BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/VC/2024-25/30365-30372)

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

In respect of

Noticee No.	Name and PAN of the Noticees
1	**Bilcare Limited** (PAN No.: AABCB2242F)
2	**Mr. Mohan H. Bhandari** (PAN No.: AEQPB1073A)
3	**Mrs. Nutan Bhandari** (PAN No.: ADZPB4130E)
4	**Dr. Praful R. Naik** (PAN No.: AAGPN6187R)
5	**Mr. Anil Tikekar** (PAN No.: AAGPT1883J)
6	**Mr. Avinash Joshi** (PAN No.: AEUPJ5584N)
7	**Mr. Rajendra B. Tapadia** (PAN No.: AAJPT0502B)
8	**Mr. Pawan Chandak** (PAN No.: AEYPC3412L)

In the matter of Bilcare Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigation in the matter of Bilcare Limited (hereinafter referred to as the **'Company'** or **'Bilcare Limited'** or **'Noticee-1'**), to ascertain whether the published financial statements of the company for the Financial Year (hereinafter referred to as **'FY'**) 2013-14 to FY 2016-17 were prepared in accordance with the notified and applicable accounting standards, as required under SEBI (Listing

Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **'SEBI (LODR) Regulations, 2015'**) with regard to treatment in books of accounts on interest on term loans from banks classified as Non-Performing Assets (hereinafter referred to as **'NPA'**). The investigation was conducted for the period of FY 2013-14 to FY 2016-17 (hereinafter referred to as **'Investigation Period'**).

2. Based on the findings of investigation, SEBI initiated adjudication proceedings against Bilcare Limited (**'Noticee-1'**), Mr. Mohan H. Bhandari (**'Noticee-2'**), Mrs. Nutan Bhandari (**'Noticee-3'**), Dr. Praful R. Naik (**'Noticee-4'**), Mr. Anil Tikekar (**'Noticee-5'**), Mr. Avinash Joshi (**'Noticee-6'**), Mr. Rajendra B. Tapadia (**'Noticee-7'**) and Mr. Pawan Chandak (**'Noticee-8'**) {hereinafter together referred to as **'Noticees/ you'**} for violating the provisions of the following Acts and Regulations:

Table No. 1

Noticee No.	Name of the Notice	Alleged Violations
1	Bilcare Limited	• Clause 41(I)(a) and Clause 49 of the erstwhile Equity Listing Agreement read with section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **'SCRA, 1956'**) for the FY 2013-14 to FY 2014-15. • Regulations 4(1)(a), 4(1)(b), 33(1), 34(3), 48 read with 4(2) (e) of SEBI (LODR) Regulations, 2015 for the FY 2015-16 to FY 2016-17. • Sections 12A (b) & (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**), read with regulations 3(c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **'SEBI (PFUTP) Regulations, 2003'**).
2	Mr. Mohan H. Bhandari	• Clause 41(II)(a) & (e), and Clause 49(II) (d) & (e) & Clause 49(V)(a) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15.

Noticee No.	Name of the Noticee	Alleged Violations
		• Regulations 4(2)(f), 17(8) read with part B of Schedule II, 33(2)(a) of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992, and Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 for the FY 2015-16 to FY 2016-17. • Section 12A (b), (c) of the SEBI Act, 1992 read with regulations 3 (c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992.
3	Mrs. Nutan Bhandari	• Regulations 4(2)(f), 17(8), 33(2)(a), of the SEBI (LODR) Regulations, 2015 for the FY 2015-16 to FY 2016-17. • Section 12A (b), (c) of the SEBI Act, 1992 read with regulations 3 (c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992.
4	Dr. Praful R. Naik	• Clause 41(II)(a) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15. • Section 12A (b), (c) of the SEBI Act, 1992 read with regulations 3 (c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992.
5	Mr. Anil Tikekar	• Clause 49(V)(a) & clause 41(II)(a) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15. • Regulations 4(2)(f), 17(8) read with part B of Schedule II, 33(2)(a) of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 for the FY 2015-16 to FY 2016-17.

Noticee No.	Name of the Noticee	Alleged Violations
		• Section 12A (b), (c) of the SEBI Act, 1992 read with regulations 3 (c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003.
6	Mr. Avinash Joshi	• Clause 49(II) (d) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15. • Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 for the FY 2015-16 to FY 2016-17.
7	Mr. Rajendra B. Tapadia	• Clause 49(II) (d) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15. • Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 for the FY 2015-16 to FY 2016-17.
8	Mr. Pawan Chandak	• Clause 49(II) (d) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as the Adjudicating Officer, *vide* order dated June 24, 2022, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (**Procedure** for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules, 1995'**) and Section 23 I of the SCRA, 1956 read with Rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SCR Adjudication Rules, 2005'**) to inquire into and adjudge under the provisions of the Section 15HA and 15HB of the SEBI Act, 1992 and Section 23A(a) and 23H of the SCRA, 1956, for the violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice bearing reference nos. EAD-8/AS/VC/52609/2022 & EAD-8/AS/VC/52688/1-7/2022 dated October 17, 2022 (hereinafter referred to as **'SCN'**) was served upon the Noticees and a Supplementary Show Cause Notice bearing reference no. EAD/AS/VC/ 6493/1-7/2024 dated February 16, 2024 (hereinafter referred to as **'Supplementary SCN')** was served upon the Noticee-1, 2, 4, 5, 6, 7 and 8, in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules, 1995 read with Section 15-I of SEBI Act, 1992 and Rule 4(1) of the SCR Adjudication Rules, 2005 read with Section 23-I of the SCRA, 1956, requiring the Noticees to show cause as to why an inquiry should not be held against them in accordance with Rule 4 of the SCR Adjudication Rules, 2005 read with Section 23-I of the SCRA, 1956 and Rule 4 of the SEBI Adjudication Rules, 1995 read with Section 15-I of the SEBI Act, 1992, why penalty, if any, should not be imposed upon them under Section 15HA and 15HB of the SEBI Act, 1992 and Section 23A(a) and 23H of the SCRA, 1956 for the alleged respective violations as mentioned in table no. 1 above.

5. I note that SCN and Supplementary SCN issued to the Noticees were duly served by Speed Post Acknowledgement Due (SPAD) and by e-mails, except to Noticee-5. SCN and Supplementary SCN issued to Noticee-5 via SPAD and e-mail was returned undelivered/bounced back. *Vide* separate letters dated October 31, 2022, Noticee-1 and Noticee-2 on behalf of Noticee- 2 to 8 requested for extension of 2 weeks' time for submission of reply to the SCN, which was acceded to. Thereafter, Noticee-1 furnished reply to the SCN *vide* letter dated November 15, 2022 and Noticee-2 on behalf of Noticee- 2 to 8 furnished reply to the SCN *vide* letter dated November 14, 2022.

6. Vide e-mail / letter dated February 26, 2024, Noticees requested for extension of 4 weeks time to submit their reply to the Supplementary SCN, which was acceded to. Thereafter, Bilcare Limited, on behalf of all Noticees, furnished reply to the Supplementary SCN vide letter dated March 18, 2024.

7. In the interest of natural justice, an opportunity of personal hearing was granted to the Noticees on November 28, 2022 through video conference on cisco Webex platform, *vide* Hearing Notice dated November 18, 2022. Noticees *vide* letter dated November 25, 2022 requested for extension of 10 days' time for hearing, therefore, hearing of Noticees was rescheduled to December 8, 2022. On December 8, 2022, the Authorised Representative of the Noticees appeared for the scheduled hearing and reiterated the submissions made by the Noticees *vide* their letter dated November 15, 2022 (Reply of Noticee 1) and November 14, 2022 (Reply of Noticee 2 to 8), to the SCN.

8. The allegations levelled against the Noticees in the SCN are summarised as under:

8.1. From the investigation, it was observed that for FY 2013-14 to FY 2016-17, the company had not accounted for the interest expense payable to its lenders for loan which were classified as NPA. It was also observed from the Annual Report for FY 2016-17 of Bilcare Limited that the statutory auditors had stated the following under "emphasis of matter":

"The company has not provided interest on the term loans from banks classified as Non-Performing Assets (NPA) of Rs.11432 lacs for the current year and Rs.5800 lacs for the previous financial year 31 March 2016. As an impact the losses are understated to this extent by the same amount in the respective years."

8.2. On examination of the Annual reports for previous years, it was observed that the company has been following the above accounting practice of non-recognition of interest due on NPA account since FY 2013-14. Therefore, the company had understated the losses during FY 2013-14 to FY 2016-17.

Opinion of the Expert Advisory Committee of ICAI

8.3. In a similar matter Expert Advisory Committee of ICAI has inter alia opined as under:

"The Committee notes that the interest expense accrued on outstanding loans is a borrowing cost which should be recognized as an expense in the period in which it is incurred (unless it is directly attributable to the acquisition, construction or production of a qualifying asset). With regard to reversal of the provision made for interest payable on the outstanding loans, the Committee is of the view that the unpaid interest is a

'liability', which as per the paragraph 61 of the Framework for the Preparation and Presentation of Financial Statements can be derecognized only when the present obligation is settled or extinguished. Further, in the context of Indian Accounting Standards, the Committee is of the view that the credit facility granted by the State Bank of India/AARC and Bank of Baroda to the company and interest thereon is a 'financial liability' under Ind AS 32 as it is an obligation of the company to repay the credit facility availed by it along with the interest. As per the requirements of Ind AS 109 (which deals with recognition, measurement and derecognition of financial liability), the company can remove a financial liability from its balance sheet when and only when, it is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires.

Incidentally, the Committee notes that as per the prudential norms of RBI, the banks should not recognise interest as income on accrual basis for non-performing assets; rather the same should be recognised on receipt basis. However, the Committee is of the view that non- recognition of interest income in the books of account of banks (lenders) due to such prudential norms of RBI does not discharge the borrower from its liability in respect of payment of interest on credit facilities granted to it by banks/AARC. In other words, the company cannot avoid its contractual liability in respect of interest payable on credit facilities availed by it, on the pretext that the same has not been recognised as income by the banks as whether the lenders recognises the same as income or not is of no consequence as far as borrower company is concerned. Further, till the ongoing settlement process is not finalised, liability of the company is not extinguished.

Accordingly, the Committee is of the view that the treatment accorded by the company in the extant case of reversal of interest expense/payable and non-provision of interest expense is not in accordance with Accounting Standards, notified under the Companies (Accounting Standards) Rules, 2006 and Indian Accounting Standards, notified under the Companies (Indian Accounting Standards) Rules, 2015."

8.4. In this regard, the MCA, vide letter dated October 14, 2019 had inter alia stated that "it is in agreement with the views expressed by ICAI which is comprehensive and self-contained. The financial liability of the company continues and it cannot be reversed."

8.5. During investigations, Noticee-1 had submitted that:

a) *It had not recognized the interest on loan which is classified as NPA as an expense as per Indian Generally Accepted Accounting Principles in the books of accounts and the same was shown under contingent liability.*

b) *The company has provided and charged the interest on the NPA loans to its Statement of Profit & Loss account in all these years, which is calculated at an average rate of interest of 10% p.a. The amount which is provided in the Contingent liability is the difference between the average rate and the contractual rate. Hence it is clarified that the amount of interest not provided by the company mentioning in SEBI's letter is not the entire amount of interest payable on NPA but the differential amount.*

c) *During FY 2015-16, some of the company's loans were restructured by way of assignment to ARC's at a discount and waiver/remission of the interest amount. Therefore, there was a reversal of the interest charged to the Profit & Loss account of the earlier years in respect of these restructured loans. Further, interest included in contingent liability in respect of these banks ceased to be contingent and therefore was reduced from the amount of contingent liability.*

d) *Based on the on-going discussions with various banks, the management concluded that providing interest at an average rate of 10% p.a. will give a fair picture of the company's situation and profit & loss. And the excess amount, in unlikely event of actual payment, should be disclosed in contingent liability. Considering the above, full disclosure of interest payable on NPA accounts is made in the financial statement.*

e) *The financial statements are the first financial statements of the company under IND AS, hence IND AS 101- First time adoption of Indian Accounting Standards has been applied. During the year FY 2015-16 & FY 2016-17, the bank loans of the company were restructured by way of assignment to ARC's with a discount and waiver of interest amount. The gain arising on such restructuring of ₹ 349.67 crore was credited to statement of profit & loss in absence of specific details of the waiver of interest and principal included in the settlement amount at the time of restructuring of loan, the entire gain was presumed to include the interest and principal as well.*

f) *This is precisely what has been disclosed in our Notes to accounts as "In view of ongoing discussions for one-time settlement and restructuring, the company has reversed interest accrued on its non-performing term loans from Bank......". Further, all the bank loans restructured with ARC's are NIL interest payable on the restructured amount, which supports the above. Enclosed herewith is the relevant extract from the settlement agreement with ARC's. Considering the above explanations, we state that there is no misstatement in any of the annual reports of the company in any of the financial years.*

g) *The interest has been provided for as well as reversed in line with the restructuring terms with the ARC's and there is no impact on the losses of the company due to the same. We thus refute the claim that there are wrongful disclosures made."*

8.6. *As per opinion of Expert Advisory Committee of ICAI (which was also accepted by the MCA), the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. In the instant case, Noticee-1 had acknowledged in its letter dated February 28, 2022 that the financial resolution was being discussed and planned with the banks. The financial liability of the company for the interest component was not extinguished at the time of publishing of the respective financial statements during the investigation period.*

8.7. *Therefore, the explanation of the company is not satisfactory since the liability of the company is not extinguished on account of bank classifying the loan under NPA. Mere reclassification of loan the company as NPA by lenders / banks does not absolve the company's contractual obligation of interest payment against the loans taken. During FY 2013-14 to FY 2016-17, Bilcare Limited (Noticee-1) did not recognise interest due on NPA accounts. Hence, it was alleged the accounting treatment of interest was not in accordance with the notified and applicable AS.*

8.8. *The non-recognition of interest due to banks in the financial statements has significantly altered the declared profit position of the company in a significant way. The company has understated the losses during FY 2013-14 to FY 2016-17 as shown below:*

Table No. 2

(Amount in ₹ crores)

Particulars	**FY 2013-14**	**FY 2014-15**	**FY 2015-16**	**FY 2016-17**
Interest on the term loan from bank/s classified as Non-Performing Assets	*(42.38)*	*(56.50)*	*(58.00)*	*(114.32)*
Reported Profit / (loss)	*(124.27)*	*(179.77)*	*(66.19)*	*(79.81)*
Actual Profit/ (Loss) after tax after adjustment of Interest on term loan	*(166.65)*	*(236.27)*	*(124.19)*	*(194.13)*
Percentage of under reporting of loss	***34.10%***	***31.43%***	***87.63%***	***143.24%***

8.9. Artificially inflating a company's revenue, profits or receivables or hiding diversion of funds etc., will impact the price of the shares of the company and would influence the investment/ disinvestment decisions of the investors. In view of the same, it is alleged that the intention of understatement of the losses and inflating the profits by the company during FY 2013-14 to FY 2016-17, was to reap the benefit of such misstatements which has a direct bearing on the interest of the investors as they remained invested or dealt in securities without having any information of such misstatements. Therefore, it was alleged that such misstatements in disclosures are unfair trade practices.

8.10. It was also alleged that, had the company recognized the interest due in the profit and loss accounts in in the respective years, the loss of the company would have been increased significantly and could have had huge impact on the decision making process for all stakeholders including shareholders of Bilcare Limited. The underreporting of losses continued even after the auditor highlighted the issue under 'Emphasis of Matter'. Therefore, the published financial statements / results of the company did not give a true and fair view of the financial performance and position of the company as it significantly under reported the losses, thereby published manipulated financial statements and disseminated the same to the stock exchanges.

8.11. In view of the above, the following was alleged against the Noticees:

(a) ***Company - Noticee 1:***

It was alleged that the accounting treatment of interest was not in accordance with the notified and applicable Accounting Standards viz. AS 1, AS 16 and AS 29. Therefore, the published financial statements / results of the company, Bilcare Limited, did not give a true and fair view of the financial performance and position of the company.

In view of the above, the company was alleged to have violated the following provisions:

(i) Clause 41(I)(a) and Clause 49 of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15.

(ii) Regulations 4(1)(a), 4(1)(b), 33(1), 34(3), 48 read with 4(2) (e) of SEBI (LODR) Regulations, 2015 for the FY 2015-16 to FY 2016-17.

(iii) Sections 12A (b) & (c) of the SEBI Act, 1992, read with regulations 3(c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 for the FY 2013-14 to FY 2016-17.

(b) ***Audit Committee members - Noticee-2, Noticee-6, Noticee-7 and Noticee-8:***

In any listed company, the Audit Committee is expected to play a vital role as far as ensuring compliance with existing accounting standards, applicable laws and regulations are concerned. The role of the Audit Committee is defined under Clause 49 of the Listing Agreement and SEBI (LODR) Regulations, 2015, wherein, the Audit Committee is required to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

It was alleged that, Noticee-2, Noticee-6, Noticee-7 and Noticee-8 being members of the Audit Committee have failed to discharge their duties and to exercise oversight on the listed entity's financial reporting process and to ensure that the financial statements were correct, sufficient and credible and were in accordance with the applicable AS, though specific violation was pointed out by the statutory auditor under 'Emphasis of Matter'. Noticee-2 and Noticee-6 were also the signatories to the financial statements that under reported the losses, though specific violation was pointed out by the statutory auditor under the 'Emphasis of Matter'.

In view of the above, it was alleged that the members of the Audit Committee have violated the following provisions:

(i) Noticee-2, Noticee-6, Noticee-7 and Noticee-8 have violated the Clause 49(II) (d) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15.

(ii) Noticee-2, Noticee-6 and Noticee-7 have violated the Regulation 18(3) read with clause A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 for the FY2015-16 to FY2016-17.

(c) *Chairman and Managing Director (Noticee-2) and CFO (Noticee-5):*

*Under regulation 17(8) of SEBI (LODR) Regulations, 2015, the Chief Executive Officer (hereinafter referred to as **'CEO'**) and the CFO shall provide the compliance certificate to the board of directors. Further, under regulation 33(2)(a) of SEBI (LODR) Regulations, 2015, it is the duty of the CEO and CFO of the listed entity to certify that the published financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading while placing the financial results.*

*As detailed above the accounting treatment of interest is not in accordance with the notified and applicable Accounting Standards and the published financial statements of the company do not present a true and fair view of the company's affairs. There was no CEO in the company and Noticee-2 (Shri Mohan H. Bhandari, Chairman and Managing Director (hereinafter referred to as **'CMD'**) and Noticee-5 (Mr. Anil Tikekar, CFO) had certified the financial statements. It is alleged that the reported financial statements of the company for the FY 2013-14 to FY 2016-17 were found to be misrepresented and manipulative, and consequently, the compliance certificates provided by Noticee-2 and Noticee-5 to the Board of Directors under Regulation 17(8) of SEBI (LODR) Regulations, 2015 read with part B of Schedule II of SEBI (LODR) Regulations, 2015 and para V of Clause 49 of the erstwhile Equity Listing Agreement were found to be untrue and fraudulent in nature. Noticee-2 and Noticee-5 were also the signatories to the financial statements that under reported the losses, though specific violation was pointed out by the statutory auditor under the 'Emphasis of Matter'.*

In view of the above, it was alleged that Noticee-2 (CMD) and Noticee-5 (CFO) have violated the following provisions:

(iii) Clause 49(V)(a), clause 41(II)(a) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15.

(iv) Regulations 4(2)(f), 17(8) read with part B of Schedule II, 33(2)(a) of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 for the FY 2015-16 to FY 2016-17.

(v) Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3 (c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 read with Section 27(2) of SEBI Act, 1992 for the FY 2013-14 to FY 2016-17.

(d) *Non-independent directors – Noticee-2, Noticee-3 and Noticee-4*

The non-independent director of Bilcare Limited, namely Dr. Praful R. Naik (Noticee-4) was in-charge of operations and decision making process. Mrs. Nutan M. Bhandari (Noticee-3), who is wife of Mr. Mohan H. Bhandari, CMD (Noticee-2) was promoter director in the company since 2014-15, attended all meeting of the Board of Directors during FY 2015-16 and 2016-17 as per annual report and cannot claim ignorance of the affairs of the company. Noticee-2 and Noticee-4 were also the signatories to the financial statements that under reported the losses, though specific violation was pointed out by the statutory auditor under the 'Emphasis of Matter'.

It is alleged that the Noticee-2, Noticee-3 and Noticee-4 being the non-independent directors of the company had failed to discharge their duties in ensuring that the published financial statements were prepared in accordance with the notified and applicable AS and that the financial statements present a true and fair view of the company's affairs.

In view of the above, it was alleged that the non-independent directors of the company have violated the following provisions:

(i) Noticee-2 and Noticee-4 have violated the Clause 41(II)(a) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 for the FY 2013-14 to FY 2014-15.

(ii) *Notice-2 and Noticee-3 have failed to comply with Regulations 4(2)(f), 17(8), 33(2)(a), of the SEBI (LODR) Regulations, 2015 and regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(1) of SEBI Act, 1992 for the FY 2015-16 to 2016-17.*

(iii) *Noticee-2, Noticee-3 and Noticee-4 have violated the Sections 12A (b), (c) of the SEBI Act, 1992 read with regulations 3 (c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 read with Section 27(1) of SEBI Act, 1992 for the FY 2013-14 to FY 2016-17."*

9. Noticee-1 *vide* letter dated November 15, 2022 and Noticee-2, on behalf of Noticee- 2 to 8, *vide* letter dated November 14, 2022 furnished similar reply to the SCN. Bilcare Limited, on behalf of Noticee- 1, 2, 4, 5, 6, 7 and 8, furnished reply to the Supplementary SCN vide letter dated March 18, 2024. The replies to the SCN and Supplementary SCN are summarised as under:

   a. *Bilcare Limited is a loss making company since 2013-14 and continues to make losses ever since and still a loss making Company.*

   b. *Bilcare Limited was classified as an NPA in April 2013 and we commenced talking to our lenders since then. We had a multiple banking arrangement of lenders at that time and the total outstanding loans was ₹ 1,05,725 Lacs with an interest component of ₹ 14,704 Lacs.*

   c. *The first restructuring happened in the financial year 2014-15 wherein Invent ARC took over the liabilities of State Bank of India with an approximate discount of 50% haircut and waiver of the outstanding interest including penal interest. Similar agreements were entered into with the ARCs for other outstanding loans or with the banks bilaterally for an One Time Settlement. All the restructuring was similar with complete waiver of the interest component.*

   d. *By the Financial year 2019-20 all the lenders (22 of them) had entered into a restructuring arrangement either through an ARC or directly with a discount and complete waiver of interest.*

e. *We submit that there was not a single instance where interest was paid by Bilcare Limited to any of the lenders as a part of the restructuring package.*

f. *The discount was treated as a gain and considered as an exceptional item in our profit and loss account.*

g. *Bilcare Limited transitioned into Ind AS in the year 2016-17 with a transition date of April 1, 2015.*

h. *Thus, as a part of the negotiation process during the restructuring exercise, it became evident that the interest payable would be waived. However, the management decided to provide interest at an average rate of 10% and this amount was charged as an expense in the Profit and Loss Account. The balance incremental interest alone was treated as a contingent liability and disclosed as a note to the Accounts. For example, if the interest payable to any lender was 12%, 10% was provided in the P&L account and only 2% was treated as a contingent liability. We submit that this practice continued till the FY 2015-16 and at no point of time did we not provide for interest as an expense as alleged by you in the SCN. In the Annual Reports for the years 2013-14, 2014-15 and 2015-16, the interest payable component of ₹ 10.249 lacs and ₹ 14.704 lacs and ₹ 13.184 lacs respectively can be seen.*

i. *By the year 2016, more than 50% of the loans had been restructured and all these loans had been restructured with a waiver of interest. With 40% of the loans pending for restructuring and the precedent being that interest was being waived off, for the first time in the year 2016-17, our Company took a decision not to provide for interest on NPA accounts which were under negotiation.*

j. *We submit that the entire gain made by way of discounts / waiver of interest which had been provided as expenses in the previous years were written back as income / gain in our profit and loss account in FY 2015-16 and 2016-17.*

k. *With reference to the opinion of the ICAI as provided in Paragraph 16, we reiterate the interest on outstanding loan was treated as an expense and unpaid interest can be derecognised only when the loan is extinguished / cancelled / expired. In our case the loan was transferred to the ARC and the same was settled with the Banks. All through the process interest at the rate of 10% was accounted as an expense* *and the balance was shown as a contingent liability and a note with full transparency to the shareholders. We therefore deny that we have not complied with the provision of Ind AS or the Indian GAAP with regard to the accounting of outstanding interest. The notes to Accounts have covered all the aspects and the Profit & loss should not be read in isolation but should be read with notes to accounts which present a true and fair view of the financial statements.*

l. *With regard to the opinion of the MCA in Paragraph 17 we reiterate that we have not reversed our financial liability and have only split the interest component into 2 parts and shown the major part as debited to the profit and loss account and the balance part of the interest as a contingent liability. This was dropped as a contingent liability the moment the interest component was waived off as a part of the restructuring.*

m. *With regard to allegation in Paragraph 20, we have already provided the explanation as to why such a treatment was given. We rely on the NFRA Circular dated 20.10.2022 which alludes to the fact that such a similar practice was being followed by many companies under Ind AS 109. We are very committed to complying with the provisions of various regulations and strived to make all the necessary disclosures to our stakeholders. We have clearly brought out in our Annual Report by way of Notes the extent of interest treated as a contingent liability which has also been emphasised by our statutory auditors and hence there is no non- disclosure at any point in time.*

n. *With regard to allegations in Paragraph 21 to 25 we reiterate that we have not violated any of the provisions. Ours was a loss making company since FY 2013-14 and inflation of the loss by a higher amount would only be the statement of interest. A loss is a loss and there is no difference with regard to the amount of loss that we would have made.*

o. *In view of the submissions made we have not violated the provisions of Clause 41(1) (a) and 49 of the erstwhile Listing Agreement, Regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 read with 4(2) (e) of the SEBI (LODR) Regulations, 2015 and Sections 12A (b) & (c) of the SEBI Act, 1992 read with Regulations 3(c), 3(d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2(1)(c)(1) of the SEBI (PFUTP) Regulations, 2005.*

p. With regard to your allegations against the members of our Audit Committee we submit that they are extremely diligent and have always raised the necessary queries during the meetings. Since they were also aware of the negotiation process that was going on and were briefed about the restructuring terms the practice of accounting interest at an average rate of 10% was accepted by them after due deliberation. We would also like to submit that the loss was not grossly understated. Hence, we humbly submit that our independent directors have not violated the provisions of Clause 29(2)(d) and (e) of the erstwhile Listing Agreement and Regulation 18(3) read with Clauses A (1), (4) and (5) of Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of the SEBI Act, 1992.

q. We would also like to submit that no false certificates pertaining to the financial statements presenting a true and fair view were given by the CMD and CFO of our Company. The statements gave the correct position and all the disclosures were made to the stakeholders as explained in the above paragraphs. As mentioned earlier too, the financial statements should be read complete with the notes to accounts and not in isolation. Hence both our CMD and are not in violation of Regulation 17(8) read with Part B of Schedule II of the SEBI (LODR) Regulations, 2015 and Para V of Regulation 49 of the erstwhile Listing Agreement. They have also not violated Clause 49(V)(a), Clause 41(II)(a) and (e) of the erstwhile listing agreement, Regulations 4(2)(f), 17(8) read with Part B of Schedule II, 33(2)(a) SEBI(LODR) Regulations, 2015 read with Section 27(2) of the SEBI Act, 1992and Sections 12A (b) & (c) of the SEBI Act, read with Regulations 3(c), 3(d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2(1)(c)(1) of the SEBI (PFUTP) Regulations, 2005.

r. We reiterate the submissions made in Paragraph 15 and 16 above for allegations made against the non-independent directors in Page 22 / 23 of the SCN. They have therefore not violated Clause 41(II)(a) and (e) of the erstwhile listing agreement, Regulations 4(2)(f), 17(8), 33(2)(a), Regulation 18(3) read with Clauses A (1), (4) and (5) of Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of the SEBI Act, 1992 and Sections 12A (b) & (c) of the SEBI Act, 1992 read with Regulations 3(c), 3(d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2(1)(c)(1) of the SEBI (PFUTP) Regulations, 2005."

s. Reply to the Supplementary SCN vide letter dated March 18, 2024:

Noticees submitted the following developments since the date of the personal hearing on December 08, 2022 till the date of this reply and the events are listed as under:

i. *The Company since then entered into One Time Settlements (OTS) with all the banks/lenders.*
ii. *All the banks/ lenders settled the OTS at a discount and not only waived the entire penal interest but also the simple interest.*
iii. *The Company thereafter in March 2023 repaid the entire OTS to all the banks and lenders in full & final settlement of their dues.*
iv. *All the banks/ lenders have given No Dues Certificates for NIL dues wherein they have also withdrawn the legal cases, if any pending at any Courts/Tribunals.*

Thus, with the full payments made to the banks/ lenders and a waiver of the entire penal and simple interest dues, the allegations made in the earlier show cause notice and the supplementary show cause notice are no longer valid.

t. *Noticee 1 vide e-mail dated April 05, 2024, has informed that Noticee-5 (i.e. Anil Tikekar) had passed away on March 14, 2024 and furnished the death certificate of Noticee-5 to this effect vide e-mail dated May 13, 2024.*

CONSIDERATION OF ISSUES AND FINDINGS

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

I. Whether the Noticees have violated the provisions of the erstwhile Equity Listing Agreement, SCRA, 1956, SEBI Act, 1992, SEBI (LODR) Regulations, 2015 and SEBI (PFUTP) Regulations, 2003 as mentioned in table no. 1?

II. Do the violations, if any, attract monetary penalty under Section 15HA and 15HB of the SEBI Act, 1992 and Section 23A(a) and 23H of the SCRA, 1956 ?

III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of

SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules, 1995 and Section 23-J of SCRA, 1956 read with Rule 5(2) of the SCRA Adjudication Rules, 2005?

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

Relevant provisions of SEBI Act, 1992:

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

12A. No person shall directly or indirectly –

....

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

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

Contravention by companies.

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

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

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

Explanation : For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

<u>Relevant provisions of SEBI (PFUTP) Regulations, 2003:</u>

Definitions

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

…………

(b) "dealing in securities" includes:

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

(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and

(iii) any act of providing assistance to carry out the aforementioned acts.

(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;

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

………

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

"4(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: —

………...

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

…………

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

<u>Relevant provisions of SEBI (LODR) Regulations, 2015:</u>

Principles governing disclosures and obligations.

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

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

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

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

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

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

(ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.

(iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

(f) ***Responsibilities of the board of directors:*** *The board of directors of the listed entity shall have the following responsibilities:*

(i) Disclosure of information:

(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

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

(ii) Key functions of the board of directors-

(1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.

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

(3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.

(4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.

(5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.

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

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

(8) Overseeing the process of disclosure and communications.

(9) Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities:

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

(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.

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

(4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

(5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.

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

(7) The board of directors shall exercise objective independent judgement on corporate affairs.

(8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.

(9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.

(10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.

(11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.

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

(13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.

(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

Board of Directors.

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

PART B: COMPLIANCE CERTIFICATE

[See Regulation 17(8)]

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

A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

(1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

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

C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

D. They have indicated to the auditors and the Audit committee

(1) significant changes in internal control over financial reporting during the year;

(2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

Audit Committee.

18. (3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

SCHEDULE II: CORPORATE GOVERNANCE

PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE [*See* ***Regulation 18(3)]***

A. The role of the audit committee shall include the following:

(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

(a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;

(b) changes, if any, in accounting policies and practices and reasons for the same;

(c) major accounting entries involving estimates based on the exercise of judgment by management;

(d) significant adjustments made in the financial statements arising out of audit findings;

(e) compliance with listing and other legal requirements relating to financial statements;

(f) disclosure of any related party transactions;

(g) modified opinion(s) in the draft audit report;

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;

Financial results.

33. (2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a) The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

Accounting Standards.

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

<u>Relevant provisions of erstwhile Equity Listing Agreements:</u>

- Clause 41(I)(a) of erstwhile Equity Listing Agreements states that *"The company shall be prepared the financial statements on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods.*

- Clause 41(II)(a) of erstwhile Equity Listing Agreements states that *"while placing the financial results before the Board, the Chief Executive Officer and Chief Financial Officer of the company, by whatever name called, shall certify that the financial results* *do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading".*

- Clause 41(II) read with clause 49(V) of erstwhile Equity Listing Agreement states that *"while placing the financial results before the Board of Directors, the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading. Thereafter, the annual audited financial results shall be approved by the Board of Directors. Similar provisions have been laid down under regulation 33(2) of the SEBI (LODR) Regulations, 2015, which has replaced Listing Agreement. As per Section 21 of the SCRA, where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange".*

- Clause 49 (II) (D) & (E) erstwhile Equity Listing Agreement states that *"the role of Audit Committee is to oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible and mandatorily review Management discussion and analysis of financial condition and results of operations".*

Relevant provisions of SCRA, 1956:

Conditions for listing.

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

Issue I. Whether the Noticees have violated the provisions of the erstwhile Equity Listing Agreement, SCRA, 1956, SEBI Act, 1992, SEBI (LODR) Regulations, 2015 and SEBI (PFUTP) Regulations, 2003 as mentioned in table no. 1?

12. Before the issues on merits are considered, I note that the Company, vide e-mail dated April 05, 2024, has informed that the Noticee-5 (i.e. Anil Tikekar) had passed

away on March 14, 2024 and furnished the death certificate of Noticee-5 to this effect vide e-mail dated May 13, 2024. The death certificate of Noticee-5 has been cross verified by scanning the QR code given on the it, leading to the digital copy of the aforesaid death certificate hosted at the website of Pune Municipal Corporation, Department of Health, Government of Maharashtra.

13. In this context, it is worth mentioning that in **Girijanandini Vs Bijendra Narain** (AIR 1967 SC 2110), the Hon'ble Supreme Court held that in case of personal actions, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal in **Chandravadan J. Dalal vs. SEBI** (Appeal No. 35/2004 decided on June 15, 2005) wherein it was held that: *"The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."*

14. In view of the foregoing, I am of the view that the instant adjudication proceedings against Noticee-5 are liable to be abated without going into the merits of the case qua him and the SCN dated October 17, 2022 read with Supplementary SCN dated February 16, 2024 issued against him is disposed of accordingly.

15. Now I shall proceed to deal with the allegations against the other Noticees. I note that the allegations levelled against the other Noticees is that the company had not accounted for the interest payable to its lenders on loans which were classified as NPAs and the same were shown under contingent liability in the financial statements. The instant accounting treatment of non-provisioning of interest was alleged to be not found in accordance with the notified and applicable Accounting Standards and consequently, the published financial statements of the company did not present a true and fair view of the financial performance and position of the

company as it significantly under reported the losses during FY 2013-14 to FY 2016-17.

16. In response to the above allegations, the Noticees submitted that the company was classified as an NPA in April 2013 and it commenced discussion with lenders since then. It had multiple banking arrangement of lenders and total outstanding on loans was ₹1,05,725 Lacs with an interest component of ₹14,704 Lacs. Restructuring of loans started from FY 2014-15 and all the restructurings were similar with a discount and complete waiver of the outstanding interest component. Noticees stated that there was not a single instance where interest was paid by the company to any of the lenders as a part of the restructuring package. The discount was treated as a gain and considered as an exceptional item in the Company's profit and loss account. Thus, as a part of the negotiation process during the restructuring exercise, it became evident that the interest payable would be waived. However, the management decided to provide interest at an average rate of 10% and this amount was charged as an expense in the Profit and Loss account. The balance incremental interest alone was treated as a contingent liability and disclosed as a note to the Accounts. For example, if the interest payable to any lender was 12%, 10% was provided in the Profit and Loss account and only 2% was treated as a contingent liability.

17. Further, in reply to the Supplementary SCN, the Noticees have submitted that the company has entered into One Time Settlements (OTS) with all the banks/lenders. All the banks/ lenders settled the OTS at a discount and not only waived the entire penal interest but also the simple interest. The company thereafter in March 2023 repaid the entire OTS to all the banks and lenders in full and final settlement of their dues. All the banks/ lenders have given no dues certificates for NIL dues wherein they have also withdrawn the legal cases, if any pending at any Courts/Tribunals. Thus, with the full payments made to the banks/ lenders and a waiver of the entire penal and simple interest dues, the allegations made in the earlier SCN and the supplementary SCN are no longer valid.

18. I note that as per Regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company is required to comply with all the notified and applicable Accounting Standards. The interest on loans is a borrowing cost for the company, which is required to be recognized as an expense under AS 1, AS 16 and AS 29 (IND AS 32 and IND AS 109 as per the accounting standards applicable currently) and liability of the company does not extinguish on account of bank classifying the loans as NPA or in anticipation that the interest payable on NPA loans would be waived of in restructuring.

19. Accounting is based on concept of conservatism which requires the accounts to be prepared with caution and high degrees of verification. Further, principle of prudence governing the selection and application of accounting policies state that *"In view of the uncertainty attached to future events, profits are not anticipated but recognised only when realised though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information."* Thus, in accounting revenues and assets should be recognized only when they realized and provision is to be made for all known/ probable liabilities and losses. Therefore, the company cannot consider anticipated waivers of interest due on NPA loans and recognise the incremental interest above 10% as a contingent liability in its Profit and Loss accounts. Till the ongoing settlement process was not finalised, liability of the company was not extinguished and interest due on NPA loans should have appeared on liability side of the balance sheet under interest payable head.

20. I note that the precedent of interest was being waived off in all restructured loans cannot be considered as an established and settled law / rule and based on this, assumption or conclusion that interest will be waived off in upcoming restructuring of the NPA loans, cannot be drawn. The company's decision of not providing for interest on NPA loans which were under negotiation is not justifiable since, the liability of the company was not extinguished on account of bank classified the loans as NPA and the waiver of interest in restructuring of NPA loans was an

uncertain future event at that time. Therefore, I note that the provision of interest due on NPA loans which were under negotiation must have been made in Profit and Loss accounts of the company as a prudent accounting policy.

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

22. With reference to the aforesaid opinion of the ICAI, the Noticees submitted that in their case the loan was transferred to ARC and the same was settled with the Banks. All through the process, interest at the rate of 10% was accounted as an expense and the balance was shown as a contingent liability with a note with full transparency to the shareholders. In this regard, I find that the company, in its letter dated February 28, 2022 and further replies to the SCN, acknowledged that the financial resolution was being discussed and planned with the banks during investigation period. Thus, it is observed that during the process of negotiation, the liability of the company on NPA loans was not extinguished, therefore, full interest amount due to banks/lenders on NPA loans should have been provided for in Profit and Loss accounts of the company. In view of the same, I note that the practice of showing the interest due above 10% on NPA loans for FY 2013-14 to 2015-16 and entire interest due on NPA loan for FY 2016-17 as a contingent liability was in violation of the notified and applicable accounting standards.

23. Noticees have further relied upon the NFRA Circular dated October 20, 2022, and stated that such a similar practice was being followed by many companies under Ind AS 109. In this regard, I note that the aforesaid circular of NFRA indicates that it had come to attention of NFRA that a listed company had discontinued accrual / recognition of interest expense on its bank borrowings, which had been reportedly classified as Non-Performing Asset (NPA) by the lender banks and for which the company was negotiating One Time Settlement with the banks. NFRA has stated that this accounting treatment was in contravention of the provisions of applicable

accounting standard, as these borrowings as well the interest payable thereon continued to be the financial liabilities of the company and were required to be accounted for as amortized cost in accordance with the requirements of Indian Accounting Standard (Ind AS) 109, *Financial Instruments* (Ind AS 109). In this context, NFRA noted that *"Para 3.1.1 of Ind AS 109 explicitly requires that financial liability shall be removed from the balance sheet when, and only when, it is extinguished. Para B3.1.1 further state that a financial liability is extinguished when the borrower is legally released from primary responsibility for the liability either by process of law or by the creditor."* NFRA further specified that *"discontinuation of interest expense recognition on financial liability solely based on the borrowing company's expectations of loan / interest waiver / concession without evidence of the legally enforceable contractual documents results in major non-compliance with the applicable accounting standards, compliance of which is mandated by the Act*. Through said circular NFRA directed to companies that *"all companies which are required to follow Ind AS and their audit committees are hereby advised not to discontinue recognition of the principal or interest merely because of the borrowing being declared NPA or the Management's expectation of likely settlement with or without concessions from the banks."* Considering the above views and directions of NFRA, I hold that the practice of not recognising the interest on NPA loans as followed by the company was in contravention to the provisions of applicable accounting standards.

24. Further, Noticees have submitted that the Company has entered into OTS with all the banks/lenders and all the banks/ lenders settled the OTS at a discount and not only waived the entire penal interest but also the simple interest. The company thereafter in March 2023 repaid the entire OTS to all the banks and lenders in full and final settlement of their dues, thus, the allegations made in the earlier SCN and the supplementary SCN are no longer valid. In this regard, I note that the OTS has been entered into with the banks/lenders on a later date after approval of accounts of the Company for the FY 2013-14 to FY 2016-17 and a waiver of penal interest and simple interest has been approved by the banks/lenders after many years from the end of the FY 2013-14 to FY 2016-17. Similarly, payment of dues on said the

NPA loans has been made by the Noticee-1 in March 2023 i.e. a subsequent date after the finalisation and approval of the Profit & Loss Account and Balance Sheet for FY 2013-14 to FY 2016-17. Therefore, I note that the aforesaid events took place on a subsequent and future date after approval of the accounts of the Company for FY 2013-14 to FY 2016-17, thus the liability of the company was not extinguished on the date of finalisation and approval of accounts of the Company and hence the Company ought to have made the provisions for the interest on NPA loans as per applicable and notified Accounting Standards. Thus, the submission of the Noticee that the allegations made in the earlier SCN and the supplementary SCN are no longer valid cannot be accepted.

25. In this context, I would like to place my reliance on the judgment of Hon'ble High Court of Allahabad in the matter of **Girish Chandra Tiwari vs UCO Bank** vide writ C No. 67132 of 2013 decided on 09.09.2014 where Hon'ble High Court held that: "*The liability to make payment of interest by the borrower to bank arises strictly in accordance with the loan agreement. The liability to pay interest continues to subsist so long as the dues are not cleared by the borrower. The mere fact that a loan account has been declared as NPA would not absolve the borrower from its liability of payment of interest to the bank, unless the law forbids it.*"

26. In view of the foregoing paragraphs, I find that the allegation that Bilcare Limited (i.e. Noticee-1) has violated provisions of Clause 41(I)(a) and Clause 49 of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956 (for the FY 2013-14 to FY 2014-15); and Regulations 4(1)(a), 4(1)(b), 33(1), 34(3), 48 read with 4(2) (e) of SEBI (LODR) Regulations, 2015 (for the FY 2015-16 to FY 2016-17), stands established.

27. As a company acts through its directors and not by itself, and the aforementioned acts were done with the knowledge of directors / CFO of the Company. The directors / CFO are responsible for all the acts of omission and commission by the company. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy

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

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

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

29. Further, I note that Section 27 of SEBI Act, 1992 also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

30. It is already established in the earlier paragraphs that Noticee 1 has not complied with the notified and applicable accounting standards. Noticee-2, Noticee-6, Noticee-7 and Noticee-8 were members of the Audit Committee. They were aware of the negotiation process which was going on and the practice of accounting of interest at an average rate of 10% on NPA loans for FY 2013-14 to 2015-16 and not to provide for the entire interest due on NPA loans for FY 2016-17 was accepted by them. I note that in any listed company, the audit committee is expected to play a vital role as far as ensuring compliance with existing accounting standards, applicable laws and regulations are concerned. The role of the audit committee is defined under Clause 49 of the Listing Agreement and SEBI (LODR) Regulations, 2015, wherein, the audit committee is required to exercise oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible. A company can remove the financial liability from its balance sheet, when and only when, it is extinguished, i.e., when the obligation specified in the contract is discharged or cancelled or expires. In the instant case the liability was not discharged or cancelled or expired. The final settlement with the banks/lenders was arrived subsequently. I find that that the Profit & Loss accounts of the company were not prepared as per the notified and applicable accounting standards. Thus, Audit committee member has failed to discharge their duties and to exercise oversight on the listed entity's financial reporting process and to ensure that the financial statements were correct, sufficient and credible and were in accordance with the notified and applicable accounting standards. I further note that the Noticee-2 and Noticee-6 were also the signatories to the financial statements.

31. In view of the above, I hold that the allegations that the members of the Audit Committee has violated the following provisions, stands established:

    (i) Noticee-2, Noticee-6, Noticee-7 and Noticee-8 violated the Clause 49(II) (d) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 (for the FY 2013-14 to FY 2014-15).

(ii) Noticee-2, Noticee-6 and Noticee-7 violated the Regulation 18(3) read with clause A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 (for the FY2015-16 to FY2016-17).

32. In response to the allegations of providing false compliance certificates by Noticee-2 (CMD) for the FY 2013-14 to 2016-17, Noticee-2 submitted that no false certificates pertaining to the financial statements were given by the CMD and CFO of the Company. Noticee-2 further submitted that the statements gave the correct position and all the disclosures were made to the stakeholders. The financial statements should be read complete with notes to accounts and not in isolation. As discussed earlier in the order, the financial statements were not prepared in accordance with the accounting standards and consequently, the compliance certificates provided by Noticee-2 to the Board of Directors under Regulation 17(8) of SEBI (LODR) Regulations, 2015 read with part B of Schedule II of SEBI (LODR) Regulations, 2015 and para V of Clause 49 of the erstwhile Equity Listing Agreement were not correct. I also note that Noticee-2 was signatory to the financial statements. Therefore, I hold that the allegations that Noticee-2 (CMD) has violated the following provisions, stands established:

(i) Clause 49(V)(a), clause 41(II)(a) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 (for the FY 2013-14 to FY 2014-15).

(ii) Regulations 4(2)(f), 17(8) read with part B of Schedule II, 33(2)(a) of the SEBI (LODR) Regulations, 2015 read with Section 27(2) of SEBI Act, 1992 (for the FY 2015-16 to FY 2016-17).

33. In response to the allegations against non-independent directors (Noticee 2, 3 and 4), non-independent directors reiterated the submissions made by members of audit committee, CMD and CFO as stated in foregoing paragraphs. In this regard, the issues have already been discussed and dealt with in the foregoing paragraphs of this order, where, it is observed that there are no merits in the submission made

by Noticees and the alleged violations have been established in the preceding paragraphs. Further, I find that Dr. Praful R. Naik (Noticee-4) was in-charge of operations and decision making process. Mrs. Nutan M. Bhandari (Noticee-3), {wife of Mr. Mohan H. Bhandari, CMD (Noticee-2)} was promoter director of the company since 2014-15, and attended all meeting of the Board of Directors during FY 2015-16 and 2016-17. Thus, I find that they were aware of the non-provisioning of interest due above 10% on NPA loans for FY 2013-14 to 2015-16 and entire interest due on NPA loans for FY 2016-17 in accounts. Noticee-2 and Noticee-4 were also the signatories to the financial statements which continued to be based on incorrect accounting norms, though the specific violation in this regard was pointed out by the statutory auditor under the 'Emphasis of Matter'. Thus, I find that the non-independent directors of the company had failed to discharge their duties in ensuring that the published financial statements were prepared in accordance with the notified and applicable accounting standards. Therefore, I hold that the allegations that that the non-independent directors of the company have violated the following provisions, stands established:

(i) Noticee-2 and Noticee-4 violated the Clause 41(II)(a) & (e) of the erstwhile Equity Listing Agreement read with section 21 of SCRA, 1956 (for the FY 2013-14 to FY 2014-15).

(ii) Noticee-2 and Noticee-3 violated the Regulations 4(2)(f), 17(8) and 33(2)(a) of the SEBI (LODR) Regulations, 2015 and Regulation 18(3) read with clauses A (1), (4), (5) under Part C of Schedule II of the SEBI (LODR) Regulations, 2015 read with Section 27(1) of SEBI Act, 1992 (for the FY 2015-16 to 2016-17).

34. Further, it was alleged in the SCN that by failing to recognize interest expense on loans in the books of accounts, the Noticee 1 had reduced the quantum of loss appearing in its Profit and Loss account. Had the interest expense been recognised, the loss would have been higher. In this regard, I note that Noticee 1 had reduced the quantum of loss by not considering the entire interest expense. However, it is pertinent to note that Noticee 1 had disclosed the of interest due

above 10% on NPA loans for FY 2013-14 to 2015-16 and entire interest due on NPA loans for FY 2016-17 in contingent liability. As regards the allegation of violation of PFUTP regulations, I find that the financial statements for FY 2013-14 to 2015-16 showed the interest payable up to 10% as expense and the balance interest due above 10% was shown as contingent liability, and entire interest due on NPA loans for FY 2016-17 was shown as contingent liability in accounts. Thus, I find that sufficient disclosure was available to the shareholders / stakeholders to that extent. Thus, the lapse on part of Noticees was more technical in nature. In view of the above, I note that the allegation that the Noticee 1, 2, 3, 4, 6, 7 and 8 have violated provisions of Sections 12A (b) & (c) of the SEBI Act, 1992, read with Regulations 3(c) & (d), 4(1), 4(2)(f) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the SEBI (PFUTP) Regulations, 2003 for the FY 2013-14 to FY 2016-17, does not stand established.

Issue II. Do the violations, if any, attract monetary penalty under Section 15HA and 15HB of the SEBI Act, 1992 and Section 23A(a) and 23H of the SCRA, 1956 ?

35. It has been established in the foregoing paragraphs that the Noticee 1, 2, 3, 4, 6, 7 and 8 have violated the said provisions of the erstwhile Equity Listing Agreement, SCRA, 1956, SEBI Act, 1992, and SEBI (LODR) Regulations, 2015, as indicated in table no. 1 and preceding paragraphs.

36. In this regard, I place reliance on the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC), *inter-alia,* has held that –

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

37. In view of the above, since it is established that Noticee-1, 2, 3, 4, 6, 7 and 8 have violated the said provisions of the erstwhile Equity Listing Agreement, SCRA, 1956, SEBI Act, 1992 and SEBI (LODR) Regulations, 2015 as indicated in aforementioned paragraphs, I find it a fit case for imposition of monetary penalty under the provisions of Section 15HB of the SEBI Act, 1992 and Section 23A(a) and 23H of the SCRA, 1956, which reads as under:

<u>Relevant provisions of SEBI Act, 1992:</u>

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

<u>Relevant provisions of SCRA:</u>

Penalty for failure to furnish information, return, etc.

23A. *Any person, who is required under this Act or any rules made thereunder,—*

(a) to furnish any information, document, books, returns or report to the recongnised stock exchange or to the Board, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recongnised stock exchange or the Act or rules made thereunder, or who furnishes false, incorrect or incomplete information, document, books, return or report, 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 for each such failure;

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules, 1995, and Section 23-J of SCRA, 1956 read with Rule 5(2) of the SCRA Adjudication Rules, 2005?

38. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of SEBI Act, 1992 and Section 23-J of the SCRA, 1956 which reads as under: -

<u>SEBI Act, 1992:</u>

Factors to be taken into account while adjudging quantum of penalty

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

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

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

(c) the repetitive nature of the default.

[Explanation. - For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

<u>SCRA, 1956:</u>

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

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

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

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

(c) the repetitive nature of the default.

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

39. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of not making the provisions for interest due above 10% on NPA loans for FY 2013-14 to 2015-16 and entire interest due on NPA loans for FY 2016-17 in accounts and thereby, under reporting of losses by the company, is not available. With respect to the repetitive nature of the default, I find that no past defaults by Noticee 1, 3, 4, 6, 7 and 8 are available on record. A monetary penalty of ₹ 1,00,000/- (Rupees One Lakh only) was imposed on Noticee 2 (Mr. Mohan H. Bhandari) for the violation of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 for acquiring more than 15% shares of the total shareholding of Bilcare Limited without making a public announcement, *vide* order dated December 06, 2012. Further, I observe that the company by not making the provisions for interest due above 10% on NPA loans for FY 2013-14 to 2015-16 and entire interest due on NPA loans for FY 2016-17 in its accounts had not followed the specified accounting standards. However, I have taken into account the submissions made by the Noticees that the company has entered into OTS with all the banks/lenders and all the banks/ lenders have settled the OTS at a discount and not only waived the entire penal interest but also the simple interest, thereafter, the company in March 2023 have repaid the entire OTS to all the banks and lenders in full and final settlement of their dues, while deciding the quantum of penalty.

ORDER

40. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of

the SEBI Adjudication Rules, 1995, and Section 23-I of the SCRA, 1956 read with Rule 5 of the SCRA Adjudication Rules, 2005, I hereby impose the following monetary penalty on the Noticees:

Noticee No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)	Total penalty on Noticee (in ₹)
1	Bilcare Limited	Section 23A(a) of the SCRA, 1956	₹ 1,00,000/- (Rupees One Lakh only)	₹ 2,00,000/- (Rupees Two Lakh only)
		Section 15HB of SEBI Act, 1992	₹ 1,00,000/- (Rupees One Lakh only)	
2	Mr. Mohan H. Bhandari	Section 23H of the SCRA, 1956	₹ 1,00,000/- (Rupees One Lakh only)	₹ 2,00,000/- (Rupees Two Lakh only)
		Section 15HB of SEBI Act, 1992	₹ 1,00,000/- (Rupees One Lakh only)	
3	Mrs. Nutan Bhandari	Section 15HB of SEBI Act, 1992	₹ 1,00,000/- (Rupees One Lakh only)	₹ 1,00,000/- (Rupees One Lakh only)
4	Dr. Praful R. Naik	Section 23H of the SCRA, 1956	₹ 1,00,000/- (Rupees One Lakh only)	₹ 1,00,000/- (Rupees One Lakh only)
6	Mr. Avinash Joshi	Section 23H of the SCRA, 1956	₹ 1,00,000/- (Rupees One Lakh only)	₹ 2,00,000/- (Rupees Two Lakh only)
		Section 15HB of SEBI Act, 1992	₹ 1,00,000/- (Rupees One Lakh only)	
7	Mr. Rajendra B. Tapadia	Section 23H of the SCRA, 1956	₹ 1,00,000/- (Rupees One Lakh only)	₹ 2,00,000/- (Rupees Two Lakh only)
		Section 15HB of SEBI Act, 1992	₹ 1,00,000/-	

Noticee No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)	Total penalty on Noticee (in ₹)
			(Rupees One Lakh only)	
8	Mr. Pawan Chandak	Section 23H of the SCRA, 1956	₹ 1,00,000/- (Rupees One Lakh only)	₹ 1,00,000/- (Rupees One Lakh only)

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

41. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

43. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai **ASHA SHETTY**

Date: May 30, 2024 **ADJUDICATING OFFICER**