

WTM/AB/IVD/ID19/17508/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11A, 11B (1) and 11B(2) read with Sections 15HA and 15HB 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 Section 12A(1) and (2) read with Sections 23E and 23H 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.	Parsvnath Developers Limited	AAACP0743J
2.	Mr. Pradeep Kumar Jain	AEHPJ6194D
3.	Mr. Sanjeev Kumar Jain	AEHPJ6244G
4.	Dr. Rajeev Jain	AEDPJ4758B
5.	Mr. Ashok Kumar	ABFPK9610A
6.	Mr. Sunil Kumar Jain	AAIPJ5927B
7.	Mr. Ramdas Janardhana Kamath	AAEPK8776D
8.	Dr. Vinod Juneja	ADYPJ0433B
9.	Mr. Sunil Malhotra	AAGPM5418A
10.	Mr. R.N. Maloo	AAZPM3519K

In the matter of Parsvnath Developers Limited.

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

1. The present proceeding emanates from show cause notice dated October 19, 2020 (hereinafter referred to as “**SCN**”) issued to the Noticees by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”). The SCN was issued to the Noticees asking them to show cause as to why suitable directions be not issued and/or penalty be not imposed, as deemed fit under Sections 11(1), 11(4), 11(4A), 11A, 11B(1), 11B(2) read with Sections 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), Section 12A(1) and (2) read with Sections 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) against them. The SCN, *inter alia*, alleged that Parsvnath Developers Limited (hereinafter also referred to as “**PDL**” / “**the Company**”), its directors (Noticee nos. 2 to 8) and the Chief Financial Officer (hereinafter referred to as “**CFO**”) (i.e. Noticee nos. 9 and 10) of Noticee no. 1 had failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the Company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the Company and had the potential to mislead the investors.
2. The SCN alleged that the Company has violated Section 12A (a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2) (f) & (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulation, 2003**”), Clause 41(II)(a), 49 (V)(a) and clause 50 of the erstwhile Listing Agreement read with Accounting Standard 7 and Section 21 of SCRA, 1956. The SCN further alleged that the directors of the Company i.e., (ii) Mr. Pradeep Kumar Jain (Noticee no. 2), (iii) Mr. Sanjeev Kumar Jain (Noticee no. 3), (iv) Dr. Rajeev Jain

(Noticee no. 4), (v) Mr. Ashok Kumar (Noticee no. 5), (vi) Mr. Sunil Kumar Jain (Noticee no. 6), (vii) Mr. Ramdas Janardhana Karnath (Noticee no. 7), (viii) Dr. Vinod Juneja (Noticee no. 8) and its CFOs viz:, Mr. Sunil Malhotra (Noticee no. 9) and Mr. R.N. Maloo (Noticee no. 10) have violated Section 12A (a), (b) & (c) of the SEBI Act, 1992, Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, 2003 and they have also not complied with provisions of Clauses 41(II)(a), 49 (V)(a) and 50 of the erstwhile Listing Agreement read with Accounting Standard 7, Section 27 of SEBI Act, 1992 and Section 21 of SCRA, 1956.

3. The following annexures were provided with the SCN:

Annexure no.	Particulars
Annexure 1	Interim Order
Annexure 2	Forensic Audit Report

4. In reply to the SCN, the Noticee no. 1 has filed detailed response to the allegations vide letter dated September 13, 2021. Noticee no. 8 has filed detailed response to the allegations vide letter dated March 07, 2021 and Noticee no. 5 and 10 have filed detailed response vide separate letter dated September 13, 2021 and Noticee no. 9 has filed a detailed reply vide letter dated October 25, 2021, which are discussed in the subsequent paras.

Consideration of submissions and findings:

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

Relevant extract of the provisions of SEBI Act, 1992:

“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;
-”

Relevant extract of provisions of SCRA, 1956:

“Conditions for listing.

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

Relevant extract of the provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

.....

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

.....

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

.....”

Relevant Clauses of the Listing Agreement

“Clause 41. The company agrees to comply with the following provisions:

...

(II) Manner of approval and authentication of the financial results

- a. The quarterly financial results submitted under sub-clause (I) shall be approved by the Board of Directors of the company or by a committee thereof, other than the audit committee.

Provided that when the quarterly financial results are approved by the Committee they shall be placed before the Board at its next meeting:

Provided further that while placing the financial results before the Board, the Chief Executive Officer and Chief Financial Officer of the company, by whatever name called, 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.

Clause 49. Corporate Governance

...

(V) CEO/CFO certification

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

- (a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
- (i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - (ii) these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

.....”

Clause 50. The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time.....”

6. Before proceeding on the merits of the matter, it will be relevant to discuss the background of the present proceedings.
7. 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. SEBI, vide its letter dated August 07, 2017, had advised stock exchanges

i.e. BSE, NSE and MSE to identify the companies listed on their respective exchanges from the said list and initiate the surveillance action/measures stated in the letter.

8. Pursuant to the same, BSE Limited (hereinafter referred to as “**BSE**”) vide notice dated August 7, 2017, National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) vide notice dated August 7, 2017 and Metropolitan Stock Exchange of India Limited (hereinafter referred to as “**MSE**”) vide notice dated August 07, 2017, issued to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed securities 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 the company like company's compliance requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
9. PDL vide its letter dated August 08, 2017 had made a representation to SEBI. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and Stock Exchanges, PDL filed Appeal No. 175 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”). The Hon'ble SAT vide order dated August 11, 2017 directed the following:-

“.....2. Similar question was raised in the case of J. Kumar Infraprojects Ltd. (Appeal No. 174 of 2017) and by our order dated 10.08.2017 we have stayed direction 1(a) & (b) contained in the impugned communication of SEBI dated 07.08.2017 *qua* the appellant therein.

3. In view of the facts set out in the Memorandum of Appeal and other documents tendered at the time of hearing relating to annual turnover of the appellant company for last three years, which even according to SEBI *prima facie* appear to be correct, we extend the said stay to the case of the appellant company herein and direct the stock exchanges to reverse their decision in respect of the appellant company as expeditiously as possible.

4. Appellant company has already made a representation to SEBI against the impugned communication of SEBI dated 07.08.2017. SEBI is directed to dispose of the said representation in accordance with law.
...

10. Vide an interim order dated August 08, 2018, SEBI disposed of the representations of PDL and issued directions wherein exchanges were advised to appoint forensic auditor *inter alia* to verify:
 - a. Misrepresentation including of financials and/or business by PDL, if any, in the context of the transactions referred in para 20 of the interim order dated August 08, 2018 including the role of KMPs, Directors and Promoters in those transactions;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if any, in the context of the transactions referred in para 20 of the interim order dated August 08, 2018 including the role of KMPs, Directors and Promoters in those transactions.
11. PDL had submitted replies to the interim order passed by SEBI and thereafter, vide order dated January 04, 2019 the directions issued vide interim order dated August 08, 2018 were confirmed by SEBI.
12. Based on the directions given in the interim order, a forensic auditor Ernst and Young LLP Chartered Accountants (hereinafter referred to as “**E&Y**” or “**forensic auditor**”), was appointed by NSE to conduct forensic audit of PDL for the period of April 01, 2009 till March 31, 2012 (hereinafter referred to as the “**investigation period**”). On April 01, 2020, forensic auditor appointed by NSE submitted a Forensic Audit Report (hereinafter referred to as “**FAR**”) to NSE. Thereafter, based on the FAR which was forwarded by NSE to SEBI, SEBI carried out an investigation in the matter.
13. Based on the findings of investigation, SCN was issued and was delivered to all the Noticees by speed post. Thereafter, Noticee nos. 1 to 5 and 7 sought an inspection

of documents which was granted to them and carried out by the Authorized Representative (hereinafter referred to as “AR”) of these Noticees on December 28, 2020. The Noticee no. 10 also sought an inspection of documents which was granted to him and carried out by his AR on December 28, 2020. Thereafter, the matter was placed before me on February 01, 2021 for giving an opportunity of hearing and passing a final order in the matter.

14. A hearing was granted to all Noticees on April 22, 2021. On the said date, the AR appeared on behalf of Noticee nos. 1 to 5 and 7 appeared through video conferencing and sought adjournment. Noticee no. 10 also appeared through video conferencing and sought adjournment. Noticee no. 6 appeared through video conferencing and made submissions and the hearing was concluded *qua* Noticee no. 6. A further date of hearing was granted to all Noticees except Noticee no. 6 on September 14, 2021. The AR appeared on behalf of Noticee nos. 1 to 4 through video conferencing and made submissions. However, the said submissions remained part heard. The AR of Noticee nos. 5 and 8 also appeared but could not make submissions due to lack of time. A fresh date of hearing was granted to the Noticees on October 25, 2021. The AR on behalf of Noticee nos. 1 to 4 appeared through video conferencing and made submissions and hearing was concluded *qua* these Noticees. The AR on behalf of Noticee no. 5 appeared through video conferencing and made submissions and hearing was concluded *qua* this Noticee. The AR on behalf of Noticee no. 8 appeared through video conferencing and made submissions and hearing was concluded *qua* this Noticee. The Noticee nos. 9 and 10 also appeared but could not make submissions due to lack time. A fresh date of hearing was granted to these two Noticees on December 31, 2021. On the said date the AR on behalf of Noticee no. 10 appeared through video conferencing and made submissions and Noticee no. 9 appeared through video conferencing and made submissions. Thus, hearing was concluded *qua* Noticee no. 9.

15. I observe that in the SCN, the allegations against the Noticee no. 2 to 10 flows from the allegations against Noticee no.1. Noticees no. 2 to 8, have been charged in their capacity as directors of Noticee no.1 and Noticee no. 9 & 10 have been charged as the CFO of Noticee no.1. Therefore, in the following paras, various allegations made against Noticee no. 1 in the SCN have been examined to find out as to whether the violations alleged in the SCN against Noticee no. 1 have been made out so as to determine liabilities of Noticees no. 2 to 11 also, which is flowing from violations alleged against Noticee no. 1.
16. At the outset, before dealing with the allegations in the SCN against the Company, it is relevant and appropriate to first deal with the preliminary contentions of the Noticees.
 - A. Firstly, Noticee no. 1 has stated that that a copy of the reference received from the SFIO is not received by the Noticee, even after continuous requests being made by the Noticee in this regard. The Noticee has also submitted that not only the reference of SFIO, but any other document pertinent to bring to the knowledge, the grounds of initiating the enquiry against the Noticee, has not been provided to the Noticee which has caused prejudice to the Noticee in submitting a proper reply. Noticee no. 5 and 10 have also stated that they have been provided with copies of only those documents which are annexure to the SCN and no other document has been shared with them. In this regard, I note that the SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the 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 (SFIO), dated May 23, 2017 which contained the list of shell companies along with their inputs. I also note that thereafter, in terms of interim order dated August 08, 2018, NSE appointed the forensic auditor to look into the activities of PDL, in term of the

scope of work stated in the interim order and after the receipt of the FAR, SEBI conducted its own investigation into the affairs of PDL in order to identify potential violation of securities laws. Therefore, the letter from MCA/ SFIO was the incident which led to the initiation of the independent investigation by SEBI but does not form the basis of the allegations contained in the SCN which flows from the investigation by SEBI and the FAR. In view of the same, I find that non-disclosure of the letter from SFIO has not caused any prejudice to Noticee no. 1. The Noticee no.1 has also relied upon decision of the Hon'ble Supreme Court in *PWC Vs SEBI* (Civil Appeals No. 6003-6004 of 2012 & 6000-6001 of 2012) directing SEBI to provide all the documents collected during the course of investigation. In this regard, I note that similar contention, based on the aforesaid decision of the Hon'ble Supreme Court in the PWC matter, was raised before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") in the matter of *Shri B. Ramalinga Raju vs. SEBI* (SAT Appeal No. 286 of 2014) wherein Hon'ble SAT, in its order dated May 12, 2017, observed as follows:

"21.Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants."

Therefore, the direction given by the Hon'ble Apex Court in PWC matter (supra) was specific to that case only and has no application in the present proceedings as laying down law for general application. In the present case, I find that the Noticee no. 1 has been provided with all the relevant documents as mentioned in above, which are sufficient for it to file an efficacious reply in the matter and the Noticee no. 1 has also filed a detailed reply to the SCN. I also note that Noticee no. 1 had made a request dated September 13, 2021 to cross examine

the employees of E&Y who had conducted the forensic audit, however, during personal hearing the AR of the Noticee did not mention the same. Therefore, the contention of the Noticee no. 1 in this regard is untenable. I also note that the FAR which forms the basis of the allegations against the Noticees has been shared with all the Noticees and the relevant portions of the findings of investigation form part of the SCN. Therefore, in my view, the Noticees have been provided with all relevant documents in order to make an effective defense to the allegations contained in the SCN.

- B. The Noticees have also submitted that there is a long unexplained delay in initiation of proceedings against it and that the investigation period in the instant case is 2009-2012, more than 8 years back from the date of issuance of SCN i.e., October 19, 2020 which has led to difficulties in properly defending the case. In this regard, I note that after the aforesaid reference was received from MCA on June 09, 2017 SEBI had instructed the exchanges to undertake certain steps which respect to the 331 companies mentioned in the said reference. PDL being one such company had submitted a representation to SEBI in this regard. After considering the representation by PDL an interim order in the matter was passed by SEBI on August 08, 2018 appointing a forensic auditor to look into possible misrepresentations including of financials and/or business by PDL, including the role of KMPs, Directors and Promoters in those transactions and the misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if any, of PDL. Thereafter, after considering the replies of the Noticees to the interim order and providing an opportunity of hearing to the Noticees, a confirmatory order was passed on January 04, 2019. After receipt of the FAR from NSE, SEBI conducted its independent investigation in the matter and after completion of investigation, the SCN was issued on October 19, 2020 and subsequent to 8 Noticee availing inspection the matter was placed for

obtaining hearing dates on February 01, 2021. The Noticees were heard at length on April 22, 2021, September 14, 2021, October 25, 2021 and December 31, 2021 and thereafter, the present Order is being passed. I find that there is no inordinate delay in the matter and at each stage of the proceedings the replies of the Noticees had to be considered and principles of natural justice had to be satisfied in giving inspections, hearings etc. In view of the same, I find that there is no unexplained delay in the matter. I also note that Noticees have not pointed out any particular document or information which they could not retrieve due to delay. I find that all the Noticees have duly represented their respective case during the hearing before me and also filed detailed replies to the SCN. Thus, even if there is any delay in the matter that has not caused any prejudice to the Noticees.

- C. Noticee no.1 has also submitted that SEBI did not have an independent view of any sort regarding the allegations against the Noticee and merely because some other regulator had alleged something adverse, SEBI refrained from indulging in any sort of investigation and thereafter, passed the said ex-parte ad-interim order and no formal investigation was made and SEBI has not taken any steps to have an independent opinion of own. In view of the above, the Noticee no. 1 has alleged that SEBI has embarked upon a roving and fishing enquiry in the present case. In this regard, as discussed above, it is noted that, after receipt of the reference from MCA to SEBI, NSE appointed a forensic auditor in terms of the interim order dated August 08, 2018 which laid down the scope of the forensic audit in specific terms. The forensic auditor undertook forensic audit of PDL and thereafter, SEBI undertook its own investigation based on the FAR, which crystallised the charge against PDL pertaining to violation of securities laws. I note that the scope of the forensic audit was specific and the investigation of SEBI was also based on the FAR which resulted out of such forensic audit. Therefore, the contention of the Noticee

that no independent view has been taken by SEBI and that a roving and fishing enquiry has been undertaken by SEBI, is untenable.

- D. Noticee no. 1 has also contended that the SCN only reiterates the allegations made against the Noticee vide the interim order dated August 08, 2018. The Noticee no. 1 has alleged that the SCN has not been able to make out the allegations and the actual cause of the action in the present case, which renders the SCN as well as the FAR completely vague and unsubstantiated as the same does not contain the observation of E &Y and/or SEBI which the Noticee would have to consider for answering to the alleged violation of the SEBI Act and allied regulations. I have perused the SCN and I find that the subsequent to the interim order dated August 08, 2018 the Noticees submitted replies which were considered while passing the confirmatory order dated January 04, 2019. Thereafter, forensic audit was undertaken wherein the forensic auditor interacted with PDL and its officials. After submission of FAR SEBI conducted its own investigation and based on the same the SCN was issued. I note that after the passing of the interim order, the replies by the Noticees have not been found satisfactory and therefore the allegation in the interim order still remains at the SCN stage. Therefore, it cannot be said that the SCN reproduces the same allegations as that in the interim order. I also note that in the SCN, provisions of law alleged to have been violated by the Noticees have been mentioned in the SCN. Moreover, the allegations against the Noticees have also been given, point wise in the said SCN and the FAR, which forms the basis of such allegations has been provided as annexure to the SCN. I also note that the provisions of law under which directions/ penalty is proposed to be issued to the Noticees have also been spelt out in the SCN. In view of the same, I do not find the SCN to be vague and the contention of Noticee no. 1 in this regard cannot be accepted.

17. The allegations against the Noticees regarding misrepresentation including of financials and misuse of funds/books of accounts of PDL for FY 2009-10 to 2011-12 as contained in the SCN and my findings thereon are discussed below:

18. Unavailability of contemporaneous supporting documents to evidence the contracts executed by PDL/contractors and sub-contractors.

18.1. The SCN has alleged the unavailability of contemporaneous supporting documents to evidence the contracts executed by PDL/contractors and sub-contractors.

18.2. The aforesaid allegation in the SCN has emanated from the observation made in the FAR which provided as follows:

“Unavailability of contemporaneous supporting documents to evidence the contracts executed by PDL/contractors and sub-contractors:

We requested for supporting documents and explanations towards revenue booking mechanisms, intimations to contractors at each completed stage, work completion certificate, measurement bills, site visit reports etc. However, no evidence was provided by PDL basis, hence it cannot be ensured if the projects were executed.

Supporting documents such as visit reports, computation of cost, site photograph, actual working papers and such other documents were not provided. It was noted that for each of these projects, information in respect of Principal client, commencement date, completion date, project timeline etc. among the other information was not provided by PDL.”

18.3. In response to the same, the Noticee has submitted that the scope of proceedings, as decided by the interim order, was the contracts entered into by the Noticee during the financial years 2009-10, 2010-11 and 2011-12 wherein the Noticee acted as a sub-contractor for various civil construction and government infrastructure development projects. The Noticee has submitted that the Noticee had also sub-contracted the job work which was contracted to it from other entities and hence, had entered into contracts with numerous entities out of which some 18 have been questioned by SEBI which include contracts through which job work was sub-contracted to the Noticee as well as

those in which the Noticee subcontracted the job work to different entities. The Noticee has submitted that with respect to the impugned sub-contracts involving the entities, namely, Bhanot Construction and Housing Limited, Arch Infraprojects Nirman Private Limited, J. Kumar Infraprojects Limited, Totem Infrastructure Limited and Simplex Housing Development Private Limited, Noticee was not responsible to take the major decisions regarding the execution of the contracts and since, the role of the Noticee was limited, it did not go into the minute details of the execution of the contracts. The Noticee has further submitted that with respect to these contracts the role of the Noticee was limited to determining the cost, commission, etc., and further, to whom it was to be subcontracted since, it was sub-contracted to other parties with a mark-up for the Noticee and it was on the basis of the billing raised on the Noticee by its sub-contractors, that the Noticee raised the bill to the entities who had sub-contracted the work to it and primarily, these transactions were undertaken by the Contract Team of the Company to meet their revenue targets. Therefore, the major decisions regarding the executor of the impugned sub contracts were the responsibility of the contract team and not the Noticee. The Noticee has submitted that before entering into these contracts /sub-contracts, the necessary discussions/ negotiations/documentations had taken place and after due diligence, the parties were selected by the then contract head, after which the management of the Noticee was informed about it. However, when it came to the knowledge of senior management and it was realized that the since Noticee would not be able to monitor and control the execution and implementation of such projects, it immediately stopped undertaking such assignments. With regard to the other contracts, the Noticee has submitted that the details sought are the working papers in relation to such contracts and pertain to the financial years 2009-2012 and since, the documents pertain to the internal working of the Company, the same are not maintained by the Noticee beyond the tenure of the contract and its audit and

hence, could not be provided either to SEBI or to forensic auditor. The Noticee has submitted that the internal working of the Company or the 'internal noting and working' does not form part of the "books and papers" or "books of accounts" and there is no requirement on the part of the Noticee to maintain the workings of a contract which are purely rough and technical calculations and made for internal purpose and consumption only. The Noticee has further submitted that the impugned contracts were executed by the Noticee by giving sub-contracts to various parties and the quotation to the contracting company in such a scenario is generally based upon the rate agreed with the prospective sub-contractor. Since, most of the above impugned contracts involved development of agricultural land, not many technical calculations were involved. Therefore, after passage of almost 7-8 years, it is really difficult for the management to recollect the exact working as the entire contract team of the Noticee had changed and the earlier personnel are no longer available.

- 18.4. I note that aforesaid allegation in the SCN and the observations in the FAR, have come up in the wake of sub-contracts received (18 in number) by PDL and sub-contracts given (18 in number) by PDL wherein after reviewing the agreements for these sub-contracts, forensic auditor raised doubt over the existence of these sub-contracts owing to the fact that PDL did not produce supporting documents like measurement bills, completion certificates, site visit reports, etc. before the forensic auditor. The list of agreements of PDL with contractor and sub contractors as given at Table 6 of the FAR is reproduced below

Sr, No.	Financial Year	Name of Contractor	Name of Sub- contractor
1.	2009-10	Arch Infracprojects Nirman Pvt. Ltd.	Totem Infrastructure Ltd.
2.	2009-10	J. Kumar Infracprojects Limited	Totem Infrastructure Ltd.
3.	2009-10	NKG Infrastructure Limited	Totem Infrastructure Ltd.

4.	2009-10	J. Kumar Infraprojects Limited	Totem Infrastructure Ltd.
5.	2009-10	Advance Construction Co. Pvt. Ltd.	Totem Infrastructure Ltd.
6.	2009-10	J. Kumar Infraprojects Limited	Totem Infrastructure Ltd.
7.	2009-10	Patel Engineering Ltd	Totem Infrastructure Ltd.
8.	2009-10	J. Kumar Infraprojects Limited	Totem Infrastructure Ltd.
9.	2009-10	Arch Infraprojects Nirman Pvt. Ltd.	Totem Infrastructure Ltd.
10.	2009-10	AMR Constructions Limited	Totem Infrastructure Ltd.
11.	2010-11	Totem Infrastructure Ltd.	Kakarlapudi Infrastructure Private Limited
12.	2010-11	Totem Infrastructure Ltd.	Icsa (India) Limited
13.	2010-11	Totem Infrastructure Ltd.	Icsa (India) Limited
14.	2010-11	Totem Infrastructure Ltd.	Icsa (India) Limited
15.	2010-11	Totem Infrastructure Ltd.	Icsa (India) Limited
16.	2011-12	Bhanot Construction and Housing Private Ltd.	Simplex Housing Development Pvt. Ltd
17.	2011-12	Ober Construction Enterprises Pvt Ltd.	Simplex Housing Development Pvt. Ltd
18.	2011-12	Aerens Goldosuk International Ltd.	Simplex Housing Development Pvt. Ltd

In the present proceedings, I find that along with its reply dated September 13, 2021, PDL has submitted copies of duly executed work orders from both the contractor and sub-contractor for all the 18 contracts and 18 sub-contracts mentioned in the FAR and has also submitted invoices in support of the same. With respect to information such as completed stage, work completion certificate, measurement bills, site visit reports, computation of cost, site photograph, actual working papers etc. I agree with the submission of the Noticee that after passage of considerable time such information with minute details was difficult to be retrieved by PDL. I note that with respect to not submitting of completion certificate, PDL has submitted that it had only executed the sub-contract for which no completion certificate is issued to it, as the completion certificate is for whole contract and issued to the main/principal contractor by the principal client. FAR at page 13, also states that in the case of 99% of these sub-contracts, payments have been received and made by

the PDL. In view of these facts and circumstances, PDL can be given benefit of doubt in respect of the observations made in the FAR regarding genuineness of the contracts/sub-contracts.

19. Outstanding amount in ledger accounts of contractors and sub-contractors without any provisioning:

19.1. The SCN has alleged that PDL had outstanding amount in ledger accounts of contractors and sub-contractors without any provisioning for the same.

19.2. In this regard the FAR observes as follows:

“1. It was noted that PDL does not maintain project wise Profit and Loss account for contracting and sub-contracting. Contractor and sub-contractor wise separate ledger accounts are maintained.

2. The monitoring of budgeted v/s actuals was looked after by contract team/site in charge. PDL does not have any documents to evidence the budgeted v/s actuals for back to back project.

For Totem Infrastructure Ltd, PDL has made a total payment of INR 56,25,44,360/- between FY 2009-10 and FY 2011-12. Out of total payments made to Totem Infrastructure Ltd. amounting to INR 25,00,35,955 was made through Head Office ledger account. As a result, the payments to that extent cannot be mapped against individual projects sub-contracted to Totem Infrastructure Ltd.

Based on ledger review, it was noted that outstanding balance of contractors and sub-contractors as at 31st March 2012 is still outstanding as 31st March 2019.

E&Y asked for the communication/ follow ups with contractors and follow ups done by sub-contractors for clearing the outstanding dues. However, no details were provided by PDL.”

19.3. In response to the above mentioned allegation, the Noticee has submitted that while the contract between the Noticee and the said entities have been executed and completed, the Noticee had a bonafide belief and confidence in such entities that they will honour their liabilities and the Noticee will receive the outstanding amount in the future. PDL further submitted that the majority of the amount was outstanding as on March 31, 2011. The necessary disclosure about the amount being outstanding have been made in the Annual Report of the Financial year ended March 31, 2011 and the management had also disclosed that since at that time the same were considered good, the provisions for the same were not made. The relevant extract of Note 47 in the

Notes to the Accounts in the Annual Report, as relied on by PDL in this regard, is reproduced hereunder:

"Note 47: Details of Contracts Revenue and Cost

In accordance with the Accounting Standard 7 on Construction Contracts, details of contracts revenue and costs is as under:

Particulars	31 March, 2012 (Rs. In Lakhs)	31 March, 2011 (Rs. In Lakhs)
1. Contract Revenue recognized during the year	10,845.50	14,732.42
2. Aggregate of contract cost incurred and recognized profits upto the year end	30,430.54	-27,036.27
3. Advances received for contracts in progress	618.24	611.48
4. Retention money for contracts in progress	487.56	388.42
5. Amount due from customers for contract work	1,676.15	7,850.60"

The Noticee has further submitted that it has been a commercial decision of the officials of the Noticee to enter into contracts with such entities as well as to whether to write-off the outstanding amount from the financials of the Noticee and since the management of the Company has the belief and confidence in respect of the receipt of the said amount, the said outstanding amount still in the financial statements of the Company and no adverse inference regarding the same is warranted against the Noticee in the present case. Further, the Noticee has submitted that the said outstanding payable amount stands in the books of the Noticee because of the work sub-contracted by the Noticee which was further sub-contracted by Noticee to certain entities and since the Noticee is yet to receive its entitled amount as per the sub-contract through which the work was assigned to it, hence, the said amount appears to be outstanding and as payable by the Noticee to the entities.

19.4. I note that the FAR, in Table 9 has identified an outstanding balance of Rs. 21,12,39,030/- as on February 31, 2012, which towards contracts which included 6 contracts from FY 2009-10, 5 contracts from FY 2010-11 and 3 contracts from FY 2011-12, for which no provision was made. The Noticee does not dispute that it had not made provision for these outstanding amounts, however, it has submitted that it did not do so because the management of the Company has the belief and confidence in respect of the receipt of the said amount. The said amounts mentioned by the forensic auditor have been outstanding since March 31, 2012, i.e. for 7 years, at the time of forensic audit. Even during the hearing in the present proceedings before me held in the year 2021, Noticee has not produced any documents showing follow ups by the Noticee for recovering such dues or actual recovery of such dues. The submission of the Noticee that the management of PDL has faith in the recoverability of these dues stands belied by the fact that amount remains outstanding even after 10 years when they became due. In view of the same, I agree with the FAR that such dues remain unpaid for 7 years and PDL has failed to provision for the same.

20. Non submission of original documents with respect to agreements and invoices:

20.1. The SCN has alleged that PDL has not submitted certain original agreements and invoices.

20.2. The FAR has stated the following agreements and invoices, the original of which was not produced by PDL before the forensic auditor:

		WO ref no	Name of the party	Category	Original documents not provided
1	2009-10		Arch Infraprojects Nirman Pvt. Ltd.	Contractor	Invoices
2	2009-10		J.Kumar Infraprojects Limited	Contractor	Invoices
3	2009-10		NKG Infrastructure Limited	Contractor	Invoices
4	2009-10	JKR/2009-10/001	J.Kumar Infraprojects Limited	Contractor	Invoices
5	2009-10	ADV/KOY/VO/CIVIUIO	Advance Construction co. Pvt. Ltd	Contractor	Agreement and Invoices

		WO ref no	Name of the party	Category	Original documents not provided
6	2009-10		J.Kumar Infraprojects Limited	Contractor	Invoices
7	2009-10	PEUKOY,WO/CIVIL/120	Patel Engineering Ltd	Contractor	Invoices
8	2009-10	WPCL-SEPCO-EIEL-CS001 WPCUEIEL	J.Kumar Infraprojects Limited	Contractor	Invoices
9	2009-10		Arch Infraprojects Nirman Pvt. Ltd	Contractor	Invoices
10	2009-10	PDLñIL/2009-10/003	Totem Infrastructure Ltd	Subcontractor	Agreement
11	2009-10	PDUTIL/2009-10/004	Totem Infrastructure Ltd	Subcontractor	Agreement
12	2009-10	PDL/TIL/2009-10/002	Totem Infrastructure Ltd	Subcontractor	Agreement and one original invoice not provided
13	201 1-12		Bhanot Construction and Housing Private Ltd	Contractor	Agreement and invoices
14	201 1-12		Ober Construction Enterprises Pvt. Ltd.	Contractor	Agreement and invoices
15	2011-12		Aerens Goldosuk International Ltd.	Contractor	Agreement and invoices
16	2011-12	PDL/SHDPU2011-12/003	Simplex Housing Development Pvt Ltd	Subcontractor	Agreement and invoices
17	2011-12	PDUSHDPU2011-12/002	Simplex Housing Development Pvt Ltd	Subcontractor	Agreement and invoices
18	2011-12	PDUSHDPU2011-12/001	Simplex Housing Development Pvt Ltd	Subcontractor	Agreement and invoices

20.3. With regard to the above the Noticee has submitted that for the contracts in which the Noticee acted as a sub-contractor, as a matter of general practice, the original invoices raised by the Noticee were submitted to the contractors and the Noticee used to keep only copies of the same for its records. Further, the Noticee has submitted that the absence of the original documents in question, cannot be the sole factor to decide whether the work was completed by us or not. With regards to some of the documents the Noticee has submitted that a Panchnama from the Income Tax Department was shown to the forensic auditor by PDL to show that some documents were taken away by officials during income tax survey at their premises. However, the Panchnama did not have the listing of documents that were taken away.

- 20.4. In this regard, I note that the contracts referred to in the FAR pertain to FY 2009-10 to 2011-12. Forensic audit was conducted in the year 2020. I note that drawing adverse inference for not producing the original documents pertaining to contracts which were executed and concluded long back and without there being any requirement of maintain such documents for a particular period of time, is farfetched. I note that as submitted by the Noticee, it had produced the copies of the invoices and the panchnama from income tax department, before the forensic auditor. Having regard to the facts and circumstances of the case, I find that adverse inference sought to be drawn in the FAR in this regard, is not tenable.
21. Non-compliance with provisions of Clause 50 of the erstwhile Listing Agreement read with Accounting Standard 7:
- 21.1. The SCN has alleged that PDL failed to comply with Clause 50 of the erstwhile Listing Agreement during the investigation period.
- 21.2. In this regard the FAR mentions that According to Accounting Standard (AS) 7, dealing with Construction Contracts, lays down that in the case of a fixed price contract, the outcome of a construction contract can be estimated reliably when all the following conditions are satisfied:
- total contract revenue can be measured reliably;
 - it is probable that the economic benefits associated with the contract will flow to the enterprise;
 - both the contract costs to complete the contract and the stage of contract completion at the reporting date can be measured reliably; and
 - the contract costs attributable to the contract can be clearly identified and measured reliably so that actual contract costs incurred can be compared with prior estimates.
- The FAR states that according to contracts provided by PDL, PDL had entered into fixed-price contract with contractors and sub-contractors where the

contract value was specified and according to Annual Report of PDL, income from construction contracts is recognized by reference to the stage of completion of the contract activity at the reporting date of the financial statements. The related costs there against are charged to the profit and loss account of the year. The FAR further states as follows:

“- According to AS-7, under stage of completion method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.

- Supporting documents which evidences the reliability of measuring stage of contract completion mostly consists of the following documents:

1. Independent work completion certificate of work completed
2. Itemized bills submitted by contractor/sub-contractor substantiating the details of the work completed
3. Management's control process over the payment of itemized bill which includes analysis of budget to actuals of costs incurred
4. Physical verification reports of the work completed by company personnel which could include site photographs, measurement books etc.

- PDL was unable to furnish any supporting documents which substantiates the reliability of measuring the stage of contract completion.

- During our discussion with PDL management, it was confirmed that PDL does not have any evidence around delivery of services nor are they sure if the work was completed.

- PDL has not been able to provide documentation to substantiate the completeness of work, hence the revenue recognized, and costs booked maybe misstated resulting in potential misstatement of financial statements.”

21.3. In this regard, PDL has submitted that the income from construction contracts is recognised by reference to the stage of completion of the contract activity at the reporting date of the financial statements and the related expenditure there against are charged to the profit and loss account of the year. PDL has further submitted that there was no requirement of providing a work completion certificate on the part of any of the parties since it requires cost to prepare the work completion certificate and the party has to pay fees to an independent body to do the same. Since, the margin in these contracts were not very high and it would not be practically possible for these sub-contractors to prepare the same. PDL has further submitted that the sub-contractor on the basis of the stage-wise completion of the project, raises the bills and it is the bills which

must contain the details of the work completed and the sub-contractors only had to send the bills in which the details of the stage-wise work completed by them had to be indicated and in turn, the Noticee would accordingly raise the bills and there was no mention of issuance of any work-completion certificate in the contract. The Noticee has submitted that in majority of the cases rather than the work completion certificate being provided, a work satisfaction letter either from the contractor from whom the contract was received or from the principal contractor had been provided for in the impugned contracts which had not been shared with PDL. PDL has submitted that the payment of the invoices raised by the contractor in itself shows that there is no objection with regard to the work executed in regard to the impugned contracts. PDL has also submitted that as per paragraph 29 of AS-7, the stage of completion of a contract may be determined in a variety of ways. The enterprise may use, depending on the nature of the contract, the following methods: (a) the proportion that contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or (b) surveys of work performed; or (c) completion of a physical proportion of the contract work. In pursuance of the same, it is submitted that the sub-contractors have raised the bills on the Noticee to the extent of work completed by these sub- contractors and PDL had booked these incurred costs as an expense in its books of account and corresponding income attributable to cost incurred was recognised as revenue. Work done by the sub-contractors was duly verified by the Company's officials. Revenue and related cost were booked as income and charged as cost in the Profit and Loss Account in the same period. Therefore, PDL has submitted that it has fully complied with revenue recognition method prescribed by AS-7 and the revenue recognised by the Company during the respective period is in accordance with the accounting policy of the Company. PDL has also submitted that necessary disclosures were made in the Annual Report for the relevant financial years that the income

and the cost for the construction contracts were recognized as per the Accounting Standards on "Construction Contracts".

- 21.4. In this regard, I note that with respect to all 18 contracts/ sub contracts identified in the FAR, PDL received a contract which it further subcontracted to another company. The entity which granted the contract to PDL was not the principal client. I note that according to AS- 7 which deals with Construction Contracts, the outcome of a construction contract can be estimated reliably when the stage of contract completion at the reporting date can be measured reliably. I note that this question arises only when the contract has not reached the stage of completion. In the present matter, I note that in all the 18 contracts, the contracts under consideration have been completed and the bills have been raised. I also note that page 13 of the FAR states that for FY 2009-10 99% of the payment was received from contractors and full payment was made to sub-contractors. So is the case in FY 2011-12. In respect of payments received made in FY 2010-11, FAR does not tell in percentage terms as to how much payments were made or received. However, it observes that PDL received much lower than what it paid to subcontractors. I note the fact that PDL has received payment for most of the contracts show that work was successfully completed on the contract. Moreover, I note that PDL was not undertaking any work on the contract. The sub-contractor was raising invoice for the work completed on the contract and PDL was raising invoices to the contractor only by marking up its profit in regard to the invoice raised by the sub-contractor thus there may not be any requirement of budgeting. Moreover, with respect to these contracts, I find that submission of the Noticee that inspection was carried out by the principal contractor and thereafter, payments were made to the subcontractors, is a plausible explanation. However, it is a fact that PDL does not have records of such site inspections or the supporting documents which will show its internal workings regarding mark up to be charged by it, estimates, etc. I find that PDL has submitted copies of invoices

for some of these contracts. In view of the above, I find that observations made in FAR, regarding non-compliance with AS-7 is correct to the extent that PDL did not follow AS-7 in strict sense.

22. From the discussion in para 18 to 21 above, I find that PDL failed to make provision for outstanding amount in ledger accounts of contractors and sub-contractors and also failed to strictly comply with AS-7. Thus, I find that PDL to that extent failed in presenting 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 Clause 50 of the erstwhile Listing Agreement. The SCN further alleges that PDL has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. I note that since PDL has been found to be in violation of the Clause 50 of the erstwhile Listing Agreement, as discussed above, therefore, PDL is also in violation of Section 21 of SCRA, 1956.

Violations of PFUTP Regulations, 2003:

23. The SCN also alleges of violation of provisions of PFUTP Regulations, 2003 and Section 12A (a), (b) and (c) of the SEBI Act, 1992. In this regard, I note that the scope of work, as was assigned to the forensic auditor vide the interim order dated August 08, 2018 was as follows:
- a. Misrepresentation including of financials and/or business by PDL, if any, in the context of the transactions referred in para 20 of the interim order dated August 08, 2018 including the role of KMPs, Directors and Promoters in those transactions;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if

any, in the context of the transactions referred in para 20 of the interim order dated August 08, 2018 including the role of KMPs, Directors and Promoters in those transactions.

As can be noted from the above, the scope of audit did not include examination of possible violations of PFUTP Regulations, 2003 and accordingly, the findings of the FAR are confined only to alleged misrepresentation in the books of accounts of PDL and consequential and other violations of Accounting Standards. Moreover, the FAR states that:

“ On the basis of limited scope of forensic audit and limited information provided by PDL, there is no evidence of misuse of funds.”

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 SCN. However, the SCN additionally states:

“14.From the above, it was observed that the company (noticee no. 1), its directors (noticee no. 2 to 8) and its Chief Financial Officers (noticee no. 9 and 10) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the company and had the potential to mislead the investors.”

Consequently, the 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) and 4(1) and 4(2) (f) and (r) of PFUTP Regulations, 2003, however, it has not been alleged or finding given in the SCN whether violation of the Accounting Standard as found in the FAR has directly or indirectly resulted in the manipulation of the price of the scrip.

24. 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 erstwhile Listing Agreement 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, against the Noticees.
25. The SCN also alleges that Noticee nos. 2 to 8 who were directors of PDL and Noticee no. 9 who was the CFO of PDL during FY 2009-10, and 2010-11 and Noticee no. 10 who was the CFO of PDL during FY 2011-12 have also violated all those provisions which have been violated PDL, based on Section 27 of the SEBI Act, 1992.
26. In this regard, I note that Noticee no. 10 has submitted that he was not the CFO of PDL when these contracts were entered into and had no role in the granting and execution of these contracts. He has stated that he had no role to play in the impugned transactions and that he had not been named in the entire FAR and that he was not in charge of the contracting and sub-contracting vertical. He has stated that he had not signed any quarterly or annual compliance certificate of PDL during the investigation period and the subsequent certification by him as CFO, were not in the nature of new or additional entries but in the nature of roll over system. He has also stated that any newly appointed CFO relies upon the interim financial statement/ report that was prepared in terms of AS-25. He has stated that as regards provisioning on outstanding amounts the same had been considered good for recovery. He has submitted that the dates of the contracts identified in the FAR pertaining to 2011-12 were also entered into before his tenure as CFO. He has also stated that his tenure overlapped with the investigation period for only four months and he placed reliance on the certificates related to the financials which had already been issued by his predecessor in the previous financial years. Noticee no. 9 has given detail of the accounting process followed in PDL and stated that if the

documents support a transaction and is in order and such documents carry requisite approvals and do not otherwise lead to doubt or enquiry then such document was included in the books of accounts and even the FAR, after examining the trail of funds concluded that there was no misuse of funds and ledger account matched with the bank entries and thus, at the level of CFO there had been no room for doubt. Noticee 8 has submitted that the investigation period extends from FY 2009 – 2010 to FY 2011 – 2012, the Noticee was not a director of the Noticee No.1 Company during the FY 2009 – 2010 as he was appointed as an independent director w.e.f. November 12, 2010 and during the next two financial years also, he had attended only one out of four Audit Committee Meeting in each financial year and said Audit Committee Meetings had not considered or discussed any matter relating to the alleged contracts/sub-contracts or annual accounts. He has also submitted that being an independent and non-executive director, he was not involved in the day to day affairs of the Noticee No. 1 Company. The Noticee also stated that, as an independent and non-executive director, he endeavored to ensure that all the decisions taken in the board meetings are transparent, fair and in consonance with applicable provisions of law and in the interests of the Company and its stake holders and an independent and non-executive director cannot monitor the implementations of decisions or interfere in the same. The Noticee no. 8 has submitted that there is not even a single averment in the captioned SCN to indicate that the Noticee was having knowledge or was involved in the alleged misrepresentation of financials and misuse funds/books of accounts for the period from FY 2009-10 to FY 2011-12.

27. With regard to the allegation of violations of Clause 41 (II) (a) and Clause 49 (V)(a) of the erstwhile Listing Agreement, against PDL and its directors and CFOs, I find that Clause 41 (II) (a) *inter alia* dealt with manner of approval and authentication of financial results and states that the quarterly financial results shall be approved by the Board of Directors of the company or by a committee thereof, other than the audit committee. Further, Clause 49 (V)(a) provided that financial statements and the cash

flow statement for the year to be certified by the CFO. The said violations have been alleged against Noticee no. 2 to 10 by resorting to Section 27 of the SEBI Act, 1992. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2009-10 to 2011-12), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word “offence” with the word “contravention” in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by PDL, with reference to Clauses of the Listing Agreement or provisions of SCRA, 1956 for which regulatory directions and monetary penalty has been proposed, which are civil in nature. I further observe that the aforesaid clauses of the erstwhile Listing Agreement cast an obligation on the listed company to abide by certain mandate related to disclosures, corporate processes, corporate governance etc. and such provisions cast the liability on the listed entity. I find that obligation to abide by the erstwhile Listing Agreement was on PDL and since, the financials of PDL for the period of FY 2009-10 to FY 2011-12, did not represent true and fair view of the state of affairs of PDL, as discussed above, I find that PDL has violated Clause 41 (II)(a) and Clause 49(V) (a) of the erstwhile Listing Agreement.

28. Finally, it may be noted that the erstwhile Listing Agreement is not in force at present. However, Regulation 103 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations, 2015**”) provides that:

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

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

I note that the provisions of the erstwhile Listing Agreement were stipulated and modified by SEBI through circulars from time to time. For example, the relevant Clause 49 of the erstwhile Listing Agreement was amended vide circular dated October 29, 2004 and relevant Clause 41 of the erstwhile Listing Agreement was amended by circular dated July 10, 2007 and thereafter by circulars dated February 03, 2009, and April 05, 2010. Therefore, in view of Regulation 103(2), anything done under the present SCN which is in respect of the erstwhile Listing Agreement, is saved as being deemed to have been done or taken under the corresponding provisions of the LODR Regulations, 2015.

29. In view of the aforesaid violations committed by PDL, I find that directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 needs to be issued and penalties under Section 11B(2) and 12A(2) of SCRA, 1956 needs to be imposed.
30. The SCN in the matter, also calls upon the Noticees no. 1 to 10 to explain as to why appropriate penalty be not imposed upon them under Sections 15HA and 15HB of SEBI Act, 1992 and Section 23E and 23 H of SCRA, 1956, for the violations alleged in the SCN. Relevant extract of these penalty provisions, as existing at the time of violations, is reproduced, hereunder:

Relevant extract of Section 15HB of SEBI Act, 1992:

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

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

Relevant extract of Sections 23E and 23H of SCRA, 1956:

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

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

Penalty for contravention where no separate penalty has been provided.

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

31. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15HB of the SEBI Act, 1992, only, is attracted and not the penalties under Section 15HA of SEBI Act, 1992. 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. In view of the findings given in para 23 and 24, SEBI has been given liberty to issue fresh SCN, if so deemed fit, and penalty under Section 15HA of SEBI Act, 1992 at present is not attracted against the Noticees (i.e. Noticees no. 1 to 8, 9 and 10).
32. I find that for the violation of Clause 41(II)(a), Clause 49(V)(a) and Clause 50 of the erstwhile Listing Agreement read with Section 21 of SCRA, 1956 by PDL penalty under Sections 23H of SCRA, 1956 only, is attracted and not the penalties under Sections 23E of SCRA, 1956. I note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person

managing collective investment scheme or mutual fund". In the present case, it has been found that PDL is in violation of listing conditions, however, PDL was not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA. In my view a penalty under Section 23H of SCRA, 1956 is attracted in the case of Noticee no. 1 for violation of clauses of the erstwhile Listing Agreement read with Section 21 of the SCRA, 1956, 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 the Securities and Exchange Board of India for which no separate penalty has been provided and no separate penalty has been provided for cases where provisions of the erstwhile Listing Agreement read with Section 21 of SCRA, 1956 is violated by the listed entity, as in the present case .

33. For imposition of penalty under the provisions of the SCRA , 1956, Section 23J of the SCRA, 1956 provides as follows:

"Factors to be taken into account while adjudging quantum of penalty.

23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India 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 of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section."

34. I find that SCN does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that SCN does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by PDL. However, I note that the violations have occurred over a period of three financial years, i.e. FY 2009-10, 2010-11 and 2011-12 attracting violation of the erstwhile Listing

Agreement and as per LODR Regulations, 2015 the actions are saved as discussed in para 28 above. I also note that out of the four observations made in the FAR only two observations could be sustained in this order.

Directions:

35. 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(b) and 11B(1), 11B(2) and Section 12A(1) and 12A(2) of SCRA, 1956 read with Section 19 and 11(2)(j) of the SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, direct as under:

- (i) Noticee no. 1 (Parsvnath Developers Ltd.) is 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;
- (ii) The Noticees no. 1 is hereby imposed with following penalty:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalties
1.	Parsvnath Developers Limited	Section 23H of SCRA, 1956.	Rs. 15,00,000/- (Rupees Fifteen Lakh).

- (iii) PDL is directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order, 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, PDL 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, 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)	

- (i) Proceedings against Noticee no. 2 to 10 are disposed of without any directions/penalty in view of the discussions in para 27 above;
36. During the period of restraint, as directed in para 35 above, the existing holding of securities including the units of mutual funds, of the concerned Noticee, shall remain under freeze.
37. The obligation of the Noticee, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all

open positions, if any, of the Noticee, 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.

38. This Order comes into force with immediate effect.
39. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai

Date: June 29, 2022

-Sd-
ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA