

WTM/AB/IVD/ID19/16060/2022-23

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.	Dalmia Industrial Development Limited	AAACD9405B
2.	Mr. Vikash Chowdhary	ABXPC9870G
3.	Mr. Raj Mohta	AZXPM4978M
4.	Mr. Vineet Chowdhary	ACQPC5971Q
5.	Mr. Alok Agarwal	ACSPA4871B
6.	Mr. Shailendra Nath Bakshi	ACXPB4934B
7.	Mr. Kishore Vasant Hajare	AGSPH2965B
8.	M/s R K P Associates Chartered Accountants (CA. Aditya Chirimar)	AAGFR4500G

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

In the matter of Dalmia Industrial Development Limited

1. The present order deals with two show cause notices dated February 27, 2020 issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”). One show cause notice (hereinafter referred to as “**SCN I**”) was issued to Noticee no. 1 to 7 calling upon them to show cause as to why suitable directions as deemed fit under Sections 11(1), 11(4), 11(4A), 11A and 11B(1) and 11B(2) read with Sections 15A(a), 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) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) read with

Sections 23E and Section 23H of SCRA, 1956 should not be issued against them. Second show cause notice (hereinafter referred to as “**SCN II**”) was issued to Noticee no. 8 calling upon it to show cause as to why suitable directions as deemed fit under Sections 11, 11B and 11D of SEBI Act, 1992 should not be issued against it. SCN I alleges that Dalmia Industrial Development Limited (hereinafter referred to as “**Noticee no.1**”/“**DIDL**”/“**Company**”) has violated Section 12A(a),(b) and (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulation, 2003**”), Regulation 4(1)(a),(b),(c),(g), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(3),(6) and (12), Regulation 6(1), Regulation 17(1), Regulation 21, Regulation 44(3), Regulation 46(1) & (2) (k), Regulation 17(8) read with Part B of Schedule II, Regulation 33(2)(a) and Regulation 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations, 2015**”) read with Section 21 of SCRA, 1956. SCN I further alleges that the Company’s directors, Mr. Vikash Chowdhary (Noticee no. 2), Mr. Raj Mohta (Noticee no. 3), Mr. Vineet Chowdhary (Noticee no.4), (v) Alok Agarwal (Noticee no. 5), Mr. Shailendra Nath Bakshi (Noticee no. 6), and Mr. Kishore Vasant Hajare (Noticee no.7) have violated Section 12A(a) (b) and (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, 2003, Regulation 4(1)(a),(b),(c),(g), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(3),(6) and (12), Regulation 6(1), Regulations 17(1), Regulation 21, Regulations 44(3), Regulation 46(1) & (2)(k) of LODR Regulations, 2015 read with Section 27 of SEBI Act, 1992, Regulation 17(8) read with Part B of schedule II, Regulation 33(2)(a) and Regulation 48 of LODR Regulations, 2015 read with Section 21 of SCRA, 1956. SCN II alleges that the statutory auditor, M/s. R K P Associates Chartered Accountants (Noticee no. 8) has violated Section 12A (a) (b) (c) of the SEBI Act, 1992 and Regulation 3(b), (c) & (d) and Regulation 4(1) and 4(2), (a), (e), (f) & (r) of the PFUTP Regulations, 2003.

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

2.1. SEBI passed an interim order on September 26, 2017 (hereinafter referred to as “**interim order**”) *inter-alia* directing the stock exchange to appoint an independent Forensic Auditor to, *inter alia*, further verify:

- i) Misrepresentation including of financials and/or business of DIDL, if any;
- ii) Misuse of the funds/books of accounts of DIDL, if any.

2.2. The directions in the interim order were confirmed by an order dated October 31, 2018 (hereinafter referred to as “**confirmatory order**”).

2.3. The Forensic Audit Report (hereinafter referred to as “**FAR**”) was forwarded by BSE to SEBI and the findings of the FAR for the period of April 01, 2015 till March 31, 2018 (hereinafter referred to as “**Investigation Period**”) were examined by SEBI.

2.4. The investigation by SEBI, *inter-alia*, revealed the following:

- I. Misrepresentation including of financials and misuse of funds/books of accounts in violation of LODR Regulations, 2015;
- II. Non furnishing of information/Non-cooperation by the Company;
- III. Other violations of LODR Regulations, 2015.

3. The SCNs were served on the Noticees via Speed Post Acknowledgment Due (SPAD) except for Noticee no. 1, for whom the service was effected through affixture. Thereafter, the file was placed before me on February 08, 2021, for granting a date of hearing in the matter. Accordingly, an opportunity for personal hearing was scheduled on May 10, 2021. Hearing notice dated February 24, 2021 was delivered to all Noticees by SPAD. Vide separate letters dated March 24, 2021 Noticee nos. 1, 2, 3, 4 and 6 acknowledged the receipt of the hearing notice. In reply to the same, vide separate emails dated May 10, 2021, Authorised Representative of Noticee nos. 1, 2, 3, 4 and 6 and Noticee no. 8 sought adjournment of the hearing citing the prevailing pandemic. Remaining Noticees neither appeared for hearing nor

requested for adjournment. A last and final opportunity of hearing was granted to all the Noticees on October 20, 2021. On the said date the Authorised Representative of Noticee nos. 1, 2, 3, 4 and 6 and Noticee no. 8 appeared and made submissions. Since, the other Noticees neither appeared for hearing nor sought an adjournment to the hearing, hearing was concluded *qua* all Noticees.

4. The following written replies/ submissions in the matter have been received from the Noticees on the following dates, which are discussed in detail below:

Noticee No.	Name of Noticees	Date of reply/written submissions
1.	Dalmia Industrial Development Limited	November 25, 2020 and October 30, 2021
7.	Mr. Kishore Vasant Hajare	March 07, 2020 and April 05, 2021
8.	M/s R K P Associates Chartered Accountants (C.A. Aditya Chirimar)	March 07, 2020 and October 30, 2021

5. Vide its reply dated November 25, 2020, Noticee no. 1 has submitted as follows:

i) *As per the Cash Flow and its breakup and classification has been prepared by its Auditors, through their audit staff comprising of a qualified Chartered Accountants along with two audit assistants performing the said job bifurcated and regrouped some figures. But that nowhere reflects its negligence or compromising with its duty as a Management so as to misrepresent any facts and figure.*

ii) *The Noticee's submission is as follows:*

Year	Income on Loan and Advances (Both short term & Loan Term)	Rate of return
2015-16	45,06,646.00	9.00 %
2016-17	16,89,858.00	9.00 %

2017-18	11,48,945.00	9.00 %
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- iii) *The observation of the Forensic auditor is erroneous. The Management took the best call to protect the interest of the Company and also the funds. Even today there were no default in any Loan and advances. Note that even Banks/Housing Banks/ NBFC's are making losses in the Loan segment the Company has protected the interest of the Stakeholders and there were no default.*
- iv) *Out of total income of Rs. 4812 Lakhs earned during the F.Y. 2015 - 2016 income of Rs. 45.06 lakhs is income earned out of Loans & Advances (both Short Term & Long Term) given by the company Amounting to Rs. 535 lakhs which is approximately 8.42 % return on Loan which is standard as per Industrial Standards and higher than the Bank prevailing rate.*
- v) *The Company is into trading of various Garments which as per industry standard depends on credit facilities. Comparative with the turnover of the company in the trading and the nature of business the company into at any given time in this business, the debtor position has not 6-10 % over the turn over at any point of time.*

(In Lakhs)				
Years	2016	2017	2018	2019
Turnover	4766.90	2310.80	1356.83	52.68
Debtors	302.99	320.74	439.05	24.29

- vi) *Further note that the debtors have been fully recovered in the F.Y. 18-19. The allegations of the Forensic auditor in this account alone stand meaningless.*
- vii) *GST was implemented with effect from 01, July 2017. The stocks lying with the Company were without GST and it was easy for it to sell the entire stock on or before 30th June, 2017 as there were buyers. Before it could start fresh trading activities BSE declared the Company as a Shell Company on August 2017, hence nobody was interested to do business with the Company hence the inventory position which was nil continued till 31.03. 2019. With a lot of odds, the Company for the F.Y. 2018-19 and 19-20 restarts its trading businesses and made the*

turnover is Rs. 1356.83 & Rs. 52.68 respectively. Also, in the accounting standard it was not mentioned the circumstances to continue with stick each and every time. The forensic auditor has not applied his mind while framing this allegation.

- viii) The preliminary expenses written off by the company is on the basis of the estimates of the management. The figures were decided keeping in mind the utility of the Expenses done by the management at that point of time and the accounting standard.*
- ix) During the course of business as and when the company realizes the money from its debtor, it is the prudential trade practice to pay the creditor. The transaction alleged in the FAR are pertaining to realization from debtors and making payment to the creditor hence there is no misrepresentation of books of accounts of misuse of funds. The debtors pay as per their obligations and the Company pay according to its obligations and realization of funds in a timely manner. The Forensic Auditor failed to Justify any wrong in the same day of payment. The Debtors and creditors position even certified by the Forensic Auditor in his report. The Allegations are purely on assumptions and without any rational, hence needs to be set aside. The Debtors were fully recovered and there were no bad debts, where as the Banks are today facing problem with the Debtors.*
- x) Even today the company is doing business and the net worth of the Company still intact.*
- xi) The Company's office i.e. 9, India Exchange Place, 8th floor, Room No. 1, Kolkata 700001 is a Commercial Building having 8 floors and having more than 100 offices. There is no company registered in our registered office address. The allegation is baseless.*
- xii) In this part the forensic Auditor concluded that these irregularities as stated herein above tantamount to misrepresentation of financials/misuse of funds/books of accounts of the company during the investigation period and has misled the existing and prospective investors. However, not a single allegation of the forensics Auditor holds good as per the explanations given herein above. There were not a single misrepresentation of financial statement and there was not a complaint from any stake holders. The forensic Auditor is not a stake holder and*

neither an investor. The Books of the Company are properly audited and there was not a single incident of or fraudulent transaction reported.

- xiii) The company also submitted all the documents as called by SEBI. Mails to and from BDO are attached for the kind perusal. Just to make an allegation the auditor put this standard phase as part of their report.*
- xiv) The company has appointed a qualified company secretary and the details are as under: When the company was declared as a shell company, no qualified Company secretary was ready to join the Company despite multiple efforts which includes issue of public Notice.*
- xv) The company during the relevant period maintained a web site fully functional. Even today the site is functional. The Website address is as follows: www.dalmiaindustry.co.in*
- xvi) The company appointed Mr. Raj Mohta as its compliance officer on 30th May 2017 and the details were there in the website. Even today the same was there. This can be seen from the BSE data.*
- xvii) Regarding failing to maintain numbers of EDs on its board and appointment of risk management committee, it is submitted that the regulation is not applicable to the Company.*
- xviii) Voting results were always informed to BSE.*

6. Vide his replies dated March 07, 2020 and April 16, 2021 Noticee no. 7 has submitted as follows:

- i) He is the resident of Kombadpada, near Chatrapati Shivaji Chowk, Bhiwandi and has never visited Kolkata and has no idea about Dalmia Industrial Development Limited and is unaware about that who are Mr. Vikash Chowdhury, Mr. Raj Mohta, Mr. Vineet Chowdhary, Mr. Alok Agarwal and Mr. Shailendra Nath Bakshi who are said to be Directors of the said Company and not even aware about M/S R K P Associates Chartered Accountants through C.A. Aditya Chirimar.*
- ii) He is not an Independent director of Dalmia Industrial Development Limited.*

- iii) *He has no idea and knowledge about said company, he is unaware about ministry of corporate affairs.*
- iv) *He has bank A/c at state Bank of India, which had Branch at Naupada(Thane) with A/c No. 34773790835 and, that from 2015 till now he has no big amount in Bank.*
- v) *He is an Illiterate person only studied till 9th std, he did not know that he became the Independent Director of said company.*
- vi) *He was working as courier boy from 2012 to 2014 in Shree Enterprises as Advertising boy with payment of only Rs. 4,500/- per month, than after he worked in leela logistics company as field representative from 2 November, 2014 till 11 November 2018 only with payment of Rs. 13,150/- per month. And from January 2019 to till date he is working in Amazon as a Delivery boy of Parcel with Payment of Rs. 13,000/-.*

7. Vide its replies dated March 07, 2020 and October 30, 2021, Noticee no. 8 has submitted as follows:

- i) *The allegations made in the SCN are based on surmises, conjectures.*
- ii) *Their Firm has not been negligent in the performance of its duties as it has carried out proper due diligence and has reported alleged findings in its audit report. The firm practices and maintains highest level of integrity and professional ethics.*
- iii) *The observation in FAR that there is a net decrease in loans and advances given by the Company to the tune of Rupees 171 Lakhs is not correct. The correct change in loans and advances given by the Company as per Balance Sheet is as below:*

Note Number As in Baiance Sheet	Balance of Loans And Advances Given by the Company as on 31.03.2017.	Balance of Loans And Advances Given by the Company as on 31.03.2018.	Increase/(Decrease) in Loans And Advances	
8	2,00,50,832.00	3,72,02,652.00	1,71,51,820.00	Long Term Loans And Advances
11	4,43,00,000.00	3,26,00,000.00	(1,17,00,000.00)	Short Term Loans And Advances

Total	6,43,50,832.00	6,98,02,652.00	54,51,820.00	
Net Increase in Loans And Advances	N.A.	N.A.	54,51,820.00	

iv) The correct change in loans and advances given by the company as per Cash Flow Statement is as below:

As depicted in the Cash Flow Statement	Description	Increase/(Decrease) in Loans And Advances	The Major Head Of Assets And Liabilities In Cash Flow Statement
(A)	Increase In Loans And Advances Given To Parties	1,00,000.00	Cash Flow From Operating Activity. (Advance for Material Procurement)
(B)	Loans And Advances Given To Other Parties	2,93,00,000.00	Cash Flow from Investing Activity
	Loans Received Back From Parties	(2,50,55,406.00)	Cash Flow from Investing Activity
Net Increase in Loans And Advances		43,44,594.00	

Thus, the apparent difference from Balance Sheet figures and Cash Flow Statement is Rupees 11,07,226/-. The above difference is on account of interest receivable net of taxes i.e. Rupees 11,07,226/-.

v) Interest Receivable (Rs. 11,48,945) and Tax Deducted At Source (Rs. 41719) is included in Long Term Loans and Advances and the same has not been reflected

separately in the Cash Flow Statements but is included in Changes in Long Term Loans and Advances.

Interest Receivable	1,48,945.00
Less: Tax Deducted At Source	-41,719.00
Net Difference	11,07,226.00

As per the breakup and classification given above it is very much clear that the Noticee's audit staff comprising of a qualified Chartered Accountant bifurcated and regrouped some figures. But that nowhere reflects their negligence or compromising with their duty as an Auditor so as to misrepresent any facts and figures.

- vi) Investments made by the Company and its resultant benefits were enquired by the Noticee during the course of Audit. The management explained that they have invested an amount of Rupees 320 Lakhs as advance for acquiring a property to E - City Projects Lucknow Private Limited and Rupees 20 Lakhs as advance against Land at Bantalla both of which is stuck due to bottlenecks and hardships of the developers of the concerned projects. Though, at that juncture the Noticee did not act as a whistle-blower and took the projections and the statements of the management. The explanations was that as the projects are being delayed thus the company is venturing at other avenues and investing the surplus funds to secure immediate gains from equity and loans and advances.*
- vii) With regard to the excessive writing off preliminary expenses it is submitted that the assumptions and estimates are made by the management with regard to the utility of such expenses. The Companies Act, 2013 nowhere states that the Statutory Auditor is required to justify the assumptions and estimates of the management with regard to writing off the preliminary expenses in its books of accounts. The preliminary expenses can be written off fully in its year of occurrence as per the assumptions and estimates of the Management. Which is very much in*

accordance with the manner so required and give true and fair view in conformity with the accounting principles generally accepted in India.

viii) The Company sold its entire stock within the financial year 2017-18 and had a nil or zero stock or inventory as on 31.03.2018 does not necessarily aspires any wrong doing. The same point was raised by the Noticee during the course of the audit with the Management. The explanations provided was that the Company is in the fabric business for the last 2-3 years and inspite of the experience was unable to generate enough margins to keep the business afloat and as such is in the process of winding up the said business and look for new ventures and avenues. The effect of which could also been seen from the fact that they started investing in other companies which was also discussed with the Management.

ix) The Noticees including all their family members directly or indirectly have never ever indulged in trading or buying and selling the shares of the Company at any point of time. Therefore, the question of creating false and misleading appearance and manipulation of price does not arise. A serious charge like fraud cannot be established on the basis of these tenuous and farfetched observations.

Consideration of submissions and findings:

8. I have considered the allegations in the SCNs, replies received, submissions made by the Noticees during the personal hearing granted to them and in the written submissions filed by them. The relevant extract of provisions of law violation of which have been alleged in the SCNs, are as follows:

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:-

.....
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

.....
(e) any act or omission amounting to manipulation of the price of a security;

(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, 2015 as existed at the relevant time are provided as under:

“.....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.

(c) Equitable treatment: The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:

...

(iv) The listed entity shall devise a framework to avoid insider trading and abusive self-dealing.

.....

(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-

- (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.

.....

- (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:

The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

....

- (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. Preservation of documents.

9. The listed entity shall have a policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows-

(a) documents whose preservation shall be permanent in nature;

(b) documents with preservation period of not less than eight years after completion of the relevant transactions:

Provided that the listed entity may keep documents specified in clauses (a) and (b) in electronic mode.

Board of Directors.

- 17(1) The composition of board of directors of the listed entity shall be as follows:

board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors;

where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.-For the purpose of this clause, the expression "related to any promoter" shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;(ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

- 17(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

.....

SCHEDULE II - PART B: COMPLIANCE CERTIFICATE

[See Regulation 17(8)]

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
- (1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - (2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee
- (1) significant changes in internal control over financial reporting during the year;
 - (2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 - (3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

.....

Risk Management Committee.

- 21.(1) The board of directors shall constitute a Risk Management Committee.

- (2) The majority of members of Risk Management Committee shall consist of members of the board of directors and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise of independent directors.
- (3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- (3A) The risk management committee shall meet at least once in a year.

Financial results.

33(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

.....

Voting by Shareholders

44.(3) The listed entity shall submit to the stock exchange, within forty eight hours of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.

Website

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

(2) The listed entity shall disseminate the following information on its website:

(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;

Accounting Standards.

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

- 9. Before proceeding with 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 DIDL, vide its letter dated August 7, 2017, SEBI advised stock exchanges to place trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide said letter dated August 7, 2017 also advised the Exchanges to place 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.

10. Aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, the Company filed an appeal bearing no. 211 of 2017 before the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 29, 2017 directed the following:

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

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

On the basis of the decision of the Hon'ble SAT, DIDL submitted its representation to SEBI and an opportunity of personal hearing was granted to DIDL on September 14, 2017. DIDL in the said hearing was asked to submit certain necessary documents/records for its consideration. Thereafter, the interim order and confirmatory order were passed.

11. Based on the direction given by the SEBI, vide interim order dated September 26, 2017, BSE appointed BDO India LLP for conducting forensic audit of DIDL. The FAR was forwarded to SEBI vide BSE's letter dated July 03, 2019. On receipt of the FAR, SEBI carried out an investigation in the matter.

12. Before proceeding with the matter, I note that Noticee no. 7 has submitted that he was not a director of DIDL. He has submitted that his educational qualification is 9th standard passed and that he has never been to Kolkata (where the registered office of DIDL was) in his life and that he is working as a courier boy for delivering products for Amazon. He has submitted copy of statement of his bank account held with State Bank of India to show that there is no substantial balance or credit therein. In this regard, I note that Noticee no. 7 has been alleged to be an Independent Director of DIDL based on the fact that he had been disclosed to be so in the Annual Reports of the Company pertaining to all three years of the Investigation Period. I note that on conducting a search on the MCA 21 portal by SEBI, with respect to Mr. Kishore Vasant Hajare, it is observed that there is a director with the name Mr. Kishore Vasant Hajare having DIN 07022019. It is further observed from the portal that, no company exists wherein Mr. Kishore Vasant Hajare having DIN 07022019 is a director. It shows that he is neither a director in DIDL or any other company. I find that Noticee no.7 has submitted proof of his educational qualification (9th standard passed) and I note that he had also been declared to be a member of the Audit Committee of DIDL and that he did not have the qualification required to be a member of the Audit Committee in a listed company, i.e. financially literate. Moreover, his bank statements also do not show any remittance of any amount akin to sitting fees etc. In view of the same, I find that there is not enough material to establish that Noticee no. 7 was an Independent Director of DIDL during the Investigation Period.
13. Coming to the merits of the matter, I observe that, in the SCN I & II, the allegations against the Noticee No. 2 to 8 flows from the allegations against Noticee No.1. Noticee Nos. 2 to 7 have been charged in their capacity as directors/ CFO of Noticee No.1 and Noticee Nos. 8 has been charged as the statutory auditor of Noticee No.1. The SCN I alleges that the Noticee Nos. 1 to 7 have failed to present true and fair financial statements of the Company, executed transactions which are non-genuine in nature thereby resulting in misrepresentation of the accounts/financial statements and misuse of account/funds of the Company during the investigation period and that 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. SCN

I also alleged that the directors/ CFO of the Company (Noticee Nos. 2 to 7) have failed to exercise duty of care, by misrepresenting the financial statements /misusing the funds of the Company. The SCN II alleges that Noticee No. 8 who was the statutory auditor of the Company for the relevant period, has been negligent in performance of its duties as it had not carried out proper due diligence in its audit report.

14. I note that allegations made in the SCN I against DIDL can be categorized as under:

- A. Misrepresentation including of financials and misuse of funds/books of accounts in violation of LODR Regulations, 2015;
- B. Non furnishing of information/Non-cooperation by the Company with the forensic auditor;
- C. Other violations of LODR Regulations, 2015;
- D. Violation of PFUTP Regulations, 2003.

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

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

15.1. Discrepancy in the figure relating to Loans and Advances:

- (a) The SCN I, based on the FAR alleges that in FY 2017-18 there has been a net increase in loans and advances, amounting to Rs 42.45 lakhs, given by DIDL. However, as per the balance sheet of the Company for Financial Year (FY) 2016-17 and FY 2017-18, there has been a net decrease in loans and advances, amounting to Rs 117 lakhs, given by the Company thereby resulting in misrepresentation in the cash flow statement to the extent of Rs 159.45 lakhs. Further, SCN I alleges that DIDL has not shown breakup of current assets and current liabilities like changes in inventory, operating receivables and payables under working capital changes in its cash flow

statement for the FY 2015-16 and 2016-17. Thus, the Company has not prepared its cash flow statement in accordance with AS-3.

- (b) In response to the same, the Company has submitted that the actual difference from Balance Sheet figures and Cash Flow Statement is Rupees 11,07,226/-. The above difference is on account of interest receivable net of taxes i.e. Rupees 11,07,226/- and that Interest Receivable (Rs. 11,48,945) and Tax Deducted At Source (Rs. 41719) is included in Long Term Loans and Advances and the same has not been reflected separately in the Cash Flow Statements but is included in Changes in Long Term Loans and Advances.
- (c) The Company has claimed that it had grouped interest receivable as a long term loan, which implies that it was not receiving any interest, i.e. the instrument which was supposed to yield the interest is not yielding any interest and thus it was being categorised as a loan, however, I find that there is no corresponding entry for bad loan in the profit and loss accounts. I note that interest receivable has to be accounted for in the Profit and Loss Account as an income using accrual method whereas long term loans are loans for which accounting has to be done under separate methodology. Based on the relevant loan agreements, the interest income, whether receivable quarterly, monthly or annually has to be accounted for in the income of a company. Further, it is not clear as to how the Company is accounting for TDS under Loan and Advances. I also note from the FAR that DIDL has not shown breakup of current assets and current liabilities like changes in inventory, operating receivables and payables under working capital changes in its cash flow statement for the FY 2015-16 and 2016-17. Therefore, I agree with the observation of FAR that there is a discrepancy between the figures for loans and advances as per the balance sheet of the Company for FY 2016-17 and FY 2017-18 and the cash flow statement of the Company to the extent of Rs 159.45 lakhs. Further, I agree with the observation in the FAR that the Company has not followed applicable Accounting Standard while disclosing its financial statements for

FY 2015-16 and 2016-17 and is in violation of Regulations 4(1)(a),(b), (c) read with Regulation 33 (2) and 48 of the LODR Regulations, 2015.

15.2. Company not deploying appropriate investment selection process and not utilising shareholders' fund diligently:

- (a) The SCN I alleges that the Company has made loans and advances (both short term and long term) amounting to Rs 550.31 lakhs, Rs 220.5 lakhs and Rs 698.02 lakhs in FY 2015-16, FY 2016-17 and FY 2017-18, respectively and the Company has also made investments amounting to Rs. 757.57 lakhs, Rs 405.65 lakhs and Rs 1,137.27 lakhs in FY 2015-16, FY 2016-17 and FY 2017-18, respectively. However, the Company has earned only miniscule income of Rs 48.81 lakhs, Rs 22.14 lakhs and 11.48 lakhs on these investments in FY 2015-16, FY 2016-17 and FY 2017-18, respectively, thereby generating a return of 3.73%, 3.53% and 0.62% in all the aforesaid three financial years. Thus, the SCN I alleges that the Company has not deployed appropriate investment selection process and has also not utilised shareholders' fund diligently.
- (b) In response to the same, the Company has denied the figures in the FAR and has stated that it had generated return of 9% p.a. each in the three financial years covered by the FAR.
- (c) In my view, there appears to be a difference of observation between the FAR and the reply of Noticee no.1 related to the returns which the Company was getting from the investments it had made during the Investigation Period. Be that as it may, I note that the FAR has not doubted the veracity of the investments, it has only raised issues related to the quality of such investments. A company is free to invest its surplus fund temporarily or long term depending on its future requirement and whether to invest in fixed deposit or gilt or high yielding securities will be based on its requirements or commercial wisdom. I also note that the FAR is silent as to whether there

is any violation of the securities law with regard to the purported low returns received by DIDL on its investments or whether it was not prudent and/or not on arm's length basis. In view of the same I do not find any violation by the Company with reference to the above mentioned allegation.

15.3. Discrepancy between trade receivable and revenue:

- (a) The SCN I, based on the FAR notes that there is an increase in the trade receivables of the Company from FY 2015-16 to FY 2017-18 from Rs. 302.99 crores to Rs. 439.05 crores (36.89%). However, the revenue of the Company has declined from Rs 4,815.72 crores to Rs 1,368.32 crores (41.35%) from FY 2015-16 to FY 2017-18. The sales of the Company are decreasing but its debtors are increasing thereby raising concerns about the genuineness of these debtors.
- (b) In reply to the same the Company has submitted that it is into trading of various Garments which as per industry standard depends on credit facilities. Comparative with the turnover of the Company in the trading and the nature of business the Company into at any given time in this business, the debtor position has not 6-10 % over the turn over at any point of time and that the debtors have been fully recovered in the FY 2018-19.
- (c) I note that the Company has not submitted details of the repayment of debt in support of its submissions. I also note that the FAR has also pointed out that the Company had not submitted information and details regarding the trade receivables. Some of the observations of the FAR regarding the same are given below:

- "With regard to trade receivables of Rs. 3.03 crore reported in the consolidated financial statements of FY 2015-16, DIDL in its reply dated September 20, 2017 has referred to 'Annexure-4'. However, upon perusal of documents submitted by the company along with its reply dated September 20, 2017 there is no 'Annexure-4'. Thus, the company had failed to provide full breakup party wise, back up documents underlying the transactions and their link to the business. With respect to the observation mentioned in above paragraph as regards to trade receivable of Rs.3.03 crores as on March 31, 2016

(FY 2015-16), DIDL during personal hearing has submitted 'Annexure- 4' referred in its reply dated September 20, 2017. On perusal of the same, it is observed that DIDL provided ledger account of A. R Vyapar Pvt. Ltd. from April 2015 to June 2016 and Sanskar Goods Pvt. Ltd. for the FY 2015-17 along with relevant bank account statement of DIDL i.e. State Bank of Hyderabad (SBH)/A/c No. 62338284318 and few sales invoices pertaining to FY 2015-16. As per the ledgers, an amount of Rs.1.14 crores and Rs.1.89 crores (which comes to Rs.3.03 crore) is receivable from A. R Vyapar Pvt. Ltd. and Sanskar Goods Pvt. Ltd., respectively. On comparing the above ledgers with relevant bank account statement of DIDL, it appears that amount receivable from A. R Vyapar Pvt. Ltd. and Sanskar Goods Pvt. Ltd. was received during FY 2016-17. Further, it is noted that DIDL vide letter January 24, 2018 also provided the ledger account and bank statement of A. R Vyapar Pvt. Ltd. as a third-party verifiable documents. SEBI also note that the bank statement does not have the counter party details (i.e. party from whom the amount is received) and DIDL had not provided any other supporting documents such as stamped agreements, contract notes, VAT payment receipt or any other third-party verifiable documents to establish the genuineness of the underlying transactions. Thus, SEBI note that DIDL had failed to submit any plausible explanation/documents in respect of trade receivable of Rs.3.03 crores as on March 31, 2016 (FY 2015-16) as mentioned in the interim order."

- "During the course of hearing, the company was advised to provide the top 10 contributors for sales/purchases by value with the backup documents. On perusal of the same, it is observed that DIDL provided ledger account of A. R Vyapar Pvt. Ltd., Sanskar Goods Pvt. Ltd., Varnika Sarees Pvt. Ltd., Dhanvarsha Properties Pvt. Ltd. and Panghat Textiles Pvt. Ltd. for FY 2015-16 along with few sales invoices. The above 5 debtors have contributed Rs.19.39 crores out of total sales of Rs. 47.67 crore in FY 2015-16 (Consolidated). Further, DIDL provided ledger of Cainhill Development Pvt. Ltd. for FY 2015-16 along with few purchase invoices. From the above table, it is observed that there are 7 parties, who have contributed Rs. 23.11 crore sales made by DIDL during FY 16-17. DIDL has provided ledger account of DIDL in their debtor's books as third-party verifiable documents. Further, DIDL has also submitted bank statement of only 3 parties (i.e. Venus, Vyapar a Tripurari) highlighting the amounts received from these 3 parties. I noticed that funds have moved, however, the counter party details are not available in bank statement of DIDL and Debtors. I also noticed that DIDL had not provided any other supporting documents such as stamped agreements, contract notes, VAT payment receipt or any other third-party verifiable documents to establish the genuineness of the underlying transactions."

- "On reviewing financial statements and cash flow statements for the financial year 2017-18, 16-17 and 15-16 the trade receivables showed increasing movement for continuous 2 financial year from FY 16-17 to FY 17-18 although the revenue is showing drastic decreasing trend during said period which is unusual. Considering above analysis and fact that the Company has failed to provide necessary information, it creates suspicion about genuineness of receivables as shown in financial statements of the Company."

- (d) I note that during the present proceedings before me, the Company has not produced any information or records such as authenticated Loan Agreements or payment receipts or proof that the loans have been repayed to the Company by the purchaser of the goods. In view of the same, I am inclined to agree with the observation in the FAR on this issue

and I find that the Company is in violation of Regulation 4(1)(a),(b), (c) read with Regulation 33 (2) and Regulation 48 of the LODR Regulations, 2015 pertaining to its financial statements for FYs 2015-16 to 2017-18.

15.4. DIDL had made investments in companies with Nil revenue:

- (a) The SCN I alleges that DIDL has made huge amount of investments in companies with either nil revenue, declining revenues, having losses or having no tangible or intangible assets and having nil employee benefit cost.
- (b) In response to the allegation, the Company has stated that the Management took the best call to protect the interest of the Company and also the funds. Even today there were no default in any Loan and advances.
- (c) In this regard, I note that the FAR gives a few examples. The first example is that of Yogmaya Tradelink Pvt. Ltd. (YTPL) wherein the Company had invested 120 lakhs. The FAR states that the entity is not having any revenue from operations during FY 2016-17 & FY2015-16 and the employee benefit cost of YTPL is NIL which is unusual and that the entity has suffered consecutive losses during last 3 financial years. The FAR further states that this entity has no tangible or intangible assets in FY 2015-16 and FY 2014-15 and it had invested its funds in other companies approx. 99.99% of its net worth, however having no returns from these investments during FY 2016-17 & FY 2017-18. The FAR also noted that investments made by DIDL in other companies during FY 2017-18 like, Blackberry Sarees Private Limited, Gemzar Enterprises Private Limited, Harilaxmi Real Estate Private Limited, Mentax Impex Private Limited have exactly the same address as YTPL that is "2nd Floor, Plot - 599, Kapadia Chambers Jagannath Shankarsheth Marg, Chira Bazar, Kalbadevi Mumbai City MH 400002 IN." The FAR also notes that DIDL has paid Rs. 119.85 as securities premium for the shares of YTPL, which is relatively very high considering the financial position of the entity. The FAR further states that DIDL has invested Rs. 83

lakhs in unquoted equity shares of Lifewood Cotton Industries Private Limited (LCIPT) during FY 2017-18. It holds 830 shares of face value Rs.10 and this entity's revenue from operations has been reduced from 1.65 Lakhs to 1.55 Lakhs during FY 2016-17 from FY 2015-16 and it suffered loss in FY 2017-18. Further, this entity has no tangible or intangible assets in FY 2016-17 and FY 2015-16 which is unusual. Based on the above, the FAR concludes that the due diligence process deployed by the Company before investing shareholder's funds in the unquoted shares of other entities was suspicious and such investment activities are detrimental to the interest of the minority shareholders.

- (d) From the above, I find that the Company's investments in the above-mentioned few entities *prima facie* do not appear to be prudent. Moreover, the facts such as the Company having invested in several entities with the same address, the Company having paid a premium for unlisted shares of a company with no revenue from operations or no assets, indicate that the observation in the FAR about the suspicious nature of these purported investments are correct. I also note that although the Company has stated in its reply that it received good returns from these investments but no details of return such as dividends or capital gains etc., nor documents supporting this claim has been placed on record. In view of the same, I am inclined to agree with the observations of FAR in this regard and find that the Company made suspicious investments in companies having Nil revenue and assets etc. and had not disclosed the true nature of these investments in its financials and thereby the Company has violated Regulations 4(1)(a),(b), (c),(e) (g), 4(2) (c) read with Regulations 33 (2) and 48 of the LODR Regulations, 2015.

15.5. DIDL had nil closing stock as on March 31, 2018:

- (a) The SCN I alleges that the closing stock of DIDL as at March 31, 2018 is shown as NIL and the Company being in textile business and having nil

inventory at any point of time raises concern over future operations of the company.

- (b) In response to this the Company has submitted that GST was implemented with effect from 01, July 2017 and the stocks lying with the Company were without GST and it was easy for it to sell the entire stock on or before 30th June, 2017 as there were buyers. Before it could start fresh trading activities BSE declared the Company as a Shell Company on August 2017, hence, nobody was interested to do business with the Company hence, the inventory position which was nil continued till 31.03.2019. With a lot of odds, the Company for the FY 2018-19 and 19-20 restarted its trading businesses and made the turnover of Rs. 1356.83 & Rs. 52.68, respectively.
- (c) I note that from the FAR or the SCN I it is not clear as to which provision of the securities law has been violated by the Company with respect to it having nil stock. There also appears to be no allegation in the FAR or the SCN I that the Company has misrepresented the fact that it had NIL stock in any of its disclosures. In view of the same, I do not find any violation by the Company in this regard.

15.6. Allegation related to computation of preliminary expenses:

- (a) The SCN I alleges that the amount of preliminary expenses charged by the Company to the profit and loss account (i.e. Rs 6.31 lakhs) is not correct as the correct amount should be Rs 6.12 lakhs (i.e. 6.17-0.05).
- (b) The Company has submitted that preliminary expenses written off by the Company is on the basis of the estimates of the management. The figures were decided keeping in mind the utility of the expenses done by the management at that point of time and the accounting standard.
- (c) I note that the calculation provided in the FAR is based on the following finding in the FAR:

“...we have noted discrepancy in amount written off in Profit and Loss account that as per difference in preliminary expense shown in balance sheet of FY 2016-17 & FY 2015-16. Amount charged to profit & loss account should have been INR 6.12 lakhs (i.e. 6.17-0.05) instead of INR 6.31 lakhs for the year 2016-17.”

- (d) I note that the Company has not explained the reason for the above-mentioned discrepancy and made a general submission that the figures of preliminary expense has to be based on the estimates of the management. I note that the Company has not explained the discrepancy between the figures related to preliminary expenses as stated in DIDL's profit and loss account and balance sheet for the year 2016-17. In view of the same, I agree with the findings of FAR in this regard and I find that the Company has violated Regulations 4(1)(a),(b), (c) read with Regulations 33 (2) and 48 of the LODR Regulations, 2015.

15.7. The Company has transferred funds to 8 entities on the same day of receipt from other entities:

- (a) The SCN I alleges that the fact that the Company has transferred funds amounting to Rs. 734 lakhs to 8 different parties, on the same day of receipt of funds amounting to Rs. 733.9 lakhs, raises concern about the genuineness of business transactions undertaken by the Company. Thus, DIDL is acting as a conduit for diversion of funds and has led to misrepresentation of books of accounts/misuse of funds as apparently no underlying business transactions have taken place.
- (b) In this regard the Company has submitted that it received money from debtors which it transferred to its creditors.
- (c) In this regard the FAR observes as follows:

“We noted that 14 bank receipts from 11 different parties, amounting to INR 733.90 lakhs were transferred to 8 different parties, amounting to INR 734 lakhs, on the same day of receipt.

.....

During the course of hearing company was advised to submit the bank statement for the financial year 2016-17, on analysis of bank statement of A/c.no. 62338284318 State Bank of Hyderabad, Brabourne Road, Kolkata, it is observed that there are entries of funds received by DIDL from single/multiple entities and almost the same amount transferred to other entity/ entities on the same/next day. This pattern of back-to-back transactions leads to suspicion that the books of accounts may have been used to facilitate accommodation transactions.

....

With respect to the observation mentioned in above paragraph as regards to Funds received by DIDL from single/multiple entity(ies) and transferring of almost same amount to other entity(ies) on same or next day, it appears that DIDL during the hearing submitted a statement of payment & receipt summary for the Financial Year (FY) 2016-17 along with the copy of certain sales invoices of FY 2016-17 and purchase invoices of FY 2015-16. DIDL in receipts & payments summary statement given the details such as receipt of amount(s) from sale of investments, loan refund, debtor and payment to creditor(s). From the receipt & payment summary statement, it appears that out of Rs. 5.29 crores other loans & advances (shown in FY 2015-16), DIDL during FY 2016-17 received Rs.3.67 crores. However, DIDL has not provided the relevant bank account statement highlighting the respective amounts, other supporting documents such as stamped agreements, contract notes, VAT payment receipt or any other third-party verifiable documents to establish the genuineness of the underlying transactions. Further, SEBI vide email dated July 23, 2018 gathered bank account statement for account number 62338284318 of DIDL from the banker i.e. SBI/SBH. Upon perusal of the bank account statement received from SBI/SBH, SEBI tried to match the figures shown in the receipt and payment summary submitted by DIDL with the bank account statement received from the banker. However, it is noticed that since the bank account statement gathered from banker does not have the details of counter parties, the genuineness of the amounts cannot be ascertained. In view of this, the prima facie finding that the pattern of back-to-back transactions leading to suspicion that the books of accounts may have been used to facilitate accommodation transactions has not been contradicted with sufficient documentary evidence.”

- (d) I note that in response to the above-mentioned detailed observations in the FAR, the Company has only made a general submission that money received from debtors were paid to creditors. The Company has not produced any supporting documents which provide details as to the loan agreements or purchase receipts or payments to be made to any supplier or whether the payment was towards any raw material or services received, between DIDL and these debtors or creditors. In view of the same, I am inclined to agree with the findings of FAR in this regard and find that DIDL has disclosed false transactions in its books of accounts and therefore, violated Regulations 4(1)(a),(b), (c),(e) (g), 4(2) (c) read with Regulation 33 (2) and 48 of the LODR Regulations, 2015.

15.8. Allegations related to the premises of the Company:

- (a) The SCN I based on the FAR alleges that the Company is operating from a small room and having only two computer systems and the fact that several other companies were also operating from the same registered office address as DIDL, raises doubts over the operations of the Company.
- (b) I note that there seems to be no express bar in the Companies Act, 2013 against companies sharing offices with similar addresses in the same premises with some demarcations for space. However, some regulated entities have to fulfil requirement of certain minimum infrastructure. The FAR has not brought out any details to show that there was a violation of provisions of securities law or provisions of the Companies Act, 2013 with respect to registered office by DIDL or that there was not adequate space at the premises. The FAR also does not make any further observations regarding the same. In view of the same, the observation in this regard in the FAR is not established.

16. From the discussion in paras 15 above, I find that:

- i) There is discrepancy in the cash flow statement disclosed by the Company for FY 2017-18 to the extent of Rs 159.45 lakhs. Further, DIDL had not shown breakup of current assets and current liabilities like changes in inventory, operating receivables and payables under working capital, changes in its cash flow statement for the FY 2015-16 and 2016-17.
- ii) There is discrepancy in the figures shown by the Company for trade receivables of the Company pertaining to FY 2015-16 to FY 2017-18.
- iii) The Company has not disclosed the true nature of investments in companies with Nil revenue in its financials.
- iv) The amount of preliminary expenses charged by the Company to the profit and loss account is not correct.
- v) DIDL has disclosed suspicious transactions in its books of accounts with respect to transferring of funds amounting to Rs 734 lakhs to 8 different parties, on the same day of receipt of funds amounting to Rs 733.9 lakhs.

Thus, I find that DIDL failed to represent a true and fair view of the state of affairs of the Company in compliance with the mandate contained in Accounting Standards and thereby violated provisions of Regulation 48 of LODR Regulations.

17. I note that the SCN I *inter alia* alleges that DIDL has violated Regulation 4(1)(a),(b),(c),(e),(g), 4(2)(f)(ii)(1),(6)(7), 4(2)(f)(iii)(3),(6)(12), Regulation 33(2)(a), Regulation 48 and Regulation 17(8) read with Part B of Schedule II of the LODR Regulations, 2015. From the discussions above, I find that since the financial statements of DIDL pertaining to the investigation period were not as per the Accounting Standard as discussed in the previous paras, therefore, the Company has violated Regulation 48 of LODR Regulations, 2015 which mandates that the listed entity shall comply with all the applicable and notified Accounting Standards from time to time. Regarding the violations of Regulation 4, I note that Regulation 4 of LODR Regulations, 2015 lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations, 2015. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCNs, provides that the listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

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

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

18. As discussed in the para above, I find that the Company has failed to comply with Regulation 48 of the LODR Regulations, 2015. Further, its disclosures were not in accordance with the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, DIDL is also in violation of Regulation 4(1)(a), (b), (c), (e) and (g) of the LODR Regulations, 2015. Regulation 4(2)(c) of the LODR Regulations, 2015 states that the listed entity shall ensure equitable treatment of all shareholders, including minority shareholders. As discussed in para 15, DIDL did not safeguard the interest of its minority shareholders and thus violated Regulation 4(2)(c) of the LODR Regulations, 2015. Regarding the violations of Regulation 4(2)(f)(ii) (6) and (7) and 4(2)(f)(iii) (3), (6) and (12) of the LODR Regulations, 2015 by the Company as alleged in the SCN I, 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, 2015 is of the board of directors of the listed entity. Therefore, I find that DIDL cannot be said to be in violations of Regulation 4(2)(f)(ii) (6) and (7) and 4(2)(f)(iii) (3), (6) and (12) of the LODR Regulations, 2015 which pertain to obligations of the board of directors. Regarding the violations of Regulation 17(8) read with Part B of Schedule II of LODR Regulations, 2015 by Noticee no.1, as alleged in the SCN I, I find that Regulation 17(8) mandates that the Chief Executive Officer and the Chief Financial Officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II. Since the said provisions pertain to Chief Executive Officer and the Chief Financial Officer of the Company, I find that Noticee no.1 cannot be said be in violation of Regulation 17(8) of LODR Regulations, 2015. I also note that Regulation 33(2)(a) provides that a listed company shall authenticate its financial results by approval of the Board of Directors. While placing the financial results

before the board of directors, the CFO and CEO of the listed entity have to 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. However, in terms of the Uniform Listing Agreement read with Section 21 of the SCRA, 1956, since the financial results were not accurate, DIDL has violated Regulation 33(2)(a) of LODR Regulations, 2015. Further, since one of the condition which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply with is compliance with LODR Regulations, 2015 and in the present case, DIDL has been found to be in violation of the provisions of the LODR Regulations, 2015 as discussed above, therefore, the Company is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

19. Non furnishing of information/Non-cooperation by the Company to the forensic auditor

19.1. The SCN I alleges that the Company has not furnished the information sought by the forensic auditor on various instances viz. the Company has not furnished any information/explanation with respect to the queries raised by SEBI in the interim order and confirmatory order, Further, the company has also not provided details with respect to type of entities to whom loans have been provided by DIDL, bank books and bank account statements for all the bank accounts of DIDL. I note that the Noticees have stated that they have cooperated in the forensic audit and have provided all the documents sought. However, I note from the FAR that several documents sought by the forensic auditor were not provided to them, which has hindered the audit process. In this regard, I note that the FAR has made the following observations:

- i) "We have shared the SEBI queries along with our remarks and required information and documents vide our email dated 15th Feb 2019 and 18th June 2019. However, despite our multiple follow up vide mail dated 23th Feb 2019, 26th Feb 2019 and 27th Feb 2019 the management failed to provide necessary explanation/information and majority of documents as sought from the Company."
- ii) "We have requested management of DIDL to provide Bank Books of the Company in Excel format and Bank Account Statements for all the bank account maintained in Soft Copy format (Excel or Text Format) during review period via mail dated

15th Feb 2019. However, the company failed to provide required documents despite multiple mail follow up vide email dated 23th Feb 2019, 26th Feb 2019 and 27th Feb 2019.”

19.2. I note that the Noticees have been alleged to have violated Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. On a reading of these Sections, I observe that Section 11(1) of the SEBI Act, 1992 lays down the functions of SEBI, and in carrying out the said functions, SEBI is empowered, under 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992, to call for records from intermediaries and other entities. I note that BSE was directed to appoint a forensic auditor for carrying out forensic audit of DIDL vide SEBI order dated November 26, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. I note that DIDL failed to furnish information sought by the forensic auditor and thereby violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

20. Other Violation of LODR Regulations, 2015:

20.1. The SCN I alleges that DIDL failed to appoint a qualified company secretary during FY 2017-18 and a Compliance Officer during the Investigation Period which is a violation of Regulation 6(1) of LODR Regulations, 2015. In response to the same the Company has stated that after the Company was declared as a shell company, no qualified Company Secretary was ready to join the Company despite multiple efforts which included issue of public notice. I am unable to accept the said explanation by DIDL since the interim order against the Company was issued in September 2017 and the Company did not have a Compliance Officer since 2015-16. I note that DIDL has not denied that it did not have a Compliance officer for the FY 2015-16 and FY 16-17 and Mr. Raj Mohta was only appointed on May 30, 2017. In view of the said fact, I find that the Company has violated Regulation 6(1) of LODR Regulations, 2015.

20.2. The SCN I also alleges that DIDL did not maintain a functional website, containing the basic information about the Company, during the Investigation Period and failed to disseminate the required information

on its website which is a violation of Regulation 46(1) & (2) of LODR Regulations, 2015. SCN I also alleges that DIDL failed to upload contact information, of designated officials who are responsible for assisting and handling investor grievances, on its website, which is a violation of Regulation 46(2)(k) of LODR Regulations, 2015. In response to the allegation the Company has submitted that during the relevant period it maintained a fully functional web site and even today the site is functional (www.dalmiaindusty.co.in) and that the Company appointed Mr. Raj Mohta as its Compliance Officer on May 30, 2017 and the details were there in the website. In this regard, I note that the Company has only made a bald assertion that it was maintaining a functional website at the relevant time as also at present. However, the Company has not submitted any supporting document for such assertion. Further, I note that during the present proceedings an effort was made to access the purported website of the Company through several devices, several times. However, the same could not be accessed and showed an error. In view of the same, I cannot accept the submission of the Company that it has a functional website. Consequently, I also find that DIDL failed to upload contact information, of designated officials who are responsible for assisting and handling investor grievances on its website. In view of the same, I find that DIDL has violated Regulation 46(1) & (2) and 46(2)(k) of LODR Regulations, 2015.

- 20.3. The SCN I has also alleged that DIDL failed to maintain the minimum number of executive directors on its board of directors during FY 2015-16, FY 2016-17 & FY 2017-18, which is a violation of Regulation 17(1) of LODR Regulations, 2015. In this regard I note that Regulation 17(1) of LODR Regulations, 2015 mandates not less than fifty percent of the board of directors of a listed entity shall comprise of non-executive directors. In response, the company has submitted that this regulation is not applicable to the Company. I note that the Company has not elaborated on what basis it has submitted that Regulation 17(1) of LODR Regulations, 2015 is not applicable to it. I note that the paid up capital of

the Company during the Investigation Period was Rs.20,24,75,000/-, i.e. it had a paid up share capital of more than 10 crores and therefore, the exemption granted under Regulation 15(2) of the LODR Regulations, 2015 will not apply to it. However, I note that, Regulation 17(1) of LODR Regulations, 2015 mandates the minimum percentage of non-executive directors on the board of a listed company and does not mandate minimum number of executive directors in a listed entity. As discussed in previous paras, since it has not been established that Noticee no. 7 was indeed an Independent Director of DIDL, therefore, I find that DIDL had equal number of executive and non-executive directors in FY 2016-17 and FY 2017-18. DIDL had more number of non -executive directors than executive directors on its board for FY 2015-16 but in my view that does not amount to violation of Regulation 17(1) of LODR Regulations, 2015.

20.4. The SCN I further alleges that DIDL failed to submit voting results of its AGM/ EGM to stock exchange for the FY 2015-16 and FY 2016-17, which is a violation of Regulation 44(3) of LODR Regulations, 2015. The Company has stated that voting results were always informed to BSE. I am unable to accept this submission since the voting results pertaining to DIDL for FY 2015-16 and FY 2016-17 are not available on the BSE website and the Company has not produced and document to show that the same were submitted to BSE. Therefore, I find that the Company has violated Regulation 44(3) of LODR Regulations, 2015.

20.5. The SCN I has alleged that DIDL failed to form a risk management committee of the board of directors of the company, which is a violation of Regulation 21 of LODR Regulations, 2015. The Company has stated that the said regulation does not apply to it, but has not elaborated as to the reason for such non- applicability. As discussed above, the exemption under Regulation 15(2) of the LODR Regulations, 2015 do not apply to the Company. In view of the same I am unable to accept to submission of DIDL to that extent and I find that the Company is in violation of Regulation 21 of LODR Regulations, 2015.

21. Violations of PFUTP Regulations, 2003:

21.1. The SCNs also alleges of violation of provisions of PFUTP Regulations, 2003 and Section 12A(a), (b) and (c) of the SEBI Act, 1992.

21.2. In this regard, I note that the scope of work, as was assigned to the forensic auditor by BSE, as stated in the FAR, was as follows:

- i) 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
- ii) Possible misusing of books 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)

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 review major inflows and outflows during the financial years. (as per annual report for last 2 years)
 - II. Assess genuineness of the debtors/ receivables and creditors I payables,
 - III. Reconciliation of debtors I creditors as stated by the Company vis-a-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 I suppliers I 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 I 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/ HODs, 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's functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants I factories.

The Audit should cover aforesaid points for the period April 2015 onwards and wherever required, analysis may be carried out on sample basis.

21.3. As can be noted from the above terms of reference of the auditor, the scope of audit was to examine possible violations of LODR Regulations, 2015 and accordingly, the findings of the FAR are confined only to misrepresentation in the books of accounts of DIDL and consequential and other violations of LODR Regulations, 2015 and the FAR does not bring out violation of PFUTP Regulations, 2003. It is observed that the Investigating Authority, after examining the FAR, incorporated the findings of FAR as part of investigation report, and consequently, the same was reproduced in the SCNs. However, the SCN I additionally states,

“8. From the above, it was observed that the company (Noticee no.1) and its directors (Noticee no. 2 to 7) have failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financial statements and misuse of accounts/ funds of the company and such acts were found to be fraudulent in nature.”

21.4. Consequently, the SCNs *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) and (d), 4(1) and 4(2)(f) and (r) of PFUTP Regulations, 2003. It is observed that Noticee no. 1 to 7 have been additionally 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 in the SCN however, it has not been alleged or finding given in the SCN whether violation of the LODR Regulations, 2015 as found in the FAR has directly or indirectly resulted in the manipulation of the price of the scrip.

21.5. I note that there is no bar on taking action by SEBI on the basis of a FAR, 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 FAR, SEBI finds that such violation of LODR Regulations, 2015 etc. led to direct/ indirect manipulation of the price of the scrip. Therefore, SEBI is at liberty to issue fresh SCN, if so deemed fit, to pursue violations of PFUTP Regulations, 2003.

22. I find that, based on the defaults by DIDL as discussed in the previous paras, the SCN I has *inter alia* alleged 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 the Company at the relevant time, including Independent Directors are also liable for the violations alleged to be committed by DIDL viz: Sections 12A(a),(b) and (c) , 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of the PFUTP Regulation, 2003, Regulations 4(1)(a), (b), (c), (g), 4(2) (f)(ii)(6),(7), 4(2)(f)(iii)(3), (6) and (12), 6 (1), 17(1), 17 (8), 21, 44(3), 46 (1) (2) and (2)(k) 33(2)(a) and 48 of LODR Regulations, 2015 read with Section 21 of SCRA, 1956. Thus, the SCN I imputes all the allegations which are levelled against DIDL, automatically, on the directors/ CFO of DIDL.

23. In this regard, I note that, as discussed in para 12 above, it cannot be established based on material available on record that Noticee no. 7 was a director in DIDL.

Therefore, none of the allegations levelled against Noticee no. 7 (which flows from his purported directorship in DIDL) are made out *qua* Noticee no.7.

24. I also note that during the relevant period (i.e. investigation period), Section 27 provided for the liability of certain persons who were in charge of and was responsible to the company where the 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 does not create any vicarious liability of Noticee Nos. 2 to 6 for the alleged violations committed by DIDL during the investigation period, with reference to PFUTP Regulation, 2003 or LODR Regulations, 2015 for which proceedings under Sections 11, 11(4), 11A, 11B (1) and Section 12A(1) of SCRA, 1956 or monetary penalty are proposed, which are civil in nature.
25. Now, the question remains whether Noticee Nos. 2 to 6 can be held independently liable for the violations as alleged in SCN I without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that, with reference to the allegations of violation of fraud provisions, i.e. Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c), (d) Regulations 4(1) and 4(2) (f) and (r) of PFUTP Regulations, 2003 against these Noticees, as already discussed in the forgoing paras, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors/ CFO *qua* these violations may also be examined by SEBI. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, the allegations of violation of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable against the Noticee nos. 2 to 6.

26. Regarding violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 alleged against Noticee nos. 2 to 7, I note that, the said violations have been alleged in view of the non-furnishing of information by DIDL to the forensic auditor. In this regard, I note that information was sought by the forensic auditor from DIDL and not from these directors or CFO in their capacity of the director/CFO of DIDL. In view of the inapplicability of Section 27 of SEBI Act, 1992, Noticee No. 2 to 6, being directors and Noticee No. 3 also being CFO, cannot be held liable for violation of Section 11(2)(i) and 11(2) (ia) of SEBI Act, 1992, as alleged in the SCN I. Further, Section 21 of SCRA and 4(1)(a),(b),(c),(e),(g) and 48 of LODR Regulations, 2015 which deal with non-compliance with listing conditions is applicable to a listed entity and thus, cannot be invoked against the Noticee Nos. 2 to 6.
27. With respect to violation of the other provisions of LODR Regulations, 2015 invoked against Noticee Nos. 2 to 6 in the SCN I, I note that Regulations 4(2)(f)(ii) (6), (7) and 4(2)(f)(iii) (3), (6) and (12), 17(8), 21 and 33 of LODR Regulations, 2015 create specific and direct liability of the board of directors of a listed entity. 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. 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, 2015 is fastened on the board of directors of the listed entity. As the Company has been found to be in violation of Regulation 4(1)(a), (b), (c), (e) and (g) of LODR Regulations, 2015 therefore, board of directors of DIDL, i.e., Noticee nos. 2 to 6 are in violation of Regulations 4(2)(f)(ii)(6), (7) and 4(2)(f)(iii)(3),(6) and (12) and 33(2)(a) of LODR Regulations, 2015 as alleged in the SCN I.
28. I note that during the investigation period, Noticee nos. 2 to 6 were directors of the Company and Noticee no.3 was its Chief Financial Officer (CFO) w.e.f May 30, 2017 as well as a director. It is observed that as per the Annual Reports of DIDL, the details of the Board of Directors during the investigation period are as follows:

FY 2015-16

Name	Designation
Mr. Vikash Chowdhary	Managing Director
Mr. Vineet Chowdhary	Executive Directors
Mr. Alok Agarwal	Non-Executive Directors
Mr. Sailendra Nath Bakshi	Independent Directors
Mr. Kishor Vasant Hajare (as discussed in pre-paras, not a director)	
Mr. Vikash Dhelia	
Ms. Pramila Bansal	

Source: Annual report

FY 2016-17

Name	Designation
Mr. Vikash Chowdhary	Managing Director
Mr. Raj Mohta (appointed wef 30/05/2017)	Whole Time Director
Mr. Vineet Chowdhary	Executive Directors
Mr. Alok Agarwal	
Mr. Sailendra Nath Bakshi	Independent Directors
Mr. Kishor Vasant Hajare (as discussed in pre-paras, not a director)	
Mr. Vikash Dhelia	
Ms. Pramila Bansal	

Source: Annual report

FY 2017-18

Name	Designation
Mr. Vikash Chowdhary (Resigned wef 30/05/2017)	Managing Director
Mr. Raj Mohta (appointed wef 30/05/2017)	Whole Time Director
Mr. Vineet Chowdhary	Executive Directors
Mr. Alok Agarwal	
Mr. Sailendra Nath Bakshi	Independent Directors
Mr. Kishor Vasant Hajare (as discussed in pre-paras, not a director)	
Mr. Vikash Dhelia	
Ms. Pramila Bansal	

Source: Annual report

29. I note that Regulations 4(2)(f) and Regulation 33 creates specific duty on the whole board of directors without making any distinction on the basis of designation of the directors, viz: independent/ non-executive/ additional directors. Further, it is true that non-executive directors (NED) and independent directors (ID) cannot be held liable

for those acts that form part of day to day activities. However, these directors can be held liable for those acts which come to their knowledge through board processes. In the present case, the main allegation is misrepresentation of financials. In terms of LODR Regulations, 2015, the financials are approved by the board of directors. Therefore, NED and ID can be held liable. It is noted that Noticee nos. 2 and 6 were members of the Audit Committee of DIDL for FY 2015-16 and FY 2016-17. With effect from May 30, 2017 Noticee nos. 2 resigned and was replaced by Noticee no.3 on the Audit Committee of DIDL. I note that the details of Audit Committee meetings attended by Noticee directors who were members of Audit Committee of DIDL are not available in the Annual Reports of DIDL. Section 177 (4) of the Companies Act, 2013 lays down as follows:

“Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include, -

- (i)
- (ii) examination of the financial statement and the auditors' report thereon;
- (iii) approval or any subsequent modification of transactions of the company with related parties;
- (iv) scrutiny of inter-corporate loans and investments;
- (v) valuation of undertakings or assets of the company, wherever it is necessary;
- (vi) evaluation of internal financial controls and risk management systems;
- (vii)

30. 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, 2015 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 financials of DIDL were placed before the Audit Committee of DIDL during the investigation period were inaccurate and inadequate. In terms of Section 177 of the Companies Act, 2013 and Part C of Schedule II read with Regulation 18(3) of LODR Regulations, 2015 it was the duty of the Audit Committee of DIDL to examine the financials, scrutinize inter corporate loans and investments and related

party transactions etc. For the instances of misstatement and noncompliance with accounting standards in the financials of DIDL pertaining to the investigation period, the Audit Committee was required to act in accordance with its terms of reference, as enlisted in Section 176 of the Companies Act, 2013. I note that Noticee nos. 6, who was an Independent Director of DIDL, were part of the Audit Committee of the Company which reviewed and approved the financial statements of DIDL, as part of the board of directors of the Company. In view of the same, I find that failure to raise any concern regarding the financials of DIDL, as member of the Audit Committee as well as the board of directors of DIDL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations, 2015.

31. I observe that in the previous paras, it has been found that the financial statements of DIDL for the Investigation Period contained misstatements and the same were not in line with the applicable Accounting Standards. I note that in terms of Regulation 33(2)(a) of LODR Regulations, 2015 the annual audited financial results are to be approved by the board of directors of the listed entity. As the financial of DIDL were misrepresented, as discussed above, therefore, Noticee nos. 2 and 6, who certified the financial results of DIDL for the financial years 2015-16 and Noticee no. 3 who certified the financial results of DIDL for the financial years 2016-17 and 2017-18 are in violation of Regulation 33(2)(a) of LODR Regulations, 2015. Further, the directors of DIDL, did not exercise due diligence in approving the financials of DIDL. In view of the same, I am of the view that the Noticee nos. 2 to 6 cannot deny responsibility in the matter, and hence I find that they have violated Regulations 4(2)(f)(ii) (6),(7), 4(2)(f)(iii) (3), (6) and (12) of LODR Regulations, 2015.
32. With respect to the violation of Regulation 17(8), I note that Regulation 17(8) of the LODR Regulations, 2015 provides that the CEO and CFO of a listed company shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II of the said Regulations. As per the Annual Reports of the Company for the investigation period, the Company did not have a Chief Executive Officer for FY 2015-16 and 2016-17, and the MD of the Company gave annual certification in terms of Part B of Schedule II of the LODR Regulations, 2015. Having issued untrue

certificates with respect to the financial statements of the Company, Noticee nos. 2 and 3 have also violated Regulation 17(8) read with Part B of Schedule II of LODR Regulations, 2015.

33. I note that Noticee No. 8, being the statutory auditor of DIDL during investigation period, have also been issued SCN, alleging that the statutory auditor has been negligent in performance of its duties and has not been diligent in issuance of unqualified audit opinion for DIDL for the Investigation Period, thereby, violating provisions of Section 12A (a) (b) and (c) of the SEBI Act, 1992 and Regulations 3(b) (c), (d) and 4(1) and 4(2), (a), (e), (f) and (r) of the PFUTP Regulations, 2003. I observe that in the FAR there is no finding against Noticee no.8. In this regard, before dealing with the liability of the statutory auditor, it would be appropriate to refer to the judgment of Hon'ble Bombay High Court in Writ Petition No. 5249 of 2010 (filed by Price Waterhouse, Bangalore) and Writ Petition No. 5256 of 2010 (filed by 10 CA firms alongwith their partners), dated August 13, 2010, wherein Hon'ble Bombay High Court, with respect to SEBI's jurisdiction over auditors has held as follows:

"25.

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

.....

With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market.

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

34. From the above-mentioned judgment of Hon'ble Bombay High Court, it is observed that for SEBI to exercise jurisdiction over an auditor, it has to be shown that the case pertains to an auditor who in connivance and in collusion with the officers or directors of a company has concocted false accounts. I note that in the present matter SCN II, as issued to Noticee no. 8 only alleges that the statutory auditor was not diligent enough in the issuance of an unqualified audit opinion for the financial statements of DIDL. Failure to exercise due diligence amounts to violation of code of conduct regulations by audit professionals prescribed by the conduct regulator. Violation of conduct regulations can be appropriately judged by the conduct regulator such as ICAI or NFRA. The SCN II does not allege that such failure to exercise due diligence by the statutory auditor was in connivance with the promoters/ directors / management of DIDL to fudge the financial statements of DIDL. Moreover, as discussed in previous paras, I note that the charges of violation of provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, pertaining to fraud, have not been given against any Noticee in the FAR. Therefore, in view of the judgment of the Hon'ble Bombay High Court in PWC matter (supra) and allegation made in SCN II against Noticee No. 8, are not made out.
35. In view of the aforesaid findings and violations committed by DIDL and its directors as given in paras 15 to 20 for DIDL and para 22 to 32 with respect to its directors, 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 I in the matter, also calls upon the Noticee No. 1 to 7 to explain as to why appropriate penalty be not imposed upon it under Section 15HA and 15HB of SEBI

Act, 1992 and Section 23E and 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 15 A(a), 15HA and 15HB of SEBI Act, 1992:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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

of SEBI Act, 1992 is not attracted against the Noticees. I also not that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that DIDL is in violation of listing conditions, however, DIDL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. I find that penalty under Section 23H of SCRA, 1956 is also not attracted in the case of Noticee No. 2 to 8, 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 recognized stock exchange or directions issued by SEBI for which no separate penalty has been provided. As the Noticee No. 2 to 6, being directors/CFO of DIDL, have been found to be in violation of LODR Regulations, 2015 which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the “regulation” of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI directions alleged against these Noticees, therefore, Section 23H is not attracted in the case of Noticee No. 2 to 6. DIDL has been found to have violated provision of Section 21 of SCRA Act, 1956, therefore, provisions of Section 23H is attracted *qua* Noticee No.1.

38. I find that for non-furnishing of information to forensic auditor, as found above, DIDL is liable for imposition of penalty under Section 15A(a) of the SEBI Act, 1992 which provides penalty for failure to furnish information, *inter alia*, sought by SEBI under the provisions of SEBI Act, 1992. For the violation of provisions of LODR Regulations, 2015 DIDL 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, 2015 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, 2015 therefore, for violation of LODR Regulations, 2015 by DIDL, as found in this Order, penalty under Section 15HB is attracted against DIDL. Similarly, Noticee No. 2 to 6 who are the directors/CFO of DIDL are liable for imposition of penalty, for the

violations of LODR Regulations, 2015 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 allegations made in the SCN does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that allegations made in the SCN do not indicate the amount of specific loss caused to investors or group of investors as a result of the default by Noticee No. 1 to 6. I note that some of the allegations in the SCN relating to misrepresentation in financials have been found to be correct in the case of the Company. However, I note that the violations have occurred over a period of three financial years. I also note that Noticee No. 6 was Independent Director of DIDL for FY 2015-16, 2016-17 and 2017-18, and Noticee No. 3 was the Chief Financial Officer and director of the Company for FY 2017-18.

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 Sections 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, Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 5 of

the SC(R) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, direct as under:

- (i) The Noticee nos.1 (DIDL), 2 (Mr. Vikash Chowdhary), 3 (Mr. Raj Mohta), 4 (Mr. Vineet Chowdhary) and 5 (Mr. Alok Agarwal), 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.6 (Mr. Shailendra Nath Bakshi) 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 Nos. 1 to 6, are hereby imposed with, the monetary penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount
Noticee no. 1	Dalmia Industrial Development Ltd.	Section 23H of SCRA, Section 15HB and Section 15A(a) of SEBI Act, 1992	Rs. 30,00,000/- (Rupees Thirty Lakh) and Rs.10,00,000/- (Rupees Ten Lakh)
Noticee no. 2	Mr. Vikash Chowdhary	Section 15HB of SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh)
Noticee no. 3	Mr. Raj Mohta	Section 15HB of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh)
Noticee no. 4	Mr. Vineet Chowdhary	Section 15HB of SEBI Act, 1992	Rs. 15,00,000/- (Rupees Fifteen Lakh)

Noticee no. 5	Mr. Alok Agarwal	Section 15HB of SEBI Act, 1992	Rs. 11,00,000/- (Rupees Eleven Lakh)
Noticee no. 6	Mr. Shailendra Nath Bakshi	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)

- (iv) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of receipt of this order. The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, 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) The proceedings against Noticee no. 7 are disposed of without any adverse directions, in terms of observations at paragraphs 12 and 22.
- (vi) The proceedings against Noticee no. 8 are disposed of without any adverse directions, in terms of observations at paragraphs 32 and 33.

42. The obligation of the Noticees, restrained/ prohibited by paragraphs 40(i) and (ii) of 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, Reserve Bank of India and Institute of Chartered Accountants of India, along with a copy of the Forensic Audit Report for their information and necessary action, if any.

Date: April 21, 2022

Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA