

WTM/AB/IVD/ID19/12587/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

Noticee No.	Name of Noticees	PAN
1.	Venmax Drugs and Pharmaceuticals Limited	AAACY1073C
2.	Mr. N. V. Narender	ABCPN2615D
3.	Mr. N. Krishnaniah	AYPPN3755J
4.	Mr. A. Ramakrishnaiah	AHKPA5243Q
5.	Ms. G. S. V. Divya Jyothi	BQSPG9204P
6.	Mr. Rajkumar Rai	AGHPR6234J
7.	Mr. A. Venkateswarlu	BKEPA5210K

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

In the matter of Venmax Drugs & Pharmaceuticals Limited

1. The present proceeding emanates from a show cause notice dated August 19, 2020 (hereinafter referred to as “**SCN**”) issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees calling upon them to show cause as to why suitable directions should not be issued and/or penalty not be imposed, as deemed fit under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2)

read with Section 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), Section 12A(1) and 12A(2) read with Section 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) against them. The SCN, *inter alia*, alleged that Venmax Drugs & Pharmaceuticals Limited (hereinafter also referred to as “**VDPL**” / “**the Company**”) and its directors i.e. Noticee no. 2 to 7, have failed to present true and fair financial statements of VDPL and had executed transactions which are non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of funds of the Company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the Company and had the potential to mislead the investors. It is also alleged that the directors of VDPL had failed to exercise duty of care, and failed to discharge their fiduciary responsibility. In view of the above, the SCN alleged that the Company and its directors (Noticee no. 2 to 7) have violated Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) and Regulations 4(1), 4(2) (f) & (r) of SEBI (Prevention of Fraudulent and Unfair Trading Practices relating to securities market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulation, 2003**”), Regulations 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(g), 4(1)(e), Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1),(3),(6) & (12), Regulations 6(1), 33(2)(a), 46(1) and 48 of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “**LODR Regulations**”) read with Section 21 of SCRA, 1956.

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

2.1. SEBI passed an interim order on December 18, 2017 (hereinafter referred to as “**interim order**”) *inter-alia* directing the promoters and the directors (Noticee no. 2 to 6) of the VDPL to only buy the shares of VDPL held by them in the Company and shall not be allowed to be transferred for sale by depositories. Further, vide

the said interim order, the stock exchange was directed to appoint an independent forensic auditor to, *inter-alia*, further verify:

- 1.1. Misrepresentation including of financials and/or business of VDPL, if any;
 - 1.2. Misuse of the funds/books of accounts of VDPL, if any.
- 2.2. The forensic audit report was submitted to SEBI by the stock exchange on August 19, 2019 and the findings of the forensic audit report from the period April 01, 2015 till March 31, 2018 were examined.
- 2.3. The investigation, *inter-alia*, revealed the following:

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

2.3.1. **Re:** Reporting of non-genuine purchases & sales.

2.3.1.1. Regarding purchases & sales made by “VDPL” and the tripartite agreement dated December 29, 2016 between VDPL, Nama and Unimax.

2.3.1.1.1. Observations in the confirmatory order dated 29, 2018:

2.3.1.1.2. VDPL has submitted the tripartite agreement dated December 29, 2016 between VDPL, Nama and Unimax, which states that Unimax will directly make a payment of INR 24.42 lakhs to Nama instead of VDPL. This will settle the liability between VDPL and Nama which arose due to purchase of equipment by VDPL from Nama. The following was observed from the tripartite agreement:

- 2.3.1.1.3. The tripartite agreement states that credit period of 60 days were given to VDPL by Nama. So, the payment for invoice no. 006 dated June 29, 2016 amounting to INR 16.54 lakhs was due on or before August 28, 2016. Even though no payment was made by VDPL to Nama during the credit period, another sale was made by Nama to VDPL vide invoice no. 013 dated September 29, 2016 amounting to INR 7.88 Lakhs. The same was due for payment on or before November 28, 2016 i.e. 60 days credit period.
- 2.3.1.1.4. As per invoices no. VDPL/001 dated June 30, 2016 and no. VDPL/002 dated September 30, 2016, the credit period given to Unimax by VDPL was indicated as 60 days. So, the payment for invoice no. VDPL/001 dated June 30, 2016 amounting to INR 17.26 Lakhs was due on or before August 29, 2016. Even though no payment was made by Unimax to VDPL, another sale was made by VDPL to Unimax vide invoice no. VDPL/002 dated September 30, 2016 amounting to INR 8.66 Lakhs. The same was due for payment on or before November 29, 2016.
- 2.3.1.1.5. The tripartite agreement states that credit period of 90 days was given by VDPL to Unimax instead of 60 days as mentioned in the invoices no. VDPL/001 dated June 30, 2016 and no. VDPL/002 dated September 30, 2016 raised by VDPL to Unimax.
- 2.3.1.1.6. The agreement states that due to financial crunch, Unimax is unable to make payment to VDPL after due dates. Despite the financial position of Unimax, Nama agreed to settle the liability of VDPL with Unimax, which is not consistent with accepted business practice.
- 2.3.1.1.7. Further, the agreement provides for settlement of INR 24.42 lakhs due to Nama from VDPL. However, the total transaction value between

Unimax and VDPL was INR 25.92 Lakhs. The agreement does not provide for balance INR 1.50 lakhs owed by Unimax to VDPL. No documentary evidence has been provided by VDPL for receipt of the same. Also, no documentary evidence has been provided for transfer of INR 24.42 Lakhs from Unimax to Nama. Further, there is no third party verifiable documentary evidence to show the actual delivery of machinery from Nama to VDPL and then from VDPL to Unimax.

2.3.1.1.8. Findings of Investigation:

2.3.1.1.9. It is observed that the forensic auditor is of the view that the conduct of above mentioned transaction is not wrong in business.

2.3.1.1.10. However, it is noted that by the forensic auditor has not been provided with supporting documents such as confirmation letter from Nama, communication with Nama/Unimax, etc. as proof for payment made by Unimax to Nama Chemicals.

2.3.1.1.11. Further, no third party verifiable documentary evidence has been provided till date by VDPL to show the actual delivery of machinery from Nama to VDPL and then from VDPL to Unimax. The non-submission of such important supporting documents concludes that the entire set of transactions were mere book entries.

2.3.1.2. Regarding the tripartite agreement between VDPL, Nama and Syntho.

2.3.1.2.1. Observations in the confirmatory order dated 29, 2018:

2.3.1.2.2. VDPL has submitted the tripartite agreement dated December 29, 2016 between VDPL, Nama and Syntho, which states that Syntho will directly make a payment of INR 46.70 lakhs to Nama instead of VDPL.

This will settle the liability between VDPL and Nama which arose due to purchase of equipment by VDPL from Nama. It was observed from the tripartite agreement that:

- 2.3.1.2.3. The agreement states that the credit period given to VDPL by Nama was 60 days. So, the payment for invoice no. 002 dated March 07, 2016 amounting to INR 16.54 lakhs was due on or before May 06, 2016.
- 2.3.1.2.4. The agreement states that the credit period given to Syntho by VDPL was 90 days. So, the payment for invoice no. VDPL/003 dated March 14, 2016 amounting to INR 48.60 lakhs was due on or before June 12, 2016.
- 2.3.1.2.5. Despite the fact that due dates for payment were on or before May 06, 2016 for VDPL and June 12, 2016 for Syntho, the agreement was entered on December 29, 2016.
- 2.3.1.2.6. The agreement states that due to financial crunch, Syntho is unable to make payment to VDPL after due date. Despite the financial position of Syntho, Nama agreed to settle the liability of VDPL with Syntho.
- 2.3.1.2.7. The agreement provides for settlement of INR 46.70 lakhs due to Nama from VDPL. However, the total transaction value between Syntho and VDPL was INR 48.60 Lakhs. The agreement does not provide for balance INR 1.90 lakhs owed by Syntho to VDPL. No documentary evidence has been provided by VDPL for receipt of the same. Also, no documentary evidence has been provided for transfer of INR 46.70 Lakhs from Syntho to Nama.
- 2.3.1.2.8. Further, even though no payment was made by VDPL to Nama during the credit period for the transaction done in March 2016 (1st), Nama

executed 2 more sale transactions during 2016-17 with VDPL - amounting to INR 16.54 lakhs for which payment was due on or before August 28, 2016 (2nd) and INR 7.88 Lakhs which for payment was due on or before November 28, 2016 (3rd). All 3 sales transactions were settled vide tripartite agreements with no documentary proof on exchange of funds. Further, there is no third party verifiable documentary evidence to show to actual delivery of machinery from Nama to VDPL and then from VDPL to Syntho.

2.3.1.2.9. Findings of Investigation:

2.3.1.2.10. It is observed that the forensic auditor is of the view that the conduct of the company having subsequent sales irrespective of receipt of consideration for the initial sales and payment to a third party (provided there is a tripartite agreement) is a common practice in pharmaceutical business.

2.3.1.2.11. However, it is noted that by the forensic auditor has not been provided with supporting documents for proof for payment made by SynthoChirals to Nama Chemicals. The non-submission of important supporting documents such as proof of payment, etc. concludes that the entire set of transactions were mere book entries. Entering into such transactions is not in the interest of shareholders of the company. This tantamount to misrepresentation of financial /misuse of funds/ books of accounts of VDPL.

2.3.1.2.12. Also, non-submission of these relevant documents by the company to forensic auditor raises concerns as to whether the transactions have indeed taken place. This tantamount to misrepresentation of financial and misuse of funds of VDPL.

2.3.2. **Re:** Misreporting by the company with regard its related party transactions.

2.3.2.1. It is observed that since Mr. N V Narender is an independent director of Syntho and is also MD of VDPL, Syntho is a related party of VDPL in terms of provisions of Section 2(76)(iv) of the Companies Act, 2013 read with Regulation 2(1)(zb) of LODR Regulations, 2015. VDPL has not provided sufficient material to show that the said transaction of VDPL with Syntho was carried out on an arms' length basis.

2.3.2.2. Further, para 23 of Accounting Standard 18 inter alia requires that - If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose details such as the name of the transacting related party, a description of the relationship between the parties , a description of the nature of transactions, etc. It was observed that since the transaction with Syntho was not disclosed by VDPL in the annual report for FY 2015-16, such non-disclosure creates suspicion on the genuineness of the transactions, thereby misrepresentation of financial statements to this extent.

2.3.3. **Re:** Reporting of non-genuine deposits.

2.3.3.1. VDPL has not provided any documents to support existence of deposits for Rs. 6.96 lakhs (as on March 31, 2017) that have been shown in the annual report for FY 2016-17 and subsequently written off in FY 2017-18.

2.3.3.2. It is observed that the forensic auditor has not been provided with supporting documents such as Invoice, Confirmation letter, Email confirmation, etc. as proof for such book entries. Also, the company's

reply that they had given replies from their memory during hearing is beguiling; that too for details regarding financial transactions including entries related to electricity, court etc. is non tenable.

2.3.3.3. The non-submission of such important supporting documents concludes that the entire set of transactions were mere book entries. Recording of such transactions in the books of accounts is not in the interest of shareholders of the company. This tantamount to misrepresentation of financial /misuse of funds/ books of accounts of VDPL.

2.3.4. **Re:** Reporting of non-genuine salary expenses.

2.3.4.1. As per VDPL's submissions, MD (Mr. Narender) had taken the personal loan by pledging gold and met company's expenditure of Rs 12,90,251/- in FY 2016-17. According to VDPL, Mr. Narender was making expenditures on behalf of VDPL and the same was accounted as "unsecured loan from directors".

2.3.4.2. It is observed that the liabilities were paid off by the director which is shown as unsecured loan from director in the books of accounts.

2.3.4.3. Further, the forensic auditor has not been provided with supporting documents such as salary slips, salary database, communication with employees regarding salary etc. with regard to salary expenses of Rs 5,56,000 in FY 2016-17 as proof for such book entries.

2.3.4.4. The non-submission of such important supporting documents concludes that the entire set of transactions of "unsecured loan from directors" and "salary expenses" were mere book entries.

2.3.4.5. A company is a separate legal entity to its owners/ directors. The transparency of transactions becomes vital the company is a listed entity with public money is involved. The cash received from gold loan bot being deposited into company's account clubbed with the fact that the said money has been used for expenses for which no supporting documents have been provided for tantamount to misrepresentation of financial and misuse of funds/books of accounts of VDPL. Recording of transactions in such a manner in the books of accounts seems to be inappropriate and not in the interest of shareholders of the company.

2.3.5. **Re:** Misreporting by the Company with regard its trade receivables.

2.3.5.1. Trade receivables were Rs. 68,19,901 in 2015-16 and Rs. 64,08,296 in 2016-17. However, Trade receivables were shown as Nil for 2015-16 and 2016-17 (previous year figures) in the annual report for 2017-18. This amounts to misrepresentation of financial statements.

II. Other Violations of LODR Regulations.

2.3.6. VDPL has not appointed a qualified company secretary as compliance officer.

2.3.7. VDPL has not maintained a functional website.

3. I note that Noticee no.1, through Noticee no. 2, has filed its merit based reply dated November 23, 2020 to the SCN. I note that Noticee no. 3 has vide his letter dated September 14, 2020, has submitted that he was the non-executive director of VDPL and was not involved in regular operations of the Company except attending board meetings and discussing agenda items. He has submitted that Noticee no. 1 and Noticee no. 2 are in a better position to reply to the SCN since they, have access to the records and documents and he does not have access to it. Noticee no. 3 has concluded his letter by stating that he has nothing more to say. I note that Noticee no.

4 has vide his letter dated September 14, 2020, has submitted that he was the independent director of VDPL and was not involved in regular operations of the Company except attending board meetings and discussing pre-selected agenda items. He has submitted that Noticee no. 1 and Noticee no. 2 are in a better position to reply to the SCN since they have access to the records and documents and he does not have access to it. Noticee no. 4 has concluded his letter by stating that he has nothing more to say. Noticee no. 6 vide his letter dated September 14, 2020, had sought time of two months to furnish his detailed replies, on the ground that office records were not accessible due to COVID restrictions. I note that, it has been over six months since the expiry of additional period of two months and yet no reply has been received from Noticee no. 6. I also note that despite successful service of SCN upon Noticee no. 5 and 7 through Speed Post, no reply has been received from them. Thus, the present matter is being proceeded against Noticee no. 5 and 7 ex-parte.

4. The Noticees were granted an opportunity of personal hearing on January 14, 2021. The hearing notice for the said hearing was served on all Noticees through email dated November 25, 2020. On receipt of adjournment request from Noticee no. 1, the hearing for the Noticees was adjourned to February 8, 2021. On the scheduled date of hearing, Advocate representing the Noticees was heard. During the hearing, the advocate was informed that the authorization letter dated February 2, 2021, which was submitted by him before me, would allow him to make submissions only on behalf of Noticee no. 1 and 2 and that he will have to submit separate authorizations from Noticee no. 3 to 7 in order to make submissions on their behalf. However, on request, the advocate was granted liberty to file the separate authorizations from Noticee no. 3 to 7 within 7 days and he was permitted to make submissions on behalf of Noticee no. 3 to 7 at the hearing on February 8, 2021 itself. I note that despite reminder emails being sent to the advocate, no authorization letters have been filed by him that could authorize and justify, him to make submissions on behalf of Noticee no. 3 to 7. Hence, I note that the oral submissions made by the advocate on behalf of Noticee no. 3 to 7 at the hearing held on February 8, 2021 cannot be taken on record.

5. I also note that in the reply dated November 23, 2020, Noticee no. 1, has insisted that the said reply be treated as reply on behalf of Noticee no. 2 to 7 as well. However, Noticee no. 1 was informed vide email that in order for the said reply to be treated as reply from Noticee no. 3 to 7, Noticee no. 1 will have to provide separate authorizations from each of the said Noticees. I note that Noticee no. 1 has failed to produce any such authorization despite several reminders, hence, the reply dated November 23, 2020 cannot be taken on record as reply from Noticee no. 3 to 7 and the said reply can only be treated as reply from Noticee no. 1 and 2. On perusal of the reply dated November 23, 2020, I also note that, the said reply does not contain any specific contentions that are raised on behalf of Noticee no. 3 to 7 as the director/CFO of VDPL.
6. I also note that in the reply dated November 23, 2020, Noticee no. 1, has made reference to certain documents in various paragraphs of the reply, which it claims to have attached as 'Annexures' to the said reply. However, I note that, no documents have been found to be attached as 'Annexure' to the reply dated November 23, 2020.

Consideration of submissions and findings:

7. I have considered the allegations in the SCN, replies received, and submissions made by the Noticees during the personal hearing granted to them. The SCN alleges the violation of the following provisions of law by the Noticees.

Relevant extract of the provisions of SEBI Act, 1992:

"Functions of Board.

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

(2) Without prejudice to the generality of the foregoing provisions, the measurements referred to therein may provide for-

.....

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

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

.....

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

12A. No person shall directly or indirectly-

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

.....

Offences by companies.

27. (1) Where an offence has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary

or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,- (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.....”

Relevant extract of provisions of SCRA, 1956:

“Conditions for listing.

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

Relevant extract of the provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a)
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

.....

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

.....

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

.....”

Relevant extract of the provisions of LODR Regulations:

“Principles governing disclosures and obligations.

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

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

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

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d)

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

(f)

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

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

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(f) Responsibilities of the board of directors:

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

.....

(ii) Key functions of the board of directors-

.....

- (6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
- (7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

...

(iii) Other responsibilities:

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

.....

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

.....

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

.....

Compliance Officer and his Obligations.

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

.....

Financial results.

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

.....

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

.....

- (2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
 - (a) The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading
- (3) The listed entity shall submit the financial results in the following manner:
 - (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

Website.

46. (1) The listed entity shall maintain a functional website containing the basic information about the listed entity.

.....

Accounting Standards.

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

8. Before proceeding on the merit of the matter, it will be relevant to discuss the background of the present proceedings. SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs. In respect of listed shell companies including VDPL, vide its letter dated August 7, 2017, SEBI placed trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. Thereafter, BSE vide notice dated August 7, 2017 issued to all its market participants, initiated

actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies, as identified by MCA and communicated by SEBI, with effect from August 8, 2017. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

9. Vide its letter dated September 19, 2017, VDPL made a representation to SEBI, *inter alia*, submitting as under:

"2 ...

a. SEBI has purportedly received the list of 331 companies from the Ministry of Corporate Affairs ("MCA") (purportedly by its letter dated June 9, 2017) which are identified as 'suspected shell companies'.

b. The Notification does not specify the criterion adopted to identify these 331 companies as 'suspected shell companies' and the specific provisions of law pursuant to which such entities have been identified as 'shell companies'.

c. The Notification, after two months from the receipt of the list from the MCA, directs the exchanges to place identified listed companies in Stage VI of the Graded Surveillance Measures (GSM) with immediate effect.

d. The effect of the Notification would be that the trading in the listed companies would be permitted only once in a month under the trade to trade category. Any upward price movement in these scrips is not permitted beyond the last traded price and Additional Surveillance Deposit of 200% of the trade value is to be collected from the buyer which is retained with the exchanges for five months. This substantially reduces the trading in these scrips on the basis of a mere suspicion.

f. Shares of the promoters/directors of such listed companies are -allowed to be transferred by depositories only after 'verification' by the exchanges. There is effectively a freeze on trading by such promoters/directors except to buy securities of the listed company until 'verification' of the credential/fundamentals by the exchanges is completed -without specifying any time period for such 'verification'-in other words inordinately."

10. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, VDPL filed an appeal No. 285 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**SAT**"). Hon'ble SAT vide order dated November 6, 2017 directed the following:

“2. As the appellant has already made a representation to SEBI against the said communication dated August 7, 2017, with a copy to BSE, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

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

11. Pursuant to above mentioned order passed by Hon'ble SAT, SEBI had called for various information/ explanation from VDPL and after granting an opportunity of personal hearing to VDPL, an interim order dated December 18, 2017 came to be passed by Whole Time Member, SEBI, directing the following:

“25.....

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

The interim order also clarified that:

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

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

12. The said directions in the interim order were confirmed vide order dated October 29, 2018. In terms of the interim order, BSE had appointed Secmark Consultancy Pvt. Ltd. as the Forensic Auditor and the Forensic Audit Report (hereinafter also referred to as “**FAR**”) was submitted to BSE by Secmark Consultancy Pvt. Ltd. on August 8,

2019. Thereafter, based on the Forensic Audit Report which was forwarded by BSE to SEBI, SEBI carried out an investigation in the matter. Based on the findings of investigation, the matter was placed before me on May 6, 2020 for approval of issuance of show cause notice and then was again placed before me on December 10, 2020 for granting a date for opportunity of hearing to the Noticees and passing a final order in the matter.

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

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

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

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

14. Re: Reporting of non-genuine purchases & sales by VDPL.

14.1. Regarding purchases & sales made by VDPL and the tripartite agreement dated December 29, 2016 between VDPL, Nama and Unimax.

AND

Regarding the tripartite agreement between VDPL, Nama and Syntho.

14.1.1. The short case of the SCN is that even though the Forensic Audit Report has not made any adverse observations with regard to the two tripartite agreements dated December 29, 2016, the fact that the forensic auditor has

not been provided with supporting documents for proof of payment made by Syntho Chirals to Nama Chemicals and Unimax to Nama Chemicals, and the lack of supporting documents to prove delivery of machinery from Nama to VDLP and VDPL to Syntho / Unimax, concludes that the entire set of transactions were mere book entries.

14.1.2. On perusal of the Forensic Audit Report, I note that Noticee no. 1 has submitted to the Forensic Auditor that “The delivery challan is the only document accompanying the equipment because it is a local sale. The fact that the three parties entered into the tripartite agreement itself is a proof that the equipment changed hands. If it was not so neither of the parties would have signed on the same. Hence it is wrong to say that there is no third party confirmation. When the parties to the contract are agreeing to the contract, there is no need for a third party confirmation.”

14.1.3. I note that, with regard to the two Tripartite Agreement for Settlement dated December 29, 2016, the Forensic Auditor has made the following observations in the Forensic Audit Report:

Regarding the tripartite agreement between VDPL, Nama and Syntho:

“We have not found anything wrong in the tripartite agreement entered between VDPL, Nama Chemicals and SynthoChirals which states that Syntho will directly make payment to Nama Chemicals for settling VDPL’s liability. Agreement was entered on December 29th 2016 as VDPL was anticipating receipt of the amounts from SynthoChirals and as amounts were still not received till December, tripartite agreement was entered into on December 29th 2016.

The agreement states that in case SynthoChirals is unable to make payment to Nama Chemicals, VDPL shall be liable for the same. This practice is not wrong in business.

No documents have been provided to us as proof for payment made by SynthoChirals to Nama Chemicals. As per books of account of VDPL, Rs 1,89,950 is still receivable from Syntho Chirals.(Refer Annexure 15)

Second and third sale to VDPL by Nama Chemicals even though money from first and second sale is not received within credit period is not a wrong practice as recovery is usually not made within credit period in the pharmaceutical industry.”

Regarding the tripartite agreement dated December 29, 2016 between VDPL, Nama and Unimax:

“We have not found anything wrong in the tripartite agreement entered between VDPL, Nama Chemicals and Unimax which states that Unimax will directly make payment to Nama Chemicals for settling VDPL's liability. Second sale to VDPL by Nama Chemicals even though money from first sale is not received within 60 days is not wrong as recovery is usually not made within time given in this industry.

Another sale was made by VDPL to Unimax even though money from first sale was not received. There is nothing wrong with such sale being made as it is normal in the pharmaceutical industry for bills to not be cleared within time given.

Agreement was entered into after making sale to Unimax. Actual credit period as per invoice is 60 days and as per agreement is 90 days. No non compliance is observed with regard to the same.

The agreement states that in case Unimax is unable to make payment to Nama Chemicals, VDPL shall be liable for the same. This practice is not wrong in business

No documents such as Confirmation letter from Namo, communication with Namo/Unimax, which was sought vide email dated May 29, 2019 (Refer Annexure 7 and 7A) have been provided to us as proof for payment made by Unimax to Nama Chemicals. VDPL has passed a journal voucher debiting Nama Chemicals and crediting Unimax by Rs 24,42,000. As per books of account of VDPL, Rs 1.50 lakhs is still receivable from Unimax. (Refer Annexure 12).”

- 14.1.4. From the remarks of the Forensic Auditor with respect to the underlying transactions in the two impugned Tripartite Agreement for Settlement dated December 29, 2016, I find that except for the remark on proof of payment to Namo by Unimax/ Syntho Chirals, the Forensic Auditor does not seem to find any adverse observation on the said transactions. I note that Forensic Auditor has not disputed the existence and execution of two impugned Tripartite Agreement for Settlement dated December 29, 2016. From the Confirmatory Order dated October 29, 2018, I find that VDPL had submitted before the Whole Time Member- SEBI, the following documents (1)

purchase invoices of Nama Chemicals, (ii) Sale invoices to Unimax, (iii) Copies of VAT returns of VDPL. Therefore, I find that the allegation that, the impugned transactions were mere book entries, does not stand proved.

15. Re: Misreporting by the company with regard its related party transactions.

15.1. With regard to allegation of misreporting by VDPL of its related party transactions forensic audit report observes as follows:

“Mr N.V.Narender is a Chairman and Executive Director of VDPL and director in Syntho Chirals Private Limited; thereby the said transaction is undertaken with related entity as per AS 18. No documentary evidence has been provided to us as supporting that the sale to Syntho Chirals was made at an arm's length price which were sought vide email dated May 29, 2019. Further, the same has not been disclosed as per section 188(2) of the Companies Act, 2013 in the Board's report and AS 18 in the annual report for the financial year 2015-16. Thus, it creates suspicion on the genuineness of the transactions, thereby misrepresentation of financial statements to this extent.”

15.2. With regards to this allegation, Noticee no. 1 and 2 have contended that the Company has invited the bids from four parties for the item on sale and three bids were received. Since, Syntho Chirals Pvt. Ltd. was the highest bidder, the items were sold to them. The board of Syntho Chirals Pvt. Ltd. consists of four directors of which three directors are promoter shareholder directors having stake in the company. Mr. N. V. Narendra, CMD of VDPL, is not having any stake in the company – Syntho Chirals Pvt. Ltd. and he is “only honorary director”. Hence, the question of control and significant influence in the affairs of Syntho Chirals Pvt. Ltd. does not arise. It is therefore submitted that the transactions between VDPL and Syntho Chirals Pvt. Ltd. are not Related Party transactions as per AS 18. Thus, the transactions between VDPL and Syntho Chirals Pvt. Ltd. are not covered under disclosure requirements of Section 188(1) and 188(2) as well as AS 18.

15.3. In this regard, I note that as per the records available with MCA 21 Portal, I note that Noticee no. 2 was the independent director on the board of Syntho Chirals Pvt. Ltd. I also note that Noticee no. 2 was the Chairman cum Managing Director of VDPL. Thus, I find that Syntho Chirals Pvt. Ltd. is a related party to VDPL in terms of Section 2(76)(iv) of Companies Act, 2013 read with Regulation 2(1)(zb) of LODR Regulations. I note that Noticee no. 2 has contended that he was merely an honorary director on the board of Syntho Chirals Pvt. Ltd. and unlike other directors on its board, he was not a promoter director, so he was not in a position to exercise significant influence and control. Thus, it is the case of Noticee no. 2 that, Syntho Chirals Pvt. Ltd is not a related party to VDPL. I note that Regulation 2(1)(zb) of LODR Regulations draws the definition of 'related party' from Section 2(76) of the Companies Act, 2013 and Section 2(76)(iv) of the Companies Act, 2013 reads as: "(76) "related party" with reference to a company means-(iv) a private company in which a director or manager or his relative is a member or director". From a reading of this definition of 'related party', it is amply clear that the said definition is a exhaustive definition and limits itself only to the specific instances of 'related party' mentioned therein. I note that by virtue of clause (iv) in the aforesaid definition Syntho Chirals Pvt. Ltd. is a related party to VDPL by virtue of Noticee no. 2 being a common director on the board of both the companies. I note that clause (iv) of the definition of 'related party' does not stipulate the requirement of 'exercise of significant influence or control' by the director, thus, I do not find merit in the contention raised by Noticee no. 2. I note that clause (iv) merely stipulates that for a private company to be called a related party to a listed company, the director/manager or their relative of a listed company should be a member or director of the private company. Thus, the contention raised by Noticee no. 2 is untenable.

15.4. Further, I note that VDPL entered into a related party transaction (sale) with Syntho Chirals Pvt. Ltd. vide the invoice no. VDPL/003 dated March 14, 2016 amounting to INR 48.60 lakhs. I note that the aforesaid transaction was a material

related party transaction (since the value of the transaction exceeded 10% of the turnover of VDPL for the FY 2014-15), and it was mandatory for VDPL to obtain shareholder's approval for the said related party transaction in accordance with Regulation 23(4) of LODR Regulations. I note that no such approval has been sought by VDPL for the impugned related party transaction. Thus, I find that VDPL has violated Regulation 23(4) of LODR Regulations.

15.5. I also note that in accordance with Section 188(1)(a) of the Companies Act, 2013, the impugned sale to Syntho Chirals Pvt. Ltd. by VDPL, was also required to be approved by the board of VDPL. However, an exception has been made by virtue of fourth proviso to Section 188(1) of the Companies Act, 2013, if the impugned transaction is in the ordinary course of business and at an arms length. I note that the confirmatory order dated October 29, 2018 had made the observation that VDPL has failed to produce any proof that the impugned transaction was made at an arms length price and the same observation has also been reiterated by the Forensic Auditor in the Forensic Audit Report. I also note that Noticee no. 1 and 2 have failed to provide any proof to substantiate the arm's length nature of the transaction while replying to the present SCN. It has merely stated that the Company has received bids from three sellers but no proof has been provided in support thereof. Thus, I find that the said related party transaction cannot be considered as an arm's length transaction and in accordance with Section 188(1)(a) of the Companies Act, 2013, the said transaction also required board's approval. Notwithstanding the status of arm's length nature of the said related party transaction, I note that Regulation 23(4) of LODR Regulations, does not provide for an exemption to an arm's length transaction done in the ordinary course of business if it is a material related party transaction. As found in para 15.4 above, the impugned transaction was a material related party transaction, which was undertaken by VDPL without the approval of the shareholders in the general meeting. Therefore, I find that VDPL has violated Regulation 23(4) of LODR Regulations.

15.6. I also note that for the FY 2015-16 and 2016-17, VDPL was required to disclose the aforesaid related party transaction with Syntho Chirals Pvt. Ltd. in the Board's Report in Form AOC-2 in accordance with Section 134(3)(h) of Companies Act, 2013 read with Rule 8(2) of Companies (Accounts) Rules, 2014. However, from the Annual Report of FY 2015-16 and 2016-17, I find that no such disclosure has been made by VDPL in the Board's Report/ Director's Report section of the Annual Report of VDPL for FY 2015-16 and 2016-17, which is in violation of Regulation 34(3) of LODR Regulations. I also note that, in accordance with AS 18 and Ind AS 24, VDPL was required to disclose the aforesaid related party transaction in the 'notes to accounts' section of the Annual Report for 2015-16 and 2016-17. However, I find that no such disclosure has been made by VDPL. Thus, by not complying with the disclosure requirements of AS 18/ Ind AS 24, I find that VDPL has violated Regulation 48 and Reg. 33(1)(c) of LODR Regulations.

16. Re: Reporting of non-genuine deposits.

16.1. With regard to allegation of reporting of non-genuine deposits, the interim order observed as follows:

"VDPL has not provided any documents to support existence of deposits for Rs. 6.96 lakhs (as on March 31, 2017) that have been shown in the annual report for FY 2016-17 and subsequently written off in FY 2017-18."

16.2. With regard to allegation of reporting of non-genuine deposits, the Forensic Audit Report has observed as follows:

"We were provided only extracts of tally in its own books of accounts as evidence of the deposits. Documentary evidence such as Invoice, Confirmation letter, Email confirmation, etc, with regard to existence of deposits had not been provided to us, which were sought vide email dated May 29, 2019 (Refer Annexure 7A & 13). The

same was written off in FY 2017-18. This tantamount to misrepresentation of financial statements as there was no proof as to its existence which was later written off.”

16.3. Noticee no. 1 and 2 had submitted that the deposits consists deposit with Electricity Board of Rs.5,16,738/-, Rental Deposit of Rs. 75,000/- and deposit with IDS of Rs. 25,000/-. These are security deposits made 20 years back in compliance with statutory requirements and are not normal transactions. Being security deposits with state govt. organisations, we could not bring out the confirmation from such organisations in Jan 2018. However, the said deposits were adjusted by Electricity Department at the time of dismantling of its services and to that effect the state electricity department has given a letter dated February 22, 2020, mentioning of adjustment of deposit. Rental deposit of RS. 75,000/- was adjusted towards rental expenses. And deposit of Rs. 25,000/- with IDS is to be recovered. The MD has deposited Rs. 87,000/- in favour of M/s. Sri Ram Chit Fund Pvt. Ltd. as per decree of Hon’ble Court. The amount of Rs. 80,000/- is now considered in the books of accounts as deposit amount. Previously, this amount of Rs. 80,000/- was debited to M/s. Sriram Chit Funds Account.

16.4. I note that while replying to the present SCN or even while replying to the forensic auditor, VDPL has failed to furnish any independently verifiable documentary evidence in support of its claim of deposits viz. Deposit of Rs.5,16,738/- with Electricity Board, Rental Deposit of Rs. 75,000/- or deposit with IDS of Rs. 25,000/-. I note that, all that has been provided is the copy of the entries in its own books of accounts. I note that the Company has even failed to provide any copy of the purported letter dated February 22, 2020 from the electricity department, which it claims that it mentions about the adjustment of deposit. In view of the above, I find that the ‘Deposits’ as shown in ‘Non-current Assets’ of the Notes to Financial Statements of VDPL for the FY 2015-16 and 2016-17, are incorrect and thus, the financial statements of VDPL are misrepresented to that extent. By the aforesaid misrepresentation in the financial statement of the

Company, VDPL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

17. Re: Reporting of non-genuine salary expenses.

17.1. With regard to allegation of reporting of non-genuine salary expenses by VDPL, the Forensic Audit Report has observed as follows:

"We have been informed that the personal loan has not been deposited as the same has been withdrawn in cash by Mr N. V. Narender and spent for business purpose as payment had to be made on an urgent basis. Expenses like listing fees, salary, maintenance charges, printing & stationery, travelling, consultancy charges, postage and courier, telephone, etc were paid by using loan funds. However, while verifying expenses of the company, supporting documents of all expenses except salary was given. Supporting documents such as salary slips, salary database, communication with employees regarding salary etc with regard to salary expenses of Rs 5,56,000 in FY 2016-17 were not been made available to us. This raises doubt on the genuineness of salary expenditure in the financial statements of FY 2016-17."

17.2. Noticee no. 1 and 2 have submitted that they are constrained to operate the bank account for major amounts due to fear of freeze by Income Tax Dept. and hence, Noticee no. 2 has met the expenses through cash which was withdrawn from his personal account (which was raised through Gold Loans). We used to give Pay Slips and maintain Pay Vouchers with us alongwith the acknowledgement from the receiver as proof of receipt. Further, the salary income of Rs. 3 Lakh per annum to Noticee no. 2 was shown as income in his personal income tax return under "Salary Head" and assessed accordingly. Accounting of Salary Expenses by VDPL:

Salary Expenses A/c. Dr.

To Director Loan A/c. Cr.

(Being Salary Expenses met by director)

The above accounting entry is journal entry where the cash brought in by Noticee no. 2 and cash paid to employee are squared off and hence, personal accounts or nominal accounts only reflected. The underlying principle of the above said Journal entry where the cash movement is squared off is not appreciated by the Forensic Auditor and thereby commented that the salary expenses are non-genuine. Further, it is also unfortunate that the Forensic Auditor has not accepted any payment voucher or Income Tax Return filed by Noticee no. 2 as genuine. The pay slips and acknowledgement by recipient would be ample proof to show evidence for salary expenses and not sham transactions as alleged.

17.3. Noticee no. 1 and 2 have acknowledged the fact that they used to avoid payment through banking channels in order to avoid scrutiny by Income Tax Dept. Thus, I find that the claims of Noticee no. 1 and 2 about payment of salary cannot be verified from an independent source such as bank entry. Be that as it may, I note that Noticee no. 1 and 2 have also failed to furnish any supporting documents such as salary slips, salary database, communication with employees regarding salary etc, to the forensic auditor or while replying to the present SCN. I also note that, the explanation that out of the total salary expense of Rs. 5,56,000/-, Rs. 3,00,000/- belonged to the salary expense of Noticee no. 2, has been given by the said Noticees for the first time while replying to the present SCN. This explanation was not presented before the forensic auditor. Be that as it may, from the Annual Report of VDPL for FY 2016-17, I find that Rs. 3,00,000/- is shown to have been paid to Noticee no. 2 as remuneration. However, I find that for the balance salary expenditure of RS. 2,56,000/-, no supporting documentary evidence have been provided by VDPL except for entries in its own books of accounts. Thus, in the absence of any supporting documentary evidence, I find that the Salary Expenses as shown in the financial statements of VDPL for the FY 2016-17 have been mis-reported to the extent of Rs. 2,56,000/-. By the aforesaid misrepresentation in the financial statement of the Company, VDPL has

failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

18. **Re:** Misreporting by the Company with regard to its Trade Receivables.

18.1. With regard to this allegation, the Forensic Audit Report has observed as follows:

“In the Annual Report for FY 17-18, provision of Rs. 64,08,296, which represents all trade receivables, is shown for FY 2015-16, 2016-17 and 2017-18. However, the provision was made in the FY 2017-18 only. Trade receivables were Rs. 68,19,901 in 2015-16 and Rs. 64,08,296 in 2016-17. However, Trade receivables were shown as Nil for 2015-16 and 2016-17 (previous year figures) in the annual report for 2017-18. This amounts to misrepresentation of financial statements.”

18.2. With regards to the aforesaid allegation the Company has submitted that though the trade receivable's are long pending, we are very sure they can be recovered by constant follow-up with them and we are not sparing any effort in this regard. However, during FY 2017-18, the auditor has suggested us and made the provision for credit loss as per provisions of Ind AS method. Accordingly, the management took Audit Committee approval made provisions. We clarify that it is only provisions and not relinquishing any legal right to recover the pending receivable's and would dilute shareholders interest. We are surprised to note that how the learned forensic auditor has come to conclusion that mere outstanding for more period represents misrepresentation of the Trade receivables.

18.3. I agree with the findings of the forensic auditor and note that in the Balance Sheet of VDPL for the FY 2015-16 and 2016-17, the Trade Receivable's were shown as Rs. 68,19,901 and Rs. 64,08,296, respectively. I also note that no provision for doubtful debts for trade receivebale's was made by VDPL in FY 2015-16 and 2016-17. However, while showing the previous year figures in the Balance Sheet

for FY 2017-18, VDPL has shown that a provision for doubtful trade receivable was made in the FY 2015-16 and 2016-17. Thus, I find that the Financial Statements, specifically, the trade receivables mentioned in the previous years figures of the Balance Sheet and the notes to Financial Statement of FY 2017-18, are misleading and therefore, the financials of VDLP are misrepresented to that extent. By the aforesaid misrepresentation in the financial statement of the Company, VDPL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

B. Other Violations of provisions of LODR Regulations.

19. Re: VDPL has not appointed a qualified company secretary as compliance officer.

19.1. Noticee no. 1 and 2 have submitted that because of the severe financial position of the Company, the Company could not appoint a full time Company Secretary and Noticee no. 2, who was capable in dealing with regulations, took the responsibility to deal with all the compliances and acted as Compliance Officer of the Company as per Clause 41 of the Listing Agreement. It is the case of Noticee no. 1 and 2 that without compromising the statutory compliances, the Company has engaged an experienced practicing company secretary. Thus, though it is a technical requirement, the purpose and intent of law is well complied with and no prejudice is caused to the stakeholders of the Company. We further note that the secretarial audit report since 2015-16 onwards till now, clearly establishes that VDPL has put in place adequate systems and procedures commensurate with its size and operations, to monitor and ensure compliance with all applicable laws, rules, regulation and guidelines and accordingly complied with the rules that are applicable except for appointing a Company Secretary.

19.2. I note that Noticee no. 1 and 2 have admitted that VDPL has failed to appoint a Company Secretary as the Compliance Officer of VDPL during the FY 2015-16 to FY 2017-18. I do not find merit in the contention of Noticee no. 1 and 2 that the failure to appoint Company Secretary is merely a technical violation. I note that Regulation 6 of LODR Regulations imposes certain obligations on the Compliance Officer like monitoring the grievance redressal of investor complaints, ensuring the compliance by the listing entity with all applicable laws in letter and spirit, co-ordinating with stock exchanges, depositories and SEBI on behalf of the Company, etc. From a perusal of the responsibilities cast on the Compliance Officer under the LODR Regulations, I find that the Company Secretary plays a key role in the ensuring the compliance management functions of the Company. Therefore, I find that the appointment of Company Secretary under Reg. 6(1) of LODR Regulations, is not merely a technical violation by VDPL but rather it is a substantial violation by VDPL. Thus, I find that VDPL has violated Regulation 6(1) of LODR Regulations. Further, I also note that, in accordance with Section 203(1)(ii) r/w. Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company is mandated to appoint a Company Secretary as a whole time key managerial personnel. By not appointing the Company Secretary, I find that VDPL has also violated Section 203(1)(ii) of Companies Act, 2013.

20. Re: VDPL has not maintained a functional website of its Company.

20.1. Noticee no. 1 and 2 have submitted that VDPL was having a functional website i.e. www.venmaxdrugs.com, till 2015. Due to various other pressing priorities like payment of salaries, meeting statutory payments to RoC, BSE, CDSL, NSDL, Company Secretary and Auditor, the expiry of the operation period of the website could not be noticed. However, the complete information of the Company such as outcome of the board meetings, quarterly results, announcements, shareholding pattern and other information was made publicly available on BSE

website without any default. As the operation came to a standstill and the financial position of the Company is precarious, the additional expenses on account of website maintenance are burden to the company and the management has been trying to keep the expenses at minimal till such time the Company gets back on its tracks.

20.2. I note that Noticee no. 1 and 2 have admitted that the website of VDPL was not functional for during the FY 2015-16 to 2017-18. I do not agree with the contention of the said Noticees that the aforesaid is merely a technical violation. I note that in accordance with Regulation 46 of LODR Regulations, a listed company is *inter alia* required to mention the following information on its website: (a) details of its business; (b) terms and conditions of appointment of independent directors; (c) composition of various committees of board of directors; (d) code of conduct of board of directors and senior management personnel; (e) details of establishment of vigil mechanism/ Whistle Blower policy; (f) policy on dealing with related party transactions; (g) policy for determining 'material' subsidiaries; (h) the email address for grievance redressal and other relevant details; (i) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances, etc. I note that the website of a listed entity is expected to act as a one stop point of source of information not only for the financials of the Company but also in respect of the various policies adopted by the Company. I note that while some the information that is stipulated under Regulation 46(2) of LODR Regulations, may also be uploaded at regular intervals by VDPL on the website of the stock exchange, but that is not the entire gamut of the information that is stipulated in Regulation 46(2) of LODR Regulations. Further, as indicated earlier the website of the Company acts as the single point of source of information for the investors. In view of the above, I do not agree with the contention of VDPL that non-maintenance of a functional website by VDPL is merely a technical violation and I find that VDPL has violated Regulation 46(1) of LODR Regulations.

C. Violations of PFUTP Regulations, 2003:

21. I note that the scope of work, as was assigned to the forensic auditor by BSE, as stated in the Forensic Audit Report, was as follows:

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

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

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

- a. Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company
- b. To examine the Books of Accounts and backup records of the company for the period of two years including the year of transactions referred in SEBI / Exchange Order to:
 - I. Cash flow analysis to trace source of funds and end use of funds on sample basis (as per Annual Report for last 2 years)
 - II. Assess genuineness of the debtors/ receivables and creditors / payables,
 - III. Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors)
 - IV. Analysis of Related party transactions
 - V. High value bank transactions to ascertain their relevance to the business of the company and to identify the potential round-tripping of funds or accommodation transactions
 - VI. Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers
 - VII. Investments made by the company in subsidiary companies along with the relevant fund flows, if any
 - VIII. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds
 - IX. Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act
 - X. Comment on the shareholding pattern
 - XI. Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds)
- c. Verification / discussions:
 - I. Independent and /or physical verification of the underlying transactions
 - II. Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the company
 - III. Discussions with key stakeholders like Promoters/ Senior Management Team / Departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the company, etc.
 - IV. Business history, directorship searches and litigations
 - V. Assessment of size and scope of business

VI. Site visit as may be applicable for verifying existence of the company functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants / factories.”

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

“

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

2. The details of instances where noncompliance were found are hereunder:

- VDPL has violated Section 18(1)(c), 18(1)(f), 6(1) & 46(1) of Listing Obligation and Disclosure Requirement 2015. (Refer Para 2.1)
- VDPL has violated Accounting Standard 18 – Related Party disclosures in the FY 2015-16. (Refer Para 2.3.2)
- VDPL has violated Section 188(2) of the companies act, 2013 (Refer Para 2.3.2)
- VDPL did not provided any documentary evidence with regards to deposits which were present in FY 2016-17 and were then written off in FY 2017-18, which tantamount to misrepresentation of financial statements (Refer Query 3).

- Salary expenses could not be verified due to lack of documentary evidence which raises doubt on its genuineness of the expenditure (Refer Para 2.3.3)
- VDPL has written off as bad debts debtors to the extent of Rs 45,93,828 which represented 79.84% of the total indirect expenses during the FY 2016-17 which lead to increase in losses for that year (Refer Para 2.3.1)
- VDPL has made provision for doubtful debt for all debtors in FY 2017-18. However, in the Annual Report of 2017-18, they have shown that provision existed since 2015-16 (Refer para 2.3.1)

B. Possible misusing of Books of Account/funds of the Company including facilitation of accommodation entries and/ or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP)

- No suspicious transactions were found which would amount to misuse of book of accounts/funds of the Company including facilitation of accommodation entries and/ or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP).”

23. As can be noted from the above terms of reference of the auditor, scope of audit was to examine possible violations of LODR Regulations and not violations of PFUTP Regulations, 2003 and accordingly, the findings of the Forensic Audit Report are

confined only to misrepresentation in the books of accounts of VDPL and consequential and other violations of LODR Regulations. It is observed that the Investigating Authority, after examining the Forensic Audit Report, incorporated the findings of Forensic Audit Report as part of investigation report, and consequently, the same was reproduced in the SCN. However, the SCN additionally states, “.....8.

From the above, it was observed that the company (noticee no. 1) and its directors and the Chief Financial Officer (noticee no. 2 to 7) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the company and had the potential to mislead the investors.....” Consequently, the SCN, *inter alia*, additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the Forensic Audit Report. It is observed that these Noticees have been charged with the violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) of PFUTP Regulations, 2003 which can be in relation to dealing in securities. However, no details of trading viz: volume of shares traded, price impact, % increase or decrease in price, etc. have been provided. Nor is there any analysis as to how each of the finding of Forensic Audit Report has impacted the persons dealing in securities

24. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 deals with fraud related to securities market and the provisions of Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003 are also related to securities market fraud/manipulation/ unfair trade practices. Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice,

course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or price impact analysis that would impact the investors.

25. It is further observed that Regulation 4(1) of PFUTP Regulations, 2003, at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. The common thread through these provisions is that the ingredients of fraud/ manipulation/ unfair trade practices must be satisfied. In this regard, I note that the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 clarifies as follows:

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

Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market should have directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price shares of VDPL. I note that Forensic Audit Report does not allege any diversion/ mis-utilisation of funds which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the Company. I note that there is no bar on taking action by SEBI on the basis of a Forensic Audit Report, invoking provisions of PFUTP Regulations, 2003

and other similar provision of SEBI Act, 1992 related to fraud, if, after examination of the matter, including the Forensic Audit Report, SEBI finds that there was impact on the securities market or the price of the scrip, which are ingredients to prove violations of PFUTP Regulations, 2003. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753, makes it clear that 'inducement' is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose 'to induce others to deal in securities'. The allegations made in the SCN does not bring out findings or any facts relating to impact on trading in securities or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc.

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

27. SCN, also alleges that VDPL has violated Regulation 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations. In this regard, I note that Regulation 4 of LODR Regulations, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provides that the listed entity which has listed securities shall make disclosures

and abide by its obligations under these regulations, in accordance with the following principles:

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

28. As discussed above, VDPL has been found to be in violation of Regulations 6(1), 23(4), 34(3), 33(1)(c), 46(1) and 48 of the LODR Regulations, therefore, VDPL was not in compliance of the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, VDPL is in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations.

29. Regarding the violations of Regulations 4(2) (f) (ii) (6) & (7) and 4(2)(f)(iii) (1), (3), (6) & (12) of the LODR Regulations by VDPL, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (ii) of

Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is of the board of directors of the listed entity. Therefore, I find that VDPL cannot be said to be in violations of Regulation 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (1), (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

30. SCN further alleges that VDPL has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. I note that securities of VDPL are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

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

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

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

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

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

31. Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the condition is

compliance with LODR Regulations. In the present case, VDPL is a company whose securities are listed on BSE Ltd. which is a recognised stock exchange. VDPL being a company having its securities listed on BSE was also required to sign the said uniform listing agreement with BSE and in view of the provisions of Section 21 of SCRA, 1956, VDPL was bound to comply with the conditions of the uniform listing agreement, as extracted above. VDPL has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, VDPL is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

32. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 7, who were the directors/CFO of VDPL at the relevant time, are liable for the violations alleged to be committed by VDPL viz: Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, 4(1) (a), (b), (c), (e) & (g), Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12), 6(1), 33(2)(a), 46(1) and 48 of LODR Regulations and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against VDPL, automatically, on the directors/CFO of VDPL. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors *qua* these violations may also be examined by SEBI. In the previous paras, it has been found that VDPL was in violation Regulations 6(1), 23(4), 34(3), 33(1)(c), 46(1) and 48 of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to Noticee no. 7, it has to be determined whether these Noticees are liable for those violations for which VDPL has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. I note that Noticee no. 6 joined as the Managing Director of VDPL from September 1, 2018. However, I note that the present SCN deals with the alleged violations by VDPL for the period from April 1,

2015 to March 31, 2018. Thus, I find that when Noticee no. 6 has joined at a subsequent date from the alleged period of violations by VDPL, no case is made out by the SCN against him. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word “offence” with the word “contravention” in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by VDPL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature. Now, the question remains whether these Noticees can be held independently liable for the violations alleged against them without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii) (3), (6) & (12) and 33(2)(a) of LODR Regulations, the violations of which have been alleged against Noticee no. 2, 3, 4, 5 and 7, create specific and direct liability of the board of directors/ CFO. As discussed above, Clause (ii) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Thus, board of directors is responsible for complying with these principles. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations or otherwise, is fastened on the board of directors of the listed entity. In the previous paras, it has been found that VDPL was in violation of Regulations 6(1), 23(4), 34(3), 33(1)(c), 46(1) and 48 of the LODR Regulations and Section 21 of SCRA, 1956. In view of these violations found to have been committed by VDPL, the principles contained in

Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(3), (6) & (12) are also violated for which Noticee no. 2, 3, 4 and 5, being part of the board of directors of VDPL are liable. Further, Regulation 33(2)(a) creates primary liability of board of directors and CEO/CFO, for certification and approval of financial results. Therefore, Noticee no. 2, 3, 4, 5 and 7 are liable for violation of Regulation 33(2)(a) of LODR Regulations, also.

33. I note that Noticee no. 2 to 5 were the directors of the Company and Noticee no. 7 was CFO of the Company, during the period of violations alleged in the SCN, i.e. April 01, 2015 to March 31, 2018. I note that Noticee no. 2 was the managing director of the Company, Noticee no. 3 was non-executive director and Noticee no. 4 and 5 were the independent directors. Noticee no. 3 and 4 have contended that they were non-executive/ independent directors of the Company and did not have any day to day control over the affairs of the Company, therefore, they can not be held liable for the violations alleged in the SCN. In this regard, I note that Regulation 4(2)(f) refers to board of directors of company, it does not make any distinction between independent director or other directors. I further note that during the financial years 2015-16 to 2017-18, the details of audit committee members of VDPL, number of audit committee meetings held and the meeting attended by the concerned directors, are as under:

Financial Year FY 2015-16

Name of the Director	Designation	Number of Meetings held during the year	Number of Meetings attended during the year
Mr. Ramakrishnaiah Appanaboyana (Noticee no. 4)	Chairman	4	4
Ms. G.S.V.Divya Jyothi (Noticee no. 5)	Member	4	2

Mr. Nuka Venkat Narender (Noticee no. 2)	Member	4	4
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Financial Year FY 2016-17

Name of the Members	Designation Category	Number of Meetings held during the year	Number of Meetings attended during the year
Mr. Ramakrishnaiah Appanaboyana (Noticee no. 4)	Chairman	4	4
Ms. G.S.V.Divya Jyothi (Noticee no. 5)	Member	4	4
Mr. Nuka Venkat Narender (Noticee no. 2)	Member	4	4

Financial Year FY 2017-18

Name of the Members	Designation	Number of Meetings held during the year	Number of Meetings attended during the year
Mr. Ramakrishnaiah Appanaboyana (Noticee no. 4)	Chairman	4	4
Ms. G.S.V.Divya Jyothi (Noticee no. 5)	Member	4	4
Mr. Nuka Venkat Narender (Noticee no. 2)	Member	4	4

34. Regarding the liability of the independent directors for the acts of commission and omission of a company reference may be made to Regulation 25(5) of the LODR Regulations which provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations. As discussed in previous paragraphs, the Company has been found to be in violation of Regulations 6(1), 23(4), 34(3), 33(1)(c), 46(1) and 48 of LODR Regulations. In respect of the aforesaid violations by the Company, I note that Noticee no. 2, 3, 4, 5 and 7 have already been found to have violated Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(3), (6) & (12) of LODR Regulations. I note that Noticee nos. 4 and 5, being the independent Directors of VDPL and being part of the audit committee of VDPL reviewed the financial statements of VDPL, and approved the financials of VDPL as part of the board of directors of VDPL. Failure to raise any concern regarding the financials of VDPL, as member of the audit committee as well as the board of directors of VDPL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations. Therefore, the contention raised by Noticee no. 4 is not tenable.
35. In view of the aforesaid violations committed by VDPL and its directors/CFO, I find that directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued.
36. SCN in the matter, also calls upon the Noticee no. 1 to explain as to why appropriate penalty be not imposed upon it under Sections 15HA and 15HB of SEBI Act, 1992 and Section 23E of SCRA, 1956, for the violations alleged in the SCN. Also, Noticee no. 2 to 7 have been called upon to explain as to why penalty should not be imposed

upon them under Sections 15HA and 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956, for the violations alleged in the SCN. Extract of these penalty provisions, as existing at the relevant time is as under:

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

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

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

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

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided.

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

37. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15HB of the SEBI Act, 1992, only, is attracted and not the penalties under

Section 15HA of SEBI Act, 1992 and Sections 23E and 23H of SCRA, 1956. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 have not been made out, therefore, penalty under Section 15HA of SEBI Act, 1992 is not attracted against the Noticees. I also note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that VDPL is in violation of listing conditions, however, VDPL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. I find that penalty under Section 23H of SCRA, 1956 is also not attracted in the case of Noticee no. 2, 3, 4, 5 and 7, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided. As the Noticee no. 2, 3, 4, 5 and 7, being directors/CFO of VDPL, have been found to be in violation of LODR Regulations, which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the “regulation” of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI directions alleged against these Noticees, therefore, Section 23H is not attracted in the case of Noticee no. 2, 3, 4, 5 and 7.

38. I find that for the violation of LODR Regulations, VDPL is liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, the rules or the regulations made or directions issued by SEBI for which no separate penalty has been provided. Since, LODR Regulations are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HA) does not separately provide for any penalty for violation of LODR Regulations, therefore, for violation

of LODR Regulations by VDPL, as found in this order, penalty under Section 15HB is attracted against VDPL. Similarly, Noticee no. 2 to 7 who are the directors/CFO of VDPL are liable for imposition of penalty, for the violations of LODR Regulations which are found to be committed by them, under Section 15HB of the SEBI Act, 1992.

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

“Factors to be taken into account while adjudging quantum of penalty.15J.

While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

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

(c) the repetitive nature of the default.

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

40. I find that material available on record does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that the material available on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by the Noticees. However, I note that the violations have occurred over a period of three financial years. I also note that Noticee no. 3 was the non-executive director and Noticee no. 4 and 5 were the independent directors of VDPL.

Directions and monetary penalties:

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

- (i) The Noticee no. 1, 2 and 7, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;
- (ii) The Noticee no. 3, 4 and 5, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;
- (iii) The Noticee no. 1 to 6, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
Noticee no. 1	Venmax Drugs and Pharmaceuticals Limited	Section 15HB of SEBI Act, 1992	30 Lakhs (Thirty Lakhs).
Noticee no. 2	Mr. N. V. Narender	Section 15HB of SEBI Act, 1992	15 Lakhs (Fifteen Lakhs)
Noticee no. 3	Mr. N. Krishnaniah	Section 15HB of SEBI Act, 1992	3 Lakhs (Three Lakhs)

Noticee no. 4	Mr. A. Ramakrishnaiah	Section 15HB of SEBI Act, 1992	3 Lakhs (Three Lakhs)
Noticee no. 5	Ms. G. S. V. Divya Jyothi	Section 15HB of SEBI Act, 1992	3 Lakhs (Three Lakhs)
Noticee no. 7	Mr. A. Venkateswarlu	Section 15HB of SEBI Act, 1992	6 Lakh (Six Lakhs)

(iv) The aforesaid Noticees shall remit / pay the said amount of penalties within 45 days from the date of receipt of this order. The aforesaid Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, CFID-2, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

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

(v) Proceedings against Noticee no. 6 are disposed off without any directions.

42. The obligation of the Noticees, restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
43. This Order comes into force with immediate effect.
44. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of mutual funds to ensure necessary compliance.
45. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs, along with a copy of the Forensic Audit Report for their information.

Sd/-

Date: July 14, 2021
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA