BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BS/YK/2023-24/29725-29726]

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

In respect of:

Noticee No.	Noticee	PAN
1	Mr. SAK Narayanan	AACPN0659E
2	Mr. Jignesh Hasmukhlal Shah	APUPS5209N

*(The above-mentioned entities are individually referred to by their respective Noticee No. as assigned in the Show Cause Notice dated December 05, 2022 and collectively referred to as **'Noticees'**)*

In the matter of D B Realty Ltd.

FACTS OF THE CASE

1. Pursuant to receipt of certain complaints alleging *inter alia* diversion of the loan amount by Pune Buildtech Pvt. Ltd. (hereinafter referred to as **"PBPL"**), a subsidiary of D B Realty Limited (hereinafter referred to as **"DBRL/Company"**), Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) initiated an investigation into the affairs of the Company for the period from FY 2013-14 to FY 2020-21 (hereinafter referred to as **"IP"**). The focus of the said investigation was to ascertain if there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SCRA"**), SEBI (Listing Obligations and

Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **"LODR Regulations"**) and erstwhile Listing Agreement.

2. DBRL had given a Corporate Guarantee in favour of Bank of India (hereinafter referred to as **"BOI"**) as collateral security for the loan of Rs. 225 crores availed by one PBPL. The said Corporate Guarantee was executed on October 15, 2013. PBPL is a wholly-owned subsidiary of Marine Drive Hospitality & Realty Private Limited (hereinafter referred to as **"MDHRPL")** and as per the Annual report of DBRL for the FY 2013-14, MDHRPL was shown as "Enterprise where individuals i.e. Key Managerial Persons (hereinafter referred to as **"KMP"**) and their relatives have significant influence". I further note that in terms of SEBI circular CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014, DBRL had sought ratification/approval of shareholders by way of a special resolution on September 02, 2015 through Postal Ballot for all existing material related party transactions including the Corporate Guarantee given by the Company in favour of BOI on the loan availed by PBPL along with other existing and proposed transactions. It was alleged that explanatory statement to the proposed resolution in the Postal ballot notice dated July 21, 2015 signed by Noticee 1 issued in this regard did not disclose the material facts in the explanatory statement to the postal ballot notice. Moreover, DBRL had also failed to disclose the material events/information to Stock Exchanges.

3. Based on the findings of Investigation, SEBI initiated an adjudication proceeding under:

3.1. Section 15HB of SEBI Act and 23H of SCRA for the alleged violation of the provisions of Clauses 47(a), 49(I)(A)(2)(a),(3)(a) and (B)(1)(d) of the erstwhile listing agreement read with Section 11A(2) of SEBI Act and Section 21 of SCRA by the Noticee No. 1.

3.2. Section 15A(b) of SEBI Act and Section 23A(a) of SCRA for the alleged violation of the provisions of Regulation 6, Regulation 30, Regulation 4(1)(d)(e)(f)(g)(h)(i)(j) and 4(2)(b),(d)(iv) of LODR Regulations read with Section 11A(2) of SEBI Act and Section 21 of SCRA by the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide an order of the Competent Authority dated November 15, 2022, SEBI initiated adjudication under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) and under Section 23-I of SCRA read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **"SCRA Rules"**) to inquire into and adjudge under the provisions of the Section 15HB and Section 15A(b) of the SEBI Act and Section 23H and Section 23A(a) of SCRA for the violations alleged to have been committed by the Noticees. Subsequently, the undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') vide communique dated April 20, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Common Show Cause Notice ref no. SEBI/EAD-1/SM/YK/60783/2022 dated December 05, 2022 (hereinafter referred to as **'SCN'**) was issued to the Noticees in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act and Rule 4 of the SCRA Rules read with Section 23-I of the SCRA to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of the Section 15HB and Section 15A(b) of the SEBI Act and Section 23H and Section 23A(a) of SCRA for the violations alleged to have been committed by the Noticees. The aforesaid SCN was served upon the Noticees through Speed Post Acknowledgement Due (hereinafter referred to as **"SPAD"**) and e-mail.

6. During the course of investigation by SEBI, the following was observed and accordingly, the said facts are alleged in the SCN:

6.1. DBRL had given a Corporate Guarantee in favour of BOI as collateral security for the loan of Rs. 225 crores availed by one PBPL. The said Corporate Guarantee was executed on 15th October, 2013. PBPL is a wholly-owned subsidiary of MDHRPL and as per the Annual report of DBRL for the FY 2013-14, MDHRPL was shown as "Enterprise where individuals i.e. KMP and their relatives have significant influence".

6.2. **Wrong Disclosure with respect to status of the loan and failure to include material relevant information in the postal ballot:**

6.2.1. It was observed that DBRL held 15.53% of the equity share capital of the MDHRPL. Further, its directors, KMPs, relatives of directors/KMPs and enterprises controlled by them held 62.51% of equity share capital of the MDHRPL. Hence, DBRL along with its directors, KMPs, relatives of directors/KMPs and enterprises controlled by them held 78.04% of equity share capital of the MDHRPL as on date of execution of guarantee i.e. October 15, 2013.

6.2.2.It was further observed that in addition to 15.53% of the equity share capital held by DBRL and 62.51% of equity share capital held by directors, KMPs, relatives of directors/KMPs and enterprises controlled by them, they also held a significant portion of different classes of preference share capital of the MDHRPL. It was further observed that the promoters of DBRL had substantially higher interest in MDHRPL than DBRL by way of their equity and different classes of preference share holdings.

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

6.2.4. It was observed that in terms of aforesaid circular, Company had sought the ratification/approval of shareholders by way of a special resolution on September 02, 2015 through Postal Ballot of all existing material related party transactions including the Corporate Guarantee given by the Company in favour of BOI on the loan availed by PBPL along with other existing and proposed transactions. It was further observed from the Postal ballot notice dated July 21, 2015 issued in this regard that explanatory statement to the proposed resolution vide said notice contained the following disclosure in regard to said guarantee:

"Your Company has given a Corporate Guarantee in favour of Bank of India as collateral security for the loan of Rs. 225 crores availed by Pune Buildtech Private Limited. The said Corporate Guarantee was executed on 15th October, 2013. Your Company has also mortgaged immovable property in the form of land and building as security for the repayment of the said loan.

The said company is a wholly owned subsidiary of Marine Drive Hospitality & Realty Private Limited and is in the process of developing a Project for construction of residential and commercial complex at Yerawada, Pune subject to necessary approvals. The primary security for the said loan include the mortgage of the land and building at the project site and its receivables and other securities of fellow subsidiary of the borrower. The outstanding amount of the said loan as on 30th June, 2015 is Rs. 224.07 crores. ***This company is fulfilling its obligations of repayment of the loan.*** *Your Company / Promoters have considerable economic interest in the holding company Marine Drive Hospitality & Realty Private Limited. Being a wholly owned subsidiary company of Marine Drive Hospitality & Realty Private Limited, your Directors (other than the Independent Directors) and KMP and their relatives (to the extent of their shareholding interest in the Company) may be deemed to be concerned or interested in the said transaction".*

6.2.5. It was observed from email from BOI dated August 8, 2022 that DBRL was servicing the loan with delay upto the Non-Performing Asset date December 31, 2015. Further, vide email dated August 8, 2022 and email dated August 11, 2022, BOI had furnished additional details including the details for demand and repayment. The said details till the date of postal ballot notice are given below:

Demand Date	Particulars	Demand Amt	Collection Amt	Adjusted Date	Delay in days
31/10/2013	Normal Interest	37,36,987	37,36,987	21/12/2013	51
29/11/2013	Charges	56,180	56,180	21/12/2013	22
30/11/2013	Normal Interest	51,43,523	51,43,523	21/12/2013	21
30/11/2013	Penal Interest	5,939	5,939	21/12/2013	21
31/12/2013	Normal Interest	55,49,338	55,49,338	12/02/2014	43
31/12/2013	Penal Interest	10,005	10,005	12/02/2014	43
24/01/2014	Charges	8,577	8,577	12/02/2014	19
31/01/2014	Normal Interest	1,38,78,711	1,38,78,711	12/02/2014	12
31/01/2014	Penal Interest	8,990	8,990	12/02/2014	12
28/02/2014	Normal Interest	1,67,75,896	1,67,75,896	03/03/2014	3
28/02/2014	Penal Interest	11,972	11,972	03/03/2014	3
27/03/2014	Charges	1,68,540	1,68,540	29/04/2014	33
31/03/2014	Normal Interest	1,90,48,308	1,90,48,308	29/04/2014	29
31/03/2014	Penal Interest	1,839	1,839	29/04/2014	29
30/04/2014	Normal Interest	1,87,32,975	1,87,32,975	30/04/2014	0
30/04/2014	Penal Interest	29,410	29,410	30/04/2014	0
31/05/2014	Normal Interest	2,16,51,165	2,16,51,165	24/06/2014	24
30/06/2014	Normal Interest	3,26,19,019	3,26,19,019	30/09/2014	92
30/06/2014	Penal Interest	26,481	26,481	30/09/2014	92
31/07/2014	Normal Interest	2,79,01,096	2,79,01,096	30/09/2014	61
31/07/2014	Penal Interest	53,582	53,582	30/09/2014	61
31/08/2014	Normal Interest	2,86,02,249	2,86,02,249	19/12/2014	110
31/08/2014	Penal Interest	1,01,321	1,01,321	19/12/2014	110
30/09/2014	Normal Interest	3,06,82,173	3,06,82,173	19/12/2014	80
30/09/2014	Penal Interest	1,45,146	1,45,146	19/12/2014	80
31/10/2014	Normal Interest	3,21,61,790	3,21,61,790	26/02/2015	118
31/10/2014	Penal Interest	99,432	99,432	26/02/2015	118
30/11/2014	Normal Interest	3,15,64,432	3,15,64,432	26/02/2015	88
30/11/2014	Penal Interest	1,46,549	1,46,549	26/02/2015	88
31/12/2014	Normal Interest	3,32,00,910	3,32,00,910	31/03/2015	90
31/12/2014	Penal Interest	1,52,662	1,52,662	31/03/2015	90
31/01/2015	Normal Interest	3,38,72,685	3,38,72,685	30/06/2015	150
31/01/2015	Penal Interest	1,25,352	1,25,352	30/06/2015	150
28/02/2015	Normal Interest	2,87,17,126	2,87,17,126	01/07/2015	123
28/02/2015	Penal Interest	1,59,356	1,59,356	01/07/2015	123
28/02/2015	Principal	10,71,00,000	0	**Not yet paid**	
28/03/2015	Principal	10,71,00,000	0	**Not yet paid**	
31/03/2015	Normal Interest	3,02,70,104	3,02,70,104	01/07/2015	92
31/03/2015	Penal Interest	3,49,593	3,49,593	01/07/2015	92
30/04/2015	Normal Interest	2,96,39,302	2,96,39,302	30/09/2015	153
30/04/2015	Penal Interest	1,63,602	1,63,602	30/09/2015	153
30/05/2015	Normal Interest	2,95,96,797	2,95,96,797	30/09/2015	123
30/05/2015	Penal Interest	2,00,901	2,00,901	30/09/2015	123
30/06/2015	Normal Interest	3,08,50,684	3,08,50,684	03/10/2015	95

Demand Date	Particulars	Demand Amt	Collection Amt	Adjusted Date	Delay in days
30/06/2015	Penal Interest	2,51,632	2,51,632	03/10/2015	95

6.2.6. From the above table, it was observed that PBPL had not made any of the repayment by due date except one instance of repayment of interest on April 30, 2014. In remaining instances, the delay was in the range of 3 to 153 days with an average delay of 76 days. Further, it was also observed that PBPL had not repaid a single instalment of principal amount. **Hence, it was alleged that the statement made by DBRL in the postal ballot notice *"This company is fulfilling its obligations of repayment of the loan"* was false and misleading and would constitute a misrepresentation. These Misstatement and omissions were material as this information was reasonably expected to influence the voting decisions of the shareholders. It was alleged that had the company made full and correct disclosure in the postal ballot notice, it was possible that the outcome of the resolution would have been different.**

6.2.7. It was further observed in the postal ballot notice that DBRL had provided the details of its relationship with PBPL as *"WOS of Marine Drive Hospitality & Realty Pvt. Ltd., a company in which KMPs and Promoters/ their relatives have significant influence and the Company has considerable economic interest".* It is further observed that the explanatory statement to the said notice contained disclosure in respect of PBPL as *"Your Company / Promoters have considerable economic interest in the holding company Marine Drive Hospitality & Realty Private Limited. Being* a *wholly owned subsidiary company of Marine Drive Hospitality & Realty Private Limited, your Directors (other than the Independent Directors) and KMP and their relatives (to the extent of their shareholding interest in the Company) may be deemed to be concerned or interested in the said transaction."*

6.2.8. From the aforesaid at Paras 6.2.1. to 6.2.5. above, it was observed that directors, KMPs, relatives of directors/KMPs of DBRL and enterprises controlled by them not only hold 62.51% of equity share capital in PBPL by virtue of their shareholding in MDHRPL but also held a significant portion of different classes of preference share capital of the MDHRPL. Hence, it was alleged that neither the postal ballot notice nor the explanatory statement thereof contains any such information as required under Section 102 of the Companies Act 2013.

6.2.9. From the aforesaid, it was alleged that DBRL had not disclosed following details in the explanatory statement to the postal ballot notice:

(a) The fact that PBPL is not servicing the loan timely and regularly.

(b) The details of the nature of concern or interest, financial or otherwise of its Directors, KMPs and their relatives in the proposed resolution.

(c) The extent of shareholding interest in PBPL of every promoter, director, manager and KMPs of DBRL.

6.2.10. Clause 49(I)(A)(2)(a) & (B)(1)(d) of the erstwhile Listing Agreement requires the notice should have contained adequate, sufficient, full, relevant and reliable information regarding the issues to be discussed at the meeting and the status of loan for which the guarantee/security had been provided and the interest of the directors, KMPs, relatives of directors/KMPs and enterprises controlled by them in the proposed resolution would constitute adequate, sufficient and full information for this purpose. Also, the disclosure of such information is specific requirement of the Section 102 of the Companies Act 2013. It was observed that the postal ballot notice was signed by Noticee No. 1, the then Company Secretary of the company. Hence, it was alleged that Noticee No. 1 had violated the Provisions of Clause 47(a), 49(I)(A)(2)(a), (3)(a) and (B)(1)(d) of the erstwhile Listing Agreement read with Section 11A(2) of SEBI Act and Section 21 of SCRA..

6.3. Failure to disclose material events/ information to Stock Exchanges viz., receipt of Notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 inter *alia* invoking guarantee and symbolic possession of company's properties by BOI.

6.3.1. It was observed from BOI's letter dated August 08, 2022 that BOI vide letter dated May 08, 2017 had issued notice u/s 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as **"SARFAESI Act")** to DBRL, wherein the bank has *inter alia* informed that inspite of the repeated demands/requests for repayment of the amounts due to bank, the principal debtor (PBPL) had not so far paid the same, therefore the guarantor (DBRL) had become liable to pay the said dues. The notice dated May 08, 2017 which was served on PBPL was also sent to DBRL specifically stating that the guarantee had been “invoked”. In view of the same, it was observed that the Corporate Guarantee had been invoked in May 08, 2017 itself.

6.3.2. It was further observed from copy of newspaper notices dated November 24, 2017 published in Business Standard and Navshakti provided by BOI vide letter dated August 08, 2022 that BOI had taken symbolic possession of certain properties including the Leasehold rights of DBRL in Resham Bhavan property admeasuring 1161.34 sq. mt. bearing CS no. 1680 of Fort Mumbai, owned by Goverment of Maharashtra on November 22, 2017.

6.3.3. It was further observed from an email from BOI dated July 02, 2022 that Recall Notice dated 14th August, 2020 was sent by BOI’s Advocate M/s M V Kini & Co., addressed to PBPL and other 9 Noticees (including DBRL). From the said recall notice issued to PBPL and others including DBRL, it was observed that BOI had called upon the Borrower and Guarantors (including DBRL) to pay Rs. 516.50 Crores outstanding as on June 11, 2020 together with further interest of 17.15% p.a. at monthly rests and penal interest @ 2% p.a. from 12.06.2020 till the date of full and final payment and/or realization. Addressee from Sl. No 1 to 10 (which includes DBRL at Sl. No. 5) were asked to pay the entire dues failing which legal actions will be initiated and no further notice will be issued in this respect. It was further observed from Clause 1, of deed of Guarantee dated September 30, 2013 executed by DBRL that *” …. the Guarantor/s hereby irrevocably and unconditionally guarantee the due repayment by the Borrower and further irrevocably and unconditionally guarantee and undertaken to pay to the Bank, within 2 (two) days of demand, all and every sum at any time be owing by the Borrower to the Bank under the said Credit facilities…”.* Hence, from the clause it was observed that the guarantee can be invoked by the bank by issuing a demand letter and in the instant case, the recall notice dated August 14, 2020, though does not use the word “invoke”, it clearly informs that the borrower had defaulted and noticees including DBRL were called upon to pay the amount outstanding within three days.

6.3.4. The dates of aforesaid notices, the outstanding amount as per those notices, and the consolidated net worth of DBRL as per latest available audited financials on dates close to the dates of those notices are tabulated below:

Event	Event Date	Amount Outstanding (Rs)	Net worth (Rs.)
Recall Notice	14/08/2020	516.49 Crores as on 11/6/2020 + interest at 17.15% p.a. + penal interest @ 2% p.a.	2,075.67 Crore (March 31, 2019)
Newspaper publication of possession Notice	25/11/2017	316.24 Crores as on 30/04/2014 + Interest @ 18.95% p.a.	2,678.09 Crore (March 31, 2017)
Notice u/s 13(2) of SARFAESI Act 2002 invoking guarantee	08/05/2017	316.24 Crores as on 30/04/2014 + Interest @ 18.95% p.a.	

6.3.5. It was observed from the above table that considering the outstanding amount of loan as on the dates of aforesaid notices vis-a-vis the net worth as per the consolidated balance sheet of the company around those dates, these events are material as this information had the potential for significant market reaction as the amount due outstanding as on these dates would have eroded the net worth of the company significantly. It was further observed from the corporate guarantee agreement executed on 30/09/2013 that the guarantor is not only liable for repayment of the principal amount but also liable to pay interest, penal interests, other costs, charges, expenses payable by the borrower. Further, since there had been default in repayment of loan by PBPL since beginning, it was observed that the risk of liability devolving upon DBRL is significant and hence these events warranted disclosure under Regulation 30 of LODR Regulations.

6.3.6. Hence, from the aforesaid, it was alleged that Noticees have violated provisions of Regulation 6, Regulation 30, Regulation 4(1)(d)(e)(f)(g)(h)(i)(j), 4(2)(b),(d)(iv) of LODR Regulations read with Section 11A(2) of SEBI Act and Section 21 of SCRA.

7. Upon receipt of SCN dated December 05, 2022, Authorized Representative (AR) of Noticee 2 vide letter dated December 16, 2022 sought inspection of the list of documents provided in the said letter. Vide email dated December 16, 2022, AR of Noticee 2 was informed that it can undertake the inspection of the relied upon documents on December 20, 2022. Thereafter, AR of Noticee 2 vide e-mail dated December 19, 2022 requested to reschedule the Inspection of Documents to any date after December 31, 2022. Considering the request, Inspection of documents was

rescheduled to December 27, 2022. The AR of Noticee 2 undertook the inspection of the documents on December 27, 2022.

8. Upon receipt of SCN dated December 05, 2022, Noticee 1 vide e-mail December 15, 2022, requested for additional time of six months to submit reply to the SCN. Considering the request, Noticee 1 was advised to file the reply to the SCN latest by December 31, 2022. Thereafter, AR of Noticee 1 who is also the AR of Noticee 2 vide letter dated December 30, 2022 again sought inspection of the list of documents provided in the said letter. As the list of documents for which the inspection sought vide letter dated December 30, 2022 were same for which the inspection had already been sought by the AR vide letter dated December 16, 2022 and concluded on December 27, 2022, the same was intimated to AR vide e-mail dated December 30, 2022.

REPLIES OF THE NOTICEES

9. Noticees in their respective written replies have *inter alia* submitted as follows:

<u>Noticee 1 (reply dated July 05, 2023 and October 05, 2023)</u>

9.1. The Noticee submits that there is a long unexplained delay in the issuance of the SCN against the Noticee. SEBI has issued SCN dated 05th December, 2022 i.e., after lapse of about 9 years from the date of original loan and lapse of 7 long years from the issuance of the postal ballot authorizing related party transaction in authorization of such loan. It is submitted that due to long period of time, all the relevant documents pertaining to the present matter, are not available with the Noticee at this point of time. Further, post December 2017 i.e., after his resignation from DBRL, the Noticee has not been associated with DBRL in any capacity. Thus, as of the present date, the Noticee is constrained to respond the SCN on the basis of limited data and to the best of his knowledge.

9.2. Noticee being a Company Secretary was not in any manner associated or connected with PBPL nor the Notice was involved in day-to-day operations of the said Company. PBPL was a wholly owned Subsidiary Company of Marine Drive Hospitality Reality

Pvt. Ltd. (MDHRPL). The Noticee, therefore, couldn't know on real time basis whether PBPL was not servicing the loan on timely and on regularly basis. The Noticee further submits that DBRL and PBPL were distinct entities. Hence, the Noticee verily believed in good faith that PBPL was meeting its obligation on timely and regular basis by repaying the loan amount to Bank of India since default if any by PBPL was never brought to the notice of this Noticee at any point of time.

9.3. *Without prejudice to the aforesaid submission, it is asserted that even if the other concerned management person were aware that PBPL was not fulfilling its loan repayment obligations, the said information was only privy to the said identified person and no iota of evidence has been presented in the SCN to observe that the Noticee was informed, notified by any of the directors of DBRL or PBPL regarding the non-fulfilment of the loan liability or that the Noticee was some-how in knowledge of such a non-payment.*

9.4. *Even the alleged event of the categorization of the PBPL's Loan account as a Non-Performing Asset in December 2015 on account of the delay in loan repayment delay transpired significantly later than the issuance of the postal ballot Notice on July 21, 2015. It is submitted that the mere delay in payment does not necessarily imply that PBPL was failing to fulfill its obligations.*

9.5. *It is submitted that under the laws prevailing during the relevant time period, there was no explicit requirement mandating banks to inform the corporate guarantor when the principal borrower makes delays in repayment. Also, it was not obligatory for banks or principal borrower to furnish bank statements to corporate guarantors.*

9.6. *The disclosure made regarding the Company, its Directors and Key Management Personnel (KMPs) having an indirect interest through MDHRPL should be considered adequate. Therefore, there was no requirement to disclose the specific interest held by the Directors and KMPs of DBRL in MDHRPL.*

9.7. *The Noticee submits that in the Explanatory Statement, it is clearly stated that DBRL/ Promotors have considerable economic interest in the holding Company Marine Drive Hospitality Reality Pvt. Ltd. (MDHRPL) and PBPL being wholly owned Subsidiary*

Company of MDHRPL. In the Explanatory Statement it is clearly stated that the Directors (other than Independent Directors) and KPMs and their relatives (to the extent of their shareholding interest in the company) may be deemed to be concerned or interested in the said transaction. The Noticee submits that such disclosure was made in the Explanatory Statement based on information then made available to the Noticee and such information/ details/ documents which were available on the records of DBRL.

9.8. *Moreover, the disclosure made regarding DBRL and its promoters having a significant economic interest in the holding company MDHRPL, with PBPL being a wholly owned subsidiary of MDHRPL, is deemed as satisfactory disclosure. By disclosing the relevant connections and ownership structure, any potential conflicts of interest or related party transactions can be identified and evaluated. Hence, it can be concluded that the disclosure made adequately fulfils the required disclosure obligations, leaving no necessity for further disclosure.*

9.9. *As regards alleged violation of Section 21 of SCRA, the Noticee submits that Hon'ble WTM, SEBI in Order dated 11.08.2021 has held that Section 21of SCRA which deals with non-compliance with Listing condition is applicable to a listed Entity and thus, cannot be invoked against the Noticee no's 2 to 7 therein.*

9.10. *Notice of BOI does not relate to any debt where DBRL is a debtor and related to a debt taken by PBPL, the same though addressed to DBRL was understood to not have any effect on the affairs of the Company and hence was not disclosed by the Company. The Noticee submits that the above submission needs to be considered with the fact that the primary responsibility of payment of the debt was on PBPL and the security interest created in the assets of the Company was only secondary (as collateral) to the obligation of PBPL and hence it was understood that since the obligation of repayment rests on the shoulders of PBPL (which was backed up by ample security of PBPL itself and guarantees of the promoters), the same will not have any effect on the affairs of the Company and hence the said fact was not disclosed.*

9.11. *At that time, there was no explicit obligation imposed on listed companies to disclose the default in payment of loans borrowed from financial Institutions/banks.*

9.12. *With reference to Newspaper Notice dated November 24,2017 published by Bank of India in Business Standard and Navshakti mentioning the Symbolic Possession of certain properties of DBRL including the Leasehold rights of DBRL in Resham Bhavan property, owned by Government of Maharashtra, it is submitted that no adverse inference can be drawn against the Noticee as the Noticee had no knowledge of any such symbolic possession of DBRL's properties being taken by the BOI.*

<u>Noticee 2 (reply dated July 05, 2023)</u>

9.13. *The Noticee submits that there is a long unexplained delay in the issuance of the SCN against the Noticee. SEBI has issued SCN dated 05th December, 2022 i.e., after lapse of about 9 years from the date of original loan.*

9.14. *The Noticee, at the outset, states and submits that he had joined DBRL as Company Secretary and Compliance Officer with effect from 05th December, 2017.*

9.15. *It needs to be noted that in Para 5.10 of SCN, Mr. Asif Balwa had represented PBPL in Consortium Meeting held on 20th December, 2017. However, the Noticee was not aware of the said Consortium Meeting held on 20th December, 2017 nor the Minutes of the said Meeting attended by Mr. Asif Balwa on behalf of PBPL was provided to the Noticee.*

9.16. *It is submitted that the said Recall Notice dated 14th August, 2020 was sent by M/ s M V Kini & Co., Advocate on behalf of BOI during the period when Central/ State Government had announced strict COVID-19 pandemic restrictions/norms including working from home or working with limited attendance in offices. Moreover, the Registered Office of DBRL was shifted with effect from 01st August, 2020. Hence, under these unavoidable circumstances the Noticee was not aware about the said Recall Notice dated 14th August, 2020 during the relevant period and hence had no knowledge of it which is a matter of fact.*

9.17. *However, without prejudice to the Noticee's submissions as aforesaid it is submitted that BOI vide its letter dated 14th August, 2020 sent through M/ s M V Kini & Co., Advocate to 10 Noticees (including DBRL) and had recalled Term Loan outstanding as on 11th June, 2020 amounting to Rs. 516,48,85,149.82/- with further interest. The said Recall Notice dated 14th August, 2020 could not be construed as "Invocation" of Guarantee provided by DBRL. I, however, say and submit that BOI through M/ s M V Kini & Co., Advocate have served Invocation cum Recall Notice 20th October, 2022 (received by DBRL 28th October, 2022) of which DBRL by letter dated 29th October, 2022 had given intimation under Regulation 30 of SEBI (LODR) Regulation 2015 to both BSE and NSE enclosing therewith copy of letter dated 20th October, 2022.*

9.18. *As regards Recall Notice dated 14th August, 2020, it is submitted that as per Regulation 30 of SEBI (LODR) Regulation, 2015, a Listed Entity is required lo frame Policy on Disclosure of Events or Information and Determination of Materiality and the said Policy is required to be displayed on Listed Entity's Website. It is submitted that DBRL had duly displayed its Policy on Disclosure of Events or Information and Determination of Materiality on its Website. As per the said Policy Mr. Shahid Balwa, Managing Director and Mr. Asif Balwa, CFO had the authority to determine materiality of any Events as specified in the Annexure to the said Policy. Further, the Chairman, Managing Director, Vice Chairman & Managing Director, CFO, Company Secretary and COO are severally authorized to make necessary Disclosures of Events as decided by Authorised Person(s) to the Stock Exchange(s). Hence, the Authorized Person(s) i.e., Mr Shahid Balwa and Mr. Asif Balwa had the authority to determine whether the Recall Notice dated 14th August, 2020 fell under Material Event as per the said Policy and therefore, no adverse inference can be drawn as against the Noticee.*

9.19. *It is submitted that under the erstwhile LODR Regulations applicable during the relevant time, there was no explicit obligation imposed on listed companies to disclose the invocation of the guarantee given by it in any loans borrowed from the Banks/Financial Institutions.*

HEARING

10. In compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on January 04, 2023 vide Hearing Notice dated December 16, 2022 (Noticee 1) and December 27, 2022 (Noticee 2). The Noticees vide letter dated January 02, 2023 requested for postponement of the hearing which had been acceded to and the hearing was re-scheduled on January 13, 2023. Subsequently, SEBI vide e-mail dated January 11, 2023 informed that Noticees had filed settlement Application under Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 and considering the same, hearing scheduled on January 13, 2023 was adjourned until further Notice.

11. SEBI vide e-mail dated June 14, 2023 informed undersigned that settlement application filed by Noticees was rejected. In view of the same, personal hearing was granted to Noticees on June 29, 2023 vide Hearing Notice dated June 16, 2023. Thereafter, in the interest of natural justice, hearing scheduled on June 29, 2023 was extended considering the request of the AR of the Noticees. On September 20, 2023, Noticees appeared through their AR who made submission primarily on the lines of their written replies filed with SEBI vide letter dated July 05, 2023 and the Noticees were advised to file their additional submissions, if any, latest by September 30, 2023 which were filed by Noticees vide letter dated October 05, 2023.

CONSIDERATION OF ISSUES AND EVIDENCE

12. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. Whether Noticee 1 has violated the provisions of Clause 47(a), 49(I)(A)(2)(a),(3)(a) and (B)(1)(d) of the erstwhile listing agreement read with Section 11A(2) of SEBI Act and Section 21 of SCRA and whether Noticees

have violated the provisions of Regulation 6, Regulation 30, Regulation 4(1)(d)(e)(f)(g)(h)(i)(j) and 4(2)(b),(d)(iv) of LODR Regulations read with Section 11A(2) of SEBI Act and Section 21 of SCRA?

II. **Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB and 15A(b) of SEBI Act and section 23H and 23 A(a) of SCRA?**

III. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?**

13. Before proceeding with the matter on merits, I would first deal with the contention of delay in issuance of SCN as raised by the Noticees.

14. I find that there is no unreasonable delay in the present adjudication proceedings. The Investigation Period of the matter was from FY 2013-14 to FY 2020-21. Investigation was carried out in the instant case wherein correspondences were exchanged and summons were issued to various entities during 2021-22. The investigation was completed in October'2022. Thereafter, SEBI recommended adjudication proceedings in the matter and AO was appointed in the matter on November 15, 2022 and SCN was issued on December 05, 2022.

15. In this regard, it is pertinent to refer to observations of the Hon'ble SAT in the matter of Bipin R Vora vs SEBI dated March 22, 2006, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in*

this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".

16. In this context, I would also like to refer the observations of Hon'ble Supreme Court of India in the matter of *State vs. R. Vasanthi Stanley* reported in AIR 2015 SC 3691 wherein the Apex Court has held that "…*serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial*…".

17. Therefore, in view of the chronology of events as narrated in paragraph 14 of this order, I conclude that, there was no unreasonable delay in the matter as it was being investigated for the likely violations of different regulations and SEBI has already initiated action pursuant to the findings of the investigation. Hence, I conclude that there is no merit in the objections raised by the Noticees regarding the delay in issuance of SCN.

Issue I. Whether Noticee 1 has violated the provisions of Clause 47(a), 49(I)(A)(2)(a), (3)(a) and (B)(1)(d) of the erstwhile listing agreement read with Section 11A(2) of SEBI Act and Section 21 of SCRA and whether Noticees had violated the provisions of Regulation 6, Regulation 30, Regulation 4(1)(d)(e)(f)(g)(h)(i)(j) and 4(2)(b),(d)(iv) of LODR Regulations read with Section 11A(2) of SEBI Act and Section 21 of SCRA?

18. Before adverting to the factual conspectus of the case, I note that the Noticees had been alleged to have violated applicable provisions of LODR Regulations. Therefore, the text of the said provisions are reproduced hereunder:

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

"11A.

…………

…………

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto."

Relevant provisions of SCRA:

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

Relevant provisions of erstwhile Listing Agreement:

"47. The Company agrees

a) to appoint the Company Secretary to act as Compliance Officer who will be responsible for monitoring the share transfer process and report to the Company's Board in each meeting. The compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, Registrar of Companies, etc., and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and complaints of related matter;"

"49. CORPORATE GOVERNANCE

I. *The company agrees to comply with the provisions of Clause 49 which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below. In case of any ambiguity, the said provisions shall be interpreted and applied in alignment with the principles.*

A. The Rights of Shareholders

……………

2. The company should provide adequate and timely information to shareholders.

a. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.

……………

3. The company should ensure equitable treatment of all shareholders, including minority and foreign shareholders.

a. All shareholders of the same series of a class should be treated equally.

……………

B. Role of stakeholders in Corporate Governance

1. The company should recognise the rights of stakeholders and encourage cooperation between company and the stakeholders.

……………

d. Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process."

<u>Relevant provisions of LODR Regulations:</u>

"Principles governing disclosures and obligations.

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

……………

(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

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

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

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

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

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

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

……………

(b) Timely information: The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:

(i) sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.

(ii) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership.

(iii)rights attached to all series and classes of shares, which shall be disclosed to investors before they acquire shares.

……………

(d) Role of stakeholders in corporate governance: The listed entity shall recognise the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:

……………

(iv)The listed entity shall devise an effective vigil mechanism/whistle blower policy enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

Compliance Officer and his/her Obligations.

6. (1) A listed entity shall appoint a qualified company secretary as the compliance officer.

(2) The compliance officer of the listed entity shall be responsible for-

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
(c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
(d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

Provided that the requirements of this regulation shall not be applicable in the case of units issued by mutual funds which are listed on recognised stock exchange(s) but shall be governed by the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

Disclosure of events or information.
30. (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.
(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.
(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).
(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:
(a)the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
(b)the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;
(c)In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

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

(5) The board of directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) under this regulation and the contact details of such personnel shall be also disclosed to the stock exchange(s) and as well as on the listed entity's website.

(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information: Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay: Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein.

(7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

(8) The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

(9) The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.

(10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information: Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.

(11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).

(12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.

Wrong Disclosure with respect to status of the loan and failure to include material relevant information in the postal ballot:

19. From the material available on record, I note that DBRL had given a Corporate Guarantee in favour of BOI as collateral security for the loan of Rs. 225 crores availed by one PBPL. The said Corporate Guarantee was executed on October 15, 2013. PBPL is a wholly-owned subsidiary of MDHRPL and as per the Annual report of DBRL for the FY 2013-14, MDHRPL was shown as "Enterprise where individuals i.e. KMP and their relatives have significant influence". These facts are not disputed by the Noticees. I further note that in terms of SEBI circular CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014, DBRL had sought ratification/approval of shareholders by way of a special resolution on September 02, 2015 through Postal Ballot of all existing material related party transactions including the Corporate Guarantee given by the Company in favour of BOI on the loan availed by PBPL along with other existing and proposed transactions. It was alleged that explanatory statement to the proposed resolution in the Postal ballot notice dated July 21, 2015 signed by Noticee 1 issued in this regard states that **PBPL is fulfilling its obligations of repayment of the loan** despite the fact that till the date of Postal Ballot notice i.e. from October'2013 to June'2015, PBPL had not made any of the repayment by due date except in one instance. In the remaining Instance, delay was in the range of 3 to 153 days with an average delay of 76 days. Moreover, PBPL had also not repaid the Principal Instalment of Rs. 10.71 Crores which was due on February'2015.

20. I note that Noticee 1 in its submission made vide letter dated July 05, 2023 contended that he was not informed about the non-fulfilment of the loan liability by PBPL and hence the Noticee believed in good faith that PBPL was meeting its financial obligations on timely and regular basis. Also, it was not obligatory for banks or principal borrower to furnish bank statement to corporate guarantors. In this regard, I find that Noticee 1 being Company Secretary and Compliance Officer of the Company signed the Postal Ballot Notice dated July 21, 2015. I further note that the correct

status of loan for which the guarantee/security had been provided by DBRL was relevant and material since it was reasonably expected to influence the voting decisions of the shareholders. I find from the aforesaid provisions of erstwhile Listing Agreement that Clause 47(a) casts specific responsibilities on compliance officer with respect to implementation of various clauses, rules, regulations and other directives of authorities such as SEBI, Stock Exchanges, Registrar of Companies, etc. and Clause 49(I)(A)(2)(a) & (B)(1)(d) of the erstwhile Listing Agreement requires that the notice should have contained adequate, sufficient, full, relevant and reliable information regarding the issues to be discussed at the meeting. Noticee 1 being Company Secretary and Compliance Officer of DBRL should ensure true and fair disclosure in the postal ballot notice. However, there is no material available on record, which shows that he was informed about the non-fulfilment of the loan liability by PBPL. In view of the same, I am inclined to grant benefit of doubt to the Noticee.

21. I note that Noticee 1 in his submissions further contended that mere delay in payment does not necessarily imply that PBPL was failing to fulfill its obligations. In this regard, from the materials available on record, I find that till the date of Postal Ballot notice i.e. from October'2013 to June'2015, PBPL had not made any of the repayment by due date except in one instance. In the remaining Instance, delay was in the range of 3 to 153 days with an average delay of 76 days. Moreover, PBPL had also not repaid the Principal Instalment of Rs. 10.71 Crores which was due on February'2015. These lapses reveals that PBPL is not fulfilling its financial obligations timely and regularly. Hence, the contention of the Noticee 1 in this regard is not tenable.

22. I further note that it was alleged that in the postal ballot notice , DBRL had just provided the details of its relationship with PBPL as *"WOS of Marine Drive Hospitality & Realty Pvt. Ltd., a company in which KMPs and Promoters/ their relatives have significant influence and the Company has considerable economic interest"* and the explanatory statement to the said notice contained disclosure in respect of PBPL as *"Your Company / Promoters have considerable economic interest in the holding company*

Marine Drive Hospitality & Realty Private Limited. Being a wholly owned subsidiary company of Marine Drive Hospitality & Realty Private Limited, your Directors (other than the Independent Directors) and KMP and their relatives (to the extent of their shareholding interest in the Company) may be deemed to be concerned or interested in the said transaction". However, the details of the nature of concern or interest, financial or otherwise of its Directors, KMPs and their relatives in the proposed resolution and the extent of shareholding interest in PBPL of every promoter, director, manager and KMPs of DBRL as required under Clause 49(I)(A)(2)(a) & (B)(1)(d) of the erstwhile Listing Agreement and Section 102 of the Companies Act, 2013 was not disclosed in the explanatory statement to the Postal Ballot Notice.

23. Extracts of Section 102 of the Companies Act 2013 are reproduced below:

"102. Statement to be annexed to notice.

(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely: —

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1), —

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than-

(i) the consideration of financial statement and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company ***relates to or affects any other company, the extent of shareholding interest in that other company of every promoter. director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent of the paid-up share capital of that company, also be set out in the statement."***

24. I note that Noticee 1 in his submission contended that the disclosure made in explanatory statement annexed to the Notice is a satisfactory disclosure since by disclosing that DBRL and its promoters have considerable economic interest in MDHRPL and PBPL being wholly owned subsidiary company of MDHRPL and the directors/KMPs and their relatives may be deemed to be concerned or interested in the said transaction to the extent of their shareholding interest in the Company. Further, any potential conflicts of interest or related party transactions can be identified and evaluated and hence, there is no necessity for further disclosure. Noticee 1 further contended that he submits such disclosure based on the information made available to him and the information made available on the records of DBRL.

25. From a bare perusal of the aforementioned provisions of erstwhile Listing Agreement, I find that Clause 49(I)(A)(2)(a) & (B)(1)(d) of the erstwhile Listing Agreement requires that the notice should contain adequate, sufficient, full, relevant and reliable information regarding the issues to be discussed at the meeting. Moreover, Section 102 of the Companies Act, 2013 also mandates that nature of concern or interest, financial or otherwise, if any, in respect of each items of every director, manager, other KMP and their relatives and where any item to be transacted at the meeting relates to or affects any other Company, shall be set out in the annexure to the notice calling such meeting.

26. I find that directors, KMPs, relatives of directors/KMPs of DBRL and enterprises controlled by them not only hold 62.51% of equity share capital in PBPL by virtue of their Equity shareholding in MDHRPL but also held a significant portion of different classes of preference share capital of the MDHRPL.

27. In view of the above, I find that the contention of the Noticee 1 that disclosure made in explanatory statement annexed to Notice was satisfactory disclosure is devoid of merit since the details of the nature of concern or interest, financial or otherwise of its Directors, KMPs and their relatives in the proposed resolution and the extent of shareholding interest in PBPL of every promoter, director, manager and KMPs of DBRL was not disclosed in the notice which constitute adequate, sufficient and full information for this purpose as required under law.

28. I note that Noticee No. 1 in his submission contended that Section 21 of SCRA that deals with non-compliance with Listing Condition is applicable to a Listed Entity. Noticee No. 1 also provides reference to the Hon'ble Whole Time Member, SEBI order dated August 11, 2021. From the perusal of Section 21 of SCRA, I find that Section 21 is applicable to a listed entity and thus cannot be invoked against the Noticee 1.

29. I find that Noticee 1 while acting as the Compliance officer was in employment of the Company in July, 2015 when postal ballot notice was issued and he resigned from the Company in December, 2017. It is the duty of the Company Secretary who is appointed as the Compliance Officer to ensure true and fair disclosure as per the requirements of law. However, considering the fact that Noticee 1 had acted based on the information made available to him and further the fact that there is no material available on record which shows that the information pertaining to the default as well as delay in servicing of financial obligations pertaining to loan by PBPL was known to the Noticee 1. It is also pertinent to mention that the events occurred in 2015 and the Noticee 1 resigned in 2017, I am inclined to grant benefit of doubt to the Noticee as regards his knowledge of the material events pertaining to the case. Such knowledge

of events cannot be attributed to him at this juncture. Hence, the alleged violation of the Provisions of Clause 47(a), 49(I)(A)(2)(a), (3)(a) and (B)(1)(d) of the erstwhile Listing Agreement read with Section 11A(2) of SEBI Act and Section 21 of SCRA is not conclusively proved as against the Noticee 1 on the basis of the facts and circumstances of the case and the evidence available on record.

Failure to disclose material events/ information to stock exchanges viz., receipt of Notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 inter *alia* invoking guarantee and symbolic possession of company's properties by BOI.

30. From the material available on record, I note that SCN alleges that DBRL had failed to disclose following material events/information to Stock Exchanges and hence, the Noticees being Company Secretary during this period failed to comply with the provisions of Regulation 6, Regulation 30, Regulation 4(1)(d)(e)(f)(g)(h)(i)(j), 4(2)(b),(d)(iv) of LODR Regulations read with Section 11A(2) of SEBI Act and Section 21 of SCRA:

30.1. BOI vide letter dated May 08, 2017 had issued Notice u/s 13(2) of SARFAESI Act to DBRL, wherein it was specifically stated that the guarantee had been "invoked".

30.2. Newspaper Notices dated November 24, 2017 published in Business Standard and Navshakti revealed that BOI had taken symbolic possession of certain properties including the Leasehold rights of DBRL in Resham Bhavan property admeasuring 1161.34 sq. mt. bearing CS no. 1680 of Fort Mumbai, owned by Government of Maharashtra on November 22, 2017.

30.3. It is pertinent to mention that a recall Notice dated August 14, 2020 was sent by BOI's Advocate M/s M V Kini & Co., addressed to PBPL and other 9 Noticees (including DBRL) wherein BOI had called upon the Borrower and Guarantors (including DBRL) to pay Rs. 516.50 Crores outstanding as on June 11, 2020 together with further interest of 17.15% p.a. at monthly rests and penal interest @ 2% p.a. from 12.06.2020 till the date of full and final payment and/or realization.

31. I note that the dates of aforesaid notices, the outstanding amount as per those notices, and the consolidated net worth of DBRL as per latest available audited financials on the dates close to dates of those notices are as follows:

Sl. No.	Event	Event Date	Amount Outstanding (Rs)	Net worth (Rs.)
a	Recall Notice	14/08/2020	516.49 Crores as on 11/6/2020 + interest at 17.15% p.a. + penal interest @ 2% p.a.	2,075.67 Crore (March 31, 2019)
b	Newspaper publication of possession Notice	25/11/2017	316.24 Crores as on 30/04/2014 + Interest @ 18.95% p.a.	2,678.09 Crore (March 31, 2017)
C	Notice u/s 13(2) of SARFAESI Act 2002 invoking guarantee	08/05/2017	316.24 Crores as on 30/04/2014 + Interest @ 18.95% p.a.	

32. From the aforesaid table, considering the outstanding amount of loan as on the dates of aforesaid notices vis-a-vis the net worth as per the consolidated balance sheet of the company around those dates, I find that these events are material as this information had the potential for significant market reaction as the amount due outstanding as on these dates would have eroded the net worth of the company significantly and hence these events warranted disclosure under Regulation 30 of LODR Regulations.

33. I note that Noticee 1 was associated with DBRL as Company Secretary and Compliance Officer till December'2017 and hence the events mentioned in Sl. No. b and c of para 31 of this order occurred during the period when Noticee 1 was serving as Company Secretary and Compliance Officer of DBRL. I note that Noticee 1 in his submission contended that the notice of BOI does not relate to any debt where DBRL is a debtor and related to a debt taken by PBPL. The primary responsibility of payment of the debt was on PBPL and the security interest created in the assets of the Company was only secondary to the obligation of PBPL. It was understood that since

the obligation of repayment rests on the shoulders of PBPL (which was backed up by ample security of PBPL itself and guarantees of the promoters), the same will not have any effect on the affairs of the Company and hence the said fact was not disclosed. In this regard, I note that Notice dated May 08, 2017 issued u/s 13(2) of SARFAESI Act to DBRL specifically stated that the guarantee had been “invoked”. Hence, the contention of the Noticee No. 1 in this regard is not tenable.

34. In reference to Newspaper Notice dated November 24, 2017, Noticee 1 contended that he had no knowledge of any such symbolic possession of DBRL's properties being taken by the BOI. In this regard, I find that there is no material available on record which shows that this Information had been made available to Noticee No. 1. Hence, on the basis of material available on record, it is difficult to attribute knowledge on the part of Noticee 1.

35. It was further observed from the corporate guarantee agreement executed on 30/09/2013 that the guarantor is not only liable for repayment of the principal amount but also liable to pay interest, penal interests, other costs, charges, expenses payable by the borrower. Further, since there had been default in repayment of loan by PBPL since beginning, it was observed that the risk of liability devolving upon DBRL is significant and hence these events warranted disclosure under Regulation 30 of LODR Regulations.

36. I note that Noticee 2 was associated with DBRL as Company Secretary and Compliance Officer with effect from December 05, 2017 and hence the events mentioned in Sl. No. a of para 31 occurred during the period when Noticee 1 was serving as Company Secretary and Compliance Officer of DBRL. I note that Noticee 2 in his submission contended that Noticee was not aware about the *Recall Notice dated August 14, 2020 which was sent by M/ s M V Kini & Co., Advocate on behalf of BOI since during that period Central/ State Government had announced strict COVID-*

19 pandemic restrictions/norms including working from home or working with limited attendance in offices and the Registered Office of DBRL was also shifted with effect from August 01, 2020. In this regard, I find that there is no material available on record which shows that this Information had been made available to the Noticee. In view of the same, I am inclined to grant benefit of doubt to the Noticee.

37. I further find that Noticee 2 in his submission also contended that Recall Notice dated August 14, 2020 recalled Term Loan outstanding as on 11th June, 2020 amounting to Rs. 516,48,85,149.82/- with further interest and thus could not be construed as "Invocation" of Guarantee provided by DBRL. In this regard, I note that the corporate guarantee agreement executed on September 30, 2013, contains the clause – "…. *the Guarantor/s hereby irrevocably and unconditionally guarantee the due repayment by the Borrower and further irrevocably and unconditionally guarantee and undertaken to pay to the Bank, within 2 (two) days of demand, all and every sum at any time be owing by the Borrower to the Bank under the said Credit facilities*…". Hence, from the clause it was observed that the guarantee can be invoked by the bank by issuing a demand letter and in the instant case, the recall notice dated August 14, 2020, though does not use the word "invoke", it clearly informs that the borrower has defaulted and noticees including DBRL were called upon to pay the amount outstanding within three days. Hence, the contention of the Noticee in this regard is not devoid of merit.

38. I note that Noticees further contended that there was no explicit obligation imposed on listed companies to disclose the invocation of the guarantee given by it in any loans borrowed from banks/financial Institutions. In this regard, I find that Regulation 30 specifically states that in case where an event occurs which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures thereof and as discussed above in para 32 and 33 of this order, these events are material and warranted disclosure

under Regulation 30 of LODR Regulations. Hence, the contention of the Noticees in this regard is not tenable.

39. I note that Noticee 2 in its submission further contended that DBRL had duly displayed its Policy on Disclosure of Events or Information and Determination of Materiality on its Website *(As per Regulation 30 of LODR Regulations, a Listed Entity is required lo frame Policy on Disclosure of Events or Information and Determination of Materiality and the said Policy is required to be displayed on Listed Entity's Website).* As per the said Policy, Mr. Shahid Balwa, Managing Director and Mr. Asif Balwa, Chief Financial Officer (CFO) had the authority to determine materiality of any Events as specified in the Annexure to the said Policy and the Chairman, Managing Director, Vice-Chairman & Managing Director, CFO, Company Secretary and COO are severally authorized to make necessary Disclosures of Events as decided by Authorised Person(s) to the Stock Exchange(s). Hence, the Authorized Person(s) i.e., Mr. Shahid Balwa and Mr. Asif Balwa had the authority to determine whether the Recall Notice dated August 14, 2020 fell under Material Event as per the said Policy. From the perusal of the said policy, I find that Mr. Shahid Balwa, Managing Director and Mr. Asif Balwa, Chief Financial Officer (CFO) have the authority to determine materiality of any Events as specified in the Annexure A to that Policy and the said policy is effective from December 01, 2015. Hence, the contention of the Noticee in this regard is tenable.

40. I have also note the submission of Noticee 2 that BOI through M/ s M V Kini & Co., Advocate had served Invocation cum Recall Notice dated October 20, 2022 (received by DBRL on October 28, 2022) pertaining to which DBRL by letter dated October 29, 2022 had given intimation under Regulation 30 of LODR Regulations to the Stock Exchanges.

41. Hence, in view of the above, considering the facts and circumstances of the instant case that the authority to determine materiality of events lies with Mr. Shahid Balwa, Managing Director and Mr. Asif Balwa, Chief Financial Officer (CFO) and the Noticees

are authorized to make necessary disclosures of events as decided by Authorised Person(s) to the Stock Exchange(s) and also there is no material available on record which shows that the information regarding Newspaper Notice dated November 24, 2017 was communicated to Noticee 1 and the Recall Notice dated August 14, 2020 was communicated to Noticee 2. On the basis of the facts and circumstances of the case and the evidence available on record, the alleged violation of the provisions of Regulation 6, Regulation 30, Regulation 4(1)(d)(e)(f)(g)(h)(i)(j), 4(2)(b),(d)(iv) of LODR Regulations read with Section 11A(2) of SEBI Act and Section 21 of SCRA is not conclusively proved as against the noticees. Accordingly, consideration of Issue II and III does not arise.

ORDER

42. In view of the above observations/findings and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Section 23-I of the SCRA read with Rule 5 of the Adjudication Rules, and Rule 5 of the SCRA Rules, the adjudication proceedings initiated against the Noticees namely Shri SAK Narayanan and Shri Jignesh Hasmukhlal Shah vide SCN dated December 05, 2022, is disposed of without imposition of any monetary penalty.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : October 31, 2023
Place : Mumbai

Biju S
Adjudicating Officer