WTM/SM/IVD/ID1/25069/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTION 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 12A(1) AND 12A(2) OF SECURITIES CONTRACTS (REGULATION) ACT, 1956

In respect of:

Sr. No.	Name of the Entity	PAN
1	PNB Finance and Industries Limited	AAACP0256C
2	Samir Jain	AEHPJ3016Q
3	Meera Jain	AEZPJ3882J
4	Indu Jain	AEHPJ3014N
5	Trishla Jain	AEMPJ2136G
6	Ashoka Viniyoga Limited	AACCA4784G
7	Artee Viniyoga Limited	AABCA1549C
8	Camac Commercial Company Limited	AABCC0733E
9	Combine Holding Limited	AAACC0807E

IN THE MATTER OF PNB FINANCE AND INDUSTRIES LIMITED

BACKGROUND OF THE MATTER

1. The present matter has a long-chequered history of litigations on various fora amongst various stakeholders pertaining to a total number of eight companies; which is required to be briefly discussed at the outset, to understand the

background of the present matter before moving forward to fully appreciate the substance of the actual matter in hand and understand the seriousness of allegations that caused the initiation of the present proceedings. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had received certain complaints alleging non-compliance with various provisions of securities laws including non-compliance with Minimum Public Shareholding (in short '**MPS**') norms as well as wrong disclosure of promoters' shareholdings by certain companies such as Arth Udyog Limited, Bharat Nidhi Limited, Ashoka Viniyoga Limited, Ashoka Marketing Limited, PNB Finance and Investments Limited (hereinafter referred to as '**PNBFIL**'/'***Company***'/'***Noticee no. 1***'), Camac Commercial Company Limited, Combine Holding Ltd. and Sahu Jain Ltd., out of which PNBFIL and Camac Commercial Company Limited are companies listed on Calcutta Stock Exchange (hereinafter referred to as '**CSE**') and rest of the aforementioned companies are listed on Dissemination Board of the National Stock Exchange of India Limited (hereinafter referred to as '**NSE**'). Five of the aforementioned 8 little known companies (mentioned in bold in Table 1 below) are also found to be holding large quantities of shares of Bennett Coleman and Co. Limited (hereinafter referred to as '**BCCL**'). The details of total shareholding of BCCL as per material available on record are as below: -

Table 1: Shareholding of BCCL

Sr. No	Name of Shareholder	Percentage of Shareholding
1	**Bharat Nidhi Ltd**	24.41
2	**PNB Finance & Industries Ltd**	9.29
3	**Camac Commercial Company Ltd**	13.30
4	**Ashoka Viniyoga Ltd**	18.02
5	Sanmati Properties Ltd	9.75
6	**Arth Udyog Ltd.**	9.31
7	Jacaranda Corporate Services Ltd	8.93
8	TM Investments Ltd	5.96
9	Vinet Kumar Jain	0.57

10	Samir Jain	0.003
11	Meera Jain	0.45
Total		**100%**

BCCL is the flagship company of the Times Group. BCCL is an unlisted holding company which owns some of the most prominent media brands of India including but not limited to newspaper 'Times of India', radio channel 'Radio Mirchi', TV news channel 'Times Now', magazines 'Filmfare' & 'Femina', TV music channel 'Zoom' and website 'www.gaana.com' etc. Further, as per submission of BCCL to SEBI, it claims to be a company without any recognized promoter. It has also submitted that Mr. Samir Jain (hereinafter referred to as '***Noticee no. 2***') was the Vice Chairman and Managing Director of BCCL at the relevant point of time and Ms. Meera Jain (hereinafter referred to as '***Noticee no. 3***') was a Whole Time Director at BCCL.

2. Due to such shareholding of the 5 entities viz. Bharat Nidhi Ltd. PNBFIL, Camac Commercial Company Ltd., Ashoka Viniyoga Ltd. and Arth Udyog Limited in BCCL, as mentioned in Table 1 above, one of the grievances of the complainants, who have filed complaint in the present matter to SEBI, is regarding valuation of three of these companies (listed at S. No. 1, 4 and 6 in Table 1 above) in the exit offer provided by them. The said three companies viz. Bharat Nidhi Limited, Ashoka Viniyoga Limited and Arth Udyog Limited are listed on dissemination board of NSE. However, the said issue regarding valuation of companies listed on dissemination board is sub-judice before Hon'ble High Court at Delhi, and is beyond the scope of present proceedings.

3. The complainants had filed an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') to get their allegations investigated by SEBI. Vide Order dated November 14, 2019, the Hon'ble SAT directed the complainants to file a consolidated representation before SEBI and further directed SEBI to consider and decide the matter within a period of six weeks

from the date of receipt of the representation from the complainants. In an appeal against the said order, the Hon'ble Supreme Court of India, vide orders dated January 27, 2020 and July 06, 2020, extended the time granted to SEBI to deal with the complaints. Subsequently, SEBI conducted investigation and submitted compliance affidavit dated December 28, 2020 before the Hon'ble Supreme Court of India upon completion of investigation in the matter. Thereafter, vide order dated August 24, 2021, the Hon'ble SAT directed SEBI to pass a reasoned and speaking order in the matter.

4. As mentioned above, in terms of the aforementioned orders of SAT and Supreme Court, SEBI conducted investigation, into the disclosures made by the abovementioned eight companies including PNBFIL for the period of January 01, 2013 to December 31, 2019 (hereinafter referred to as '**Investigation Period**'/'**IP**') inter alia to ascertain if any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**'), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCR Act, 1956**'), Securities Contracts (Regulations) Rules, 1957 (hereinafter referred to as '**SCR Rules, 1957**'), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (hereinafter referred to as '**LODR Regulations**') Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') has been committed by certain entities in the scrip of the *Company* (PNBFIL).

5. It was noticed during the course of the investigation that a group of 19 entities, connected with one another through a complex web of network and associations,

were holding majority shares of 8 companies including that of PNBFIL to the extent that they were holding shares beyond 75% of these 8 companies. Investigation into the affairs of PNBFIL showed that 8 of these 19 entities were controlling the affairs of PNBFIL without disclosing themselves as promoters of the *Company or* person in control of the affaires and management of the *Company*. In this background, the major shareholders of the PNBFIL holding more than 1% of total shareholding during the course of investigation, were as following: -

Table 2: Details of Shareholders holding more than 1% shares in PNBFIL

Sr. No.	Name	31-March-2013		31-March-2014		31-March-2015		31-March-2016	
		Shares held	% of shares held	Shares held	% of shares held	Shares held	% of shares held	Shares held	% of shares held
1	Samir Jain	518827	16.25	518827	16.25	518827	16.25	518827	16.25
2	Meera Jain	196000	6.13	196000	6.13	196000	6.13	196000	6.13
3	Indu Jain	-	-	-	-	-	-	77604	2.43
4	Trishla Jain*	77604	2.43	77604	2.43	77604	2.43	-	-
5	Ashoka Viniyoga Ltd	651660	20.36	651660	20.36	651660	20.36	651660	20.36
6	Camac Commercial Co ltd.	520000	16.25	520000	16.25	520000	16.25	520000	16.25
7	Combine Holding Ltd	161437	5.04	161437	5.04	161437	5.04	161437	5.04
8	Artee Viniyoga Ltd.	801710	25.05	801710	25.05	801710	25.05	801710	25.05
Total		**2927238**	**91.51**	**2927238**	**91.51**	**2927238**	**91.51**	**2927238**	**91.51**

Sr. No.	Name	31-March-2017		31-March-2018		31-March-2019	
		Shares held	% of shares held	Shares held	% of shares held	Shares held	% of shares held
1	Samir Jain	518827	16.25	518827	16.25	518827	16.25
2	Meera Jain	196000	6.13	196000	6.13	196000	6.13
3	Indu Jain	77604	2.43	77604	2.43	77604	2.43
4	Trishla jain	-	-	-	-	-	-

5	**Ashoka Viniyoga Ltd**	651660	20.36	651660	20.36	651660	20.36
6	**Camac Commercial Co ltd.**	520000	16.25	520000	16.25	520000	16.25
7	**Combine Holding Ltd**	161437	5.04	161437	5.04	161437	5.04
8	**Artee Viniyoga Ltd.**	801710	25.05	801710	25.05	801710	25.05
Total		**2927238**	**91.51**	**2927238**	**91.51**	**2927238**	**91.51**

*Trishla Jain had transferred her shareholding to Indu Jain in September 2015.

From the information as captured in the above table, it is noticed that Mr. Samir Jain. Ms. Meera Jain, Ms. Indu Jain (hereinafter referred to as '***Noticee no. 4***'), Ms. Trishla Jain (hereinafter referred to as '***Noticee no. 5***'), Ashoka Viniyoga Limited (hereinafter referred to as '***Noticee no. 6***'/'**AVL**'), Camac Commercial Company Limited (hereinafter referred to as '***Noticee no. 7***'/'**CCCL**'), Combine Holding Limited (hereinafter referred to as '***Noticee no. 8***'/'**CHL**') and Artee Viniyoga Limited (hereinafter referred to as '***Noticee no. 9***'/'**Artee**') were major shareholders of PNBFIL holding more than 1% of total shareholding of the *Company* during the Investigation Period. It is observed that shareholding of none of these major shareholders changed except in one case wherein, during Financial Year 2015-16, *Noticee no. 5* transferred her complete shareholding in the *Company* to *Noticee no. 4*, who wasn't holding any share of the *Company* before the said transaction. For the purpose of ease of classification, *Noticees no. 2 to 5* have been collectively referred to as '**Jain Family**' and *Noticees no. 6 to 9* have been collectively referred to as '**Corporate Shareholders**'.

6. Based on findings of the investigation, a common Show Cause Notice (in short '**SCN**') dated October 28, 2020 was issued to the *Noticees*. In the said SCN it was alleged that the 19 entities including the *Noticees* are associated with one another through a series of *inter-se* connections, as narrated below:

Table 3: Connections of the *Noticees* amongst themselves and with other connected entities

Sr. No.	Entity/ company	Nature of Connection
1	Vineet Jain	1. Son of Mrs. Indu Jain – Chairman of Bennett Coleman and Company Ltd. (BCCL) 2. Brother of Mr. Samir Jain – Vice Chairman and Managing Director and shareholder of BCCL.
2	Samir Jain	1. Son of Mrs. Indu Jain – Chairman of BCCL 2. Brother of Mr. Vineet Jain – Managing Director and shareholder of BCCL. 3. Husband of Ms. Meera Jain – Whole time Director and shareholder of BCCL.
3	Meera Jain	1. Wife of Mr. Samir Jain – Vice Chairman and Managing Director, and shareholder of BCCL. 2. Daughter in Law of Mrs. Indu Jain, Chairman of BCCL.
4	Indu Jain	1. Chairman of BCCL. 2. Mother of Mr. Samir Jain and Vineet Jain
5	Mukul Jain	1. Cousin of Mr. Vineet Jain and Mr. Samir Jain.
6	Ashoka Marketing Ltd	1. Promoter of company at sr. no 13. 2. Registered office address of the company i.e. *First Floor, Express Building 9-10, Bahadur Shah Zafar Marg New Delhi New Delhi DL 110002",* is the same as the company at sr. no 8, 9 and 10 3. As per the Articles of Association the first shareholders of AML included Shanti Prasad Jain, who was the grandfather of Samir Jain and Vineet Jain.
7	Ashoka Viniyoga Ltd	1. Promoter of company at sr. no 9. 2. Shareholder of BCCL (18.02%) 3. Address of the company i.e. *77A, Block- B, Greater Kailash - I, New Delhi South Delhi DL 110048",* is the same as the company at sr. no 11, 12 and 14
8	Bharat Nidhi Ltd	1. Shareholder of BCCL (24.41%). 2. Promoter of company at sr. no 13. 3. Registered office address of the company i.e. *First Floor, Express Building 9-10, Bahadur Shah Zafar Marg New Delhi New Delhi DL 110002",* is the same as the company at sr. no 6, 9 and 10.

Sr. No.	Entity/ company	Nature of Connection
		4. As per the Articles of Association the first shareholders of BNL included Ramakrishna Dalmia and Shanti Prasad Jain, who were the great grandfather and grandfather of Samir Jain and Vineet Jain. 5. Email mentioned in the bank statement of the company – piyush.garg@timesgroup.com 6. The email ID of director Amita Gola is also amita.gola@timesgroup.com
9	Camac Commercial Company Ltd	1. Shareholder of BCCL (13.30%) 2. Registered office address of the company i.e. *First Floor, Express Building 9-10, Bahadur Shah Zafar Marg New Delhi New Delhi DL 110002",* is the same as the company at sr. no 6, 8 and 10
10	PNB Finance and Industries Ltd	1. Promoter of company at sr. no 9. 2. Shareholder of BCCL (9.29%). 3. Registered office address of the *Company* i.e. *First Floor, Express Building 9-10, Bahadur Shah Zafar Marg New Delhi New Delhi DL 110002",* is the same as the company at sr. no 6, 8 and 9
11	Combine Holding Ltd	1. Promoter of company at sr. no 9 2. Address of the company i.e. *77A, Block- B, Greater Kailash - I, New Delhi South Delhi DL 110048",* is the same as the company at sr. no 7, 12 and 14
12	Sahu Jain Ltd	1. Address of the company i.e. "*16A, Lajpat Nagar-IV, New Delhi-110024",* is the same as the company at sr. no 13 2. As per the Articles of Association, the first shareholders of SJL included Shanti Prasad Jain and Ashok Kumar Jain, who were the grandfather and father of Samir Jain and Vineet Jain.
13	Arth Udyog Ltd	1. Shareholder of BCCL (9.31%) 2. As per the fillings with MCA (Form No. DIR-11), the email address of the company is given as ayushi.sharma@timesgroup.com 3. Address of the company i.e. "*16A, Lajpat Nagar-IV, New Delhi-110024",* is the same as the company at sr. no 12
14	Artee Viniyoga Ltd	1. Promoter of company at sr. no 9.

Sr. No.	Entity/ company	Nature of Connection
		2. Address of the company i.e. *77A, Block- B, Greater Kailash - I, New Delhi South Delhi DL 110048",* is the same as the company at sr. no 7, 11 and 12.
15	Matrix Merchandise Ltd	1. Promoter of company at sr. no 13. 2. Registered office address of the company i.e. *MBD House, Gulab Bhawan, 6, Bahadurshah Zafar Marg New Delhi New Delhi DL 110002 IN*", is the same as the company at sr. no 16, 17 and 18. The address is also the address of subsidiary of BCCL – Speaking Tree Properties Ltd. 3. Phone number – 011 - 43562981
16	Mahavir Finance Ltd	1. Promoter of company at sr. no 13. 2. Registered office address of the company i.e. *MBD House, Gulab Bhawan, 6, Bahadurshah Zafar Marg, New Delhi, New Delhi DL 110002 IN",* is the same as the company at sr. no. 15, 17 and 18. The address is also the address of subsidiary of BCCL – Speaking Tree Properties Ltd. 3. Phone number – 011 - 43562981
17	TM Investment Ltd	1. Shareholder of BCCL (5.96%). 2. Promoter of company at sr. no 13. 3. As per articles of association, Samir Jain was one of the first shareholders. 4. Registered office address of the company i.e. *MBD House, Gulab Bhawan, 6, Bahadurshah Zafar Marg, New Delhi, New Delhi DL 110002 IN",* is the same as the company at sr. no. 15, 16 and 18. The address is also the address of subsidiary of BCCL – Speaking Tree Properties Ltd. 5. Phone number – 011 – 43562981. 6. As per Articles of Association, Samir Jain was one of the first shareholders.
18	Sanmati Properties Ltd	1. 100% subsidiary of Ashoka Marketing Ltd. (Sr. no 6) 2. Shareholder of BCCL (9.75%). 3. Promoter of company at sr. no 13. 4. Registered office address of the company i.e. *MBD House, Gulab Bhawan, 6, Bahadurshah Zafar Marg, New Delhi, New Delhi DL 110002 IN",* is the same as the company at sr. no. 15, 16 and 17. The address is also

Sr. No.	Entity/ company	Nature of Connection
		the address of subsidiary of BCCL – Speaking Tree Properties Ltd. 5. Phone number – 011 - 43562981
19	Punjab Mercantile and Traders Ltd	1. 100% subsidiary of PNBFIL. 2. Promoter of company at sr. no 9.

Apart from the aforesaid, examination of official addresses of the aforementioned 19 entities was conducted and for that purpose, available data was collected from https://esearch.delhigovt.nic.in/SearchByAdd.aspx, a website maintained by Government of NCT of Delhi providing information regarding Property Registration. On the basis of data collected from the aforementioned website, it was alleged that these aforesaid 19 entities were also connected with one another as well as with BCCL in the following manner:

- House No. 9-10, Bahadur Shah Zafar Marg, Delhi, which is the address of Bharat Nidhi Ltd., Camac Commercial Company Ltd., PNBFIL and Ashoka Marketing Ltd, was leased to BCCL.
- House No.16-A LPN IV, Lajpat Nagar Delhi, which is the address Sahu Jain Ltd. and Arth Udyog Ltd, is owned by BCCL.
- House No. B-77-A, Greater Kailash-I Delhi, which is the address of Combine Holding Ltd and Ashoka Viniyoga Ltd, was sold to Bennett Property Holdings Co. Ltd.

At this stage, I find it necessary to clarify that, since only 8 entities out of these 19 entities were holding shares of PNBFIL, the present proceedings are against these 8 entities and the *Company* only. The reference to other 10 entities as well as other connected entities, if any, are only to establish connection amongst the *Noticees*.

7. It was observed from the material available on record that the following persons were on the Board of Directors of the *Company* during the Investigation Period:

Table 4: Board of Directors of PNBFIL during the Investigation Period

S. No.	Name	Designation	Date of Appointment	Date of Cessation
1.	Mohit Jain	Director	09/10/2007	-
2.	Rakesh Dhamani	Director	16/04/2018	-
3.	Govind Swarup	Director	29/06/1984	-
4.	Ashish Verma	Director	02/08/2014	-
5.	Saumya Agarwal	Director	27/05/2016	-
6.	Meera Jain	Director	19/01/2009	04/08/2014
7.	Mukesh Gupta	Director	02/08/2014	16/04/2018
8.	Meeta Sachdeva	Director	17/05/2015	27/05/2016
9.	Samir Jain	Director	29/11/1983	19/02/2016
10.	Om Prakash Vaish	Director	28/08/1984	18/09/2013
11.	Ashok Sen	Director	17/06/1999	04/08/2014

Certain queries were raised to BCCL regarding its relation/connection with PNBFIL, which were replied by BCCL in due course of investigation. It was noticed from the replies of BCCL that:

- *Noticee no. 2* (Samir Jain) is the vice chairman and Managing Director of BCCL and was a director in PNBFIL till February 2016.
- Shri Mohit Jain, a director in PNBFIL since 2007, is an employee of BCCL since 2003. He was also a director in AVL since 2018 and Punjab Mercantile and Traders Limited.

- Shri Rakesh Dhamani, a director in PNBFIL since 2018, is an employee of BCCL since February 2012.
- *Noticee no. 3*, who is the spouse of *Noticee no. 2*, was on the board of PNBFIL till 2014 and is a Whole Time Director of BCCL since 2012.
- Mr. Govind Swarup, a director in PNBFIL since 1984, was also a director in CCCL during 2018-19.
- Mr. Ashish Verma, a director in PNBFIL since 2014, is also a director in CHL since 2018.
- Mr. Mukesh Gupta, a director in PNBFIL during 2014-18, was also a director in CHL during 2016-2019.
- Ms. Meeta Sachdeva, who was an employee of BCCL from 2011- 2016, was a director of PNBFIL, from May 17, 2015 to May 27, 2016.
- Mr. Ashok Sen, a director of PNBFIL during 1999-2014, was an employee of BCCL till 2017 and has been working as a consultant of BCCL since then.

8. In view of the above stated connections that existed amongst the *Noticees*, it has been alleged that *Noticees no. 2 to 9* were persons acting in concert. By acting in concert, they were holding majority of shares of PNBFIL to the extent of 91.51% of total shareholding of the *Company*. It has also been alleged that, by controlling 91.51% of total shareholding of the *Company* and the aforementioned directorship of persons connected with BCCL in the *Company*, *Noticees no. 2 to 9* were controlling the affairs of PNBFIL during the Investigation Period. However, neither PNBFIL has disclosed *Noticees no. 2 to 9* as promoters nor these Noticees have disclosed themselves as promoters or being in control of the *Company* and further, the *Company* was being wrongly projected as a professionally run company without any promoter.

9. It is also observed that the composition of the Audit Committee of the *Company* during Financial Year 2018-19 was as following:

Table 5: Audit Committee of PNBFIL during Financial Year 2018-19

Name	Designation	Type of Directorships	Tenure
Mr. Govind Swarup	Chairman	Non-Executive & Independent Director	Continuing (appointed w.e.f. July 18, 2002)
Mr. Mohit Jain	Member	Non-Executive & Independent Director	Continuing (appointed w.e.f. October 25, 2013)
Mr. Mukesh Gupta	Member	Non-Executive & Independent Director	August 2, 2014 till April 16, 2018
Mr. Rakesh Dhamani	Member	Non-Executive & Independent Director	Appointed as member w.e.f. April 16, 2018

In view of the earlier mentioned connections of Mr. Mohit Jain and Mr. Rakesh Dhamani with BCCL, it is alleged that their classification as independent directors of the *Company* was wrongful and the composition of audit committee of the *Company* during Financial Year 2018-19 was not in terms of the requirement of Regulation 18(1)(b) of LODR Regulations 2015.

10. In view of the allegation of *Noticees no. 2 to 9* being the promoters of the *Company*, it is also alleged that either some of the disclosures made under various provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') or Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') or LODR Regulations, wherein *Noticees no. 2 to 9* were not shown as promoters, were false and misleading or some provisions in terms of which the promoters had to disclose their shareholding annually, were also violated as such disclosures were not made by them.

11. Further, in terms of provisions of Rule 19A(1) of SCR Rules, 1957 read with Regulation 38 of LODR Regulations, every listed company is required to maintain minimum public shareholding of 25% of total issued share capital. By virtue of such alleged promoters' holding more than 75% of total shareholding

of PNBFIL, the *Company* has been alleged to have violated the aforementioned provisions of law. They have also failed to achieve such minimum public shareholding by way of methods prescribed by SEBI vide its circulars.

12. In the end, it is alleged that by structuring the shareholding of the *Company* in a manner to camouflage the actual shareholding of Jain Family, the *Noticees* have alleged to have made a deliberate attempt to mislead the non-promoter investors of the listed entity. In view of this, it is alleged that the non-disclosure of *Noticees no. 2 to 9* as promoters of the *Company* has adversely affected the interest of the actual public shareholders and the above acts of the *Noticees* have been allegedly in violation of the provisions of section 12A(a) and (b) of SEBI Act, 1992 read with Regulation 3(b), (c) and 4(1) of PFUTP Regulations.

13. Therefore, the allegations of violation of the following provisions of law have also been made in the SCN with respect to the *Company*:

- Regulation 18(1)(b) and Regulation 31(1)(b) of LODR Regulations read with SEBI circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015 read with Regulation 2(za) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirement) Regulations, 2009 (hereinafter referred to as '**ICDR Regulations**') and Clause 35 of the Equity Listing Agreement; and
- Rule 19A(1) of SCR Rules, 1957 read with Regulation 38 of LODR Regulations read with provision of clause 2(II) of SEBI Circular no. CIR/CFD/DIL/10/2010 dated December 16, 2010 read with SEBI circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015; and
- Section 12 A(a) and (b) of SEBI Act, 1992 read with Regulation 3(b), (c) and 4(1) of PFUTP Regulations.

Further, the allegation of violation of the following provisions of law has been made in the SCN with respect to *Noticees no. 2 to 9*–

- Regulation 30(2) of SAST Regulations and Regulation 7(1)(a) of PIT Regulations; and
- Provision of clause 2(II) of SEBI Circular no. CIR/CFD/DIL/10/2010 dated December 16, 2010 read with SEBI circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015.
- Section 12 A(a) and (b) of SEBI Act, 1992 read with Regulations 3(b), (c) and 4(1) of PFUTP Regulations.

14. In view of the aforesaid allegations that have been brought in the SCN, the *Noticees* were called upon to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) and Section 11(2)(j) of SEBI Act, 1992 read with Section 12A(1)(a) of SCR Act, 1956 should not be issued against them for committing the aforesaid alleged violations. The *Noticees* were further called upon to show case as to why suitable penalty under Sections 11(4A) read with 11B(2) of the SEBI Act, 1992 should not be imposed upon them for alleged violation of provisions of law referred hereinabove. At the same time, the *Company* was also called upon to show cause as to why suitable penalty in terms of provisions of Section 11(2)(j) of SEBI Act, 1992 read with Section 12A(2) under Section 23E of SCR Act, 1956 should not be imposed upon it for the alleged violation referred hereinabove.

15. It is noticed from the record that the SCN was delivered to the *Noticees* through speed post on November 05, 2020. The same has been acknowledged by them through their respective emails dated November 18 & 19, 2020. As 19 connected entities were allegedly holding the shares of 8 companies, similar allegations were made against all these 19 entities through a total of 8 SCNs. In response,

common replies to all the allegations in all these matters have been submitted by these entities including the 9 *Noticees* covered in the present proceedings who have made their respective submissions through their written replies as indicated in the table below:

Table 6: List of replies submitted by the *Noticees*

S. No.	Name of the Noticee	Date of Letter
1	PNB Finance and Industries Limited	March 05, 2021, July 07, 2022
2	Samir Jain	March 05, 2021, July 07, 2022
3	Meera Jain	March 05, 2021, July 07, 2022
4	Indu Jain	March 05, 2021, July 07, 2022
5	Trishla Jain	March 05, 2021, July 07, 2022
6	Ashoka Viniyoga Limited	March 05, 2021, July 07, 2022
7	Artee Viniyoga Limited	March 05, 2021, July 07, 2022
8	Camac Commercial Company Limited	March 05, 2021, July 07, 2022
9	Combine Holding Limited	March 05, 2021, July 07, 2022

16. Keeping in view the similarities in submissions made by all the 19 entities, in the interest of time and to provide effective hearing, it was decided to provide all these 19 entities a common personal hearing so as to save them from making same submissions repeatedly matter-wise. In this regard, an opportunity of personal hearing was granted to the *Noticees* on March 30, 2022 wherein Mr. Zal Andhyarujina, Senior Advocate appeared with the Authorized Representative on behalf of the *Company* and its Corporate Shareholders and argued on the lines of their respective written submissions. The matter was part heard on that date and it was decided to provide a copy of Investigation Report to the *Noticees* in the light of the ratio laid down by the Hon'ble Supreme Court of India in its judgment dated February 17, 2022 in the matter of *T. Takano vs. Securities and Exchange Board of India*. Subsequently, the matter was placed for further hearing on May 26, 2022. On the said date, Mr. Rohan Kama appeared for the *Company*

and its Corporate Shareholders. He continued the arguments from the previous hearing day viz. March 30, 2022 when Mr. Zal Andhyarujina first appeared for these entities. He reiterated the submissions made by PNBFIL and its Corporate Shareholders in their respective written submissions and completed his oral presentation. He sought six weeks' time to make post-hearing submissions with respect to the *Noticees no. 1* and *6 to 9*, which was granted to him. After that, Mr. Pradeep Sancheti, Senior Advocate appeared and argued on behalf of Jain Family and reiterated the submissions already made by them vide their respective letters to SEBI. He sought five weeks' time to make post-hearing submissions with respect to the *Noticees no. 2*, *3* and *5*, which was granted to him. All the *Noticees* made post-hearing submissions vide two separate letters dated July 07, 2022.

17. The submissions of the *Company* and 8 other *Noticees* are mostly similar in content hence, to avoid repetition, these common submissions including certain common preliminary objections separately raised by each of the *Noticees* have been summarized below in a consolidated manner for better appreciation and for consideration.

17.1. The *Noticess* have submitted that the SCN is silent on the measures proposed to be taken against them, except for the proposed action of imposition of penalty. Whilst SCN states that the *Noticees* may be directed to comply with the MPS norms, it is silent on whether any additional directions may be imposed against the *Noticees*. Principles of Natural Justice make it incumbent for SEBI to state the specific measures that are contemplated against the *Noticees*, so that the *Noticees* are able to present their respective cases on the suitability of the directions/measures proposed.

17.2. In this regard, while making a reference to judgment of the Hon'ble Supreme Court of India in the matter of *Gorkha Security Services v. Govt. of NCT of Delhi & Ors.*, the *Noticees* [(2014) 9 SCC 105] have submitted that a statutory

authority is bound to set out the exact nature of the measures that it proposes to take in a show cause notice, failing which, the proceedings would be liable to be quashed as being in violation of the principles of natural justice.

18. Other than aforementioned submissions, the *Noticees*, vide their respective letters dated March 05, 2021 and two separate letters dated July 07, 2022 (one submitted by PNBFIL & its Corporate Shareholders and another by the Jain Family), have made the following submissions:

18.1. PNBFIL is a company incorporated on May 19, 1894 under the name 'The Punjab National Bank Limited', under the Indian Companies Act, 1882 and pursuant to issue of a fresh certificate of incorporation on December 4, 1981, its name was changed to PNBFIL. PNBFIL is a non-banking finance company registered with the Reserve Bank of India.

18.2. The equity shares of the *Company* have been listed on the Calcutta Stock Exchange (hereinafter referred to as "**CSE**") for more than 25 years and it has claimed to have no promoter and is a professionally managed company. There has been no trading in the scrip of PNBFIL on CSE during the relevant period. Further, the only change in shareholding of entities holding more than 1% of shares is transfer of complete holding of *Noticee no. 5* to *Noticee no. 4* in 2015.

18.3. *Noticees no. 2 to 9* have separately contended that they are public shareholders of the *Company*. Each of these *8 Noticees* have also submitted that they are unaware of holding of any other public shareholder except their own respective shareholding.

18.4. While referring to Regulation 2(e) of the SAST Regulations which define 'control', the *Noticees* have pointed out that control, as defined under the aforementioned provision, can be exercised in multiple ways viz. by means

of shareholding, directorship, agreements, special rights, differential voting rights, veto rights, etc., however, the SCNs fails to demonstrate the manner in which the *Noticees* allegedly exercised control over PNBFIL.

18.5. In addition to that, the *Noticees* have also submitted that:

18.5.1. On a standalone basis, *Noticees no. 2 & 3* currently hold 16.21% and 8.55% of equity shareholding of the *Company* respectively, and *Noticees no. 4 or 5* were holding 2.43% equity shareholding of the *Company* during investigation period, which has since been transferred to *Noticee no. 3*. Therefore, the aggregate direct shareholding of Jain Family has never exceeded threshold of 25% of total shareholding of the *Company*.

18.5.2. At the same time, none of the aforesaid individuals of Jain Family, in aggregate hold in excess of 26% in any of the Corporate Shareholders of the *Company*. To the extent the shareholding of Jain Family in the Corporate Shareholders of PNBFIL, they have contended that the same does not demonstrate control merely by virtue of indirect shareholding and there is no evidence to demonstrate their control through direct and/or indirect shareholding in Corporate Shareholders of PNBFIL.

18.5.3. Further, on a standalone basis, the shareholding of none of the Corporate Shareholders is above threshold of 26% of total shareholding of the *Company*.

18.5.4. In view of this, the extent of the alleged promoters' shareholding in the *Company*, either directly or indirectly, cannot be construed to have any bearing on the control or decision making in the *Company*. Moreover, the alleged promoters of PNBFIL are at par with any other public shareholders and they do not have the ability to exercise any special

rights which may influence management or policy decisions to be able to demonstrate control, as alleged.

18.6. While referring to the observation of the Hon'ble SAT in the case of *Subhkam Ventures (I) Private Limited v SEBI*, [(2010) SCC Online SAT 35] wherein SAT held that the term 'control' under the SAST Regulations shall include the right to appoint majority of the directors and/or the ability to influence the management of the company, the *Noticees* have contended that neither the alleged promoters have the rights to appoint directors on the board of PNBFIL nor the ability to control the management or policy decisions of the *Company*.

18.7. Regarding the allegation that the *Noticees no. 2 to 9* are allegedly exercising control through directorship(s) of employees/consultants of BCCL in the *Company*, the *Noticees* have submitted that appointment of all such directors was undertaken in compliance with applicable law and these persons were acting as Non-Executive Directors and Independent Directors of PNBFIL respectively and not as nominee directors of the alleged promoters.

18.8. In this regard, the *Noticees* have submitted that BCCL is neither a subsidiary nor an associate company of PNBFIL, as understood in law, and accordingly, the sole fact that these individuals were in some manner associated with BCCL or its subsidiaries is not sufficient to dilute their appointment as non-executive or independent directors of PNBFIL.

18.9. The fact of certain directors of PNBFIL being employed with BCCL is a mere co-incidence and this does not by itself demonstrate control of the *Noticees no. 2 to 9* through the alleged individual directors. There exists no legal or factual basis for such an assumption to be made as SEBI has failed

to adduce any evidence that demonstrates control of the *Company* by *Noticees no. 2 to 9,* as alleged, through such directors of PNBFIL.

18.10. The *Noticees* have pointed out that the SCN fails to specify the exact provision or criteria which has been violated. It is not SEBI's case that Regulation 16(1)(b) of the LODR Regulations or Section 149(6) of the Companies Act, 2013 have been violated. Therefore, the SCN fails to demonstrate as to how Mr. Mohit Jain and Mr. Rakesh Dhamani do not meet the criteria for being independent directors or how their appointment was in violation of regulatory requirements.

18.11. In continuation of this, the *Noticees* have submitted that the appointments of Mr. Mohit Jain and Mr. Rakesh Dhamani were in compliance with the relevant provisions of the Companies Act, 2013 and LODR Regulations. The appointment of the said independent directors was approved by the Board of Directors of PNBFIL. The evaluation and validation of their independence has also been verified by the Board of Directors of PNBFIL from time to time. Further, the appointment of the said independent directors has been disclosed from time to time as required under LODR Regulations.

18.12. Furthermore, the SCN fails to make out a case as to whether any of these individuals were acting at the behest of the *Noticees*. If there is any inference that such directors of the *Company* were acting at the behest of the *Noticees no. 2 to 9,* SEBI ought to have substantiated such a charge against such directors. The SCN also fails to establish the manner in which the Jain Family or any of the Corporate Shareholders of PNBFIL were allegedly exercising control over PNBFIL. In any case, the association of *Noticees no. 2 & 3* with BCCL is entirely circumstantial and has no bearing on the present proceedings in relation to the *Company*.

18.13. The fact that certain directors were also employees of BCCL is a mere co-incidence and this does not by itself demonstrate control by any entity over the *Company*. SEBI has also failed to adduce any evidence that demonstrates control of the *Company* by the alleged promoters through such directors.

18.14. With respect to the appointment of Ms. Meera Jain and Mr. Samir Jain as directors, it has been stated that they have ceased to be directors of PNBFIL with effect from August 4, 2014 and February 19, 2016, respectively. Further, their appointment as directors was solely on account of their experience and expertise. In this regard, reference has been placed on the proviso of paragraph 2(e) of the SAST Regulations which specifically states that "*a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position*'".

18.15. On the same lines, the Corporate Shareholders of the *Company* have separately submitted that the fact that certain directors of theirs were also directors of PNBFIL does not, by itself, demonstrate control either of those Corporate Shareholders over PNBFIL or vice versa. The Corporate Shareholders of the *Company* have denied having any arrangement with any of the aforesaid individuals or entities for exercise of their respective shareholding right in PNBFIL. Therefore, any inference of control by the Corporate Shareholders (whether by itself or along with other persons/ entities) is merely in the realm of speculation.

18.16. At this stage, while referring to judgment of the Hon'ble Supreme Court of India in the matter of *Balram Garg vs. SEBI*, (CA No.7054/2021) the *Noticees* have contended that, before a presumption is made, the foundational facts must be established; the onus of proof of which lies upon SEBI and that circumstantial evidence could be relied upon only by producing cogent evidence. On the contrary, SEBI has merely relied on disjointed and

incoherent facts and circumstances. The SCN fails to establish the manner in which the *Noticees* exercised control over Relevant Entities. Accordingly, the allegation that the *Noticees no. 2 to 9* ought to have been disclosed as promoters and not public shareholders of the *Company* is devoid of any merits and there is no basis to allege that the *Noticees no. 2 to 9* were in control of the *Company*.

18.17. In view of all these, it has been contended that the *Noticees no. 2 to 9* cannot be construed to be a promoter of the *Company* in terms of Regulation 2(1)(za)(i) of the ICDR Regulations and the *Company* as well as *Noticees no. 2 to 9* are not required to adhere to any compliances that apply to a listed company having promoter shareholding or compliances that apply to a promoter of such listed company.

18.18. With respect to the allegation regarding improper constitution of audit committee of the *Company* during Financial Year 2018-19, the *Noticees* have stated that Mr. Mohit Jain and Mr. Rakesh Dhamani were independent directors in terms of applicable provisions of law. Therefore, their being on the Audit Committee of the *Company* as independent directors fulfil the requirement of having composition of Audit Committee with 2/3rd of its members being independent directors in terms of applicable provisions of LODR Regulations.

18.19. With respect to the allegation that wrongful disclosure of promoter shareholding by the *Company* has adversely affected the interest of the actual public shareholders, the *Noticees* have initially contended that the said allegation of fraud is completely vague and bereft of any particulars and therefore without any basis and is entirely misdirected. Mere surmise and conjecture or suspicion cannot sustain the holding of guilt as any charge of fraud must be proved based on cogent materials.

18.20. Without prejudice to the above, while referring to the observations of the Hon'ble Supreme Court of India in the matter of *Securities and Exchange Board of India and Ors. vs. Kanaiyalal Baldevbhai Patel and Ors.* [(2017) 15 SCC 1], the *Noticees no. 2 to 9* have contended that even assuming that promoter holding as alleged by SEBI is in excess of prescribed thresholds, they have not dealt in securities during the Relevant Period.

18.21. The *Noticees* have also pointed out that the SCN fails to show how the alleged actions have induced any investors to deal in securities with an intent that was designed to defraud. In view thereof, the ingredients of 'fraud' and/or 'fraudulent' conduct under the PFUTP Regulations are not satisfied in the present case.

18.22. In the end, the *Noticees* have denied having resorted to any fraud or artifice to conceal anybody's identity as promoters or to have perpetuated fraud on its shareholders or causing any loss to the investors/shareholders of the *Company*. In this regard, PNBFIL has separately contended that it is keen to allow an exit to its shareholders as per regulatory framework applicable to entities listed on NSE dissemination board, once SEBI allows it to be moved to the dissemination board.

18.23. The *Noticees* have pointed out that SEBI's allegation that the interest of public shareholders of the *Company* has been adversely affected is entirely misplaced and devoid of any evidence to suggest that any loss was caused to the shareholders.

18.24. Before concluding their substantive submissions, the *Noticees* have suggested that SEBI has failed to establish any cogent chain of definite evidence in order to demonstrate that *Noticees no. 2 to 9* were exercising

control over the *Company*, either individually or in concert with anyone, in any manner whatsoever.

18.25. While referring to factors mentioned under Section 15J of SEBI Act, 1992, the *Noticees* have denied obtaining any disproportionate gain or advantage specifically on account of any of the allegations made out in the SCN. They have also pointed out that there is no evidence, direct or indirect, that would suggest that any loss to a particular investor or group of investors of PNBFIL has been caused. In the end, the *Noticees* have contended that they have not committed any default, much less a deliberate or a repetitive default.

18.26. The *Noticees* have also contended that the directions under Section 11B of SEBI Act, 1992 should be remedial and/or preventive in nature. The present situation does not, in any manner, constitute an 'emergent situation' or present an 'impending danger' to the security of the market which would necessitate a remedial or preventive direction to be issued by SEBI.

CONSIDERATION OF ISSUES AND SUBMISSIONS

19. I have carefully considered the allegations made against the *Noticees* in the SCN, their replies and submissions made before me during personal hearing and the materials available on record. Before dealing with the replies of the *Noticees* on specific charges on merit, I deem it necessary to deal with the preliminary objections raised by the said *Noticees*.

20. I note that, citing the judicial decision of the apex court in the case of *Gorkha Securities Services vs. Govt. of NCT of Delhi*, the *Noticees* have contended that the SCN doesn't mention the specific nature of any measure that SEBI proposes to take against the *Company* and the rest of the Noticees. In this regard, I note that vide

SCN dated October 28, 2020, the *Noticees* have been called upon to show cause as to why appropriate directions under sections 11(1), 11(4) and 11B(1) and Section 11(2)(j) of SEBI Act, 1992 read with Section 12A(1)(a) of SCR Act, 1956, including the direction to comply with MPS requirements, should not be issued to/against them for the alleged violation of the provisions of law as specifically stated in the SCN. Further, the *Noticees* have also been called upon to also show cause as to why appropriate penalty under sections 11B(1) and 11(4A) of the SEBI Act, 1992 and Section 11(2)(j) of SEBI Act, 1992 read with Section 12A(2) of SCR Act, 1956 should not be imposed upon them for the alleged violations as narrated in the SCN.

21. A bare perusal of the SEBI Act, 1992 shows that a comprehensive list of possible directions has been prescribed under Section 11(4) of the SEBI Act, 1992 which the authority under the SEBI Act, 1992 is empowered to issue and the aforesaid provision of law conferring such power to SEBI, has already been specifically referred to in the SCN. Similarly, I also note that SEBI has power under Section 12A(1) of SCR Act, 1956 to issue directions to any company whose securities are listed or proposed to be listed on a recognized stock exchange in the interest of investors or for the purpose of orderly development of securities market. The SCN makes sufficient suggestion about directions that are likely to be issued, once the violations of the provisions of law alleged in the SCN are established, and therefore, I see this preliminary objection of the *Noticees* as frivolous. In this regard, I note that the SCN contains detailed enumeration of the allegations, the basis of each of those allegations, the documents relied upon for making such allegations as well as the relevant provisions of the Securities Laws supporting those allegations. Without prejudice to the foregoing, the Hon'ble Supreme Court has held in the case of *Fortune Impex Vs. Commissioner of Customs* [2004 (167) ELT A 134 (SC)], that "non-mentioning of particular Section of Customs Act

1962 would not vitiate the proceedings when allegations and charges against all the appellants were mentioned in clear terms in the show cause notice." This position has been reiterated through a long list of judicial decisions in several other cases as well, wherein it has been settled that mere non-mentioning of the provisions of law in the SCN would not vitiate the proceedings. However, it is reiterated that in the instant case, the SCN contains detailed allegations against each of the *Noticees* and attached with the SCN are certain documentary evidences on the basis of which the allegations have been made against the *Noticees*. Needless to state that in an adjudication proceeding, the exact remedial measures that can be taken or the directions that can be issued against the noticees can be crystallized only after the proceedings reach its conclusion and only after all the explanations and arguments are evaluated *vis-à-vis* the allegations made against the noticees, based on the evidences, factual & circumstantial, available before the adjudicating authority. The SCN cannot pre-judge or pre-ordain the remedial consequences, which at times preventive in nature or punitive in character, with certainty, prior to commencement of the proceedings, but can acquaint the entities with the possible outcomes that may emanate from the proceedings based on the allegations of various contraventions brought against them which exactly has been indicated in the SCN issued in the present matter to the *Noticees*. Hence, the contention raised by the *Noticees* in this regard lacks any substance worth its merit and I do not find any merit in contentions that SEBI has not stated in the SCN about the measures it proposes to take in the matter qua the *Noticees*. Additionally, I also find that reliance placed by the *Noticees* on *Gorkha Security* (supra) is squarely covers the facts and allegations made in the instant matter and is found to be substantially factually distinguishable. In the matter of *Gorkha Security,* the observations were made pursuant to failure of a contract, which was commercial in nature, whereas the instant proceedings have emanated

by way of exercise of statutory powers vested in a Regulator of the securities market, including the power to take appropriate measure and pass directions for protecting the interest of investors as well as for the development of the securities market. Also, in *Gorkha Security case*, blacklisting was imposed by way of penalty whereas the instant proceedings propose to issue directions, if found necessary, which are preventive and remedial in nature. Further, in *Gorkha Security case*, provision for blacklisting of the contractor was provided in the contract itself as a penalty to be imposed in case of breach of terms of contract, whereas in the present matter, provisions of law under which directions are contemplated to be issued, confer statutory discretion on SEBI to take such measure as it thinks fit in the interest of investors and securities market and the same is not limited and confined to the directions mentioned under the umbrella of Section 11 of the SEBI Act, 1992. Similarly, the observations in the matter of *Canara Bank and Ors. v. Debasis Das and Ors.* [AIR 2003 SC 2041] also don't help the case of the *Noticees* as the matter there was related to granting of personal hearing to an employee in disciplinary proceedings. Moreover, it is not the case of the *Noticees* that the allegations have not been precisely mentioned in the SCN or the documents relied upon by SEBI with regards to these allegations have not been supplied to them or they have been denied the opportunity of personal hearing. Under the circumstances, I see no merit in the above contention of the *Noticees*.

22. Before proceeding to deal with the allegations as recorded above against the *Noticees* on merit, I find it appropriate that for the purposes of easy reference, relevant provisions of the applicable sections, regulations, guidelines, etc. which have allegedly been contravened as per the SCN are reproduced hereunder:

SEBI Act

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

12A.No person shall directly or indirectly—

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

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

SCR Rules

Continuous Listing Requirements

19A. *(1) Every listed company other than public sector company shall maintain public shareholding of at least twenty-five per cent.*

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

LODR Regulations

Audit Committee.

18.*(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:*

(b) two-thirds of the members of audit committee shall be independent directors.

Holding of specified securities and shareholding pattern.

31.*(1) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –*

(b) on a quarterly basis, within twenty one days from the end of each quarter; and,

Minimum Public Shareholding.

38. *The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time:*

Provided that provisions of this regulation shall not apply to entities listed on Institutional Trading Platform without making a public issue.

SAST Regulations

Continual disclosures.

30.*(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

PIT Regulations

Disclosures by certain persons.

7.*(1) Initial Disclosures.*

(a). Every promoter, member of the promoter group, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date

of these regulations taking effect, to the company within thirty days of these regulations taking effect;

23. Now, I proceed to examine as to whether or not, in the facts of the present matter, the shareholding of *Noticees no. 2 to 9* in PNBFIL and the dealings of the *Noticees* in the scrip of PNBFIL amounts to violation of the aforesaid provisions of law as alleged in the SCN. The SCN alleges that PNBFIL (*Noticee no. 1*) has violated the following provisions of law:

- Regulation 18(1)(b) of LODR Regulations by wrongly constituting Audit Committee of the *Company* having less than 2/3rd independent directors in the said Audit Committee; and
- Regulation 31(1)(b) of LODR Regulations read with SEBI circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015 read with Regulation 2(1)(za) of ICDR Regulations and Clause 35 of the Equity Listing Agreement by failing to disclose *Noticees no. 2 to 9* as promoters of the *Company*; and
- Rule 19A(1) of SCR Rules, 1957 read with Regulation 38 of LODR Regulations read with provision of clause 2(II) of SEBI Circular no. CIR/CFD/DIL/10/2010 dated December 16, 2010 read with SEBI circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015 by failing to comply with MPS requirements; and
- Section 12 A(a) and (b) of SEBI Act, 1992 read with Regulation 3(b), (c) and 4(1) of PFUTP Regulations by defrauding the shareholders through wrongful disclosure of shareholding of the *Company*.

Further, the allegation of violation of the following provisions of law has been made in the SCN with respect to *Noticees no. 2 to 9*–

- Regulation 30(2) of SAST Regulations and Regulation 7(1)(a) of PIT Regulations by their failure to disclose their shareholding as promoters of the *Company*; and
- Provision of clause 2(II) of SEBI Circular no. CIR/CFD/DIL/10/2010 dated December 16, 2010 read with SEBI circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015 by their failure to comply with MPS norms.
- Section 12 A(a) and (b) of SEBI Act, 1992 read with Regulations 3(b), (c) and 4(1) of PFUTP Regulations, by defrauding the shareholders of the *Company* by masquerading themselves as its public shareholders.

24. Essentially speaking, the core case of SEBI against the *Noticees* is that *Noticees no. 2 to 9*, despite having fallen within the defined criteria of 'Promoters' of the *Company* during the Investigation Period, were knowingly not disclosed as promoters either by the *Company* or by *Noticees no. 2 to 9* themselves and were only disclosed as public shareholders of the *Company* and, by doing so, the *Noticees*, as a group, were engaged in acts of camouflaging the entire and actual shareholding pattern of the promoter group of the *Company* and were projecting the *Company* (PNBFIL) to have zero promoter shareholding and claiming that all its shares were held by public shareholders and further claiming that the *Company* was a 'professionally run company'. Rest of the violations in fact emanate from the aforementioned main allegation against the *Noticees no. 2 to 9* of allegedly being the promoters of the *Company*. Therefore, before moving ahead, it is necessary to first decide as to whether or not in the facts and circumstances of the matter, the appreciation of materials on record sufficiently lead to application of the principle of preponderance of probability to hold that the *Noticees no. 2 to 9* were indeed the promoters of the *Company* during the Investigation period.

25. In this respect, it is noticed that the term 'Promoter' has been defined under ICDR Regulations as following:

ICDR Regulations

Definitions.

2.*(1) In these regulations, unless the context otherwise requires:*

(za)"promoter" includes:

(i) ***the person or persons who are in control of the issuer****;*

(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;

(iii) the person or persons named in the offer document as promoters:

Provided *that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:*

Provided further *that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person;*

Provided further *that such financial institution, scheduled bank and foreign portfolio investor other than Category III foreign portfolio investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;*

The said definition of 'Promoter' has been modified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 as following:

2(1)(oo) "promoter" shall include a person:

i) who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in section 92 of the Companies Act, 2013; or

ii) who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or

iii) in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act:

Provided that nothing in sub-clause (iii) shall apply to a person who is acting merely in a professional capacity;

Provided further that a financial institution, scheduled commercial bank, foreign portfolio investor other than individuals, corporate bodies and family offices, mutual fund, venture capital fund, alternative investment fund, foreign venture capital investor, insurance company registered with the Insurance Regulatory and Development Authority of India or any other category as specified by the Board from time to time, shall not be deemed to be a promoter merely by virtue of the fact that twenty per cent. or more of the equity share capital of the issuer is held by such person unless such person satisfy other requirements prescribed under these regulations;

It is further noticed that Section 2(69) of the Companies Act, 2013 also defines promoter in following terms:

(69) "promoter" means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

From the conjoint reading of the above mentioned provisions defining the term 'Promoter', it is observed that, a person can be held as a promoter of a company

either if he has been named or identified as promoter by the said company in its records and disclosures, be it offer documents or the annual report; or if he is in control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise or at whose advise or instruction the company or its board is accustomed to act, meaning thereby a person who is having an instrumentality in formulation of plan, policy or decision making of the company.

26. As none of the *Noticees no. 2 to 9* was ever disclosed as promoters by PNBFIL in any of its disclosures or documents/annual report etc., the issue for determination in the present matter is whether *Noticees no. 2 to 9* were jointly or individually, controlling or managing the affairs of the *Company* during the Investigation Period so as to be said that they were jointly or severally had an important and crucial role in formulation of plan, policy of other decision making of the business affairs of the *Company*. Therefore, it now becomes essential to examine what **control** means and how it can be ascertained if any entity or a group of entities are in reality, exercising control over a listed company.

27. At this juncture for the purpose of determining the aforementioned question, it has to be also seen as to how the term 'control', has been defined in SAST Regulations which has also been adopted in other relevant laws governing the securities market such as ICDR Regulations etc. Regulation 2(1)(e) of SAST Regulations has defined 'control' in following terms:

"control" ***includes*** *the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:*

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position. (emphasis supplied)

28. From the afore quoted definition of control as prescribed under SAST Regulations, it can be observed that the term "control" has been defined in an inclusive form, signifying that the term shall not have a restrictive meaning only confined to the illustrative examples of exercise of control as indicated within the definition itself and can stretch beyond such a definition to ascertain control being exercised by an entity or a group of entities acting in concert, if the facts of the matter necessitate a wider interpretation of the aforesaid inclusive definition of control. Based on the above-stated definition, in order to arrive at a finding as to whether an entity or a group of entities are exercising control over a company, some of the parameters that need to be examined closely to find out if the said entity(ies) has/have-

- The right to appoint a majority of directors; and/or
- The right to control the management; and/or
- The right to control the policy decision

As evident from the above definition of control, such rights can be exercisable by one person or by more than one person who are acting in concert. Further, such rights can be exercisable directly or indirectly. The aforementioned right(s) can accrue to a person or a group of persons in any of the following manner:

- Shareholding
- Management rights
- Shareholders agreements
- Voting agreements
- In any other manner

At the same time, the definition of control clearly indicates that these are only some of the manners of exercise of control and going by the spirit of the

definition of control, the aforementioned list of various modes of exercising control is an inclusive list and not an exhaustive one. The term 'in any other manner' shows that the 'control' may be exercised by a person or a group of persons in a manner beyond the afore listed examples, depending upon human ingenuity finding new ways of exercising control of a company by resorting to methods/strategies which on the face of it may escape from the purview of control if the concept of control is given a restrictive interpretation but, when looked through the lenses of the spirit of definition of control, as articulated in SAST Regulations, such strategies/manner would certainly come in conflict with definition and shall be seen to be defeating the very objective for which the term 'control' has been defined under the law.

29. Present day securities market in India is based on disclosure based regime. This means that SEBI has no role in an entity or a group of entities exercising control over a company by any means of human ingenuity within four corners of law as long as the factum of exercise of such control by such person/group of persons is disclosed in a fair and transparent manner to the shareholders and market wide investors.

30. I find it important to mention here that there may be several purposes for which control is relevant under securities law; some of which are to identify the promoters of a company in order to know the real person or entity who is behind the incorporation and decision making of that company and secondly, for the purpose of fastening the liability under the rules including to ensure the necessary compliances for the purpose of open offer under SAST Regulations. As no violation of provisions related to open offer has been alleged in the SCN, the whole case is therefore regarding disclosure of *Noticees no. 2 to 9* as promoters of PNBFIL and their compliance with the provisions of Securities Laws in their capacity as its promoters.

31. Identification of an entity or a group of entities as promoters is essential for public shareholders who should at all points of time be aware of the persons who have control over the affairs of a company as essentially it is the promoters and their reputation/calibre etc. on whom people bank upon, while investing in a company. Knowing that a person with right mindset and one whose goals align with their own, is in control over the affairs of the company gives a sense of assurance to shareholders or persons willing to invest in the company believing that such promoter will take all measures to take the company forward. Such alignment of goals is beneficial for all the parties as it removes instances of friction amongst stakeholders and lead to better progress for the company.

32. While a company is a juristic person, it has been acknowledged by courts in numerous instances that it doesn't have a brain of its own and it is the people who run the company who matter for the day-to-day affairs and governance of the company. Therefore, while a group of persons with right mindset can lead the company to better businesses and higher revenue/profits, persons with wrong mindset can run the company aground. Therefore, knowing the promoters of a company is essential for all shareholders. For this purpose, SEBI has imposed numerous obligations on the promoters including various disclosure obligations so that the public shareholders and investors are continuously appraised of their position in the company and also stay aware of all the actions being taken by such promoters in respect to the company. Various provisions have been incorporated in law to protect the company from promoters misusing its resources and mismanaging the company and to protect minority shareholders from promoters' oppression. All these provisions become mute if a company fails to make disclosure of any or all of its promoters, thereby projecting it to be running without any promoters and consequently, avoiding all the disclosure obligations imposed by law upon the promoters.

33. Whether an entity or a group of entities are in control over the affairs of a company is a question with a straightforward answer in most of the cases where the rights accrue to such entity/group of entities through its shareholding/voting rights in the company and such shareholding/voting rights accrual is direct and obvious. In cases of rights accruing through contractual agreements or where shareholders/entities form a complex web of networks amongst themselves, such assessment of locus of control becomes complex and requires consideration of additional facts and circumstances pertaining to each of those shareholding entities before any final conclusion of any specific shareholder/entities exercising *de facto* control over the company are brought to the fore.

34. This difficulty in identification of promoters through unmasking the actual person in control of a company is a well-known challenge to address which was specifically acknowledged in the Report dated July 19, 2010 of the Takeover Regulations Advisory Committee constituted under the Chairmanship of Mr. C. Achuthan (hereinafter referred to as '**Achutan Committee**') wherein the said committee felt that the existence or non-existence of control over a listed company would be a question of fact, or at best a mixed question of fact and law, to be answered on a case to case basis. The Committee also recognized that any blanket provision whereby a 'right to say no' is in all circumstances deemed to either constitute control or not to constitute control may be liable to misuse. Therefore, it was decided not to include any such blanket provision in SAST Regulations and it was left for the investigating authority and adjudicating authority to examine the question of control on a case to case basis.

35. The same issue had again cropped in an unrelated matter wherein the Hon'ble Supreme Court of India made the following observation in their judgment in the matter of Vodafone International Holdings B.V. vs. Union of India (2012)6 SCC 613:

"***"Control" is a mixed question of law and fact.*** *Ownership of shares may, in certain situations, result in the assumption of an interest which has the character of a* ***controlling interest*** *in the management of the company. A controlling interest is an incident of ownership of shares in a company, something which flows out of the holding of shares.*" (emphasis supplied).

As held above by the Hon'ble Apex Court, the question of control is a mixed question of law and fact. Therefore, in cases of complex web of shareholding, the question of identification of entity(ies) in control of a company becomes more complex. This is because the question of 'control' is a mixed question of law and fact and to examine the same from a narrow construct of established legal principles would lead to completely overlooking the extent of human ingenuity involved in a specific case to avoid the clutches of the same provisions or legal principles enshrined under the law. Recognizing the same, the Achutan Committee had stated that the question of control is required to be examined and decided on case to case basis by taking into consideration the extent of human ingenuity.

36. As mentioned above, one such example of human ingenuity can be seen in the cases involving cross-holding of shares amongst the entities wherein it appears on the face of shareholding pattern that none of these entities is in control of the company as no single entity (of these groups of connected entities) holds shares beyond the required threshold to be able to exercise control individually over the company. For example, in the present matter, majority shareholding of the 8 entities have been held by a group of 19 entities (including the cross-holding by the aforementioned 8 entities viz. *Noticees no. 2 to 9* in the present matter). In such a scenario, examining shareholding of only one of these eight companies for the purpose of identification of entities exercising control over such company will only show a partial picture wherein, none of its major shareholders, at the level of their individual shareholding, will appear to be in control of such company.

In order to identify the ultimate natural person who is in control of any one of these eight listed companies, one needs to look at it using a holistic approach, by comprehensively analysing shareholding of all of these eight listed companies, which in the instant matter were held by a group of 19 entities (individuals as well as companies). Such an analysis requires that the ultimate natural person(s) in control of the shareholders of these eight listed companies are identified at the initial stage, which will facilitate unearthing of the ultimate natural person in control of the affairs of these 8 listed companies including PNBFIL.

37. Recognising the same difficulties and challenges to define control in any definite terms as expressed by the Achutan Committee as highlighted above, SEBI has defined control only on certain principles rather than making it a rule-based definition. It is perceived that any rule based definition would be susceptible to be worked around and could be open to be bypassed by errant promoters; thereby run contrary to the object of the provisions to curb the mischief that the legislature is attempting to curb. At the same time, it is also a fact that, while applying these principles enunciated in the SAST Regulations pertaining to determination of control by applying upon a set of facts on case to case basis, there has been a rise of multitude of opinions and regulatory decisions on the issue of control that have led to litigations in past. However, multitude of litigations on the contentious subject of control neither should deter nor would change the fact that the factum of control has to be decided objectively on a case-to-case basis and every single variation in factum in any case as compared to the preceding case may lead to a completely new scenario and result of examination of control may be completely different from previous case.

38. While there are numerous methods to exercise control over a company, the easiest way to identify control over a company is by looking at the shareholding of such company. The same has also been identified by Hon'ble Supreme Court

of India in its judgment in the matter of Vodafone International Holdings (supra), wherein the Apex Court made the following observations:

"***The control of a company resides in the voting power of its shareholders and shares represent an interest of a shareholder which is made up of various rights contained in the contract embedded in the Articles of Association.*** *The right of a shareholder may assume the character of a controlling interest where the extent of the shareholding enables the shareholder to control the management.*

Shares, and the rights which emanate from them, flow together and cannot be dissected. In the felicitous phrase of Lord MacMillan in ***IRC*** *v.* ***Crossman*** *[1936] 1 All ER 762, shares in a company consist of a "congeries of rights and liabilities" which are a creature of the Companies Acts and the Memorandum and Articles of Association of the company.*

Thus, control and management is a facet of the holding of shares.

Shares, we have already indicated, represent congeries of rights and controlling interest is an incident of holding majority shares. ***Control of a company vests in the voting powers of its shareholders. Shareholders holding a controlling interest can determine the nature of the business, its management, enter into contract, borrow money, buy, sell or merge the company.***" (emphasis supplied)

39. As held above by the Hon'ble Supreme Court, shareholding is one of the test of control by an entity or a group of entities over a company as shares denote a bundle of rights in the hands of the shareholder including the right to elect directors, right to vote on resolution of the company, right to enjoy the profits of the company if and when dividend is declared or distributed and right to have a share in the surplus, if any, on liquidation. By using these rights, shareholders as a group can determine the nature of the business, its management, if it can enter into contract, borrow money, buy, sell or merge the company.

40. However, shareholders of a listed company are rarely a coherent group and they drive company in various directions which support their respective interests in

the said company. In such a tussle to give direction to the affairs of the company, the group of shareholders having larger shareholding amongst all the shareholders, gain upper hand and drive the company to their desired direction. This shareholder group is called the group in control of the affairs of the company. For this purpose, any person, who desires to enter into a company by subscribing to its share capital, desires to know the identity of shareholder group who control the affairs of the company, as this is the group which drive the affairs of the company as per its vision.

41. As such a group controls the affairs and direction of a company, certain details regarding such group of shareholders are necessary for general investing public and other shareholders. At the same time, it cannot be ignored that such a controlling power is amenable to misuse, which as a regulatory body, is a duty of SEBI to prevent to protect the interest of market and general investors. For the same reason, the controlling shareholders of a company have been included in the definition of promoters of a company and every listed company is required to disclose list of its promoters and promoter group entities and their shareholding on a regular periodical basis. At the same time, various disclosure and other compliance obligations have been imposed on the said controlling shareholder group for the benefit of public shareholders and investors.

42. There is no divergence in opinion that such control comes in the hand of a shareholder or a group of shareholders as soon as their voting rights in the company cross the threshold of 50%+1 of total shareholding and voting rights. The same has also been accepted by the Hon'ble Apex Court in a catena of judgments including Vodafone International Holding case (supra).

43. At this stage, I find it necessary to reiterate that the allegation in the SCN against *Noticees no. 2 to 9* is that, while 'acting in concert' with one another, they were exercising complete control over the *Company*. By virtue of their control, they

squarely fall within the definition of 'Promoter' and were required to be disclosed as such. However, they were deliberately omitted from being disclosed as such and were only disclosed as public shareholders of PNBFIL.

44. Now applying the aforementioned principles in the facts of the present matter, I find that 91.51% shares of the *Company* are held by *Noticees no. 2 to 9* all of whom were disclosed as public shareholders of the *Company*. The argument of the *Noticees* is that *Noticees no. 2 to 9* were acting separately as individual public shareholders of PNBFIL.

45. Therefore, it becomes necessary at this stage to deal with the concept of 'persons acting in concert' and the standard of proof required to establish if two persons or a group of persons are acting in concert or not. The term 'persons acting in concert has been defined under Regulation 2(1)(q) of SAST Regulations as following:

(q) "persons acting in concert" means, —

*(1) persons who, **with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate** for acquisition of shares or voting rights in, or exercise of control over the target company.*

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, —

(i) a company, its holding company, subsidiary company and any company under the same management or control;

(ii) a company, its directors, and any person entrusted with the management of the company;

(iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;

(iv) promoters and members of the promoter group;

(v) immediate relatives;

(vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;

(vii) a collective investment scheme and its collective investment management company, trustees and trustee company;

(viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;

(viiia) an alternative investment fund and its sponsor, trustees, trustee company and manager;

*(ix) ****

(x) a merchant banker and its client, who is an acquirer;

(xi) a portfolio manager and its client, who is an acquirer;

(xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:

Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

(xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

Explanation. — For the purposes of this clause "associate" of a person means, —

(a) any immediate relative of such person;

(b) trusts of which such person or his immediate relative is a trustee;

(c) partnership firm in which such person or his immediate relative is a partner; and

(d) members of Hindu undivided families of which such person is a coparcener;

46. In this regard, it is the submissions of *Noticees no. 2 to 9* that they were acting separately and not acting in concert. It is also their submissions that there is no evidence that there was any agreement amongst them to suggest that they were acting in concert.

47. However, the said issue was dealt with in detail by the Hon'ble Supreme Court of India in the matter of Technip SA vs. SMS Holding (Pvt.) Ltd. & Ors. (2005) 5 SCC 465, wherein, while examining as to whether two companies were acting in concert with each other in terms of predecessor of SAST Regulations i.e. SAST Regulations, 1997, Hon'ble Supreme Court of India made the following observations:

"*54. The standard of proof required to establish such concert is one of probability and may be established*

"<u>if having regard to their relation etc., their conduct, and their common interest, that it may be inferred that they must be acting together: evidence of actual concerted acting is normally difficult to obtain, and is not insisted upon</u>". [CIT v. East Coast Commercial Co. Ltd., (1967) 1 SCR 821]. (SCR p. 829 H)

55. While deciding whether a company was one in which the public were substantially interested within the meaning of Section 23A of the Income Tax Act, 1922 this Court said:-

"The test is not whether they have actually acted in concert but whether the circumstances are such that human experience tells us that it can safely be taken that they must be acting together. It is not necessary to state the kind of evidence that will prove such concerted actings. Each case must necessarily be decided on its own facts" [Commissioner of Income Tax v. Jubilee Mills Ltd., (1963) 48 ITR 9 (SC), p. 20]

56. In Guinness PLC and Distillers Company PLC [Guinness PLC and Distillers Company PLC (Panel hearing on 25-8-1987 and 2-9-1987 at p. 10052 — Reasons for decisions of the Panel.)] the question before the Takeover Panel was whether Guinness had acted in concert with Pipetec when Pipetec purchased shares in Distillers Company PLC. Various factors were taken into consideration to conclude that Guinness had acted in concert with Pipetec to get control over Distillers Company. The Panel said :-

"The nature of acting in concert requires that the definition be drawn in deliberately wide terms. It covers an understanding as well as an agreement, and an informal as well as a formal arrangement, which leads to co-operation to purchase shares to acquire control of a company. This is necessary, as such arrangements are often informal, and the understanding may arise from a hint. The understanding may be tacit, and the definition covers situations where the parties act on the basis of a "nod or a wink"..... Unless persons declare this agreement or understanding, there is rarely direct evidence of action in concert, and the Panel must draw on its experience and commonsense to determine whether those involved in any dealings have some form of understanding and are acting in co-operation with each other""
(emphasis supplied)

48. In terms of these observations, Hon'ble Supreme Court has accepted that it is not possible in all the cases to find out direct evidence of any agreement or understanding to find out if any two entities or a group of entities were acting in concert to exercise control over a listed company. In these situations, only circumstantial evidences can be looked upon and, after looking at those circumstantial evidences, the test to be applied is whether the circumstances are

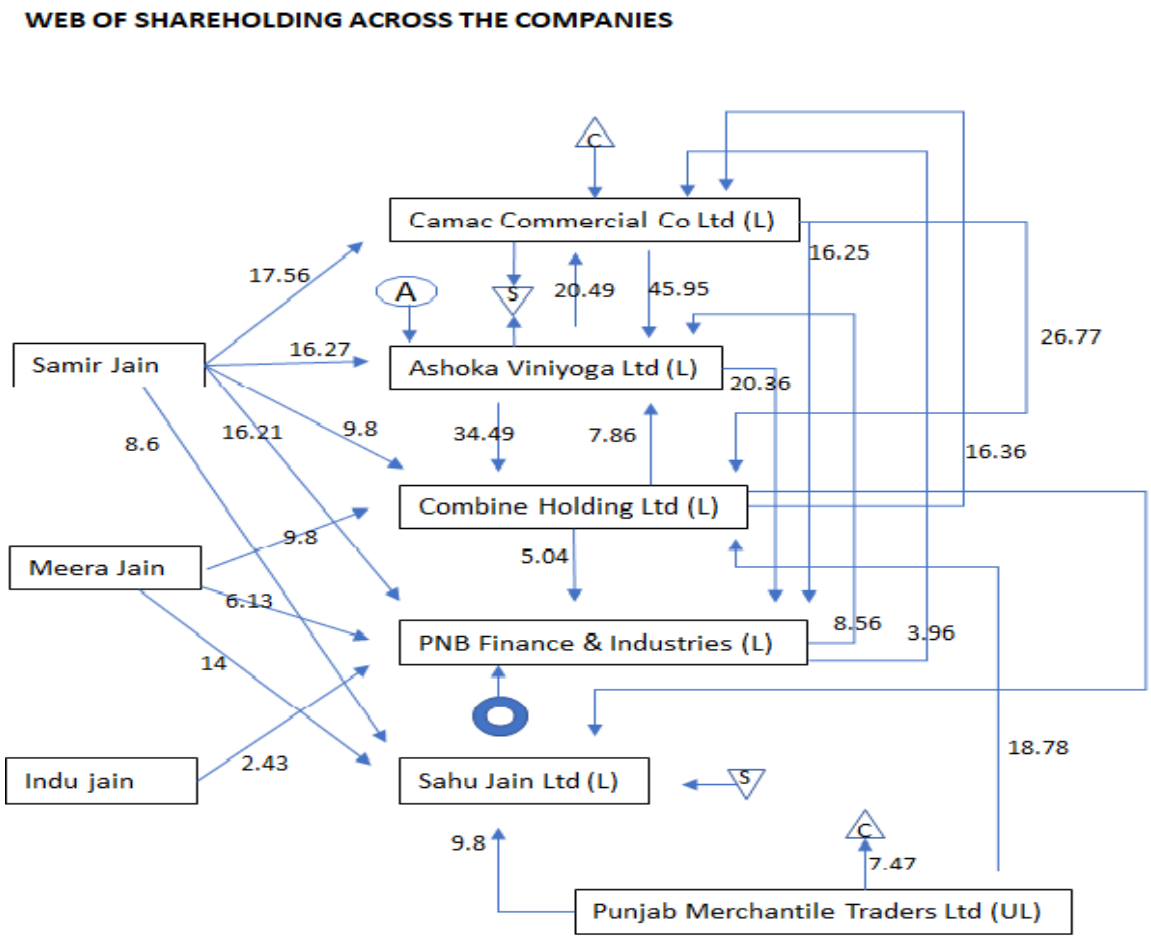
such basis which human experience can tell us that it can safely be taken that they must be acting together.

49. In respect to this, it is an admitted position that *Noticees no. 2 to 5* belong to same family wherein Indu Jain (*Noticee no. 5*) was the mother of Samir Jain (*Noticee no. 2*) and Meera Jain (*Noticee no. 3*) and Trishla Jain (*Noticee no. 4*) are his wife and daughter respectively. It has not been the case of these four entities that they are not connected and were not persons acting in concert during the Investigation Period.

50. The submission of the Corporate Shareholders of the *Company* viz. *Noticees no. 6 to 9* is that they are individual companies in which *Noticees no. 2 to 5* have no control. Therefore, their acts were in their individual capacities and they are neither connected with each other nor with *Noticees no. 2 to 5*, so far as the determination of control over PNBFIL is concerned.

51. In this regard, I find it necessary to first examine the cross-holding of shares, held by different entities in some of the earlier mentioned 8 companies. I find that Jain Family holds shares in five of these eight companies and also in another company namely Punjab Mercantile and Traders Limited indirectly, as it is wholly owned subsidiary of PNBFIL. The cross-holding of shares in these entities can better be understood by way of following diagram: -

Diagram: Cross holding of shares of *Noticees* amongst themselves



The above diagram shows the complex web through which shareholding of 5 companies mentioned in the said chart are held by Jain Family and also by the companies themselves in each other, along with Punjab Mercantile and Traders Limited. The modus of the aforesaid shareholding is that in each of these companies, shares are held by rest of corporate entities. At the same time, in all these companies, Jain family holds certain quantities of shares directly, in such a manner that their combined shareholding is always shown at below 26% of total shareholding in these companies.

52. For the purpose of the present proceedings, I find it relevant to mention the shareholding of these companies in Tabular Format for better analysis and comprehension to explain the aforesaid complex web of cross-shareholding:

Table 7: Table showing cross-holding of shares of various companies amongst the *Noticees* and other connected entities

Shareholding of *Noticees no. 6 to 9* - (figure in %) as on March 31, 2019					
Sr. No	**Name of shareholder**	**Ashoka Viniyoga Ltd.**	**Camac Commercial Co Ltd.**	**Combine Holding Ltd**	**Artee Viniyoga Ltd.**
1	Samir Jain	16.27	17.56	9.8	25
2	Meera Jain	3.66	8.04	9.8	-
3	Indu Jain	3.74			
4	Camac Commercial Co. Ltd	45.95	-	26.77	25
5	PNB Finance and Industries Ltd	8.56	3.96	-	15.62
6	Combine Holding Ltd	7.86	16.36	-	-
7	Artee Viniyoga Ltd.	11.91	20.57	-	-
8	Ashoka Viniyoga Ltd	-	20.49	34.49	29.69
9	Punjab Mercantile and Trades Ltd.	0.64	7.47	18.78	-
Total Shareholding		**98.59**	**94.45**	**99.64**	**95.30**

From the information detailed out in the table 7 above, I find that, as of March 31, 2019, all the Corporate Shareholders of PNBFIL have their shares held by one or other of the 9 group of entities cited in the above Table in a variety of combinations. In the aforementioned list, I find it necessary to mention here that the entity mentioned at S. No. 9 viz: Punjab Mercantile and Trades Ltd. is a wholly owned subsidiary of PNBFIL.

53. It can be observed from the details mentioned in the table 7 above that, apart from the shares held by the Jain Family, majority of shares of *Noticee no. 6*

(Ashoka Viniyoga Limited) were held by PNBFIL and other shareholders of PNBFIL i.e. *Noticees no. 7, 8 and 9* along with a small percentage being held by the wholly owned subsidiary of PNBFIL viz. Punjab Mercantile and Trades Ltd.

54. Similarly, with respect to *Noticee no. 7* (Artee Viniyoga Ltd.), it was observed that apart from the shares held by *Noticee no. 2,* the majority of shares were held by PNBFIL, its wholly owned subsidiary Punjab Mercantile and Trades Ltd. and other shareholders of PNBFIL i.e. *Noticees no. 6 & 8*.

55. Likewise, apart from the shares held by *Noticee no. 2,* the majority of shares of *Noticee no. 8* (Camac Commercial Company Limited) were held by PNBFIL and other shareholders of PNBFIL i.e. *Noticee no. 6 & 9* and the wholly owned subsidiary of PNBFIL i.e. Punjab Mercantile and Trades Ltd.

56. With respect to *Noticee no. 9* (Combine Holding Ltd.), it can be observed from the Table no. 7 that, apart from the shareholding held by *Noticees no. 2 & 3,* the majority of its shares were held by shareholders of PNBFIL i.e. *Noticees no. 6 and 8* as well as by the subsidiary of PNBFIL i.e. Punjab Mercantile and Trades Ltd.

57. At this stage, I find it necessary to once again refer to the observation of the Hon'ble Supreme Court of India in the matter of Vodafone International Limited (supra) wherein the Hon'ble Apex Court has observed that the control of a company vests in the voting powers of its shareholders and such shareholders, who hold a controlling interest in the company, can actually determine the nature of the business, its management, enter into contract, borrow money, buy, sell or merge the company. In the light of this, I find it necessary to identify the actual persons in control of PNBFIL.

58. Therefore, in the earlier pages of this Order, in the Tables No. 2 and 7 and the Diagram given earlier, the pattern of cross-holding of shares of different corporate entities in each other as well as in PNBFIL have been depicted. All

these corporate entities, which are being presented as promoters of each other as well as promoters of PNBFIL are all interlinked with each other by virtue of the fact that all these corporate entities have *Noticees no. 2, 3* and *4* (and earlier Noticee no. 5) as their major individual (natural person) shareholders apart from these connected corporate shareholders. Therefore, once the crossholding by these corporate entities amongst themselves is removed from the equation for time being, one can see that it is the *Noticees no. 2, 3 & 4* who are the natural human beings holding majority of stakes in these corporate entities. It further leads to the fact that, by virtue of being the majority stakeholders as natural person of all these interlinked corporate entities, four of whom are shown to be holding major stakes in PNBFIL as public shareholders, it is *Noticees no. 2, 3 & 4* only who emerge out to be the three natural persons having major stakes as well as control over PNBFIL through the conduits of their own controlled corporate entities for the purpose of crossholding of shares of each other and PNBFIL.

59. It is further observed that the shareholding of these 6 companies mentioned at S. No. 4 to 9 in the Table 7 above, are so woven around these 9 common entities mentioned at S. No. 1 to 9 (in the aforementioned Table, including these companies mentioned at S. No. 4 to 9 themselves), that on the face of it each of these 6 companies might appear to be different, distinct and separate, however, in operation and conduct of business, they are found to be controlled by certain specific natural persons and these natural persons are also found to be holdings shares in all these 6 companies in one way or the other, either directly or indirectly.

60. It is a well-established law that while a company is a juristic person, it cannot take decision on its own as it doesn't have a mind of its own. Only the natural persons at the helm of affairs of a company take decisions on its behalf. In general parlance, it is believed that it is the Board of Directors of a company that is

considered to be in control of the company. Even the law relating to the control and functioning of a company also creates such legal fiction that a company is run by its Board of Directors and the individuals, who comprise the Board, practically control or extend their involvement in managing the business of a company through its Board of Directors. In this respect, an appointment in the Board of Directors is done by the shareholders who appoint persons best suited to take the company forward in line with their aspirations and inclinations. Therefore, essentially speaking, the Board of Directors are proxy of shareholders of a company and, in their decision making, they act in fiduciary capacity on behalf of the shareholders. Therefore, it can be said that in the eyes of law, the decision making is done by Board of Directors as the proxy of shareholders and that, indirectly, it is the shareholders who control the company through its Board of Directors. Taking this forward, since the appointment of directors is done by majority voting system, it is the group of shareholders holding majority of the shares of the company, become the identified entities who can be stated to be in control of the company as all the Board appointments are made by such majority group of shareholders, unless there is any specific provision to the contrary in the Articles of Association of the company or the same is obligated on the company by way of some agreement or operation of law.

61. In a scenario like the present matter, wherein a majority part of shares of PNBFIL is held by 4 Corporate Shareholders, it becomes necessary to identify the actual persons who are hiding behind the veils of such corporate entities and yet might be exercising *de facto* control of the *Company* since, such a manner of exercising control by hiding behind a number of corporate shareholders is nothing but a fraud on public shareholders of the listed company as well as its prospective investors since they are kept bereft of information about the actual entities in control of the listed company. In this regard, I find it relevant to

mention here that the provisions of law, evolved over the period of time have taken such delinquency into consideration and an attempt was made to redress it in the General Order issued by SEBI on October 09, 2012 which laid down a framework for rejection of Draft Offer Document. In terms of the said General Order, '*Ultimate promoters are unidentifiable*' is one of the grounds that have been identified by SEBI to reject a Draft Order document submitted by an Issuer for issuance of new securities. In other words, in this case, had PNBFIL filed its Draft Red Herring Prospectus (in short 'DRHP') after the issuance of the aforementioned General Order, the same was liable for rejection on the ground of the failure of the *Company* to identify its ultimate natural person promoters or in other words, on the ground of attempting to conceal its ultimate natural person promoters while filing the DRHP.

62. In such a scenario when identifying the promoters is a basic statutory mandate placed on the listed companies as well as on the persons/entities who are required to declare themselves as promoters of a listed company by virtue of the control they are exercising, either individually or by acting in concert, either directly or indirectly, if a listed company resorts to hiding its actual promoters behind corporate veils, whether deliberately or otherwise, the same is not permissible and any delinquency seen in this regard ought to be dealt with firmly. In this connection it is relevant to refer to the observation of the Hon'ble SAT in its order dated July 28, 2017 in the matter of Sahara Asset Management Company P. Ltd. and Ors. vs. SEBI as below:

"*In the securities market, SEBI Act empowers SEBI to take actions in the interest of protecting the interests of the investors and hence* ***lifting the corporate veil to the extent to identify who controls a regulated entity cannot be faulted****. Without such a power SEBI will be a mute spectator to many of the corporate misdeeds which may jeopardize the interests of investors. Given the mandate of SEBI to protect the interests of the investors*

in the securities market SEBI is statutorily empowered to lift the corporate veil and find out the truth whenever interests of the investors are affected or likely to be affected." (emphasis supplied)

Therefore, in the light of affirmation of the Hon'ble SAT in the aforementioned order, SEBI cannot be faulted in lifting the corporate veil to identify the actual persons/entities behind the *Company* in the present matter in order to unveil the information regarding the controlling entities of PNBFIL, an information which is so vital and urgently required to be disclosed by the *Company* as a matter of duty and legal obligation, but was alleged to have illegally and fraudulently kept as a well-guarded secret.

63. Further, it is well established jurisprudence of corporate law that lifting of corporate veil is allowed in case of allegation of fraud or improper conduct. As the allegations described in the SCN clearly show that there is a *prima facie* strong case of fraudulent conduct on the part of the *Noticees*, I find no merit in submission of the *Noticees* that lifting of corporate veil is inappropriate in the present matter.

64. In the light of the above, I find that in all the connected entities viz. PNBFIL, its subsidiary company Punjab Mercantile and Traders Ltd, or its Corporate Shareholders, there was no individual shareholder holding a large stake except for the Jain Family. In fact, if the cross-holdings of these corporate entities including PNBFIL amongst themselves is eliminated, then what is left is, the Jain Family as the single common fixed shareholder group consisting of natural persons, across these Corporate Shareholders of PNBFIL at all times. By virtue of having large stakes in these companies, it is not an exaggeration to deduce that this group of individual shareholders viz. the Jain Family have been the controlling minds over all these companies (i.e. the Corporate Shareholders of PNBFIL). Therefore, it is apt to say that at all points of time, the decisions taken

by these companies viz. *Noticees no. 6 to 9*, who hold shares of PNBFIL, whether in the process of voting in the matters of other connected companies or in any other decisions, have largely been influenced by the Jain Family who constitute the largest individual shareholder group behind not only PNBFIL but also in all its Corporate Shareholders.

65. At the same time, using this complex web of shareholding of PNBFIL, the effectively beneficial owners viz. the Jain Family, which is seen to be in a position to control the *Company* through their individual shareholding as well as through the shares held by *Noticees no. 6 to 9* in the said *Company,* whereby acting in concert with those Corporate Shareholders of the *Company*, they are seen to holding together a control over 91.51% of the total shareholding of the *Company,* as already indicated in the Table 2 above. Interestingly, it can be clearly observed that throughout the complex web of connections created by virtue of cross-holding of shares found amongst the *Company*, its Corporate Shareholders and other connected entities, the Jain Family has successfully kept themselves concealed from the public knowledge. The public shareholders and the prospective investors of PNBFIL were always led to presume that the shareholding of PNBFIL is scattered amongst various individual shareholders or least to say that it was spread among individual and corporate entities which are on the face of it, not connected with each other and none of these shareholders of PNBFIL, by virtue of their individual share-holding, could be said to be in a position to control the management or business of the *Company*. In fact, in the light of the facts of the present matter, I find no hesitation in observing that the shareholding structure of PNBFIL and its Corporate Shareholders viz. *Noticees no. 6 to 9,* was consciously and knowingly designed in such an '*intertwined manner*', so that on its face they don't look connected but in reality, it turns out that a small connected group of people viz. the Jain Family, acting together in concert,

are behind these Corporate Shareholders of PNBFIL and are further observed to be practically exercising control over 91.51% of the total shareholding of the *Company* through the afore-discussed web of cross-holdings amongst the *Company* and its Corporate Shareholders, as pointed out earlier in this order. Consequently, it emerges out that it is the Jain Family, which, through its control over the Corporate Shareholders of PNBFIL, is in a position to effectively exercise control over the affairs of the *Company*. Under the circumstances, the creation of a web of shareholders in PNBFIL is nothing but an attempt to create a smokescreen through which the absolute control by the Jain Family was being exercised over these set of companies including PNBFIL.

66. In such a scenario, the only way out for SEBI to identify the actual persons in control of PNBFIL was by lifting of its corporate veil so as to identify the individuals who are hiding behind it and actually pulling the controlling strings. In fact, the web of cross-holding and *inter se* connections amongst all these Corporate Shareholders of the *Company* was so complex that SEBI had to lift corporate veils numerous times to identify the ultimate beneficiaries behind not only PNBFIL but also behind its Corporate Shareholders (viz. *Noticees no. 6 to 9*) in order to identify the individuals who are ultimately operating and managing all these companies and thereby controlling the affairs of PNBFIL, which turned out to be the members of Jain Family viz. *Noticees no. 2 to 5* in the present matter.

67. I find it relevant to reiterate here that PNBFIL is one of the shareholders of BCCL, holding 2,66,65,848 equity shares which amounts to 9.29% of the total shareholding of BCCL. As per materials available on record, including a reply from BCCL during the course of investigation, *Noticee no. 2* was admittedly the Vice Chairman and Managing Director of BCCL and *Noticee no. 3* was a Whole Time Director at BCCL during the Investigation Period. None of these facts has been disputed by any of the *Noticees* in the present matter.

68. Now moving on to the next set of facts available on records in the present matter, it has been observed by SEBI that the following persons were on the Board of Directors of the *Company* during the Investigation Period:

Table 8: Board of Directors of PNBFIL during the Investigation Period

S. No.	Name	Designation	Date of Appointment	Date of Cessation
1.	Mohit Jain	Independent Director	09/10/2007	-
2.	Rakesh Dhamani	Independent Director	16/04/2018	-
3.	Govind Swarup	Independent Director	29/06/1984	-
4.	Ashish Verma	Independent Director	02/08/2014	-
5.	Saumya Agarwal	Independent Director	27/05/2016	-
6.	Meera Jain	Non-Executive Director	19/01/2009	04/08/2014
7.	Mukesh Gupta	Independent Director	02/08/2014	16/04/2018
8.	Meeta Sachdeva	Independent Director	17/05/2015	27/05/2016
9.	Samir Jain	Non-Executive Director	29/11/1983	19/02/2016
10.	Om Prakash Vaish	Director	28/08/1984	18/09/2013
11.	Ashok Sen	Non-Executive Director	17/06/1999	04/08/2014

In this regard, SEBI sought details of connections of the persons mentioned in the above Table with BCCL. It is observed from the email dated August 03, 2020 of BCCL that the following persons who have appeared in the above list of directors of PNBFIL were also connected with BCCL during the investigation period wherein, their term of directorship of PNBFIL coincided with the period of their connection with BCCL. The details of their connection with BCCL are indicated as below–

Table 9: Details of association of directors of PNBFIL with BCCL

Name	Designation at PNBFIL	Association with BCCL
Mohit Jain	Director (09/10/2007-till date)	1. He is an Employee of BCCL since 14.11.2003. 2. He was also a Director in Punjab Mercantile and Traders Ltd., wholly owned subsidiary of PNBFIL. The said entity is also a promoter of Ashoka Viniyoga Ltd. and Camac Commercial Co. Ltd. 3. He is also a director of Ashoka Viniyoga Ltd. since April 26, 2018 – till date.
Rakesh Dhamani	Director (16/04/2018 – till date)	1. He is an Employee of BCCL since 13.02.2012.
Govind Swarup	Director (29/06/1984 – till date)	1. As per BCCL, he has no association with BCCL. 2. He was also a director in Camac Commercial Company Ltd. from April 27, 2018 to November 27, 2019.
Ashish Verma	Director (02/08/2014 – till date)	1. As per BCCL, he has no association with BCCL. 2. He is also a director in Combine Holding Ltd. since April 11, 2018.
Saumya Agarwal	Director (27/05/2016 – till date)	1. As per BCCL, she is not associated with BCCL.
Meera Jain	Director (19/01/2009 - 04/08/2014)	1. She is the spouse of *Noticee no. 2*, the MD of BCCL. 2. She herself is an Employee of BCCL since 13.02.2012.
Mukesh Gupta	Director (02/08/2014 - 16/04/2018)	1. As per BCCL, he is not associated with BCCL. 2. He has also held directorship in Combine Holding Ltd. during June 13, 2016 to June 28, 2019.
Meeta Sachdeva	Director (17/05/2015 - 27/05/2016)	1. She had been an Employee of BCCL during 01.09.2011 to 31.05.2016.
Samir Jain	Director (29/11/1983 - 19/02/2016)	1. He is admittedly Vice Chairman and MD of BCCL during the whole investigation period.
Om Prakash Vaish	Director (28/08/1984 - 18/09/2013)	1. As per BCCL, he is not associated with BCCL
Ashok Sen	Director (17/06/1999 - 04/08/2014)	1. He had been an Employee of BCCL during the period of 01.10.1987 - 31.10.2017. Subsequently, he is providing services to BCCL in the capacity of Consultant since 01.11.2017.

69. An analysis of the above table shows that out of a total of 11 persons, who had held directorship of PNBFIL during the Investigation Period, a total of 6 of them were directly connected with BCCL by way of employment, including *Noticees no.*

2 and 3 who were directly holding directorship in both PNBFIL and BCCL. Only two persons viz. Ms. Saumya Agarwal and Mr. Om Prakash Vaish were not observed to be enjoying connection with other entities and 3 persons viz. Mr. Mukesh Gupta, Mr. Ashish Verma and Mr. Govind Swarup were such that they were found to have no direct connection with either BCCL or Jain Family but were holding directorship not only in PNBFIL but also in some of its Corporate Shareholders viz. *Noticees no. 6 to 9*.

70. In this regard, I find that the *Noticees* have contended that the connection of some of these directors of PNBFIL with BCCL is merely coincidental and their appointment as director on the board of PNBFIL was made after following the proper procedure, as provided under Companies Act, 2013. In fact, they have also submitted that the connection of these directors with BCCL has no impact on their appointment as Independent Directors of PNBFIL.

71. In this regard, I find it necessary to mention here that, in terms of provisions of Section 152(5) of Companies Act, 2013, a person cannot be appointed as director of a company unless he has given his consent to hold the office as director. The reasoning behind the aforementioned provision is that, the moment a person is appointed as director of a company, he enters into a 'contract' with the said company to act as its agent, trustee and/or employee. In this regard, it is clearly mentioned in provisions of Section 10 of Indian Contract Act, 1872 that only those agreements are valid contracts which *inter-alia* are entered into by 'free consent' of the parties. At this stage, I find it necessary to refer to the definition of 'free consent', as prescribed under Section 14 of Indian Contract Act, 1872. The said provision defines free consent as below:

14. "Free consent" defined.—Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

In furtherance of that, I find it necessary to refer to the definition of undue influence, as prescribed under Section 16 of the same act, as below:

*16. **"Undue influence" defined.—(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.***

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

72. The principle of law that evolves from a combined reading of these two provisions viz. Sections 14 & 16 of the Indian Contract Act, 1872 is that a consent given by a person to a person having domination or authority over him cannot be termed as free consent and it will be presumed that the consent is

obtained by the dominant party by imposing undue influence on the subservient party. The burden of proof in this case lies on the dominant party to establish that the consent was not obtained by undue influence and was actually a free consent. This principle of law has been accepted in various fields of law including criminal law also. In fact, applying this principle, the courts have held in a catena of judgments that consent given by an employee to his employer cannot be deemed to be free consent, unless the same is proved to be so.

73. In the present matter, it has already been mentioned that majority of directors of PNBFIL were employees of BCCL at one or other point of time, whose Vice Chairman and MD post was held by *Noticee no. 2*. At the same time, *Noticee no. 3* was holding the position of Whole Time Director of BCCL. This shows that even individually as well as both acting together, *Noticees no. 2 and 3* had the power to 'hire and fire' the employees of BCCL, including those employees who were holding position of director with PNBFIL. Given the fact that *Noticees no. 2* and *3* were also holding the position of the directors of PNBFIL for some time during the Investigation Period and were also controlling over 91.51% of total shareholding of the *Company* through their persons acting in concert, as has been held earlier, it emerges from the aforementioned principle of law and facts of the present matter that the persons connected with BCCL as employees, while holding the position of director in PNBFIL, were under complete domination and control of the Jain Family, and more specifically under the direct control of *Noticees no. 2 & 3*. Also on the strength of their control over 91.51% of total shareholding of PNBFIL, *Noticees no. 2 to 9* were in a position to appoint majority of the directors of the *Company* and thus were in a position to influence and give direction to the decision making process of the *Company* through their proxies who were appointed as the directors on the Board of the *Company*. I find it relevant to point out the case of Ms. Meeta Sachdeva, who was an employee of

BCCL till May 31, 2016. She remained the director of PNBFIL till May 27, 2016. This would show that the appointment of the employees of BCCL as directors of PNBFIL was also subject to their continuance as employees of BCCL and not independent of their employment with BCCL. Ms. Meeta Sachdeva resigned or was removed just prior to her leaving BCCL. This would clearly show that she was not an Independent Director and was mere a proxy of the Jain Family and she had to leave PNBFIL just prior to her resignation *prima facie* because of the fact that after her resignation from BCCL, the Jain Family would not have been in a position to control her actions as a director on the board of PNBFIL.

74. I also find that certain persons were not found to be directly connected with BCCL but were holding directorship in other connected entities and Corporate Shareholders of PNBFIL. For example, Mr. Govind Swarup, a director of PNBFIL, was also a director of *Noticee no. 8*. A cursory reading of Table 7 above shows that *Noticees no. 2 and 3* were holding 94.45% of total shareholding and voting rights of *Noticee no. 8* through their own shares and shares held by persons acting in concert with them. This clearly shows that the appointment of the said director in as many as two companies, was in the hands of the Jain Family including *Noticees no. 2 & 3*. The same facts also apply in the case of Mr. Ashish Verma and Mr. Mukesh Gupta.

75. It is further observed from the details stated in Tables 8 and 9 above that, except for *Noticees no. 2 & 3*, all the employees of BCCL who were appointed as Independent Directors of PNBFIL have been projected to have been appointed as per the applicable law governing the procedure for appointment of Independent Directors. In this respect, it is also essential to understand the legislative intent behind the essence of the concept of Independent Director. As the name itself suggests, an Independent Director is a non-executive director of a company who helps the company in improving corporate credibility and

governance standards to protect the interest of the company as well as the interest of the minority shareholders. An Independent Director is not desired to have any kind of commercial/pecuniary relationship or any other vested interest with the company or any person associated with the company that may affect the independence of his/her judgment. Thus, Independent Director is a person who ought to have '*no material or pecuniary interest*' in the matters related to the company other than earning the sitting fee for attending the meetings of Board of Directors and its various committees. The aforesaid view regarding the Independent Director has also been accepted by the Hon'ble Supreme Court of India, in the matter of *Needle Industries India Ltd. vs Needle Industries Newey (India) Holding Ltd.* (AIR 1981 SC 1298); wherein while reinforcing the interpretation of independent director as '*disinterested*' or '*uninterested*' director, it has been held that Independent Director should be one, who is not having vested interest in the affairs related to the company **in any manner** and should have a completely neutral approach so as to perform his/her role of Independent Director in the best possible manner, protecting the interest of shareholders, particularly the public shareholders.

76. As stated above, the legislative objective of induction of the institution of Independent Director in the board of Directors of a company was to improve the corporate governance framework of the company, more so in a listed company, since a listed company employs the funds of the public shareholders for its business. Therefore, it was felt necessary to have a system of an independent and an impartial oversight over the acts of the Board of Directors by such person(s) who could exercise independent judgment in the best interest of all the stakeholders of the company at large.

77. In these circumstances, adoption of strictly literal interpretation to the concept of 'Independent Directors' and their appointment, as the *Noticees* have tried to

do in the present matter, would defeat the whole purpose of introduction of institution of Independent Director in a company and would lead to continuation of the mischief by the promoters or management which was attempted to be curbed by way of induction of such Independent experts on the Board of directors of the companies.

78. In the present matter, the employees of BCCL were directly under the influence of *Noticees no. 2 & 3* by virtue of their employment with BCCL. In such circumstances where there subsisted a master-servant relationship between those employees of BCCL and *Noticees no. 2 & 3*, it is difficult to imagine if these persons were at all able to act independently on the board of PNBFIL irrespective of whether, the Jain Family was in reality exercising 'undue influence' on them or not. In fact, the proviso to Section 16 of the Indian Contract Act, 1872 clearly places the burden on the *Noticees no. 2 & 3* to establish that these employees of BCCL were not acting under the direct or indirect influence of Jain Family in any manner whatsoever. On the contrary, from the materials available on record, I am of the view that none of the *Noticees* has placed anything on record to suggest that these directors were acting independently and were under no influence of the Jain Family. In fact, none of the *Noticees* has placed anything on record to suggest any dissent/differing opinion ever shown by any of these directors (who were employees of BCCL) to any of the proposals placed by the Jain Family including *Noticees no. 2 & 3* in the meetings of Board of Directors of PNBFIL.

79. In the light of the aforesaid, I find that 6 out of 11 directors of PNBFIL during the Investigation Period were employees of BCCL and were working under the influence of the Jain Family. By placing such persons on the Board of Directors of the *Company*, the Jain Family was positively in a dominant position to exercise control over the Board of Directors of the *Company*.

80. Apart from the aforesaid finding both on facts and in law that the Jain Family is holding such large quantities of shares of PNBFIL through direct holding as well as indirect holding through *Noticees no. 6 to 9* and was also controlling the Board of Directors of the *Company*, SEBI has also found out in the course of its investigation that House No. 9-10, Bahadur Shah Zafar Marg, Delhi, which is mentioned as the registered address of 4 companies including *Noticees no. 1* and *8* along with two other companies, viz: Bharat Nidhi Limited and Ashoka Marketing Ltd., is a property leased to BCCL by its owner Express Newspapers Pvt. Ltd. It appears from the materials available on record that the said property has been leased by its owner to a number of entities over the period of time, but nowhere in the list of these lessee entities the names of *Noticees no. 1* or 8 find any mention. This indicates that either the property was in the possession of some other entity while *Noticees no. 1* (PNBFIL) *and 8* (Camac Commercial Company Ltd) were using it as their registered office or one of the lessees of the aforesaid owner had given the property on sub-lease to *Noticees no. 1 and 8* for their use. However, none of these entities (*Noticees no. 1* or *8*) has come forward to explain as to how and on what basis they were using this property. Moreover, there is no evidence to connect any of the lessees of the aforementioned property with *Noticees no. 1 and 8* except for BCCL, whose connection with PNBFIL has already been dealt with elaborately in this order.

81. Similarly, it is also found during the course of investigation that House No.16-A LPN IV, at Lajpat Nagar, New Delhi is owned by BCCL and the same is shown as the registered address of Sahu Jain Ltd. and Arth Udyog Ltd. in MCA Records. In addition to that, House No. B-77-A, at Greater Kailash-I Delhi was sold by one Mr. Raj Kishan Khanna to Bennett Property Holdings Co. Ltd., a group company of BCCL and the said address has been used as the registered address of *Noticees no. 6 and 9*. These facts have not been disputed by any of the *Noticees*

either in their written submissions or during the course of personal hearing. These facts again indisputably establish the connection of BCCL with PNBFIL and its Corporate Shareholders as well. Given the fact that *Noticees no. 2* and *3* were the directors of BCCL as well as shareholder-directors of *Noticee no. 1*, the connection of these entities get further strengthened and cemented beyond any doubt.

82. In the light of all these facts and evidences placed on record, I find that the Jain Family was acting as one coherent group during the Investigation Period. Further, I find no difficulty in concluding that by the use of cross-holding of shares, the Jain Family was controlling majority of shares of *Noticees no. 6 to 9* and it was the only repository of human wisdom which was in control of majority of the shares of *Noticees no. 6 to 9* by way of their direct holding and cross-holding of shares of PNBFIL as well as those of the *Noticees no. 6 to 9*. By controlling these Corporate Shareholders of PNBFIL, the Jain Family was controlling a collective of 91.51% of total shareholding of the *Company*. At the same time, using their voting rights to the extent of 91.51% of total shareholding and voting rights of PNBFIL through their direct and indirect shareholding held through a web of cross holdings as discussed earlier, the Jain Family appointed their subordinates/employees in BCCL as the directors of PNBFIL so as to exercise absolute control over the decisions that were to be taken in the Board of Directors of the *Company*.

83. Before moving ahead, I find it necessary to deal with the submissions of the *Noticees* regarding allegation of them exercising control over PNBFIL. The *Noticees* have contended that they were acting individually and were not acting as a group. Therefore, individually, none of them had sufficient number of shares to exercise control over the affairs of the *Company*. In support of their submissions, they have relied heavily on the finding and observations of Hon'ble

SAT in its order dated January 15, 2010 in the matter of *Subhkam Ventures (I) Pvt. Ltd. vs. SEBI* and judgment dated October 04, 2018 in the matter of *ArcelorMittal India Pvt. Ltd. vs. Satish Kumar Gupta & Ors.*.

84. Before analysing the observations of Hon'ble SAT in Subhkam Ventures (supra) and the facts in context of which such observations were made, I find it relevant to refer to the judgment of Hon'ble Supreme Court of India in the matter of Union of India vs. Dhanwanti Devi [(1996)6 SCC 44], wherein the Apex Court observed that:

"*9. .....Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found…*"

Similarly, in the judgment of The Regional Manager vs. Pawan Kumar Dubey [(1976)3 SCC 334], Hon'ble Supreme Court of India made the following observations:

"*7. ……Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar.* ***One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.***" (emphasis supplied)

The aforementioned observations made in both these judgments were again affirmed by Hon'ble Supreme Court of India in its recent judgment dated May 05, 2022 in the matter of Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation (Civil Appeal 3657/2022).

85. In the light of the afore-discussed observations, I find it necessary to examine the context in which the observations regarding the definition of 'control' was interpreted by Hon'ble SAT in Subhkam Ventures (supra). In the said matter, I find that the appellant therein was allotted preferential shares of the target company therein and by virtue of this, it had acquired 17.90% of the post preferential issue of equity capital. For the purpose of the said acquisition, the appellant therein had entered into a tripartite share subscription and shareholders agreement with the existing promoters of the target company and the target company. It was stipulated in the said agreement that the appellant therein was only a financial investor in the said target company and he shall not be considered to be a promoter of that company and that the control and management of the said target company shall continue to vest in the existing promoters and that the appellant shall not acquire control and management of that company for any reason whatsoever. In the context of these facts, the Hon'ble SAT rejected the notion of 'negative control' in its order dated January 15, 2010 in Subhkam Ventures (supra). However, at the same time, to avoid any kind of misconstruction, Hon'ble SAT also made the following observations in the same order:

"*In a board managed company, it is the board of directors that is in control.* ***If an acquirer were to have power to appoint majority of directors, it is obvious that he would be in control of the company*** *but that is not the only way to be in control. If an acquirer were to control the management or policy decisions of a company, he would be in control. This could happen by virtue of his shareholding or management rights or by reason of shareholders agreements or voting agreements or in any other manner.*" (emphasis supplied)

86. Similarly, I find that in the matter of ArcelorMittal (supra), the matter to be examined was whether the appellant therein was exercising control over the affairs of one Uttam Galva Steels Limited (hereinafter referred to as 'Uttam

Galva') by virtue of its holding of 29.05% of total shareholding of the said company. Hon'ble Supreme Court noted that the said appellant had right to appoint one half of non-independent directors on the board of Uttam Galva and it was mentioned in the shareholder agreement that the independent directors shall be jointly nominated by the aforementioned appellant along with the existing promoter of Uttam Galva. By virtue of this, the appellant therein was declared promoter and it had made open offer in terms of SAST Regulations. In this context, Hon'ble Supreme Court had held that the appellant therein was exercising positive control over Uttam Galva and was a promoter.

87. Contrary to the facts of Subhkam Ventures, the facts of the present matter show that, by acting in concert with one another, the *Noticees no. 2 to 9* were controlling the affairs of the *Company* in the positive way due to their control over a total of 91.51% of total shareholding of the *Company*. The facts of the aforementioned two cases show that the observations relied upon by the *Noticees*, as made in Subhkam Ventures (supra) and affirmed in ArcelorMittal (supra), have no application in the present case. In fact, the case of the *Noticees* is closer to ArcelorMittal where ArcelorMittal was held to be exercising positive control in the manner mentioned above, and was therefore, declared a promoter.

88. In this context, I find that the majority of shares to the extent of 91.51% of total shareholding of the *Company* were held by *Noticees no. 2 to 9*. Given the fact that it was essentially the Jain Family which represented the actual natural persons behind all the companies involved in the present matter, be it PNBFIL or its Corporate Shareholders, they were the only group of natural persons who were in position to take a decision in one or other Corporate Shareholders of PNBFIL and consequently were in position to take all decisions in the affairs of PNBFIL.

89. In these circumstances, using such control over the *Company* by virtue of their combined shareholding, the *Noticees no. 2 to 9* were appointing employees of

BCCL and other persons connected with the Jain Family as the Directors of PNBFIL so as to practically control the affairs of the *Company* unopposed. By cornering such enormous controlling shares and appointing their connected persons as Directors of PNBFIL, these persons were exercising complete control over the affairs of the *Company*, be it through their shares or through the management of PNBFIL.

90. In the light of these facts, I now move to the definition of Promoter under Regulation 2(1)(za) of ICDR Regulations, 2009, which declares any person or group of persons in control of the affairs of an issuer company as promoter of such issuer company, whether such person or group of persons is disclosed so or not. In this regard, I am of the view that the facts elaborated above are sufficient to establish that *Noticees no. 2 to 9* were acting as one coherent group and were exercising complete control over the affairs of PNBFIL (*Noticee no. 1*). Therefore, I have no qualms in holding that *Noticees no. 2 to 9*, by virtue of being in a position to manage and influence of decision of the *Company*, were occupying the position of promoters of the *Company*.

91. Keeping this in perspective, I now proceed to deal with the actual violations alleged in the present matter. The allegations in the present matter are three-fold:

    91.1. Wrongful disclosure of promoter shareholding

    91.2. Non-disclosure of their shareholding by promoters

    91.3. Misrepresentation/Wrongful disclosure regarding promoter/public shareholding

    91.4. Wrong constitution of Audit Committee of the *Company*

    91.5. Non-compliance of MPS Requirement

Wrongful Disclosure of Promoter shareholding of the *Company*

92. In terms of provisions of Regulation 31(1)(b) of the LODR Regulations and clause 35 of Equity Listing Agreement, every listed company is required to submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by SEBI on a quarterly basis, within twenty-one days from the end of each quarter. A cursory reading of the format prescribed for the aforementioned disclosure shows that the listed company has to specifically provide for details of shares held by promoters/promoter group and shares held by public shareholders of the company.

93. It is alleged that PNBFIL did not disclose *Noticees no. 2 to 9* as its promoters in any of the aforementioned quarterly disclosure during the Investigation Period and always disclosed to have no promoter shareholding and rather always claimed that 100% of its shares were being held by public shareholders. In the light of this and my aforesaid observations, it has been alleged that PNBFIL has failed to disclose *Noticees no. 2 to 9* as its promoters and the *Company* was wrongly disclosing to have no promoter shareholding. By doing so, the *Company* has alleged to have violated the provisions of Regulation 31(1)(b) of LODR Regulations as well as Clause 35 of Equity Listing Agreement.

94. In terms of the provisions of Regulation 2(1)(za) of ICDR Regulations, any person or a group of persons, who is either named so in the prospectus of the company or who is in control of the affairs of the company is defined as a promoter. In this regard, it has already been established that the *Noticees no. 6 to 9* were acting in concert with the Jain Family in the light of the fact that the Jain Family was the only group of individual shareholders in all these corporate entities holding substantial stakes in these entities. A major part of rest of the shares of each of the *Noticees no. 6 to 9* are being held in a cross-holding manner

by the entities controlled by the Jain Family only. Due to such shareholding structures of these corporate Noticees (*Noticees no. 6 to 9*), the Jain Family was effectively controlling the affairs of *Noticees no. 6 to 9* and through them ultimately it was also controlling 91.51% of total shares and voting rights in PNBFIL. Further, due to such overwhelming percentage of controlling voting rights to the extent of 91.51% of total shareholding, indirectly being held in PNBFIL through these corporate entities viz. *Noticees no. 6 to 9*, which are closely connected with as well as controlled by the Jain Family members, the said family is in a position to control every possible aspect of the *Company*. This observation gets corroborated from the very fact that the registered address of PNBFIL was actually leased to BCCL by the owner of the premise and majority of directors on the Board of Directors of PNBFIL happened to be employees of BCCL which was undisputedly directly being managed and controlled by the Jain Family. Therefore, by virtue of their complete control over the affairs of PNBFIL, *Noticees no. 2 to 9* had to be necessarily held as the promoters of the *Company* under the compelling factual evidence and under unambiguous provisions of law prescribed under Regulation 2(1)(za) of ICDR Regulations during the Investigation Period.

95. The same definition of promoter has been incorporated under LODR Regulations by virtue of Regulation 2(1)(w) of LODR Regulations. Therefore, an entity, which is a promoter of a listed company in terms of provisions of ICDR Regulations, is required to be disclosed so by the listed company in the quarterly disclosures under the provisions of Regulation 31(1)(b) of LODR Regulations as well as Clause 35 of Equity Listing Agreement.

96. It is a matter of fact that PNBFIL did not disclose any one of *Noticees no. 2 to 9* as its promoter for any single quarter during the investigation period. The same has been impliedly admitted by the *Company* in its reply. Therefore, by failing to

disclose *Noticees no. 2 to 9* in the aforementioned quarterly disclosures, the *Company* has repeatedly violated the provisions of Regulation 31(1)(b) of LODR Regulations as well as Clause 35 of Equity Listing Agreement.

97. It is also relevant to mention here that the provisions of Regulation 30(2) of SAST Regulations require the promoter of every listed company along with persons acting in concert with him to disclose their aggregate shareholding and voting rights in the said company to the stock exchanges. In terms of provisions of Regulation 30(3) of SAST Regulations, the said disclosure is required to be made to all the stock exchanges, wherever the company is listed, within seven working days from the end of every Financial Year in the form specified for such purpose. This is annual disclosure which was required to be made by all the promoters to reveal promoter shareholding of the listed company as of the end of every Financial Year.

98. I note from the provision of Regulation 2(1)(s) of SAST Regulations that the definition of promoter under ICDR Regulations has been adopted by SAST Regulations also. Therefore, by virtue of this provision, *Noticees no. 2 to 9* take the place of promoters of the *Company* under ICDR Regulations, as they have already been established in the preceding paragraphs. Therefore, the obligation of disclosure under Regulation 30(2) falls upon *Noticees no. 2 to 9* due to their position as promoters of the *Company* as determined above based on irrefutable reasoning arising out of strong factual support and compulsions of relevant law.

99. I find from the materials available on record that none of the promoters viz. *Noticees no. 2 to 9* have made any such disclosure at the end of any financial year falling within the Investigation Period. The said position has not been disputed by any of the *Noticees no. 2 to 9*. Their contention of not being the promoters of the *Company* has already been dealt with and properly rejected in pre-paragraphs of this order and I don't deem it necessary to reiterate the same here.

100. In the light of this, I find that *Noticess no. 2 to 9* have failed to comply with the disclosure requirement of provisions of Regulation 30(2) read with Regulation 30(3) of SAST Regulations. I find that the said requirement has been floundered by the *Noticees no. 2 to 9* during all the financial years falling within the scope of Investigation Period viz. FY 2013-14 to FY 2018-19.

101. Similarly, it is required under the provisions of Regulation 7(1)(a) of PIT Regulations, every promoter, key managerial personnel and director of every listed company is required to disclose his holding of securities of such listed company within thirty days of PIT Regulations coming into effect. The said disclosure is required to be made by the Promoters to the company.

102. In this regard, I note that PIT Regulations had come into force on May 15, 2015. Therefore, the *Noticees no. 2 to 9* were required to make one-time disclosure of promoter shareholding to PNBFIL on or before June 14, 2015. However, neither any evidence of such disclosure is available on record nor such a claim of any disclosure has been made by the *Noticees no. 2 to 9* in their respective replies.

103. Therefore, I find that *Noticees no. 2 to 9* have failed to comply with the disclosure requirement with respect to promoters of PNBFIL in terms of the provisions of Regulation 7(1)(a) of PIT Regulations. I find that the said requirement has been floundered by the *Noticees no. 2 to 9* on one occasion i.e. upon the PIT Regulations coming into force in May 2015.

Misrepresentation/Wrongful disclosure regarding promoter shareholding

104. At this stage, I find it necessary to refer to the definition of 'fraud', as provided under Regulation 2(1)(c) of PFUTP Regulation. The same is as below:

> *Reg. 2(1)(c) "fraud" includes any act, expression,* ***omission or concealment*** ***committed whether in a deceitful manner or not*** *by a person or by any other person with his connivance or by his agent while dealing in securities* ***in order to induce another***

person *or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

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

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

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

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

(5) 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 behaviour by a person depriving another of informed consent or full participation****,*

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

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

And "fraudulent" shall be construed accordingly;

105. In this context, I find it necessary to emphasize once again on the necessity for investors and public shareholders of a company to know the promoters of the company. It is the promoters who are in control of the company and in most of the cases, it is the promoters who pull the strings on the affairs of the company, decide the direction of its future growth and take the company forward. As any company generally works for the benefit of its shareholders, it is the promoter group who is in control of the affairs of the company by virtue of its majority shareholding and voting rights either directly, or indirectly as in this case, or even by exercising *de facto* control over the affairs of the company by appointing majority of the directors as per their choice, as seen in this case, which becomes

the largest beneficiary of such benefit that may accrue from the business operations of the company. Such benefits motivate them to take company to new heights. Therefore, public investors and shareholders invest or remain invested in a company after evaluating a number of factors related to promoters viz. the motivation level, the keen business understanding, the fair conduct, integrity and honesty of promoters and their ability to bring right kind of people to the company to take the company forward etc.

106. Another crucial importance for identifying or ascertaining the names of the promoters is that there are certain companies where no single shareholder or a group of shareholders may hold shares to the extent of holding controlling stakes in the affairs of the company. In such a scenario, where no particular shareholder or group of shareholders can be classified as a promoter or promoter group, the affairs of the company are generally found to be run in a professional manner so as to benefit all the shareholders of such company. In these kind of companies, it is seen that the shareholders holding large stakes prefer to appoint certain professionals having no or negligible shareholding interest to run the affairs of the company. In such companies, the senior management is generally filled with professionals who only work on salary and perks basis. The Board of Directors of such companies are also filled in such a manner that, apart from having Independent Directors, the Board comprises the nominees of large stakeholders as well, while the day to day management of the company are looked after by professional managers appointed by the Board of Directors. Such kind of companies are often called 'Professionally Run Companies'.

107. While history is replete with numerous examples of mis-governance and abuse of powers in the promoters driven companies for some reasons or other, professionally run company are generally perceived to be less susceptible to misuse of power or mis-governance. It is seen in certain developed capital

markets such as United States of America and United Kingdom that large institutional investors as well as smaller public investors prefer to invest in these kind of professionally run companies as the Board of Directors of these kind of companies are perceived to be more independent in nature and better placed to exercise proper due diligence over the actions of the management of the company. In fact, over the period of time, many promoter-driven companies have also transformed themselves into professionally run companies wherein promoters take back seat in favour of professionals running the company as this would inherently benefit them in terms of increase in valuation of the company.

108. Keeping the aforesaid general public impression about promoter led *vis-à-vis* professionally managed companies, when one is confronted with a situation as in the present matter, wherein the *de facto* promoters of the listed company PNBFIL, holding absolute control over the affairs of the said *Company* through a layer of connected Corporate Shareholders of PNBFIL and yet deliberately abstaining from disclosing themselves as the promoters and instead have been projecting themselves as public shareholders to the investors and public at large, it can be clearly stated that these promoters have deliberately deprived the other public shareholders and investors of the crucial details about the promoters which is required to be known to them to take an informed investment decision w.r.to the *Company*. Further, by falsely misrepresenting PNBFIL as a professionally run company, which was in essence nothing but a promoters controlled and family run company, the *Noticees* have militated against the provisions of all the aforesaid SEBI Regulations, both in letter and spirit.

109. Thus, the Jain Family has resorted to a shrewd strategy of presenting the *Company* as a professionally and non-promoter run company which was practically not correct. Such a pretentious projection about PNBFIL smacks of an illicit intent on the part of the Jain Family to attract gullible investors through a misleading

portrait of the *Company* whereas by remaining two steps behind the corporate veil, they were controlling and managing the affairs of not only PNBFIL but also other connected corporate entities.

110. Laying this scheme in the present matter, the *Company,* where shareholding of much more than the permitted limit of 75% of total shares is being held by a promoter group, who have appointed their employees at BCCL on the Board of Directors of the *Company*, is fraudulently being represented as a 'Professionally Run company' whereas the same is actually being run under the control of a distinct promoter group (Jain Family) from behind the corporate veils of those Corporate Shareholders (*Noticees no. 6 to 9.*), along with their own shareholding The same was being done through deliberate concealing of the details of actual promoters and by presenting those actual promoters to the public as public shareholders without mentioning anywhere in their disclosures as to how these promoters and their connected Corporate Shareholders of the *Company* were acting in concert with one another in a deceitful manner to the detriment of the interest of its real public shareholders. Under the circumstances, it can be said that due to their ignorance about the promoters' shareholding, the actual public shareholders had failed to take any remedial measures about their investment decision in the *Company* who in their good faith and on the basis of available information, all along believed that PNBFIL was not under the control of any identifiable promoter or promoter group and that it was being run as a professional company. Therefore, as one would anticipate in such types of matters, the suppression of facts about the promoters of the *Company* has led to various allegations of minority oppression as alleged by the actual public shareholders in a number of litigations against the *Company*.

111. The afore discussed violations and apparently motivated misconduct on the part of the *Company* and other *Noticees* demonstrate that such misconduct of *Noticees*

in the present matter squarely falls within the domain of fraudulent misrepresentation and the same amounts to fraud committed on the public shareholders and investors in terms of provisions of Regulations 2(1)(c)(1), 2(1)(c)(3) and 2(1)(c)(7) of PFUTP Regulations. Such fraudulent misrepresentation can be said to have induced the public shareholders of the *Company* to stay invested in the *Company* under the erroneous impression that the *Company* is a professionally run company. The same is visible from the frustration of investors who have taken all possible routes to litigation against a number of decisions taken by the *Company*.

112. All the aforesaid discussions clearly establish that the *Noticees* have jointly and maliciously misrepresented the *Company* to be a professionally run company having no promoter, despite clearly knowing that the Jain Family was the actual promoter of the *Company* practically through their holding 91.51% of its total shareholding of the *Company*, directly as well as indirectly. By misrepresenting the *Company* to be a professionally run company, the *Noticees* have induced the investors and public shareholders to invest or remain invested in the shares of the *Company* especially those shareholders and investors who take their investment decisions in favour of professionally run companies. I hold that such deceitful acts of the *Noticees* clearly fall within the definition of fraudulent conduct and therefore, by doing so, the *Noticees* have violated the provisions of Regulations 3(b), 3(c) and 4(1) of PFUTP Regulations.

Wrongful Composition of Audit Committee of PNBFIL

113. In terms of provisions of Regulation 18(1) of LODR Regulations, a listed company is required to constitute a qualified and independent audit committee, which shall have a minimum of three directors as its members of which two-thirds members are mandatorily required to be independent directors. Further, the chairperson of the audit committee is required to be an independent director.

114. It is noticed that the following directors constituted the audit committee of the *Company* in the Financial Year 2018-19:

Table 10: Audit Committee of PNBFIL during Financial Year 2018-19

Name	Designation	Type of Directorships	Tenure
Mr. Govind Swarup	Chairman	Non-Executive & Independent Director	Continuing (appointed w.e.f. July 18, 2002)
Mr. Mohit Jain	Member	Non-Executive & Independent Director	Continuing (appointed w.e.f. October 25, 2013)
Mr. Mukesh Gupta	Member	Non-Executive & Independent Director	August 2, 2014 till April 16, 2018
Mr. Rakesh Dhamani	Member	Non-Executive & Independent Director	Appointed as member w.e.f. April 16, 2018

Thus, it is the case of the *Company* that its Audit Committee was constituted for the Financial Year 2018-19 in a proper manner having 4 independent directors as its members.

115. However as discussed in earlier paragraphs, it has already been admitted that Mr. Mohit Jain is an employee of BCCL since 2003. He is also holding the position of a Director in AVL/*Noticee no. 6* since 2018 and is a director in Punjab Mercantile and Traders Limited. Further, Mr. Rakesh Dhamani is also an employee of BCCL since February 2012.

116. It has already been explained in detail earlier as to how, appointment of the employees of BCCL as Independent Directors in PNBFIL was not in compliance with the spirit of the relevant provisions pertaining to the Independent Directors under LODR Regulations and Companies Act, 2013, and how such act of appointing employees of BCCL completely erodes the purpose for which the institution of independent directors was introduced in corporate governance regimen of India. Under these circumstances, these two persons cannot be treated as independent directors given the hard reality that these two persons, as employees of BCCL, owed their livelihood to BCCL which in turn rested in the hands of *Noticees no. 2 & 3* who effectively held the power to 'hire and fire' these two persons, viz: Mr. Mohit Jain and Mr. Rakesh Dhamani during the

Investigation Period. Therefore, any of their consent given to the agendas placed in the meeting of Board of Directors of PNBFIL cannot be said to be a free consent and such consent to agenda items or signature to any such Board resolutions given by these two directors was bound to have been given under the undue influence of the Jain Family who were their employers, as these two so called independent directors had no option but to remain mute spectators to the board proceedings that were being chaired, handled and conducted by their employers who have put them on the Board as dummy directors only to further their own personal interest. Under the circumstances, I cannot allow the *Noticees* to misuse the lacunae, if any, in the extant definition of Independent Directors as prescribed under law so much so that they can make a mockery of the provisions of law surrounding the independent directors and dare to defeat the sacrosanct legislative intent behind creating such an institution of independent directors under corporate governance framework of India.

117. Therefore, I firmly reiterate my aforesaid views and hold that Mr. Mohit Jain and Mr. Rakesh Dhamani cannot be construed as 'Independent Directors' on the Board of Directors of the PNBFIL as per the provisions of Companies law as well as the LODR Regulations. Given the fact that the aforesaid two persons were made members of Audit Committee in the capacity of them being independent directors, the constitution of Audit Committee itself gets grossly vitiated and defeats the provisions of Regulation 18(1) of LODR Regulations, as half of the members of the Audit Committee were directors who were in effect and reality not independent, as opposed to the requirement of 2/3rd of members being independent directors. Therefore, by constituting an Audit Committee during Financial Year 2018-19 in repudiation and by disrespecting to the provision of Regulation 18(1) of LODR Regulations both in letter and spirit, I hold that the *Company* has violated the aforementioned provision of law.

Non-Compliance with Minimum Public Shareholding

118. A new rule i.e. Rule 19A was inserted in SCR Rules, 1957 which introduced the requirement for all the listed companies to achieve and maintain the Minimum Public Shareholding (in short '**MPS**') of at least twenty-five per cent of total shareholding of the company. The said provision had come into force on June 04, 2010. As a one-time relaxation, all the listed companies not compliant with the aforementioned MPS requirement were given three years' time i.e. till June 03, 2013 to comply with it, in the manner specified by SEBI. In furtherance of the same, various circulars have been issued by SEBI from time to time, specifying the methods that can be adopted for complying with the MPS requirements.

119. The said requirement has also been incorporated under Regulation 38 of LODR Regulations which specifies that every listed company is required to comply with the minimum public shareholding requirements as specified under Rule 19(2) and Rule 19A of SCR Rules, 1957.

120. One of the objectives behind introduction of MPS Requirement was to ensure availability of a minimum portion/number of shares (also called 'floating stock' in common parlance) of the listed securities with the public shareholders which the public shareholders can use for trading on the stock exchanges as per their wish which would in turn facilitate reasonable depth and liquidity in the market and because of frequent trading of the shares by the public shareholders, the prices of such frequently traded securities may become less susceptible to manipulation. Moreover, a dispersed shareholding structure of a listed company is also essential for the sustenance of a continuous market for listed securities to provide liquidity to the public shareholders and investors and to discover fair prices.

121. Another objective behind introduction of MPS Requirement was to provide meaningful voice to the public shareholders of the listed companies, as excessive control of promoters/promoter group over the company may lead to misuse of their position and ultimately cause oppression of the minority public shareholders. This would defeat the very purpose of introduction of public shareholders in a company. Without a meaningful voice, the public shareholders would be left as mere passive spectators to the wrongdoings by the promoters. Since oppression of public shareholders and excessive control by promoters (having majority stakes in the company) over a listed company was perceived to be a big hindrance for the development of securities market in India as no person would want to invest his money in a company where he has no voice, it prompted the Government to democratize the Capital Market by inserting provisions such as Rule 19A in SCR Rules, 1957.to keep a minimum number of shares with public shareholders in order to increase depth of securities market as well as to provide a meaningful voice to the public shareholders of the listed company.

122. However, contrary to the afore-stated noble intention of the Government and behind the spirit of the above said insertion of new provision in SCR Rules, 1957, it is clearly established in the light of the facts of the extant matter and discussions made above, that the promoters of PNBFIL (*Noticee no. 1*) viz. *Noticees no. 2 to 9* were together, acting in concert, holding 91.51% of total shares of the *Company* in utter disregard to MPS requirement as stipulated in the afore-cited provisions of SCR Rules, 1957 and LODR Regulations. In fact, neither PNBFIL nor its promoters have even made any attempt at any point of time, either prior to or during the Investigation Period, to reduce promoters' shareholding to achieve MPS as required under Rule 19A(1) of SCR Rules, 1957 and Regulation 38 of LODR Regulations. Therefore, I hold that the *Noticees* have violated the provisions of aforementioned provisions of law.

123. At this stage, I find it necessary to observe that by fraudulently disclosing the promoters as public shareholders, the *Noticees* have not only defrauded the actual public shareholders, they have also defrauded the Regulator into believing that the *Company* was in compliance with MPS Requirement. Therefore, while SEBI has, in the past, passed numerous orders issuing strictures and directed companies to comply with MPS requirements, wherever they had been found to be non-compliant of the said provisions, it is now clear that PNBFIL has always evaded punitive and remedial action of SEBI by resorting to its fraudulent disclosures about its promoters and also by deceitfully camouflaging the real promoters as their public shareholders due to which, no red-flag could be raised at *prima-facie* level. Such a fraud committed by the *Noticees*, all acting in concert, both against the public and the Regulator, cannot be discarded lightly as the same would lead to erosion of trust of investors in securities market and in the regulatory oversight by SEBI. Given the sacrosanct statutory duties to protect the investors and to safeguard the integrity of the securities market, that has been conferred on SEBI under the securities laws, it is necessary that such deviant conduct and glaring violation of laws are dealt with firmly so as to insulate the securities market and investors from the fraudulent actions of unscrupulous persons such as the *Noticees* in this case, who have indulged in such unfair practice of dodging the law to fulfil their dubious personal agenda.

124. A basic premise that underlies the integrity of securities market is that participants conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws and not to resort to fraudulent activities. In this case, the conduct of the *Noticees*, as brought out quite succinctly in the foregoing discussions has been violative of this basic obligation cast by law. This is also a fit case where SEBI needs to send out a firm message to deter the companies and their promoters from indulging in such acts of unethical,

unfair and fraudulent behaviour as observed in this case. In my view, in the facts and circumstances of this case, a strong deterrent action needs to be taken by way of present order. Therefore, it is the duty of SEBI to impose exemplary punishment upon the *Noticees* so as to not only punish the *Noticees* for their wrongdoings but also to send a strong message to market so that no one would consider to make such kind of fraudulent disclosure in future.

125. I am of the considered opinion that the persons forming part of the promoter/ promoter group of such non-complaint companies are mainly responsible for the non-compliance with the MPS requirements within specified timelines. It is the duty of the promoters/promoter group of such companies to nudge the company to comply with MPS Requirements by using any of the methods prescribed by SEBI or by approaching SEBI to allow them to adopt any other method that may be legally permissible to follow, to comply with the MPS norms. Due to their controlling stake, the promoters are better placed to dictate the Board of Directors to comply with MPS Requirements. However, in the present matter, it was both the *Company* and its promoters who are found to be complicit in non-compliance of MPS Requirement. Therefore, directions are required to be issued to both the *Company* and its promoters to compel them to comply with MPS Requirements.

126. In addition to that, I further note that the SCN calls upon *Noticee no. 1* viz. PNBFIL to show cause *inter alia* as to why penalty under Sections 15A(b), 15HA and 15HB read with Sections 11(4A) and 11B(2) of the SEBI Act, 1992 and Section 23E read with Section 12A(2) of SCR Act, 1956 should not be imposed upon it for the alleged violation of the provisions of law.

127. Similarly, the SCN also calls upon *Noticees no. 2 to 9* to show cause *inter alia* as to why penalty under Sections 11(4A) and 11B(2) read with 15A(b), 15HA and 15HB of the SEBI Act, 1992 and under Section 23H read with Section 12A(2)

of SCR Act, 1956 should not be imposed upon them for the violations of various provisions of SEBI Act, 1992, SCR Act, 1956, PFUTP Regulations and Listing Agreement, as discussed in this Order.

128. I note that the powers vested upon SEBI under Sections 11(4A) and 11B(2) of SEBI Act, 1992 and Section 12A(2) of SCR Act, 1956 are without prejudice to the powers to issue directions under Sections 11(1), 11(4A) and 11B(1) of the SEBI Act, 1992 and Section 12A(1) of SCR Act, 1956. In this regard, I note that Sections 15A(b), 15HA and 15HB of the SEBI Act, 1992 and Section 23E & 23H of SCR Act, 1956 provide as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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.*

SCRA

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or 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.*

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.*

129. In view of the aforesaid findings which clearly establish that the *Noticees* have violated the provisions of the SEBI Act, 1992, PFUTP Regulations, LODR Regulations, SCR Rules, 1957 as well as provisions of Listing Agreement, the *Noticees* are liable to be held guilty of failure to make true and fair disclosure, thereby defrauding the public shareholders of the *Company* and investors at large, by presenting a misleading picture regarding promoters' shareholding of the *Company* whereas PNBFIL has also been found to have failed to comply with MPS requirement, as mandated under SCR Rules, 1957 and LODR Regulations, despite knowing perfectly well that its shareholding structure and the peculiar profile of its certain shareholders actually do not confirm to MPS Requirements.

130. In view of the detailed factual analysis and deliberations as well as my observations recorded in the foregoing paragraphs of this Order with regard to failure to disclose and presenting misleading picture as well as non-compliance with MPS Requirement by these *Noticees* during the Investigation Period as alleged in the SCN, I find that the aforesaid nine *Noticees* are liable for issuance of appropriate directions, under Sections 11(4) and 11B(1) of SEBI Act, 1992

and Section 12A(1) of SCR Act, 1956 as well as for imposition of appropriate penalty under Sections 11(4A) and 11B(2) read with Sections 15A(b), 15HA and 15HB of SEBI Act, 1992 as well as under Section 12A(2) read with Sections 23E & 23H of SCR Act, 1956.

131. In this regard, I find that Section 15J of SEBI Act, 1992 and Section 23J of SCR Act, 1956 provide factors to be considered while imposing the penalties. The said factors that are common under both the aforesaid provisions are reproduced below:

(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.

At the same time, it is a well settled position of law that the above listed three factors are not exhaustive in nature and the adjudicating authority, while deciding levy of penalty in a matter, may take into account any other relevant factors for consideration beyond the aforementioned factors.

132. In this regard, I find that there is no allegation of any unfair gains made by any of the *Noticees* in the present matter. However, it is a matter of fact that, due to their non-compliance with MPS Requirement, and holding of control over shares as well as voting rights of as much as 91.51% of total shareholding as well as voting rights in the *Company,* practically no floating shares for trading and no liquidity, whatsoever, was available in the market and no trading had in fact taken place in the scrip of *Company* during the whole Investigation Period. Due to this, the public investors were deprived of their right of price discovery of the shares of the *Company* which led them to hold on to the shares of the *Company* in the

hope that someday rightly discovered market price of their shares in the *Company* may be available on stock exchange platform. As the non-compliance of MPS Requirement had continued for a long period of six financial years, at no point of time any actual price discovery of shares of the *Company* could take place on the stock exchange platform. It is important to mention here that *Noticee no. 5* was a promoter of the *Company* for two and a half years during the IP i.e. from April 01, 2013 to September 2015 only and *Noticee no. 4* was the promoter of the *Company* for rest three and half years of IP due to transfer of shareholding of *Noticee no. 5* to *Noticee no. 4*. At the same time, the *Company*, though had constituted its Audit Committee in FY 2018-19, the same was not in compliance with the requirement of the provisions of LODR Regulations. It has also been established that the *Company* has repeatedly disclosed patently false shareholding pattern thereby showing zero Promoters' shareholding and in essence, was disclosing that it does not have any promoter entity in the *Company*. By making such false disclosures on six occasions in annual disclosures made after ending of financial years 2013-14 to 2018-19, the *Company* has violated the provisions of SAST Regulations, which require annual disclosure by a listed company of its promoters' shareholding at the end of every financial year in prescribed format. At the same time, *Noticees no. 2 to 9* did not make any annual disclosure at the end of the aforementioned financial years, which was required to be made by promoter of a listed company at the end of every financial year under the provisions of SAST Regulations. By their aforementioned failure, the *Noticees no. 2, 3* and *6 to 9* have violated the provisions of SAST Regulations on six occasions when no disclosures were made by them after ending of every financial year starting from FY 2013-14 till FY 2018-19 and they have also evaded the requirement of one time disclosure (about promoter shareholding) under PIT Regulations at the time of the said Regulations coming into force. The said

violation of SAST Regulations was committed by *Noticee no. 5* on 2 occasions and by *Noticee no. 4* on 4 occasions and *Noticee no. 5* has also violated the provision of PIT Regulation regarding one time disclosure of promoter shareholding. At the same time, the *Company* has made false disclosures in its quarterly shareholding pattern, required to be made after ending of every quarter in terms of Listing Agreement and LODR Regulations, as it has disclosed zero promoter shareholding and was repetitively disclosing *Noticees no. 2 to 9* as its public shareholders. This violation has been committed by the *Company* on 24 occasions. These omissions clearly establish that the violations in the present matter have been repetitive in nature and have been acts of deliberate non-compliances by the *Company* as well as by the promoters themselves. Therefore, I have considered all these relevant factors in deciding and determining the penalty leviable on the *Noticees* in the present matter.

133. At this stage, I find it necessary to mention that, vide email dated July 31, 2021, the Authorized Representative of *Noticee no. 4* has intimated SEBI that the said *Noticee* had passed away on May 13, 2021. In support of this, the Authorized Representative has also submitted a death certificate dated May 18, 2021 issued by South Delhi Municipal Corporation. In light of this, the proceedings against the said *Noticee* stands abated. I also note from the submissions of the *Noticees* that *Noticee no. 5* is not holding any share of the *Company* as of today.

ORDER

134. Having carefully considered the materials available on record and the submissions advanced by the *Noticees*, based on the facts & evidences available on records and having due regard for the principles of preponderance of probabilities, I hold that the charges relating to violation of the provisions of the SEBI Act, 1992, the PIT Regulations, the PFUTP Regulations, the SAST Regulations, LODR Regulations, Equity Listing Agreement and SCR Rules, 1957

as brought out in detail in the SCN and deliberated at length in this Order, are found to have been substantially established. Hence, considering the gravity of the violations so found established against the *Noticees*, I am of the view that to meet the ends of justice, it will be sufficient to pass following directions, while exercising the powers conferred upon me under Section 11(1), 11(4), and 11B(1) read with Section 19 of the SEBI Act, 1992 and Section 12A(2) of the SCR Act, 1956:

a. The *Noticees* are directed to make proper and complete disclosures under various provisions of law declaring *Noticees no. 2, 3* and *6 to 9* as promoters of the *Company*.

b. The Calcutta Stock Exchange is directed to take actions against the *Noticees* in terms of instructions contained in para 4.2 of SEBI Circular ref. CFD/CMD/CIR/P/2017/115 dated October 10, 2017 with immediate effect. Action in terms of para 4.3 of the aforementioned circular has to follow in due course, if required.

c. Till such time PNBFIL complies with MPS Requirements, the promoters of the *Company* viz. *Noticees no. 2, 3* and *6 to 9* are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner whatsoever, except for the purpose of complying with MPS requirement by the *Company*.

d. The individual promoters viz. *Noticees no. 2* and *3* are restrained from holding the post of director, or any key managerial position or associating themselves in any capacity with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI, till such time PNBFIL complies with the MPS requirement;

e. In addition to the aforementioned directions, the following penalties are also hereby being imposed upon the *Company/Noticee no. 1*/PNBFIL in terms of provisions of 11B(2) and 11(4A) of SEBI Act, 1992 and Section 12A(2) of SCR Act, 1956 due to the violation of relevant provisions of law by the *Company*, as mentioned below:

Provisions of law violated	**Penal Provision**	**Quantum of penalty**
Regulation 18(1)(b) of LODR Regulations	Section 15HB of SEBI Act, 1992	INR 1,00,00,000 (One Crore Rupees Only)
Regulation 31(1)(b) of LODR Regulations read with SEBI circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015 read with regulation 2(za) of ICDR Regulations and clause 35 of the listing agreement (violation on 24 occasions)	Section 15A(b) of SEBI Act, 1992	INR 1,00,00,000 (One Crore Rupees Only)
Rule 19A(1) of SCRR 1957 read with regulation 38 of LODR Regulations read with provision of 2(II) of SEBI Circular no CIR/CFD/DIL/10/2010 dated December 16, 2010 read with circular no CIR/CFD/CMD/14/2015 dated November 30, 2015 (continuous violation)	Section 23E of SCRA and Section 15HB of SEBI Act, 1992	INR 5,00,00,000 (Five Crore Rupees Only)
Section 12 A(a) and (b) of SEBI Act 1992 read with regulation 3(b) and (c) and 4(1) of PFUTP Regulations.	Section 15HA of	INR 5,00,00,000

	SEBI Act, 1992	(Five Crore Rupees Only)

f. Further, the following penalties are also hereby being imposed upon the *Noticees no. 2, 3* and *5 to 9* in terms of provisions of 11B(2) and 11(4A) of SEBI Act, 1992 under Section 15A(b) of SEBI Act for the violations of Regulation 30(2) of SAST Regulations, 2011 (violated six times by *Noticees no. 2, 3* and *6 to 9* and two times by *Noticee no. 5*) and Regulation 7(1)(a) of PIT Regulations, 2015 (one time violation by *Noticees no. 2, 3* and *5 to 9*) as following:

Name of the Noticee	**Amount of Penalty**
Samir Jain	INR 21,00,000 (Twenty One Lakh Rupees only)
Meera Jain	INR 21,00,000 (Twenty One Lakh Rupees only)
Trishla Jain	INR 9,00,000 (Nine Lakh Rupees only)
Ashoka Viniyoga Limited	INR 21,00,000 (Twenty One Lakh Rupees only)
Artee Viniyoga Limited	INR 21,00,000 (Twenty One Lakh Rupees only)
Camac Commercial Company Limited	INR 21,00,000 (Twenty One Lakh Rupees only)
Combine Holding Limited	INR 21,00,000 (Twenty One Lakh Rupees only)

g. Further, the following penalties are also hereby being imposed upon the *Noticees no. 2, 3* and *5 to 9* in terms of provisions of 11B(2) and 11(4A) of SEBI Act, 1992 under Section 15HB of SEBI Act for the violations of Provision of 2(II) of SEBI Circular no CIR/CFD/DIL/10/2010 dated December 16, 2010 read with circular no CIR/CFD/CMD/14/2015 dated November 30, 2015 as following:

Name of the Noticee	Amount of Penalty
Samir Jain	INR 20,00,000 (Twenty Rupees only)
Meera Jain	INR 20,00,000 (Twenty Rupees only)
Trishla Jain	INR 10,00,000 (Ten Lakh Rupees only)
Ashoka Viniyoga Limited	INR 20,00,000 (Twenty Rupees only)
Artee Viniyoga Limited	INR 20,00,000 (Twenty Rupees only)
Camac Commercial Company Limited	INR 20,00,000 (Twenty Rupees only)
Combine Holding Limited	INR 20,00,000 (Twenty Rupees only)

h. Further, the following penalties are also hereby being imposed upon the *Noticees no. 2, 3* and *5 to 9* in terms of provisions of 11B(2) and 11(4A) of SEBI Act, 1992 under Section 15HA of SEBI Act for the violations of Provision of Section 12 A(a) and (b) of SEBI Act 1992 read with regulation 3(b) and (c) and 4(1) of PFUTP Regulations as following:

Name of the Noticee	Amount of Penalty
Samir Jain	INR 1,00,00,000 (One Crore Rupees only)
Meera Jain	INR 1,00,00,000 (One Crore Rupees only)
Trishla Jain	INR 20,00,000 (Twenty Lakh Rupees only)
Ashoka Viniyoga Limited	INR 1,00,00,000 (One Crore Rupees only)
Artee Viniyoga Limited	INR 1,00,00,000 (One Crore Rupees only)
Camac Commercial Company Limited	INR 1,00,00,000 (One Crore Rupees only)
Combine Holding Limited	INR 1,00,00,000 (One Crore Rupees only)

135. The proceedings against *Noticee no. 4* stands disposed in light of facts mentioned at para 133 of this Order.

136. The *Noticees no. 1 to 3* and *5 to 9* are directed to pay the penalty as detailed above within 45 (forty-five) days from the date of service of this order by way of online payment through following path on the SEBI website:

www.sebi.gov.in/ENFORCEMENT → Orders → Orders of Chairman/ Members → Click on PAY NOW or at the linkhttps://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. The *Noticees* mentioned in the above table shall forward the details/confirmation of penalty so paid through e-payment to "The Division Chief, Investigation Division 1 (ID-1), Investigation Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C -7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400051" in the format given in the Table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

137. The Order shall come into force with the immediate effect.

138. A copy of this order shall be served upon the *Noticees*, Stock Exchanges, Depositories and Registrar and Share Transfer Agents for ensuring compliance with the above direction.

Sd/-

Date: March 28, 2023 **S. K. Mohanty**

Place: Mumbai **Whole Time Member**

Securities and Exchange Board of India