BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/PM/PA/2021-22/15465-15471

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

In respect of

Sl. No.	Name of the Noticee	PAN
1.	Deccan Chronicle Holdings Ltd.	AABCD6737D
2.	T. Venkattram Reddy	AAWPT6829M
3.	T. Vinayak Ravi Reddy	ABAPT1371Q
4.	P K Iyer	AFTPK1261M
5.	N. Krishnan	AAQPK7339C
6.	V. Shankar	AAZPS3984J
7.	Mani Oommen, Partner M/s. C.B. Moulli & Associates, Chartered Accountants	AAAPO5818N

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as “Noticees”, unless the context specifies otherwise)

In the matter of Deccan Chronicle Holdings Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted an investigation in the scrip of Deccan Chronicle Holdings Ltd., (*hereinafter referred to as “DCHL”/”Company”)* to ascertain whether the promoters of DCHL viz., T. Venkattram Reddy (*Chairman of DCHL*) {Noticee 2), T. Vinayak Ravi Reddy (*Vice Chairman of DCHL*) {Noticee 3} and P K Iyer (*Vice Chairman of DCHL*) {Noticee 4} have made any fraudulent pledging of shares of the Company and whether adequate disclosures had been made in

accordance with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 *(hereinafter referred to "SAST Regulations")*, during the period October, 2011 to December, 2012. The investigation was also conducted to ascertain as to whether there was understatement of loans by DCHL in its financial statements for the financial years from 2008- 09 to 2011-12.

2. DCHL was initially formed as a partnership firm in 1938 by the name of 'Deccan Chronicle'. DCHL was incorporated under the Companies Act, 1956 in the year 2002 and the assets and the liabilities of Deccan Chronicle were transferred with effect from January 1, 2003 to DCHL. The company came out with a public issue of 80,13,100 equity shares of ₹ 10/- each at ₹ 162/- per share in December 2004. DCHL is publisher of newspapers '*Deccan Chronicle*', '*Asian Age*', '*Financial Chronicle*' and '*Andhra Bhoomi*'.

3. The investigation *inter alia* revealed the following:

   (a) The aggregate amount of outstanding long term and short-term loans of DCHL at the end of FY 2008-09 was ₹ 1,693.67 crore, whereas the Company in its Annual Reports for FY 2008-09 had disclosed only ₹ 354.49 crore as outstanding long term and short-term loans.

   (b) DCHL had understated its outstanding loans to the tune of ₹ 1,339.17 crore for the year 2008-09.

   (c) Similarly, the differences between the actual and reported outstanding loans for FY 2009-10 and FY2010-11 were found to be ₹ 2,982.07 crore and ₹ 3,347.41 crore, respectively.

   (d) The Company had understated the interest and financial charges from financial year 2005-06 onwards and the cumulative amount of such understated amount stood at approximately ₹ 753.91 crore by the end of 2011-12 (up to September 30, 2012).

(e) For the buyback announcement made by DCHL on May 06, 2011, as per the accounts, the maximum limit available for buyback of its shares was only ₹ 116.02 crore after adjusting for understatement of interest/finance cost, whereas the Company announced buyback for an amount aggregating up to ₹ 270 crore from the open market at a price not exceeding ₹ 180 per share. DCHL had carried out buyback of shares during FY11- 12 which was more than 25% of its total paid up capital. Thus, without having adequate free reserves DCHL carried out buyback of its shares which misled the uninformed investors / shareholders about the perceived valuation / strong financials / adequate free reserves of the company which actually was not true and might have influenced / induced the decision of investors / shareholders, particularly when the price of the share was declining since May 2010.

(f) The Company has manipulated its financials and the announcement for buyback of its securities was made even in the absence of adequate reserves.

(g) The Company has carried out the buyback of shares beyond the prescribed limit and also did not make any disclosure about change in its shareholding consequent to the buyback.

(h) The promoters and directors of DCHL, namely, T. Venkattram Reddy, T. Vinayak Ravi Reddy and P K Iyer while making disclosure to the stock exchanges for the quarter ending on September 30, 2012 have for the first time stated/disclosed that 99.81% of their shareholding in DCHL is encumbered / pledged whereas the promoters had obtained loans from financial institutions / banks / finance companies either by way of pledging their shareholding or by way of entering into Non-disposal Undertaking (hereinafter referred to as “NDU”) or Security Net Agreements (hereinafter referred to as “SNA”) since March 2011.

(i) Deccan Chronicle Marketers (hereinafter referred to as “DCM”) is a partnership firm with T. Venkattram Reddy, T. Vinayak Ravi Reddy and

Deccan Chronicle Marketers Pvt. Ltd. (hereinafter referred to as "DCMPL") as it partners.

(j) DCM owed a sum of ₹ 4,084.81 crore to DCHL on account of non-payment of advertisement charges, interest and financial charges and above stated amount remained outstanding dues for years. No steps have been taken by the Company to recover the said amount; hence liability had been accruing in the books of DCHL with each passing day.

(k) In order to settle the said dues, a settlement agreement was entered into between DCM and DCHL on September 28, 2012 wherein DCM agreed to transfer, assign, sell all its rights, title, interest, etc. in the brands "*Deccan Chronicle*" and "*Andhra Bhoomi*" to DCHL for a consideration of ₹ 2,905.32 crore and the said dues were settled in terms of the settlement agreement dated September 28, 2012 executed between DCM and DCHL.

(l) However, it was observed from the disclosures/statements relating to brands and trademarks made in the Prospectus dated December 6, 2004 issued by DCHL and the Annual Report of DCHL for FY 2005-06 that the brands "*Deccan Chronicle*" and "*Andhra Bhoomi*" have already been disclosed to be owned by DCHL and have been duly recognized in its books of accounts as assets of DCHL.

(m) DCM, owned and controlled by the promoters of DCHL, had dues payable to DCHL to the tune of ₹ 4,084.21 crore. DCHL falsely claimed to have acquired the brands "Deccan Chronicle" and "Andhra Bhoomi" which were already owned by DCHL. Thus, under the guise of acquisition of brands, the promoters of DCHL had in their books of accounts, fraudulently transferred the liability of DCM to DCHL against the interest of other shareholders of DCHL to the extent of ₹ 2905.32 crore.

(n) T. Venkattram Reddy, T. Vinayak Ravi Reddy and P K Iyer had failed to make disclosures with respect to their encumbered shares with ICICI Bank Ltd. (through NDU), with IDFC Ltd. (through pledge), with Religare

Securities Ltd. (through irrevocable power of attorney), with Future Capital Holdings Ltd. (hereinafter referred to as “FCHL”) (through NDU) and also failed to make disclosures about the invocation of encumbrance of shares done by ICICI Bank Ltd., IDFC Ltd. and Religare Securities Ltd. They also failed to make disclosures of change in shareholding exceeding 1% of total share capital on account of buyback of equity shares by DCHL.

(o) DCHL along with T. Venkattram Reddy, T. Vinayak Ravi Reddy and P K Iyer who are responsible for the overall management of DCHL have, inter alia, failed to comply with the following conditions of the listing agreement, namely –

i. Failed to disclose to the stock exchange material price sensitive information on the date of entering into agreement with DCM.
ii. Misleading financial information (i.e., understatement of interest and outstanding loans and thereby overstatement of profits) in its Annual Report for FY 2008-09, FY 2009-10 and FY 2010-11 which were not true and fair.
iii. Delay in filing shareholding pattern for quarters ended September 2012 and December 2012 to the stock exchange.
iv. Failure to provide updated information on the shareholding pattern from quarter ended March 2013 onwards on its website.
v. Failure to appoint Company Secretary of the Company.
vi. Failure to disclose related party transactions pertaining to funds advanced to Flyington Freightors Ltd., a related entity.

APPOINTMENT OF ADJUDICATING OFFICER

4. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticees viz., Deccan Chronicle Holdings Ltd., (Noticee 1), T Venkattrami Reddy (Noticee 2), T Vinayak Ravi Reddy (Noticee 3), P K Iyer (Noticee 4), N Krishnan (Noticee 5), V Shankar (Noticee 6) and Mani Oomen, Partner, C B Mouli & Associates, Chartered Accountant (Noticee 7) and appointed Shri Nagendraa Parakh as the Adjudicating Officer vide Order dated May 6, 2016 under and under Section 23-I of the Securities Contracts (Regulation) Act,

1956 (*hereinafter referred to as 'SCRA, 1956'*) read with Rule 3 of the Securities Contracts (Regulation) (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (*hereinafter referred to as 'SCRA Adjudication Rules*') and Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as "SEBI Adjudication Rules")* to inquire into and adjudge the alleged violation of following provisions of Securities Laws under the corresponding Sections of SEBI Act and SCRA *(as applicable)*.

Name of the Noticee	**Violations in brief**	**Violation of the provisions**	**Penal provisions**
DCHL (Noticee 1)	DCHL understated outstanding loans and interest and finance charges, etc. in the annual report for FY 08-09, FY 09-10 and FY 10-11. DCHL carried out buyback of shares without having adequate free reserves which misled the uninformed investors / shareholders about the perceived valuation / strong financials / adequate free reserves of the company which have wrongfully influenced / induced the decision of investors / shareholders to invest in the Company based on such misleading financial information particularly when the price of the share was declining since May 2010	Section 12 A(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations.	Section 15HA of SEBI Act.
	DCHL carried out buyback of its equity shares which was more than 25% of its total paid up capital limit during the financial year 2011-12.	Section 68 and Section 77A of the Companies Act, 1956.	
	Failed to disclose to the stock exchanges material price sensitive information on the date of entering into an agreement with DCM	Clause 36 of the Listing Agreement read with Section 21 of the SCRA, 1956	Section 23A (a) of SCRA
	Gave misleading financial information (i.e., understatement of interest and finance charges on outstanding loans and thereby	Clause 41 of the Listing Agreement read with Section	

Name of the Noticee	Violations in brief	Violation of the provisions	Penal provisions
	overstatement of profits) in its Annual Report for FY08-09, FY09-10 and FY10-11	21 of the SCRA, 1956	
	Delay in filing SHP for quarters ended Sep-12 and Dec-12 to the stock exchange.	Clause 35 of the Listing Agreement read with Section 21 of the SCRA, 1956	
	Failure to provide updated information on the SHP from quarter ended March-13 onwards on its website.	Clause 54 of the Listing Agreement read with Section 21 of the SCRA, 1956	
	Failure to appoint Company Secretary of the Company	Clause 47(a) of the Listing Agreement read with Section 21 of the SCRA, 1956	
	Failure to disclose information about related party transactions pertaining to funds advanced to Flyington Freightors Ltd., which was a related entity of the promoters of DCHL.	Clause 32 of the Listing Agreement read with Section 21 of the SCRA, 1956	
T Venkattram Reddy, Chairman, DCHL (Noticee 2) T Vinayak Ravi Reddy, Vice Chairman, DCHL (Noticee 3) P K Iyer, Vice Chairman, DCHL (Noticee 4)	DCHL understated outstanding loans and interest and finance charges, etc. in the annual report for the FY 2008-09, FY 09-10 & FY 10- 11. Were signatories to the public announcement made by the Company on May 6, 2011 for buy back of its equity shares without having adequate free reserves. This misled the uninformed investors/ shareholders about the perceived valuation/ strong financials/ adequate free reserves of the Company which have wrongfully influenced / induced their investment decision particularly when the price of the share was declining since May 2010. Caused loss to its other non-promoter shareholders /	Section 12 A(a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations, 2003, and Section 68 and Section 77A of the Companies Act, 1956.	Section 15HA of SEBI Act.

Name of the Noticee	Violations in brief	Violation of the provisions	Penal provisions
	stakeholders to the extent of ₹ 2905.32 crore.		
	Failure to make disclosures with respect to encumbered shares with ICICI Bank (NDU agreement), IDFC Ltd. (pledge), Religare Securities Ltd. (irrevocable power of attorney), Future Capital Holdings Ltd. (NDU agreement). Failure to make disclosures about the invocation of encumbrance of shares by ICICI Bank, IDFC Ltd. and Religare Securities Ltd	Regulation 31(1) and 31(2) r/w Regulation 31(3) of the Takeover Regulations, 2011.	Section 15A(b) of SEBI Act
	Failure to make disclosure with respect to change in shareholding exceeding 1% of total share capital on account of buy back of securities by DCHL.	Regulation 13(4) and Regulation 13(4A) read with Regulation 13(5) of the SEBI (PIT) Regulations, 1992	
	DCHL failed to comply with the conditions of the listing agreement and since these Noticees were responsible for the overall management of DCHL, these entities have violated Section 21 read with Section 24(1) of the SCRA, 1956.	Section 21 read with Section 24(1) of the SCRA, 1956.	
	Failed to disclose to the stock exchanges material price sensitive information on the date of entering into an agreement with DCM	Clause 36 of the Listing Agreement read with Section 21 of the SCRA, 1956	Section 23A (a) of SCRA
	Misleading financial information (i.e., understatement of interest and finance charges on outstanding loans and thereby overstatement of profits) in its Annual Report for FY08-09, FY09-10 and FY10-11	Clause 41 of the Listing Agreement read with Section 21 of the SCRA, 1956	
	Delay in filing SHP for quarters ended Sep-12 and Dec-12 to the stock exchange.	Clause 35 of the Listing Agreement read with Section 21 of the SCRA, 1956	

Name of the Noticee	Violations in brief	Violation of the provisions	Penal provisions
	Failure to provide updated information on the SHP from quarter ended March-13 onwards on its website.	Clause 54 of the Listing Agreement read with Section 21 of the SCRA, 1956	
	Failure to appoint Company Secretary of the Company	Clause 47(a) of the Listing Agreement read with Section 21 of the SCRA, 1956	
	Failure to disclose information about related party transactions pertaining to funds advanced to Flyington Freightors Ltd., which was a related entity of the promoters of DCHL.	Clause 32 of the Listing Agreement read with Section 21 of the SCRA, 1956	
N Krishnan, Executive Director (Finance), DCHL (Noticee 5) V Shankar (Company Secretary, DCHL) (Noticee 6)	DCHL understated outstanding loans and interest and finance charges in the annual report for the FY 2008-09, 09-10 & 10-11. As signatories to the public announcement made by the Company on May 6, 2011 for buy back of its equity shares without having adequate free reserves which misled the uninformed investors / shareholders about the perceived valuation / strong financials / adequate free reserves of the company and these actions have wrongfully influenced / induced the decision of investors / shareholders particularly when the price of the share was declining since May 2010	Section 12 A(a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations, 2003, and section 68 and Section 77A of the Companies Act, 1956.	Section 15HA of SEBI Act
Mani Oommen, Partner M/s. CB. Moulli & Associates, Statutory Auditor of DCHL (Noticee 7	DCHL understated outstanding loans and interest and finance charges, etc. in the annual report for the FY 2008-09, 09-10 & 10-11.	Section 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations, 2003.	Section 15HA of SEBI Act

Pursuant to internal restructuring, the instant proceedings were transferred to the undersigned vide Order dated May 27, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice (hereinafter referred to as *"SCN"*) bearing ref. no. A&EO/EAD/PM/AE/18379/2017 dated August 3, 2017 was served on all the Noticees under Rule 4 of SCRA Rules and Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of SCRA Rules and Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Sections 23A(a) of SCRA and 15A(b), 15HA of the SEBI Act, 1992 *(as applicable)* for the violations alleged to have been committed by them. I note that the SCN was duly served on all the Noticees. I note that except Noticee 5 i.e., N Krishnan, all the Noticees have filed their replies, which are summarized hereunder:

6. <u>Reply of DCHL (Noticee 1) – Email dated October 5, 2020</u>

   (a) *Deccan Chronicle Holdings Limited ('DCHL') went into the Corporate Insolvency Resolution Process ('CIRP') under Insolvency and Bankruptcy Code of India 2016 ('Code') vide order of Hon'ble National Company Law Tribunal, Hyderabad Bench('NCLT') dated 19.07.2017. The Hon'ble NCLT, Hyderabad Bench vide its order dated 03.06.2019 read with order dated 02.07.2019 approved the Resolution Plan for DCHL submitted by the SREI Multiple Asset Investment Trust Vision India Fund (SMAIT) which was duly approved by the Committee of Creditors (CoC). Thereafter, SEBI vide its order no. WTM/SM/IVD/ID4/6335/2019-20dated 31.12.2019 passed by Mr. S. K. Mohanty, Whole Time Member disposed of the proceedings qua Noticee 1, i.e., DCHL without issuance of any directions.*

   (b) *In view of above information, facts and submissions it can be understood that the proceedings against Noticee No.1 i.e., Deccan Chronicle Holdings Limited has already been disposed of by the SEBI vide its order dated 31.12.2019. Hence, in our humble opinion, no further proceedings including adjudication proceedings can be issued against Noticee No.1 i.e., Deccan Chronicle Holdings Limited by the SEBI. Therefore, it has been requested to withdraw the said hearing notice dated 15.09.2020 qua*

Noticee No.1 i.e., Deccan Chronicle Holdings Limited and not to proceed any further steps in this regard.

(c) *With regard to status of CIRP against Deccan Chronicle Holdings Ltd, the Noticee 1 vide email dated December 10, 2021 submitted that the Approved Resolution Plan is under implementation and yet to be implemented in full.*

7. <u>Common Replies of T Venkattrami Reddy (Noticee 2) and T Vinayak Ravi Reddy (Noticee 3) – October 5, 2020 and November 18, 2020</u>

(a) *We would like to point out that an order was passed by SEBI on 31.12.2019 under Sections 11 and 11 A of the SEBI, Act, 1992 and Section 12A of the Securities Contract (Regulations) Act, 1956 ('SCRA') against these Noticees, inter alia restraining them from accessing the securities market for a period of two years, freezing their existing holding including mutual funds as well as prohibiting them from associating themselves with any listed public company. The said order was passed in relation to the same allegations contained in the Show Cause Notice dated 03.08.2017(pursuant to which these Noticees have entered appearance and furnished their response to the Adjudicating Officer). It is an established principle of law that parallel proceedings in respect of the same parties regarding the same issue are not maintainable.*

(b) *With regard to allegations regarding non-disclosure of change in shareholding exceeding 1% of total shareholding or voting rights, it is submitted that the change in shareholding and voting rights arose on account of buy-back of shares of other shareholders by DCHL post obtaining necessary statutory and corporate approvals. If the position as suggested by you, which is that the promoters of DCHL are required to disclose the change in shareholding / voting rights, is indeed true then the show cause notice should have been issued by you within a short period of time post the expiry of the timelines set out under Regulation 2 of the Insider Trading Regulations.*

(c) *As regards the observation made in connection with alleged pledge of shares, please note that the same are not pledge of shares but non-disposal undertakings entered into with each of ICICI Bank Ltd., IDFC Ltd and Religare Finvest Ltd., Further, the invocation has been challenged by the concerned parties (including DCHL). The agreement in its entirety will clearly show that the nature of the document is that of non-disposal undertaking and does not have the effect of creation of pledge of shares.*

i. It is pointed out that the non-disposal undertaking entered into in connection with ICICI Bank ("NDU Agreement") is not subject to the provisions of the Takeover Regulations as the said regulations were not in force at the time of entering into the non-disposal undertaking. In light of the same, and without prejudice to my position that such non-disposal undertaking does not tantamount to creation of share pledge, there can be no breach of a regulation that is not in force.

ii. Regulation 31(1) of the Takeover Regulations specifies that a promoter of a target company shall intimate details of shares encumbered by him or by persons acting in concert with him in such form as may be prescribed. The prescribed form for such intimation does not specify that a non-disposal undertaking is required to be intimated to the stock exchange / company. The fact that such intimation was not required would be clear from comparing the form as substituted by Circular No. CFD/Policy Cess/3/2015 dated 5th August, 2015 in which even a non-disposal undertaking is required to now be intimated to the stock exchange / company. It is clear therefore that there was no requirement to intimate non-disclosure undertakings at the relevant point in time.

iii. Without prejudice to the contention that the said Takeover Regulations were not even in force at the time of entering into the NDU and therefore, there can be no intent on the part of the promoters of DCHL to escape disclosures under the Takeover Regulations, it should also be noted that the concerned parties have subsequently entered into a pledge agreement dated 28th July, 2012.

iv. It is clear from the above, that one of the pre-requisites for creation of pledge / encumbrance is receipt of instruction from the NDU Agent (as defined under the NDU Agreement). Further, the promoters of DCHL have at Clause 4.1(i) have also represented and warranted that the promoters (being the pledgers therein) have legal, valid and marketable title to the pledged shares and that the same are free from any encumbrance. A combined reading of the NDU and the Pledge Agreement will clearly establish that the NDU is not a camouflage transaction of encumbrance / pledge. Further, it would be ludicrous to argue that encumbrance / pledge was created by virtue of entering into the NDU Agreement especially where the parties to the NDU and Pledge Agreement having explicitly stated in the said agreements that pledge / encumbrance *will be created only upon satisfaction of certain specified conditions set out therein, and unless such conditions have to bear no encumbrance or pledge can said to have been created.*

v. *As regards the alleged pledge created in favour of IDFC Ltd., the material referred to by you in your show cause notice will clearly show that no pledge has been created in favour of IDFC Ltd. IDFC Ltd. has not submitted any relevant agreement whereby the promoters of the DCHL have agreed to the creation of pledge. Moreover, the documents submitted by IDFC Ltd are self-serving in nature requesting certain individuals to confirm creation of pledge in IDFC Ltd/s favour. It is also pointed out that the pledge master report submitted by IDFC Ltd. also shows that no confirmation has been received with respect to the creation of pledge. We state that no pledge has been created in favour of IDFC Ltd. and that the claim by IDFC Ltd., that a pledge was created in its favour is illegal and without any authorisation. In this regard, we also wish to point out that suitable legal proceedings against IDFC Ltd have commenced.*

vi. *We also wish to point out that despite Religare Finvest Limited intimating the concerned stock exchange regarding the alleged transaction as far back as 30th July, 2012, no clarification / notices were issued by SEBI to DCHL in connection with the same, until recently and that too after a delay of more than 5 (five) years. It should also be noted that the no pledge was created in favour of Religare Finvest Limited. The promoters of the client had granted a power of attorney in favour of Religare Finvest Limited which was improperly and illegally utilised by Religare Finvest Limited. In this regard, DCHL and promoters have initiated legal proceedings against Religare Finvest Limited*

vii. *As regards Future Capital Holdings Limited, you have stated in your show cause notice that the disclosure by Future Capital Holdings Limited is false and misleading. There is no allegation of any wrong doing on the part of DCHL or its promoters.*

(d) With regard to the allegations contained in the paras nos., 11, 12,13,14 & 17of the show cause notice regarding understatement of outstanding loans and interest and finance charges in the annual report for the F.Y 2008-09, 2009-10 & 2010-11, we submit as under:

i. *It is clarified that as per the books of accounts and other documents, the company's total outstanding long-term and short-term loans,*

loans transferred to DCM A/c in lieu of the receivables and outstanding loans reflected and disclosed in the Trial Balances and Balances Sheets for the F.Y 2008-09, 2009-10, 2010-11 and 2011-12.

ii. *The total outstanding loans availed in the name of the company for the F.Y 2008-09, 2009-10, 2010-11 & 2011-12 were Rs.1347.67 crores, Rs.2780.34 crores, Rs.3678.50 crores & Rs.3987.50 crores. Out of which Rs.828.23 crores, Rs.2128.00 crores & Rs.2895.90 crores loans were transferred to DCM a/c and loans amounting to Rs.519.44 crores, Rs.652.34 crores, Rs.782.60 crores & Rs.3987.50 crores were disclosed in the B.S for the F.Y. 2008-09, 2009-10, 2010-11 & 2011-12 respectively.*

iii. *In the same manner. Interest & finance charges incurred on the above said transferred loans were also not charged to Profit and Loss Account and the details of Interest and Finance Charges not charged to Profit and Loss Account*

iv. *In this regard, it is submitted that certain short-term loans taken in the name of the company and the interest and finance charges thereon were not disclosed in the face of the Balance sheets for the F.Y 2008-09, 2009-10 and 2010-11 by adhering to certain agreements & MOUs, as per the following details:*

  a. *Deccan Chronicle Marketeers (DCM), a Partnership Firm which is the owner of the Brands namely 'Deccan Chronicle' & 'Andhra Bhoomi' which have been in existence for more than 65 years was inclined to promote the said brands and add further value addition to the DCM. DCHL which has been printing and publishing the newspapers both in English & Telugu namely: 'Deccan Chronicle & 'Andhra Bhoomi' was also simultaneously interested in improving its business and sales.*
  b. *DCM entered into articles of agreement/ arrangement with Deccan Chronicle Holdings Limited (DCHL) and which has been renewed from time to time, to acquire and obtain the prioritized advertisement space in the said publications for the express purpose of developing and building the Brand name. The brand and logo are owned by the DCM.*
  c. *The practice of brands and logo owned by one of the group entities and use of the same by other group companies is a common business practice. It is practiced by the leading groups like TATAs etc. The value of the brand increases over a period of time because of the brand building.*
  d. *DCHL would be billing the DCM a certain amount periodically for the brand building which has been included in the total*

revenue of DCHL. As sale of advertisement space is the main and measurable source of revenue for any newspaper, the amount billed by DCHL to DCM is quantified in terms advertisement space.

e. *As per the above agreement, DCHL & DCM have agreed that in the event DCM being unable to meet its financial obligations against the sale of advertisement space, DCHL shall be at liberty to raise loans to meet the cash flow deficit arising on account of default on die part of DCM in meeting with its financial obligations/commitments and accordingly DCM agreed to take-over such loans corresponding to its payables to DCHL along with financial costs (Interest and Finance Charges) as their loans for due discharge to the lenders.*

f. *DCM was not fulfilling its financial obligations, DCHL was borrowing and repaying loans and transferring the loans raised on account of non-performance of financial obligations by DCM which were outstanding as on the last day of every financial year to DCM Account against the receivables from DCM along with financial costs at the end of the financial year.*

g. *As all the loans were raised by DCHL and accounted in the books of accounts of the Company for operational convenience and considering the arrangement between the DCHL and DCM being distinct from the agreement / arrangement between DCHL and its lenders, the adjusted entries of Loans and Receivables were reinstated on the first day of the financial year.*

h. *However, the financial statements of DCHL were prepared for the financial year 2008-09, 2009-10 and 2010-11 after taking into account the adjustment of loans, receivables and interest & finance charges incurred / paid on the loans transferred to DCM, as stated above. Thus, the Company has given the above accepted accounting treatment to the loans and receivables as per the agreement/ arrangement referred to above in-order to reflect/ disclose the true assets & liabilities and correct financial position of DCHL.*

i. *Incidentally it is also submitted that all the loans borrowed by DCHL from banks, financial institutions and other lenders have been drawn by DCHL in its name and accounted receipt of the same in its books of accounts and utilized the said loans through banking channels. In nutshell, the receipts and utilization of loans has been accounted by DCHL in entirety in its books of accounts. It is further submitted that all these short-term loans were utilized for the purpose of working* *capital and general corporate purpose viz., purchase of increased news print & other raw materials, launching of new editions in south India, launching of new business daily newspapers and also for the purpose of repayment of previously taken short term loans. It is further submitted that no part of the loan has been mis-utilized or diverted for any other purpose.*

v. *As explained above, the loans and interest and finance charges which were accounted (adjusted against receivables) to DCM account have not been reflected in the Balance Sheets for the financial years 2008-09, 2009-10 and 2010-11. It is submitted that total outstanding loans for the F.Y 2008-09, 2009-10 & 2010-11 were Rs.1347.67 crores, Rs.2780.34 crores & Rs.3678.50 crores, out of which Rs.828.23 crores, Rs.2128.00 crores & Rs.2895.90 crores loans were transferred to DCM a/c and loans amounting to Rs.519.44 crores, Rs.652.34 crores & Rs.782.60 crores were disclosed in the B.S for the F.Y. 2008-09, 2009-10 & 2010-11 respectively. The Company has given the above accepted accounting treatment to the loans and Interest thereon as per the agreement / arrangement referred to above in-order to reflect correct financial position of DCHL.*

vi. *In view of the above it is submitted that the short term loans were taken by the company in lieu of the receivables due to the company i.e. in other words the receivables due to the company were realized in the form of loans and accordingly the company had accounted/ adjusted certain loans (loans taken in lieu of receivables) & interest thereon to other entity by adhering to Agreement / arrangement and MOUs entered between the parties and hence, certain loans were not disclosed in the Balance Sheets for the financial years 2008-09,2009-10 and 2010-11. Thus, the Company has given the above accepted accounting treatment to the loans and receivables as per the agreement / arrangement referred to above in-order to reflect/ disclose the true assets & liabilities and correct financial position of DCHL.*

vii. *It is further submitted that the above adjustments may be a case of omission of suitable disclosure in the financial statements as the company had not disclosed the arrangement agreements and MOUs in the financial statements by way of notes/ other suitable manner.*

viii. *As explained above, in order to reflect the true assets and liabilities of the company and to report correct financial position of the company, the outstanding short-term loans taken to fund the mismatch in cash flows due to delay in realization of dues from the DCM and interest & financial charges paid on the loans transferred* *to DCM were transferred to DCM against the receivables dues from DCM.*

ix. *It is further submitted that all the loans borrowed by DCHL from banks, financial institutions and other lenders have been drawn by DCHL in its name and accounted receipt of the same in its books of accounts and utilized the said loans through banking channels for the business purpose of DCHL. The short-term loans which were taken by the company in lieu of the receivables due to the company i.e. in other words the receivables due to the company were realized in the form of loans and accordingly the company had accounted / adjusted certain loans with receivables. Accordingly, the financial statements of DCHL were prepared each year after taking into account the adjustment of loans, interest thereon and receivables as stated above. Thus, the Company has given the above accepted accounting treatment to the loans and receivables as per the agreement referred to above in-order to reflect / disclose the true assets & liabilities and correct financial position of DCHL.*

x. *In view of the above, it is of the view that the company has not understated the loans and interest & finance cost. The company had accounted / adjusted certain loans & interest thereon to other entity by adhering to Agreement / arrangement and MOUs entered between the parties and hence, certain loans were not disclosed in the Balance Sheets for the financial years 2008-09, 2009-10 and 2010- 11. In the opinion of the management of the company, it is submitted that the above adjustments may be a case of omission of suitable disclosure as the company had not disclosed the arrangement/ agreements and MOUs in the financial statements by way of notes / other suitable manner. The above said accounting treatment followed by the management for preparation and presentation of the financial statements for the financial years under consideration is just an omission of suitable disclosure and omission of suitable disclosure cannot be treated as a "misleading financial information" in terms of financial statements".*

(e) With regard to the allegations regarding buy-back of shares made in the year 2011 without having adequate free reserves, it is submitted that the company had carried out buy back of shares / securities in compliance with the provisions of the Companies Act, 1956. Interest & financial charges which are in the revenue nature should only be charged to profit & loss account for arriving profit or loss. In the instant case, the Adjudicating Officer has considered the items which are non-revenue nature and reduced from the disclosed profits / reserves as per the audited financial

statements. Also refer the submission furnished with regard to transfer of outstanding loans and interest thereon.

(f) *The Adjudicating Officer in the instant Show Cause Notice has come to conclusion about the free reserves by reducing interest and financial charges which are not charged to the profit & Loss Account from the profits / reserves and the same (calculation of free reserves by the adjudicating officer) is not in accordance with generally accepted accounting principles for preparation and presentation of financial statements.*

(g) *It is thereby submitted that the company had adequate free reserves at the time of buy back of shares as per the audited financial statements approved by the shareholders of the company in the annual general meetings.*

(h) *With regard to the allegation regarding non-disclosure of price sensitive information, it is submitted that the issue of compromise settlement deed entered into between DCHL and DCM does not fall under any of the events set out Clause 36 of the Listing Agreement. There was never any dispute between DCM and DCHL regarding the amounts to be paid. DCM had always acknowledged the debt owed by it to DCHL, and in lieu of the same had agreed to transfer the rights, title, interest, etc., in the brands set out therein. We do not believe that this requires any disclosure under Clause 36 of the Listing Agreement as it does not qualify as a material event, neither does it have any bearing on the operation / performance of DCHL or me nor is it price sensitive information. If every trade receivable detail is required to be disclosed, then DCHL would have to intimate every transaction it enters to the stock exchange. Further, it comes as a surprise to us that while you have alleged non-disclosure of the terms of the aforesaid agreement to be violative of Clause 36 of the Listing Agreement, subsequently however, you have also alleged that such agreement was an after-thought and sham. Assuming but not conceding that the said allegation is true, there cannot be any requirement for disclosure of the same by me or DCHL. Therefore, it is submitted that non-disclosure of transaction with DCM regarding trade receivable and settlement thereof doesn't tantamount to non-disclosure of material price sensitive information.*

(i) *With regard to the allegations regarding delay in filing the shareholding pattern to the stock exchanges before due date and updated information of shareholding pattern has not been provided on DCHL website, it is submitted that as regards disclosure of shareholding pattern, DCHL had previously informed SEBI that due to inadvertent reasons including but not* *limited to resignation of the company secretary and unable to fill the vacancy of the company secretary, agitation for the independent State of Telangana, high employee attrition, stay on convening meeting of the board of directors, various litigations and legal complaints initiated by the lenders, DCHL was unable to make the necessary filing within the stipulated time period.*

(j) *It is further submitted that due to non-availability of the updating shareholding pattern and details of invocation of the pledged shares and pursuant to resignation of the Company Secretary, the company was not able to provide the updated information of shareholding pattern in its website. Considering the facts and circumstances then and considering that DCHL has nevertheless submitted such information albeit slightly delayed, it is submitted that DCHL had not made any violation.*

(k) *With regard to the allegations regarding non-appointment of the Company Secretary, it is submitted that despite the efforts undertaken by DCHL it was unable to fill the position of a whole-time company secretary. The non-availability of suitably qualified company secretaries to be considered for appointment cannot be attributed as a fault of DCHL. DCHL would also like to point out that it had made sufficient efforts calling for appointment of company secretary and despite which DCHL did not receive adequate responses.*

(l) *With regard to the allegation of non-providing of related party transaction in its Annual Report, it is submitted that DCHL has properly disclosed related party transactions and further submitted that Flyington Freighters Private Limited is disclosed under related party transactions in notes to accounts information. The same can be observed from the note no.27.4 of the Annual Report 2011-12. It is humbly submitted that under Accounting Standard No.18, parties considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions. Control is referred to under various accounting standards in different manner, but control is essentially the power to govern the financial and operating policies of an economic activity so as to obtain benefit from it. However, once again it is submitted that Flyington Freighters Private Limited is properly disclosed as related party and the transaction with the said related party is also disclosed under the heading transactions with the related parties*

(m) *With regard to allegations made in the para no. 22 of the show cause notice, it is submitted that the company and the directors had complied* *with the conditions of the listing agreement wherever required as explained in detail in the above para except in case of non-appointment of company secretary. Therefore, it is submitted that the company or none of its directors have not violated Section 21 read with Section 24(1) of SCRA, 1956.*

(n) The "Deccan Chronicle" newspaper in English language was established in the year 1938 and "Andhra Bhoomi" newspaper in vernacular Telugu was established in the year 1960. Both the Newspapers were major circulated newspapers in the southern part of India and more particularly in the state of erstwhile Andhra Pradesh. Late Shri T.ChandraShekhar Reddy, the father of the promoter directors, took over this business in 1970s from their earlier owners. The business was run in the name of the firm "Deccan Chronicle", a partnership firm whose partners were all family members of Shri T. Chandra Shekhar Reddy. To develop and promote the business outside the state of erstwhile Andhra Pradesh, the partners of the Firm decided to corporatize the business and accordingly incorporated the Company namely "Deccan Chronicle Holdings Limited" or "DCHL" on 16th December, 2002. The assets and liabilities appearing only in the balance sheet of the M/s Deccan Chronicle as on 31.12.2002 were transferred to M/s DCHL and this company continued the business hitherto carried on by the firm M/s Deccan Chronicle. It is important to note that M/s Deccan Chronicle (Firm) was not converted in to a company (DCHL). It is a case where the assets and liabilities of the firm were transferred to a company incorporated on 16-12-2002. Even after this transfer. M/s Deccan Chronicle (Firm) was not dissolved and continues to exist.

(o) It is also submitted that neither the Transfer Agreement nor the Memorandum of Association of die Corporate Debtor articulate that transfer of assets shall specifically include the transfer of ownership of the brands by Deccan Chronicle Partnership firm to DCHL. The brands "Deccan Chronicle" & "Andhra Bhoomi" were never ever transferred to DCHL and owned by the Partnership Firm. It is further submitted that neither the promoters nor the company never acknowledged or admitted that the Brands & Trademarks of "Deccan Chronicle" and "Andhra Bhoomi" are held by the DCHL in any manner.

(p) The business of printing and publication of News Papers and Magazines has been carrying out in the name of the Company w.e.f. 01.01.2003. The promoters of the Company have agreed and given consent to use the names of the Brands "Deccan Chronicle" and "Andhra Bhoomi" for the purpose of printing & publishing of the newspapers and magazines by the

Company since the promoters decided to corporatize the business and expand the business pan India.

(q) *The disclosure made in the RHP under the established Business subheading is to inform the public in terms of the Newspapers "Deccan Chronicle" & "Andhra Bhoomi" published by the Company are not newly launched newspapers and business of Print media is not new to tire Company as all employees, business, circulation agents, advertisement agencies are continued to be associated with the Company. The disclosure made in RHP is further to intimate the public about the business and revenue of the Company in terms of advertisement revenue generated from publishing of Newspapers "Deccan Chronicle" & "Andhra Bhoomi" since they are already established newspapers.*

(r) *It is further submitted that the original Trademark 'Deccan Chronicle' was applied for in the name of the general partnership- Deccan Chronicle, T Venkatram Reddy and T Vinayak Ravi Reddy (Partners of Deccan Chronicle Partnership Firm) on 10th October 1996. The Registrar of Trademarks registered the trademark on 29th March 2008 vide registration number 729889 in the name of Deccan Chronicle (in the capacity of the partnership) (See Annexure), T Venkatram Reddy and T Vinayak Ravi Reddy (Partners of Deccan Chronicle Partnership Firm). It should be further noted that the current information as per the Registrar of Trademarks shows that the trademark is registered in the name of Deccan Chronicle Partnership firm ("DCP"), T Venkatram Reddy and T Vinayak Ravi Reddy (Partners of Deccan Chronicle Partnership Firm). Since the formal trademark registration occurred on March 29th, 2008, the Trademark belonged to DCP. It should be noted that "Deccan Chronicle" stated above now refers to Deccan Chronicle marketeers since DCP had changed its name to the name of Deccan Chronicle Marketeers on April 1, 2004. It should be emphasized that the trademark was issued under the original general partnership. However, legally since DCP is now renamed as Deccan Chronicle Marketeers, the Trademark is owned by Deccan Chronicle (now Deccan Chronicle Marketeers) partnership firm.*

(s) *It is submitted that one of the main objects of the Memorandum of Association (MOA) of the Company was "to take over the business including the assets and liabilities of the Firm, i.e., Deccan Chronicle, who was carrying the business of publication of Deccan Chronicle, Andhra Bhoomi and other publications as a going concern". It is further submitted that as per the Agreement executed on December 27, 2002 by and between Deccan Chronicle Partnership Firm ("DCP") and the Company, wherein it is recorded that the "Corporate Debtor has been incorporated* *so that it takes over the business of" DCP "as a going concern (including the business of publication of English daily Deccan Chronicle and Telugu Daily Andhra Bhoomi) with effect from January 1, 2003". It is hereby clarified that the inference drawn by the Adjudicating Officer is not correct on the following grounds. Neither the Transfer Agreement nor the Memorandum of Association of the Corporate Debtor articulate that transfer of assets shall specifically include the transfer of ownership of the Brands / Trademarks by DCP to the Corporate Debtor. The Adjudicating Officer has failed to consider the fact that prior to the Transfer Agreement, the Memorandum of Agreement, which records DCP's transfer of ownership of the Trademarks.*

(t) With regard to allegation made in the para no. 23.8 of the show cause notice, it is submitted that the company has never valued and recognized the Brands "Deccan Chronicle" and "Andhra Bhoomi" as assets in its books of accounts or financial statements or in the Annual report. Annual Report 2005-06 is enclosed for your reference.

(u) It is submitted that as stated in the note no.27.11 of the Annual report 2011-12 which is reproduced here that

"As per the legal settlement it is decided to acquire the Brands based on the valuation report for intangibles/brands obtained from independent valuers to the extent of Rs.3700 crores. The parties have also given their personal properties to the extent of Rs.170.16 crores as collateral to the lenders on which the company has already availed loans. ....The parties are still in the process of transfer of the legal titles to the intangibles /brands".

As further clearly stated in note no. 27.16 of the Annual report 2011-12 which is reproduced here that:

"As per the terms of legal settlement, for the dues recoverable, the parties have agreed to sell, transfer, assign their brand, which was valued around Rs.3700 crores. Pending completion of documentation, transfer, assign, etc., in the name of the company, the said brand has been shown as Intangible asset under development - Brand and shall be capitalized to the fixed assets upon completing the transfer of title".

(v) As per the above notes reported in the Annual report, it is very clear that the parties have agreed to transfer but not transferred the Brands. The Company decided to acquire the Brands but not acquired the Brands. There is lot of difference between acquisition of an asset and decision

taken to acquire the asset. In the present case the Company decided to acquire the brands but not acquired the Brands. In other words, the transfer of Brands to the company is not taken place since pending documentation, transfer, assign, settlement of amounts on account of personal properties given by the promoters for the loans availed by the company, clarification and settlement of difference amount of Brands valuation and value at which it is decided to acquire, etc., Therefore, it is submitted that the Brands & Trademarks "Deccan Chronicle" & "Andhra Bhoomi" were never got transferred to the Company and these Brands & Trademarks are owned by the Partnership Firm till the date. The Company was permitted to publish these News Papers so as to corporatize the business and expand the business pan India.

(w) As explained in the above paras and based on the documents referred in the above paras, it is once again submitted that the brands were never owned by the company and neither the promoters nor the company never acknowledged or admitted that the Brands & Trademarks of "Deccan Chronicle" and "Andhra Bhoomi" are held by the DCHL in any manner. 26. In view of the above, we submit that we have not violated any securities market related laws and we have not committed any securities market fraud as alleged in the order, as more elaborately explained above. We submit that we had not been unduly benefited financially or otherwise. We submit that none of my acts can be termed as fraud on investors.

(x) It could thus be seen that the amount of disproportionate gain or unfair advantage, amount of loss caused to an investor or group of investors as a result of the default are critical factors. Even if the revenues and profits were overstated as alleged, no loss has been caused to anyone on account of buy back of shares. In fact, the public shareholders have benefitted by the higher price offered. There was no appreciable change in quoted price after the second buy back. Therefore, the ingredients of Section 15HA of fraud are not made out. Likewise charging of interest to the partnership firm in respect of the company's borrowings and squaring off the accumulated dues of the firm against value of the brand and acquisition of the same has actually benefitted the company. It is for the adjudicating officer to prove loss has been caused to any investor or investor group.

(y) Mere allegation of fraud is insufficient; such allegation is must be supported by cogent evidence and burden of proof to establish the same lies on the one who alleges it Fraud being an allegation of serious nature, has to be substantiated by cogent evidence; mere allegation of fraud is in sufficient.

The Supreme Court has held in the case of Canara Bank Versus P. Selathal and others [2020 SCC Online SC 245], that mere allegations of fraud is insufficient, there must be sufficient material that fraud is committed. In the case of, Raja Ram vs. Jai Prakash Singh and Ors. [(2019) 8 SCC 701] and Shanti Budhiya Vesta Patel and Ors. vs. Nirmala Jayprakash Tiwari and Ors [(2010) 5 SCC 104]. relying on its decision in Bishundeo Narain and Ors. v. Seogeni Rai and Jagernath [AIR 1951 SC 280], the Supreme Court held that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence.

(z) As stated above, in the instant case, most of the breaches alleged against these Noticees are Technical in nature. Nothing has been placed on record to establish fraud beyond doubt. It is a well settled principle of law that penalty cannot be imposed for technical breaches. Securities Appellate Tribunal, has held repeatedly, in various judgments, including in the cases of R.R. Chokhani v. SEBI [2013 SCC OnLine SAT 73], Finquest Securities Pvt. Ltd. v. SEBI [2013 SCC OnLine SAT 75], and Samkit Shares and Stock Brokers Pvt. Ltd v. SEBI [2004 SCC Online SAT 70] that in cases of a venial breach; i.e.; an inadvertent breach, no penalty should be imposed. It has been further held that where the lapse is technical, unintentional and does not involve any monetary loss to any party, mere warning to comply with norms of the SEBI is sufficient, and no penalty ought to be imposed.

8. <u>Reply of P K Iyer (Noticee 4) – August 29, 2017 submitted by the Authorized Representative</u>

(a) The SCN issued for the instant proceedings is substantially similar to the SCN dated May 10, 2016 issued by SEBI, for which I had responded.

(b) I am inclined to point out that the Hon'ble National Company Law Tribunal by its Order dated July 19, 2017 in the matter of Canara Bank Vs. Deccan Chronicle Holdings, Ltd., had appointed an Interim Insolvency Resolution Professional and has further ordered moratorium.

(c) In light of the above, I am of the view that it would be advisable to respond to the merits of the said SCN issued by you at this stage as the same would tantamount to violation of the Order passed by the Hon'ble National Company Law Tribunal and would attract punishment as set out in the Insolvency and Bankruptcy Code, 2016.

9. <u>Reply of V Shankar (Noticee 6) – October 27, 2017 and December 21, 2020</u>

i. *The Noticee was appointed as Company Secretary in the Noticee No.1 company (DCHL) on 21st April, 2009 and resigned from the services of the Company vide resignation letter dated 1st May, 2012. It is further placed on record that the Noticee had stopped attending the Office and discharging official duties at DCHL w.e.f. from 1st June, 2012. However, the Company has filed the requisite Form No. 32 showing relieving of the Company Secretary (Noticee No. 6) w.e.f. 31st August, 2012. It is to be noted that the date of filing of Form No. 32 regarding cessation from the post of Company Secretary cannot be taken into account as in many cases, the companies have not even filed the said form.*

ii. *It is submitted and is on record to show that the dates mentioned in the Notice and the annexures, it contains dates and transactions conducted prior to 21st April 2009 and beyond 1st June, 2012 and as such the Noticee No. 6 was not aware/ has no knowledge of the transactions and annexures mentioned prior to 21st April 2009 and beyond 1st Jun e, 2012. It is further stated that the Noticee No. 6 at no point of time was entrusted by the management of the company with any duties or responsibilities relating to the accounting or finance function and as such the Noticee No. 6 had no knowledge of the financial transactions, loan, disclosures relating to financials, Bank correspondences, pledge of shares of the company etc. or its end-use and thus not responsible and liable for any alleged violation of these transactions. It is further submitted that all the allegations levelled against the company by SEBI relates to finance and accounts or underlying the transactions related to finance through pledge of shares etc., the Noticee No.6 was neither aware of the transactions and as such not responsible for the transactions to take place in the manner as alleged nor privy to the said transactions. That the Noticee No. 6 had worked only as a Company Secretary and to the best of his knowledge adhered to the provisions of the Companies Act, 1956 including the provisions relating to listing Agreement and was never involved or in-charge of any of the financial matters, including pledge of shares, buy back etc.*

iii. *The Noticee No. 6 was not entrusted with the work relating to accounting and finance including the transactions relating to loans, borrowings etc., The Noticee No. 6 was not responsible of the exact amounts stated in the Balance Sheet. It is further submitted that after the Statutory Auditors sign the annual statement of accounts for any financial year, it is final unless it is refuted that the annual accounts and figures were wrongly or incorrectly stated. If at all any of the outstanding loans were understated as alleged for the FY 2009-10 and FY 2010 -11, the onus of responsibility lies with the Chief*

Financial Officer, if any of the Company or the Accounts/Finance In-charge or executives along with the Whole Time Directors/Promoters of DCHL. The presumption as to the correctness of the audited financial statements is established immediately upon signing of the same by the Statutory Auditors and if any understatement of outstanding loans as alleged in the notice is noticed upon investigation of the books of accounts, then the Noticee No.6 who was a mere Company Secretary was not liable as the said Noticee No. 6 was not entrusted with the work related to finance or finalisation of annual accounts. It is further submitted that the signing of the financials by the Noticee No. 6 is pursuant to the provisions of Section 215 of the Companies Act, 1956 and by mere appending of signature by the Company Secretary, it cannot be concluded as to lend any authenticity/ approval by him to the numbers contained in the financials as the responsibility for the same squarely lies on the Whole time directors/Promoter Directors who have signed it and the Statutory Auditors who has signed it showing that it depicts true and fair value as on a particular date. It is submitted that the Noticee No. 6 who has worked as Company Secretary and having exercised professional judgment in good faith cannot be slapped with Notice of allegations, which were already misplaced as explained above. Besides it would be appreciated that the approving authority of accounts and audited financials of a company is its Board of Directors and not the Company Secretary more so when he is not specifically charged/entrusted with the responsibility for maintaining the accounts and drawing up the financials by the Board of Directors.

iv. *As regards the inferences drawn regarding the adjusted net profit of DCHL (after taking into account the alleged understatement of expenses) and a consequent reworking of the reserves and the actual funds/amount deployed in buy- back and to allegation regarding the buyback violations in particular the absence of adequate reserves for buy-back in the main para 15 and the sub-paras 15.1to 15.3, the same can only be attributable to the promoter/directors and Finance and Account s Personnel and the Noticee No. 6 was a mere Company Secretary and not entrusted with accounting/finance function and hence cannot be made responsible in relation to calculation/reckoning of paid up capital, reserves and the amount spent on buy back as the Noticee No. 6 relied upon the audited financials and also the oral representation(s) from the accounts/finance head based on the audited numbers. It is further submitted that the Noticee No. 6 as a Company Secretary is only aware about the statutory limits etc. mentioned in the provisions* *of buy-back and is not supposed to look beyond and to cast doubt or investigate the numbers which are audited. So based on the audited numbers and relying upon the oral representation from account and finance department, the Noticee No. 6 drew the presumption that the maximum amount to be expended on buyback was within the statutory limits.*

v. *As regards the inference that by being a signatory to the Public Notice of Buy-back which allegedly mislead the investor, it is humbly submitted that the said Public Notice was approved and released on behalf of the Board of Directors of the company and by the Merchant Banker. Besides, the Noticee No. 6 had ascribed his signature on Public Announcement, in the capacity as Company Secretary as is mandated by the SEBI Buy Back Regulations, and the same is only in relation to the compliances of procedural formalities for the Buyback of shares and not in respect of the financial statements and information contained therein, which in any case was never under the control of the Company Secretary and thus the inference and the allegation that Noticee No. 6 has violated Regulation 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations read with Section 12(a), (b) and (c) of SEBI Act, 1992 is completely incorrect and will not be sustainable under established legal principles.*

vi. *It is further submitted that the Public Notice/Announcement was subjected to various due diligence checks/verification by the Merchant Banker to the Buyback Offer. Accordingly, the answering Noticee cannot be faulted for having placed reliance on such due diligence checks of the Merchant Banker. In the Buyback Offer the primary responsibility is on the Board of Directors of the company and equally also on the Merchant Banker who are to make appropriate due diligence of such offer; while the answering Noticee has been show caused in the proceedings and is being made responsible for the Offer, which it would be appreciated that the Company Secretary has no power to initiate, however the Merchant Banker who are supposed to have done due diligence have been given a clean chit. Accordingly for same cause of action while the role of Merchant Banker is above board however, that of the answering Noticee is being faulted. It is humbly submitted that how come a two different set of conclusions can be reached? one qua answering Noticee and the other qua Merchant Banker. It is humbly submitted that the same betrays prejudice of the investigation in the whole matter and accordingly on this count alone the charge needs to be dropped qua the answering Noticee.*

vii. *The Companies Act, 1956 and the Rules thereunder did not specify the role, duties or responsibilities of a Company Secretary; however, Section 205 of the Companies Act, 2013 and Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 set out the functions of a Company Secretary and his/her duties and responsibilities. While, the Noticee held the post of Company Secretary in the Company prior to enactment/notification of the provisions of the Companies Act, 2013 and the Rules, the provisions of the Act and The Rules can be used to help understand the functions, roles and responsibilities of a Company Secretary.*

viii. *Further, it is pertinent to note that the Ministry of Law, Justice and Company Affairs, vide its Circular No. 7/72 dated March 12, 1972 clarified the role of the Company Secretary in respect of the Balance Sheets attested by him. The Ministry clarified that "The Department is of the view that as the authentication by the Secretary is "on behalf of the Board of Directors" and not in his personal capacity, the Secretary can be held responsible regarding errors etc., (in a balance sheet) only as an "Officer" of the Company within the meaning of Section 628 and not because of authentication by him under Section 215 as such".*

10. <u>Reply of Mani Oommen, Partner, C B Mouli & Associates, Chartered Accountant (Noticee 7) – August 21, 2017 and December 4, 2020</u>

(a) At the outset, it is submitted that the investigation was conducted for the matter pertaining to the FY. 2008-09; 2009-10 and 2010-11. Thereafter, the present show cause notice has been issued in August 2017 i.e., almost after a period of 9 years. Thus, it was submitted that there is an inordinate delay in issuance of the SCN. The Noticee in its defence rely on Orders of the Hon'ble SAT in the matters of Parag Sarda Vs SEBI (Appeal No. 290 of 2020) dated November 12, 2020, Rakesh Kathotia & Ors., Vs SEBI (Appeal No. 7 of 2016) dated May 27, 2019, Ashok Shivlal Rupani & Anr. v. SEBI (Appeal No.417 of 2018) decided on August 22, 2019, Sanjay Jethalal Soni v. SEBI (Appeal No.102 of 2019) dated November 14, 2019).

(b) It is also submitted that, though the Noticee No. 7 was the statutory auditor of the Noticee No.1 Company; it is essential to mention that it is the responsibility of the company's management to prepare and

present the financial statements of the company. Noticee No. 7 submitted that the duty of the statutory auditor is to express an opinion on these financial statements based on audit. Moreover, the Noticee No. 7 has performed his duty as per the guidelines i.e., Standards of Auditing 200 ("SA-200"), issued by the Institute of Chartered Accountants of India ("ICAI")

(c) A bare perusal of SA-200, it confirms that it is the duty of the management to prepare and present financial statement in accordance with the applicable financial reporting framework. Moreover, in case of a listed companies, the board of directors are responsible for implementing policies and procedures that ensure orderly and efficient conduct of the company's business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of accounting records, and the timely preparation of reliable financial information. In light of the above, it was submitted that, the Noticee No.7 shall not be fastened with any penalty for any act of omission by management of Noticee No.1 company.

(d) It is also submitted that, an independent auditor's opinion is confined to expressing whether the financial statements are prepared in all material respects, in accordance with the applicable financial reporting framework. Therefore, it is abundantly clear that the auditor's opinion is subject to applicable financial framework and applicable laws or regulations, which is clearly enunciated in Para A12 of SA-200.

(e) It is also submitted that an auditor is not an investigator and does not question every transaction of the company. It is well defined that the ambit of the audit is to check if the management has prepared and presented the financial statement as per the applicable reporting framework and not question each and every transaction.

(f) Further, it is submitted that SEBI has no jurisdiction over the members of ICAI, for any omission or commission committed by them while performing their functions as per the mandate and guidelines prescribed by the ICAI. All the allegations levelled against me in the impugned notice flow from performance of my duties as the statutory auditors of DCHL. While functioning as such, I am bound by the rules, regulations and guidelines issued by the ICAI from time to time and I am subject to disciplinary action by the ICAI for any omissions and commissions.

(g) *The Noticee No.7 was unaware of the arrangement between the Noticee No. 1 and Deccan Chronicle Marketers (DCM"). DCM, a partnership firm which is the owner of brands namely 'Deccan Chronicle' & 'Andhra Bhoomi'. The arrangement between the Noticee No.1 and DCM, as the Noticee came to know later, as such that DCM entered into an article of agreement/ arrangement with Noticee No.1 which had been renewed from time to time, to acquire and obtain the prioritized advertisement space in the publications of Noticee No.1 for the purpose of developing and building brands owned by DCM.*

(h) *It was also mutually agreed that, in any event if DCM is unable to meet its financial obligations against the sale of advertisements spaces; Noticee No.1 shall be at liberty to raise loans to meet the cash flow deficit arising out of default on the part of DCM in meeting its financial obligations. Correspondingly, DCM agreed to take over such loans payable to Noticee No.1 company along with interest and financial charges.*

(i) *It is on account of this arrangement that Noticee No.1 was borrowing and repaying loans and transferring loans on behalf of DCM and transferring on non-performance of any financial obligations by DCM; which were outstanding on the last day of financial year; were transferred to DCM along with financial costs. However, these loans were raised by Noticee No.1 in its books of accounts for operational convenience and the fact that, the arrangement between. the Noticee No.1 and DCM was independent of the agreement between DCHL and its lenders; therefore, the adjusted entries were reinstated on first day of the financial year.*

(j) *It is also pertinent to mention that, the interest and. finance charges incurred on the abovementioned loans were not charged to the profit and loss account of the Noticee No.1. Further, it is submitted that, the trial balances and the financial statements of Noticee No.1 for FY 2008-09;2009-10 and 2010-11 were prepared by the Company after taking into account the abovementioned arrangements. The interest and finance charges accounted on behalf of DCM were not reflected in the trial-balances and the balance sheet for FY 2008-09; 2009-10 and 2010-11. These balance sheets were prepared by the management after adjusting the above-mentioned arrangement and were not even part of the trial balance. These transactions were neither disclosed as related party transactions in the financial* *statement of Noticee No.1 nor, was the transaction/ arrangement recorded in the register maintained under Section 301 of the Companies Act.*

(k) *It is further submitted that; these transactions came to Noticee No.7 knowledge for the first time during their audit for FY 2011-12. This was because; the Noticee No.1 undertook an exhaustive review of its policies and discontinued the abovementioned arrangement w.e.f April 1, 2011. Consequently, the Noticee No.1 reinstated the liabilities to protect its credibility with lenders. This fact was noted in the notes to the accounts in the relevant year. Therefore, the Noticee No.7 submits that, it was the Noticee No.1 company who was responsible for preparing of the financial statements. It was the Noticee No.1 Company who had failed to disclose the arrangement with DCM in its financial information. Thus, it was submitted that, by no stretch of imagination can the Noticee No.7 be held liable for alleged under-reporting of the loans, interest and finance charges by the management of the Noticee No. 1.*

(l) *It is also submitted that, BSR & Co., Chartered Accountants were the joint statutory auditors of Noticee No.1 along with Noticee No.7. It was submitted that, the allegation of non-disclosure of certain loans i.e., loans taken by the company in its name and transferred to other entity without having been reflected in trial balance and without being disclosed in the balance sheets was not observed/ traced by the said auditors for the same reasons. It was submitted that the said BSR & Co was not part of the proceedings and BSR would have equal liability as that of the Firm of the Noticee 7. In the absence of any proceedings against the BSR& Co., the present Noticee should also be exonerated.*

(m) *It was also submitted that, the only two allegations against the Noticee No.7. First, understatement of loans and second, understating interest and finance charges and consequently, overstating of the profits of Noticee No.1. However, it was submitted that these allegations do not culminate into fraud. It is settled principle of law that, fraud must be established beyond reasonable doubt whereas, in the present case, the SCN fails to bring out any prima facie evidence of fraud against the Appellant.*

(n) *It is submitted that the Noticee was not a beneficiary of any fraud that had alleged to have taken place in the Company. He did not receive any monies from the Company or promoters of the Company in any* *manner except the remuneration as fixed by the Board of the Company from time to time received by the Firm where the Noticee is a partner. 26. In view of the above, the Noticee No.7 denied using or employing any manipulative or deceptive device or contrivance or any scheme or artifice to defraud in dealing in or issue of securities, listed or proposed to be listed. The Noticee No.7 also denied engaging into any act, practice, course of business which would operate as fraud or deceit upon any person.*

(o) The Noticee No.7 submitted that he never dealt in the shares of the Noticee No.1. Therefore, the Noticee denied indulging in any manipulative, fraudulent or unfair trade practices in securities market. The Noticee further denied publishing any financial statement which is not true or which he does not believe to be true. Moreover, the Noticee No.7 also denied disseminating any information or advice through media or knowingly or planting any false or misleading news, as is alleged in the SCN.

(p) Without prejudice to the above, it was submitted that the Ld. Whole Time Member, vide order dated December 31 2019, has barred the Noticee No.7 for a period of 1 year from directly or indirectly issuing any certificate with respect to compliance of statutory obligations which SEBI is competent to administer and enforce under various laws. However, the Noticee No.7 has filed an Appeal (L) No. 150 of 2020 before Securities Appellate Tribunal challenging the same.

11. In order to conduct an inquiry in the matter, in the interest of natural justice and in terms of the provisions of Rule 4(3) of SEBI Adjudication Rules and Rule 4(3) of SCR Adjudication Rules, the Noticees were given an opportunity of hearing. I note that the Noticees 2 & 3 appeared before me virtually through their Authorized Representative on November 4, 2020 and reiterated the submissions made by the Noticees vide letter dated October 5, 2020.

12. I also note that the Noticee 6 appeared before me virtually through his Authorized Representative on December 16, 2020 and reiterated the submissions made by the Noticee vide letter dated October 27, 2017. The Noticee 7 also appeared before me virtually through his Authorised Representative on November 12, 2020 and reiterated the submissions made by the Noticee vide letter dated September 27, 2017.

13. Further, I note that the Noticee 1 did not appear for the hearing and submitted that the case of DCHL is pending before the Hon'ble NCLT. I also note the Notice of hearing dated September 15, 2020 was duly served upon the Noticee 4, but failed to attend the hearing scheduled on October 12, 2020. It is pertinent to note that the SCN dated August 3, 2017 and Notice of hearing dated September 15, 2020 was duly served upon the Noticee 5, yet the Noticee neither submitted his reply nor appeared for the hearing scheduled on October 12, 2020.

14. In this context, I would like to rely upon the observations of The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd., vs. SEBI (Appeal 68 of 2003 decided on December 08, 2006) wherein the Hon'ble SAT, inter alia, observed that - *"........... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".*

15. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal 68 of 2013 decided on February 11, 2014), interalia, observed that – *"………………As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices…………….".*

16. In view of the above, I am of the opinion that the SCN and Notice of hearing have been duly served on the Noticee 5, but the Noticee neither submitted his reply to the charges alleged in the SCN nor availed the opportunity of hearing. Therefore, I am convinced that the principle of natural justice has been duly followed in the matter, as enough opportunities were provided to the Noticee 5 to reply to the SCN and to appear for hearing. Therefore, I am inclined to decide the matter ex-parte in respect of the Noticee 5. In respect of the Noticee

4, I take into consideration the reply submitted by him and accordingly decide the matter.

FINDINGS

17. I have taken into consideration the facts and material available on record. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder:

18. Before moving forward, I feel it is relevant to address the two issues raised by the Noticees with regard to delay in initiation of the instant proceedings and multiple proceedings for the same cause of action.

19. I note that the Noticee 7 contended that the investigation was conducted for the matter pertaining to the FY. 2008-09; 2009-10 and 2010-11 and thereafter, the present show cause notice has been issued in August 2017 i.e., almost after a period of 9 years. Accordingly, the Noticee contended that there has been inordinate delay in issuance of SCN.

20. I note that the focus of the investigation in the matter of DCHL was to ascertain whether the promoters of the company have made any fraudulent pledging and made adequate disclosures in accordance with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Pledging of shares by promoters has been examined for the period during October 2011 to December 2012. Further, understatement of loans by DCHL in its financial statements for the financial years 2008-09 to 2011-12 (up to September 30, 2012) has also been examined in terms of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. Accordingly, the investigation was conducted up to period September 2012 to find out the suspected malpractices in pledging of shares by promoters in the scrip of DCHL.

21. I find that the fact of delay in completion of investigation and / or initiation or completion of enforcement proceedings, in itself, cannot be a ground for

dropping the proceedings. Only in cases where a Noticee is adversely affected, can such a submission be considered. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt., Ltd., vs.SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*

22. In this context, it is noteworthy that as a generally accepted principle regarding enforcement action by any enforcement authority, investigation/inquiry against any subject entity and the consequent action in pursuance of the same should be completed in a reasonable timeframe which would serve the objective of balancing the rights of the persons subjected to enforcement action and the investors whose rights are being protected though enforcement proceedings. However, it is equally true that the time consumption in investigation or consequent enforcement actions can be caused due to multiplicity of factors such as the violation coming to the notice of the enforcement authority on a later date, the requisite data / material not being readily available, non-cooperation by the subject entities, detailed analysis of voluminous data etc., Thus, in order to address the contention raised by the Noticee, it would be appropriate to consider the facts and circumstances of the case in light of the legal principles in this regard. I note that the investigation in the scrip of DCHL was concluded in the year 2016 and SCN was issued to the Noticees in the year 2017. Therefore, the time taken for completion of collective investigation into a large number of similar cases and also for issuing SCNs to a large number of Noticees is fairly understandable. Without prejudice the above factual observation, I find that no provision under SEBI Act, prescribes time limit for taking cognizance of the alleged breach of provisions of SEBI Act, and rules and regulations made thereunder. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in the matter, the date when the violation came to the notice of the SEBI would be the relevant

point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of that case.

23. In this connection, I deem it appropriate to refer to the observations made by Hon’ble SAT in the matter of Vaman Madhav Apte & Ors. Vs. SEBI vide Order dated March 04, 2016, which reads as follows

“Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws.”

24. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Hon’ble Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Hon’ble Supreme Court in Bhavnagar University v.Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd., (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Hon’ble Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

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

26. In the light of the aforesaid observations of the Hon’ble Supreme Court and Hon’ble SAT and the facts of the case, I am of the view that proceedings cannot be quashed on the ground that the same had been initiated at a late stage or could not be concluded in a reasonable period unless the delay creates prejudice to the Noticee. Since the entire material on which the allegations levelled in the SCN were based, has been provided to the Noticee, they were not in any manner constrained to submit their defense to the allegations levelled in the SCN. I, therefore, find that the above noted prayer of the Noticees with regard to dropping the proceedings on account of inordinate delay cannot be accepted.

27. The Noticees 2 and 3 in their submissions stated that they are subjected to multiple proceedings for the same cause of action in the same matter and accordingly contended that the instant proceedings be quashed, since they have been restrained by the Hon’ble WTM vide Order dated December 31, 2019.

28. In this connection, it is pertinent to mention the Hon’ble SAT’s observations in the matter of Sunita Gupta Vs. SEBI in the Appeal No. 193 of 2016 decided on April 21, 2017, which are reproduced hereunder:
“Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP

Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.

29. Therefore, in my view, the principle of double jeopardy does not apply to the present proceedings, as the directions issued by Hon'ble WTM of SEBI are under Section 11 and 11B of the SEBI Act and the instant proceedings have been initiated under Chapter VI of SEBI Act to inquire, adjudicate and impose monetary penalty as applicable. In view of the above, I find no merit in the argument put forth by the Noticees 2 and 3 and accordingly I proceed further in the matter.

30. The main allegation against the Noticees is that they have underreported the loan amounts, interest payments and financial charges in the books of accounts of the Company during FY2008-09 to 2010-11 and thereby misled the investors and shareholders by reporting to the public such manipulated financials of the Company. The Company has also made buyback announcement at a price which was 234% higher than the ongoing market price so as to induce the investors to trade/invest in the securities of the Company. Further, the promoters of DCHL have also concealed material information about the pledge/encumbrances created on their shareholding in the Company, from the shareholders of DCHL and have made misleading statements about ownership of brands. It has been alleged that the Noticees have violated the provisions of Section 12 A(a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003. In order to appreciate the charges levelled against the Noticees, it would be proper and necessary to refer to the above stated relevant provisions of the PFUTP Regulations, 2003 which have a bearing on the allegations made against the Noticees.

31. For the purpose of reference, the provisions of Section 12 A(a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations, 2003 are reproduced hereunder:

Section 12 (A) (a) (b) (c) of SEBI Act

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;

Regulation 3 of PFUTP Regulations: - Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(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 thereunder;

(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 thereunder.

Regulation 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:-

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

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

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

32. I now proceed to deal with the technical objections raised by some of the Noticees pointing out that there is no mention of exact provision of the SEBI Act, 1992 in the SCN while alleging the contraventions thereof by the said Noticees. Some of the Noticees have constantly harped that the charges in the SCN are vague. I note that the SCN contains detailed enumeration of the allegations, the factual basis of each allegation, the documents relied upon for making such allegation and, wherever necessary, the SCN also has invoked the relevant provisions of the SEBI Act, 1992 read with the relevant regulations. The typographical errors in the SCN in mentioning the relevant Section of the SEBI Act, 1992, viz. inadvertent mentioning of Section 12(a), (b) and (c) of the SEBI Act, 1992 instead of section 12A(a), (b) and (c) of the Act. Further, while section 12A of the Act prohibits, inter alia, manipulative and deceptive devices, the PFUTP Regulations, framed under the SEBI Act, lay down in detail as to what constitutes 'fraud' and manipulative, fraudulent and unfair trade practices, etc. Since, the SCN contains the specific provisions of the SEBI (PFUTP) Regulations alleged to have been contravened by the Noticees, I do not find any prejudice that could have been caused to the Noticees by the typographical error in mentioning section 12A of the Act. Without prejudice to the foregoing, the Hon'ble Supreme Court has held in the case of Fortune Impex vs Commissioner – 2004 (167) ELT S 134 (SC), that *"non-mentioning of particular section of Customs Act 1962 would not vitiate the proceedings when allegations and charges against the appellants were mentioned in clear terms in the show cause."* This position has been reiterated

by the Hon'ble Supreme Court in several cases. I reiterate that in the instant proceedings the SCN contains detailed enumeration of the allegation, the factual basis of each allegation, the documents relied upon for making such allegation and, wherever necessary, the relevant provisions of the SEBI Act, 1992 and the relevant Regulations. I, therefore, do not find any merit in the contentions of the Noticees and hence reject the same

33. I will now proceed to deal with the submissions of the Noticees on merit. I note that since the allegations in the SCN against the Noticees are diversified, I deem it appropriate to deal with the allegations levelled against the Noticee separately. Further, for the purpose of clarity, the role of the Company and its directors (i.e., Noticees 1 to 5) in respect of various allegations made against them are being dealt with together, while the allegations pertaining to the role of the Company Secretary and the Statutory Auditor of DCHL (Noticees 6 and 7) shall be dealt with separately. Before I deal with each of the allegations separately in the manner explained above, I would like to summarize herein below, the chronology of events, as observed during investigation in the instant matter.

A. Allegation in SCN: DCHL, its Directors (T. Venkattram Reddy, T. Vinayak Ravi Reddy, P K Iyer, N. Krishnan), V. Shankar, Company Secretary and its Statutory Auditors (Mani Oommen, Partner, M/s. CB Moulli & Associates) understated outstanding loans and interest and finance charges in the annual report for the FY 2008-09, 09-10 & 10-11.

34. The instant allegation stems from the information submitted by DCHL vide its letters dated August 08, 2013 and September 10, 2013 whereby the Company had furnished details regarding its outstanding short term and long-term loans, and interest and financial charges thereon for the financial years 2008-09, 2009-10 & 2010-11. I note that as per the SCN, the Company is alleged to have understated its outstanding loans to the extent of ₹ 1339.17 cr., ₹ 2982.07 cr. and ₹ 3347.41 cr. and interest and financial charges to the extent of ₹ 133.39 cr., ₹ 305.68 cr. and ₹ 293.62 cr. for the financial years 2008-09,

2009-10 & 2010-11 respectively in its Annual Report / financial statements filled with the stock exchanges, thereby misinforming and misleading its shareholders / stakeholders and the investors at large.

35. The Noticees 2, 3 and 7 in their reply stated that the amounts of loans, interest and finance charges which were adjusted against receivables from DCM, have not been reflected in the Balance Sheets of DCHL for the FY2008-09 to FY2010-11. These short-term loans were raised against the receivables from DCM and were transferred from the books of accounts of DCHL to the Books of Accounts of DCM on the last day of the Financial Year in order to reflect/disclose the true assets and liabilities of DCHL in the Audited Balance Sheet. The interest and financial charges paid on the aforesaid short term loans by DCHL were also shown as receivable from DCM and therefore were transferred to DCM's accounts on the last day of the next financial year. Hence, certain short-term loans availed by DCHL and interest payments thereon were not incorporated into the Balance Sheet and were also not charged to the Profit and Loss account of DCHL for the FY2008-09, FY2009-10 and FY2010-11, respectively in order to report the true and fair view of the Balance Sheet and Profit and Loss Account of the Company. Therefore, according to the Noticees 2 and 3, the figures of outstanding loans and interest and finance charges payable as shown by them in the Balance Sheets of DCHL for the aforesaid 3 financial years are correct and SEBI has erroneously considered the figures of loans outstanding and interest and bank charges which were transferred by DCHL to the books of DCM to be the outstanding amounts of loans, interest and bank charges of DCHL and has wrongfully alleged understatement of outstanding loans and interest and finance charges in the annual report for the financial years 2008-09, 09-10 & 10-11 by the Noticees 2 & 3.

36. With regard to the above arrangement, I find it imperative to emphasise that in this era of disclosure-based regime, a company's documents, viz. balance sheet, audited financial results, annual reports, etc. must reflect, inter alia, true and fair picture of its finances. The true and fair picture the finances of a

company shall invariably contain the details of actual assets and liabilities of the said company. In the instant case, since DCHL had availed the loans from banks/FIs, the loans were required to be serviced by DCHL and as such the outstanding loans, interests and financial charges must be part of the Company's documents. However, purportedly, an internal arrangement was made to show and claim that certain loans did not belong to DCHL but to DCM. In the process, the Company had resorted to a practice of transferring the loan amounts taken by it in its name and the interest and bank charges payable by it thereon, to the books of account of DCM at the end the financial year so that the said loan liabilities were not shown as liability of DCHL towards the banks/ FIs from which the loans were availed. Further, DCHL merely showed those outstanding loans and interest and finance charges thereon as transferred to DCM by making transfer entries in its books of accounts without any corresponding entries being made in the books of accounts of DCM. It has also been noted that the Company again restored back those entries of loans, interest & finance charges to its own books of account on the next day, i.e., the beginning of the next financial year. Thus, practically the liabilities pertaining to these short-term loans and interest & finance charges thereon were removed from the accounts of DCHL only for a day (i.e., the last date of the financial year) so as to understate the liabilities, overstate the assets and income in the annual accounts of the financial year and present a fabricated and misleading financial state of affairs to the public. DCHL, despite being a listed company, and its directors and auditors, who were under statutory obligation to report all transactions which have prejudicial impact to the interest of the Company or to the interest of the shareholders of the Company, knowingly preferred to not to disclose such material information pertaining to transfer entries of its outstanding loans, to the shareholders or to the public at large and thereby adversely influenced their decision making process in the scrip of DCHL. The contention of the Noticees that they have done these accounting manipulations to show true and fair view of the Balance Sheet of DCHL is deplorable and not acceptable by any measure of accounting standards. Instead, by their act of such accounting adjustments, they have deprived the shareholders and investors from a view of the true and fair financial state of affairs of the Company.

37. As regards the contentions of the Noticees 2 and 3 that the SCN has considered wrong amounts of outstanding liabilities towards loans, interest and bank charges in the accounts of DCHL by erroneously considering the liabilities of DCM payable to DCHL, I observe that such a contention and assertion on the part of the Noticees is factually incorrect and grossly misleading. In fact, the SCN has rightly made an attempt to present the correct amount of outstanding loan that was supposed to be reflected in the balance sheet of DCHL as on the closing dates of the aforestated 3 financial years. However, by way of diverting a substantial portion of loan liabilities from the books of DCHL to the books of DCM on the last date of each of the aforesaid three financial years, the Noticees have deliberately understated the loan liabilities of DCHL. The SCN has merely brought back those diverted liabilities that were actually outstanding in the books of accounts of DCHL and were rightfully required to be presented in the balance sheet of DCHL for those 3 financial years. Similar is the case with interest and bank charges on the said loans taken by DCHL, supposedly against the receivables from DCM to offset those receivables and infuse cash flow into its account. Even though DCHL has actually serviced those loans and paid necessary bank charges thereon, the Noticees have deliberately transferred those revenue expenditures from the accounts of DCHL against all principles of accounting only to overstate profit and to understate the loss in the books of DCHL. Therefore, the plea taken by the Noticees 2 and 3 about wrong presentation of loan amount in the SCN has to be rejected for being without any basis. At this point, it would be relevant to have a look at the bifurcation of the details of year-wise loans taken by DCHL, loans transferred to DCM and the remaining amount of loans shown in the balance sheet of the Company as reported by the auditors vide their reply dated December 18, 2018 which will be pertinent for consideration in adjudication of the issues at hand. The same are presented in the table below:

Sl. No.	Financial Year	Total outstanding loans (in ₹ crores)	Loans transferred to DCM A/c (₹ in Crore)	Loans disclosed in the B.S. (in ₹ Crore)	Remarks made by Statutory Auditor's in their reply
1	2008-09	1347.67	828.23	519.44	The total long term and short-term loans disclosed in the Balance Sheet were ₹ 519.44 crore. Out of total loans disclosed in the Balance Sheet, ₹ 18.21 crore long term facilities repayable within next one year and OD facilities of ₹ 146.74 crore were grouped under current liabilities.
2	2009-10	2780.34	2128	652.34	The total long term and short-term loans disclosed in the Balance Sheet were ₹ 652.34 crores. Out of total loans disclosed in the Balance Sheet, ₹ 23.59 crores long term facilities repayable within next one year and short-term loan of ₹ 299.88 crores were grouped under current liabilities.
3	2010-11	3678.50	2895.90	782.60	The total long term and short-term loans disclosed in the Balance Sheet were ₹ 782.60 crores. Out of total loans disclosed in the Balance Sheet, ₹ 24.15 crores long term facilities repayable within next one year and OD facilities & short-term loan of ₹ 445.34 crores were grouped under current liabilities.

38. From the above table, it is see that the Company had disclosed only a small portion of its actual outstanding loan liabilities in its Balance Sheet and there is no dispute that the Company had not reported the outstanding loan amount of ₹ 828.23 crore during the FY 2008-09, ₹ 2,128 crore during FY 2009-10 and ₹ 3,678.90 crore during FY 2010-11 in its Balance Sheet as it had resorted to a mechanism of transferring the same out of its account to the accounts of DCM on the last date of each financial year and further bringing back the same

to the account of DCHL on the first day of the next financial year. The very fact remains that DCHL availed all the loans in its own name and then in complete disregard of the accounting norms and accounting standards, have shown the said outstanding loan amounts as belonging to DCM's account on the last day of the financial year. No plausible explanation has been advanced by the Noticees to justify the transfer of such amounts at the end of each financial year and bringing the same back to its books of accounts on the very first day of the next financial year. As a result of such acts of the said Noticees in resorting to such unfair practices in flagrant violations of accounting principles the annual accounts have been understated to the extent of such large amounts which have been shown as transferred to the accounts of DCM, thereby deliberately causing dissemination of wrong, incorrect and distorted information to the public at large. I further note that no disclosures with respect to the amounts of loan outstanding including interest & bank charges thereon so transferred to DCM or about the internal agreement entered into between DCM and DCHL, if any, to support the claim that these loans had been availed against amounts receivable from DCM, have been made in the Annual Reports so as to enable the investors to take an informed view about its affairs and informed decision about their investment in the Company. It is a settled position under the law that any arrangement or decision which has an effect on the financial affairs of the company must be adequately disclosed in its annual reports for the benefit of the shareholders. The Noticees, by not disclosing such private and discreet arrangement between DCHL and DCM, to which only the promoters/directors of DCHL were privy, have kept the shareholders in dark about the understatement of such huge amounts of loans & liabilities in the annual accounts of DCHL.

39. The said Noticees 2 and 3 have admitted that the interest paid to the lenders on the amount of the loans taken in the name of DCHL (and transferred to DCM against dues receivable from it) were also not charged to the profit and loss account of DCHL. As per the reply of the auditor dated December 4, 2020, the interest and finance charges not charged to profit and loss account of DCHL for the FY 2008-09, FY 2009-10 and FY 2010-11 stood at ₹ 143.41

crore, ₹ 315.39 crore and ₹ 293.62 crore, respectively. Thus, the Company and its directors have eloquently concealed the said revenue liabilities from the investors at large and their shareholders in particular. The Company and its directors have even not disclosed these facts to the lenders, i.e., banks and financial investigations by apprising them that though the loans have been availed by DCHL, the liability to pay the interest would be chargeable from the accounts of DCM since the loans so availed by DCHL were taken primarily for compensating/offsetting the non-payment of the accumulated dues payable by DCM to DCHL towards advertisement expenses. In the process, the Company and its directors have been transferring their liabilities towards outstanding loans, interest & finance charges thereon, etc. to the books of DCM at the end of the financial year and re-transferring the same to the books of DCHL immediately upon the commencement of next financial year, behind the back of the lenders, shareholders and public at large. The Noticee directors were aware about the financials affairs/status of DCM and it was also within their knowledge that DCM would not be in position to pay their accumulated dues payable to DCHL. In spite of this well-known truth, the Company and directors kept availing loans and kept on transferring the liability from the books of DCHL to DCM only for a day with an objective to conceal the true and correct financial conditions of the Company from the investors at large and in the process, the said Noticees have deliberately understated the liability of the Company in the audited annual accounts. The contentions that DCHL had taken those loans year after year to recover the accumulated dues receivable from DCM hence the liabilities arising out of the said loan were kept out of its accounts, shall neither be permissible by any fundamental principles of accountancy nor by the accounting standards prescribed by ICAI. Moreover, such an explanation per se is blatantly unacceptable, since DCHL on the relevant date was a public listed corporate entity and it cannot disown the liabilities of its own borrowings availed by it in its own name and transfer the book entries of such liabilities out of its accounts to another legal entity just because that entity (DCM) owed money to DCHL. This is not a tenable proposition under any law.

40. In this regard, I would like to draw from the findings of the Hon'ble SAT in the matter of V Natarajan vs SEBI in the matter of Pyramid Saimira Ltd.– (Appeal no. 104/2011 – date of decision June 29, 2011) wherein the Hon'ble Tribunal held as under:

"It has been found that the financial results as disclosed to the public through the stock exchanges were false and inaccurate and the finding in this regard is not being challenged before us. It is also not in issue that the appellant being the chairman and whole-time director was a part of the board of directors which approved the financial results. This being so, we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities. It is by now well understood that unaudited financial results that are required to be published by every listed company on a quarterly basis do form the basis for the investing public to take informed decisions. Any false information or false accounts depicting inflated revenues and profits by fictitious entries in accounts is, indeed, a very serious wrong doing which directly impacts the securities market and the investors. Since the appellant was a part of the board of directors which approved the financial results of the company which were actually false and untrue, we are satisfied that the appellant is guilty of the charges levelled against him."

41. In my view, the allegations against the said Noticees and more specifically the Noticee directors about understatement of financial statements are fully covered within the four walls of the findings of the Hon'ble Tribunal in the matter of V Natarajan vs SEBI (supra). Considering the foregoing, it is

absolutely clear that the said Noticees have knowingly and consciously contributed in dissemination of wrong, factually incorrect, understated and distorted information related to the annual financial statements of DCHL to the public.

<u>Role of V. Shankar (Noticee 6)</u>

42. In the instant case, as admitted by V. Shankar, he was appointed as Company Secretary in DCHL on April 21, 2009. He resigned from the services of the Company vide his resignation letter dated May 01, 2012. The Noticee has further claimed that he had stopped attending the office and discharging his official duties at DCHL w.e.f. from June 01, 2012. The Noticee has, inter alia, also contended that during the time when he was in the employment of DCHL, he was not invited to the meetings of board of directors of the Company. The Noticee has claimed that the promoters/directors used to meet prior to the scheduled time on the dates of board meeting (for approval of results, etc.) and would direct him to send the financial results to the stock exchanges and that he was not aware as to what transpired in those meetings. With regard to the alleged mis-statement in books of accounts, the Noticee has stated that at no point of time he was entrusted with any duties or responsibilities relating to the accounting or financial transactions of the Company by the management and as such he had no knowledge of the loan, bank correspondences, pledge, etc. The presumption as to correctness of the Audited Financial statement is established immediately upon signing of the same by the Statutory Auditors and if any understatement of outstanding loans is noticed upon investigation, then a person who is merely a company secretary may not be held liable as he was not involved in preparation and finalisation of annual accounts. He had signed the financial statements of the Company only pursuant to the statutory requirement under Section 215 of the Companies Act, 1956 which is mandatory and the signing was only in the nature of attestation to the effect that these financials have been considered and approved by the directors. He has also contented that as per the provisions of the Companies Act, 1956 the

responsibility for accounts and financials rests ultimately on the board of directors.

43. In this regard, I would like to draw attention to the requirements of section 215 of the Companies Act, 1956 regarding authentication of balance sheet and profit and loss account.

"215. AUTHENTICATION OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT"

(1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors –

(i) in the case of a banking company, by the persons specified in clause (a) or clause (b), as the case may be, of subsection (2) of section 29 of the Banking Companies Act, 1949 (10 of 1949);

(ii) in the case of any other company, by its manager or secretary if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.

(2) In the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non- compliance with the provisions of sub-section (1).

(3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon."

44. Thus, in the context of the present case before me, as per Section 215 of the Companies Act, 1956 every Balance Sheet and every Profit and Loss account of the company shall be signed on behalf of the board of directors, in case of companies, (other than banking companies) by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one. Further, the Balance Sheet and the Profit and Loss account shall be approved by the board of directors before they are signed on behalf of the board in accordance with the provision of this

section and before they are submitted to the auditors for their report thereon. It is a trite law of interpretation that the heading or title prefixed to a particular section or group of sections in a statute can be referred to for construing the legislative intent of an Act of the Legislature, and so, in this case also, section 215 of the Companies Act, 1956, which deals with "authentication of accounts" should be treated as a preamble to the other provisions spelt out in the Act following the said title on the subject of authentication of accounts. I note that there exists a Government clarification on section 215 of the Companies Act, 1956 vide circular no. 7/72, dated May 12, 1972 whereby it was clarified that the Department (erstwhile Department of Company Affairs) is of the view that as the authentication by the Secretary is "on behalf of the board of directors" and not in his personal capacity, secretary can be held responsible regarding errors, as an "officer" of the company within the meaning of section 628 of the Companies Act, 1956 and not because of authentication by him under section 215 as such. Where, however, the secretary is charged with the responsibility of maintaining the accounts and also assisting the auditor at the time of auditing, he cannot conceivably escape the consequence of any wrong statement in the accounts.

45. The Hon'ble SAT has examined the role of company secretary, insofar as the requirement of making timely and absolutely true disclosures under the Securities Laws is concerned in various appeals filed in the matter of GHC Ltd. In this regard, I would also like to draw attention to the findings of the Hon'ble Tribunal in the matter of Mr. Bhuwneshwar Mishra vs SEBI (Appeal no. 7 of 2014 – Date of decision – July 31, 2014) which are as under:

> *"19. Therefore, the company, the Company Secretary and the Chairman of the company have a greater responsibility on their shoulders to ensure, in a free and fearless manner, that the promoters make timely and absolutely true disclosures as regards their respective shareholding in the company in consonance with various regulations prescribed by SEBI and the Listing Agreement. In fact, the companies are required to maintain a register in this respect and if a vast variation is noted by the company, the Company Secretary and the Chairman, in the shareholding pattern of the promoters they are duty bound to inform to*

the stock exchange or even to SEBI accordingly. Such acts of wrong disclosures are condemned as fraudulent and unfair trade practices. ………………………...

………………………..

23. In this connection, it is pertinent to note that the Company, the Company Secretary and the Chairman are not mere conduit to pass-on whatever details they receive from the promoters to the Stock Exchanges irrespective of the records maintained by the Company in respect of the shares which may be held by a promoter at given point of time. The Appellants should have acted more diligently and responsibly and should not have been guided by mere legal opinions. It is settled law that legal opinions are only advisory in nature and not binding on anyone. Therefore, no legal infirmity can be attributed to the impugned order which holds all the appellants guilty of violating the PFUTP Regulations, 2003 and imposes monetary penalties on them."

46. Admittedly, the Noticee 6 has served as a Company Secretary in DCHL during the financial year 2009-10 and 2010-11 which means, he has attested the Balance Sheet and Profit and Loss accounts of DCHL for two of the three financial years in which the accounts have been allegedly fraudulently understated. The provisions of section 215 of the Companies Act, 1956 fastens a duty on the Company Secretary to authenticate the Balance Sheet and Profit and Loss account of the company on behalf of the board of directors. Under the circumstances, as a Company Secretary, the Noticee 6 cannot plead innocence by stating that he has merely fulfilled a statutory duty by signing the audited accounts which were prepared by the auditors and approved by the board of directors of the Company. The Noticee 6 was performing the job of a secretary to the board of directors and it was his duty to aid and advice and assist the board in ensuring that the accounts contained all the true information before the same were approved. Further, he was not merely supposed to attest the accounts but was required to authenticate the Balance Sheet and Profit and Loss account of the Company, which cannot be undermined as a mere routine attestation job but has to be taken up as a serious responsible job of declaring the authenticity of the contents of the accounts and all the information contained therein. The Noticee 6 ought to have verified if the audited accounts have contained all the assets & liabilities or any other material facts that needed to be incorporated in the accounts. In

view of the above, I find that V. Shankar has failed to act diligently and responsibly while acting as the company secretary of DCHL at a time when the Company and its directors (Noticees 1 to 5) understated outstanding loans and interest and finance charges in the annual reports for FYs 2008-09, 2009-10 and 2010-11 and thereby overstated the profits of the Company for all the three successive financial years.

Role of Mani Oommen (Noticee 7)

47. I note that Mani Oommen, partner of, M/s C B Moulli & Associates, which was the statutory auditor of DCHL has submitted that the preparation and presentation of the financial statements and the job to ensure that they are free from material misstatements, whether due to fraud or error, is the responsibility of the management. The Noticee, as statutory auditor, was responsible only to express an opinion on the financial statements based on internal audit. Therefore, he was not involved in the alleged mis-statement in the balance sheets of the Company. It has been also stated that the accounting adjustments (non-disclosure of loans by transferring the same to the other entity) were brought to their notice for the first time during the audit of the books of account of the Company for the financial year 2011-12 in the month of October/November 2012.

48. In this respect, it would be apt to refer Section 224 r/w Section 227 of the Companies Act, 1956. In terms of the above-mentioned sections in case of a public listed company, the statutory auditors owe an obligation to the shareholders of a company to report the true and correct facts about its financials since it is not only appointed by the shareholders in the AGM of the company but at the same time required to report true and correct position to the member of the company. Since, auditor is required to function for the betterment of the company and its member, a duty is cast upon it to do all necessary steps as contemplated and provided under Section 227 of the Companies Act, 1956 so as to ensure that no steps prejudicial to the interest of the Company and its member are taken at any cost. In order to perform their duties towards the shareholders effectively the statutory auditors should

plan and perform an audit with an attitude of professional scepticism. While conducting audit, an auditor knows that there could be various circumstances which may cause the financial statements to be materially misstated. Therefore, while performing his job, a statutory auditor should not only comply with the relevant accounting standards prescribed by the ICAI but also should identify and understand major classes of transactions in the entity's operations, how such transactions are initiated and also should examine the significant accounting records, supporting documents and specific accounts in the financial statements, the accounting and financial reporting process, and the significant transactions as well as the extra-ordinary events that might have taken place during the year which ought to be incorporated in the financial statements of the company. The outstanding loans - short terms as well as long term, availed by a company, and interest and finance charges payable thereon which were not reported in the accounts prepared by the Company and its directors, by all standards had significant financial implications for the Company during the year which could not have been overlooked by a Statutory Auditor, who audits the accounts of a listed corporate entity by following the Accounting Standards prescribed by ICAI.

49. In this connection, observations made by the Hon’ble Gujarat High Court in the case of CA Rajesh Dudhwala vs. Disciplinary Committee (decided on 6th November, 2012) is also pertinent to refer to. The relevant paragraph is as under:

> *“A Chartered Accountant has an obligation, not only statutory but also moral and social, to be absolutely and completely diligent and cautious and careful while preparing, signing and certifying Annual Accounts and/or Audit report. Several Government and private organizations and individuals rely on the report / certificate by Chartered Accountant and once a particular factual aspect or entries, etc. are prepared, signed and certified by Chartered Accountant they are ordinarily accepted without further probing or investigation. In such circumstances, the duty and obligation of being absolutely diligent, conscious and careful is multiplied manifold and a Chartered Accountant should not, and cannot take, such obligation or perform his duties lightly or casually. A mistake by a petty clerk or lower-level accountant may be dealt with in different manner but*

a mistake by a Chartered Accountant cannot be treated with indifference or casually or lightly. …."

50. Undoubtedly an auditor is duty bound to be absolutely and completely diligent and cautious while preparing, signing and certifying Annual Accounts and/or any other Audit report. It is noted that DCHL had billed an amount of ₹ 2380.64 crore to DCM (towards advertisement charges) during the period from April 1, 2004 to March 31, 2011 and the above amounts of revenue so billed to DCM, was also included in the total revenue of the Company from year to year in its profit and loss accounts. It is observed that the percentage of outstanding loan amount transferred to the books of DCM constituted 61.46% of the total outstanding loan amount of DCHL during the FY 2008-09. During the next two financial years also, the percentage of loans taken by DCHL supposedly against the dues receivable from DCM vis-à-vis the total outstanding loans availed by the Company in its own name increased to 76.54% and 78.73%, respectively. In the financial year 2008-09 itself the outstanding loan amount transferred to DCM's account was more than ₹ 800 crore thereby understating the liabilities of DCHL for that year to the extent of the said amount of ₹ 800 crore (approximately).

51. In such circumstances, the auditor certainly had an obligation to check the outstanding loan details from banks or other independent sources before being satisfied with the amount of outstanding loan presented by the management. The auditors have stated in Auditors' Report that "audit includes examining on a test basis". The auditor has not demonstrated in his reply as to whether independent confirmation from the banks regarding outstanding loans was obtained by him at least on a test basis from some banks. Considering the materiality and the magnitude of outstanding loans, the auditor should have at least carried out some independent assessment based on documents other than the statements provided by the Company. The audit evidence is necessary to support the auditor's opinion and report. It is cumulative in nature and is primarily obtained from the audit procedures performed during the course of the audit. I note that under the Auditing and Assurance Standard (AAS) 5 prescribed by the ICAI, "Audit Evidence" states

that the reliability of audit evidence is influenced by its source and nature. It indicates that, in general, audit evidence from external sources is more reliable than audit evidence generated internally, and that written (documentary) audit evidence is more reliable than audit evidence in oral form. Accordingly, audit evidence in the form of written responses directly received in response to confirmation requests made by the auditor from third parties who are not related to the entity being audited, helps in reducing audit risk for the related financial statements to a very low level.

52. In this case, the loans were being transferred /adjusted by the Company reportedly from the year 2005-06 onwards, hence, the auditors were duty bound to understand the major sources of revenue generation and realisation of the revenue from that source. It is strange to observe that the auditors remained oblivious to the fact that the Company was borrowing from banks/FIs, year after year, to offset the amounts receivable from DCM against such borrowings and was doing such book entry transfer of liabilities on the last day of every financial year. It shows that the auditors miserably failed to identify and verify the loan accounts of the Company despite conducting statutory audit of the Company for a long period of three years, during which the other Noticees were continuously understating the accounts of the Company. The contention of the auditors that they became aware of the adjustment of loan for the first time during their auditing exercise for the financial year 2011-12 is highly improbable, and such an explanation rather indicates a high probability of complicity of the auditor with the Company in their strategy to manipulate the accounts and to understate the liabilities in the Balance Sheets of the Company.

53. I further find that Mani Oommen has not disputed the fact that the interest amount on the loans taken by the Company was not being shown as expenditure in the profit and loss account of the Company. In fact, no explanation has been furnished by Mani Oommen justifying as to why the loans and interest liability thereon was shown as transferred to the books of DCM on the last date of a financial year and again were brought back to the

accounts of DCHL on the first date of the next financial year. I also note that Mani Oommen has not brought any evidence to show that he had audited the books of accounts with due diligence and care and that he had raised all possible queries expected to be raised by any prudent auditor to the management in the normal course of his work. I find that Mani Oommen, by not pointing out the bogus transfer of loan liability to and from between the books of DCHL and DCM, has not only failed to perform his basic duty of an auditor but at the same length has blindly allowed the fudging of the books of accounts of DCHL to be continued for years together.

54. However, there is nothing on record to find that the Noticee 7 (Mani Oommen) was instrumental in preparing false and fabricated accounts or have connived in preparation or falsification of the books of accounts and that the Noticee 7 had manipulated the books of accounts with knowledge and intention, in the absence of which, I am of the view that there is no deceit or inducement by the Noticee. Further, in view of my finding at Para 38 above, wherein I find that that the promoters and the directors of the DCHL had a private and discreet arrangement between the company and DCM which was only known to the promoters and directors of the DCHL with regard to the understatement of loans and liabilities in the annual accounts of DCHL. Therefore, I am of the view that the Noticee as a statutory auditor was not responsible for the preparation and falsification of the books of accounts, the financials of the company and the balance sheet of the company.

55. In view of the fact that the Noticee 7 was not involved in the fabrication and fudging of the books of accounts and the balance sheet and that the Noticee 7 had no intention or knowledge of such understatement being shown in the financials, I am of the view that the charge of fraud or collusion or connivance with the directors and promoters of the company cannot be levied, only on the ground that he was not diligent or cautious or did not check the outstanding loan details from the banks and through other sources. I am of the view that lack of due diligence can only lead to professional negligence which would amount to a misconduct which could be taken up only by ICAI.

56. In this connection, I deem it appropriate to refer the Writ Petition no. 5249/2010 Price Waterhouse Co. Vs SEBI decided by the Bombay High Court on 13.08.2010, wherein the Hon'ble Bombay High Court held that in view of the various provisions contained in the SEBI Act and Regulations it is the duty of the Board (SEBI) to protect the interest of investors in securities and to promote the development and to regulate the securities marked by such measures as it thinks fit. The Bombay High Court held that while exercising the powers under the SEBI Act, it is not open to SEBI to encroach upon the powers vested with the Institute under the Chartered Accountant Act, 1949. However, in a given case, if there is material against the C.A. to the effect that he was instrumental in preparing false and fabricated accounts in connivance, then SEBI is entitled to pass appropriate orders………

57. The Bombay High Court further held that if on conclusion of enquiry if no evidence is available regarding fabrication and falsification of accounts, then SEBI cannot give any direction in any manner. The Bombay High Court held that SEBI has jurisdiction to inquire into and investigate the matter in connection with manipulating and fabricating the books of account and balance sheet of the company. If it finds that the C.A. had no intention and knowledge to fabricate and fudge the books of account and there was only some omission without any *mens rea* or connivance with anyone then on such evidence SEBI cannot give any further directions

58. In matter of Price Waterhouse Co. Vs. SEBI in appeal no. 6 of 2018 decided on 09.09.2019, the Hon'ble SAT while considering the role of the appellant as a firm of the C.A.s and after considering the judgment of the Bombay High Court (supra) found that the scope of the enquiry was only restricted to the charge of conspiracy and involvement in the fraud and not to any charge of professional negligence since the C.A. / C.A. firm were not dealing directly in the securities. The Hon'ble SAT held that in absence of inducement, fraud was not proved nor there was connivance or collusion by the C.A.s and therefore, the provision of section 12 (A) of SEBI Act and Regulation 3 & 4 of SEBI

(PFUTP) Regulations are not applicable. The Hon'ble SAT further held that gross negligence or recklessness in adhering to the accounting norms in the course of auditing can only point out to the professional negligence which would amount to a misconduct to be taken up only by ICAI.

59. In view of the above, I am of the view that the Noticee 7 cannot be charged for being party to the fraud committed by the Company and its Promoters & Directors. Accordingly, the violation of the provisions of Section 12 A(a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations, 2003 does not stand established against the Noticee 7 and the SCN issued to the Noticee 7 is disposed off without any monetary penalty.

B. Allegation in the SCN: DCHL carried out buyback of its equity shares which were more than 25% of its total paid up capital limit during the financial year 2011-12. Also, by carrying out buyback of its shares without having adequate free reserves, DCHL misled the uninformed investors / shareholders about the perceived valuation, strong financials and adequate free reserves of the Company which have wrongfully influenced / induced the decision of investors / shareholders, more particularly when the price of the share was declining since May 2010. DCHL has also provided misleading financial information (i.e., understatement of interest and outstanding loans and thereby overstatement of profits) in its Annual Report for FY 08-09, FY 09-10 and FY 10-11.

and

C. Allegation in the SCN: T. Venkattram Reddy, T. Vinayak Ravi Reddy, P K Iyer, N. Krishnan and V. Shankar as the signatories to the public announcement made by the Company on May 6, 2011 for buyback of its equity shares without having adequate free reserves, have misled the uninformed investors / shareholders about the perceived valuation, strong financials and adequate free reserves of the Company which have adversely influenced / induced the decision of the investors /

shareholders particularly when the price of the share of DCHL was declining since May 2010.

60. The SCN alleges that the Company has manipulated its financials and has announced buyback of its shares in the absence of adequate reserves which misled the uninformed investors with respect to the perceived valuation of the Company. The SCN enumerates that DCHL had undertaken buyback of its shares on two occasions, for the first time in the year 2009-10 and for the second time in 2011-12. The Company had reported a net profit of ₹ 260.92 crore and ₹ 162.59 crore for FY 09-10 and FY 10-11, respectively. However, if understatement of interest expenses and financial charges is taken into consideration and the profit and loss account is recast accordingly it will be seen that the Company actually had suffered an operating loss of ₹ 44.76 crore in FY 09-10 and a loss of ₹ 131.03 crore in FY 10-11. It is noted that the second buyback announcement for buying back up to 3.45 crore equity shares from the open market was made by DCHL on May 06, 2011.

61. During the relevant period, section 77A of the Companies Act, 1956 prescribed a limit on the maximum number of securities which can be bought back by a company. The relevant extract of the provision is as under:

"Power of Company to purchase its own securities

(1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buyback") out of –

i. *its free reserves; or*
ii. *the securities premium account; or*
iii. *the proceeds of any shares or other specified securities*

Provided … … …

(2) No company shall purchase its own shares or other specified securities under sub-section (1), unless –

(a) … … …

(b) … … …

(c) the buy-back is of less than twenty-five per cent of the total paid-up capital and free reserves of the company. Provided that the buy-back of equity shares in any financial year shall not exceed twentyfive per cent of its total paid-up equity capital in that financial year.
(d) … … … … … …"

62. In terms of section 77A(2)(c) of the Companies Act, 1956, the amount of buyback by a company of its own securities shall be less than twenty-five per cent of the total paidup capital and free reserves of the company. Thus, the buy-back of equity shares by a company in any financial year shall not exceed twenty-five per cent of its total paidup equity capital in that financial year. Further, the details of reserves reported in the Annual Reports of DCHL for FY 2008-09, 2009-10 and 2010-11 vis-a-vis its actual free reserves that were available for buyback of shares during these years have been tabulated as under-

(in ₹ crore)

	2008-09	**2009-10**	**2010-11**
Paid up capital **(A)**	48.97	48.44	48.69
Reserves and surplus **(B)**	1100.89	1209.57	1231.45
Less: Debenture redemption reserve **(C)**	17.62	30.64	80.64
Total= A+B-C	**1132.24**	**1227.37**	**1199.50**
Maximum limit available for the company to buy-back its own shares as per annual report figures (25% of total; as per Sec. 77A of the Companies Act, 1956)	283.06	306.84	299.87
Interest / financial charges not disclosed by the company in the Annual Reports (refer para 10.2) **(D)**	-133.39	-439.07	-732.69
Maximum limit available for buy-back its own shares after adjusting for non-disclosed interest and financial charges (i.e. 25% of **(Total - D)**)	**249.71**	**197.07**	**116.02**
Total buy-back offer as per announcement	**180.00**	**-**	**270.00**

63. It can be seen from the table above that in the FY 2010-11 the maximum limit available with the Company for buyback after adjusting for understatement of interest / finance cost incurred during the previous years was only ₹ 116.02 crore, whereas the Company announced buyback for an aggregate amount of ₹ 270 crore out of which it made a buyback to the extent of ₹ 227.66 crore. The allegation of understatement of outstanding loans, interests and finance charges has already been dealt with earlier in detail, hence, in my opinion, does not need further iterations. It is, therefore, now clear that by understating the interest amount and financial charges, the Company was able to show artificially inflated profits to the shareholders when there was actually a loss. As the profits were overstated, the Company was able to buy back its shares in excess of the amount which was statutorily permissible to it. Hence, by carrying out buyback of shares, the company DCHL, has surreptitiously exceeded the prescribed limit of 25% of its total paid up capital during the financial year 2011-12 and thereby has violated provisions of section 77A of the Companies Act, 1956.

64. Further, the Company had announced that it would purchase its own shares at a price not exceeding ₹ 180/- per equity share for an aggregate amount not exceeding ₹ 270 cr. The buyback commenced on May 16, 2011 and closed on August 29, 2011 wherein 3.45 cr. equity shares were bought back at an average price of ₹ 65.79 aggregating ₹ 227.66 cr. The market price of the scrip was Rs.76.75 on the date of announcement. However, the Company announced buyback at 234% of the ruling market price of its scrip which misled the uninformed investors/shareholders about the perceived valuation, strong financials and adequate free reserves of the Company particularly at a time when the price of the share was actually declining since May 2010 financial were not good and free reserves were not adequate.

65. It is thus clear that, at the time when prices of the shares of DCHL was on a declining trend, the Company announced a buyback at 234% of the ruling market price in the absence of adequate reserves for implementing the buyback in order to mislead the investors and to induce them into investing in

the shares of the Company. In this backdrop, I find it prudent to reproduce herein below the provision of section 68 of the Companies Act, 1956:

> *"68. PENALTY FOR FRAUDULENTLY INDUCING PERSONS TO INVEST MONEY*
>
> *Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into –*
> *(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures; or*
> *(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures;*
> *shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to 1 one lakh rupees, or with both."*

66. As discussed above, the Company and its directors, namely, T. Venkattram Reddy, T. Vinayak Ravi Reddy, P K Iyer and N. Krishnan (Noticees 2 to 5) by their overt actions and misconduct, first by understating the liabilities and overstating the profit in the accounts of the Company and then by offering buyback of shares at a price that was 234% of the ruling market price of the scrip despite absence of required amount of free reserves, have knowingly deceived the investors and induced them into investing in the shares of the Company. Moreover, the Company had carried out buyback of its equity shares which was more than 25% of its total paid up capital limit during the financial year 2011-12.

67. Considering the foregoing, I hold that DCHL and T. Venkattram Reddy, T. Vinayak Ravi Reddy, P K Iyer and N. Krishnan (Noticees 2 to 5) have violated the provisions of Sections 68 and 77A of the Companies Act, 1956 and Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations, 2003 read with section 12A(a), (b) and (c) of the SEBI Act, 1992.

68. Having dealt with the role of the Company and its directors vis-à-vis the aforestated allegation, I now proceed to deal with the role of V. Shankar as company secretary/signatory to the public announcement made by the Company on May 6, 2011 for buyback of its equity shares. I note from the submissions of V. Shankar that he was appointed as Company Secretary in DCHL on April 21, 2009. He resigned from the services of the Company vide his resignation letter dated May 01, 2012. The Noticee has further claimed that he had ascribed his signature on the Public Announcement for buyback in his capacity as a Company Secretary and that it was only as a matter of compliance of procedural formalities for the buyback of shares and not in respect of any financial statements or information contained therein.

69. Thus, it is not in dispute here that the Noticee 6 was acting as the Company Secretary of DCHL during the FY 2010-11 when buyback offer worth ₹ 270 crore was made by the Company. It is also an admitted fact that the Noticee had ascribed his signature on the public announcement for buyback in his capacity as a Company Secretary of DCHL. In this regard, I would once again like to rely upon the findings of the Hon'ble Tribunal in the matter of Mr. Bhuwneshwar Mishra vs SEBI (Supra) and my observations recorded in above paragraphs of this Order about the roles & responsibilities vested in the Noticee 6 as the Company Secretary, towards the Company and its board of directors. I reiterate that as a statutory official of the Company, the Noticee 6 should have exercised utmost due diligence and checked the veracity of the buyback offer document and its legal compliances before authenticating such a document and signing the aforesaid public announcement which apparently violated the provisions of the Companies Act, 1956.

70. In the light of the above, I do not have any hesitation in holding V. Shankar (Noticee 6) responsible as the company secretary of DCHL for signing the public announcement made by the Company on May 6, 2011 for buyback of its equity shares, without having adequate free reserves, which misled the uninformed investors/ shareholders about the perceived and artificially overstated valuation, strong financials and adequate free reserves of the Company which might have certainly influenced/ induced the decision of

investors/shareholders particularly when the price of the share was declining since May 2010. Considering the foregoing, I hold V. Shankar equally liable for violation of the provisions of sections 68 and 77A of the Companies Act, 1956 and regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of the SEBI Act, 1992.

D. Allegation in the SCN: T. Venkattram Reddy, T. Vinayak Ravi Reddy and P K Iyer have failed to make disclosures with respect to encumbered shares with ICICI Bank Ltd. (NDU), IDFC Ltd. (pledge), Religare Securities Ltd. (irrevocable power of attorney) and Future Capital Holdings Ltd. (NDU) and also have failed to make disclosures for invocation of shares by ICICI Bank Ltd., IDFC Ltd. and Religare Securities Ltd. Further, T. Venkattram Reddy, T. Vinayak Ravi Reddy and P K Iyer have also failed to make the statutory disclosures of change in their shareholding exceeding 1% of the total share capital of the company consequent to the buyback of the equity shares by DCHL.

71. As per the aforesaid allegation, T. Venkattram Reddy, T. Vinayak Ravi Reddy and P K Iyer (Noticees 2 to 4) have failed to make disclosures with respect to their encumbered shares with ICICI Bank Ltd., (through an NDU), IDFC Ltd., (through a pledge agreement), Religare Securities Ltd., (through an irrevocable power of attorney), FCHL (NDU) and also have failed to make disclosures for invocation of shares by ICICI Bank Ltd., IDFC Ltd., and Religare Securities Ltd., and thereby, have failed to comply with the requirements of regulation 31(1) and 31(2) read with regulation 31(3) of the SEBI (SAST) Regulations, 2011. Before I proceed any further, in this regard, it is relevant here to list out some of those agreements signed by the Noticees hereinbelow:

Sl. No.	Party to the Agreement	Type of the Agreement	Date of Agreement
1	ICICI Bank	NDU	September 23, 2011
2	IDFC Ltd.,	Pledge	July 2, 2012 July 3, 2012

3	Religare Finvest Ltd.,	Irrevocable Power of Attorney	June 1, 2012
4	FCHL	NDU	October 17, 2011 November 2, 2011, November 22, 2011, January 6, 2011, January 17, 2012 January 27, 2012

72. The details of the shares pledged with ICICI Bank Ltd. are as under: -

Date of pledge	**Name of the pledgee**	**Name of pledger**	**No. of shares pledged**	**% of total share capital**
28-Jul-12	ICICI Bank Ltd.	P. K. Iyer	2,00,00,000	9.57%
28-Jul-12	ICICI Bank Ltd.	T. Vinayak Ravi Reddy	2,00,00,000	9.57%
28-Jul-12	ICICI Bank Ltd.	T. Venkattram Reddy	2,00,00,000	9.57%
Total			**6,00,00,000**	**28.71%**

73. Thereafter, ICICI Bank Ltd. invoked the pledged shares for not fulfilling the terms and conditions of such agreement. The details of shares invoked by ICICI Bank Ltd. are as under:

Date of invocation	**Shares invoked**
05-Nov-12	20,00,000
09-Nov-12	30,00,000
21-Nov-12	50,00,000

74. I also note that the promoters of the company (Noticees 2 to 3) also pledged 5 cr. shares in July 2012, constituting 23.93% of the total share capital with IDFC Ltd. Details of the pledge are as under: -

Date of pledge	**Name of the pledgee**	**Name of pledger**	**No. of shares pledged**	**% of total share capital**
02-Jul-12	IDFC Ltd.	P. K. Iyer	90,00,000	4.31%

Date of pledge	Name of the pledgee	Name of pledger	No. of shares pledged	% of total share capital
02-Jul-12	IDFC Ltd.	T. Vinayak Ravi Reddy	1,00,00,000	4.79%
02-Jul-12	IDFC Ltd.	T. Venkattram Reddy	60,00,000	2.87%
03-Jul-12	IDFC Ltd.	P. K. Iyer	90,00,000	4.31%
03-Jul-12	IDFC Ltd.	T. Vinayak Ravi Reddy	60,00,000	2.87%
03-Jul-12	IDFC Ltd.	T. Venkattram Reddy	1,00,00,000	4.79%
Total			**5,00,00,000**	**23.93%**

75. It was observed that subsequently IDFC Ltd. invoked shares pledged with them during the quarter ended September 2012, as detailed below: -

Date	Name of the pledger	No. of shares invoked	% of total share capital	Cumulative Shareholding
26-Jul-12	IDFC Ltd.	3,00,000	0.14%	0.14%
27-Jul-12	IDFC Ltd.	3,00,000	0.14%	0.28%
30-Jul-12	IDFC Ltd.	3,00,000	0.14%	0.42%
31-Jul-12	IDFC Ltd.	40,00,000	1.91%	2.33%
01-Aug-12	IDFC Ltd.	20,00,000	0.96%	3.29%
06-Aug-12	IDFC Ltd.	30,00,000	1.44%	4.73%
09-Aug-12	IDFC Ltd.	20,00,000	0.96%	5.69%
10-Aug-12	IDFC Ltd.	10,00,000	0.48%	6.17%
13-Aug-12	IDFC Ltd.	20,00,000	0.96%	7.13%
17-Aug-12	IDFC Ltd.	30,00,000	1.44%	8.57%
07-Sep-12	IDFC Ltd.	20,00,000	0.96%	9.53%
10-Sep-12	IDFC Ltd.	20,00,000	0.96%	10.49%
11-Sep-12	IDFC Ltd.	40,00,000	1.91%	12.40%
12-Sep-12	IDFC Ltd.	40,00,000	1.91%	14.31%
Total		**2,99,00,000**	**14.31%**	

76. Further, I note that the Noticees 2 to 4 pledged 3 crore shares in July 2012, constituting 14.37% of the total share capital with Religare Finvest Ltd. Details of the pledge are as under: -

Date of pledge	Name of the pledgee	Name of pledger	No. of shares pledged	% of total share capital
30-Jul-12	Religare Finvest Ltd.	P. K. Iyer	1,00,00,000	4.79%
30-Jul-12	Religare Finvest Ltd.	T. Vinayak Ravi Reddy	1,00,00,000	4.79%
30-Jul-12	Religare Finvest Ltd.	T. Venkattram Reddy	1,00,00,000	4.79%
Total			**3,00,00,000**	**14.37%**

(as per the irrevocable power of attorney dated June 1, 2012, 1 crore shares each were deposited with Religare Finvest Ltd. acting as the depository participant on June 2, 2012)

77. It is a matter of record that the Noticees 2 to 4 entered into NDUs and SNAs with FCHL, the details of which are furnished hereunder:

Sl. No.	Date of NDU / SNA agreement	Number of shares as on date of the agreement	% of total share capital
1.	October 17, 2011	*6,04,50,000	28.93%
2.	November 02, 2011	3,30,00,000	15.79%
3.	November 22, 2011	*6,04,50,000	28.93%
4.	January 6, 2012	*6,04,50,000	28.93%
5.	January 17, 2012	*6,04,50,000	28.93%
6.	January 27, 2012	6,04,50,000	28.93%

** Agreements were named as "Security Net Agreement"(SNA)*

78. It is an admitted fact that pursuant to buyback of shares by DCHL, the shareholding of the Noticees 2 to 4 (who are also the promoters of DCHL) had increased from 63.37% as on March 2011 to 73.83% as on March 2012.

However, by quarter ending September 2012, shareholding of the Noticees 2 to 4 had decreased from 73.83% to 38.40% only.

79. The provisions of Regulation 31 of the SEBI (SAST) Regulations are reproduced hereinbelow:

> *"Disclosure of encumbered shares.*
> *31 (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*
> *(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*
> *(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to, —*
> > *(a) every stock exchange where the shares of the target company are listed; and*
> > *(b) the target company at its registered office."*

80. In accordance with the requirement of the aforementioned provisions, SEBI had issued circulars from time to time including circular no. SEBI/CFD/DCR/SAST/1/2011/09/23 dated September 23, 2011, SEBI/CFD/DCR/SAST/2/2011/10/20 dated October 20, 2011 and CIR/CFD/POLICYCELL/11/2013 dated October 21, 2013 and CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015 whereby the format for disclosure of encumbered shares and details of any invocation/release of such encumbrances to the stock exchanges and the target company have been specified. I find that even the formats prescribed vide circular dated September 23, 2011, amongst others, also provided that the promoters specify whether the said encumbrance was in the nature of pledge, lien, NDU or others. The same formats prescribed by SEBI for disclosure of encumbered shares in various modes, including through the mode of NDUs, have been continuing to be in force since September 2011.

81. In the instant case, the Noticees 2 to 4 (who are also the promoters of DCHL) had signed various types of agreements with certain financial institutions

thereby encumbering their shareholdings, viz. ICICI Bank, IDFC Ltd., Religare Finvest Ltd. and FCHL. While the agreements signed by the concerned promoters with ICICI Bank and FCHL were in the nature of NDU, the agreement with IDFC Ltd. was by way of pledge agreement and agreement with Religare was by way of an irrevocable power of attorney. The allegation is that those agreements that went by the terminology, viz: - 'Non-Disposal Agreement' (NDU) were, in effect, another such instruments executed to create encumbrance on shareholding (just like pledge agreements) hence, the aforesaid Noticees were mandatorily required to make necessary disclosure about the encumbrances created on their shares through those NDUs and through other such instruments to the stock exchanges.

82. The contentions made by the Noticees 2 & 3 are that certain clauses in the NDU and the pledge agreement point to the fact that the promoters (being the pledgers therein) possessed legally valid and marketable title to the pledged shares and that the same were free from any encumbrance and as such, a combined reading of the NDU and the Pledge Agreement would clearly establish that the NDUs signed by them were not camouflage transactions for encumbrance / pledge of their shares to the third parties. The Noticees have also contended that it was only vide SEBI circular no. CFD/POLICYCELL/3/2015 dated August 5, 2015, that an NDU was mandated to be disclosed to stock exchange/company and, as such, at the relevant point of time of signing of NDUs, it was not mandated by SEBI for disclosure of NDUs to the stock exchanges.

83. I note that Non-disposal Undertakings (NDUs) are typically undertakings given by a shareholder not to transfer or otherwise alienate the securities and are in the nature of negative lien given in favour of another party, usually a lender. Further, I note that while raising funds with the Financial Institutions, numerous covenants other than pledge or hypothecation are possible, which restrict the right of holders of securities, will all operate as 'encumbrance' on securities. Examples of such encumbrances are NDUs, lien and other covenants, as clarified by SEBI from time to time within the inclusive explanatory clause

contained in Regulation 28(3) of the SEBI (SAST) Regulations. Such covenants can be evidenced by way of documents such as agreements/ trust deed, etc.,

84. I have perused the copies of NDUs and other pledge agreements entered into between the Noticees 2 to 4 and ICICI Bank, IDFC Ltd., Religare Finvest Ltd and FCHL. As mentioned in the SCN, these agreements were mostly in the nature of creating encumbrances. This is evident from the very provisions of NDU signed by the said Noticees with ICICI as quoted hereunder: -

Clause 3.2 of these NDU agreement states as under:

> *- Clause 3.2 of the NDU signed between the aforesaid Noticees and ICICI mandates the Noticees "to create or attempt or agree to create or permit to arise or exist, any encumbrance on the NDU shares in favour of any person and save and except as provided under this Agreement and other related deeds and documents, creation of any Encumbrance or attain to create any Encumbrance on the NDU Shares, in violation of the provisions of this Agreement shall be null and void."*

Further, as per Clause 10.7 of the said NDU, the Lender may, at any time and from time to time, by power of attorney or in any other manner delegate to any person or persons or fluctuating body or persons of all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender under this Agreement. in relation to the NDU Shares or any part thereof and any such delegation may be made on such terms and conditions (including power to sub-delegate) and subject to such regulations as may be necessary or desirable, or that the Lender may request and the Lender shall not in any way be liable or responsible to the Ohligor/s for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate except loss or damage arising due in gross negligence or wilful misconduct or fraud of the Lender or its delegate or sub-delegate or any of their officers directors, employees or agents."

85. There are similar other clauses in the agreements signed between the aforesaid Noticees (2 to 4) and other institutions like IDFC Ltd., Religare Finvest Ltd. and FCHL. A cursory look at various clauses of these agreements clearly reveals that these agreements, including the NDUs executed by the said Noticees with different lending institutions, were in practice and in spirit, executed with a view to create encumbrance on their shares in favour of those

lending institutions and the terminologies that have been used to describe these agreements, including the name NDU, were meant only to camouflage the creation of actual encumbrance / pledge in favour of the lenders. The essence and spirit of all these agreements have essentially been to create a pledge/encumbrance in favour the respective financial institutions. As regards the contention of the said Noticees that NDU was required to be disclosed only pursuant to the SEBI circular dated August 05, 2015, I do not agree with the same. Regulation 31(1) of the SEBI (SAST) Regulations, 2011 inter alia, prescribed that the promoter of every target company shall disclose the details of shares in such target company encumbered by him. Further, I note that SEBI has been issuing various circulars to that effect beginning with September 23, 2011 mandating the companies and their promoters to disclose to the stock exchanges encumbrances created on their shareholding in any form and manner including through the medium of signing NDUs. This is apparent from the formats prescribed by SEBI for making these disclosures as early as in September 2011 wherein encumbrance created through various instruments (by way of pledge, lien, non-disposal undertaking, etc.) have to be disclosed by the concerned promoters and also disclosure has to be made when such encumbrances are invoked.

86. I find from the specifics of the NDUs signed by the promoters, I find that in the case of ICICI Bank, the NDU was entered into between the concerned parties on September 23, 2011 whereby the concerned promoters had agreed not to divest or deal with the shares held by them and their shares representing 28.71% of the paid-up capital of the Company was also deposited in the beneficiary account maintained with depository participant. Further, upon failure of the NDU, I note that the encumbered shares were invoked by ICICI on various dates in November 2012. As regards NDUs with FCHL, it is noted that 6 separate NDUs were entered into between the said Noticees and FCHL between October 2011 and January 2012. The SCN elaborately mentions the terms of those agreements that clearly lend the character of encumbrance to these NDUs. For the sake of brevity, I do not intend to reiterate such clauses in this Order. Similarly, another instrument, viz., the irrevocable power of

attorney signed by the said Noticees in favour of Religare Finvest Ltd. had all the character of creation of encumbrance.

87. In the instant case, whatever be the terminologies used conveniently by the said Noticees, the effect of the said agreements including the NDUs was in the nature of creating an encumbrance over their shares in favour of the lending Institutions. The submissions that the said Noticees continued to be the beneficial owners of those encumbered shares would not be of any assistance in rescuing them from the charges levelled against them. The intention of the said Noticees to create encumbrances in favour of lending institutions further find strength from their conduct, as the Noticees, who had failed to seek any timely recourse against the lending institutions against the invocation of pledge/encumbrance and rather willingly allowed those encumbrances on shares to be invoked by not taking timely recourse. Therefore, the contention of the said Noticees that the requirement to disclose an NDU agreement came much later is fallacious and reflects the dubious intentions of the Noticees, hence, is devoid of any merit. It is a matter of record that circulars have been issued by SEBI since September 23, 2011 prescribing the format of disclosure of encumbrance created by way of pledge, lien, NDU, etc., and also prescribing for disclosure by the concerned promoters when such encumbrances are invoked. The circular referred to by the said Noticees in their defence to escape from their liability to disclose the NDUs to the stock exchanges cannot defend them from the allegations of non-disclosure of encumbrances created over their shareholding in favour of third parties through various instrument under the garb of different terminologies such as NDU, irrevocable power of attorney, which in reality, were nothing but instruments that created encumbrances over the shares of the promoters/directors just like the pledge agreement signed by them. In fact, in the instant case, the Noticees 2 to 3 not only have failed to disclose to the stock exchanges the creation of the encumbrances on their shareholding but also have failed to make disclosure regarding the invocation of such pledges/ encumbrances by the lending institutions.

88. In continuation of the foregoing, I find it worthwhile to state that the SEBI Act, 1992 and the regulations made thereunder are pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors. In a disclosure-based regime, it is the right of the common investor to have access to timely and fair disclosures and it is the duty of a listed company, its promoters and directors, and officers of the company entrusted with such responsibility to facilitate such disclosures to be made to the public in a fair and transparent manner. It is also a well-known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation, the paramount duty of the court is to adopt such an interpretation so as to further the purposes of law and, if possible, eschew the one which frustrates it. This principle has been upheld by the courts in the matter of Ramrakh R. Bohra vs SEBI [(1999) 33 CLA 243 (Bom)] and the Hon'ble Supreme Court in the matter of RBI vs Peerless General Finance & Investment Co. Ltd. [(1996) 20 CLA 195/AIR 1996 SC 646].

89. Considering the foregoing, I do not have any hesitation in holding that T. Venkattram Reddy (Noticee 2), T. Vinayak Ravi Reddy (Noticee 3) and P K Iyer (Noticee 4) have maliciously failed to make relevant disclosures about encumbrances on shares held by them, created pursuant to signing of those NDUs, irrevocable power of attorney or pledge agreements with various lending institutions and hence, have failed to comply with the requirements of Regulation 31(1) and 31(2) read with regulation 31(3) of the SEBI (SAST) Regulations, 2011.

90. Further, as per the afore-stated allegation, the Noticees 2 to 4 have also failed to make disclosures under Regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 about the increase in their shareholdings from 63.37% as on March 2011 to 73.83% as on March 2012 on account of buyback of shares by DCHL.

91. I note that the facts of this allegation, viz. increase in shareholding of the promoters pursuant to the buyback of shares is an undisputed fact. In their defence, the said Noticees have contended that the requirement to make

disclosure under Regulation 13(4) and 13(4A) read with regulation 13(5) of the SEBI (PIT) Regulations, 1992 would arise only when the change in shareholding is on account of an overt act on the part of the said Noticees to acquire shares and not when the increase in their shareholding is incidental to buyback of shares of other shareholders by the company. Since, change in the shareholding of the Noticees occurred pursuant to the buyback of securities by the Company and no act, particularly any positive act, can be attributed to the Noticees for the said change in their shareholding, there is no requirement on their part to make any disclosure as alleged in the SCN. To buttress the submissions, the Noticees have contended that the non-disclosure could not be said to be critical, as the promoters had sufficiently disclosed their pre and post buyback shareholding in the requisite formats, therefore, at the most lapses on their part, if any could be called technical/procedural in nature.

92. I have perused the contentions of the said Noticees in this regard and the requirements of the relevant provisions of the SEBI (PIT) Regulations, 1992 as was applicable at the relevant time. It is worthwhile to note that the increase in the shareholding of the said Noticees was on account of buyback of shares of the Company and not by any overt act of the said Noticees. I also note from the contentions of the said Noticees that the disclosure/filings regarding promoters' shareholding was done by the Company to the stock exchanges pursuant to the buyback. Considering these mitigating circumstances, this specific issue involved herein pertaining to disclosure under the PIT Regulations, 1992 has lost significance for the purposes of the instant proceedings.

E. Allegation in SCN: DCHL along with T. Venkattram Reddy, T. Vinayak Ravi Reddy and P K Iyer who are responsible for the overall management of DCHL have failed to comply with the conditions of the listing agreement, namely-

(i) Failed to disclose to the stock exchange the material price sensitive information about the date of entering into agreement with DCM. (Clause 36)

(ii) Misleading financial information (i.e., understatement of interest and outstanding loans and thereby overstatement of profits) in its Annual Report for FY 2008-09, FY 2009-10 and FY2010-11. (Clause 41)

(iii) Delay in filing SHP for quarters ended Sep-12 and Dec-12 to the stock exchange. (Clause 35)

(iv) Failure to provide updated information on the SHP from quarter ended Mar-13 onwards on its website. (Clause 54)

(v) Failure to appoint Company Secretary of the company. (Clause 47(a))

(vi) Failure to provide related party transactions pertaining to funds advanced to Flyington Freightors Ltd., a related entity. (Clause 32)

93. The aforestated set of allegations pertain to the non-compliances of the various clauses of the Listing Agreement by DCHL, T. Venkattram Reddy, T. Vinayak Ravi Reddy, and P K Iyer i.e., Noticees 1 to 4. The aforesaid allegations are discussed in detail as under: -

94. It was observed during the investigation that DCHL had filed the shareholding pattern for the quarter ended September 30, 2012 on January 23, 2013 and for the quarter ended December 31, 2012 on February 08, 2013. As per Clause 35 of the Listing Agreement, companies are required to file shareholdings details in the required format on a quarterly basis, within 21 days from the end of each quarter. Therefore, it has been alleged that DCHL has filed the shareholding pattern to the stock exchange after delay, thereby has failed to comply with the requirements of Clause 35 of the Listing Agreement. In this connection it is to be noted that dissemination of material information about a listed company to the investors in a timely manner is a necessary condition to ensure transparency and efficiency of the market and to facilitate fair play amongst market participants. It is with this end in view, that disclosures are required to be made within a certain time frame so that

investing public is not deprived of vital information. Therefore, negligence in making timely disclosure has to be viewed seriously.

95. In terms of clause 54 of the Listing Agreement, DCHL was required to maintain a functional website containing basic information about the Company e.g., details of its business, financial information, shareholding pattern, etc. and to ensure that the contents of the said website are up-to-date at any given point of time. It is observed that the Company had not provided updated information of its shareholding pattern on its website after December 31, 2012. Further, the Noticees 2 and 3 admitted that they have not been not been able to appoint a Whole Time Company Secretary since September 1, 2012. Therefore, the violation of Clause 47(a) stands established against the Noticees 1 to 4.

96. With regard to the allegation that DCHL has failed to disclose under clause 32 of the Listing Agreement about advancing an amount of ₹ 99.45 crore to a related party, namely, Flyington Freightors P. Ltd., for purchase of a Cargo Aircraft and other connected expenses, the Company has contended that the transaction was not a related party transaction. However, contrary to their claim, I note that DCHL in its reply dated July 4, 2013 to the Ministry of Corporate Affairs had informed that the Company had advanced funds of ₹ 99.45 cr. to Flyington Freightors P. Ltd., a related entity for purchase of Cargo Aircraft and to meet legal and other connected With regard to the allegation that DCHL has failed to disclose under clause 32 of the Listing Agreement about advancing an amount of ₹ 99.45 crore to a related party, namely, Flyington Freightors P. Ltd., for purchase of a Cargo Aircraft and other connected expenses, the Company has contended that the transaction was not a related party transaction. However, contrary to their claim, I note that DCHL in its reply dated July 4, 2013 to the Ministry of Corporate Affairs had informed that the Company had advanced funds of ₹ 99.45 cr. to Flyington Freightors P. Ltd., a related entity for purchase of Cargo Aircraft and to meet legal and other connected.

97. As regards no-disclosure by the Company, DCHL about its private agreement/ arrangement with DCM to offset its receivable from DCM with loans raised by it from various lenders and disclosure of grossly understated liabilities in its financial statements for various years, the same have been discussed in detail in the preceding paragraphs of this Order in which the Company has been held liable for suppression of the accounts and information from the public and for its accounting manipulations and illegal financial adjustments with DCM. In view of the aforesaid undisputable facts, I find that DCHL has failed to comply with clauses 36, 41, 35, 54, 47(a) and 32 of the Listing Agreement in violation of Section 21 of the Securities Contracts (Regulation) Act, 1956. Since, T. Venkattram Reddy, Chairman, T. Vinayak Ravi Reddy, Vice Chairman and P K Iyer, Vice Chairman are responsible for the overall management of DCHL, I find that these Noticees have violated Section 21 read with Section 24(1) of the SCRA.

F. Allegation in SCN: DCM which was owned and controlled by the promoters of DCHL, had dues payable to DCHL to the tune of ₹4,084.21 cr. DCHL falsely claimed to have acquired the brands "Deccan Chronicle" and "Andhra Bhoomi" from DCM which were already owned by DCHL. Thus, under the guise of acquisition of brands from DCM, "the promoters" of DCHL have reduced/waived huge liability worth of ₹2905.32 crore payable by DCM to DCHL, which was a fraudulent act and against the interest of minority shareholders of DCHL thereby causing loss to its non-promoter shareholders/stakeholders to the extent of ₹2905.32 cr.

98. It is pertinent to look into the details of the entities/persons who were involved in the agreements between DCHL and DCM. The Noticees 2 and 3 have claimed in their submission that the partnership firm 'Deccan Chronicle' was formed with T. Venkattram Reddy and T. Vinayak Ravi Reddy as its partners and this firm was initially the owner of the brands 'Deccan Chronicle' and 'Andhra Bhoomi'. These brands were transferred by the partners of 'Deccan Chronicle' to Deccan Chronicle Marketeers Pvt. Ltd. (DCMPL) for a consideration of ₹ 98 only through a MoU dated December 16, 2002 entered with DCMPL. This transfer of brands happened just a fortnight before

transferring all other assets and liabilities of the firm to DCHL (on December 31, 2002).

99. DCMPL is a closely held company belonging to T. Venkatram Reddy and family. Subsequently, DCMPL (the new owner of the brands) was admitted as a partner in the old partnership firm 'Deccan Chronicle' vide a Deed of Addendum on April 1, 2004 through which DCMPL introduced the brands ('Deccan Chronicle' and 'Andhra Bhoomi') so acquired by it for ₹ 98/- from the same firm as its share capital in the firm again for a consideration of ₹ 98/-. Upon admission of DCMPL as partner, the name of the partnership firm 'Deccan Chronicle' was changed to 'Deccan Chronicle Marketeers' (DCM) and thus the firm which originally owned the brands till December 16, 2002 became owner of the same brands through the aforestated Addendum on April 1, 2004.

100. As can be seen from above, the entire beneficial ownerships of the original partnership firm 'Deccan Chronicle', the closely held company, i.e., DCMPL and also the ownership of the new partnership firm DCM, were all along held by T. Vinayak Ravi Reddy and T. Venkattram Reddy and their family. Further, these persons were also the promoters and directors of DCHL. So, all the entities mentioned above were very closely connected and managed by only one group of persons. The transactions involving transfer of brands, as have been presented before me, were crafted in a circuitous manner so as to retain ownership of the brands with certain persons/entities to the exclusion of DCHL. The Noticees have artificially concocted the transactions in such a manner to suggest that all the assets of the partnership firm 'Deccan Chronicle' were transferred to the DCHL in 2002 except for the brands which went to DCMPL only to return back to the old partnership firm with a new name (DCM) only after about 15 minutes. However, contrary to the aforesaid explanation offered by the Noticees 2 & 3 narrating the events as to how the ownership over the brands travelled from the partnership 'Deccan Chronicle' to DCM, via DCMPL, I note that during the IPO in December 2004, DCHL had made the following disclosures relating to brands and trade marks in its

prospectus (page 38) under subheading 'Established Business'. The relevant extract is as under:

> *"Our Company was formed as a public limited company in January 2003 by acquiring the business of the Firm. The Firm started the newspaper publishing business in the year 1938 and the newspaper "Deccan Chronicle" has been in existence since then. See 'Our History and Certain Corporate Matters' on page 49 of this Red Herring Prospectus for further details. Our brands "Deccan Chronicle" and "Andhra Bhoomi" have a strong brand image and enjoy a strong brand recall, which is substantiated from the fact that Deccan Chronicle is the leading English newspaper in the state of Andhra Pradesh. Further, our leadership position provides us the flexibility to charge premium advertisement rates".*

101. Further, the prospectus under the sub-section 'Our History and Certain Corporate Matters' states with regard to the background of the Company as follows

> *"We were initially formed as a partnership firm in 1938 by the name of "Deccan Chronicle" ……. In an effort to corporatize its operations, the Firm was restructured to form a public limited company. The restructuring was undertaken by the incorporation of a new entity Deccan Chronicle Holdings Ltd. and the transfer of all the assets and the liabilities of the Firm as a going concern with effect from January 1, 2003 to our Company. This restructuring was effected through an agreement dated December 27, 2002 between our Company and the Firm, … … …"*

102. Under sub-section 'Objects of the Issue' of page 24 and page 26 of the prospectus, the Company has made the following additional disclosure with regard to brands and the extracts of the same is as under:

> *"The objects of the Issue also include creating a public trading market for the Equity Shares of our Company by listing them on the Stock Exchanges. We believe that the listing of our Equity Shares will enhance our visibility and brand name and enable us to use our Equity Shares for strategic growth opportunities"*
> *................*
> *We also plan to continue investing in and developing the "Deccan Chronicle" brand in Indian newspaper industry"*

103. Further, DCHL, in its prospectus, under the heading 'Risk related to non-registration of our trademark' on page (xiii) of the prospectus, has made the following additional disclosure with regard to trademarks which is as under:

> *"We have applied on September 30, 1996 (Application number 729889) to the Registrar of Trademarks, Mumbai for registration of our trademark "Deccan Chronicle". Whilst the registration is awaited, we may not be able to prohibit any person from using the said trademark to their advantage and any unfavourable use of such trademark may adversely affect our goodwill and business".*

104. From a comprehensive reading of the above cited disclosures and the proclamations made by the promoters of DCHL in their IPO Prospectus, it has been made succinctly clear to the public that the brands formerly owned by the firm 'Deccan Chronicle' have already been transferred to DCHL consequent upon restructuring of the firm and transfer of its all assets and liabilities to DCHL. Further, it has been also represented to the world at large that 'Deccan Chronicle' and 'Andhra Bhoomi' are the brands of the Company and that it enjoys a strong brand recall amongst the public. Further, in the disclosure about risk factors it has been mentioned that till the time their trademark registration application for the brands is pending, their ability to prohibit unauthorised use of the trademark is restricted. Thus, it can be reasonably inferred even by a layman from the representations made by promoters of the Company in their IPO documents, that the brands 'Deccan Chronicle' and 'Andhra Bhoomi' were always owned by DCHL.

> *"Reconciliation of net assets under IFRS – 31 March 2006 ....*
> *The biggest contributors to the increase in net assets were the recognition of the Deccan Chronicle brand (₹529 million) and the fair valuation of tangible fixed assets (₹96 million).*
> *............. The Deccan Chronicle brand, which has been in existence since 1938, is considered to have an indefinite useful life and will be annually tested for impairment. Indian GAAP only permits the recognition of acquired intangible assets at cost. ...."*

105. Thus, apart from the representation made in the IPO prospectus, it is clearly stated in the Annual Report for FY2005-06 of DCHL that the brands ‘Deccan Chronicle’ and ‘Andhra Bhoomi’ were owned by DCHL and the same was also recognized as such, in its books of accounts.

106. Under the circumstances, the submissions now being made before me by the Noticees 2 and 3 to demonstrate through a narration as to how DCM become owner of the brands and trademarks of the Company remain an unsubstantiated claim, sans any supporting verifiable evidence and is devoid of any credence. I note that the assets & liabilities, of ‘Deccan Chronicle’ were transferred to DCHL from January 1, 2003 pursuant to restructuring of the erstwhile Partnership Firm. Therefore, the explanations being offered now that the brands & trade marks were transferred to by ‘Deccan Chronicle’ DCMPL for ₹ 98/- through an MoU and again were re-introduced by DCMPL into ‘Deccan Chronicle’ for the same amount through a Deed of Addendum, not only sounds absurd, but also appears to be a clear cut after thought argument advanced only to defend the lame arguments of the Noticees that the brand and trademark were owned by DCM (new name of Deccan Chronicle).

107. In the circumstances described above, it is noted from the documents available on record that on April 2, 2008, DCM had entered into a settlement agreement with DCHL to acquire and obtain prioritised advertisement space in the publications of DCHL for the purpose of developing and building the brands owned by it. DCHL and DCM had also agreed that in the event of DCM being unable to meet its financial obligations against the sale of advertisement space, DCHL shall be at liberty to raise loans to meet the cash flow deficit arising on account of default on the part of DCM in meeting their financial obligations/commitments and, in turn, DCM agreed to take over such loans, corresponding to its payables to DCHL, along with financial costs (interest and financial charges) treating them as their loans, for due discharge to the lenders.

108. There is no dispute that DCM was continuously not fulfilling its financial obligations since the time the above noted agreement was entered with DCHL. Therefore, in terms of the above discussed so called agreement with DCM, DCHL was borrowing and utilising the loans taken in its own name and also was repaying those loans and financial charges thereon but, as a dubious strategy, was transferring the said loans which were outstanding as on the last day of every financial year, to the books of accounts of DCM along with financial costs at the end of financial year. It can be seen from the reply of the Statutory Auditor that large portion of the outstanding loan availed by DCHL in its name, year after year, was transferred by DCHL to DCM's account on the last date of the financial years. The percentage of outstanding loan amount so transferred to DCM as against the total outstanding loan amount sitting in the books of accounts of DCHL during the FY 2008-09 was 61.46%. During the next two financial years also the percentage of loans taken by DCHL against dues payable by DCM vis-à-vis its total outstanding loans increased to 76.54% and 78.73%, respectively. It shows that DCHL was transferring major portion of its own outstanding loans and the financial charges thereon to DCM on the last date of the financial year so as to understate the liabilities in its balance sheets and interest expenditure in its profit and loss accounts under the garb of the above noted agreement in which DCM agreed to own up those loans and financial charges that rightfully belonged to DCHL. This is how, it appears, DCHL was able to understate its outstanding loans as at the end of FY 2008-09 by ₹ 1339.17 crore, as alleged in the beginning of this Order.

109. As already noted earlier, the same set of persons / promoters were controlling both DCM and DCHL. However, it is noted from the auditor's reply that the aforesaid transaction and agreement between DCHL and DCM were never disclosed as related party transaction in the financial statements of DCHL nor even the said agreement/ arrangement between DCM and DCHL was recorded/disclosed in the register maintained under section 301 of the Companies Act, 1956. Thus, DCHL has been misleading and filing false statements to the Registrar of Companies and the stock exchanges, year after

year, and has been concealing its related party transactions from its financial statements for several years. Moreover, by entering into an internal arrangement with DCM, a public listed corporate entity like DCHL cannot commit itself to take loans from Banks & FIs to offset the said loans against the revenue receivable from a related entity (i.e., DCM) and to indulge in transfer of entries of those loan liabilities from its books to the books of the related entity back and forth, so as to suit its needs & convenience. The loans have been taken by DCHL, hence the entire liabilities with its interest & finance charges have to be charged to its accounts only. An undisclosed agreement with its related entity on the side-lines cannot defy basic accounting principles, disclosure obligations and corporate governance of a listed company and cannot be allowed to manipulate the financial statements just to comply with the terms of an undisclosed agreement with its related entity. Without prejudice, in any case, by taking those loans DCHL cannot substitute the same with the advertisement revenues receivable for DCM since the character of loans obtained (capital receipt) cannot partake the character of advertisement fees (revenue receipts) receivable from DCM

110. It is a trite law to state that financial statements are the most important medium through which shareholders know the financial health of a company. As shareholders are not involved in day-to-day management of the company, financial statements provide a source of information based on which shareholders can take their investment decisions. Any wrong disclosure or concealment of information would result in perverse analysis/decision by shareholders to the detriment of their interests. Therefore, the corporate/securities laws have vested an essential obligation on the companies/board of directors to present a true and fair view of the state of the affairs of the company at all times. Such true presentation of financials of the company ensures that there is no information asymmetry between shareholders and management. Further, such true presentation also instils faith of shareholders in the governance of the company. The financial statements of the company are also used by various other persons (financial institutions, research analysts, regulators, etc.) for different purposes and the

accuracy of decisions/analysis made by such persons depends on the accuracy of financial statements. Therefore, accuracy of financial statements is of utmost importance to ensure transparency, fairness and also efficient functioning of the securities market, which cannot be permitted to be compromised at any cost.

111. In the instant matter, the Noticees 1 to 5 have however, miserably failed to disclose in the financial statements of the Company, the correct amount of loan taken by them from banks/FIs. Moreover, by under-reporting loans in one financial year, DCHL was able to raise more loans from banks/FIs in the next financial year, which can be seen from the pre-paragraphs of this Order. It is common knowledge that banks/FIs look into various factors while sanctioning loans to companies (such as profits, capital adequacy, assets, solvency, liquidity position, debt-equity ratio, financial stability, management competency, etc.). By under-reporting the loans and interest, DCHL was able to show better financial stability, better financial ratios (debt-equity ratio, debt service coverage ratio, etc.) based on which, the banks/FIs have sanctioned additional loans to them year after year. Further, the aforestated under-stating of interest expenditure has also resulted in over-statement of net profits. It is noticed that after reinstatement of interest amount in the Profit & Loss account (which were transferred to the books of DCM), the Company turned from profit-making to loss-making in 2 out of the 3 years (2008-09 to 2010-11). Had the loans and interest amount been reported accurately, the banks/FIs may also have taken a different view while sanctioning additional doses of loans every year to DCHL. Further, shareholders would have also taken different informed view while investing in the shares of DCHL had the correct financial statements been presented to them through the stock exchanges. The market price of the shares of the Company could have also been adjusted/rectified by the market based on true financial positions. However, because of the unscrupulous intent of the Noticees to understate & supress the liabilities in the balance sheet and understate the interest expenditure in the Profit & Loss account, the lending institutions, shareholders and the investors in the scrip of

DCHL, were all deprived of the knowledge about the true & correct financial affairs of the Company.

112. Needless to emphasise here that the directors of a company owe a sacrosanct duty to act in good faith and to discharge their duties for the benefit of the company. They also owe a duty to exercise reasonable care, skill and diligence and a duty to exercise independent judgment. It may also be noted that the directors' report prepared for each financial year of a company must contain sufficient disclosure for shareholders to help them understand the state of the company's affairs. Further, it is the statutory duties of a director that if he is in any way, directly or indirectly, interested in any transaction or arrangement involving the company, he must declare the nature and extent of his interest to the other directors either before the transaction occurs or at least as soon as it becomes reasonably practicable for him. Any failure by a director to disclose his conflict of interest, if any, or to comply with any of the duties bestowed upon him, has potentially serious consequences for him as well as for the Company.

113. Therefore, by concealing material information and understating of outstanding loans and interest and finance charges in the annual report for the FY 2008-09, FY 2009- 10 and FY 2010-11, DCHL, its directors (T. Venkattram Reddy, T. Vinayak Ravi Reddy, P K Iyer and N. Krishnan) have undoubtedly violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003 read with Section 12 A(a), (b) and (c) of the SEBI Act, 1992.

114. To sum up my foregoing observations, dissemination of material information about a listed company to the investors in a timely and accurate manner is sine qua non to ensure efficiency and integrity of the market and to facilitate fair play amongst market participants. In a disclosure-based regime, on the basis of issuer's disclosures, shareholders are able to make informed decisions. Shareholders also hold board and management of a Company accountable for any misallocation or misuse of their invested funds and keep a watchful eye on the performance & business conduct of the Company. If shareholders are not pleased with the performance of the company or its

board, they have the ability to change the behaviour of management and direction of the company by exercising their votes or, alternatively, by selling their shares. In view of this, I find the violations and breaches committed by the Noticees the instant case is fully addressed by the findings and observations of the Hon'ble Supreme Court in the matter of N. Narayanan vs SEBI (Civil Appeal Nos.4112-4113 of 2013) and the same is reproduced hereinbelow:

> *"28. We notice in this case that the Directors of the company had clearly violated provisions of Section 12A of SEBI Act read with Regulations 3 and 4 of 2003 Regulations. Companies whose securities are traded on a public market, disclosure of information about the company is crucial for the accurate pricing of the companies' securities and also for the efficient operation of the market.*
>
> ***Corporate Governance and Directors***
>
> *29. SEBI Act read with Regulations of the Companies Act would indicate that the obligations of the Directors in listed companies are particularly onerous especially when the Board of Directors makes itself accountable for the performance of the company to shareholders and also for the production of its accounts and financial statements especially when the company is a listed company.*
>
> *30. The Directors of the company or the person in charge directly or indirectly use or employ, in connection with the issue, purchase or sale of any securities listed in stock exchange, any manipulative or deceptive device or contrivance in contravention of SEBI Act or the Regulations made thereunder have necessarily to be dealt with in accordance with the provisions of the Act and the Regulations which is absolutely necessary for the investor's protection and to avoid market abuse.*
>
> *31. The facts clearly indicated that the company had made false corporate announcement stating that it had entered into agreements with 802 theatres and that false corporate announcement gave false figures relating to advance, security deposit and income pertaining to the theatres which were not inexistence. The deposits shown were turned out to be not genuine but mere book entries to hide receivables in the balance sheet.*
>
> *32. Responsibility is cast on the Directors to prepare the annual records and reports and those accounts should reflect 'a true and fair view'. The over-riding obligation of the Directors is to approve the accounts only if they are satisfied that they give true and fair view of the profits or loss for the relevant period and the correct financial position of the company.*

33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.

34. The facts in this case clearly reveal that the Directors of the company in question had failed in their duty to exercise due care and diligence and allowed the company to fabricate the figures and making false disclosures. Facts indicate that they have overlooked the numerous red flags in the revenues, profits, receivables, deposits etc. which should not have escaped the attention of a prudent person. ……………..

Securities Market – Market abuse

35. Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the 'creation of artificiality'. The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rice of scrip of the company. Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse.

36. We have, on facts, clearly found that the Directors of the company have "created artificiality" by projecting inflated figures of the company's revenue, profits, security deposits and receivables and that the manipulation in the financial results of the company resulted in price rise *of the scrip of the company and the promoters of the company then pledged their shares to raise substantial funds from financial institutions. The conduct of the appellant and others was, therefore, fraudulent and the practices they had adopted, relating to securities, were unfair, which attracted the penalty provisions contained in Section 15 HA read with 15J of the SEBI Act. ………………… …………………*

The Companies Act casts an obligation on the company registered under the Companies Act to keep the Books of accounts to achieve transparency. Previously, it was thought that the production of the annual accounts and it preparation is that of the Accounting Professional engaged by the company where two groups who were vitally interested were the shareholders and the creditors. But the scenario has drastically changed, especially with regard to the company whose securities are traded in public market. Disclosure of information about the company is, therefore, crucial for the accurate pricing of the company's securities and for market integrity. Records maintained by the company should show and explain the company's transactions, it should disclose with reasonable accuracy the financial position, at any time, and to enable the Directors to ensure that the balance sheet and profit and loss accounts will comply with the statutory expectations that accounts give a true and fair view. Companies (Amendment) Act, 2000 has added clause (a)(iii) under which SEBI has also been given the power of inspection of listed companies or companies intending to get listed through such officers, as may be authorized by it.

39. ……………..We have noticed that the Directors and the Chief Financial Officers of the company had caused to publish forged and misleading results of the company, various quarterly financial results and the annual results for the year 2007-08, were reported to the stock exchanges containing inflated figures of the company's revenue, profits, security deposits and receivables and those financial statements which were relied upon by investors in making investment decisions, which did not reflect a true and fair view of the state of affairs of the company.

40. ……………. The appellant, admittedly, was a whole time Director of the company, as regards the preparation of the annual accounts, the balance-sheet and financial statement and laying of the same before the company at the Annual General Meeting and filing the same before the Registrar of the Companies as well as before SEBI, the Directors of the company have greater responsibility, especially when the company is a registered company. Directors of the companies, especially of the listed companies, have access to inside knowledge, such as, financial position of the company, dividend rates, annual accounts etc. Directors are expected to exercise the powers for the purposes for which they are conferred. Sometimes they may misuse their powers for their personal gain and makes false representations to the public for unlawful gain.

We have indicated, so far as this case is concerned, the subsequent conduct of pledging their shares at artificially inflated prices, based on inflated financial results and raising loan on them would indicate that they had deliberately and with full knowledge committed the illegality and hence the principle of "acta exterior indicant interiora secreta" (meaning external actions reveals inner secrets) applies with all force, a principle which this Court applied in Sahara's case.

…………………….

……………………..

A word of caution:

43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity."

115. The discussions made in the foregoing paragraphs, the analysis of facts and evidences which have been alluded to by the SCN and the explanations offered by the Noticees to unfasten them from the liabilities that have been fastened on to them in the SCN for the violations committed by them, succinctly bring out a case, where one finds the Company, its directors and management in cahoots with its company secretary have manipulated the accounts by understating the liabilities and expenditure over many years from 2005-06 onwards with an objective to mislead the shareholders and defraud the investors with an artificially projected strong financial statements which were full of falsehood and misrepresentations. The attempt to buy back shares of the Company by the directors and promoters based on the falsely reported reserves amount despite the Company actually lacking the requisite free

reserves was another attempt to hoodwink innocent investors and to sell the Company's misplaced false story about its strong fiscal position to its shareholder/investors. The Company Secretary went on generously authenticating and attesting the financial statements and the buyback offer documents without any application of mind and with an intent to aid and abate the malicious conduct of the Company and its promoters and directors. The Company and the Noticees 2 to 4 have also been successfully concealing the series of encumbrances created on promoter's shareholding in favour of financial institutions under the garb of NDUs which were nothing but pledge agreements signed with these institutions and have also chosen to conceal the invocation of the encumbrances from the public shareholders. The Noticees 1 to 5 have also blatantly made specious claims about the ownership of brands such as Deccan Chronicle and Andhra Bhumi claiming that these brands were owned by DCM (and not by the Company) only to accommodate their manipulative accounting adjustments and to waive huge amount of financial obligations to the tune of ₹ 2905.32 crore which DCM owed to the Company. Such actions of the Noticees are replete with glaring manipulations, fraudulent intents and exaggeration of accounts to the extent that it went on for a number of years with the connivance of the Company Secretary. Such blatant and egregious misconduct on the part of the Noticees 1 to 6 is not conducive for the integrity of securities market and cannot be spared to be viewed leniently, rather such mis-conduct of the Noticees deserve to be dealt with strictly.

116. In view of the above, since the violations as alleged against the Noticees 1 to 6 stands established, the Noticees 1 to 6 are liable for monetary penalty under Sections 15HA, 15A(b) of SEBI Act and Section 23A(a) of SCRA *(as applicable)*, the provisions of which are reproduced hereunder:

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

Section 15A of SEBI Act – *If any person, who is required under this Act or any rules or regulations made thereunder: -,*
(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

Section 23A(a) of SCRA - *Any person, who is required under this Act or any rules made thereunder, —*

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure;

117. While determining the quantum of monetary penalty under Sections 15HA and 15A(b) of SEBI Act and Section 23A(a) of SCRA I have considered the factors stipulated in Section 15-J of SEBI Act and Section 23J of SCRA which reads as under:

Section 23J of SCRA and Section 15J SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 23-I of SCRA and Section 15-I of SEBI Act, 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.

118. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the other Noticees and the loss suffered by the investors as a result of these Noticees' default. The

consequences resulting from violations committed by the Noticees are of very grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand then investors will lose faith in the Indian Securities Market and even good companies will find it extremely difficult to raise capital in future.

119. A basic premise that underlies the integrity of the securities market is that persons connected with the securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities. The manner in which the entire scheme of fraudulent and deceptive scheme was planned and executed by the Company, its Promoters, Director and Company Secretary demonstrates beyond reasonable doubt the manipulative intent to deliberately withhold the critical information to Stock Exchange and also to the investors which ultimately enabled them to carry out the fraud. Such a conduct by a listed company erodes the trust and confidence of investors and also threatens the integrity of the securities market. Therefore, such lapses need to be dealt with sternly to protect the interest of investors in the securities market. Therefore, I find it appropriate to impose suitable penalty on the Noticees.

120. Further, Hon'ble SAT, in its order dated August 02, 2019 in the matter of P G Electroplast vs SEBI, has held that the Order passed in corresponding proceedings before the Whole Time Member should be factored in while fixing the quantum of penalty.

121. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticee under the provisions of Sections 11(1), 11(4) and 11B of SEBI Act under the same facts. In the said proceedings, vide Order dated December 31, 2019, Hon'ble Whole Time Member of SEBI has restrained the Noticees 2 to 5 and Noticee 6 from accessing the securities market and further prohibited them 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 2 years and 1 year respectively.

122. I note from the submissions made by the Company and on perusal of the website of Deccan Chronicle Holdings Ltd., (https://www.deccanchronicle.com) it was observed that the company was under Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC), and the insolvency commencement date was mentioned as July 5, 2017.Further, I note that during the corporate insolvency resolution process of the Company a resolution plan was considered and approved by the CoC members. The Hon'ble NCLT, Hyderabad had approved the Resolution plan on June 03, 2019, however, I note that the same has not taken effect. I note that Hon’ble NCLAT vide Order dated January 21, 2022 ruled that the approval of resolution plan by the CoC and subsequently approval of resolution plan by the Adjudicating Authority vide order dated 03.06.2019 is not sustainable in law and accordingly set aside the Order dated June 3, 2019. Further, the Hon’ble NCLAT remitted the matter is remitted back to the CoC with the direction to distribute the resolution amount in conformity with the Section 30(4) r/w Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In this regard, I note that dealing with a similar case of enforcement action by SEBI against a company in CIRP, the Hon’ble SAT, vide its order dated October 09, 2020 in Dewan Housing Finance Corporation Ltd. Vs. SEBI (Appeal No. 206 of 2020) held that enforcement action/ proceedings against a company under CIRP cannot be initiated/ continued. The said order passed by the Hon’ble SAT in the DHFL matter has been challenged by SEBI before the Hon’ble Supreme Court (CA 3963/2020) and the same is pending. The limited purpose of these proceedings is to determine if the Noticee company has violated any of the provisions of securities laws and if so, to assess and determine the penalty in order to enable SEBI to crystallise its claim. The penalty imposed after consummation of these proceedings will be given effect to depending on outcome of aforesaid appeal before the Hon’ble Supreme Court in the DHFL matter. Further, subject to outcome of the aforesaid appeal before the Hon’ble Supreme Court in the DHFL matter, the monetary penalty imposed (or consequent demand notice or recovery, etc.) will stand crystalized and will enable lodging of claim before the liquidator in the eventuality of failing of resolution plan and consequent initiation of liquidation proceedings.

ORDER

123. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 23-I of SCRA and Section 15-I of SEBI Act read with Rule 5 of SCR Rules and Rule 5 of SEBI Adjudication Rules, hereby impose a penalty on the Noticees as under.

#	Name of the Noticee	Penalty amount in ₹ and words	Imposition of penalty under
1	Deccan Chronicle Holdings Ltd *	3,00,00,000/- (Rupees Three Crores only)	Section 15HA of SEBI Act
		1,00,00,000/- (Rupees One Crore only)	Section 23A(a) of SEBI Act
2	T. Venkattram Reddy	1,00,00,000/- (Rupees One Crore only)	Section 15HA of SEBI Act
		25,00,000/- (Rupees Twenty-Five Lakhs only)	Section 23A(a) of SCRA
		5,00,000/- (Rupees Five Lakhs only)	Section 15A(b) of SEBI Act
3	T. Vinayak Ravi Reddy	1,00,00,000/- (Rupees One Crore only)	Section 15HA of SEBI Act
		25,00,000/- (Rupees Twenty-Five Lakhs only)	Section 23A(a) of SCRA
		5,00,000/- (Rupees Five Lakhs only)	Section 15A(b) of SEBI Act
4	P K Iyer	1,00,00,000/- (Rupees One Crore only)	Section 15HA of SEBI Act
		25,00,000/- (Rupees Twenty-Five Lakhs only)	Section 23A(a) of SCRA
		5,00,000/-	Section 15A(b) of SEBI Act

#	Name of the Noticee	Penalty amount in ₹ and words	Imposition of penalty under
		(Rupees Five Lakhs only)	
5	N Krishnan	20,00,000/- (Rupees Twenty Lakhs only)	Section 15HA of SEBI Act
6	V Shankar	10,00,000/- (Rupees Ten Lakhs only)	Section 15HA of SEBI Act

**The said penalty shall stand payable by Noticee 1 as per observations mentioned in para 122 of this order.*

124. The said penalty imposed on the Noticees, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

125. The Noticees, except Noticee 1, shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, 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 SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

126. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-1, DRA-1, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

127. In terms of Rule 6 of the SCR Adjudication Rules and Rule 6 of SEBI Adjudication Rules, copies of this order are sent to all the Noticees and also to SEBI.

Date: March 22, 2022
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER