

WTM/AB/IVD/ID19/12493/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11A, 11D, 11B(1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Sections 12A(1), 12A(2) and 23I of Securities Contracts (Regulations) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005.

Noticee No.	Name of Noticees	PAN
1.	M/s. V. B. Industries Limited	AAACV9152B
2.	Mr. Vikash Kothari	AQWPK3687R
3.	Mr. Shyam Sundar Parasramka	AJCPP2571J
4.	Mr. Johar Pal Singh	AMBPS8591F
5.	Mr. Sandip Ray	ANQPR2065K
6.	Mr. Raj Kumar Sharma	BMIPS9482B
7.	Mr. Jagannath Pandit	BEBPP5358E
8.	M/s. Jhunjhunwala & Associates, Chartered Accountants	AHMPJ8136F
9.	M/s. B. S. Kedia & Co., Chartered Accountants	AAJFB0614L

(Aforesaid entities are hereinafter individually referred to as by their respective name or noticee number and collectively as “the Noticees”.)

In the matter of V. B. Industries Limited

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1. The present order deals with three show cause notices issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), the details of which are as follows:

- (i) Show Cause Notice No. SEBI/HO/IVD/ID19/VA/OW/P/2020/7873/ dated March 06, 2020 issued to Noticee no. 1 to 7 (hereinafter referred to as “**SCN**”);
 - (ii) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/7873/8 dated March 06, 2020 issued to Noticee no. 8 (hereinafter referred to as “**SCN-II**”); and
 - (iii) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/7873/9 dated March 06, 2020 (hereinafter referred to as “**SCN-III**”).
2. SCN calls upon Noticee no. 1 to 7 to show cause as to why suitable directions should not be issued and/or penalty not be imposed, as deemed fit under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Section 15A(a), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Section 12A(1) & 12A(2) read with Section 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) against them for violations of Sections 12A(a), (b) & (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1), 4(2) (f) & (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulation, 2003**”), Regulations 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), 16(1)(b)(ii), 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c), 46(2)(i), 48 and 17(8) read with Part B of Schedule II, of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) read with Section 21 of SCRA, 1956 alleged to be committed by Noticee no. 1 i.e. V.B. Industries Limited (hereinafter also referred to as “**VBIL**” / “**the Company**”) and violations of Sections 12A(a), (b) & (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1), 4(2) (f) & (r) of PFUTP Regulation, 2003, Regulations 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), 16(1)(b)(ii), 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c), 46(2)(i), 48 and 17(8) read with Part B of Schedule II, LODR Regulations read with Section 27 of SEBI Act, 1992 and Section 21 of SCRA, 1956, alleged to be committed by Noticee no. 2 to 7.

3. SCN-II and SCN-III, call upon Noticee no. 8 and 9, respectively, to show cause as to why suitable directions, as deemed fit under Section 11, 11B and 11D of SEBI Act, 1992, should not be issued against them for violation of Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulation, 2003, as auditors of Noticee no. 1.

4. The brief facts of the case and the allegations levelled against the Noticees, as mentioned in the SCN are as follows:

4.1. SEBI passed an interim order on November 09, 2017, *inter-alia*, permitting the promoters and the directors (Noticee no. 2 to 6) of VBIL to only buy the securities of VBIL and restraining them from selling any of securities held by them. Further, vide the said interim order, the stock exchange were directed to appoint an independent forensic auditor to, *inter-alia*, further verify:

4.1.1. Misrepresentation including of financials and/or business of VBIL if any;

4.1.2. Misuse of the funds/books of accounts of VBIL, if any.

4.2. The forensic audit report was submitted to SEBI by the stock exchange and the findings of the forensic audit report from the period April 01, 2015 till March 31, 2018 were examined.

4.3. The investigation, *inter-alia*, revealed the following:

I. Misrepresentation including of financials and misuse of funds/ books of accounts:

4.3.1. Misreporting in Cash Flow Statements:

4.3.1.1. The Company is engaged in the business of providing financing activities, trading /investment in shares and securities and providing

financial assistance to individuals and corporates. Therefore, interest income from such activities should be shown under the head “Cash flow from operating activities” rather than “Cash flow from financing activities”. However, it is noted that for three consecutive financial years beginning since 2015-16, VBIL has incorrectly shown interest received by it on loans and advances granted by it under the head “Cash flow from financing activities” instead of “Cash flow from operating activities” as under:

FY 2015-16: Rs 111.68 lakhs
FY 2016-17: Rs 43.56 lakhs
FY 2017-18: Rs 44.67 lakhs

- 4.3.1.2. The Company has shown incorrect figures of net increase in total current liabilities, in the cash flow statement, by including provision for taxation and provision for expenses in total current liabilities, despite these items being non cash in nature. The amount for the same is as under:

FY 2015-16: Rs 3,439.54 lakhs
FY 2016-17: Rs 2,906.69 lakhs
FY 2017-18: Rs 283.37 lakhs

- 4.3.1.3. VBIL has shown current year tax paid as an outflow under operating activities in cash flow statement and same amount as a provision for taxation in balance sheet under the head short term provisions in current liabilities. These amounts are as under:

FY 2015-16: Rs 13.68 lakhs
FY 2016-17: Rs 2.68 lakhs
FY 2017-18: Rs 4.02 lakhs

Thus, the SCN alleges that the Company has not prepared its cash flow statement in accordance with AS-3. The aforesaid incorrect accounting treatment allegedly carried out by VBIL has led to misrepresentation of books of accounts/misuse of funds.

- 4.3.2. There is minimal movement in opening & closing balances of debtors/ receivables and creditors/ payables in the financial statements of VBIL, thereby indicating that the Company is unable to realise cash from its receivables, which adversely affects the Company's working capital cycle.
- 4.3.3. Advancement of huge amount of unsecured loans by VBIL at minimal rate of interest (0.59%-1.46%) and that too without any provisioning is not a prudent business practice as transactions entered into by the Company gives an impression that the Company has not judiciously utilised the shareholder's funds, thereby leading to misuse of the funds of the Company.
- 4.3.4. VBIL has invested in the shares of companies which seem to have no legitimate business activity, are either loss making or have been delisted from the stock exchange or are having nil inventory. These transactions indicate that VBIL has not taken due care in selecting companies for making investments, thereby leading to misrepresentation of its books/ misuse of shareholder's funds.
- 4.3.5. VBIL has transferred funds to different parties, either on the same date of receipt of funds or within a gap of one day, which raises concern about the genuineness of business transactions undertaken by the Company. Further, failure on part of the Company to furnish information or any evidence, to justify such receipt and transfer of funds, to the forensic auditor, indicates that VBIL is making accommodation entries. Therefore, VBIL has led to misrepresentation of books of accounts/misuse of funds as apparently no underlying business transactions have taken place.
- 4.3.6. The revenue of the Company has substantially reduced from Rs 14,501 lakhs to Rs 573.17 lakhs from FY 2015-16 to FY 2017-18. However, other expenses

of the Company have increased from Rs 15.79 lakhs to Rs 16.05 lakhs from FY 2015-16 to FY 2017-18. Also, employee benefit expenses of the Company have also increased from Rs 13.51 lakhs to Rs 14.61 lakhs from FY 2015-16 to FY 2017-18. In a scenario, where revenue of the Company has declined in three consecutive financial years; the employee benefit expense of the Company should have also reduced but instead the said expense has increased, without justifying the fall in revenues.

4.3.7. The observations of the forensic auditor that the Company was operating from a small room having only two computer systems raises doubts over the operations of the Company.

II. Non-furnishing of information to the forensic auditor:

4.3.8. The SCN alleges that the Company has not furnished the information sought by the forensic auditor in various instances viz. Company has not furnished any information/explanation with respect to the queries raised by SEBI in the interim order and confirmatory order, Company has not provided any data/information like debtors'/creditors' ageing, list of debtors & creditors along with their balances and other supporting documents with respect to sales & purchases, bank books of the Company in excel format and bank account statements for all the bank accounts of the Company in soft copy format (excel or text format).

III. Violation of LODR Regulations:

4.3.9. VBIL failed to submit quarterly result to stock exchange, within the stipulated period of 45 days from the end of each quarter, in three instances, which is in violation of Regulation 33(3)(a) of LODR Regulations.

- 4.3.10. The statutory auditor of VBIL i.e. B. S. Kedia & Co. does not have a valid peer review certificate, as issued by Peer Review Board of Institute of Chartered Accountants of India (ICAI), which is in violation of Regulation 33(1)(d) of LODR Regulations.
- 4.3.11. The management of VBIL failed to upload a policy with respect to materiality of events/information on its website, which is in violation of Regulation 30(4)(ii) of LODR Regulations.
- 4.3.12. The management of VBIL failed to upload details of familiarization programmes imparted to independent director (during the year and on cumulative basis till date) on its website, which is in violation of Regulation 46(2)(i) of LODR Regulations.
- 4.3.13. The Company has not prepared its cash flow statements in accordance with Accounting Standard 3-“Cash flow statements” as prescribed by the Central Government under Section 133 of the Companies Act, 2013, which is in violation of Regulation 34(2)(c) of LODR Regulations.
5. The SCN-II and SCN-III alleged that Noticee no. 8 having firm registration no. 328750E was the statutory auditor of Noticee no. 1 for the financial year 2015-16 and Noticee no. 9 having firm registration no. 317159E was the statutory auditor of Noticee no. 1 for the financial years 2016-17 and 2017-18, respectively. In view of the violation of provisions of SEBI Act, 1992, SCRA, 1956, LODR Regulations and PFUTP Regulations, 2003, by Noticee no. 1, SCN-II and SCN-III alleged that Noticee no. 8 and 9 being the statutory auditor of Noticee no. 1 had been negligent in performance of their duties as they had not carried out proper due diligence and had not reported these findings in their audit reports. Further, SCN –II and SCN-III alleged that the fact that Noticee no. 1 had not complied with AS-3 and such non-compliance including observations such as adverse features with respect to loans and advances made by the company, high value bank transactions carried out by the company, had not been

pointed out in the audit reports of Noticee no. 1. SCN-II and III also alleged that the books of accounts and financial statements of Noticee no. 1 were incorrect, irregular and misleading. It was further alleged that an unqualified audit opinion stating that financial statements give the information required by the Companies Act, 2013 in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India, had been given by Noticee no. 8 and 9 in their respective audit reports. It was alleged that such certification of annual reports by Noticee no. 8 and 9 had resulted in not only the shareholders but also the public being misled about the financial health of Noticee no.1.

6. I note that Noticee no.1 has filed reply dated March 13, 2021 to the SCN. In its reply, the said Noticees have produced the copy of the death certificate of Noticee no. 4 (date of demise: November 11, 2019) and Noticee no. 3 (date of demise: October 30, 2019). In view of the same, I note that, the present proceedings against Noticee no. 3 and 4 stand abated. I note that Noticee no. 2, 5 and 6, vide their letter dated March 1, 2020 and Noticee no. 7 vide his letter dated March 12, 2021, have authorized Noticee no. 1 to file all replies to the SCN, on their behalf. Accordingly, reply dated March 13, 2021, as filed by Noticee no. 1, is also being considered as the reply of Noticee no. 2, 5, 6 and 7. Noticee no. 8 has filed his reply dated September 24, 2020 and Noticee no. 9 has filed his reply dated April 23, 2021. The Noticees were granted an opportunity of personal hearing on May 5, 2021, on which date the Noticees were heard.

Consideration of submissions and findings:

7. I have considered the allegations in the SCN, SCN-II and SCN-III, replies received, and submissions made by the Noticees during the personal hearing granted to them. The SCN alleges the violation of the following provisions of law by the Noticee no. 1 to 7:

Relevant extract of the provisions of SEBI Act, 1992:

“Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

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

.....

Offences by companies.

27. (1) Where an offence has been committed 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:

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 offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence 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 offence 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.....”

Relevant extract of provisions of SCRA, 1956:

“Conditions for listing.

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

Relevant extract of the provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

- (i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

.....

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

.....”

Relevant extract of the provisions of LODR Regulations:

“Principles governing disclosures and obligations.

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:
- (a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.
 - (b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
 - (c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
 - (d)
 - (e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, and timely and presented in a simple language.
 - (f)
 - (g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

- (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.

.....

- (f) Responsibilities of the board of directors:

The board of directors of the listed entity shall have the following responsibilities:

.....

- (ii) Key functions of 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.

...

- (iii) Other responsibilities:

....

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

.....

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

.....

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

.....

Definitions.

16.(1) For the purpose of this chapter, unless the context otherwise requires –

- (a).....

(b) "independent director" means a non-executive director, other than a nominee director of the listed entity:

- (i).....

(ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity;

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.

Disclosure of events or information.

30. (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(2)

(4) (ii) The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website....

.....

Financial results.

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

.....

(d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

.....

(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

(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

Annual Report.

34. (1).....

(2) The annual report shall contain the following:

(a).....

(c) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable

Website.

46. (1).....

(2) The listed entity shall disseminate the following information under a separate section on its website;

(a).....

(i) number of programmes attended by independent directors (during the year and on a cumulative basis till date),

(ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and

(iii) other relevant details.

Accounting Standards.

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

8. Before proceeding on the merit of the matter, it will be relevant to discuss the background of the present proceedings. SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs. In respect of listed shell companies including VBIL, vide its letter dated August 7, 2017, SEBI placed trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said

letter dated August 7, 2017 also placed the scrip in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. Thereafter, BSE vide notice dated August 7, 2017 issued to all its market participants-initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies, as identified by MCA and communicated by SEBI, with effect from August 8, 2017. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

9. Vide its letter dated August 18, 2017 and September 27, 2017, VBIL made a representation to SEBI, *inter alia*, submitting as under:

- (a) SEBI has not justified in declaring company as Shell Company.
- (b) SEBI has grossly misused its powers and violated the principle of natural justice and had taken arbitrary actions.
- (c) The said directions had harmed the reputation of the company and investors are also affected by the said directions.
- (d) The company had complied with all Listing Regulations requirements and with all annual filing at MCA.
- (e) The Authorized Capital of the company is Rs. 14,00,00,000 and Paid up Share Capital is Rs 13,10,79,500. Also the net worth of company is Rs.99,64,74,947. The Company has a reserves of Rs. 86,57,28,539 in the F.Y. 2016-17
- (f) Company had annual turnover of Rs. 1,20,98,87,745 in year 2016-17; Rs 1,45,01,43,336 in the year 2015-16; Rs 23,72,56,273 in the year 2014-15 during the last three years.
- (g) Company had a profit of Rs. 8,53,444 in the year 2016-17; Rs 44,06,422 in the year 2015-16 ; Rs 20,85,744 in the year 2014-15 during last three years and have also paid tax of Rs 2,68,470 in the year 2016-17; Rs 13,68,050 in the year 2015-16; Rs 6,39,400 in the year 2014-15.

10. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, VBIL filed an appeal No. 251 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**"). Hon'ble SAT vide order dated September 11, 2017 directed the following:

2. As the appellant has already made a representation to BSE and SEBI against the said ex-parte order dated August 7, 2017, counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit....”

11. Pursuant to above mentioned SAT Order, SEBI had called for various information/ explanation from VBIL and after granting an opportunity of personal hearing to VBIL, an interim order dated November 9, 2017 came to be passed by Whole Time Member, SEBI, directing the following:

“28.....

- i. The trading in securities of VBIL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Exchange shall appoint an forensic auditor inter alia to further verify:
 - a. Misrepresentation including of financials and/or business of VBIL and its subsidiaries, if any;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries, if any.
- iii. The promoters and directors in VBIL are permitted only to buy the securities of VBIL. The shares held by the promoters and directors in VBIL shall not be allowed to be transferred for sale by depositories.
- iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against VBIL. “

The interim order also clarified that:

“29. The ‘directors’ for the purpose of directions above shall mean and include:

- a. the persons who are acting as directors on the date of this order, or
- b. the persons who were acting as directors of this company as on August 07, 2017, who cease to be director by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017.”

12. The said directions in the interim order were confirmed vide order dated October 5, 2018. In terms of the interim order and confirmatory order, BSE had appointed BDO India LLP as the Forensic Auditor on January 9, 2019 and the Forensic Audit Report

was submitted to BSE by BDO India LLP on July 5, 2019. Thereafter, based on the Forensic Audit Report which was forwarded by BSE to SEBI, SEBI carried out an investigation in the matter. Based on the findings of investigation, the matter was placed before me on February 18, 2020 for approval of issuance of show cause notice and then was again placed before me on February 10, 2021 for granting a date for opportunity of hearing to the Noticees and passing a final order in the matter.

13. I shall now proceed to examine the allegations in the SCN and the contentions raised by the Noticees thereon. I note that allegations made in the SCN can be categorized as under:

- A. Violations of provisions of LODR Regulations due to misrepresentation including of financials and misuse of funds/books of accounts;
- B. Non-furnishing of information to the forensic auditor;
- C. Other violation of provisions of LODR Regulations;
- D. Violation of provisions of PFUTP Regulations, 2003.

In the following paras, all these have been dealt with my findings thereon.

A. Violations of provisions of LODR Regulations due to misrepresentation including of financials and misuse of funds/books of accounts:

14. Re: Violation of Accounting Standard-3

14.1. SCN alleges that the Company is engaged in the business of providing financing activities, trading/ investment in shares and securities and providing financial assistance to individuals and corporates. Therefore, interest income from such activities should be shown under the head "Cash flow from operating activities" rather than "Cash flow from financing activities". However, it is noted that for three consecutive financial years beginning since 2015-16, VBIL has incorrectly shown interest received by it on loans and advances granted by it under the head "Cash

flow from financing activities” instead of “Cash flow from operating activities” as under:

FY 2015-16: Rs 111.68 lakhs

FY 2016-17: Rs 43.56 lakhs

FY 2017-18: Rs 44.67 lakhs

- 14.2. In response to said allegation, Noticee no. 1, 2, 5, 6 and 7 have apart from its trading activities in Yarn (Textile Segment), the Company was also engaged in the business of financing activities and trading/ investment in shares during the audit period. The Company is catering to individual and corporate by way of providing financial assistance and thus, the interest income from such activities needs to be shown under the head ‘Cash flow from Operation’ rather than the head ‘Cash flow from financing activities’. Further, Forensic Auditor might have overlooked / ignored the line of business of the Company and has stated wrong observation in the Forensic Audit Report and hence the same should be overlooked.
- 14.3. I find that the Company itself has admitted in its reply dated March 13, 2021 that it was engaged ‘in the business of financing activities’. The Company has also admitted that “The Company is catering to individual and corporate by way of providing financial assistance and thus the interest income from such activities needs to be shown under the head ‘Cash flow from Operation’ rather than the head ‘Cash flow from financing activities’.” Further, from the website of the Company at the URL <https://www.vbindustriesltd.in/>, I find that the Company has made the following disclosure on the Homepage itself:

“Brief Line of Business

Primarily, the business of the Company can be divided into following two Segments -

- *Investment in Shares & Securities*
- *Providing Short Term Loan to Corporate and HNIS*

- 14.4. While mentioning the 'Principal Business Activities' of the Company in the Form MGT-9 (Extract of Annual Return), I note that the Company has disclosed 'Financing Activities & Trading / Investment in Shares & Securities' as one of its principal business activities contributing 27.54%, 32.49% and 100% to the total turnover of the Company for the FY 2015-16, 2016-17 and 2017-18, respectively. Therefore, I find that 'financing activity' was indeed one of the principal business activity of the Company and the income earned from such activity ought to have been classified as 'Cash Flow from Operations' in the Cash Flow Statement for the FY 2015-16, 2016-17 and 2017-18 thereby violated Regulation 34(2)(c) of LODR Regulations and Noticee no. 2 and 7, being CEO and CFO of VBIL, respectively, by certifying that financial results do not contain any false or misleading statement or figures, have violated proviso to Regulation 33(2)(a) of LODR Regulations. Further, Regulation 33(2)(a) of LODR Regulations provide that the quarterly financial results submitted shall be approved by the board of directors and thus, Noticee no. 2, 5, 6 and 7 being part of board of directors of VBIL, have violated Regulation 33(2)(a) of LODR Regulations.
- 14.5. SCN alleges that VBIL has shown current year tax paid as an outflow under operating activities in cash flow statement and same amount as a provision for taxation in balance sheet under the head short term provisions in current liabilities.
- 14.6. In response to said allegation Noticee no. 1, 2, 5, 6 and 7 replied that they strongly deny the allegations about the Cash Flow Statements. The Company has reduced the amount of Provision for Taxation in the same section, prior to showing 'Net Cash from operating activities' and the same is evident from Cash Flow Statement for all the three financial years. We are of the opinion that one needs to understand the concept of Accounting Standard 3 before making such allegations. Furthermore, the Company has prepared the Cash Flow Statement using indirect method. To nullify the double taxation effect of taxes paid, the provision for taxation has been considered in the changes in working capital rather than non- cash item. And thus

there are no material misstatements in the financial statement prepared by the Company, as alleged in the Forensic Audit Report.

- 14.7. The allegation in the SCN is that, while on one hand 'tax paid by the Company' has been shown in the cash flow statement as outflow from operating activities, but on the other hand 'provision for taxes' were made for the same amount in the balance sheet. In other words, while on one hand the cash flow statement of VBIL for FY 2015-16, 2016-17 and 2017-18 deducts 'Income Tax liability for the year' from the Cash flow from Operating Activities, but at the same time it also shows the same amount as 'provision for Taxation' in the 'Current Liabilities' section of the Balance Sheet for all the said three financial years. I note that Noticee no. 1, 2, 5, 6 and 7, have failed to offer any explanation for this misleading disclosure in the financial statements, except for the bald counter-allegation that the Forensic Auditor fails to understand Accounting Standard -3. In view of the above, I find that the financial statements of VBIL - either the cash flow statement or the balance sheet – (depending on whether the said amount was actually paid by VBIL towards Income Tax in the relevant year or only provision was made), for the FY 2015-16, 2016-17 and 2017-18 were misrepresented.
- 14.8. SCN alleges that the Company has incorrectly shown (i) net increase in total current liabilities amounting to 3449.30 lakhs instead of 3439.54 lakhs in cash flow statement for FY 2015-16, (ii) net increase in total current liabilities amounting to 2898.30 lakhs instead of 2906.69 lakhs in cash flow statement for FY 2016-17, and (iii) net decrease in total current liabilities amounting to 287 lakhs instead of 283.37 lakhs in cash flow statement for FY 2017-18.
- 14.9. Noticee no. 1, 2, 5, 6 and 7 have not provided any specific reply to said allegation in their reply. I find that because of the incorrect reporting of current liabilities by VBIL in the cash flow statement, the net cash flow from operating activities for the FY 2015-16 was over-reported by 9.76 lakhs, the net cash flow from operating

activities for the FY 2016-17 was under-reported by 8.39 lakhs and the net cash flow from operating activities for the FY 2017-18 was over-reported by 3.63 lakhs. In view of the above, I find that the Cash Flow Statement of VBIL for the FY 2015-16, 2016-17 and 2017-18 were misrepresented.

15. Re: Minimal movement in opening/closing balance of debtors/creditors in the financial statements:

- 15.1. SCN alleges that there is minimal movement in opening & closing balances of debtors/ receivables and creditors/ payables in the financial statements of VBIL, thereby indicating that the Company is unable to realise cash from its receivables, which adversely affects the Company's working capital cycle.
- 15.2. Regarding the said allegation, Noticee no. 1, 2, 5, 6 and 7 have submitted that the Company was engaged in the business of yarn trading during FY 2015-16 and 2016-17 and this business activity has been discontinued during FY 2017-18 due to the introduction of VAT on textile products. The said business activities were quite satisfactory during FY 2015-16 and 2016-17 and were of Rs. 24,389.75 lakh and Rs. 12,098.88 lakh, respectively. After closing down the Yarn business, the receivable's were stuck and thus there was a delay in realization and also the delay in making payments of dues. However, the other business .i.e. of trading/investment in shares and securities as well as financing activities were having not affected at all during FY 2017-18, as it appears in the financial statement of Annual Report.
- 15.3. I note that allegation made in the SCN is that there was minimal movements in opening and the closing balances in debtors/receivables and creditors/payables. The Company has provided an explanation which I find plausible. Moreover, such minimal changes could be for various reasons including the one offered by the Company, however, unless there is a material to disbelieve the explanation which in the present case is none, it can not be termed as misrepresentation of financials. I find that allegation made in the SCN, in this regard is not made out.

16. Re: Investment in shares without due care in selecting companies.

- 16.1. SCN alleges that VBIL has invested in the shares of companies which seem to have no legitimate business activity, are either loss making or have been delisted from the stock exchange or are having nil inventory. These transactions indicate that VBIL has not taken due care in selecting companies for making investments, thereby leading to misrepresentation of its books/ misuse of shareholder's funds.
- 16.2. Regarding the said allegation, Noticee no. 1, 2, 5, 6 and 7 have submitted that we strongly deny this allegation and hereby submit that the Company has taken due care while making investment in shares and securities. The one who knows the concept of stock market, knows it well that every investment cannot fetch huge / good / guaranteed return. In the stock market there is always a risk of losing money due to any of the adverse news, whether change in govt. regulation or change in laws of land, any wrong happening with the company and so on. In spite of losing money in the stock market through many more people deal in the share market. As far as investment in shares by the Company is concerned, the Company has taken due care while investing the money in shares, but unfortunately have lost money from some of its investments due to the sudden fall in the small cap shares, shares which have given huge return in earlier period.
- 16.3. I agree with submissions of the Noticees that investment in securities market are subject to market risks, however, I note that aforesaid allegation in the SCN has come in the wake of specific instance of investment made by the Company inter alia in D B Vyapaar Ltd., as pointed out in the Forensic Audit Report, wherein it was observed that D B Vyapaar was not only a poor investment decision but the Company was not even shown as shareholder of D B Vyapaar Ltd. The Company has given only a general reply that securities investment do not give guarantee of returns but has not given any explanation regarding observation of Forensic Audit

Report with respect to investment by the Company in D B Vyapaar Ltd. Specific observations in Forensic Audit Report, are as under:

“On sample review of inventories held by the Company INR 144.49 lakhs in FY 2017-18, we noted the Company has shown 128600 shares of “D B Vyapaar Private Limited” amounting to INR 90.02 lakhs which was purchased in FY 2016-17, we independently verified the financial statement and list of shareholders of “D B Vyapaar Private Limited” through MCA portal, performed public domain search. Below enumerated is summary of financials.

1. The entity had incurred a loss of INR (0.35) lakhs in FY 2015-16.
2. The entity's revenue is decreased by 57.26% from 41.72 lakhs to 17.83 lakhs in FY 2016-17.
3. The level of inventory in FY 2015-16 & FY 2016-17 is “NIL” which is unreasonable.

Further, on review of the list of shareholders of “D B Vyapaar Private Limited” for FY 2016-17 and FY 2017-18, we noted that the name of VBIL was not appears in the list of shareholders of DB Vyapaar Private Limited. This raises suspicion on the genuineness of the investment activities undertaken by the company.

16.4. I note that the Forensic Auditor has explicitly made adverse observations about VBIL not being the shareholder of “D B Vyapaar Pvt. Ltd.” and yet showing the shares held in “D B Vyapaar Pvt. Ltd.” as ‘Inventories’ in the Balance Sheet as on March 31, 2017 and March 31, 2018. In view of the above, I find that the financial statements of VBIL for the FY 2016-17 and 2017-18 were thus misrepresented. I also note from the interim order dated November 09, 2017, VBIL is stated to have bought shares of Shree Ganesh Sugar Mills Pvt Ltd. from Prantikole Dealers Pvt. Ltd. However, as stated in the said interim order, from the MCA database, it is observed that Prantikole Dealers Pvt. Ltd. does not exist. I note that VBIL was called upon by the forensic auditor to offer its comments on the aforesaid observations in the interim order, but VBIL has chose to remain silent on the same.

17. Re: Advancement of huge amount of unsecured loan at minimal rate.

- 17.1. SCN alleges that advancement of huge amount of unsecured loans by VBIL at minimal rate of interest (0.59%-1.46%) and that too without any provisioning is not a prudent business practice as transactions entered into by the Company gives an impression that the Company has not judiciously utilised the shareholder's funds, thereby leading to misuse of the funds of the Company.
- 17.2. Noticee no. 1, 2, 5, 6 and 7 have submitted that the Company is not a RBI registered NBFC and it does not hold NBFC Certificate under Section 45-I of RBI Act. In view of the same, it is not required for the Company to make a provision for non-performing assets under RBI Rules, as questioned by the Forensic Auditor. The Company has analyzed each and every loan payment and did not find any reason to make provision for Bad Debts on Loan. With regards to providing for interest on loan, the Company has made provision for interest on loan, only for those payment where there was a certainty to receive interest. The Company did not think it appropriate to charge interest on every loan payment, to pay taxes on such income and afterwards to write-off the same in the books of accounts.
- 17.3. In this regard, I note that VBIL has submitted that it is not an RBI registered NBFC. I find that while mentioning the 'Principal Business Activities' of the Company in the Form MGT-9 (Extract of Annual Return 2017-18), I find that the Company has disclosed 'Financing Activities & Trading / Investment in Shares & Securities' as its only principal business activity contributing 100% to the total turnover of the Company for the 2017-18. Thus, it appears that from financial year 2017-18 onwards, VBIL's principal business activity was in the nature of financing activities mainly trading in shares and securities which are akin to the activities of an NBFC. Therefore, this aspect of the matter should be looked into by competent regulator. Accordingly, the allegation with regard to not providing for adequate provisions for bad debts, I note that the same can not be determined at this stage, since, the status

of VBIL as an NBFC, will have to be examined by the concerned regulator which will decide the percentage of provisioning that would be required to be made by VBIL.

18. Re: Transfer to different entities, either on the same date of receipt of funds or within the gap on one day

18.1. SCN alleges that VBIL has transferred funds to different parties, either on the same date of receipt of funds or within a gap of one day, which raises concern about the genuineness of business transactions undertaken by the Company. Further, failure on part of the Company to furnish information or any evidence, to justify such receipt and transfer of funds, to the forensic auditor, indicates that VBIL is making accommodation entries.

18.2. In this regard, Noticee no. 1, 2, 5, 6 and 7 have submitted as under:

18.2.1. During the FY 2015-16 and 2016-17, the Company was into the business of trading in yarn and was carrying trading activities with limited finance/ funds. As per the policy of the Company, the Company was utilizing the proceeds from sale of yarn to make payment of yarn purchases. There is no harm or crime or irregularity in making payment on the same day to the debtors from whom the yarn was purchased earlier or enter into any financial transaction. Remember the Company does not get interest from the balances lying in their Current Account, however, the payment to the debtors enables the Company to make fresh purchase after clearing old dues and this is beneficial to the Company.

18.2.2. As far as we understand the Forensic Auditor is putting finger on the banking transactions carried out during FY 2017-18, the year in which the Company had discontinued its business of trading in yarn. The payment was overdue to the debtors and so were the receivables. During these days the Company was trying hard to recover dues and also to clear their liabilities by way of making payment

to sundry creditors. We do not find any mismanagement in the concept of handling banking activities looking to the usual business practice.

18.2.3. In regard to the allegation of the Forensic Auditor of not providing information or evidence, please note that the Company has provided the backup of Tally containing details records of books of accounts. The purchase and sales entries have been entered in the books and payment were made to those entities only. The name of the person from whom the payment is received and the name of the person to whom payment was made appears in the Bank Statement itself and those name of transactions can be verified from the date of books of accounts.

18.2.4. Not doing enough efforts to find the truth and then making false and baseless allegations against the Company is not the right concept of auditing and the same could have been avoided by the forensic auditor.

18.3. In this regard, I note that no specific violation of the LODR Regulations could be ascertained from the aforesaid allegation. I also note that though the transfer of large amount of funds on the same day or the next day of receipt of funds, may *prima facie* sound suspicious but in light of the explanation offered by Noticee no. 1, 2, 5, 6 and 7, no adverse inference can be drawn from these transactions.

19. Re: The revenue of the Company has been substantially reduced, however, other expenses have increased.

19.1. SCN alleges that the revenue of the Company has substantially reduced from Rs. 14,501 lakhs to Rs. 573.17 lakhs from FY 2015-16 to FY 2017-18. However, other expenses of the Company have increased from Rs. 15.79 lakhs to Rs. 16.05 lakhs from FY 2015-16 to FY 2017-18. Also, employee benefit expenses of the Company have also increased from Rs. 13.51 lakhs to Rs. 14.61 lakhs from FY 2015-16 to FY

2017-18. In a scenario, where revenue of the Company has declined in three consecutive financial years, the employee benefit expense of the Company should have also reduced but instead the said expense has increased, without justifying the fall in revenues.

19.2. SCN further alleges that Forensic Audit Report observed that the Company was operating from a small room having only two computer systems raises doubts over the operations of the Company.

19.3. In response to the aforesaid allegations, Noticee no. 1, 2, 5, 6 and 7 has submitted as under:

19.3.1. As stated earlier also in our reply letter, the fact that the Yarn business was discontinued in FY 2017-18 and the same led to decrease in revenue of the Company. Without prejudice it appears that the Forensic Auditor has ignored this fact while making allegations against the Company, else such remark would not have come into the report. The discontinuation in yarn business led to decrease in revenue in FY 2017-18, in comparison to FY 2015-16 and FY 2016-17.

19.3.2. With regard to increase in Other Expenses from Rs. 15.79 Lakh in FY 2015-16 to Rs. 16.04 Lakhs in FY 2017-18, one can obtain the information about increase in head of expenses from Schedule of Profit and Loss Statement.

19.3.3. Please take note that there was increase in “Legal and Professional Fees” to the tune of Rs. 1.70 Lakhs, in FY 2017-18 because of the order of ‘Shell Company’ which was issued by BSE. There is no abnormal rise in the expenses and this remark could have been ignored by the forensic auditors. Same with remark “Employee Benefit Expenses” which increased from Rs. 13.51 Lakh to Rs. 14.61 Lakh in comparison from FY 2015-16 to FY 2017-18. Remember that

the Company was operating with minimal staff strength during all the three financial years and increase was due to salary of staff in line with the raise of inflation in the country.

19.3.4. In regard to the operating of the Company from small room with two computers is concerned, please take note that Forensic Auditors have visited two rooms instead where four computers were available and were in operation during audit inspection.

19.4. In this regard, I note that the Company has justified the reduction in revenue in FY 2017-18 due to discontinuation in Yarn trading business by the Company. I do not wish to draw any adverse inference on the same. I also note that the SCN has raised suspicion on the 'other expenses' and the 'employee benefit expenses' being incurred by the Company vis-à-vis the decline in revenue of the Company. On this remark by the SCN, I note that the increase in 'other expenses' and 'employee benefit expenses' from FY 2015-16 to FY 2017-18, is negligible and no adverse inference can be drawn from the same. The decision to incur expenses in the day to day operations of the Company is the discretion of the management of the Company, it is not the purview of the regulator to call into question the decisions of the management taken in the commercial wisdom, unless there is grave and alarming misappropriation of the funds of the listed company or allegations such as siphoning off of funds of the Company.

B. Non-furnishing of information to the forensic auditor:

20. The SCN alleges that the Company has not furnished the information sought by the forensic auditor in various instances viz. Company has not furnished any information/ explanation with respect to the queries raised by SEBI in the interim order and confirmatory order, Company has not provided any data/information like debtors'/creditors' ageing, list of debtors & creditors along with their balances and

other supporting documents with respect to sales & purchases, bank books of the Company in excel format and bank account statements for all the bank accounts of the Company in soft copy format (excel or text format).

21. In response to the aforesaid allegation, Noticee no. 1, 2, 5, 6 and 7 have submitted that, - we strongly deny the allegations and hereby state and submit that the Company has provided all the information/ record to the forensic auditor during the course of audit, to the extent of its availability. With regard to the allegation of the Forensic Auditor for not providing bank statement in Excel format, the same could not be provided as banker denied providing the same in Excel format. The auditor has also been asked to approach directly to the banker to get the Excel Sheet of bank account, but has not done the same. Banks are not under our management and we cannot do anything if the banker denies providing the same in the format which has been asked by Forensic Auditor. As far as Forensic Auditors requirement to provide sale/purchase bill in excel format is concerned, this is not possible at all and Forensic Auditor knows this fact well. We have provided all tally data output stored in Tally Accounting software. The Auditor himself could reloaded these data in Tally software and could convert this data in desired format.

22. In this regard, I find that -

22.1.1. Forensic Auditor vide its email dated February 19, 2019, February 20, 2019 and follow-up email dated February 25, 2019 and February 26, 2019, had sought explanation and information/ documents from VBIL for the queries raised by SEBI in the interim order dated November 9, 2017. I find that VBIL has conveniently ignored to furnish any information/ explanation to the forensic auditor on the same. In this regard, I also note that VBIL has also not furnished any reason for not providing any information/ explanation to the forensic auditor while replying to the present SCN.

- 22.1.2. With regard to the request of the forensic auditor for providing bank account statements for all the bank accounts of the Company in soft copy format (excel or text format). It appears that the forensic auditor has been insisting for information in a certain format, but VBIL did not provide the same in the requested format as banks did not provide the same in the said format. Be that as it may, but VBIL at least ought to have provided the bank statements in any form (i.e. hard copy or soft copy), as it was available, to the forensic auditor. From the Forensic Audit Report, I find that VBIL has provided the Kotak Mahindra Bank Statement only to the forensic auditor. VBIL failed to provide Punjab National Bank statement to the forensic auditor, which was later procured by forensic auditor from BSE.
- 22.1.3. With regard to not providing data/information like debtors'/creditors' ageing, list of debtors & creditors along with their balances and other supporting documents with respect to sales & purchases, bank books of the Company, as sought by the forensic auditor, I note that while VBIL has claimed that they have provided all Tally Data output to the forensic auditor, but from the Annexure to the Forensic Audit Report, I find that vide its email dated February 27, 2019, forensic auditor had intimated to VBIL that the Tally data provided by VBIL was inaccessible. I note that VBIL in its reply has submitted that it had difficulties in providing detail of sale/purchase invoices in excel format, however, it has not been asserted by VBIL that it had provided copies of these documents to forensic auditor. From the Annexure to the Forensic Audit Report, I find that the Forensic Auditor vide its email dated February 19, 2019, February 20, 2019 and follow-up email dated February 25, 2019 and February 26, 2019, had continuously sought data/information from VBIL, but barring one instance seeking extension of time for submission of data, I do not find any material on record, neither has any material been placed by VBIL in its reply to the present SCN, showing that VBIL had provided the requested data/ information to the forensic auditor or it had conveyed its difficulty or explanation in not providing

the said information to the forensic auditor. In view of the above, I find that VBIL has failed to furnish the requested information/ data to the forensic auditor.

22.1.4. BSE was directed to appoint a forensic auditor for carrying out forensic audit of VBIL vide SEBI interim order dated November 9, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. Being a listed entity, non-cooperation with such an audit is serious. I also note that Section 11(2) (i) and 11(2) (ia) of the SEBI Act, 1992 has been invoked against the Noticees. On a reading of these Sections, I observe that Section 11(1) of the SEBI Act, 1992 lays down the functions of SEBI, and in carrying out the said functions, SEBI is empowered, under 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992, to call for records from intermediaries and other entities. In the facts and circumstances of the present case, a forensic auditor appointed through an order of SEBI who seeks information from an entity must be treated with the same seriousness as if the information is being sought by SEBI. In view of the non-furnishing of the information sought by the forensic auditor, I find that VBIL has violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

C. Other violation of provisions of LODR Regulations:

23. Re: Delay in submission of quarterly result to stock exchange.

23.1. SCN alleges that VBIL failed to submit quarterly result to stock exchange, within the stipulated period of 45 days from the end of each quarter, in three instances, which is in violation of Regulation 33(3)(a) of LODR Regulations.

23.2. In response to the aforesaid allegation, Noticee no. 1, 2, 5, 6 and 7 have submitted that, - Table showing submission of Financial Results during Audit Period showing due date and date of submission - "Annexure B" of our reply. This can also be checked from BSE website/ BSE Compliance Dept.

- 23.3. In this regard, from the Forensic Audit Report, I find that the Company has alleged been shown to have failed to submit the quarterly financial results to BSE on time, on three occasions, as under:

Quarter ended	Due Date	Filing Date	Delay (No. of days)
31-Mar-17	15-May-17	29-May-17	14
		12-Jul-17 (Revised)	57
30-Jun-17	15-Aug-17	14-Sep-17	30
		21-Oct-17 (Revised)	67
31-Mar-18	15-May-18	29-May-18	14

I note that Regulation 33(3)(a) of LODR Regulations stipulates that the listed entity should submit its quarterly and year-to-date standalone financial results to the stock exchange within 45 days from the end of each quarter other than the last quarter. Further, in terms of Regulation 33(3)(d) and 33(3)(e) of LODR Regulations, the listed entity is required to submit the financial result in respect of last quarter along with the result for the entire financial year within sixty days from the end of financial year. In view of the above, I find that, VBIL has failed to submit the quarterly result for the first quarter of FY 2017-18 within the stipulated time of 45 days. The results in this instance, were submitted to BSE only after a delay of 30 days. Thus, I find that VBIL has violated the provision of Regulation 33(3)(a) of LODR Regulations. I note that, as far as the other two instances of delayed results submission are concerned (i.e. quarter ended March 2017 and March 2018), I find that the Forensic Audit Report and the SCN have incorrectly identified the said instances as delay.

24. Re: Statutory Auditor not a peer review auditor.

- 24.1. SCN alleges that the statutory auditor of VBIL i.e. B. S. Kedia & Co. does not have a valid peer review certificate, as issued by Peer Review Board of Institute of Chartered Accountants of India (ICAI), which is in violation of Regulation 33(1)(d) of LODR Regulations.

24.2. In response to the said allegation, Noticee no. 1, 2, 5, 6 and 7 have submitted that,
- Photocopy of Peer Review Audit Certificate of M/s. B. S. Kedia & Co. which has been issued by ICAI – is 'Annexure C' to the reply.

24.3. In this regard, from the copy of the Certificate issued by the Peer Review Board of ICAI, which was annexed as Annexure C to the reply of VBIL, I find that M/s. B. S. Kedia & Co. holds the Peer Review Certificate effective from August 25, 2020. I note that the said certificate does not indicate the status of his Peer Review Holdership for the FY 2016-17 and FY 2017-18, at which time he was the Statutory Auditor of VBIL. From the details mentioned on ICAI website about valid peer review certificate holders, I find that M/s. B.S. Kedia & Co. was first issued the Peer Review Certificate in 2011. Assuming that M/s. B. S. Kedia & Co. was a practice unit falling under Level III, the maximum period for which his certificate would have been valid was for five years. Therefore, from the details available on ICAI website and from the findings in the Forensic Audit Report, I find that M/s. B. S. Kedia & Co. did not hold a valid Certificate from the Peer Review Board of ICAI during the FY 2016-17 and FY 2017-18. Thus, I find that by appointing M/s. B S Kedia & Co. as the statutory auditor for the FY 2016-17 and 2017-18, VBIL has violated the provisions of Regulation 33(1)(d) of LODR Regulations.

25. Re: Failure to upload necessary information on website of the Company.

25.1. SCN alleges that , -

25.1.1. The management of VBIL failed to upload a policy with respect to materiality of events/information on its website, which is in violation of Regulation 30(4)(ii) of LODR Regulations.

25.1.2. The management of VBIL failed to upload details of familiarization programmes imparted to independent director (during the year and on cumulative basis till

date) on its website, which is in violation of Regulation 46(2)(i) of LODR Regulations.

25.2. In response to the aforesaid allegations, Noticee no. 1, 2, 5, 6 and 7 have submitted that, - snapshot of various section of the website of the Company, is 'Annexure D' to the reply. Snapshot of the updated policy on the Company website of familiarization programmes imparted to independent directors – is 'Annexure E' of our reply.

25.3. In this regard, from the Annexure to the Forensic Audit Report containing the document titled 'Familiarization Programme for Independent Directors' which was extracted by the Forensic Auditor from the website of VBIL, I find that VBIL has failed to mention the details of (i) the number of programmes attended by independent directors (during the year and on a cumulative basis till date), (ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), thereby violating the provision of Regulation 46(2)(i) of LODR Regulations. Further, from the snapshot of website of VBIL (provided as Annexure D to the reply of VBIL), I find that VBIL has failed to upload the 'Policy with respect to determining the materiality of event/ information' on its website. Thus, I find that VBIL has violated provisions of Regulation 30(4)(ii) of LODR Regulations. After visiting the website of VBIL, I also find that none of the policies that are mandated under the LODR Regulations to be uploaded on the website of the listed company viz. Policy on Related Party Transactions, Whistle Blower Policy, Code of Conduct of Board of Directors, etc., are accessible.

26. I note that Regulation 48 of the LODR Regulations provide that the listed entity shall comply with all the applicable and notified Accounting Standards from time to time. In view of the misrepresentations in the financials of VBIL which have resulted due to non-adherence to accounting standards, as found above, I find that VBIL has also violated Regulation 48 of LODR Regulations.

27. I note that Regulation 17(8) of LODR Regulations provide that CEO and CFO shall provide the compliance certificate to the board of directors of the company *inter alia* certifying that they have reviewed financial statements and the cash flow statement for the year and to the best of their knowledge and belief, the financial statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading and they present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations. In view of the misrepresentations in the financials of VBIL, as found above, I find that CEO of VBIL i.e. Noticee no. 2 and CFO of VBIL i.e. Noticee no. 7, have also violated Regulation 48 of LODR Regulations.

D. Violation of provisions of PFUTP Regulations, 2003:

28. I note that SCN also alleges the violation of Section 12A(a), (b) & (c) of SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1), 4(2)(f) & (r) of PFUTP Regulations, 2003, by Noticee no. 1 to 7, in view of the violations of LODR Regulations, as discussed above. In this regard, I note that the scope of work, as was assigned to the forensic auditor by BSE, as stated in the Forensic Audit Report, was as follows:

“The scope of Forensic Audit shall include examining the following: -

1. Possible misrepresentation including its financials and / or businesses and / or violation of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or
2. Possible misusing of Books of Account/funds of the Company including facilitation of accommodation entries and/ or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP)

For the aforesaid reasons, the audit *inter alia* should cover the following:

- a. Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company
- b. To examine the Books of Accounts and backup records of the company for the period of two years including the year of transactions referred in SEBI / Exchange Order to:
 - I. Cash flow analysis to trace source of funds and end use of funds on sample basis (as per Annual Report for last 2 years)
 - II. Assess genuineness of the debtors/ receivables and creditors / payables,

- III. Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors)
 - IV. Analysis of Related party transactions
 - V. High value bank transactions to ascertain their relevance to the business of the company and to identify the potential round-tripping of funds or accommodation transactions
 - VI. Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers
 - VII. Investments made by the company in subsidiary companies along with the relevant fund flows, if any
 - VIII. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds
 - IX. Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act
 - X. Comment on the shareholding pattern
 - XI. Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds)
- c. Verification / discussions:
- I. Independent and /or physical verification of the underlying transactions
 - II. Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the company
 - III. Discussions with key stakeholders like Promoters/ Senior Management Team / Departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the company, etc.
 - IV. Business history, directorship searches and litigations
 - V. Assessment of size and scope of business
 - VI. Site visit as may be applicable for verifying existence of the company functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants / factories.”

29. I note that conclusion of the forensic audit, as mentioned in the Forensic Audit Report, is as under:

“We visited the registered office of the company on 19 February 2019 and met Mr. Shyam Sundar Parasramka, Managing Director and Mr. Jauhar Singh, Director, Ms. Payal Bafna (CS), Mr. D.N. Jha (Accountant) and Consultant of the Company. We have sought necessary information and explanation to initiate the forensic audit and understand the business operations of the Company. We have also shared the SEBI queries along with our remarks and required information and documents vide our email dated 19 February 2019 and 20 February 2019. However, despite our multiple follow ups vide email dated 25 February 2019, 26 February 2019 and granted extension till 11 March 2019 based on email received from VBIL to grant some extension, the management failed to provide majority of data sought. Such non-co-operation by the target entity raises suspicion on the genuineness of the business activities undertaken by the Company.

A. Misrepresentation of financial statements and its business and violation of SEBI (Listing Obligation and Disclosure Requirement) Regulation 2015 as evident from the following observation:

a. Violation of SEBI LODR 2015 and other applicable law and regulation:

1. VBIL failed to submit quarterly result to stock exchange within stipulated period of 45 days for 3 instances which is violation of Regulation-33 (3) (a) of Chapter - IV of SEBI LODR 2015.
2. VBIL has appointed B.S. Kedia & Co. in FY 2016-17 and FY 2017-18. As per details mentioned on ICAI website about valid peer review certificate holders, we noted that B.S. Kedia & Co. does not have valid peer review certificate as issued by peer review board of Institute of Chartered Accountants of India (ICAI). This is violation of regulation 33 of chapter - IV of SEBI LODR 2015.
3. The management of VBIL failed to upload policy with respect of materiality on VBIL's website which is violation of regulation 30 (4) (ii) of chapter - IV of SEBI LODR 2015.
4. The management of VBIL failed to upload details of familiarization programmes imparted to independent director (during the year and on cumulative basis till date) on website which is violation of Regulation 46 (2) (i) & (ii) of Chapter - IV of SEBI LODR 2015.
5. The Company did not prepared cash flow statements in accordance with Accounting Standard 3 – Cash flow statements as prescribed by the Central Government under Section 133 of the Companies Act, 2013 which is violation of Regulation 34 (2) (C) of chapter-IV of SEBI LODR 2015.

B. Misuse of books of accounts / fund of the Company including facilitation of accommodation entries detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP) as evident from the following findings:

1. The Company is engaged in business of finance and investment activities. Accordingly, Interest received of INR 44.67 lakhs (7.80% of total revenue), INR 43.56 lakhs (0.36% of total revenue) and INR 111.68 lakhs (0.77% of total revenue) in FY 2017-18, FY 2016-17 & FY 2015-16 respectively on loans and advances should be shown under "Cash flow from operating activities", however, the same has been shown in "Cash flow from financing activities".
2. In FY 2017-18, the Company has incorrectly shown net decrease in total current liabilities amounting to INR 287.00 lakhs instead of INR 283.37 lakhs in cash flow statements.
3. In FY 2016-17, the Company has incorrectly shown net increase in total current liabilities amounting to INR 2898.30 lakhs instead of INR 2906.69 lakhs in cash flow statements.
4. In FY 2015-16, the Company has incorrectly shown net increase in total current liabilities amounting to INR 3449.30 lakhs instead of INR 3439.54 lakhs in cash flow statements.
5. The Company has shown current year tax paid amounting to INR 4.02 lakhs, INR 2.68 lakhs and INR 13.68 lakhs in FY 2017-18, FY 2016-17 & FY 2015-16 respectively as an outflow under operating activities in cash flow statement and same amount as a provision for taxation in balance sheet under the head short-term provisions in current liabilities. Thus, the Company had given incorrect treatment of tax paid by showing provision in the balance sheet.

6. In the FY 2017-18, The Company's revenue is decreased by 96% from 12142.44 lakhs to 573.17 lakhs. This was mainly due to NIL revenue from Yarn business and huge reduction in revenue by 87% from shares & securities business.
7. The Company has unsecured loans & advances (Assets) of INR 7177.27 lakhs in FY 2017-18. On reviewing the same, we noted 72% of net worth consist of unsecured loans & advances for which no provision has been created in last three years. We observed unsecured short-term loans and advances fetching very nominal rate of interest between 0.59% to 1.49% which is unusual. As per industry practice, rate of interest on unsecured loans & advances usually is very high. However, in this case, Company is fetching very nominal interest rate as mentioned above. This creates suspicion on the genuineness of the said transactions and gives an impression that the Company is not diligent in utilisation of share-holders funds.
8. Company's % of net profit after tax to revenue in FY 2017-18, FY 2016-17 and FY 2015-16 is 1.71%, 0.05% and 0.21% respectively which is very unusual as compared to the industry standard.
9. On review of statement of profit and loss for FY 2017-18, FY 2016-17 and FY 2015-16, we noted cost of goods sold ("COGS") was incorrectly named as increase/decrease in stock-in-trade.
10. On sample review of inventories held by the Company INR 144.49 lakhs in FY 2017-18, we noted the Company has shown 543976 and 20000 shares of PS IT Infrastructure Limited amounting to INR 2991.87 lakhs & INR 10.69 lakhs in FY 2015-16 & FY 2017-18 respectively which is form part of the list of 331 suspected shell companies provided by SEBI / MCA. This raises concern over the genuineness of stock selection process deployed by the Company.
11. Further, we noted the Company has shown 822900 shares of Denim Developers Limited amounting to INR 9.31 lakhs in FY 2017-18 which is form part of the list of 331 suspected shell companies provided by SEBI / MCA. On further review of the same, we noted the entity has been delisted on the stock exchange. This raises concern over the genuineness of stock selection process deployed by the Company.
12. On sample review of inventories held by the Company INR 144.49 lakhs in FY 2017-18, we noted the Company has shown 128600 shares of "D B Vyapaar Private Limited" amounting to INR 90.02 lakhs which was purchased in FY 2016-17, we independently verified the financial statement and list of shareholders of "D B Vyapaar Private Limited" through MCA portal, performed public domain search. Below enumerated is summary of financials.
 - The entity is engaged in the business of Marketing & consultancy and trading in shares & securities.
 - The entity had incurred a loss of INR (0.35) lakhs in FY 2015-16.
 - The entity's revenue is decreased by 57.26% from 41.72 lakhs to 17.83 lakhs in FY 2016-17.
 - The level of inventory in FY 2015-16 & FY 2016-17 is "NIL" which is unreasonable.

Further, on review of the list of shareholders of "D B Vyapaar Private Limited" for FY 2016-17 and FY 2017-18, we noted that the name of VBIL was not appears in the list

of shareholders of DB Vyapaar Private Limited. This raises suspicion on the genuineness of the investment activities undertaken by the company.

13. Basis review of sample bank transactions of Kotak Mahindra Bank for the period April 2016 to July 2017, we noted bank receipts from different parties, amounting to INR 965.00 lakhs were transferred to different parties amounting to INR 1035.00 lakhs, either on the same dates or within a gap of 1 day.

Further, on review of sample bank transactions of Punjab National Bank for the period September 2015 to January 2018, we noted bank receipts from different parties, amounting to INR 3316.20 lakhs were transferred to different parties amounting to INR 3314.94 lakhs, either on the same dates or within a gap of 1 day.

Since the Company failed provide any underlying supporting documents, such pattern of transfer of funds raises suspicion on genuineness of such transactions undertaken by the company.

14. The Company's revenue has decreased to INR 573.17 lakhs in FY 2017-18 from INR 12142.44. lakhs in FY 2016-17. In such a case, as per general business practice Company's employee benefit expense should remain same or should decrease. However, we observed that employee benefit expense of the Company is increased to INR 14.61 lakhs (approx. 17%) in FY 2017-18 from INR 12.53 lakhs in FY 2016-17 which is unreasonable."

30. As can be noted from the above terms of reference of the auditor, scope of audit was to examine possible violations of LODR Regulations and not violations of PFUTP Regulations, 2003 and accordingly, the findings of the Forensic Audit Report are confined only to misrepresentation in the books of accounts of VBIL and consequential and other violations of LODR Regulations. It is observed that the Investigating Authority, after examining the Forensic Audit Report, incorporated the findings of Forensic Audit Report as part of investigation report, and consequently the same was reproduced in the SCN. However, the SCN additionally states, "*.....It was observed during investigation that the company (Noticee no.1) had failed to present true and fair financial statements and had executed transactions which are non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statements and misuse of accounts/ funds of the company. It was further observed that VBIL had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors and are fraudulent in nature.....and that From the above, it was observed that the company (Noticee no.1), its directors and the Chief Financial Officer (Noticee no. 2 to 7) have failed to present true and fair financial statements, executed transactions which are non-genuine in nature thereby resulting in misrepresentation of the accounts/ financial statements*

and misuse of accounts/ funds of the company and such acts were found to be fraudulent in nature.” Consequently, the SCN, *inter alia*, additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the Forensic Audit Report. It is observed that these Noticees have been charged with the violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) of PFUTP Regulations, 2003 which can be in relation to dealing in securities. However, no details of trading viz: volume of shares traded, price impact, % increase or decrease in price, etc. have been provided. Nor is there any analysis as to how each of the finding of Forensic Audit Report has impacted the persons dealing in securities.

31. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 deals with fraud related to securities market and the provisions of Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003 are also related to securities market fraud/manipulation/ unfair trade practices. Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or price impact analysis that would impact the investors.

32. It is further observed that Regulation 4(1) of PFUTP Regulations, 2003, at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. The common thread through these provisions is that the ingredients of fraud/ manipulation/ unfair trade practices must be

satisfied. In this regard, I note that the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 clarifies as follows:

“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.”

Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market should have directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price shares of VBIL. I note that Forensic Audit Report does not allege any diversion/ mis-utilisation of funds which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the Company. I note that there is no bar on taking action by SEBI on the basis of a Forensic Audit Report, invoking provisions of PFUTP Regulations, 2003 and other similar provision of SEBI Act, 1992 related to fraud, if, after examination of the matter, including the Forensic Audit Report, SEBI finds that there was impact on the securities market or the price of the scrip, which are ingredients to prove violations of PFUTP Regulations, 2003. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon’ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753, makes it clear that ‘inducement’ is required to constitute ‘fraud’ under PFUTP Regulations 2003 and must be made while ‘dealing in securities’ and must be made for the purpose ‘to induce others to deal in securities’. The allegations made in the SCN does not bring out findings or any facts relating to impact

on trading in securities or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc.

33. Therefore, I find that violations of PFUTP Regulations, 2003, as alleged in the SCN, are very general and vague in nature without making out any specific case containing necessary ingredients required to constitute these violations. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, I find that the allegations of violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable against the said Noticees. However, SEBI is at liberty to issue fresh SCN to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/ingredients under PFUTP Regulations, 2003.

34. SCN, also alleges that VBIL has violated Regulation 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations. Regarding the violations of Regulation 4, I note that Regulation 4 of LODR Regulations, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provides that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

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

- (c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
- (e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
- (g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

35. I find that since, VBIL has failed to comply with Regulations 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c) and 46(2)(i) of the LODR Regulations, therefore, its disclosures were not in accordance with the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, VBIL is also in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations.

36. Regarding the violations of Regulations 4(2) (f) (ii) (6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations by VBIL, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is of the board of directors of the listed entity. Therefore, I find that VBIL cannot be said to be in violations of Regulation 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

37. SCN further alleges that VBIL has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that 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. I note that securities of VBIL are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

“.....1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.

2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:—

i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/ circulars as may be issued by SEBI from time to time.

ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.

iii. such other directions, requirements and conditions as may be imposed by SEBI/Exchange from time to time.....”

38. Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the condition is compliance with LODR Regulations. In the present case, VBIL is a company whose securities are listed on BSE Ltd. which is a recognised stock exchange. In terms of Clause 3 of SEBI Circular no. CIR/CFD/CMD/6/2015 dated October 13, 2015, all listed entities which had previously entered into agreement(s) with a recognised Stock Exchange(s) to list their securities were mandated to execute a fresh listing agreement with such Stock Exchange within six months of the date of notification of LODR Regulations, i.e. September 2, 2015. VBIL being a company having its securities listed on BSE was also required to sign the said uniform listing agreement with BSE and in view of the provisions of Section 21 of SCRA, 1956, VBIL was bound to comply with the conditions of the uniform listing agreement, as extracted above. VBIL has been found to be in

violation of the provisions of the LODR Regulations, as discussed above, therefore, VBIL is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

39. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 1 to 7, who were the directors/CFO of VBIL at the relevant time, are liable for the violations alleged to be committed by VBIL, viz: Sections 12A(a), (b) & (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1), 4(2) (f) & (r) of PFUTP Regulation, 2003, Regulations 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), 16(1)(b)(ii), 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c), 46(2)(i), 48 and 17(8) read with Part B of Schedule II, LODR Regulations read with Section 27 of SEBI Act, 1992 and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against VBIL, automatically, on the directors of VBIL. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors *qua* these violations may also be examined by SEBI. In the previous paras, it has been found that VBIL is in violation Regulations 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c) and 46(2)(i) of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 1 to Noticee no. 7, it has to be determined whether these Noticees are liable for those violations for which VBIL has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27

with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word “offence” with the word “contravention” in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by VBIL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature. Now, the question remains whether these Noticees can be held independently liable for the violations without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that the violations of regulations alleged against these Noticees i.e. Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii) (3), (6) & (12), 33(2)(a) and 17(8) [on Noticee no. 2 (CEO) and Noticee no. 7 (CFO)] create specific and direct liability of the board of directors. As discussed above, Clause (ii) of Regulation 4(2) deals with key functions of the board of directors and Clause (iii) of Regulation 4(2) deals with other functions of the board of directors. Thus, board of directors is responsible for complying with these principles. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations or otherwise, is fastened on the board of directors of the listed entity. Further, Regulation 33(2)(a) creates primary liability of board of directors and CEO/CFO, for certification and approval of financial results. Regulation 17(8) of LODR Regulations also creates primary liability on CEO and CFO when it provides that CEO and CFO shall provide the compliance certificate to the board of directors of the company *inter alia* certifying that they have reviewed financial statements and the cash flow statement for the year and to the best of their knowledge and belief, the financial statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading and they present a true and fair view of the listed entity’s affairs and are in compliance with existing accounting standards, applicable laws and regulations. In the previous paras, it has been found that VBIL was in violation of Regulations 30(4)(ii), 33(1)(d), 33(2)(a), 33(3)(a), 34(2)(c) and 46(2)(i) of the LODR Regulations and Section 21 of

SCRA,1956. In view of these violations by VBIL, the principles contained in Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(3), (6) & (12) are also violated for which Noticee no. 2, 5, 6 and 7 being part of the board of directors of VBIL are liable. Also, Noticee no. 2 and 7 are liable for violation of Regulation 17(8) readwith Part B of Schedule II and Regulation 33(2)(a), of LODR Regulations.

40. I note that Noticee no. 2 to 7 were the directors/CFO of the VBIL during the period of violations alleged in the SCN, i.e. April 01, 2015 to March 31, 2018. I note that Noticee no. 2 was MD/CEO of VBIL during financial years 2015-16, 2016-17 and 2017-18 (till August, 2017). Thereafter, from September 2017 onwards, Noticee no. 3 (deceased) became the MD/CEO of VBIL. I note that Noticee no. 4 (deceased), 5 and 6 were the independent directors of VBIL during the investigation period. I note that Noticee no. 5 was the member of the audit committee of VBIL during all the three financial years i.e. 2015-16, 2016-17 and 2017-18. I note that Noticee no. 6 was the member of the audit committee of VBIL during the financial years 2015-16 and 2016-17. I note that Noticee no. 2 was also the member of the audit committee of VBIL from 2015-16 to 2017-18 (till August, 2017) and Noticee no. 3 (deceased) was member of the audit committee of VBIL during financial year 2017-18 (September, 2017 onwards). I also note that Noticee no. 7 was the CFO of VBIL for all the three financial years i.e. 2015-16, 2016-17 and 2017-18.

41. I note that Noticee no. 8 and 9, being the statutory auditors of VBIL during the period under Forensic Audit i.e. April 1, 2015 to March 31, 2018, have also been issued separate show cause notices i.e. SCN-II and SCN-II, respectively, alleging that the statutory auditors have been negligent in performance of their duties and have not been diligent in issuance of unqualified audit opinion for VBIL for the FY 2015-16, 2016-17 and 2017-18, thereby violating provisions of Section 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992 and Regulation 3(b), 3(c) and 3(d), Regulation 4(1), 4(2)(a), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003. In this regard, before dealing with the liability of the statutory auditors, it would be appropriate to refer to the

judgment of Hon'ble Bombay High Court in Writ Petition No. 5249 of 2010 (filed by Price Waterhouse, Bangalore) and Writ Petition No. 5256 of 2010 (filed by 10 CA firms alongwith their partners), dated August 13, 2010, wherein Hon'ble Bombay High Court held as under:

"25.

.... In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market. So far as the role of Auditors is concerned, it is a very important role under the Companies Act. As posited in Section 227 of the Companies Act, every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the Company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the Company such information and explanations as the auditor may think necessary for the performance of his duties. The auditors in the Company are functioning as statutory auditors. They have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company.

.....

With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. Normally, an investor invests his money by considering the financial health of the Company and in order to find out the same, one will naturally bank upon the accounts and balance-sheets of the Company. If it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts, in our view, there is no reason as to why to protect the interests of investors and regulate the securities market, such a person cannot be prevented from dealing with the auditing of such a public listed Company. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market."

42. From the above-mentioned judgment of Hon'ble Bombay High Court, it is observed that for SEBI to exercise jurisdiction over an auditor, it has to be shown that the case pertains to an auditor who in connivance and in collusion with the officers or directors of a company has concocted false accounts. I note that in the present matter SCN-II

and SCN-III, as issued to Noticee no. 8 and 9, respectively, only allege that the statutory auditors were not diligent enough in the issuance of an unqualified audit opinion for the financial statements of VBIL. The SCN-II and SCN-III do not allege that the statutory auditors were in connivance with the promoters/ directors / management of VBIL to fudge the financial statements of VBIL. Moreover, as discussed in previous paras, I note that the charges of violation of provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, pertaining to fraud, have not been made out even against the Noticee no. 1 to 7 and SEBI has been given liberty to issue fresh SCN to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/ingredients under PFUTP Regulations, 2003. Therefore, in view of the judgment of the Hon'ble Bombay High Court in PWC matter (*supra*) and other facts and circumstances of the case, violations, as alleged in the SCN-II and SCN-III against Noticee no. 8 and Noticee no. 9, are not made out.

43. In view of the aforesaid violations committed by VBIL and its directors/CFO, I find that directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued against Noticee no. 1 to 7 (except Noticee no. 3 and 4 who are since deceased).
44. SCN in the matter, also calls upon the Noticee no. 1 to explain as to why appropriate penalty be not imposed upon it under Sections 15HA and 15HB of SEBI Act, 1992 and Section 23E of SCRA, 1956, for the violations alleged in the SCN. Also, Noticee no. 2 to 7 have been called upon to explain as to why penalty should not be imposed upon them under Sections 15HA and 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956, for the violations alleged in the SCN. Extract of these penalty provisions, as existing at the relevant time is as under:

Extract of Section 15HA and 15HB of SEBI Act, 1992:

"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,—

(a) to furnish any document, return or report to the Board, fails to furnish the same 63[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], 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 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.”

Extract of Sections 23E and 23H of SCRA, 1956:

“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.”

45. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15HB of the SEBI Act, 1992, only, is attracted and not the penalties under Section 15HA of SEBI Act, 1992 and Sections 23E and 23H of SCRA, 1956. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 have not been made out, therefore, penalty under Section 15HA of SEBI Act, 1992 is not attracted against the Noticees. I

also not that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that VBIL is in violation of listing conditions, however, VBIL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. I find that penalty under Section 23H of SCRA, 1956 is also not attracted in the case of Noticee no. 2 to 6, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided. As the Noticee no. 2 to 7, being directors/CFO of VBIL, have been found to be in violation of LODR Regulations, which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the “regulation” of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI directions alleged against these Noticees, therefore, Section 23H is not attracted in the case of Noticee no. 2 to 7.

46. I find that VBIL has also been found to be in violation Section 11(i) and (ia) of SEBI Act, 1992 for which VBIL is liable for imposition of penalty under Section 15A(a) of SEBI Act, 1992. I find that for the violation of LODR Regulations, VBIL is liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, the rules or the regulations made or directions issued by SEBI for which no separate penalty has been provided. Since, LODR Regulations are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HA) does not separately provide for any penalty for violation of LODR Regulations, therefore, for violation of LODR Regulations by VBIL, as found in this order, penalty under Section 15HB is attracted against VBIL. Similarly, Noticee no. 2 to 7 (except Noticee no. 3 and 4 who are since deceased) who are the directors/CFO of VBIL are liable for imposition of penalty, for the violations of LODR Regulations which are found to be committed by them, under Section 15HB of the SEBI Act, 1992.

47. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

“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.”

48. I find that material available on record does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that the material available on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by the Noticees. However, I note that the violations have occurred over a period of three financial years. I also note that Noticee no. 5 and 6 were the independent directors of VBIL.

Directions and monetary penalties:

49. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956 read with Section 19 and Section 11(2)(j) of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, direct as under:

- (i) The Noticee no. 1, 2 and 7, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;
- (ii) The Noticee no. 5 and 6, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;
- (iii) The Noticee no. 1, 2, 5, 6 and 7, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
Noticee no. 1	M/s. V. B. Industries Limited	Sections 15A(a) and 15HB of SEBI Act, 1992	10 Lakh (Ten Lakh) and 30 Lakh (Thirty Lakh), respectively.
Noticee no. 2	Mr. Vikash Kothari	Section 15HB of SEBI Act, 1992	15 Lakh (Fifteen Lakh)
Noticee no. 5	Mr. Sandip Ray	Section 15HB of SEBI Act, 1992	3 Lakh (Three Lakh)
Noticee no. 6	Mr. Raj Kumar Sharma	Section 15HB of SEBI Act, 1992	3 Lakh (Three Lakh)
Noticee no. 7	Mr. Jagannath Pandit	Section 15HB of SEBI Act, 1992	6 Lakh (Six Lakh)

- (iv) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of receipt of this order. The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or 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 Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD-ID19, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

- (v) The SCN issued to Noticee no. 3 and Noticee no. 4 is disposed off without any directions in view of the demise of the said Noticees;
- (vi) The SCN-II issued to Noticee no. 8 and SCN-III issued to Noticee no. 9, are disposed off without any directions, in view of the observations made in para 41 and 42 above.

50. The obligation of the Noticees, restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

51. This Order comes into force with immediate effect.

52. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of mutual funds to ensure necessary compliance.

53. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Reserve Bank of India, along with a copy of the Forensic Audit Report for their information.

Sd/-

Date: July 08, 2021
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA