the said period only. Similarly, Noticee-7 also submitted that he was appointed as the CFO of JPVL on January 27, 2020, hence his role w.r.t. the violations alleged in the SCN is limited for the period post January 27, 2020 only. In this regard, I find the submissions of the Noticee-6 and 7 are tenable. Therefore, the allegations levelled in the SCN against Noticee-6 and 7 for the period when they were not Whole Time Director / CFO of the Noticee-1 are dropped. Accordingly, the role of Noticee-6 and 7 has been analysed in the order for the relevant period only when they were Whole Time Director and CFO of the Noticee-1, respectively.

21. In view of the above, the preliminary objections made by the Noticees that SCN travels beyond the IP and SCN suffers from delays and laches hold no merit. Having dealt with the preliminary contentions, I shall now proceed to address the key issues that arise for consideration, in light of the facts of the case and the submissions made by the Noticees.

Issue- A: Whether books of accounts of the Company reflected true and fair view as per prevailing accounting standards, w.r.t. accounting treatment for given/provided corporate guarantees to lenders of its associate/subsidiary companies:

I. Corporate Guarantee of USD 1500 Lacs by JPVL to State Bank of India for the loan availed by JAL (JAL Corporate Guarantee):

22. It was alleged in the SCN that JPVL was required to disclose Corporate Guarantee of USD 1500 Lacs by JPVL to State Bank of India for the loan availed by JAL ("**JAL Corporate Guarantee"**) as contingent liability for the FY2012-13 to FY 2014-15 i.e. the years when loan was not declared NPA, however JPVL failed to do so. For the next financial year in which loan was declared NPA i.e. in FY 2015-16, the company was required to make necessary provision as per Accounting Standard-29, however company failed to do so. Further, as per Ind-AS 109 (applicable for FY 2016-17 to FY 2021-22) the company was required to recognize JAL Corporate Guarantee as financial guarantee liability and the same should have been measured at fair value. However, it was observed that JPVL failed to do so. Hence, it was alleged in SCN that the Company has not done fair valuation and has not made proper provisioning w.r.t. given/provided JAL Corporate Guarantee as per prevailing accounting standards. Accordingly, it was alleged that the accounting treatment of JAL Corporate Guarantee was not in accordance with the requirements of Accounting Standard- 29 (for FY 2012-13 to FY 2015-16) and Ind-AS 109 read with Ind-AS 113 (for FY 2016-17 to 2021-22).

23. As per Accounting Standard- 29, contingent liability is a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the enterprise and same shall be disclosed as contingent liability when possibility of any outflow is not remote.

24. I find that the contention of the Noticees that the JAL Corporate Guarantee was not a contingent liability under AS 29 as JPVL could not reliably ascertain or estimate the probability of the JAL Corporate Guarantee being invoked or the amount of the obligation is not acceptable as JAL Corporate Guarantee was fully binding on JPVL i.e. in case of default of loan repayment by JAL, which was a probable and uncertain future event, JPVL was liable to make payments. The loan availed by JAL was unsecured loan and contingency of default of re-payment by JAL was fully

obligatory only on part of JPVL. Therefore, the possibility of repayment of loan in case of default of JAL was 100% obligatory only on part of JPVL and therefore it was not remote. Hence, JAL Corporate Guarantee should have been disclosed as contingent liability in accordance with Accounting Standard- 29 when possibility of outflow was not remote and amount of outflow could have been ascertained or estimated. I note that JAL Corporate Guarantee was satisfying all elements/ conditions of Accounting Standard- 29 for disclosure as contingent liability, therefore, JAL Corporate Guarantee ought to be disclosed by JPVL as contingent liability for FY 2012-13, FY 2013-14 and FY 2014-15.

25. Accounting Standard- 29 also provides that a provision should be recognised when an enterprise has a present obligation as a result of a past event, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision should be recognised.

26. In response to the allegation of not making the necessary provisions for JAL Corporate Guarantee in FY 2015-16, Noticees contended that no provision was required on March 08, 2016 (when JAL was declared NPA) as the lenders were confident in JAL’s ability to make repayment and as a result JPVL was also advised not to make any provision for the JAL Corporate Guarantee or treat it as a contingent liability as the possibility of the JAL Corporate Guarantee being invoked was too remote. I find that the said loan of USD 1500 Lacs availed by JAL was classified as NPA on March 08, 2016 and thereafter, it continued to remain as NPA as JAL was not able to repay the loan amount timely. As, JPVL was sole guarantor to aforesaid loan and the JAL Corporate Guarantee was fully binding on JPVL, by virtue of the clauses in the deed of guarantee, JPVL had become liable to pay the lender for the amount due. When SBI declared the loan of JAL as NPA, it could have invoked the JAL Corporate Guarantee, then it would become obligation of JPVL to repay the loan to SBI as a principal debtor. With regard to the Noticees submission that the lenders were confident in JAL’s ability to make repayment and as a result JPVL was also advised not to make any provision for the JAL Corporate Guarantee or treat it as a contingent liability, I note that that the Noticees have just

made the bald statement and did not submit any supporting documentary evidence in support of their claim. I observe that JAL Corporate Guarantee was satisfying all elements / conditions of Accounting Standard- 29 for making the necessary provisions by JPVL as it had a possible obligation which was not remote, it was probable that there might be an outflow of resources to settle the obligation and a reliable estimate could have been made of the amount of the obligation. Therefore, JPVL was required to make the necessary provisions in its books in FY 2015-16 as per Accounting Standard- 29.

27. As per Ind-AS 109, at initial recognition, an entity shall measure a financial asset or financial liability at its fair value. An entity shall recognise a loss allowance for expected credit losses on a financial asset, a lease receivable, a contract asset or a loan commitment and a financial guarantee contract to which the impairment requirements apply. It further states that at each reporting date, an entity shall assess whether the credit risk on a financial instrument has increased significantly since initial recognition. When making the assessment, an entity shall use the change in the risk of a default occurring over the expected life of the financial instrument instead of the change in the amount of expected credit losses. To make that assessment, an entity shall compare the risk of a default occurring on the financial instrument as at the reporting date with the risk of a default occurring on the financial instrument as at the date of initial recognition and consider reasonable and supportable information, that is available without undue cost or effort, that is indicative of significant increases in credit risk since initial recognition. It further states that if reasonable and supportable forward-looking information is available without undue cost or effort, an entity cannot rely solely on past due information when determining whether credit risk has increased significantly since initial recognition. Regardless of the way in which an entity assesses significant increases in credit risk, there is a rebuttable presumption that the credit risk on a financial asset has increased significantly since initial recognition when contractual payments are more than 30 days past due.

28. In response to the allegation of failure to do the fair valuation of JAL Corporate Guarantee and failure to make the proper provisioning w.r.t. given/provided JAL

Corporate Guarantee in FY 2016-17 to FY 2021-22, Noticees contended that JPVL was not required to make any provision for impairment in respect of the JAL Corporate Guarantee since the lenders had expectations that JAL would repay amounts and such expectation was reasonably certain, even though the account had been declared NPA. Noticees further submitted that the full and complete disclosures of the relevant facts were made by the aforesaid notes in the annual reports of the respective years and the same amounted to the disclosure of the fair value of the said JAL corporate guarantee, therefore, the investors were clearly informed as to what could be the potential impact. I note that the contentions of the Noticees are not acceptable as Ind-AS 109 clearly stipulates that at initial recognition, an entity shall measure a financial asset or financial liability at its fair value. I further note that JAL was irregular in its repayments, therefore on March 08, 2016 the Loan was declared NPA. Further, during IP, payments were still outstanding for the Loan and it was classified as Doubtful-3. These developments were indicative of significant increase in credit risk on the JAL Corporate Guarantee given since initial recognition. Accordingly, by virtue of the clauses in the deed of guarantee, the guarantor had become liable to pay the lender for the amount due. Thus, JPVL should have recognized the financial guarantee at the amount of 'actual liability' as on March 31, 2017. Ind-AS 109 also stipulates that an entity shall recognise a loss allowance for expected credit losses on a financial guarantee contract to which the impairment requirements apply and regardless of the way in which an entity assesses significant increases in credit risk, there is a rebuttable presumption that the credit risk on a financial asset has increased significantly since initial recognition when contractual payments are more than 30 days past due. Accordingly, at the end of March 2017, JPVL should have measured the financial guarantee liability at fair value and thereafter at the end of each of the financials years starting from March 31, 2018, JPVL should have re-measured the financial guarantee liability at the amount of actual liability. Therefore, JPVL was under obligation to make the necessary provisions in its books of accounts in FY 2016-17 to FY 2021-22 as per the provisions of Ind-AS 109. I also note that the statutory auditors of JPVL qualified the accounting treatment of JAL Corporate Guarantee for five consecutive financial years i.e. from FY2017-18 to FY2021-22.

II. Other Corporate guarantees and their accounting treatment in the books of JPVL (PPGCL Corporate Guarantees):

29. It was alleged in the SCN that JPVL failed to make proper accounting treatment of the Corporate Guarantee given by JPVL to SBI for short term loan of Rs.500 Cr. availed by PPGCL (a subsidiary of JPVL) in FY2014-15, Corporate Guarantees in favour of SBI as collateral security for total loan of Rs.1100 Cr. (loan of Rs.500 Cr. availed in FY 2015-16 and loan of Rs.600 Cr. availed in FY 2016-17) ("**PPGCL Corporate Guarantees"**) as required by Accounting Standard- 29 and Ind-AS 109.

30. In response to the allegation of not disclosing the PPGCL Corporate Guarantees as contingent liability, Noticees contended that the PPGCL Corporate Guarantees were not contingent liabilities as they were never invoked and never constituted any present obligation and the security trustee had expressly not recorded that they would be invoking the PPGCL guarantees. Noticees also contended that the PPGCL Corporate Guarantees were disclosed in the annual reports and the shareholders and public were therefore kept informed of the same. The contentions of the Noticees are not acceptable as the PPGCL Corporate Guarantees were fully binding on JPVL i.e. in case of default of loan repayment by PPGCL, which was a probable and uncertain future event, JPVL was liable to make payments. The contingency of default of re-payment by PPGCL was fully obligatory only on part of JPVL. Therefore, the possibility of repayment of loans in case of default of PPGCL was 100% obligatory only on part of JPVL and therefore it was not remote. Hence, PPGCL Corporate Guarantees should have been disclosed as contingent liability in accordance with Accounting Standard- 29, when possibility of outflow was not remote and amount of outflow could have been ascertained or estimated. I note that PPGCL Corporate Guarantees were satisfying all elements / conditions of Accounting Standard- 29 for disclosure as contingent liability, therefore, PPGCL Corporate Guarantees ought to be disclosed by JPVL as contingent liability in applicable financial years till March 31, 2016.

31. In response to the allegation of not making the necessary provisions for PPGCL Corporate Guarantees of Rs.1100 Cr., Noticees contended that no provision was

required to be made as they were never invoked and never constituted any present obligation, the security trustee had expressly not recorded that they would be invoking the PPGCL guarantees and guarantees were disclosed in the annual reports and the shareholders and public were therefore kept informed of the same. I find that the said loans of Rs.1100 Cr. availed by PPGCL were classified as NPA on November 02, 2016 and thereafter, it continued to remain as NPA as PPGCL was not able to repay the loan amount timely during the FY2016-17 to FY2018-19. As, JPVL was sole guarantor to aforesaid loan and the PPGCL Corporate Guarantees was fully binding on JPVL, by virtue of the clauses in the deed of guarantees, JPVL had become liable to pay the amount due to the lender. When SBI declared the loans of Rs.1100 Cr. as NPA, it could have invoked the PPGCL Corporate Guarantees, then it would become obligation of JPVL to repay the loan to SBI as a principal debtor. I observe that the said PPGCL Corporate Guarantees of Rs.1100 Cr. were satisfying all elements / conditions of Accounting Standard-29 for making the necessary provisions by JPVL that it had a possible obligation which was not remote, it was probable that there might be an outflow of resources to settle the obligation and a reliable estimate could have been made of the amount of the obligation. Therefore, JPVL was under obligation to make the necessary provisions in respect of the said PPGCL Corporate Guarantees of Rs.1100 Cr. in its books of accounts in FY 2015-16 as per Accounting Standard- 29.

32. With respect to requirement of fair valuation of PPGCL Corporate Guarantees and the requirement of making the necessary provisions w.r.t. PPGCL Corporate Guarantees, Noticees submitted that although the new auditors issued qualified opinions in FY 2017-18 and FY 2018-19 in relation to the fair value of the PPGCL Corporate Guarantees, JPVL was unable to ascertain the fair value of the PPGCL Corporate Guarantees since restructuring was being considered in respect of both JPVL and PPGCL. I note that that loans of Rs.1100 Cr. availed by PPGCL were classified as NPA on November 02, 2016 and thereafter, it continued to remain as NPA during the FY2016-17 to FY2018-19, hence, there were indicative of significant increase in credit risk on the PPGCL Corporate Guarantees. Hence, on the similar lines of findings made hereinabove with respect to requirement of fair valuation and the requirement of making the necessary provisions w.r.t. JAL

Corporate Guarantees, I note that by virtue of the clauses in the deed of guarantee, the guarantor had become liable to pay the lender for the amount due and thus, JPVL should have recognized the said financial guarantees at the amount of 'actual liability' as on March 31, 2017 and thereafter at the end of the FY2017-18 and FY2018-19, JPVL should have re-measured the financial guarantee liability at the amount of 'actual liability'. Therefore, JPVL was under obligation to make the necessary provisions in its books of accounts in FY 2016-17 to FY2018-19 as per the provisions of Ind-AS 109. I also note that the statutory auditors of JPVL qualified the accounting treatment of aforesaid PPGCL Corporate Guarantees for FY2017-18 and 2018-19, despite that JPVL not ascertained and re-measured the fair value of the PPGCL Corporate Guarantees.

33. Noticees contention that JPVL's management acted on the advice of its erstwhile statutory auditors who were experts in the field and aware of the proper compliance of the relevant accounting standards required for the purpose of JPVL's financial statements is not acceptable as JPVL's management is responsible for preparation of the books of accounts and for representing the true and fair view of the affairs of the company. JPVL cannot shift its responsibility on the erstwhile auditor whose duty was to audit the financials of the company and not to prepare the financials. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. Further, I also note that JPVL has not put anything on record to substantiate its claim that it acted on the advice of its erstwhile statutory auditors. Hence, the above contention of the Noticees are devoid of any merit.

34. In view of the above, I hold that the Company misrepresented its books of accounts by way of not following correct accounting treatment for Corporate Guarantees given by it to lenders of its associate/parents/subsidiary companies during the FY2012-13 to FY2021-22. Thus, by not carrying out the proper accounting treatment of the said corporate guarantees as per applicable accounting standards

of relevant time, the financial statements of the Company during the FY2012-13 to FY2021-22 did not reflect true and fair view.

35. With regard to violation of provisions of PFUTP Regulations, Noticees submitted that they did not indulge in any manipulative, fraudulent and, or unfair trade practices in the securities markets; it did not divert, mis utilise or siphon off any assets or earnings; it did not manipulate its books of accounts or financial statements or adopt any device, scheme or artifice as falsely alleged or otherwise. Noticees further submitted that there was no direct or indirect manipulation of JPVL's shares prices. Any violation related to accounting standards to be termed as manipulative, fraudulent or an unfair trade practice in the securities market, it must directly or indirectly result into manipulation of the price of securities of that company. The SCN does not contain even any allegation of manipulation or any impact on the share price of JPVL. Noticees further stated that Allegations of fraud ought to be specifically pleaded and identified in respect of each of the Noticee, each of whom must be able to know the exact charge alleged in order to be able to properly defend the charge and prove their innocence. Noticees further submitted that they did not commit any 'fraud' as defined under the PFUTP Regulations or otherwise, nor did it knowingly misrepresent the truth or conceal material facts nor did it induce any other party to act to their detriment. For allegations of 'fraud' under the PFUTP Regulations, it is incumbent upon SEBI to demonstrate with full particulars what alleged act, expression, omission or concealment was committed 'while dealing in securities' and SEBI must demonstrate with proper evidence as to what the 'inducement' was that caused others to deal in securities. The allegations set out in the Notice do not contain any such findings of facts in relation to 'dealing in securities' or of any fraud whatsoever. In this regard, JPVL relied upon the observation of Hon'ble Supreme Court in the matter of SEBI and Ors. v. Kanaiyalal Baldevbhai Patel and Ors. - (2017) 15 SCC 753.

36. In this regard, I note that the allegations of violation of PFUTP Regulations on account of misrepresentation in books of accounts of JPVL were levelled against the Noticees in the SCN. Further, I note that the Company misrepresented its books

of accounts by way of not following correct accounting practices, which creates an impression among its investors that the disclosed misrepresented statements were reflecting the true and fair view of its financial position. In my view, stock market did not take into consideration the above mentioned misrepresentations by JPVL. If the provisions had been made by JPVL, the said financial guarantees would have been recognised and re-measured at the amount of 'actual liability', the profit and loss account of the Company would have shown lesser profits or higher losses to the Company. Accordingly, the decision taken by its shareholders could have changed and the movement in the price of the scrip of JPVL would have been different than what was witnessed in the absence of true and fair view of the affairs of the Company. Hence, I hold that the misrepresentation in books of accounts of JPVL induced the uninformed investors to deal in securities of JPVL, which indirectly resulted into manipulation of the price of the scrip of JPVL in terms of the PFUTP Regulations.

37. In view of the above, I hold that by misrepresenting its books of accounts, Noticee-1 has violated the following provisions:

  (a) Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2012-13 to FY 2021-22).

  (b) Clause 41(I)(a) and Para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY 2012-13 to FY 2014-15).

  (c) Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations (for FY 2015-16 to FY 2021-22).

38. I note a company acts through its board of directors. The directors are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors have the duty of being vigilant, which calls for exercise of judgment which may reasonably be expected of a director in his position and any additional knowledge, skill and experience which he may possess. The directors of the listed companies have greater responsibility as they have access to inside

information such as the financial position of the company, annual accounts, etc., and they take major decisions on behalf of the company, which affects the investors. Therefore, they are expected to exercise the powers in bona fide manner and in the interest of all stakeholders of the company. Any misuse of their powers for making false misrepresentations to the public is to be construed as failure in their duties as directors of the company.

39. In this context, I would like to place reliance on the observations of the Hon'ble Supreme Court of India in the matter of **Shri N. Narayanan vs. SEBI** decided on 26.04.2013, wherein it was observed that - *"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence."*

40. Further, Hon’ble High Court of Madras in **Madhavan Nambiar vs Registrar of Companies** has held that – *“… Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors; (b) the whole-time director or whole-time directors; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors. …*

Section 29 of the Companies Act provides the general power of the board…. Therefore, it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible..."

41. Further, I note that Section 27 of SEBI Act, 1992 also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a

company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

42. In view of the above, I hold that Mr. Suren Jain (Noticee-2), Mr. Sunil Kumar Sharma (Noticee-3), Mr. Manoj Gaur (Noticee-4), and Mr. Praveen Kumar Singh (Noticee-5) being full time directors (MD/ED/WTD) of the Company during the FY2012-13 to FY2021-22 and Mr. M K V Rama Rao (Noticee-6) being full time director of the Company during the FY2016-17 to FY2019-20 were fully involved/aware of the mis-presentation of financial statements of the Company and hence they are equally liable for said misrepresentation as the financial statements of the Company were approved by Board of Directors. In addition, Mr. Suren Jain (Noticee-2) was also CFO during the FY2012-13 to FY2018-19 and Mr. R K Porwal (Noticee-7) was CFO during the FY2019-20 to FY2021-22, who were liable for preparation of the books of accounts. Therefore, I hold that full time directors (MD/ED/WTD) and CFOs of the Company are equally liable for aforesaid misrepresentation in the books of accounts of the Company during the FY2012-13 to 2021-22. Thus, I hold that by failing to disclose contingent liability (for FY2012-13 to FY2014-15), failing to make appropriate provision in FY2015-16 and failing to make fair valuation and proper provisioning during the FY2016-17 to FY2021-22, Noticee-2, 3, 4, 5, 6 and 7 have violated the following provisions:

(a) Noticee- 2, 3, 4 and 5 have violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2012-13 to FY2021-22).

(b) Noticee- 2, 3, 4 and 5 have violated the provisions of Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY2012-13, FY2013-14 and FY 2014-15).

(c) Noticee- 2, 3, 4 and 5 have violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and 48 of LODR Regulations read with Section 27 of SEBI Act (for FY2015-16 to FY2021-22).

(d) Noticee- 2 and 3 have violated the provisions of para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY 2012-13, 2013-14 and 2014-15).

(e) Noticee- 2 and 3 have violated the provisions of Regulation 17(8) LODR Regulations (for FY2015-16 to FY2021-22).

(f) Noticee- 6 has violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2016-17 to FY2019-20).

(g) Noticee- 6 has violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and 48 of LODR Regulations read with Section 27 of SEBI Act (for FY 2016-17 to FY2019-20).

(h) Noticee- 7 has violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the PFUTP Regulations read with Section 27 of SEBI Act (for FY2019-20 to FY2021-22).

(i) Noticee- 7 has violated the provisions of Regulation 4(1)(a), 4(1)(b), 4(1)(e) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (for FY2019-20 to FY2021-22).

(j) Noticee- 7 has violated the provisions of Regulation 4(2)(f)(i)(2) and Regulation 17(8) of LODR Regulations (for FY2019-20 to FY2021-22).

III. <u>Allegations w.r.t. not obtaining the required shareholders' approval in terms of SEBI circular dated April 17, 2014 w.r.t. corporate guarantees given by JPVL to lenders of JAL and PPGCL:</u>

43. SCN alleged that as per applicable accounting standards, the corporate guarantee of USD 1500 Lacs given by JPVL to lenders of JAL (promoter holding company of JPVL) and the corporate guarantee of Rs.500 Crore given by JPVL to lenders of PPGCL (subsidiary company of JPVL)) for short term loan of Rs.500 Cr. availed by it in FY2014-15 were allegedly Related Party Transactions. Therefore, in terms of SEBI Circulars Nos. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 and CIR/CFD/POLICY CELL/7/2014 dated September 15, 2014 respectively and the

Listing Agreement, the Company was required to seek the ratification/approval of shareholders by way of a special resolution in first General Meeting subsequent to October 01, 2014. However, it was alleged in the SCN that JPVL failed to do so.

44. As per Clause 4.2 of SEBI circular CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 (on revised Clause 49 of the Listing agreement to be effective from October 01, 2014), all existing material related party contracts or arrangements as on the date of the said circular which are likely to continue beyond March 31, 2015 were required be placed for approval of the shareholders in the first General Meeting subsequent to October 01, 2014. Further, Clause 4.2 of SEBI circular dated April 17, 2014 provides that the provisions of revised Clause 49 (VII) applicable for Related Party Transactions as given in Part B shall be applicable to all prospective transactions.

45. In response to allegations of not obtaining the required shareholders' approval, Noticees submitted that the JAL Corporate Guarantee and PPGCL Corporate Guarantee of Rs.500 Crore availed for short term loan are not related party transactions since the transaction was not between JAL and JPVL; the transaction was between the lender (SBI) and JPVL who are not related parties; there was no transfer of resources, services or obligations between JPVL and JAL; the obligation to pay would only be transferred from JAL to JPVL if and when the guarantee was invoked and not otherwise. Noticees further submitted that at the time of approving the JAL Corporate Guarantee, the Board contemplated whether shareholders' approval was required. At the relevant time, the LODR Regulations were not in force. Further, Noticees stated that JPVL being a power generation company falls under the definition of infrastructure company, which was exempted from obtaining the shareholders' approval in terms of Section 372A of the Companies Act, 1956.

46. I note that the issue of JAL and PPGCL being related parties of JPVL is not disputed in the instant matter. However, Noticees have contended that corporate guarantees given by JPVL to the lenders of JAL and PPGCL were not related party transactions. In this context, it is relevant to refer to the applicable accounting standards during the relevant period i.e. Accounting Standard- 18 and Ind-AS 24.

As per Accounting Standard- 18, related party transaction means *'a transfer of resources or obligations between related parties, regardless of whether or not a price is charged'*. Further, as per Ind-AS 24, related party transaction means *'a related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged'.* Thus, as per the applicable accounting standards, the said corporate guarantees given by JPVL to the lenders of JAL and PPGCL were a transfer of obligations between JPVL (a reporting entity) and JAL and PPGCL (related parties) as JPVL was sole guarantor to said loans and the said corporate guarantees were unconditional and fully binding on JPVL by virtue of the clauses in the deed of guarantees. Further, the loans availed by JAL and PPGCL were unsecured loans and obligation for re-payment on account of default by JAL and PPGCL was only on part of JPVL as a principal debtor. Hence, there was a transfer of obligations between JPVL and its related parties i.e. JAL and PPGCL as per applicable accounting standards. Therefore, the said contentions of the Noticees are untenable.

47. Noticees contentions that no shareholder has come forward to either contest, challenge or object to the provision of the JAL Corporate Guarantee and no complaint whatsoever has been made against JPVL for providing this JAL Corporate Guarantee, consequently, JPVL's shareholders have impliedly consented to the JAL Corporate Guarantee are not acceptable as the said contentions cannot be justifiable reason for non-compliance to the SEBI Regulation / circular.

48. With regard to Noticees contentions that JPVL being a power generation company falls under the definition of infrastructure company, which was exempted from obtaining the shareholders' approval in terms of Section 372A of the Companies Act, 1956, I note that the interpretation of Noticees of the provisions of Section 372A of the Companies Act, 1956 is misplaced as the provisions of Section 372A(8) provides for restriction where the provisions of Section 372A of the Companies Act, 1956 will not apply. It does not restrict JPVL from complying with the provisions of said SEBI Circulars and the Listing Agreement. Further, I note that the Companies

Act, 1956 was amended and replaced by the Companies Act, 2013 w.e.f. April 01, 2014 and the allegation is that the Company was required to seek the ratification/approval of shareholders by way of a special resolution in first General Meeting subsequent to October 01, 2014 as per SEBI circular dated April 17, 2014. Therefore, the contentions of the Noticees are not tenable.

49. With respect to Noticees submission that the LODR Regulations were not in force at the relevant time, I note that the allegation against the Noticees is not about violation of LODR Regulations but violation of SEBI circular Nos. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 and CIR/CFD/POLICY CELL/7/2014 dated September 15, 2014. It was alleged that the Company had not obtained the ratification/approval of shareholders by way of a special resolution in first General Meeting in terms of the aforesaid SEBI Circulars and hence, the said contention of the Noticees is irrelevant and untenable.

50. In view of the above, I hold that Noticee-1 has failed to obtain the ratification/approval of shareholders w.r.t. corporate guarantees given by it to lenders of JAL and PPGCL, by way of a special resolution in first General Meeting subsequent to October 01, 2014, in terms of SEBI circulars dated April 17, 2014 and September 15, 2014. Therefore, I hold that Noticee- 1 has violated the provisions of SEBI Circulars Nos. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 and CIR /CFD/POLICY CELL/7/2014 dated September 15, 2014.

IV. <u>Allegations w.r.t. not making the disclosures by the Company / not obtaining the required approvals as per Erstwhile Listing Agreement and LODR Regulations w.r.t. corporate guarantees given to lenders of JAL and PPGCL:</u>

51. It was alleged in the SCN that the aforesaid corporate guarantees of USD 1500 Lacs and Corporate Guarantee of Rs.500 Crore given by JPVL to lenders of its promoter holding company i.e. JAL and subsidiary company i.e. PPGCL, respectively, were not disclosed as “Related Party Transaction” in Annual Reports of the Company. The Company continued with this practice for 10 years i.e. during the FY2012-13 to FY2021-22. Hence, it was alleged in the SCN that JPVL failed to

follow correct accounting practices by way of not disclosing corporate guarantees as related party transactions. Further, it was alleged in the SCN that JPVL failed to take the necessary approvals from Audit Committee before giving the PPGCL Corporate Guarantees of Rs.1100 Cr given in FY2015-16 and 2016-17.

52. In response to above allegations, Noticees submitted that JPVL made a disclosure of the "Corporate Guarantee" from FY 2012-13 onwards and even cross referenced the same under the "Related Party Disclosures" caption. The financial statements were placed before JPVL's shareholders for approval and the shareholders were therefore clearly aware of and approved the JAL Corporate Guarantee by approving the financial statements year after year. Noticees further submitted that and the meaning of related party transactions also was identical to the SEBI Circulars, consequently, as demonstrated above, the JAL Corporate Guarantee did not fall within the definition of a related party transaction.

53. It has already been observed hereinabove and held that the said corporate guarantees given by JPVL to lenders of its promoter holding company i.e. JAL and subsidiary company i.e. PPGCL were Related Party Transactions. Further, I Note that as per Accounting Standard- 18, if there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the details such as name of related party, relationship between the parties of the transaction, nature and volume of transactions etc. Further, as per Ind-AS 24, if an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements. At a minimum, disclosures shall inter-alia include the *'details of any guarantees given or received'.* Therefore, in accordance with the Accounting Standard- 18 and Ind-AS 24, JPVL was required to disclose the full details of Corporate Guarantees as related party transactions under the 'Related Party Disclosures' in its Annual Reports for 10 years i.e. during the FY2012-13 to FY2021-22. Hence, the submissions of the Noticee-1 that it had made appropriate disclosures in its accounts are not

acceptable. Further, I hold that JPVL has failed to take the necessary approvals from Audit Committee before giving the PPGCL Corporate Guarantees of Rs.1100 Cr given in FY2015-16 and 2016-17 as per LODR Regulations.

54. In view of the above, I hold that Noticee- 1 has violated provisions of Regulations 4(1)(a), (b), (h), (i), 4(2)(e), (i), 23(8), (9) and 34(3) of LODR Regulations (for FY 2015-16 to 2021-22).

Issue- B: Whether the Company mis-stated its books of accounts during the FY2012-13 to FY2018-19 by not doing fair valuation of its investments in JPVL Trust and therefore whether books of accounts of the Company reflect true and fair view:

55. Pursuant to Scheme of Amalgamation of erstwhile JKHCL and erstwhile BPSCL with JPVL, JPVL trust was created, which was holding a total of 34,40,76,923 shares on behalf of JPVL as on March 31, 2012 to March 31, 2019. The said investment was shown as non-current investment valued at Rs.1985.94 Crore. It was alleged in the SCN that the Company continued to show the said investment at Rs.1985.94 Crore without carrying out the re-valuation / fair value of the investment every year as per applicable Accounting Standard / Ind-AS. By not measuring investments at fair value during FY2012-13 to FY2018-19, profit and loss account and balance sheet of the Company did not reflect true and fair view, therefore, it was alleged that the Company misrepresented its books of accounts during FY2012-13 to FY2018-19.

56. In response to above allegations, Noticees submitted that AS 13 stipulates that long term investments are usually carried at cost. The said investments held by the JPVL Trust were always intended to be long term investments and were therefore correctly carried at cost. Noticees further submitted that AS 13 provides that if there is a decline in value which is temporary then the decline does not need to be recognised. Noticees submitted that the decline in the market value of JPVL shares was temporary and the same has thereafter revived as is evident from the share price of JPVL from 2015 to June 2024. Noticees further submitted that there is a

cyclical nature of the power project industry and the fluctuations in share price was temporary and the management accordingly made no adjustments.

57. As per Accounting Standard- 13, *'long-term investments are usually carried at cost. However, when there is a decline, other than temporary, in the value of a long term investment, the carrying amount is reduced to recognise the decline'*. AS- 13 further states that '*where there is a decline, other than temporary, in the carrying amounts of long term investments, the resultant reduction in the carrying amount is charged to the profit and loss statement. The reduction in carrying amount is reversed when there is a rise in the value of the investment, or if the reasons for the reduction no longer exist'.* Further, Ind-AS 109 provides that an entity shall measure a financial asset at amortised cost, fair value through other comprehensive income or fair value through profit or loss. And, an entity shall classify financial assets as subsequently measured at amortised cost, fair value through other comprehensive income or fair value through profit or loss.

58. I note that as per AS- 13 long-term investments are usually carried at cost, however, when there is a decline, other than temporary, in the value of a long term investment, the carrying amount is reduced to recognise the decline. Further, Ind-AS 109 provides that an entity shall measure a financial asset fair value. The decline in the investments was continued for 7 years, which is not temporary decline, hence as per Accounting Standard- 13/ Ind-AS 109, the Company ought to value the investments in JPVL trust in every financial year and ought to recognise the provision to profit and loss account every year in its financial statements from FY2012-13 to FY2018-19.

59. In this regard, I also note that in FY2017-18 and FY2018-19, the statutory auditors of the Company qualified that the "*No provision for diminution in value of investment in beneficiary trust (Equity), JPVL Trust amounting to Rs. 198,594 Lakh, ("which in turn holding investment in the Company") has been made by the management*". It is also observed that management has claimed that it was of the opinion that diminution was temporary in nature and however, in FY 2019-20, fair valuation of aforesaid investment was carried out by JPVL and the investment of Rs.1965.29

Crore (out of Rs. 1985.94 Crore) was written off by the Company, indicates that it was not a temporary diminution. If the correct accounting practices were followed by the Company, its loss of Rs. 1965.29 Crore charged to Profit & Loss account in FY2019-20 would have been changed in previous seven financial years i.e. FY2012-13 to FY2018-19.

60. Therefore, I hold that Noticee-1 has overstated its books of accounts by not adopting the correct accounting practices and by not measuring investments at fair value during FY2012-13 to FY2018-19, hence, profit and loss account and balance sheet of the Company did not reflect true and fair view.

61. Further, I note a company acts through its board of directors and the directors are responsible for all the acts of omission and commission by the company as already mentioned and observed in detail at para 38 to 41 hereinabove. In view of the same, I hold that Mr. Suren Jain (Noticee-2), Mr. Sunil Kumar Sharma (Noticee-3), Mr. Manoj Gaur (Noticee-4), and Mr. Praveen Kumar Singh (Noticee-5) being full time directors (MD/ED/WTD) of the Company during the FY2012-13 to FY2018-19 and Mr. M K V Rama Rao (Noticee-6) being full time director of the Company during the FY2016-17 to FY2018-19 were fully involved/aware of the mis-presentation of financial statements of the Company and hence they are equally liable for said misrepresentation as the financial statements of the Company were approved by Board of Directors. In addition, Mr. Suren Jain (Noticee-2) was also CFO during the FY2012-13 to FY2018-19, who was liable for preparation of the books of accounts. Therefore, in view of the above and considering the findings made hereinabove at para 36 w.r.t. violation of PFUTP Regulations, I hold that by misrepresenting its books of accounts, Noticee- 1, 2, 3, 4, 5 and 6 have violated the following provisions:

    (a) Noticee- 1, 2, 3, 4 and 5 have violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2012-13 to FY 2018-19).

(b) Noticee- 1 has violated the provisions of Clause 41(I)(a) and Para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY2012-13, FY2013-14 and FY 2014-15).

(c) Noticee- 1 has violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations (for FY2015-16 to FY2018-19).

(d) Noticee- 2, 3, 4 and 5 have violated the provisions of Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY2012-13, FY2013-14 and FY 2014-15).

(e) Noticee- 2, 3, 4 and 5 have violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (for FY2015-16 to FY2018-19).

(f) Noticee- 6 has violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2016-17 to FY2018-19).

(g) Noticee- 6 has violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and 48 of LODR Regulations read with Section 27 of SEBI Act (for FY 2016-17 to FY2018-19).

(h) Noticee- 2 and 3 have violated the provisions of para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY 2012-13 to FY 2014-15).

(i) Noticee- 2 and 3 have violated the provisions of Regulation 17(8) LODR Regulations (for FY2015-16 to FY2018-19).

Issue- C: Whether the Company mis-stated its books of accounts during the FY2012-13 to FY2021-22 by not provisioning for diminution in value against

certain long-term investments of amounting to Rs. 78,915 lacs and therefore whether the books of accounts of the Company reflect true and fair view:

62. It was observed that the Company had made certain long-term investments amounting to Rs. 78,915 lacs in subsidiaries (i.e. SPGCL, JAPL and JMPL) during the FY2012-13 to FY2021-22. In this regard, it was alleged in the SCN that the Company continued to value these investments at cost and failed to do appropriate valuation as required by Accounting Standard- 13 till FY2015-16 and impairment testing as required by Ind-AS 36 for FY2016-17 to 2021-22. Therefore, by not making provisions for diminution in value of certain long-term investments, the books of accounts of the Company did not reflect true and fair view.

63. In response to above allegations, Noticees submitted that the books of accounts of JPVL reflected a true and fair view, which is supported and certified by the independent auditor's report in the annual reports for FY 2012-13 to FY 2016-17, wherein the independent auditor made no qualifications with respect to the said issues alleged in the SCN. Noticees further submitted that the diminution in value of the long-term investments in SPGCL, JAPL and JMPL was due to various circumstances surrounding each of JPVL's investments in SPGCL, JAPL and JMPL in view of various stages of claims and future prospects for recovery of investments and such investments were not market related investments. Noticees further submitted various reason which created hurdles in its projects and stated that JPVL was confident that it would be able to recover the entire investment made in subsidiaries and for this reason that no provision was made for diminution in value of investment in said subsidiaries.

64. As mentioned hereinabove, I note that as per AS- 13 long-term investments are usually carried at cost, however, when there is a decline, other than temporary, in the value of a long term investment, the carrying amount is reduced to recognise the decline. Further, Ind-AS 109 provides that an entity shall measure a financial asset fair value. However, I observe that the Company continued to value these investments at cost and failed to do appropriate valuation as required by Accounting Standard- 13 till FY2015-16 and impairment testing as required by Ind-

AS 36 for FY2016-17 to 2021-22. The diminution in value against certain long term investments was continued for years, which is not temporary decline, hence as per Accounting Standard- 13/ Ind-AS 109, the Company ought to carry out fair valuation of its investment during the FY2012-13 to FY2015-16 and ought to carry out impairment testing of its long term investments in SPGCL, JAPL and JMPL during the FY2016-17 to FY2021-22 and ought to recognise the provision to profit and loss account every year in its financial statements from FY2012-13 to FY2018-19.

65. In this regard, I further note the auditors of the Company qualified the same in audit reports of FY2017-18 to FY 2021-22 as *'No provision for diminution in value against certain long term investments has been made by the management as in the opinion of the management such diminution is temporary in nature considering the intrinsic value of the assets, future prospects and claims (impact unascertainable). Having regard to the above, management of the company has concluded that no provision, against diminution is necessary at this stage.'* Further, I also observe that JPVL has written off the partial investment in SPGCL and written off the full investment in JAPL and JMPL, indicates that it was not a temporary diminution. If the correct accounting practices were followed by the Company, its figures of profit and loss account would have been changed in previous financial years i.e. FY2012-13 to FY2021-22.

66. Therefore, I hold that Noticee-1 has overstated its books of accounts by not adopting the correct accounting practices and by not measuring investments SPGCL, JAPL and JMPL at fair value during FY2012-13 to FY2021-22, hence, profit and loss account and balance sheet of the Company did not reflect true and fair view.

67. In view of the above observations and considering the findings made at para 36 hereinabove w.r.t. violation of PFUTP Regulations, I hold that by misrepresenting its books of accounts, Noticee-1 has violated the following provisions:

(a) Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2012-13 to FY 2021-22).

(b) Clause 41(I)(a) and Para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY 2012-13 to FY 2014-15).

(c) Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations (for FY 2015-16 to FY 2021-22).

68. Further, I note a company acts through its board of directors and the directors are responsible for all the acts of omission and commission by the company as already mentioned and observed in detail at para 38 to 41 hereinabove. In view of the same, I hold that Mr. Suren Jain (Noticee-2), Mr. Sunil Kumar Sharma (Noticee-3), Mr. Manoj Gaur (Noticee-4) and Mr. Praveen Kumar Singh (Noticee-5) being full time directors (MD/ED/WTD) of the Company during the FY2012-13 to FY2021-22 and Mr. M K V Rama Rao (Noticee-6) being full time director of the Company during the FY2016-17 to FY2019-20 were fully involved/aware of the mis-presentation of financial statements of the Company and hence they are equally liable for said misrepresentation as the financial statements of the Company were approved by Board of Directors. In addition, Mr. Suren Jain (Noticee-2) was also CFO during the FY2012-13 to FY2018-19 and Mr. R K Porwal (Noticee-7) was CFO during the FY2019-20 to FY2021-22, who were liable for preparation of the books of accounts. Therefore, I hold that full time directors (MD/ED/WTD) and CFOs of the Company are equally liable for aforesaid misrepresentation in the books of accounts of the Company during the FY2012-13 to 2021-22. Therefore, in view of the above and considering the findings made at para 36 hereinabove w.r.t. violation of PFUTP Regulations, I hold that by misrepresenting its books of accounts, Noticee- 2, 3, 4, 5, 6 and 7 have violated the following provisions:

(a) Noticee- 2, 3, 4 and 5 have violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2012-13 to FY2021-22).

(b) Noticee- 6 has violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations (for FY 2016-17 to FY2018-19).

(c) Noticee- 2, 3, 4 and 5 have violated the provisions of Clause 41(I)(a) of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY2012-13, FY2013-14 and FY 2014-15).

(d) Noticee- 2, 3, 4 and 5 have violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (for FY 2015-16 to FY2021-22).

(e) Noticee- 6 has violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and 48 of LODR Regulations read with Section 27 of SEBI Act (for FY 2016-17 to FY2018-19).

(f) Noticee- 2 and 3 have violated the provisions of para V of Clause 49 of the erstwhile Listing Agreement read with Section 21 of SCRA (for FY 2012-13, 2013-14 and 2014-15).

(g) Noticee- 2 and 3 have violated the provisions of Regulation 17(8) LODR Regulations (for FY2015-16 to FY2021-22).

(h) Noticee- 7 has violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the PFUTP Regulations read with Section 27 of SEBI Act (for FY2019-20 to FY2021-22).

(i) Noticee- 7 has violated the provisions of Regulation 4(1)(a), 4(1)(b), 4(1)(e) and Regulation 48 of LODR Regulations read with Section 27 of SEBI Act (for FY2019-20 to FY2021-22).

(j) Noticee- 7 has violated the provisions of Regulation 4(2)(f)(i)(2) and Regulation 17(8) of LODR Regulations (for FY2019-20 to FY2021-22).

Issue- D: Whether there was any violation w.r.t. audit qualifications made in independent auditor's report for FY2018-19, FY2019-20 and FY2020-21:

69. It was alleged in the SCN that the Company overstated its books of accounts by way of not providing interest on FCCBs (Rs. 148.30 Crore and penal interest - Rs.

105.77 Crore) and other unsecured loan (Rs. 95.48 Crore) in FY2018-19. Further, it was alleged that in the same FY, JVPL also failed to make any provision by not providing outstanding interest on its current investments (Rs. 2928 Crore) made in equity instrument of its subsidiary, i.e. PPGCL. Hence, the financial statements of the Company have not reflected true and fair view.

70. In response to the allegations of not providing interest on unsecured loan of Rs. 95.48 Crore Noticees submitted that JPVL was in active discussions during FY 2018-19 with JSWEL for a full and final settlement of its dues including waiver of interest. JPVL and JSWEL entered into a Debt Resolution Agreement (DRA) dated January 2, 2020 to restructure JSWEL's outstanding loans and for waiver of the previous accrued interest. Further, in response to the allegations of not providing interest on FCCBs of Rs. 148.30 Crore and penal interest - Rs. 105.77 Crore, Noticees submitted that JPVL was in discussion with the FCCB holders to try and get them to agree to convert the bonds into equity shares and to waive all claims to interest thereon. They were negotiating the matter and therefore the status quo was maintained pending the negotiations. Noticees further submitted that as on date, there are no outstanding FCCBs and the entire interest liability stands waived / deleted. As regards the allegation that no provision was made for penal interest on certain loans amounting to 105.77 crores, Noticees submitted that it did not provide for penal interest since the lenders / banks did not confirm balances and did not charge penal interest inter alia since the loan was classified as NPA.

71. I note that as per Regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company is required to comply with all the notified and applicable Accounting Standards. The interest on loans is a borrowing cost for the company, which is required to be recognized as an expense under IND-AS 32, IND-AS 324 and IND-AS 109 as per the applicable accounting standards and liability of the company does not extinguish on account of bank classifying the loans as NPA or in anticipation that the interest payable on NPA loans would be waived of in restructuring.

72. Accounting is based on concept of conservatism which requires the accounts to be prepared with caution and high degrees of verification. Further, principle of prudence governing the selection and application of accounting policies state that *"In view of the uncertainty attached to future events, profits are not anticipated but recognised only when realised though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information."* Thus, in accounting revenues and assets should be recognized only when they realized and provision is to be made for all known/ probable liabilities and losses. Therefore, discussion with lenders/bond holders who had provided unsecured loan for its full and final settlement including waiver of interest on the said unsecured loan/bonds does not absolve the company's contractual obligation of interest payment against the loans taken. Till the ongoing settlement process was not finalised, liability of the company was not extinguished and interest due on NPA loans should have appeared on liability side of the balance sheet under interest payable head.

73. As per IND-AS 109, the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. In the instant case, the company submitted that it was in discussion with bondholders/trustees/lenders and nothing was materialized in the FY2018-19. Filing of an application/discussions for waiver of interest liability cannot be said to be a definite proof that the bondholders/lenders shall accept the proposal of the Company and the interest liability shall be waived off. Also, from the reply of the company itself, it is noted that the aforesaid requests of waiver of interest was not approved by trustees/bondholders/lenders till the publication of financial statements of the company for FY2018-19. The FCCB holders in meeting held on December 13, 2019 considered the request of the Company. Further, the waiver of interest was approved by JSW Energy Ltd vide letter dated November 28, 2019. Therefore, the financial liability of the company for the interest component was not extinguished at the time of publishing of financial statements during the Investigation Period and it should have been provided in Profit and Loss accounts of the company as a prudent accounting policy.

74. In this regard, I also note that Expert Advisory Committee of ICAI, in a similar case earlier opined (which was also accepted by the MCA), that the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires.

75. W.r.t. Noticees submission that it did not provide for penal interest since the lenders / banks did not confirm balances and did not charge penal interest inter alia since the loan was classified as NPA, I note that the terms related to penal interest are generally available in loan agreements and further penal interest charged by the lenders / banks are also shown in loan account statement. Hence, the contentions of the Noticees are not tenable. Further, I also note that even if the amount might not be determined with certainty, JPVL should have made the provision for penal interest in accordance of the best estimates in the light of available information.

76. In response to the allegations of failure to make the provision on outstanding interest on its current investments (Rs. 2928 Crore) made in equity instrument of PPGCL, Noticees submitted that all shares of PPGCL held by JPVL were pledged with the Security Trustee, as collateral for the financial assistance granted by lenders to PPGCL. Noticees further submitted that PPGCL pursued restructuring of its debt with its lenders so as to protect the business value of PPGCL and JPVL. On December 18, 2017, the Security Trustee invoked the entire pledge of equity and preference shares of PPGCL held by JPVL due to default in payment of interest to the lenders. After the invocation of the said pledge, the shares were not then immediately sold and JPVL was in active discussions with the lenders of PPGCL for restructuring the debt and return of the said pledged shares of PPGCL to JPVL. In view of the ongoing attempts to recover of the said shares, no provision was made by JPVL in its accounts in FY 2017-18.

77. I note that discussions with the lenders of PPGCL for restructuring the debt does not absolve the company's obligation of booking the loss / impairment of investment. As the outcome of discussion of Management with lenders was uncertain, JPVL should have booked the loss of investment in PPGCL in FY2017-

18 itself. However, JPVL booked loss of investment in PPGCL in FY 2019-20. I further note that the said non-provisioning on its current investments of Rs. 2928 Crore made in equity instrument of PPGCL was also qualified by auditors of the Company.

78. In view of aforesaid, I hold that the Company overstated its books of accounts by way of not providing interest on its current investments, FCCBs and other unsecured loan in FY2018-19, therefore, the financial statements of the Company have not reflected true and fair view. Therefore, in view of the above observations and considering the findings made at para 36 hereinabove w.r.t. violation of PFUTP Regulations, I hold that by misrepresenting its books of accounts, Noticee- 1 (JPVL) has violated the following provisions:

(a) Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations.

(b) Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 33 (1) (a), (c) and Regulation 48 of LODR Regulations.

79. Further, I note a company acts through its board of directors and the directors are responsible for all the acts of omission and commission by the company as already mentioned and observed in detail at para 38 to 41 hereinabove. In view of the same, I hold that Suren Jain (Noticee-2), Mr. Sunil Kumar Sharma (Noticee-3), Mr. Manoj Gaur (Noticee-4), and Mr. Praveen Kumar Singh (Noticee-5) being full time directors (MD/ED/WTD) of the Company during the FY2012-13 to FY2021-22 and Mr. M K V Rama Rao (Noticee-6) being full time director of the Company during the FY2016-17 to FY2019-20 were fully involved/aware of the mis-presentation of financial statements of the Company during FY2018-19 and hence they are equally liable for said misrepresentation as the financial statements of the Company were approved by Board of Directors. Therefore, in view of the above and considering the findings made hereinabove at para 36 w.r.t. violation of PFUTP Regulations, I hold that by misrepresenting its books of accounts, Noticee- 2, 3, 4, 5 and 6 have violated the following provisions:

(a) Noticee- 2, 3, 4, 5 and 6 have violated the provisions of Regulation 4(1), 4(2) (f) and (r) read with Regulation 2(1)(b) and 2 (1)(c) (1) of PFUTP Regulations.

(b) Noticee- 2, 3, 4, 5 and 6 have violated the provisions of Regulation 4(1)(a), (b), (c), (e) (g), (h), (j) read with Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii) (1)(3), (6), (12), Regulation 33 (1) (a), (c) and 48 of LODR Regulations read with Section 27 of SEBI Act.

(c) Noticee- 2 and 3 have violated the provisions of Regulation 17(8) LODR Regulations.

Issue II. Does the violation, if any, attract monetary penalty under Section 15HA and 15HB of the SEBI Act and Section 23H of the SCRA?

80. In the light of findings and observations made against the Noticees brought out in the foregoing paragraphs, it is evident that the Noticees have violated the regulatory provisions of the SEBI Act, PFUTP Regulations, LODR Regulations and erstwhile Equity Listing Agreements.

81. With regard to imposition of penalty, Noticees submitted that imposing penalty on them does not justify as JPVL had no intention to deceive or act in breach of the SEBI Regulations and, or any other law / accounting standards, JPVL acted bona fide and in interests of all stakeholders, there was no fraud, manipulation, deceit or unfair practice, JPVL did not make any gains nor did any shareholder make any losses etc.

82. In this regard, I note that Hon'ble SAT in the matter of ***Komal Nahata v. SEBI*** *(Appeal No. 5 of 2014 dated January 27, 2014)* has observed that:- *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure"*.

83. I also note that in Appeal No. 78 of 2014 in the case of ***Akriti Global Traders Ltd. Vs. SEBI***, the Hon'ble SAT vide order dated September 30, 2014 has observed that: *"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".*

84. Further, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shriram Mutual Fund** [2006] 68 SCL 216(SC) wherein it was *inter-alia* observed that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*''

85. The aforesaid violations are serious in nature and make the Noticees liable for monetary penalty under the provisions of Section 15HA and 15HB of the SEBI Act and Section 23H of the SCRA. The content of the said provision of law is reproduced herein below:

<u>SEBI Act:</u>

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.-

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder 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.*

<u>SCRA:</u>

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, 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.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules; and Section 23-J of the SCRA read with Rule 5(2) of the SCR Adjudication Rules?

86. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act and Section 23-J of the SCRA, which reads as under:-

<u>SEBI Act:</u>

Factors to be taken into account while adjudging quantum of penalty

15J *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

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

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

(c) the repetitive nature of the default.

[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c)

of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

SCRA:

Factors to be taken into account while adjudging quantum of penalty.

23J *While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or the adjudicating officer shall have due regard to the following factors, namely:—*

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

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

(c) the repetitive nature of the default.

[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.]

87. In this case, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of the Noticees violations of the provisions of SEBI Act, PFUTP Regulations, LODR Regulations and erstwhile Equity Listing Agreements. With respect to the repetitive nature of the default, I find that earlier an advisory letter was issued to Mr. Manoj Gaur (Noticee-2) on April 26, 2011 in the matter of Jaiprakash Associates Ltd. Other than that, I do not find any previous default against the Noticees on record. In the instant case, the financial statements of the Company were misrepresented as the correct accounting practices were not followed by it and hence books of accounts of the Company did not provide a true and fair picture of the financial position of the company to its shareholders / investors. Further, the directors / CFO of the Company were fully involved in / aware of the mis-presentation of financial statements of the Company. The conduct of the Noticees in not complying with the provisions of the provisions of SEBI Act, PFUTP Regulations, LODR Regulations

and erstwhile Equity Listing Agreements cannot be taken lightly. The violations done by the Noticees are serious, therefore, should be dealt with sternly by imposing monetary penalty as effective deterrence.

ORDER

88. Having considered all the facts and circumstances of the case, the submissions made by the Noticees, material available on record, the factors mentioned in Section 15J of the SEBI Act and and Section 23-J of the SCRA, and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules and Section 23-I of the SCRA read with Rule 5 of the SCR Adjudication Rules, I hereby impose the following monetary penalty on the Noticees:

Noticee No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)	Total penalty on Noticee (in ₹)
1	M/s. Jaiprakash Power Ventures Ltd.	• Section 15 HA of SEBI Act for violations of PFUTP Regulations	₹ 10,00,000/- (Rupees Ten Lakhs only)	₹ 14,00,000/- (Rupees Fourteen Lakhs only)
		• Section 15HB of SEBI Act for violations of LODR Regulations and SEBI Circulars	₹ 2,00,000/- (Rupees Two Lakhs only)	
		• Section 23H of SCRA for violation of Listing Agreement	₹ 2,00,000/- (Rupees Two Lakhs only)	
2	Mr. Suren Jain	• Section 15HA of SEBI Act for violations of PFUTP Regulations	₹ 5,00,000/- (Rupees Five Lakhs only)	₹ 7,00,000/-

Noticee No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)	Total penalty on Noticee (in ₹)
		• Section 15HB of SEBI Act for violations of LODR Regulations	₹ 1,00,000/- (Rupees One Lakhs only)	(Rupees Seven Lakhs only)
		• Section 23H of SCRA for violation of Listing Agreement	₹ 1,00,000/- (Rupees One Lakhs only)	
3	Mr. Sunil Kumar Sharma	• Section 15HA of SEBI Act for violations of PFUTP Regulations	₹ 5,00,000/- (Rupees Five Lakhs only)	₹ 7,00,000/- (Rupees Seven Lakhs only)
		• Section 15HB of SEBI Act for violations of LODR Regulations	₹ 1,00,000/- (Rupees One Lakhs only)	
		• Section 23H of SCRA for violation of Listing Agreement	₹ 1,00,000/- (Rupees One Lakhs only)	
4	Mr. Manoj Gaur	• Section 15HA of SEBI Act for violations of PFUTP Regulations	₹ 5,00,000/- (Rupees Five Lakhs only)	₹ 7,00,000/- (Rupees Seven Lakhs only)
		• Section 15HB of SEBI Act for violations of LODR Regulations	₹ 1,00,000/- (Rupees One Lakhs only)	
		• Section 23H of SCRA for violation of Listing Agreement	₹ 1,00,000/- (Rupees One Lakhs only)	
5	Mr. Praveen Kumar Singh	• Section 15HA of SEBI Act for violations of PFUTP Regulations	₹ 5,00,000/- (Rupees Five Lakhs only)	₹ 7,00,000/- (Rupees

Noticee No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)	Total penalty on Noticee (in ₹)
		• Section 15HB of SEBI Act for violations of LODR Regulations	₹ 1,00,000/- (Rupees One Lakhs only)	Seven Lakhs only)
		• Section 23H of SCRA for violation of Listing Agreement	₹ 1,00,000/- (Rupees One Lakhs only)	
6	Mr. M K V Rama Rao	• Section 15HA of SEBI Act for violations of PFUTP Regulations	₹ 5,00,000/- (Rupees Five Lakhs only)	₹ 6,00,000/- (Rupees Six Lakhs only)
		• Section 15HB of SEBI Act for violations of LODR Regulations	₹ 1,00,000/- (Rupees One Lakhs only)	
7	Mr. R K Porwal	• Section 15HA of SEBI Act for violations of PFUTP Regulations	₹ 5,00,000/- (Rupees Five Lakhs only)	₹ 6,00,000/- (Rupees Six Lakhs only)
		• Section 15HB of SEBI Act for violations of LODR Regulations	₹ 1,00,000/- (Rupees One Lakhs only)	

In my view, the said penalty is commensurate with the violations committed by the Noticees in this case.

89. 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

90. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI

Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

91. In terms of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCR Adjudication Rules, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai	**ASHA SHETTY**
Date: December 27, 2024	**ADJUDICATING OFFICER**