

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11 (1), 11(4) and 11B(1) of the Securities and Exchange Board of India Act, 1992 read with Section 12A of the Securities Contracts (Regulation) Act, 1956

In Re: Securities Contracts (Regulation) Rules, 1957 and Listing Agreement

In respect of:

| Sl. No. | Name of the Entity  | PAN        |
|---------|---------------------|------------|
| 1.      | Falcon Tyres Ltd.   | AAACF7258E |
| 2.      | Pawan Kumar Ruia    | ACNPR3823K |
| 3.      | Sunil Bhansali      | AKRPB5641H |
| 4.      | S. Ravi             | ADEPR0817K |
| 5.      | Mohan Lall Chauhan  | ADAPC7694M |
| 6.      | Damodar Prasad Dani | ACHPD7565J |

In the matter of Falcon Tyres Limited and Dunlop India Limited

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**BACKGROUND**

1. Securities and Exchange Board of India (“SEBI”) conducted an investigation in the matter of acquisition of shares of Falcon Tyres Limited (“Falcon”) and Dunlop India Limited (“Dunlop”) by certain entities through preferential allotment for the period from April 26, 2012 and April 28, 2012 (“Investigation Period”).
2. Falcon was incorporated on November 29, 1973 in Bangalore. The main object of the company was to manufacture tyres and tubes for scooters, motorcycles and mopeds and various types of industrial ‘V’ belts. Dunlop was incorporated as Dunlop Rubber Company (India) Limited in 1923. In 1928, it was renamed as Dunlop India Ltd. Falcon and Dunlop were taken over by the Ruia Group in 2005.

### **SHOW CAUSE NOTICE**

Consequent to the completion of investigation, a Show Cause Notice ("**SCN**") dated April 24, 2018 was served on Falcon Tyres Ltd., Mr. Pawan Kumar Ruia, Mr. Sunil Bhansali, Mr. S. Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani (collectively referred to as "**Noticees**") to show cause as to why suitable actions/directions in terms of Sections 11 (1), 11(4) and 11B of the Securities and Exchange Board of India, Act, 1992 ("**SEBI Act**") read with Section 12A of Securities Contracts (Regulation) Act, 1956 ("**SCRA**") should not be initiated against them for the alleged violation of the provisions of regulations Rule 19(A) of Securities Contracts (Regulation) Rules, 1957 ("**SCRR**") and clause 40A of Listing Agreement by all the Noticees for non-compliance of Minimum Public Shareholding ("**MPS**") by Falcon and Dunlop.

3. The facts as set out in the SCN are as follows:

3.1. Manali Properties & Finance Limited ("**Manali**") is one of the group companies of Falcon and it also forms part of the Promoter Group of Falcon and Dunlop (Manali held 3.56% of shares of Falcon and 0.03% of shares of Dunlop as on quarter ended March, 2012). Another company Stephens Financial Services Pvt. Ltd. ("**Stephens**") is also one of the group companies of Dunlop.

3.2. Manali had granted a loan of Rs. 144.05 crore to Falcon on January 7, 2008. The said loan was later assigned to three companies viz., Regus Impex Private Limited ("**Regus**"), Suncap Commodities Limited ("**Suncap**") and Salputri Commerce Private Limited ("**Salputri**") vide separate Assignment Deeds dated February 9, 2012 (collectively referred to as "**Assignee Companies**"). Similarly, Stephens granted loan of Rs. 62,39,46,000/- to Dunlop on September 15, 2011, out of which an amount of Rs. 60,00,00,000/- was in turn assigned to Suncap, Regus and Salputri vide separate Assignment Deeds dated January 14, 2012. As per the terms of the said Deeds, in the event of any default under the agreement by the borrower (Falcon/Dunlop) to repay any amount on demand, the assignees (viz. Suncap, Salputri and Regus) shall have the right to get either part of loan or entire loan converted into equity shares of Falcon/Dunlop in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**"). Further, it was also mentioned that the assignors

(Manali/Stephens) would not be liable in case of any default by the borrowers (Falcon/Dunlop) to repay the amount to the assignees (viz. Suncap, Regus and Salputri).

3.3. It is observed that Manali and Stephens had assigned loans of over Rs. 200 crore to three entities namely Suncap, Salputri and Regus, which as per the submissions of Manali and Stephens were unrelated to them. Further, these three entities were hardly doing any business activity and their net worth was nowhere close to the amount of loan assigned to them. It was further observed that there was no collateral or other securities for the said loan. Further, as per the Deed of Assignment, the consideration for the said assigned loan was required to be repaid by Suncap, Salputri and Regus to Manali by October 31, 2012 or earlier, failing which penal interest would be charged from the entities by Manali / Stephens. However, no penal interest was imposed by Manali / Stephens, despite the fact that Suncap, Salputri and Regus started repayment only in April/May 2013.

3.4. Subsequently, Falcon in its Extra Ordinary General Meeting (“EOGM”) held on April 26, 2012 resolved to allot a total of 4,33,87,048 equity shares on a preferential basis to Suncap, Regus and Salputri against an outstanding loan of Rs.144,04,49,995/-. Similarly, Dunlop allotted 5,00,00,000 equity shares on a preferential basis to Suncap, Regus and Salputri against an outstanding loan of Rs. 60,00,00,000/- on April 28, 2012. The details regarding assignments of loans and the allotment of shares made by Falcon and Dunlop to the aforesaid entities are as under:

#### **Falcon**

| Sl. No. | Name of the allottees | Outstanding Loan Amount (Rs.) | No. of Equity shares allotted | % of Shareholding |
|---------|-----------------------|-------------------------------|-------------------------------|-------------------|
| 1.      | Suncap                | 50,41,57,505                  | 1,51,85,467                   | 19.60             |
| 2.      | Regus                 | 50,41,57,505                  | 1,51,85,467                   | 19.60             |
| 3.      | Salputri              | 43,21,34,985                  | 1,30,16,114                   | 16.80             |
|         | <b>Total</b>          | <b>1,44,04,49,995</b>         | <b>4,33,87,048</b>            | <b>56.00</b>      |

#### **Dunlop**

| Sl. No. | Name of the allottees | Outstanding Loan Amount (Rs.) | No. of Equity shares allotted | % of Shareholding |
|---------|-----------------------|-------------------------------|-------------------------------|-------------------|
| 1.      | Suncap                | 21,00,00,000                  | 1,75,00,000                   | 14.35             |
| 2.      | Regus                 | 21,00,00,000                  | 1,75,00,000                   | 14.35             |
| 3.      | Salputri              | 18,00,00,000                  | 1,50,00,000                   | 12.30             |
|         | <b>Total</b>          | <b>60,00,00,000</b>           | <b>5,00,00,000</b>            | <b>41.00</b>      |

3.5. As a result of the said preferential allotment of 4,33,87,048 equity shares to Suncap, Regus and Salputri on April 26, 2012 by Falcon, there was an increase in total share capital of Falcon from 3,40,85,532 shares to 7,74,72,580 shares. Similarly, the share capital of Dunlop also increased from 7,19,82,875 shares to 12,19,82,875 shares on April 28, 2012.

3.6. The details of the shareholding of Falcon and Dunlop the quarters ended March 2012, June 2012 and September 2012:

### **Falcon**

| Particulars                 | Quarter ended March 2012 |                    |               | Quarter ended June 2012* |                    |               | Quarter ended September 2012 |                    |               |
|-----------------------------|--------------------------|--------------------|---------------|--------------------------|--------------------|---------------|------------------------------|--------------------|---------------|
|                             | No of share holders      | No. Of shares      | %             | No of share holders      | No. Of shares      | %             | No of share holders          | No. Of shares      | %             |
| Promoter Holding            | 2                        | 2,47,26,944        | 72.54         | 2                        | 2,44,94,944        | 71.86         | 2                            | 2,44,94,944        | 31.62         |
| Public/Non-promoter Holding | 4145                     | 93,58,588          | 27.46         | 4402                     | 95,90,588          | 28.14         | 4423                         | 5,29,77,636        | 68.38         |
| <b>Total issued shares</b>  | <b>4147</b>              | <b>3,40,85,532</b> | <b>100.00</b> | <b>4404</b>              | <b>3,40,85,532</b> | <b>100.00</b> | <b>4425</b>                  | <b>7,74,72,580</b> | <b>100.00</b> |

\*As noted from the investigation report, Falcon failed to disclose the correct shareholding pattern for the quarter ended June 2012.

### **Dunlop**

| Particulars                 | Quarter ended March 2012 |                    |               | Quarter ended June 2012 |                     |               | Quarter ended September 2012 |                     |               |
|-----------------------------|--------------------------|--------------------|---------------|-------------------------|---------------------|---------------|------------------------------|---------------------|---------------|
|                             | No of shareholders       | No. Of shares      | %             | No of shareholders      | No. Of shares       | %             | No of shareholders           | No. Of shares       | %             |
| Promoter Holding            | 4                        | 4,67,80,865        | 64.99         | 4                       | 4,67,80,865         | 38.35         | 4                            | 4,67,80,865         | 38.35         |
| Public/Non-promoter Holding | 40,579                   | 2,52,02,010        | 23.71         | 40,737                  | 7,52,02,010         | 61.65         | 40,600                       | 7,52,02,010         | 61.65         |
| <b>Total issued shares</b>  | <b>40,583</b>            | <b>7,19,82,875</b> | <b>100.00</b> | <b>40,741</b>           | <b>12,19,82,875</b> | <b>100.00</b> | <b>40,604</b>                | <b>12,19,82,875</b> | <b>100.00</b> |

3.7. From the aforementioned tables, it is observed that the shareholding of preferential allottees viz. Suncap, Salputri and Regus, (i.e. total 56 % and 41% of shareholding held by them in Falcon and Dunlop respectively) were shown under the category of public. Accordingly, Falcon and Dunlop had declared their public shareholding as 68.38% and 61.65% and Promoter shareholding as 31.62% and 38.35% respectively. However, it is observed that if the Promoter shareholding of Falcon is taken along with the preferential allottees, it comes to 87.62% of total shares. Similarly, in the case of Dunlop, the Promoter shareholding taken together

with the preferential allottees comes to 79.35% as on the date of allotment of preferential shares.

3.8. Thus, on the basis of the findings brought out in the foregoing paragraphs, it was alleged that the entire scheme of assignment of loan by Manali and Stephens to three entities namely Suncap, Salputri and Regus and subsequent conversion of the said loan into equity shares allotted by way of preferential allotment, was done by Falcon and Dunlop in collusion with their group companies and the three preferential allottees, with a view to avoid MPS requirement under clause 40A of Listing Agreement. The preferential allottees together with the promoter entities of Falcon were holding 87.62% of the total shares of Falcon and 79.35% of Dunlop as on the date of allotment of preferential shares. Due to the issuance of preferential allotment of shares to these three entities, the public shareholding of Falcon and Dunlop had been claimed to have crossed the required minimum of twenty-five percentage.

3.9. Therefore, it was alleged that the entire scheme of Falcon and Dunlop initially availing loan from Manali and Stephens, assignment of the said loan to the three entities namely Suncap, Salputri and Regus and subsequent conversion of the said loans into equity shares allotted by way of preferential allotment by Falcon and Dunlop in collusion with its group companies, Manali and Stephens, was with a view to avoid the MPS Requirement. Thus, it was alleged that Falcon and Dunlop have issued shares on preferential basis as mentioned above with an intention to circumvent the MPS requirement. With the issuance of equity shares on preferential allotment to Suncap, Salputri and Regus the public shareholding in Falcon and Dunlop fell below the required minimum of 25% which is in violation of the provisions of Rule 19(A) of SCRR and clause 40A of Listing Agreement.

3.10. Mr. Pawan Kumar Ruia and Mr. Sunil Bhansali were members of the Board of Directors of Falcon and Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani were members of the Board of Directors of Dunlop. Mr. S. Ravi was also a member of Board of Directors in both Falcon and Dunlop during the relevant period. In view of the aforesaid findings of the investigation, it was alleged that Falcon and its Directors, viz. Mr. Pawan Kumar Ruia, Sunil Bhansali and Mr. S. Ravi (**"Noticees 1-4"**) and the Directors of Dunlop India Ltd., viz. Mr. S. Ravi (who is also Director in Falcon), Mr. Mohan Lall Chauhan, Mr. Damodar Prasad Dani

(“**Noticees 4-6**”) have violated the provisions of Rule 19(A) of SCRR and clause 40A of Listing Agreement read with Regulation 38 and Regulations 103 of the SEBI LODR Regulations.

3.11. It is observed that vide order dated January 31, 2013, Hon’ble High Court of Calcutta has directed winding up of Dunlop.

4. Based on the above, Noticees 1-6 were called upon to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of the SEBI Act read with Section 12A of SCRA, should not be issued against them for the aforementioned alleged violations.

**REPLY and HEARING**

5. In response to the SCN, Mr. S. Ravi vide his email dated April 24, 2018 enclosed his resignation letter dated September 21, 2014 which states that due to health reasons he is stepping down from the Board of Falcon as a Director and his resignation letter dated July 18, 2014 which states that due to personal reasons he is stepping down from the Board of Dunlop as a Director. Vide letter dated May 10, 2018, he reiterated his earlier submission.
6. Mr. Sunil Bhansali vide his email dated May 15, 2018 *inter alia* submitted as follows:
  - 6.1. He joined Falcon on September 30, 2008 as an employee Director and was relieved from the company with effect from November 16, 2012. He was stationed at Mysore factory and his job responsibilities were to take care of day to day factory operation particularly procurement of materials, logistics arrangements, optimization of production etc.
  - 6.2. At the time of granting of loan by Manali to Falcon, he was not working with Falcon. Further the three companies are not part of the Promoter Group.
  - 6.3. Board of Directors and EOGM had recommended / approved the share allotment on the basis of facts placed before them. Board Meeting and EOGM was also attended by the Independent Directors.
  - 6.4. There is no evidence of wrong doing by him.
7. Mr. Pawan Kumar Ruia vide his letter dated June 19, 2018 requested for two weeks’ time to submit a reply to the SCN as it was difficult for him to retrieve documents or past record of Falcon and Dunlop as in Falcon, Interim Resolution Professional is appointed and Dunlop is under liquidation. Vide his letter dated August 31, 2018, Mr. Pawan Kumar Ruia *inter alia* submitted as follows:

- 7.1. The loan of Rs. 144.05 crore was granted by Manali to Falcon in January, 2008 whereas assignment was done in February, 2012. Here the investigation is suggesting that Manali & Falcon along with alleged cohorts viz., Suncap, Salputri and Regus waited for more than four years to assign loan and then converted them in to equity to avoid MPS. The allegation made in the SCN is denied and it is stated that the time gap between the two events implies that the entire happenings were not pre-planned but was carried out of commercial considerations.
- 7.2. The assignment of loans was done by Manali. He was not on the Board nor was he related to the operation of Manali. So he cannot comment on the commercial arrangements and considerations entered by Manali with the three companies. Further, as per established law, it is the prerogative of the companies to regulate its business affairs and it is not open for the investigating agencies to question the same.
- 7.3. It is also alleged that the three companies viz., Suncap, Salputri and Regus worked in collusion with Manali and Stephens and subsequently with Falcon and Dunlop. However, no document or information has been put forward evidencing the same. The three companies are completely unrelated parties. Mere allegation that the entire transaction is a part of colourful device to avoid MPS requirements is a figment of imagination which cannot hold good in the absence of any evidence.
- 7.4. A copy of the report submitted by the investigating officer under Section 11C of SEBI Act has not been annexed to the SCN which impedes him from defending himself.
8. Mr. Sunil Bhansali vide his email dated January 12, 2019 resubmitted his earlier reply dated May 15, 2018.
9. Mr. S. Ravi vide his letter dated January 28, 2019 *inter alia* submitted as follows:
- 9.1. He was a Non-Executive Director in both Falcon and Dunlop and as a person with a technical background and industry experience, his involvement was limited to engagement in both the companies at the Board level, with the specific role of providing advisory technical support to project expansion and optimisation of operation of these companies.
- 9.2. The only occasion when the allegation made in the SCN came to his knowledge was in Board Meeting as an agenda point with necessary explanation provided by

the Management / Operational team. The Board had the advantage of having vastly experienced Independent Directors as well, who also specifically questioned and dealt with the issues as presented to the Board at that time. The compliance department / secretary of the company also confirmed the information presented and accordingly EOGM was called to pass the resolution as per requirement after taking SEBI approval. All the information was reviewed by the Board and there was no reason to believe any information was amiss.

9.3. He had no access to or ever was required to dwell into any information beyond what was provided in the Board Meetings which were well debated and conducted in the presence of experienced Independent Directors with the Executive Chairman in the chair.

10. Noticees were granted an opportunity of hearing on March 6, 2019. The hearing notices were served on the Noticees through hand delivery / email / newspaper publication. On the day of scheduled hearing only Mr. Sunil Bhansali attended the hearing and *inter alia* made the following submissions:

10.1. I was an employee director based in Mysore. I did not know Manali or the other 3 companies named in the SCN.

10.2. I joined in September 2008 and left in November 2012.

10.3. Manali and Falcon have no common Director. They were being managed separately and during his directorship, there was no interference of any kind in Falcon's management.

10.4. Mr. Ruia was the Chairman of Falcon but to my knowledge, he did not hold any shares in Falcon.

10.5. I was not a Director of Falcon when it had given loan to Manali.

10.6. The decision to assign the loan was that of Manali. When the decision to issue shares was to be taken, notice came to him mentioning that the loan cannot be repaid and therefore shares have to be issued. The decision was taken in normal course.

10.7. The agreements of assignment of loans were signed in Kolkata. I was not a signatory to them.

10.8. The three companies who received the shares were not Promoters of Falcon. I do not know how these companies have been classified as group companies.



- 10.9. I did not attend most of the Board Meetings. I attended the meeting held in Mysore.
- 10.10. The alleged transaction did not result into any benefit to Falcon, so why would it commit a fraud.
11. Vide email dated January 20, 2020, Noticees were provided one more opportunity to make submissions in addition to what has already been made by them.
12. Mr. S. Ravi vide his letter dated January 29, 2020 reiterated his earlier submissions and *inter alia* submitted as follows:
- 12.1. His engagement in the company was only as a Non-Executive Director and for rendering technical advice given his engineering background. At no point of time he had any operational role and his interaction with the company was only on the basis of Board Meeting deliberations.
- 12.2. Based on the papers put up in the meeting, the Board which also included three Independent Directors of eminent stature as well, who were well versed in such matters, took cognizance of the fact that the companies are not part of any related companies as per statutory disclosures filed and decided to take action as per law and have it processed by EGM, Board, etc.
- 12.3. It is important to reiterate that his role as a Non - Executive Director, never called upon him to do any extra due diligence beyond reviewing/ examining what was presented to the Board and he was never privy to or had access to any information which was not presented to the Board.
- 12.4. He confirms that on the basis of information available to him at that time he had no reason to suspect any wrongdoing or falsification of information and the decision was taken as per the requirement of law duly vetted by the full Board and based on compliance details presented during the meeting.
13. Mr. Sunil Bhansali vide his email dated January 30, 2020 reiterated his earlier submissions and *inter alia* submitted as follows:
- 13.1. There is no common Director or shareholders between Suncap, Regus, Salputri and Falcon.
- 13.2. There are no documents/evidences in support of charges against him.
- 13.3. The 3 companies Suncap, Regus and Salputri never approached Falcon. Manali has confirmed that these companies approached Manali and it was Manali's decision to assign the loan to these 3 companies.

- 13.4. As per details presented to him and Falcon Board, the 3 entities Suncap, Regus and Salputri were independent companies and had no connection with Falcon Director's or Promoter's. Before presenting to the Board, the details were also vetted by the Compliance Officer and Committee, which comprises of professional experts. There is no reason /evidence for him to have a doubt about the details /information.
- 13.5. There was no collusion by him. The decision to assign the loan was taken by Manali and its management and he has no role and there is no document or evidence in support of the charge.
14. R. Bhargavan & Associates representing Mr. Pawn Kumar Ruia, vide its letter dated February 11, 2020 reiterated the submissions earlier made by its client. It further stated as follows:
- 14.1. There existed a valid debt.
- 14.2. Both Falcon and Dunlop have been wound up / liquidated. It ought to have been necessary to make these entities / representatives of these entities party to the investigation, failing which its client would be hard pressed to certify facts relevant to the SCN and risk proceeding on conjecture.
15. Mr. Mohan Lall Chauhan vide his letter dated February 12, 2020 requested for a copy of the SCN. The Noticee was provided with a copy of the SCN on the same day. In response to the SCN, he vide his letter dated February 28, 2020 *inter alia* stated as follows:
- 15.1. He was a Non-Executive Independent Director of Dunlop and was not engaged or in charge of the day to day management of the Dunlop.
- 15.2. As a retired Commissioner of Income Tax, he was approached to be appointed as Non-Executive Independent Director of Dunlop. During his tenure as the Director (September 25, 2009 to September 26, 2014), he did not receive salary but was paid sitting fees.
- 15.3. There is a gross delay in issuing the SCN and on this ground alone the SCN should be disposed of without any directions.
- 15.4. Under SCRR and Listing Agreement, the liability to comply with the requirement of MPS is that of the company. The requirement to reduce the Promoter shareholding is on the Promoters. It is pertinent to note that the SCN has only been issued to former Directors and has not even been issued to the

company. The SCN is therefore, not maintainable.

- 15.5. At the relevant time, it was represented to the Board that the transaction with Stephens was happening at arm's length and the proceeds of the loan were to be used to fund the operations of Dunlop. Acting as Non-Executive Independent Director, he relied upon the documents placed before him by the management of the company. The necessary details, explanations, supporting details were duly verified and vetted by the Company secretary, legal department and same were presented before the Board and subsequently to the shareholders' general body. All the details which were presented were verified and certified by the management of Dunlop. The said issue about the loan and the issuance of the shares upon conversion of debt to equity was widely discussed by the Board members and subsequently by the shareholders. To the best of his recollection, no issue whatsoever was raised by anyone at that time. Thus, at the relevant time, there was no reason to believe that any information or representations of the management was false or erroneous. The said shares were issued in accordance with ICDR Regulations and there was no allegation from the Exchanges about any non-compliance.
- 15.6. He relied upon the advice of the Vice President Legal and Company Secretary and the detailed explanatory statement that was submitted to the shareholders. To the best of his recollection, the resolution of the Board as well as shareholders was passed unanimously.
- 15.7. An Independent Director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently.
16. Mr. Damodar Dani vide his letter dated February 12, 2020 requested for a copy of the SCN. The Noticee was provided with a copy of the SCN on the same day. In response to the SCN, he vide his letter dated February 26, 2020 *inter alia* stated as follows:
- 16.1. He was a Non - Executive Director in Dunlop May 11, 2010 to January 26, 2013. During this period his role in the functioning of Dunlop was limited since he was an Independent Non-Executive Director. During his tenure of directorship, he was under constant guidance of the management and other Directors on the Board of Directors of the company. It is pertinent to note that in his capacity as a

Non-Executive Director or Independent Director, he was not charged with the day to day affairs and management of the company and was merely involved in the decision making at the Board level based on the documents/explanations presented before the Board of Directors by the management team of the company.

16.2. Before the Extraordinary General Meeting held on 28.04.2012 at Kolkata, he along with other Directors on the Board were informed by the management, VP Legal-Company Secretary of the company that the company had availed a corporate loan from Stephens vide Loan Agreement dated 15.09.2011 to fulfil long term working capital requirements. Subsequently it was brought to notice that Stephens had informed Dunlop that it had assigned its rights and obligations to Suncap, Regus and Salputri vide Deed of assignment dated 14.01.2012. The Assignees had accepted their respective rights and obligations and that the assignees had the right to convert the loan into equity upon failure by Dunlop to repay the loan.

16.3. Further, in order to effectuate the conversion of debt liability to equity of Dunlop, EGM had been called and two resolutions were sought to be passed in this regard. Firstly, a resolution to reclassify all unissued 1,00,70,000 Preference shares of Rs 100/- each to 10,07,00,000 Equity shares of Rs. 10/-. Secondly, issuance of 5,00,00,000 equity shares of Rs. 10/- each fully paid up on conversion of outstanding loan of Rs. 60,00,00,000/- to Suncap, Regus and Salputri on preferential basis. Therefore, upon the professional advice from the management through Vice President - Legal and Company Secretary as well as the detail explanatory note which was also circulated to the shareholders, the two resolutions were unanimously passed firstly by the Board of Directors in the Board meeting and later on by the shareholders present in the EGM held on 28.04.2012.

16.4. As per the explanatory note to the resolution it was clearly mentioned that the resolution was in accordance/subject to the applicable laws/SEBI guidelines.

16.5. It is an established position or law that in order to be liable, a person should fulfil the legal requirement of being a person in law who is responsible for the conduct or the business of the company. Non - Executive Directors are, therefore, persons who are not involved in the day to day affairs of the running of the

company and are not in charge of and not responsible for the conduct or the business or the company. Thus, even if there was any contravention of law carried out by the company, he as a Non - Executive Director of the company cannot be held responsible.

16.6. He had no reason to doubt the information/explanation provided to the Board of Directors relating to the resolutions in general or about the constitution / relationship of the assignee companies with Stephens in particular.

17. Vide an email dated April 22, 2020 all the Noticees except Mr. Sunil Bhansali (as his hearing was already concluded) were granted an opportunity of hearing in the matter on May 20, 2020 through video conferencing. On the day of scheduled hearing the Noticees made the following submissions:

17.1. Falcon: Mr. Shivadutt Bannanje, the Official Liquidator for Falcon attended the hearing. He stated that he was appointed on December 30, 2019 as an Official Liquidator for Falcon and the company is under liquidation. He did not make any further submissions.

17.2. Mr. S. Ravi stated as follows:

17.2.1. Being a Non-Executive Director, he had a very limited role in the company.

17.2.2. The decision to convert loan into equity shares was based on the information given in the Board meeting.

17.2.3. The corporate loan was reassigned to unrelated companies and there was no information to suggest that something was amiss.

17.2.4. It was beyond his scope to know about the particulars or business of the assignee companies.

17.2.5. To the best of his knowledge, the discussion in the Board meeting was regarding the conversion of loan to equity and on compliance with all the relevant rules and regulations.

17.3. Mr. Damodar Dani stated as follows:

17.3.1. He was Non-Executive Director and was not involved in the day to day affairs of the company.

17.3.2. His decision was based on the advice given by the management and the detailed explanatory note.

17.3.3. There was no reason to doubt the information provided by the management at the Board meeting.

- 17.4. Mr. Mohan Lall Chauhan submitted as follows:
- 17.4.1. He was appointed as a Special Director by BIFR on the Board of Dunlop in the year 2006 and he continued as a Board member upon the request of the management.
- 17.4.2. He was Non-Executive Independent Director of the company.
- 17.5. There is undue delay in issuing the SCN and the SCN has not been issued to Dunlop.
- 17.5.1. Primary liability under Rule 19A of SCRR is upon the company and the Promoters.
- 17.5.2. As a Non-Executive Independent Director, he could not have found out any further information through Board process than what was presented at the Board meeting.
- 17.5.3. Public shareholders also did not raise any objections for the conversion of the loan into equity shares of the company.
- 17.6. The Authorised Representative of Mr. Pawan Kumar Ruia, Mr. Yadunath Bhargavan (“AR”) submitted as follows:
- 17.6.1. SCN is silent on how the 3 companies are part of the Promoter Group.
- 17.6.2. Mr. Pawan Kumar Ruia is not part of the Promoter Group of Falcon.
18. The aforesaid Noticees who attended the hearing through video conferencing were granted time till July 15, 2020 to make additional submissions, if any.
19. Pursuant to the hearing, Mr. Damodar Dani vide his letter dated July 13, 2020 reiterated his earlier submissions and *inter alia* submitted as follows:
- 19.1. It is submitted that the proceedings suffer from laches and inordinate delay and are ought to be dismissed on this account itself. It is a matter of record that six years have lapsed since the alleged default and no reasons have been assigned for the delay in investigation. The investigation has been carried out with a lackadaisical attitude which is apparent from the fact that no steps were taken till after six years of the alleged default. Much water has flown since then and, at this belated stage, the Noticee cannot be penalized for the alleged violation.
- 19.2. There is no material to establish the role of the Noticee in the alleged defaults or even the management of the company and the present notice has been issued on the basis of mere conjectures and surmises. Moreover, no specific averments have been made in complaint which implicate the Noticee towards the

alleged misdeeds of the company.

19.3. The fact that the SCN has not been issued to Dunlop and instead to the Noticee and two other Non-Executive/ Independent Directors, is prejudicial to the Noticee. It is submitted that the company is a proper and necessary party to adjudicate upon the averments made in the SCN. Moreover, the key managerial persons, Principal Officer/ Company Secretary ought to be summoned in their professional capacity before any liability can be fastened upon the Noticee.

19.4. It is submitted that merely by virtue of his designation, the Noticee cannot be held liable for the alleged affairs of Dunlop and before indicting the Noticee in the present proceedings, SEBI ought to have looked into the limited functions performed by the Noticee at Dunlop during his tenure as a Non-Executive Director. The extent of indulgence by a Director in the day to day affairs of the company is instrumental in determining his/ her liability. In the present case, the facts and nomenclature of the designation of the Noticee *prima facie* point out that he was not a part of the daily functioning of the company and therefore it would be prejudicial to the Noticee to assign personal liability towards alleged defaults by Dunlop. It is further stated that the Noticee was not responsible for the affairs of the company as a Non-Executive Director and neither was he trusted with the responsibility of managing the company at any time during the period of alleged default.

19.5. It is submitted that the details of the transaction that are being investigated by SEBI are not within the personal knowledge of the Noticee. The Noticee has never shared any relationship with any of the assignee companies or with Stephens. Since there was no knowledge of the transactions that can be attributed to the Noticee, no liability can be fastened to him.

19.6. As a Non- Executive Director, the Noticee' s role was very limited and it was not the duty of the Noticee to conduct due diligence and cross-verify every advice received from the experts in the field (in this case, the legal team and the Company Secretary) especially when such an advice appeared to be genuine on the face of it.

20. Mr. Mohan Lall Chauhan also vide his letter dated June 29, 2020 made additional submissions wherein he reiterated his earlier submissions and *inter alia* submitted as follows:

- 20.1. In the year 2006, he was appointed as a Special Director by the BIFR in Dunlop. In 2008-09, Dunlop came out of BIFR and the new management requested him to continue as an Independent Director owing to his expertise in the areas of tax and public policy over three and half decades. He did not know the Ruia Management before and was only requested to continue as Independent Director after Ruia entered the management of Dunlop.
- 20.2. Dunlop was not a party to the assignment agreement. The issue of assignment therefore never came up before the Board of Directors. The assignment is therefore not an item that can be attributed to the Board process and therefore Non-Executive Independent Directors cannot be held to be liable for the assignment. Since the Assignment Agreement was already in place prior to the matter coming up before the Board of Dunlop, the matter was either to pay back the loan or to allot shares by converting the loan as per the assignment agreement keeping the company's viz. Dunlop's interest and avoid default. Based on information put up in the Board meeting unanimous decision was taken to allot shares pursuant to the assignment agreement. What was the discussion that took place more than 8 years ago at a board meeting cannot be recalled today and therefore SEBI cannot take an inference of lack of diligence without actually finding out what exactly happened at that stage. The only allegation against him is that he was a member of the Board of Directors and it is settled law that the investigating authority is required to prove more than the fact of just being a Director, for making allegations against an Independent Director.
21. Mr. S. Ravi also vide his letter dated July 7, 2020 made additional submissions wherein he reiterated his earlier submissions and *inter alia* submitted as follows:
- 21.1. He had no association with the Promoters of the Group and his association was strictly based on the technical expertise he brought to the Board. The companies were managed on day to day basis at the Unit level by competent managers and supported by a full time Company Secretary. The Unit Management directly reported to the Corporate office at Kolkata and the Chairman of the Group was also the Executive Chairman of Falcon.
- 21.2. During the "Webex hearing" he was specifically queried as to why he had failed to recognize "negative inferences" of possible collusion and vetoed against the proposal. At no point, any material evidence establishing him of colluding was



put forth, and it appears his offence is one of “Omission” rather than of “Commission”. Accordingly, his reply is to satisfy to the authorities as to why he acted to endorse the Board Decision.

21.3. The matter was placed before the Board. The Board after reconfirming that all compliance and regulatory requirement were in place as per the information placed by the Company / Corporate Management and vetted by the company secretary, deliberated the matter. The Board extensively reviewed the matter in the presence of all the Director including Independent Directors who needless to mention had vast experience in such matters with Banking, Legal and Government background and unanimously agreed to go ahead with Assignment proposal as, in the alternative, the company would have to repay back the huge loan outstanding to Manali/Stephens which was not possible given the poor financial health of Falcon/Dunlop. This was a decision taken in the best interest of Falcon/Dunlop and as a Non- Executive Director he found it logical and appropriate.

21.4. At no stage during review of the material information place before the Board, did any Board member find the information as presented by the Corporate Management and vetted by the Company Secretary to be amiss or wanting and it was unanimously concurred that that they were acting in the best interest of Falcon/Dunlop by implementing the Assignment Agreement. The thrust in the discussion was to ensure all requirement as per law and statutes were fully complied with. The arrangement between Manali/Stephens with the Assignee Companies, being an internal matter between these companies, never came up for any discussion.

21.5. The queries raised during the Board discussion was riveted as to how they should protect the interest of the company and avoid default and ensure adherence to the statutory requirements. The Board decision was unanimous in favour of share allotment as per the Lender (Manali / Stephens) written communication.

22. The AR of Mr. Pawan Kumar Ruia, vide his email dated July 13, 2020 requested for additional four weeks’ time to submit post hearing submissions. However, the Noticee was granted a weeks’ time to make his submissions vide email dated July 15, 2020. It is noted from records that no post hearing submissions have been received from Mr.

**FINDINGS & CONSIDERATIONS**

23. I, now proceed to examine the matter on merits. To that effect, I have perused the SCNs, oral submissions, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

***Issue 1:*** *Whether the issuance of equity shares on preferential allotment basis by Falcon and Dunlop to Suncap, Salputri and Regus resulted in the public shareholding in Falcon and Dunlop falling below 25% of the total equity share capital of the issuer companies?*

***Issue 2:*** *Whether Falcon and Dunlop have violated provisions of SCRA and Listing Agreement, as alleged?*

***Issue 3:*** *If the answer to issue no. 2 is in affirmative, then who all are responsible for the violations of Falcon and Dunlop?*

***Issue 4:*** *If the answer to issue no. 2 is in the affirmative, what directions, if any, should be issued against those responsible?*

24. Before proceeding to consider the allegations on merit, I shall first deal with the preliminary objections of the Noticees. Mr. Mohan Lall Chauhan and Mr. Damodar Dani have submitted that there has been inordinate delay in the initiation of the proceedings. In this regard, I note from the records that the involvement of the Noticees came to the attention of SEBI through a complaint dated April 18, 2013 alleging certain violations, committed by Noticees, of provisions of securities laws which did not include the alleged violations in the extant matter. Post initial inquiry, the instant matter was taken up for investigation in February, 2015. It is observed from the material available on record that several summons were sent to the three Assignee Companies and their Directors and ex-Directors. Multiple reminders were also sent to them to respond to the said summons. Moreover, the aforesaid Directors and ex-Directors were also summoned to appear in person. However, except 2 Directors, rest of them failed to appear in person. The same hampered the process of investigation which impeded the early conclusion of the investigation. As noted earlier, investigation in the affairs of the Falcon and Dunlop took place at multiple levels for different sets of alleged violations of securities laws. Furthermore, the investigation process is a detailed one which passes through various levels of analysis.

This will invariably consume considerable time depending on the number of Noticees and outside agencies involved and cooperation of the entities and the complexity of the transactions. Therefore, questioning the merits of the proceedings on the sole criteria of the consumption of time to crystallise the extent of the violations, would defeat the ends of justice.

25. It is also noted that there is neither any specific provision contained in SEBI Act or SCRA to issue the SCN nor there is any provision in PFUTP Regulations and SAST Regulations which lays down any limitation period for initiating any action under them. Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Vaman Madhav Apte & Ors. vs. SEBI* has vide Order dated March 4, 2016 observed 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."*

26. Moreover, the Hon'ble Supreme Court of India recently in the case of *Adjudicating Officer, SEBI vs. Bhavesh Pabari* (2019) SCC Online SC 294 has held as follows:

*"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."*

It is noted from the records that in the facts and circumstances of the matter, the lapse of time is not fatal as there was, on a periodic basis, correspondence among SEBI, Noticees and outside agencies (BSE, ICICI Bank Ltd., Karur Vyasa Bank, Axis Bank Ltd. etc.) for information / material in the matter at hand since 2015 onwards. Further, in the light of aforesaid Hon'ble Supreme Court of India's Order, it is noted, that based on the nature of allegation in the extant matter which is of failure to achieve MPS, if proven, is a grave violation in the securities market. The objective behind the regulation was to increase the free float of the securities which, *inter alia*, provides

basis for liquidity and minimisation of risk of fraud. Therefore, it is in the interest of investors and orderly development of securities market that instant proceedings should be continued to be adjudicated on merits of the allegation. In other words, more harm would be caused by dropping the instant proceedings solely on the ground of delay. Thus, the submission of the Noticees of dropping the SCNs on the ground of delay cannot be accepted.

27. Mr. Pawan Kumar Ruia has submitted that a copy of investigation report has not been provided to him which impedes him from defending himself. In this regard, it is observed from the available records that he was provided with all the documents which were relied upon to frame allegations against him as part of the Annexures to the SCN. Here, it will be relevant to quote the order of Hon'ble SAT in the matter of *Shruti Vora vs. SEBI* decided on February 12, 2020 wherein the Hon'ble SAT as observed as follows:

*"In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence."*

28. The Hon'ble Supreme Court has also held in its order dated October 05, 2010 passed in *Kanwar Natwar Singh vs Directorate Of Enforcement & Anr* (MANU/SC/0795/2010) that *"...even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice."*

29. Mr. Mohan Lall and Mr. Damodar Dani have submitted that SCN has not been issued to Dunlop and to other key managerial persons (Principal Officer / Company Secretary). Therefore, the SCN is not maintainable / liability cannot be fastened on the Noticees. The submission of the Noticees is not acceptable. A host of factors are involved in determining whether or not an enforcement proceeding has to be initiated or not including the connection between the entity and the company, the role played by the entity etc. SEBI, after considering all the factors and evidences in the facts and circumstances of the case and in light of the applicable provisions of securities laws, has decided to proceed with enforcement action against certain entities. Moreover,

the allegation against the Noticees are independent and stand on its own basis and have to be adjudicated on their own merit without considering whether or not any action has been taken against certain other entities. Furthermore, from the available records it is noted that at the time of completion of investigation, Dunlop was under liquidation. In view of the same and in peculiar circumstance of the case, SEBI decided not to initiate any proceedings against Dunlop.

30. The following observations of the Hon'ble Supreme Court in *Union of India and Anr. vs. International Trading Co. and Anr.* (AIR 2003 SC 3983) dated May 07, 2003, in this context, merits relevance, *"Even if hypothetically it is accepted that a wrong has been committed in some other case by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish the strength of their case on some other basis and not by claiming negative equality."*

31. Here, even in cases of selection of cases for action where several wrong doers are involved, the observations of Hon'ble SAT in the matter of *Systematix Shares & Stocks (India) Ltd. vs. SEBI* decided on April 23, 2012, merits consideration. The same is as follows:

*"...It is true that the Board has taken action selectively against a few entities involved in the alleged wrong doing. According to the appellant the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone is also discriminatory. We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful..."*

32. In light of the above, it is observed that all the documents relied upon to frame the allegations against the Noticees have been annexed to the SCN that was served upon the Noticees. Moreover, on a perusal of the SCN it is observed that the allegations against the Noticees are based on their role / position in the company and obligations flowing from being a Board Member. The same stands on its own ground irrespective of the acts / omissions of other entities involved in the matter. Thus, the submission of the Noticees is unacceptable.

33. I now proceed to deal with the merits of the case.

**Issue No. 1** – *Whether the issuance of equity shares on preferential allotment basis by Falcon and Dunlop to Suncap, Salputri and Regus resulted in the public shareholding in*

*Falcon and Dunlop falling below 25% of the total equity share capital of the issuer companies?*

34. In order to effectively answer the issue, following sub-issues need to be answered:

34.1. *Whether the preferential allotment of shares by Falcon and Dunlop to Suncap, Salputri and Regus is a genuine consequence / outcome of the assignment deeds?*

34.2. *What is the result of the preferential allotment of shares by Falcon and Dunlop to Suncap, Salputri and Regus?*

### **Falcon**

35. With respect to the first sub-issue, the background of the preferential issue has to be examined. It is observed from the response to the query regarding loan transaction between Manali and Falcon that Manali had stated that a letter dated January 7, 2008 was issued by Manali approving the request of Falcon which recorded the terms of granting of the loan to Falcon. On a perusal of the aforesaid letter, it is observed that a sum of Rs. 145,00,00,000/- towards requirement for long term fund to support working capital and projects of the company was agreed to be provided by Manali to Falcon. The said sum was to be provided by Manali from time to time based on Falcon's requirement. The total amount stated to be disbursed under the aforesaid loan agreement / arrangement was Rs. 144,04,50,000/-.

36. Out of the said agreed loan of Rs. 144,04,50,000/-, Rs. 50,41,57,505/- was assigned to Suncap, Rs. 50,41,57,505/- was assigned to Regus and Rs. 43,21,34,985/- was assigned to Salputri by Manali in respect of Falcon vide February 9, 2012. Falcon was also a party to the assignment deed. On an examination of the assignment deed, it was observed that the following terms of the assignment deed were at variance with the initial loan agreement / arrangement:

36.1. The assigned loan was repayable to the Assignee on demand within a period of seven days from the notice for repayment served to the Borrower (Falcon). The letter dated January 7, 2008 which was issued by Manali agreeing to provide the loan to Falcon, does not contain any such condition.

36.2. The Assignee had the right to call upon the Borrower (Falcon) to convert the outstanding amount due to it, to equity shares of the Borrower (Falcon). It is

observed from the letter dated January 7, 2008 that no such right was conferred on Manali at the time when Manali agreed to provide the loan to Falcon.

37. It is observed from the financial performance of Falcon that it had registered net profit of Rs. 28.98 crore for the (audited) year ended September, 2011 and a loss of Rs. 58.98 crore for the (audited) year ended September, 2012. Company's net loss increased for the financial year ending September 2012 in comparison to previous year. To put it differently, there was a downward swing of approximately Rs. 90 crore in the company's financial health. Further as per unaudited quarter ending March, 2012, company's net loss was Rs. 28.91 crore. Thus, at the time of signing of the assignment deed in February, 2012, on a preponderance of probability basis, it can be held that the company's financials were declining. Thus, agreeing to pay the loan amount on demand is not in the best interest of the company as there is a high probability of defaulting on the demand made by the Assignee company especially when the "on demand" clause was not there in the original loan. Similarly, agreeing to a convertibility clause when the probability of default is high, fastens additional obligations on the company. Thus, Falcon agreed to adverse terms in the assignment deed which were earlier absent in the loan agreement / arrangement. The above circumstances indicate that the company had some other reasons for agreeing to the aforesaid onerous conditions at the time of assignment.

38. Moreover, the following factor indicate that the entire transaction of assignment of loan is not for the genuine purpose of assignment on an arm's length basis:

38.1. It is observed from the reply of Manali submitted at the time of investigation that Manali paid Rs. 12,02,38,000 between February 9, 2012 to February 15, 2012 by way of crossed cheques to Falcon which formed part of the total loan disbursed to Falcon, whereas the deed of assignment was executed on February 9, 2012. Thus, a part of the loan was reassigned even before it was purportedly disbursed.

39. Further, the following demonstrates that the decision of Manali to assign the loan to the Assignee companies was not a commercially prudent / arm's length decision:

39.1. Manali never had any transaction with the Assignee companies in the past. In spite of the same, Manali reassigned loan worth Rs. 144,04,49,995/- to them without any payment or collateral. Thus, in effect Manali failed to secure the

receivables from the three Assignee companies.

39.2. As per the terms of the assignment deed, the Assignee companies had agreed to pay the consideration for the assigned loan by October 31, 2012 or earlier. Thus, Manali took a credit risk for a period of 9 months for entities with whom it had no prior financial dealings or was known to it previously.

39.3. It was observed from the balance sheets of Suncap, Salputri and Regus that the entities had either negative net worth or very low net worth compared to the loan amount which was assigned to them by Manali. Further the entities hardly had any sales / sales were declining, during FY 2010-11 and 2011-12 when the said assignment of loan and subsequent preferential allotment of equity shares of Falcon took place. The aforesaid factors show the paying capacity of the Assignee companies which in the instant matter was weak. The same has been analysed below: -

**39.3.1. Suncap: -**

It was observed from the balance sheet for FY 2011-12 filed by Suncap with MCA, that the entity had negative net worth of Rs. (1,41,10,259) during FY 2010-11 which further deteriorated to Rs. (1,94,04,300) during FY 2011-12. Further, on the liability side, there was an increase in short term borrowings from Rs. 2,29,08,842 to Rs. 71,41,57,505 during the financial year at a time when networth was negative. On the asset side, there was an increase in short term loans and advance under the head "Advances given as Share application money" from NIL to Rs. 71,41,57,505. It was observed from the balance sheet that the entity was in the business of trading of goods mainly Chilli. Sales during FY 2010-11 was Rs. 13,07,86,960 which reduced to Rs. 5,70,45,625 during FY 2011-12.

**39.3.2. Salputri: -**

It was observed from the balance sheet for FY 2011-12 filed by Salputri with MCA, that the entity had net worth of Rs. 3,42,68,388 during FY 2010-11 which changed to Rs. 3,42,72,270 during FY 2011-12. Total assets and liabilities of the company increased from Rs. 3,42,69,488 during FY 2010-11 to Rs. 64,64,09,269 during FY 2011-12. Further, on the liability side, there was an increase in Other Current Liabilities under the head "Current Maturities of Long Term Debts" from NIL during FY 2010-11 to Rs. 61,21,34,985 during the FY2011-12. On the asset side,



there was an increase in Non-Current Investments under the head "Investment in shares" from Rs. 2,19,04,000 to Rs. Rs. 63,40,38,985. It was observed from the balance sheet that there was Nil sales during FY 2010-11 whereas there was sale of Rs. 22,500 during FY 2011-12. The company suffered a net loss of Rs. 36,129.85 during FY 2010-11 while the company registered a net profit of Rs. 3,882 during FY 2011-12. It was also observed from the Annexure to Auditor's Report that the company was carrying on trading activity and there was no opening and closing stock.

#### **39.3.3. Regus: -**

It was observed from the balance sheet for FY 2011-12 filed by Regus with MCA, that the entity had net worth of Rs. 3,77,75,305 during FY 2010-11 which changed to Rs. 3,77,55,280 during FY 2011-12. Total assets and liabilities of the company increased from Rs. 3,77,76,905 during FY 2010-11 to Rs. 75,19,14,385 during FY 2011-12. Further, on the liability side, there was an increase in short term borrowings under the head "Un-secured - From Others" from NIL during FY 2010-11 to Rs. 71,41,57,505 during the FY2011-12. On the asset side, there was an increase in short term loans and advances under the head "Loans" from Rs. Nil to Rs. 71,41,57,505. It was observed from the balance sheet that there was Nil sales during FY 2010-11 as well as in FY 2011-12. The company suffered a net loss of Rs. 17,150 and Rs. 20,025 during FY 2010-11 and FY 2011-12 respectively. It was also observed from the Annexure to Auditor's Report that the company was not having any fixed assets or inventory.

40. In view of the aforesaid discussion which has highlighted that the assignment of loan was neither in the best interest of Falcon nor was a commercially prudent decision for Manali along with the fact that the terms of the assignment deed were not carried out as mandated / agreed upon, on a preponderance of probability shows that the transaction pertaining to assignment of loan was not done for the purpose of assignment of the loan and the subsequent conversion of the loan to equity shares of Falcon by way of preferential allotment to the three Assignee companies, is not a genuine consequence / outcome of the assignment deeds.

41. It is noted that the Assignee Companies have the following common traits:

41.1. They have poor financial health, almost negligible sales, carry a significant

debt burden and have low / negative net worth.

41.2. They interacted with Manali at the same time and the loan assignment was divided amongst them at the same time.

41.3. The assignment of loan was done to the Assignee companies with deferred consideration and without any security.

41.4. They approached Falcon (May 22-23, 2012) at the same time for conversion of the loan to equity shares.

41.5. They started paying consideration for the assigned loan to Manali in the same month, May, 2013.

42. It is also observed that on April 26, 2012, post allotment, following is the shareholding of the Assignee companies in Falcon:

| Sl. No. | Name of the allottees | Outstanding Loan Amount (Rs.) | No. of Equity shares allotted | % of Shareholding |
|---------|-----------------------|-------------------------------|-------------------------------|-------------------|
| 1.      | Suncap                | 50,41,57,505                  | 1,51,85,467                   | 19.60%            |
| 2.      | Regus                 | 50,41,57,505                  | 1,51,85,467                   | 19.60%            |
| 3.      | Salputri              | 43,21,34,985                  | 1,30,16,114                   | 16.80%            |
|         | <b>Total</b>          | <b>1,44,04,49,995</b>         | <b>4,33,87,048</b>            | <b>56.00%</b>     |

43. The aforesaid table which shows that the Assignee companies acquired significant shareholding and control in Falcon. When seen in the light of factors which have been brought out in preceding paragraphs which shows that Falcon whose financial health was in a bad shape consented to onerous clauses in the assignment deed while Manali took a huge credit risk by assigning the loan without any collateral and also agreed for a convertibility clause which was not in existence in the initial loan having a bearing on its own shareholding in Falcon effectively handing over control to the three Assignee companies, further demonstrates that Falcon and Manali would not have executed the assignment deed with the Assignee companies, if not for them having a common purpose. In other words, for Falcon whose financial performance was in decline, it was inevitable that it will default on the demand to pay back the assigned loan to the Assignee companies and this fact would have been known to Manali as it is one of the Promoters of Falcon and also for the reason that why would they assign the loan if Falcon was able to repay the loan extended by Manali. Thus, inspite of inevitability of Falcon's loan default, the fact that Manali and other Promoter of Falcon (Dil Rim and Wheel Corporation Limited) agreed to a convertibility clause

which will have a significant impact on their shareholding in Falcon (Promoter Group shareholding as April 25, 2012 was 72.54%) resulting in them ceding control of Falcon, goes to only show that in the context of Assignment Deeds, Falcon, Promoter Group of Falcon (Manali and Dil Rim and Wheel Corporation Limited) and Assignee companies were not dealing at arm's length for a genuine transaction, but they had a tacit understanding among themselves. Credence to this is led from the fact that Falcon had paid Rs. 65,08,057/- to Salputri on May 10, 2013, Rs. 75,92,733/- to Regus on May 28, 2013 and Rs. 75,92,733.50/- to Suncap on May 8, 2013 towards payment of dividend. Board of Directors of Falcon had declared a dividend of Rs 0.50 per share at its meeting held on November 19, 2012 (effective date December 21, 2012) which was approved by the shareholders in its AGM dated December 29, 2012. It is observed from records that the Assignee companies made their first payment towards the consideration for the assigned loan to Manali in May, 2013 even though as per the assignment deed, they were obligated to pay Manali by October 31, 2012.

44. In light of the aforesaid discussion, it can be further held that considering, that in the context of the Assignment Deeds, the Promoter Group of Falcon was acting in concert with the Assignee Companies along with Falcon and / or there existed a tacit understanding among them, which inevitably led to the allotment of preferential allotment of equity shares of Falcon to the Assignee companies, it leads to a conclusion that their shareholding, post allotment, in Falcon should be clubbed together with the Promoter Group of Falcon. To put it differently, shareholding of Assignee companies when seen together with Promoter Group of Falcon, post preferential allotment of equity shares, represents 87.62% of total equity capital of Falcon.

45. Thus, in view of the aforesaid discussion, to answer the second sub-issue, it is noted that the preferential allotment of shares by Falcon to Suncap, Salputri and Regus resulted in the public shareholding of Falcon falling to 12.38% of the total issued capital of Falcon.

### **Dunlop**

46. With respect to the first sub-issue, it is observed from the response to the query regarding loan transaction between Stephens and Dunlop that Dunlop had submitted a certified copy of the "execution version of the loan agreement". In spite of repeated reminders at the time of investigation, Stephens failed to submit the copy of original

loan agreement dated September 15, 2011.

47. It is observed from the financial performance of Dunlop that it had registered net loss of Rs. 5.78 crore for the quarter ending December, 2011 and a net loss of Rs. 11.46 crore for the (audited) year ended March, 2012. Company's net loss increased for the quarter ending March, 2012 in comparison to previous quarter. Thus, at the time of signing of the assignment deed in January, 2012, on a preponderance of probability basis, it can be held that the company's financials were declining.

48. Moreover, the following factors indicate that the entire transaction of assignment of loan is not for the genuine purpose of assignment on an arm's length basis:

48.1. No documentary evidence is available for any demand, if any made by Stephens to Dunlop to pay back the loan amount or that Dunlop has defaulted to pay the demand made by the Lender (Stephens) within a period of seven days from such notice for repayment served upon Dunlop.

48.2. As per the terms of assignment deed, in case of non-payment of the consideration for the loan by Suncap, Salputri and Regus on or before October 31, 2012, Stephens had the right to charge penal interest from the entities. However, there is no evidence of Stephens imposing any penal interest for non-payment of loan amount by the said entities.

49. Further, the following demonstrates that the decision of Stephens to assign the loan to the Assignee companies was not a commercially prudent / arm's length decision:

49.1. Stephens never had any transaction with the Assignee companies in the past. In spite of the same, Stephens reassigned loan worth Rs. 60,00,00,000/- to them without any payment or collateral. Thus, in effect Stephens failed to secure the receivables from the three Assignee companies.

49.2. As per the terms of the assignment deed, the Assignee companies had agreed to pay the consideration for the assigned loan by October 31, 2012 or earlier. Thus, Stephens took a credit risk for a period of nine months for entities with whom it had no prior financial dealings or was known to it previously.

49.3. As noted in the preceding paragraphs, the paying capacity of the Assignee companies was weak.

50. In view of the aforesaid discussion which indicates that demand notice for repayment

was not served upon Dunlop and has also highlighted the anomalies in the assignment deed, on a preponderance of probability, shows that the transaction pertaining to assignment of loan and the subsequent conversion of the loan to equity shares of Dunlop by way of preferential allotment to the three Assignee companies, is not a genuine consequence / outcome of the assignment deeds.

51. The common traits in the Assignee companies has been noted in preceding paragraphs. It is also observed that on April 28, 2012, post allotment, following is the shareholding of the Assignee companies in Dunlop:

| Sl. No. | Name of the allottees | Outstanding Loan Amount (Rs.) | No. of Equity shares allotted | % of Shareholding |
|---------|-----------------------|-------------------------------|-------------------------------|-------------------|
| 1.      | Suncap                | 21,00,00,000                  | 1,75,00,000                   | 14.35%            |
| 2.      | Regus                 | 21,00,00,000                  | 1,75,00,000                   | 14.35%            |
| 3.      | Salputri              | 18,00,00,000                  | 1,50,00,000                   | 12.30%            |
|         | <b>Total</b>          | <b>60,00,00,000</b>           | <b>5,00,00,000</b>            | <b>41.00%</b>     |

52. The aforesaid table which shows that the Assignee companies acquired significant shareholding in Dunlop. When seen in the light of factors which have been brought out in preceding paragraphs which shows that Dunlop whose financial health was in a bad shape and there is absence of evidence of any demand notice for repayment being served upon Dunlop while Stephens took a huge credit risk by assigning the loan without any collateral and also agreed for a convertibility clause having a bearing on its own shareholding in Dunlop, further demonstrates that Stephens would not have executed the assignment deed with the Assignee companies, if not for them having a common purpose. In other words, for Dunlop whose financial performance was in decline, there was high probability that it will default in its loan payment which had to be paid with a flat rate of 18% per annum to the Assignee companies, post assignment of loan and this fact would have been known to Stephens being group company of Dunlop and also for the reason that why would they assign the loan if Dunlop was able to repay the loan extended by Stephens. Thus, inspite of inevitability of Dunlop's loan default, the fact that Stephens and Promoters of Dunlop agreed to a convertibility clause which will have a significant impact on their shareholding in Dunlop (Promoter Group shareholding as April 27, 2012 was 64.99%) resulting in them ceding control of Dunlop, goes to only show that in the context of Assignment Deeds, Dunlop, Promoter Group of Dunlop and Assignee companies were not dealing at arm's length for genuine transaction but they had a tacit understanding among

themselves.

53. In light of the aforesaid discussion, it can be further held that considering, that in the context of the Assignment Deeds, the Promoter Group of Dunlop was acting in concert with the Assignee Companies along with Dunlop and there existed a tacit understanding among them, which inevitably led to the allotment of preferential allotment of equity shares of Dunlop to the Assignee companies, it leads to a conclusion that their shareholding, post allotment, in Dunlop should be clubbed together with the Promoter Group of Dunlop. To put it differently, shareholding of Assignee companies when seen together with Promoter Group of Dunlop, post preferential allotment of equity shares, represents 79.35% of total equity capital of Dunlop.

54. Thus, in view of the aforesaid discussion, to answer the second sub-issue, it is noted that the preferential allotment of shares by Dunlop to Suncap, Salputri and Regus resulted in the public shareholding of Dunlop falling to 20.65% of the total issued capital of Dunlop.

**Issue No. 2** - *Whether Falcon and Dunlop have violated provisions of SCRA and Listing Agreement, as alleged?*

55. Before embarking on further discussions, I deem it necessary to refer to relevant provisions. I note that Section 21 of the SCRA mandates the compliance, by all listed companies, of the conditions of the listing agreement with the stock exchange. The SCRR *inter alia* prescribes the requirements which are required to be satisfied by the companies for the purpose of getting their securities listed on any stock exchange in India. The SCRR was amended vide notification of the Securities Contracts (Regulation) (Amendment) Rules, 2010 ('First amendment') by the Central Government dated June 4, 2010 and amended again vide Securities Contracts (Regulation) (Second Amendment) Rules, 2010 ('Second amendment') in terms where of Rule 19(2)(b) was amended and a new rule namely, Rule 19(A) was inserted.

56. The amended Rule 19(2)(b) and newly introduced Rule 19(A) of SCRR reads as under:

*“(19)(1) A public company as defined under the Companies Act, 1956 desirous of getting its securities listed on a recognized stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars:*

....

*19(2) Apart from complying with such other terms and conditions as may be laid down by a recognized stock exchange, an applicant company shall satisfy the stock exchange that:*

*(a) ...*

*b) (i) At least twenty five per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document; or*

*(ii) At least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document if the post issue capital of the company calculated at offer price is more than four thousand crore rupees:*

*Provided that the requirement of post issue capital being more than four thousand crore rupees shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, if it satisfies the conditions prescribed in clause (b) of sub-rule 2 of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement:*

*Provided further that the company, referred to in sub clause (ii), shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India.*

### ***Continuous Listing Requirement.***

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

*Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.*

*Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent, public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.*

*(2) Where the public shareholding in a listed company falls below twenty five per cent. at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.*

*(3) Notwithstanding anything contained in this rule, every listed public sector company shall maintain public shareholding of at least ten per cent.:*

*Provided that a listed public sector company- (a) which has public shareholding below ten per cent, on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of three years from the date of such commencement;*

*(b) whose public shareholding reduces below ten per cent, after the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of twelve months from the date of such reduction."*

57. In order to align the requirements in the Listing Agreement with the requirements specified in Rule 19(2)(b) and Rule 19A of SCRR and to specify the manner in which public shareholding may be raised to the prescribed minimum level, SEBI issued a Circular No CIR/CFD/DIL/10/2010 dated December 16, 2010 to suitably amend clause 40A of the Listing Agreement. This circular provided the following methods for complying with the MPS requirement:

- a. Issuance of shares to the public through prospectus;
- b. Offer for sale of shares held by promoters to public through prospectus;
- c. Sale of shares held by promoters through the secondary market i.e. OFS through Stock Exchange;



58. Subsequently, SEBI issued another Circular dated February 08, 2012 which *inter alia* provided that listed companies may achieve the MPS requirement through Institutional Placement Programme. With a view to further facilitate listed companies to comply with the MPS requirements within the time specified in the SCRR, SEBI issued the circular dated August 29, 2012 which specified the following additional methods to comply with the MPS requirements:

58.1. Rights Issues to public shareholders, with Promoters/Promoter Group shareholders forgoing their rights entitlement.

58.2. Bonus Issues to public shareholders, with Promoters/Promoter Group shareholders forgoing their bonus entitlement.

58.3. Any other method as may be approved by SEBI, on a case to case basis.

59. Clause 40A of Listing Agreement is also relevant here. The text of clause 40A of Listing Agreement is reproduced hereunder: -

#### **Listing Agreement**

##### ***40 A Minimum level of public shareholding***

*The company agrees to comply with the requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.*

*Where the company is required to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, it shall adopt any of the following methods to raise the public shareholding to the required level: -*

*(a) issuance of shares to public through prospectus; or*

*(b) offer for sale of shares held by promoters to public through prospectus; or*

*(c) sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/MRD/DP/05/2012 dated February 1, 2012; or*

*(d) Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended. (e) Rights Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*

*(f) Bonus Issues to public shareholders, with promoter/promoter group shareholders*

*forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*

*(g) any other method as may be approved by SEBI on a case to case basis.*

60. SEBI also initiated a consultative process with companies and market participants to elicit a concrete plan of action as regards ensuring compliance with the MPS requirement and held a series of meetings with active companies to enable the process of complying with the MPS requirement. All these measures and methods were taken/initiated to ensure that listed companies comply with the MPS norms before the due date and comply strictly in accordance with the prescribed methods.
61. The aforesaid provisions mandate that every listed company other than public sector company with public shareholding of less than 25% on the date of coming into effect of Securities Contracts (Regulation) (Amendment) Rules, 2010, i.e. on June 4, 2010 to achieve at least 25% public shareholding, within a period of three years from the date of coming into effect of Securities Contracts (Regulation) (Amendment) Rules, 2010 i.e. by June 3, 2013 in the manner specified by SEBI. Further, if the public shareholding in a listed company which is in compliance with MPS requirement but subsequently, the public shareholding falls below twenty five per cent at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by SEBI.
62. It has been noted in preceding paragraphs that preferential allotment by Falcon to the three Assignee companies, is not a genuine consequence / outcome of the assignment deeds. As a consequence of which, the shareholding of the Assignee companies has to be clubbed together with the shareholding of Promoter Group which takes the Promoter Group shareholding of Falcon along with the preferential allottees i.e., the Assignee companies to 87.62% as on April 26, 2012.
63. It is noted from material available on record that as on June 4, 2010 the Promoter Group shareholding in Falcon was 80.17%. Thus, Falcon had time till June 3, 2013 to achieve minimum public shareholding of 25% as mandated Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement. Further, as observed from material available on record that Falcon had neither taken any steps as mentioned above to reduce its Promoter shareholding nor had approached SEBI to formulate a plan to achieve MPS requirements. Furthermore, the “declared Promoter”

shareholding of Falcon, post preferential allotment of shares to the Assignee companies, has not changed between September, 2012 and June, 2013 which indicates that the shareholding of initial two Promoters of Falcon has not undergone any change during the aforesaid period. Moreover, from the material available on record it is observed that the allottees have not sold any shares of Falcon. Thus, as on June 3, 2013, Promoter Group of Falcon including the three allottees were holding 87.62% shares of total equity capital of Falcon. Therefore, Falcon had failed to meet the 25% public shareholding as mandated under Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement.

64. It is noted from material available on record that as on quarter ending March, 2010 and June, 2010, the Promoter Group shareholding in Dunlop was 74.50%. Thus, Dunlop was in compliance with Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement. However, as noted in preceding paragraphs that preferential allotment by Dunlop to the three Assignee companies, is not a genuine consequence / outcome of the assignment deeds. As a consequence of which the shareholding of the Assignee companies has to be clubbed together with the shareholding of Promoter Group which takes the Promoter Group shareholding of Dunlop along with the preferential allottees i.e., the Assignee companies to 79.35% as on April 28, 2012. Further, the declared Promoter shareholding of Dunlop has hardly changed (reduced by 0.06%) between April, 2012 and June, 2013 which indicates that the shareholding of initial four Promoters of Dunlop has not undergone any change during the aforesaid period. Moreover, from the material available on record it is observed that the allottees have also not sold any shares of Dunlop. Thus, as per Rule 19A (2) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement. Dunlop had time till April 27, 2013 to comply with the MPS requirements. Further, as observed from material available on record that Dunlop had neither taken any steps as mentioned above to reduce its Promoter shareholding nor had approached SEBI to formulate a plan to achieve MPS requirements. Thus, as on April 27, 2013, Promoter Group of Dunlop including the three allottees were holding 79.35% shares of total equity capital of Dunlop. Therefore, Dunlop had failed to meet the 25% public shareholding as mandated under Rule 19A (2) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement.

**Issue No 3** – *If answer to issue no. 2 is in affirmative, then who is responsible for the violations of Falcon and Dunlop?*

65. In order to address this issue, a holistic approach has to be adopted by taking into account the specific facts and circumstances of the matter and the requirement of law. In this regard, I note that as per Rules 19 (2)(b) and 19 A of SCRR read with Circulars dated December 16, 2010, February 8, 2012 and August 29, 2012, a listed company not only has to maintain 25% minimum public shareholding but in order to achieve it, the company has to follow specific methods prescribed by SEBI. Thus, the method adopted by the company to achieve MPS is relevant for the purpose of determination of any liability which may arise for non-compliance with MPS requirement under applicable law. Here, I would like to refer to the order of Hon'ble SAT in the matter of *Patwa Investment & Finance Ltd. vs. BSE Ltd. & SEBI* decided on January 9, 2018 wherein Hon'ble SAT has observed as follows;

*"...The above analysis of the law and various circulars issued by SEBI from time to time giving repeated opportunities to companies to comply with the Minimum Public Shareholding norms make it clear that the method adopted by the appellant company to reduce the promoters' quota illegally acquired by some promoters is not in consonance with the prescribed mode of law. The aim of the law in this case is to ensure that the modus operandi adopted by a company is accepted by SEBI before the said methodology is put into practice for increasing the public shareholding to reach the benchmark of 25%. Therefore, SEBI was right in passing the impugned order dated November 28, 2016 rejecting the application of the appellant for post facto approval to its actions which were against the law..."*

### **Falcon**

66. I note that in the present matter, Falcon seemingly is in compliance of MPS requirement post issuance of equity shares on a preferential basis to the three Assignee companies on April 26, 2012 and categorizing them as public shareholders. The said preferential issue was the result of a loan that was reassigned by Manali, a promoter group entity of Falcon to the three Assignee companies on February 9, 2012. Thus, the first step in the scheme to give the appearance of achieving compliance of MPS requirements, commenced in February, 2012 which culminated by way of preferential allotment to the three Assignee companies in April, 2012. However, as

noted in preceding paragraphs, the preferential allotment of equity shares by Falcon to the three Assignee companies, is not a genuine consequence / outcome of the assignment deeds in the normal course of business.

67. I further note that the allegation in the instant matter is avoiding compliance with the MPS Requirement. As far as Falcon is concerned, it has disclosed to the public that it is in compliance of MPS requirement by wrongly classifying the Promoter Group entities in the category of public. Though it appeared to be compliant, the same is not legal compliance as such compliance was on the basis of purposeful, wrong classification of the shareholders. Since the company was “seemingly” in compliance of MPS norms, in reality, it is avoiding the rightful compliance of MPS Requirement. Thus, the crux of the allegation is avoiding the MPS compliance. Therefore, what is relevant is the actions of the company or the facade (scheme) used by the company for avoiding the rightful compliance of MPS. A company which was not in compliance of MPS requirement as on June 4, 2010 was given three years for rightful compliance of MPS by adopting the permissible means. The company has put up a facade in seeming compliance of MPS as on the date of June 3, 2013 and in order to create this façade, it had taken steps in advance of June 3, 2013. This is a case where the wrongdoing started right from the time when the facade (scheme) was designed and continued during the period granted for rightful compliance of MPS through permissible method. Therefore, in such a scenario, putting up of a facade of compliance in order to avoid the rightful compliance becomes an action point for avoiding the MPS. Therefore, even though, technically the non-compliance with MPS may be with effect from June 3, 2013, while determining who is responsible for such non-compliance / façade of compliance, the relevant period is from the time the facade was set in motion itself so as not to let those who put up the facade of compliance go scot-free. In any case, in this matter, the enforcement action for non-compliance of MPS by way of avoiding to comply MPS, has been taken after the expiry of permissible period of three years. Accordingly, in the facts and circumstances of the case, the liability for non-compliance of MPS by avoiding to comply MPS by putting up a facade of compliance should be fastened on those who designed these facade (scheme).

68. The facade (scheme) adopted by Falcon can be summarised as follows:

68.1. Falcon was in non-compliance with MPS requirements as on June 4, 2010, as its Promoter Group shareholding at 80.17%. Consequently, it had to reduce its Promoter Group shareholding within three years from June 4, 2010.

68.2. There was an outstanding loan of approximately Rs. 144 crore which Falcon owed to its Promoter Group entity, Manali. The said loan was subsequently assigned to three Assignee companies vide three assignment deeds dated February 9, 2012.

68.3. As noted in the preceding paragraphs, the assignment of loan was not a genuine consequence / natural outcome of the initial loan in the normal course of business. The same is based on the rationale that Falcon not only agreed to onerous terms in the assignment deed but also accepted adverse terms which were not in the best interest of the company. This when seen in light of the fact that Manali assigned the loan without taking any collateral and took a credit risk for entities with whom it had no prior financial dealings or was known to it previously, leads to a conclusion that the dealings amongst Falcon, Promoter Group of Falcon and the Assignee companies, were not at arm's length.

68.4. Subsequently, post Falcon's loan default which was inevitable, considering its financial health, the Assignee companies were allotted shares on a preferential basis and shown as part of public shareholders. Thus, due to the tacit understanding amongst Falcon, Promoter Group of Falcon and the Assignee companies, Falcon was seemingly compliant with MPS requirements and avoided rightful / legal compliance with MPS requirements.

69. In light of the aforesaid action, I further note that any 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. In terms of Section 291 of the Companies Act, 1956, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company. Here I would like to refer to the observations of Hon'ble Supreme Court of India in the matter of *N Narayanan vs. Adjudicating Officer, SEBI* decided on April 26, 2013, wherein the Court observed as

follows:

*“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...”*

70. Thus, from the aforesaid, I note that Board of Directors of the company have the responsibility to ensure that the company complies with the MPS requirements which necessarily entails that the method adopted to achieve the same is in consonance with law and that it is not merely a facade of compliance.

71. I note that Falcon had to comply with MPS requirements by June 3, 2013 for which the company has violated Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement. It has also been noted in preceding paragraphs, the only reason the “declared Promoter” shareholding was less than 75% was because the three Assignee companies / preferential allottees were shown as public shareholders rather than being clubbed with the Promoter Group. The reasons for why the said clubbing should have been done, have been discussed in the preceding paragraphs. The scheme / modus operandi adopted by the company to ensure that its “declared Promoter” shareholding is less than 75%, began with the signing of the assignment deed on February 9, 2012 and was operative till June 3, 2013. Thus, the relevant period for affixing the liability for the scheme / modus operandi adopted by the company to comply with MPS requirement is February 9, 2012 to June 3, 2013.

72. The Directors of Falcon who have been proceeded against in the present matter for non-compliance of MPS requirements are as under:

| Sl. No. | Name             | Designation            | Tenure                               |
|---------|------------------|------------------------|--------------------------------------|
| 1       | Pawan Kumar Ruia | Executive Chairman     | January 31, 2006 – November 17, 2014 |
| 2       | Sunil Bhansali   | Executive Director     | September, 2008 – November 16, 2012  |
| 3       | S. Ravi          | Non-Executive Director | October, 2008 to December, 2014      |

73. In the present case, I note that Mr. Pawan Kumar Ruia is the Executive Chairman of Falcon. Considering he is the Executive Chairman of Falcon, his role in the company is different from a Non-Executive Chairman who sits on the Board of Directors and

serves as its head. He being the Executive Chairman of Falcon makes him an Executive Director of Falcon. Executive Director as part of the Board of Directors are responsible for running the company's business. The Executive Director of the company apart from having necessary skills and knowledge also has much more detailed knowledge of the company and its issues and greater access to information. The same enables an Executive Director along with other Board Members to develop the strategic plan for the company and run the company. Thus, the Executive Director of the company has a statutory duty towards the company to act with reasonable care, skill and diligence and has to ensure that the operations of the company are managed / conducted in the best interest of the company and as per the applicable provisions of law.

74. In light of the aforesaid discussion, I note that Mr. Pawan Kumar Ruia, being the Executive Chairman had the responsibility to ensure that the affairs of the company are run within the confines of the law. It is noted from the material available on record that Mr. Pawan Kumar Ruia was not only on the Board of Falcon when Falcon was made party to the assignment deed on February 9, 2012 but he was also part of the Board when the preferential allotment of equity shares of Falcon to the three Assignee companies was approved by the Board. As discussed in preceding paragraphs, the assignment of loan was not in the best interest of Falcon. The same should have been known to Mr. Pawan Kumar Ruia, if he would have exercised due care and reasonable skill being the Executive Chairman of Falcon. He would have known that the three Assignee companies were in poor financial health with significant debt burden and low / negative net worth. Consequently, the decision to assign the loan of Falcon to the Assignee companies by the Promoter of Falcon was not an arm's length decision.

75. In view of the aforesaid discussion, I observe that Mr. Pawan Kumar Ruia being the Executive Chairman of the Falcon, had the knowledge that Falcon had entered into a tripartite agreement with the Assignee companies and that "on demand" the said three Assignee companies could demand to be allotted equity shares on a preferential basis. As noted above, he has failed to exercise due skill, care and diligence to prevent the same, which enabled Falcon to falsely declare that it is in compliance with the MPS requirements. Thus, Mr. Pawan Kumar Ruia being the Executive Chairman is responsible for the non-compliance by Falcon of the MPS requirement as mandated under Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement when the scheme / modus operandi was adopted by the company to



appear to comply with MPS requirement when in fact it was not in compliance with the MPS requirements.

76. Mr. Pawam Kumar Ruia has submitted that the time gap between granting of loan and its subsequent assignment implies that the entire happenings were not pre-planned but was carried out of commercial considerations. In this regard, I note that the existence of debt from Manali to Falcon in January, 2008 is not in dispute. The primary basis of the allegation is not the loan transaction but the subsequent “non-genuine” assignment and consequent preferential issue of equity shares to the Assignee companies whose shareholding for the reasons discussed in this order ought to have been clubbed with the other declared Promoters. The non-compliance of the MPS requirement would still lie even when the pre-planning was not from the stage of the loan transaction itself. Thus, the submission of Mr. Pawam Kumar Ruia is not acceptable.
77. Mr. Pawam Kumar Ruia has contended that no document or information has been put forward evidencing that the three companies viz., Suncap, Salputri and Regus worked in collusion with Manali and subsequently with Falcon. On a perusal of the loan agreement / arrangement between Falcon and Manali, the assignment deed, the economic performance and business operations of the Assignee companies, material anomalies have been brought out which show that the transaction pertaining to assignment of loan to the Assignee companies and the subsequent conversion of loan (debt) into equity, was not a genuine outcome of the assignment deed in normal course of business and the same would not have been carried out but for the company, Promoter Group and the Assignee companies having a tacit understanding amongst them.
78. Mr. Pawam Kumar Ruia has further submitted that assignment of loan was done by Manali and he was not on the Board of Manali. In this regard, I note that though the loan was assigned by Manali but Falcon was a party to the assignment deed. It has already been brought out that the loan assignment was not in the best interest of Falcon and the same should have been known to him as he was the Executive Chairman of Falcon.
79. Mr. Pawam Kumar Ruia has contended that the SCN is silent on how the three Assignee companies are part of the Promoter Group. In this regard, I note that the SCN

has unequivocally brought out that despite all three Assignee companies having significant debt burden and low / negative net worth, still the loan was assigned by the Promoter of Falcon namely Manali to the said companies and this was done without any simultaneous consideration. Instead a huge risk was taken on the three Assignee companies, that they would pay for the assignment "later". The SCN has also brought out as to how the entire transaction between Manali and the three Assignee companies was not at arm's length. Finally, after highlighting all the anomalies in the transaction between Manali and the three Assignee companies, the SCN has alleged that a scheme was put in place by Manali and the three Assignee companies to enable Falcon to "comply" with MPS requirement. Thus, the said allegation is based on the three Assignee companies being part of the Promoter Group as a result of which, the Promoter shareholding of Falcon has been alleged to be at 87.62% of the total equity share capital of Falcon post preferential allotment made on April 26, 2012. Thus, the submission of Mr. Pawam Kumar Ruia is not acceptable as the SCN has clearly brought out the circumstances which shows that the three Assignee companies were part of / have to treated as part of the Promoter Group of Falcon.

80. With respect to Mr. Sunil Bhansali, I note from available records that he was Executive Director of Falcon from September 2008 to November 16, 2012. Mr. Sunil Bhansali being the Executive Director of Falcon, has detailed knowledge of the company and its issues and greater access to information. I note that Mr. Sunil Bhansali had the responsibility to ensure that the affairs of the company are run within the confines of the law. Considering, he was Executive Director of Falcon, he had access to information regarding the company which requires him to be aware that Falcon was made party to the assignment deed on February 9, 2012. Further, he was also part of the Board and present in EOGM when the preferential allotment of equity shares of Falcon to the three Assignee companies was approved. As discussed in preceding paragraphs, the assignment of loan was not in the best interest of Falcon. The same should have been known to Mr. Sunil Bhansali, if he would have exercised due care and reasonable skill being the Executive Director of Falcon. He would have known that the three Assignee companies were in poor financial health with significant debt burden and low / negative net worth. Consequently, the decision to assign the loan of Falcon to the Assignee companies by the Promoter of Falcon was not an arm's length decision.

81. In view of the aforesaid discussion, I observe that Mr. Sunil Bhansali being the Executive Director of the Falcon, was required to be aware that Falcon had entered into a tripartite agreement with the Assignee companies and that “on demand” the said three Assignee companies could demand to be allotted equity shares on a preferential basis. As noted above, he has failed to exercise due skill, care and diligence to prevent the same, which enabled Falcon to falsely declare that it is in compliance with the MPS requirements. Thus, Mr. Sunil Bhansali is also responsible for the non-compliance by Falcon of the MPS requirement as mandated under Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement as he was the Executive Director of Falcon when the scheme / modus operandi was adopted by the company to appear to comply with MPS requirement when in fact it was not in compliance with the MPS requirements.
82. Mr. Sunil Bhansali has submitted that his job responsibility was to take care of day to day factory operation. In this regard, I note that being the Executive Director of the company, it is his statutory duty towards the company to act with reasonable skill, care and diligence so as to ensure that the operations of the company are run within the confines of law. He cannot shy away from his responsibilities by stating that even though he was part of the Board in an Executive capacity, he had a very limited role. In the present matter, if he would have made a basic inquiry into the affairs of the Assignee companies, he would have known that the said three Assignee companies did not have the financial capacity to take over the loan of Falcon. However, he failed to exercise any skill and diligence in the assignment process by Falcon to the said three Assignee companies. Thus, the submission of Mr. Sunil Bhansali limiting his role as an Executive Director of Falcon is untenable.
83. Similarly, the submission of Mr. Sunil Bhansali that the Board Meeting and EOGM was attended by Independent Directors is also not acceptable as his responsibilities as an Executive Director of Falcon is not dependent on the presence or absence of Independent Directors on the Board. Executive Director stand on a different footing, as discussed above, from the Independent Directors.
84. The submission of Mr. Sunil Bhansali that the three companies are not part of Promoter Group has been dealt in preceding paragraphs which demonstrate the circumstances as to why the shareholding of the three Assignee companies should be

clubbed together with the Promoter Group of Falcon.

85. Mr. Sunil Bhansali's submitted that he was not a signatory to the assignment deed. In this regard, I note that even if the submission of Mr. Sunil Bhansali is accepted, still it is observed that he being the Executive Director of Falcon had greater access to information regarding the company and therefore, he was required to be aware of the fact that Falcon has signed the tripartite agreement. He being part of the Board of Falcon as an Executive Director would have been aware of the said agreement and if he would have exercised diligence, he would have realised that Falcon, by signing the said tripartite agreement was agreeing to onerous terms which were not in its best interest. Further, by doing even a basic background check of the Assignee companies, he would have realised the financial incapacity of the said companies to take over the loan of Falcon.
86. Mr. Sunil Bhansali has further submitted that the transaction with the Assignee companies did not result in any benefit to Falcon. The said submission of the Noticee is incorrect as the entire scheme including the transaction with the Assignee companies enabled Falcon to claim compliance with the MPS requirements, when in fact, it was not compliant.
87. Mr. S. Ravi, the Non- Executive Director of Falcon (October, 2008 to December, 2014) has submitted that his role as a Non - Executive Director, never called upon him to do any extra due diligence beyond reviewing / examining what was presented to the Board and he was never privy to or had access to any information which was not presented to the Board. On the basis of information available to him at that time, he had no reason to suspect any wrongdoing or falsification of information. Further, he submitted that the Board after reconfirming that all compliance and regulatory requirement were in place as per the information placed by the Company / Corporate Management and vetted by the company secretary, deliberated the matter. The Board extensively reviewed the matter in the presence of all the Director including Independent Directors who needless to mention had vast experience in such matters.
88. With respect to the submission of Mr. S. Ravi, I note that being a Non-Executive Director, knowledge can be attributed to him of matters that are placed before the Board of the company. Mr. S. Ravi has admitted that the issue of preferential allotment to the three Assignee companies was deliberated by the Board of Falcon. Considering

a significant debt of the company was converted into equity shares and were allotted to three Assignee companies which would give them even individually a substantial shareholding in the company, this should have given him sufficient cause to make a meaningful inquiry regarding the nature and financial worth of the said Assignee companies. More so when the three Assignee companies are not related to Falcon or to its Promoter Group. The submission of Mr. S. Ravi that he relied upon the information placed by the Company / Corporate Management and vetted by the company secretary and on the expertise of other Independent Directors on the Board, is not acceptable. The reason being that though a Non-Executive Director is not charged with day to day affairs and management of the company but he has to independently exercised his own judgment to examine the information placed before him as part of the Board process. He in order to discharge his responsibilities has to make his own enquiry to ascertain the correctness of the information. In the given circumstance, considering a significant debt was assigned without any collateral giving a considerable stake to the Assignee companies in Falcon, even individually coupled with the fact that Falcon was entering into a transaction for the first time with the Assignee companies, should have given him sufficient reason to make a basic enquiry about the nature and financial worth of the said Assignee companies, over and above the information presented to him by the management. As noted in preceding paragraphs, the three Assignee companies were in poor financial health with significant debt burden and low / negative net worth. The same would have given enough cause to him to doubt the / question the information provided by the management. Thus, the failure of Mr. S. Ravi to exercise due care, skill and diligence has enabled Falcon to declare that it is in compliance with the MPS requirements, when in fact, it was not. Therefore, Mr. S. Ravi is also responsible for the non-compliance of the MPS requirement by Falcon as mandated under Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement as he was part of the Board of Falcon when the scheme / modus operandi was operative to give the appearance that the company was in compliance with MPS requirement.

### **Dunlop**

89. I note that Dunlop had to comply with MPS requirements by April 27, 2013 as per Rule 19A (2) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement. It has also been noted in preceding paragraphs, the only reason the

“declared Promoter” shareholding was less than 75% was because the three Assignee companies / preferential allottees were shown as public shareholders rather than being clubbed with the Promoter Group. The reasons for why the said clubbing should have been done, have been discussed in the preceding paragraphs. The scheme / modus operandi adopted by the company to ensure that its “declared Promoter” shareholding is less than 75% post issuance of equity shares on a preferential basis to the three Assignee companies, began with the signing of the assignment deed on January 14, 2012 and was operative till April 27, 2013. Thus, the relevant period for affixing the liability for the scheme / modus operandi adopted by the company to comply with MPS requirement is January 14, 2012 to April 27, 2013.

90. I further note that the allegation in the instant matter is avoiding compliance with the MPS Requirement. As far as Dunlop is concerned, it has disclosed to the public that it is in compliance of MPS requirement by wrongly classifying its Promoter Group entities in the category of public. Though it appeared to be compliant, the same is not legal compliance as such compliance was on the basis of purposeful, wrong classification of the shareholders. Since the company was “seemingly” in compliance of MPS norms, in reality, it is avoiding the rightful compliance of MPS requirement. Thus, the crux of the allegation is avoiding the MPS compliance. Therefore, what is relevant is the actions of the company or the facade (scheme) used by the company for avoiding the rightful compliance of MPS. A company which has, subsequent to June 4, 2010 has become non-compliant with MPS requirement, was given a year from the date of the said non-compliance, for rightful compliance of MPS by adopting the permissible means. The company has put up a facade in seeming compliance of MPS as on the date of April 27, 2013 and in order to create this facade, it had taken steps in advance of April 27, 2013. This is a case where the wrongdoing started right from the time when the facade (scheme) was designed and continued during the period granted for rightful compliance of MPS through permissible method. Therefore, in such a scenario, putting up of a facade of compliance in order to avoid the rightful compliance becomes an action point for avoiding the MPS. Thus, even though, technically the non-compliance with MPS may be with effect from April 27, 2013, while determining who is responsible for such non-compliance / facade of compliance, the relevant period is from the time the facade was set in motion itself so as not to let those who put up the facade of compliance go scot-free. In any case, in

this matter, the enforcement action for non-compliance of MPS by way of avoiding to comply MPS, has been taken after the expiry of permissible period of one year. Accordingly, in the facts and circumstances of the case, the liability for non-compliance of MPS by avoiding to comply MPS by putting up a facade of compliance should be fastened on those who designed these facade (scheme).

91. The facade (scheme) adopted by Dunlop can be summarised as follows:

91.1. There was an outstanding loan of approximately Rs. 62.39 crore which Dunlop owed to its group company, Stephens. Out of the said loan, Rs. 60 crore was subsequently assigned to three Assignee companies vide three assignment deeds dated January 14, 2012.

91.2. As noted in the preceding paragraphs, the assignment of loan was not a genuine consequence / natural outcome of the initial loan in the normal course of business. The same is based on the rationale that the decision of Stephens to assign the loan to the Assignee companies was not a commercially prudent decision / arm's length decision. This when seen in light of the fact that Stephens did not levy any penal interest on the Assignee companies for non-payment of consideration of loan and the absence of any evidence which shows that a demand notice was served on Dunlop by the Assignee companies, leads to a conclusion that the dealings amongst Dunlop, Stephens, Promoter Group of Dunlop and the Assignee companies, were not at arm's length.

91.3. Subsequently, the Assignee companies were allotted shares on a preferential basis and shown as part of public shareholders. Thus, due to the tacit understanding amongst Dunlop, Stephens, Promoter Group of Dunlop and the Assignee companies, which led to the Assignee companies being wrongly classified in the public category of shareholders, Dunlop was seemingly compliant with MPS requirements and avoided rightful / legal compliance with MPS requirements.

92. The Directors of Dunlop who have been proceeded against in the present matter for non-compliance of MPS requirements are as under:

| <b>Sl. No.</b> | <b>Name</b>        | <b>Designation</b>                 | <b>Tenure</b>                           |
|----------------|--------------------|------------------------------------|-----------------------------------------|
| 1              | Mohan Lall Chauhan | Non-Executive Independent Director | September 25, 2009 – September 26, 2014 |

|   |                     |                        |                                    |
|---|---------------------|------------------------|------------------------------------|
| 2 | Damodar Prasad Dani | Non- Executor Director | May 11, 2010 – January 26, 2013    |
| 3 | S. Ravi             | Non-Executive Director | September 10, 2011 – July 18, 2014 |

93. Mr. S. Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani have made similar submissions viz.,

93.1. The details presented were certified and vetted by the management of Dunlop and that they had no reason to doubt the information / explanation provided to them.

93.2. They relied upon the documents placed before them.

93.3. Since the Assignment Agreement was already in place prior to the matter coming up before the Board of Dunlop, the matter was either to pay back the loan or to allot shares by converting the loan as per the assignment agreement keeping the company's viz. Dunlop's interest and avoid default.

94. With respect to the first submission, I note from the observation of Hon'ble Supreme Court of India in the matter of *Pooja Ravinder Devidasani vs. State of Maharashtra* (2014) 16 SCC 1 that a Non-Executive Director is custodian of the governance of the company and only monitors the executive activity. The same entails that a Non-Executive Director cannot place blind reliance on the information provided by the management of the company. He in order to discharge his responsibilities has to make his own enquiry to ascertain the correctness of the information. In the given circumstance, considering a significant debt was assigned without any collateral giving a considerable stake to the Assignee companies in Dunlop, even individually coupled with the fact that Dunlop was entering into a transaction for the first time with the Assignee companies, should have given them sufficient reason to make a basic enquiry about the nature and financial worth of the said Assignee companies, over and above the information presented to them by the management. As noted in preceding paragraphs, the three Assignee companies were in poor financial health with significant debt burden and low / negative net worth. The same would have given enough cause to the Non-Executive Directors to doubt the / question the information provided by them.

95. Similarly, for the submission that the Non-Executive Directors relied upon the



documents placed before them, I observe that a Non-Executive Director has to independently exercised his own judgment and diligence to examine the information placed before him as part of the Board process. Therefore, a Non-Executive Director cannot escape liability where he has information sufficient enough to raise queries and he has failed to make any meaningful inquiries before giving his consent.

96. With respect to the submission that the assignment agreement was already in place prior to the matter coming up before the Board of Dunlop and allotment of shares by converting the loan as per the assignment agreement was in Dunlop's interest, I note that the responsibility of the Non-Executive Directors in the given facts and circumstances of the matter, is not for Dunlop entering into an assignment agreement but for their failure to make a meaningful inquiry into the nature and financial worth of the said Assignee companies which could have brought to their knowledge the facts constituting the noncompliance of MPS. Further, it has been brought out in preceding paragraphs that the assignment of loan and its subsequent conversion to equity, was not a genuine consequence / outcome of the assignment deeds and was done to avoid non-compliance with MPS requirements. Hence, the submission of the Non-Executive Directors that it was done in the best interest of Dunlop is not acceptable, as consequence of the said assignment, is non-compliance with a mandatory provision of law.

97. In view of the aforesaid discussions, it is held that Mr. S. Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani are responsible for the non-compliance of the MPS requirement by Dunlop as mandated under Rule 19A (1) of SCRR read with Section 21 of SCRA and clause 40A of Listing Agreement as they were part of the Board of Dunlop when the scheme / modus operandi was operative to give the appearance that the company was in compliance with MPS requirement.

98. Before proceeding further, it will be appropriate to summarise the role played by the Executive Chairman and Executive Director of Falcon and Non-Executive Directors of Falcon and Dunlop.

98.1. Executive Chairman and Executive Director of Falcon had knowledge of the company affairs and greater access to its information. Thus, if they would have exercised due care and reasonable skill, they would have known that the assignment of loan was not in the best interest of Falcon. Further, by making basic

inquiry they would have known about the financial incapacity of the Assignee companies. Thus, the Executive Chairman and Executive Director of Falcon were responsible for the assignment of loan and the subsequent conversion of the loan to equity share capital of the company including the wrongful classification of the Assignee companies which enabled Falcon to be seemingly in compliant with MPS requirements.

98.2. Non-Executive Director(s) of Falcon and Dunlop had knowledge about the conversion of debt of the company to equity share capital of the company pursuant to the assignment deeds and the aforementioned fact has been admitted by them. Thus, inspite of having the knowledge that the three assignee companies, even seen individually, will have a substantial shareholding in the company, still they failed to make meaningful inquiry regarding the nature and financial worth of the said Assignee companies. Therefore, their failure to make enquiry about the Assignee companies resulted in the wrongful classification of the Assignee companies which enabled Dunlop to be seemingly in compliant with MPS requirements.

99. I note that Listing Agreement has been rescinded and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 has come into effect. Regulation 103 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides as under:

***Repeal and Savings***

*103 (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.*

*(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations*

100. Thus, the present proceeding is saved by above mentioned regulation of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

**Issue No. 4** - *If the answer to issue no. 2 is in the affirmative, what directions, if any, should be issued against those responsible?*

101. I note that the rationale behind the insertion of Rule 19A in the SCRR, can be noted from the Press Release dated June 4, 2010, issued by the Ministry of Finance, Government of India, which inter alia states that "*A dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. Further, the larger the number of shareholders, the less is the scope for price manipulation.*". Further, the Hon'ble SAT in the matter of *Siel Financial Services Ltd. vs. SEBI* decided on August 3, 2020 has observed as follows that: "*The reason for bringing in the minimum public shareholding requirement was to ensure that there is no concentration of shares at the hands of single person or a group of persons. The idea is that if there are a large number of shareholders then there is less scope of price manipulation and further provides liquidity to the investors and helps in discovery of fair price*

102. As such, in order to ensure an equitable participation of the Promoter / Promoter Group qua the public shareholders in the affairs of a private sector listed company and also to provide a level playing field for the Promoter/ Promoter Groups of these companies with the Promoter/ Promoter Groups of the other companies that have already complied with the abovementioned provisions of SCRR and in the manner as specified by SEBI, it is imperative that this balance be restored and the disproportionate advantage arising out of non-compliance of the MPS requirement not be permitted to be vested with the Promoter/ Promoter Group. In view thereof, in the interest of all investors and the orderly development of the securities market, it is necessary to pass suitable directions.

103. I note from the material available on record that both the companies, Falcon and Dunlop are under liquidation. As such any directions passed against them under Sections 11(1), 11(4) and 11B (1) of SEBI Act read with Section 12A of SCRA does not serve any desirable purpose.

### **ORDER**

104. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act read with Section 12A(1) of Securities

Contracts (Regulation) Act, 1956 issue the following directions:

- 104.1. Mr. Pawan Kumar Ruia being the Executive Chairman, is hereby restrained from accessing the securities market for a period of two years from the date of this order and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years, from the date of this order.
- 104.2. Mr. Sunil Bhansali being the Executive Director, is hereby restrained from accessing the securities market for a period of one year from the date of this order and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one year, from the date of this order.
- 104.3. Mr. S. Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani are hereby restrained from accessing the securities market for a period of six months from the date of this order and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one year, from the date of this order.
- 104.4. Mr. Pawan Kumar Ruia, Mr. Sunil Bhansali, Mr. S. Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani are also restrained from being associated with any other listed company or a SEBI registered intermediary, in any capacity including as a Director or key managerial person, directly or indirectly, for their respective period of restraint as mentioned under paragraphs 104.1, 104.2 and 104.3 from the date of this order.
- 104.5. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of Mr. Pawan Kumar Ruia, Mr. Sunil Bhansali, Mr. S. Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani shall remain frozen. It is made clear that if Mr. Pawan Kumar Ruia, Mr. Sunil Bhansali, Mr. S. Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani have any open positions in any exchange traded derivative contracts, they can close out / square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that Mr. Pawan Kumar Ruia, Mr. Sunil Bhansali, Mr. S.

Ravi, Mr. Mohan Lall Chauhan and Mr. Damodar Prasad Dani can settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on March 24, 2021.

105. The order shall come into force with immediate effect.
106. A copy of this order shall be served upon all recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.
107. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

**DATE: March 24, 2021**

**PLACE: Mumbai**

**MADHABI PURI BUCH**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**