National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/61089	Date: March 12, 2024
Circular Ref. No: 293/2024	

To All NSE Members,

Sub: SEBI Order in the matter of non-payment of dividend to Cairn UK Holdings Limited (now known as Capricorn UK Holdings Limited) by Cairn India Limited (now known as Vedanta Limited)

This is with reference to the SEBI Order no. QJA/KS/IVD/ID2/30077/2023-24 dated March 12, 2024 wherein SEBI has debarred following entities from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for the period mentioned below from the date of this order, as directed in para 116(b) & 116(c) of SEBI Order.

Sr. No	Name of Entity	PAN	Debarment Period
1	Mr. Navin Agarwal	ACTPA4140J	2 Months
2	Mr. Tarun Jain	AACPJ9089J	2 Months
3	Mr. Thomas Albanese	BNCPA8714K	2 Months
4	Mr. GR Arun	ADJPA2469F	2 Months
5	Ms. Priya Agarwal	ANFPA8240C	1 Month
6	Mr. K Venkataramanan	AABPV8512F	1 Month
7	Ms. Lalita D	AAEPG5696C	1 Month
8	Mr. Aman Mehta	AAGPM5030J	1 Month
9	Mr. Ravi Kant	AAIPK7999L	1 Month
10	Mr. Edward T	AONPJ7391G	1 Month

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:
https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.
In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of
National Stock Exchange of India Limited

Sanesh Sawant
Senior Manager

ANNEXURE: SEBI Order in the matter of non-payment of dividend to Cairn UK Holdings Limited (now known as Capricorn UK Holdings Limited) by Cairn India Limited (now known as Vedanta Limited)

QJA/KS/IVD/ID2/30077/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Section 11(1), 11(4), 11B (1) of the Securities and Exchange Board of India Act, 1992 read with Section 24(2) of the Companies Act, 2013.

In respect of:

Noticee	Name of the Noticee	PAN
1.	Vedanta Limited (Earlier known as Cairn India Limited)	AACCS7101B
2.	Mr. Navin Agarwal	ACTPA4140J
3.	Mr. Tarun Jain	AACPJ9089J
4.	Mr. Thomas Albanese	BNCPA8714K
5.	Mr. GR Arun Kumar	ADJPA2469F
6.	Ms. Priya Agarwal	ANFPA8240C
7.	Mr. K Venkataramanan	AABPV8512F
8.	Ms. Lalita D Gupte	AAEPG5696C
9.	Mr. Aman Mehta	AAGPM5030J
10.	Mr. Ravi Kant	AAIPK7999L
11.	Mr. Edward T Story	AONPJ7391G

In the matter of non-payment of dividend to Cairn UK Holdings Limited (Now known as Capricorn UK Holdings Limited) by Cairn India Limited(Now known as Vedanta Limited).

Background

1. Securities and Exchange Board of India **("SEBI")** received a complaint dated April13, 2017 from Cairn UK Holdings Limited **("CUHL")**, inter-alia, alleging non-payment of dividend of Rs.340,64,76,634 by Cairn India Limited (merged with Vedanta on April 11, 2017) / **("CIL/VIL/Vedanta")** in respect of 184,125,764 equity shares of CIL owned by CUHL.

2. On September 14, 2017, SEBI intimated CUHL that CIL in its action taken report dated June 28, 2017 has submitted that all outstanding unpaid dividends of Rs.666,53,52,657 to the account of CUHL had been paid to the Income Tax Department **("ITD")** against recovery notice from Deputy Commissioner of IT,

International Taxation, New Delhi, issued under Section 226(3) of the Income Tax Act, 1961, on June 19, 2017 and June 20, 2017. In view of pendency of matter before the ITD, SEBI closed the complaint of CUHL.

3. CUHL preferred appeal no. 319 of 2017 before the Hon`ble Securities Appellate Tribunal **("SAT")** against SEBI communication dated September 14, 2017. The Hon`ble SAT vide order dated July 19, 2019 allowed the appeal directing SEBI to reconsider the complaint of CUHL dated April 13, 2017 and pass appropriate orders. The Hon`ble SAT, inter-alia, held as follows: -

"5. ……… Only a part of the complaint has been considered by SEBI in so far as the prayer of the appellant directing Cairn India to pay the dividend alongwith interest. We are of the opinion that SEBI was justified in holding that since an amount has been transferred to the income tax authorities pursuant to some orders issued by them, the question of paying the dividend by the appellant alongwith interest does not arise. In our opinion, it is open to the appellant to pursue his remedies for return of the dividend amount from the income tax authorities.

6. However, if the company, namely, Cairn India had violated the provisions of the Companies Act in not releasing the dividend when there was no embargo upon it, it is SEBI' s duty to inquire into the alleged violation and if it exists take action against the said company and, if necessary, under Section 124 of the Companies Act. This aspect has not been considered by SEBI."

4. In compliance with the Hon`ble SAT directions, SEBI re-examined CUHL complaint and informed CUHL vide letter dated December 26, 2019 that allegation of violation of Section 127 of the Companies Act, 2013 **("Companies Act")** and Regulation 4(2)(c) of the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 **("LODR")** by CIL are not established.

5. CUHL preferred appeal no. 2 of 2021 before the Hon`ble SAT against SEBI communication dated December 26, 2019. Hon`ble SAT vide order dated July 5, 2022 allowed the appeal and directed SEBI to initiate an enquiry under Section 11(4)(A) of the Securities and Exchange Board of India Act, 1992 **("SEBI Act")** and hold an enquiry in the prescribed manner, investigate the violations of the Companies Act, LODR Regulations, etc., and take it to its logical conclusion within six months. Further, the Hon`ble SAT held as follows: -

> *"16. In the instant case, admittedly, the dividend was not paid to the appellant within the stipulated period. Thus, a prima-facie, case is made out for violation of Section 127 read with Section 124 of the Companies Act. The finding that the documents available on record was not sufficient to establish mens rea for an offence to be established under Section 127 of the Companies Act is patently erroneous as we find that relevant documents has not been considered by SEBI. Further, nothing has come on record to indicate as to what was the mitigating circumstances which led respondent nos. 2 in not releasing the dividend after the expiry of the attachment on March 31, 2016 and issuance of recovery notice dated June 16,* 2017.

6. SEBI preferred appeal Civil Appeal No. 6563 of 2022 before the Hon`ble Supreme Court of India against the Hon`ble SAT Order dated July 5, 2022. Hon`ble Supreme Court vide order dated October 14, 2022 extended time for completing the enquiry by a further period of six months from the date of the order and disposed the said appeal, inter alia, observing as follows: -

> *"4. In order to ensure that a fair enquiry takes place, we clarify that none of the observations of the SAT in its impugned order shall influence the enquiry. SEBI shall take its own independent decision uninfluenced by any of the observations in the impugned order."*

7. Upon SEBI`s application for extension of time to complete enquiry and pass final order, the Hon`ble Supreme Court vide order dated July 07, 2023 extended time by further period of six months. Subsequently, SEBI moved an application dated October 14, 2023 seeking extension of time by further period of 6 months to pass final order.

8. In compliance with directions of the Hon`ble SAT and the Hon`ble Supreme Court, SEBI carried out an investigation to ascertain whether CIL had violated the provisions of the Companies Act, 2013, LODR Regulations, etc. by withholding the dividends payable to CUHL during the period January 22, 2014 to June 20, 2017.

<u>Show Cause Notice, Hearing and Replies</u>

9. Based on the findings of investigation, SEBI issued show cause notice dated June 06, 2023 **("SCN")** to the Noticee(s) which, inter-alia, stated as follows: -

a. During January 22, 2014 to June 20, 2017 **(“Investigation period” or “IP”),** CIL declared following dividend: -

Table No.1

Sr. No.	Entities	Dividend Particulars	Bank	Account no.	Date of Declaration of Dividend AGM/Board Meting	Date of warrant	Date of funding the bank accounts	Date of transfer dividend to unpaid account	Amount in (Rs.)
1	Cairn India Limited	Final Dividend 2013-14	ICICI	001105024615	23-07-2014	30-07-2014	28-07-2014	28-08-2014	1196817466
2	Cairn India Limited	Interim Dividend 2014-15	ICICI	00110502481	17-09-2014	26-09-2014	22-09-2014	18-10-2014	920628820
3	Cairn India Limited	Final Dividend 2014-15	ICICI	1105025337	21-07-2015	27-07-2015	24-07-2015	25-08-2015	736503056
4	Cairn India Limited	Final Dividend 2015-16	Indus	20100058561	21-07-2016	25-07-2016	25-07-2016	24-08-2016	552377292
5	Vedanta post Cairn merger	Second Interim Dividend 2016-17	Axis	917020029371 177	30-03-2017	28-04-2017	03-04-2017	04-05-2017	3259026023

b. ITD had issued a provisional attachment Order dated January 22, 2014, u/s 281B of the Income Tax Act, 1961, in respect of CUHL. A copy of the said order dated January 22, 2014 was marked to CUHL, CIL, NSDL, CDSL, NSE, BSE and ROC-Delhi. The order inter-alia read as follows: -

“ …. (B) So far as the receivables by Cairn UK Holdings Ltd in the books of Cairn India Limited are concerned the Principal Officer of Cairn India Limited is directed not to remit/pay any amount to Cairn UK Holdings Ltd.

(C) It is ordered that the assessee or its nominee or any other person on behalf of the assessee is prohibited and restrained from creating a charge on or part with the possession (by way of sale, mortgage, gift, exchange, or any other mode of transfer, whatsoever) of the properties mentioned in schedule below, without prior sanction of the undersigned. Any such charge or transfer shall be void as against any claim in respect of any income tax or other sum payable by the assessee as a result of completion of assessment proceedings, as mentioned in para 4 & 5.

Schedule

Name of the owner	*Description of property*
Cairn UK Holdings Ltd	*196174600 Equity shares of Carin India Ltd (par value Rs 10 each)*
Cairn UK Holdings Ltd	*Receivables from Cairn India Ltd*

c. Subsequently, the provisional attachment Order dated January 22, 2014 was extended from time to time i.e. on July 18, 2014, January 01, 2015, January 14, 2016 until March 31, 2016, whereupon the provisional attachment expired.

d. Upon expiry of provisional attachment Order dated January 22, 2014 on March 31, 2016, ITD issued a letter dated March 31, 2016 to CUHL, with a copy to CIL, NSDL, CDSL, BSE, NSE, ROC-Delhi and SEBI. ITD letter dated March 31, 2016 inter-alia, stated that assessment order was passed u/s 143(3) on January 25, 2016 raising a demand of Rs 29,102.51 crore in respect of CUHL. Further, the letter stated as follows: -

   " 3. While the demand is not being pursued for the time being, keeping in view the provisions of Section 281 of the Income-tax Act, 1961 you or your nominee or any other person on behalf of you may not create a charge on or part with the possession in favour of any person (by way of sale, mortgage, gift, exchange, or any other mode of transfer, whatsoever) of any asset without previous permission of the undersigned as any such transfer would be rendered void as against any claim in respect of any tax or any other sum payable as a result of completion of the assessment proceedings."

e. After receipt of ITD letter dated March 31, 2016, Noticee No.1 wrote letters dated September 22, 2016, January 31, 2017 (*referred ITD internal letter dated 30/12/2016*) and March 27, 2017 (*referred to ITD internal letter dated 01/03/2016*) to ITD seeking clarification on release of dividends to CUHL and did not release the dividends to CUHL.

f. In the course of correspondence with the Noticee No.1, CUHL shared with Noticee 1 ITD`s internal communication dated December 30, 2016 which *inter-alia* stated *"The undersigned would like to state that the provisional attachment order u/s 281B on dividend expired on 31 March 2016 and as on date there is no attachment in force. The decision to release the dividend to CUHL is an internal matter between two companies and the same may be dealt accordingly."* On similar lines, ITD`s internal communication dated March 01, 2017 *inter-alia* stated *"…So far as the payment of dividend is concerned, it is a matter between the company (CIL) and its shareholder (CUHL). This office presently has no role to play in this matter."* From these internal letters, ITD had clarified that the release of dividend was a matter between the company and the shareholder i.e. CUHL and the Noticee No.1.

g. ITD issued Notice dated June 16, 2017 u/s 226(3) of the Income Tax Act, 1961 to Noticee 1, under a copy to CUHL, and *inter-alia* directed that *"…A sum of Rs 10395,42,32,782/-(including interest under section 220(2) of the Income-tax Act, 1961 till 16.06.2017) is due from M/s Cairn UK Holdings Limited, 50, Lothian Road, Edinburgh Scotland, EH 39BY on account of Income tax / ~~Penalty~~ / Interest / ~~fine~~. You are hereby required under section 226(3) of the Income Tax Act, 1961 to pay to me forthwith any amount due from you to or held by you for or on account of the said assessee up to the amount of arrears shown above / ~~salary payable to the above name assessee~~".* Accordingly, the amount of dividend due to CUHL (i.e. ~Rs.666.53 crore) till June 2017 was transferred by CIL to ITD on June 19 & 20, 2017 in terms of the said directions.

h. On February 14, 2022, ITD issued order under Rule 11UE / 11UF read with the Taxation Laws (Amendment) Act 2021 in respect of CUHL that *inter-alia* noted that *"… the assessment order dated 25.01.2016 shall be treated as a nullity. Credit of the taxes paid / recovered for AY 2007-08 is being allowed. However, as per the provisions of sixth proviso to Explanations 5 to 9(1)(i) of the Act, read with Form No 4 dated 04.02.2022, the assessee is not entitled to any interest under Section 244A of the Act on the refund due".* Accordingly, the tax demand of CUHL of Rs ~10,247 crore was nullified by ITD subsequent to amendment in retrospective tax laws in 2021 and a refund of Rs ~7,975 crores was made by ITD to CUHL against the recoveries made by way of dividend and sale of shares of Vedanta. Accordingly, CUHL received the said dividend amount by way of this settlement on February 24, 2022.

i. After declaration of dividend in respect of the shares which were attached vide provisional attachment order dated January 22, 2014, the Noticee 1 deposited the dividend dues of CUHL within seven days from the expiry of 30 days from the date of declaration of dividend to the Unpaid Dividend Account in terms of section 124 (1) of the Companies Act, 2013. However, the Noticee No.1, after expiry of provisional attachment order on March 31, 2016, despite CUHL repeatedly claiming the dividend, did not take steps to pay dividend to CUHL.

j. The Noticee No.1 declared dividend, however, it failed to pay dividend to CUHL within the timelines prescribed in Section 127 of the Companies Act, therefore, the Noticee 1 became liable to pay simple interest at the rate of eighteen per cent per annum on the dividend due to CUHL for the period there was delay in payment of the dividend to CUHL. By doing so, the Noticee 1 has failed to comply with all applicable laws as mandated under Regulation 4(1)(g) of LODR Regulations. Further, the Noticee No.1 has failed to treat CUHL equitably as mandated in Regulation 4(2)(c)(i) of LODR Regulations, 2015.

k. From January 27, 2017 onwards, CUHL addressed letters to the Noticee No.1 along with its "*directors*" for the release of dividends.

l. Minutes of the Audit committee meeting of the Noticee No.1 held on February 09, 2017, inter-alia, noted *"…committee noted that the company was seeking clarification from the Income Tax Department if the dividend due to CUHL in respect of their shareholding in the company could be released."* The meeting was attended by the Noticee No. 3, 9 and 11.

m. The minutes of the Audit Committee Meeting dated February 09, 2017 were placed before the Board of Directors of the Noticee No.1 in its meeting held on March 30, 2017 and the minutes inter-alia *recorded "4 - Minutes of the last Audit committee meeting held on 9th February 2017, as circulated with the agenda papers were read and noted by the board"*. The meeting was attended by Noticee No. 2, 3, 6, 9 and 11.

n. During the Board of Directors meeting held on May 15, 2017, CEO & Director, Mr Thomas Albanese in his report inter-alia *mentioned "…. We have been trying to get a formal communication from IT Dept. before the release of the funds (which were under provisional attachment by IT Dept. for over 2 years until 31st March 2016), given that a demand has been crystalized on CUHL* *post ITAT order and is due by 15th June 2017. We have intimated SEBI and CUHL accordingly."* The meeting dated May 15, 2017 was attended by the Noticee No. 2,3,4,5,7,8 and 10.

o. Letter addressed by Mr Navin Jain, Head – Taxation, (reported to the head of Corporate Finance, who in turn reported to Mr Sudhir Mathru, Acting CEO & CFO, who in turn reported to the Board) on September 22, 2016, inter-alia, stated *"…please note that if we do not hear from your office to the contrary, we will proceed on the basis that we are entitled to remit the subject dividend, to Cairn UK Holdings Ltd."*

p. Letter *addressed* by Mr Sunil Bohra, Chief Commercial and Marketing Officer (reported to Mr Sudhir Mathur, Acting CEO and CFO, who in turn reported to the Board) on March 27, 2017, inter-alia, stated *"… we thank you for clearly setting out the legal position. Given previous correspondence between us on the subject, as a matter of courtesy, we hereby inform you that in light of the above mentioned clarifications, we will be paying the outstanding dividend payments to CUHL without further delay."*

q. Noticee(s), who had attended the meetings is tabulated hereunder, were aware of the issue of non-payment of dividend to *CUHL*:-

Table No. 2

Noticee	**Name**	**Designation**	**Audit Meeting**	**BOD Meeting**	
			09/02/2017	**30/03/2017**	**15/05/2017**
2.	Mr. Navin Agarwal	Chairman / Non-Executive Chairman DOC*- CIL merged with Vedanta effective 11.04.2017		Y	Y
3.	Mr. Tarun Jain	Whole-Time Director/ Non-Executive Director DOC- CIL merged with Vedanta effective 11.04.2017	Y	Y	Y
4.	Mr. Thomas Albanese	Whole-Time Director & Chief Executive Officer			Y
5.	Mr. GR Arun Kumar	Whole-Time Director & Chief Financial Officer			Y
6.	Ms. Priya Agarwal	Non-Executive Director		Y	

Noticee	Name	Designation	Audit Meeting	BOD Meeting	
			09/02/2017	30/03/2017	15/05/2017
7.	Mr. K Venkataramanan	Independent Director			Y
8.	Ms. Lalita D Gupte	Independent Director			Y
9.	Mr. Aman Mehta	Independent Director	Y	Y	
10.	Mr. Ravi Kant	Independent Director			Y
11.	Mr. Edward T Story	Independent Director	Y	Y	

**DOC: Date of Change*

r. The Noticee 2 to 11 were aware that the Noticee No.1 owed a substantial amount of dividend to CUHL which was being kept in abeyance and clarifications were being sought from ITD. The Noticee No.2 to 11 were aware of the Noticee No.1`s failure to distribute dividend in the manner and within the period prescribed in section 127 of the Companies Act.

10. SEBI vide the SCN alleged that Noticee(s) violated Section 127 of the Companies Act, Regulation 4(1)(g) and 4(2)(c)(i) of LODR Regulations and called upon them to show cause as to why suitable directions, under Section 11 (1), 11(4) and 11B(1) of the SEBI Act read with Section 24(2) of the Companies Act, should not be issued against them for the above violation including directions to pay interest at the rate of eighteen percent per annum from April 01, 2016 to June 20, 2017 on the dividend due to CUHL and/or to prohibit them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and directions not to be associated with any registered intermediary/ listed company and any public company which intends to raise money from public in the securities market, in any manner whatsoever.

11. The SCN was served on Noticee No. 1,2,3,6,7,8 and 9 through post. The SCN sent to the Noticee No. 5 and 10 through post returned undelivered. The SCN was served on the Noticee(s) including Noticee No. 4,5,10 and 11 vide email dated June 07, 2023. In response thereto, Regstreet Law Advisors, representing Noticee No.1 to 11, vide email dated June 26, 2023 filed an application dated June 26, 2023 seeking inspection of documents. SEBI granted opportunity of inspection of documents to the Noticee(s) on July 10, 2023. Accordingly, Mr.Pratham Darad, Mr. Ujjwal Agrawal and Ms. Reecha Agrawal, from Regstreet Law Advisors,

conducted inspection of documents on behalf of Noticee No.1 to 11 on July 10, 2023. During the course of inspection of documents, SEBI provided copy of investigation report (IR), Annexure 1 to 18 of IR and copy of investigation authority appointment order to the Authorised Representatives **(AR)** of the Noticee(s).

12. SEBI vide email dated July 25, 2023 informed the AR of the Noticee(s) that SEBI has not received response of the Noticee(s) to the SCN and advised them to submit response on priority basis. In response thereto, Ms. Prerna Halwasiya, Company Secretary and Compliance Officer of Noticee No.1 vide email dated July 29, 2023 sought extension of two weeks to file response to the SCN stating that documents are voluminous and they need time of two weeks to prepare and file appropriate response to the SCN. Accordingly, the Noticee(s) were granted time of two weeks to file response to the SCN and date of hearing is scheduled on August 22, 2023. SEBI vide hearing notice dated August 08, 2023, sent through speed post and email dated August 09, 2023, informed the Noticee(s) about the extension of time to file reply to the SCN and date of hearing dated August 22, 2023. The AR for the Noticee(s) vide email dated August 12, 2023 sent a google drive link stating that reply dated August 12, 2023, on behalf of the Noticee No.1-2, 4-11, is enclosed therewith. SEBI vide email dated August 17, 2023 informed the AR that data from the google drive link is not accessible and advised them to send data through CD/pen drive along with physical submission thereof latest by August 18, 2023.

13. The AR vide email dated August 20, 2023, on behalf of the Noticee No. 1-2, 4-11, stated that it has been instructed to request SEBI to provide an adjournment of hearing scheduled on August 22, 2023 and extension of time by four weeks to file reply to the SCN. SEBI vide email dated August 21, 2023 informed the AR that, as last and final opportunity to file reply to the SCN, the Noticee(s) have been granted time till August 31, 2023 to file reply to the SCN and hearing dated August 22, 2023 is re-scheduled to September 07, 2023. Further, it was informed that no further request for extension of time shall be entertained.

14. The AR for Noticee No. 1-2, 4-11 vide email dated September 01, 2023 again sought extension of time by ten days to submit a reply to the SCN stating that the

Noticee(s) are taking time to finalize the response at their end. Vide email dated September 05, 2023, the AR was informed that it was clarified vide email dated August 21, 2023 that no further request for extension of time shall be entertained, accordingly, the AR was advised to appear for the hearing dated September 07, 2023.

15. Vide email dated September 06, 2023, the AR, on behalf of the Noticee No. 1-2, 4-6, 8, 10 and 11, submitted reply dated September 06, 2023 to the SCN, inter-alia, stating that inspection of documents sought vide representation dated June 26, 2023 be provided to the Noticee(s). Further, the AR vide email dated September 07, 2023 filed two applications, both dated September 07, 2023. Vide first application, the AR sought adjournment of hearing dated September 07, 2023 on ground that Deputy Commissioner of Police, Traffic, has issued notifications highlighting expected heavy traffic congestion, rains particularly on western expressway and closure of several roads due to Janmashtami Festival and Dahi Handi Sport. Vide second application, the AR reiterated request for inspection of documents and information sought vide representation dated June 26, 2023 and also sought that following documents should be procured from CUHL or other government agencies and the same be made available to the Noticee(s): -

a) Pleadings and affidavits of CUHL before the Permanent Court of Arbitration **(“PCA”)** in the case of CUHL & Anr. Vs. The Republic of India.

b) The request for interim measures dated April 13, 2016, submitted by CUHL to the PCA, in which CUHL indicated that it would withdraw its request for interim measures if the Government of India pledged not to pursue any further enforcement actions against CUHL`s shares in CIL.

c) The procedural order dated June 09, 2017, issued by the PCA to CUHL and the Government of India in response to the Parties’ relief requests on this matter.

d) The minutes of the meeting between Cairn`s representatives and the ITD, during which the ITD informed Cairn that no written confirmation would be provided to CIL regarding the release of dividends to CUHL.

e) The letter dated March 09, 2017, allegedly authored by CUHL and addressed to the Government of India, insisting that the Government of India directly communicate to CIL that it could release the dividends.

16. Vide email dated September 07, 2023, the AR was informed by SEBI that notifications, referred to in its request dated September 07, 2023, are not annexed with the said email. Vide earlier email dated September 05, 2023, it clarified that no further request for extension of time shall be entertained. The AR was granted opportunity to attend hearing dated September 07, 2023 through video conferencing.

<u>Reply of Noticee No.1, 2, 4 to 6, 8, 10 and 11</u>

17. The Noticee No. 1, 2, 4 to 6, 8 to 11 have submitted common reply dated September 06, 2023 which stated as follows: -

<u>CUHL has not approached SEBI with clean hands.</u>

a. CUHL filed complaint dated April 13, 2017 on SCORES alleging delay in payment of dividend by CIL. Arbitration proceedings were going on between CUHL and the Government of India prior to and at the time of the complaint dated April 13, 2017. The cause of action in the Arbitration proceedings covered subject of dividend, which is inextricably interwoven with the tax demand by the ITD, as the attachment by ITD was in aid of the tax demand. When CUHL settled dispute with the Government of India, cause of action of delay in payment of dividend also came to an end.

b. CUHL filed applications/claims between April 2016 and till June 2017 before the International Arbitral Tribunal seeking direction to the Government of India towards release of dividend. CUHL submitted before the Arbitral Tribunal that Government of India *“has forcibly sold approximately 99% of CUHL`s shares in CIL and refused to allow CIL to distribute to CUHL.”*

c. On March 30, 2016, CUHL filed an appeal against the Deputy Commissioner of Income Tax order dated January 25, 2016 before Income Tax Appellate Tribunal **(“ITAT”)**. The appeal was listed before ITAT on October 17, 2016 and November 15, 2016. On March 09, 2017, the ITAT upheld tax demand of ITD. On March 14, 2017, Assistant Commissioner of Income Tax issued letter to CUHL demanding payment of tax due, as confirmed by the ITAT, latest by June 15, 2017, failing which recovery proceedings would be initiated against CUHL by the ITD. ITD issued garnishee order dated June 16, 2017, upon lapse of period for enforcement of ITAT order dated March 09, 2017, directing CIL to transfer any amount due to or held on account of CUHL to ITD. Accordingly, CIL transferred to the ITD the amount of dividend due to CUHL till June 2017 (i.e. Rs.666.53 Crore) on June 19, 2017 and June 20, 2017.

d. CUHL was well aware that CIL did nothing in furtherance of withholding of dividend as a free agent of its own free accord and will and was only following instructions of ITD. While CUHL was actively pursuing the matter against the Government of India before the Arbitral Tribunal and was also anticipating recovery of tax demand upheld by ITAT, CUHL filed complaint on SCORES without disclosing crucial details of adjudication of dividend matter in the Arbitration and existence of ITAT order against CUHL.

<u>SEBI is barred from unreasonably adopting a volte face</u>

e. SEBI vide order dated September 14, 2017 disposed CUHL`s SCORES complaint observing that CIL has deposited outstanding unpaid dividend to the Government of India against the recovery notice. SEBI agreed that release of dividend was pending with ITD and It would not have been appropriate for SEBI to take any further action against CIL. Vide order dated December 26, 2019, SEBI concluded investigation and held that no offence was committed by CIL and/or its directors since CIL was bound by decisions of ITD. There was no confirmation from ITD which would have permitted CIL to release dividend to CUHL. However, in the present SCN, SEBI has ignored to take into consideration its own findings in earlier two orders. The principles of estoppel shall be squarely applicable in the present case and issuance of SCN is unreasonable, arbitrary, and violates the principles of natural justice.

SEBI proceedings are non- est and without jurisdiction

f. The SCN has invoked Section 127 of the Companies Act which power can be exercised only by jurisdictional special court for company offences and such power cannot be exercised by SEBI. Accordingly, power to grant interest @ 18% p.a. is power of the court and not with SEBI.

Section 127(a) of the Companies Act- Dividend was not paid on account of operation of law.

g. ITD vide letter dated March 31, 2016, marked to CIL, prohibited CUHL from creating a charge on its assets without previous permission from the ITD. It also restricted any other person to create a charge or part with possession by any mode of transfer whatsoever without prior approval of ITD. The language of the said letter was similar to attachment order issued by ITD previously. Thus, CIL could not have parted with assets of CUHL unless ITD permitted for the same. ITD letter dated March 31, 2016 stated that whatever asset of CUHL is lying with any entity, it must remain there only and should not be transferred to “any” person. In absence of stay from a court of competent jurisdiction, such letter had to be complied with by CIL as it had force of law. CUHL did not challenge or obtain stay on the restrictions imposed on CIL by ITD. CIL is now being penalized for having complied with order from ITD. As ITD letter dated March 31, 2016 created bar against transfer of dividend by CIL to CUHL, CUHL vide letter dated October 12, 2016 sought confirmation from the ITD whether CIL would be able to release any outstanding dividends owned to CUHL.

h. CIL`s action was bonafide that any reasonable person who cares to comply with the law, would adopt. CIL exercised due care and caution which ordinarily any prudent person is expected to do and would do while dealing with a substantial amount of money over which the tax authorities of the country were staking claim. The amount if paid to CUHL would have been remitted outside India, Therefore, CIL acted reasonably and in compliance with relevant laws and regulations. Letter dated march 31, 2016 categorically stated that transfer, if made, would be rendered void and that prior permission of the Deputy Commissioner of Income Tax must be taken.

<u>Section 127(c) of the Companies Act- Dispute Regarding Right to Receive Dividend.</u>

i. Between March 31, 2016 to June 16, 2017, there was dispute as to CUHL`s right to receive dividend. The dispute between the Government of India and CUHL was going on before ITAT and PCA. The matter of dividend was being pursued by CUHL as part of its claim before PCA long before March 31, 2016. ITD letter dated March 31, 2016 certainly and unambiguously informed CIL of the existence of dispute and clouded, questioned, and deferred CUHL`s right to receive dividend.

j. Clause (c) of Section 127 of the Companies Act is not limited to circumstances of dispute between the company declaring dividend and the shareholder who has to receive the dividend. The provision does not limit the dispute to be inter-se the company and shareholder.

<u>Section 127(e) of Companies Act- Dividend was not paid due to any other reason where default was not of the company</u>

k. No clear answer was given by the Government of India which would have acted as a valid discharge to CIL had it made the payment. No declaratory decree or order had been obtained by CUHL establishing its right to receive dividend. The Government of India vide notice dated June 16, 2016 staked its claim on the dividend. There was no default or offence on part of Noticee(s) as they acted reasonably and honestly. Non- payment of dividend by CIL was on account of operation of law, dispute and other reasons.

<u>Non- release of dividend is identical to freeze on the shares of CUHL by NSDL, a public authority</u>

l. Free transferability of shares of a listed company is an essential feature of shares held in a public company which is similar to right to receive dividends in relation to such shares. Shareholding of CUHL in CIL was put under freeze by NSDL during period subsequent to April 01, 2016. Similarly, CIL kept a freeze on pay-put of dividends to CUHL. NSDL explanations have been accepted by SEBI and no action has been taken against NSDL. Thus, CIL cannot be penalized or proceeded against in any manner whatsoever.

Non Release of dividend by CIL has been stated by CUHL to be on account of decisions of the Government of India under bilateral investment treaty arbitration

m. From the PCA award dated December 21, 2020, as publicly available, in the matter of Cairn Energy PLC & Anr. Vs. The Republic of India, it transpires that CUHL had full adjudication in relation to its purported grievance of non-receipt of dividends from CIL. CUHL is now double dipping into the same cause of action.

Inter- departmental communications cannot be relied upon as basis to claim any right and are not conclusive of the controversy.

n. The basis of CUHL`s allegation is two ITD inter-departmental communications dated December 30, 2016 and March 01, 2017, which were neither marked nor addressed to CIL and CUHL. These ITD letters were provided to CIL in 2017. Internal noting of the department does not operate as conclusive of the issue or can be construed as any final order on the basis of which any action can be taken by any person. Thus, ITD letters dated December 30, 2016 and March 01, 2017 cannot be treated to be letter granting any right in favour of CUHL or cannot be in the nature of absolving of any liability it was facing during the relevant time.

o. Upon receipt of the said inter-departmental communications of ITD, CIL`s requests made vide letters dated September 22, 2016, January 31, 2017 and March 27, 2017 to ITD for modification of binding orders issued to CIL regarding release of dividends to CUHL did not elicit any response from ITD.

p. The fact that CUHL sought to rely upon inter-departmental communication of ITD is indicative of fact that dispute with ITD/Government was not over and there was more than ambiguity in its mind though it went to claim dividend.

CIL did not enjoy unpaid dividend amount- no occasion arises to pay any interest

q. In terms of Section 124 of the Companies Act, CIL transferred total amount of unpaid dividend to a special account i.e. Unpaid Dividend Account and CIL did not unjustly enrich itself from the unpaid dividend amount. In compliance with ITD letter dated June 16, 2017, CIL promptly transferred dividend amount to ITD on June 19 and June 20, 2017. The objective behind levy of interest under Section 127 of the Companies Act is to provide a deterrent against any attempt by the company to delay payment of dividend illegally and unjustifiably.

Noticees acted in bonafide manner in the interest of its public shareholders.Unless there was complete clarity, and payment to CUHL gave CIL a valid full and final discharge without recourse to them, no default can be said to be on their part for deferring payment.

r. ITD vide letter dated March 31, 2016 prohibited CIL from parting assets of CUHL without prior permission. Thereafter, CIL, with a view to assist CUHL, vide letter dated September 22, 2016, January 31, 2017 and March 27, 2017 sought necessary instructions from ITD with respect to payment of dividend to CUHL. However, ITD did not respond to letters of CIL. As CUHL did not produce any order of court or any competent authority or any document which conclusively could be said to have given a full and final discharge to CIL in case it had made the payment to CUHL. Without a declaration by any court of the right or entitlement of CUHL to receive immediate payment, CIL may not have gotten a full and valid discharge without any recourse to itself if it had made the payment.

Similarly placed shareholders were treated similarly

s. The SCN alleges violation of Regulation 4(2)(c)(i) of LODR Regulations which is a principle to be applied in interpreting the rest of LODR Regulations. It is not by itself a charging provision. The case of CUHL was sui generis and not on account of any kind of unequal treatment. This occurrence is consequence of obligation imposed upon CIL rather than act of discrimination.

SAT order dated July 19, 2019 has already held that no interest can be charged from CIL

t. The Hon`ble SAT vide order dated July 19, 2019, in CUHL Vs. SEBI & Anr, held as follows: -

> *5. …we are of the opinion that the complaint of the appellant has not been considered by the respondent in the right perspective. Only a part of the complaint has been considered by SEBI in so far as the prayer of the appellant directing Cairn India to pay the dividend alongwith interest.* ***We are of the opinion that SEBI was justified in holding that since an amount has been transferred to the income tax authorities pursuant to some orders issued by them, the question of paying the dividend by the appellant alongwith interest does not arise.*** *In our opinion, it is open to the appellant to pursue his remedies for return of the dividend amount from the income tax authorities.*

u. The Hon`ble SAT has already adjudicated on the issue that CIL cannot be held liable to make payment of interest to CUHL on the dividend and claim, if any, by CUHL would lie against ITD, Government of India. CUHL has not challenged the Hon`ble SAT order dated July 19, 2019.

CIL in compliance with instructions of Government of India did not pay the dividend

v. To ensure that there is no default or non- compliance on part of the Noticee(s), CIL sought instructions from ITD prior to release of dividend. Thus, non-payment of dividend was consequence of non-communication from ITD, despite assurance of senior officials of the Finance Ministry.

Directors cannot be held liable for non- payment of dividend

w. The SCN has alleged that the directors of CIL were aware of substantial dividend which was being kept at abeyance and clarifications were being sought from ITD. The Noticee(s) denied that any contravention was committed with any consent of the Noticee No. 2 to 11. Consent cannot be inferred on mere ipse dixit.

x. Even if CIL is held to be in default, the directors cannot be roped in merely due to their designation. In absence of precise roles of directors in the alleged violations, the directors cannot be held responsible for alleged violation.

y. Directors are not responsible for day to day affairs of the company. They may be aware of some dialogue taking place between the company and ITD, this does not make them responsible for payment of dividend. Duty of Board of Directors is to provide strategic oversight and guidance rather than undertake implementation of operational tasks of the company.

z. The Noticee No. 6, 7, 8, 9, 10 and 11 are non-executive directors of CIL. Role of independent director is to act as a guide, mentor and a coach for the company which appoints him. The role of independent director includes the task of improving the corporate credibility and governance standards of a company by acting as a watchdog and helping the company manage risk effectively. They are in no way responsible for day-to-day affairs of the company.

SEBI previously on December 26, 2019 had taken view that no default has been committed.

aa. On September 14, 2017 and December 26, 2019, SEBI had dismissed the complaint filed by CUHL, thereby, ruling in favour of CIL. At the relevant time, even SEBI had a different perspective on the matter and also acknowledged existence of dispute and defended it accordingly stating its position under oath in affidavit before the Hon`ble SAT and the Hon`ble Supreme Court of India. Accordingly, SEBI ought not take contrary position contrary to its stand taken previously.

No penalty should be imposed

bb. The violations alleged in the SCN are neither repetitive nor the Noticee(s) made any gain or avoided any loss. All unpaid dividends were transferred to unpaid dividend account in a timely manner and none of such shareholder money was used by the Noticee(s) for earning any gains. Thus, even if it were to be held that there has been technical breach, no penalty be imposed.

<u>SEBI has not complied with principles of natural justice by rejecting request for documents forming the basis of show cause notice</u>

cc. The Noticee(s) vide letter dated June 26, 2023 sought inspection and copies of all documents relevant to the matter. The Noticee(s) sought access to processing notes and to investigation reports from first report to all subsequent investigating reports. However, inspection of only certain limited documents was granted to the Noticee(s) on July 10, 2023.

<u>Reply of Noticee No.3</u>

18. Noticee No.3 vide email dated August 09, 2023 sought inspection, in addition to documents sought by the earlier AR of the Noticee No.3 vide abovementioned email dated June 26, 2023, of following documents: -

a. Any evidence to suggest that the Noticee No.3 was aware of the facts stated in the SCN at the relevant time.

b. Any evidence to suggest that the Noticee No.3 had any role to play in any decision making related to issue/matter involved in present matter; within the company.

c. Date on which action was approved against the Noticee No.1 and the date on which action was approved against directors of the Noticee No.1.

19. SEBI informed Noticee No.3 vide email dated August 17, 2023 that inspection of all relied upon documents has already been provided to his earlier AR i.e. Regstreet Law Advisors in the inspection dated July 10, 2023. The Noticee was advised to submit his response to the SCN latest by August 21, 2023 and to share details of persons(s), who will attend the hearing dated August 22, 2023. Thereafter, Ms.Saachi Purohit, on behalf of the Noticee No.3, vide email dated August 21, 2023 sent an application dated August 21, 2023, thereby, requesting for issuance of direction for inspection and production of documents and/or

issuance of summons for production of documents by SEBI. Vide application dated August 21, 2023, the Noticee No.3 reiterated request for inspection of documents mentioned in the Regstreet Law Advisors letter dated June 26, 2023 and the Noticee No.3 email dated August 09, 2023 and also sought inspection of following documents: -

a. Investigation reports by the investigating authority as the 1st report and all subsequent investigating reports – be they preliminary, supplementary, interim, or ad hoc- that were presented to the Whole Time Member/Executive Director. All file noting(s) from the date of 1st report to the date of the SCN.

b. Order of appointment of Quasi-Judicial Authority in terms of Section 19 of the SEBI Act, 1992 read with SEBI(Delegation of Statutory and Financial Powers), 2019 and the scope of such authority.

20. On August 28, 2023, the Noticee No.3 was granted an opportunity of hearing on his application dated August 21, 2023. Vide email dated August 23, 2023, SEBI informed Noticee No.3 about the hearing dated August 28, 2023. Ms. Saachi Purohit, Advocate, vide email dated August 27, 2023 sought adjournment of hearing dated August 28, 2023 stating that Noticee No.3 has not been able to brief the Counsel, who he wished to appoint as the Noticee is indisposed and is keeping unwell. Accordingly, hearing dated August 28, 2023 was re-scheduled to August 30, 2023. Vide email dated August 28, 2023, Noticee No.3 was informed about re-scheduling of hearing to August 30, 2023.

21. Ms. Saachi Purohit vide email dated August 29, 2023 sent her letter of authority and informed that she will attend the hearing dated August 30, 2023 on behalf of Noticee No.3. Accordingly, the AR appeared for Noticee No.3 in the hearing dated August 30, 2023 and reiterated submissions made in Regstreet Law Advisors application dated June 26, 2023, Noticee No.3 email dated August 09, 2023 and application dated August 21, 2023.

22. Subsequently, the AR vide email dated September 1, 2023 sought time till September 05, 2023 to file written submissions with respect to application dated

August 21, 2023. Accordingly, vide email dated September 04, 2023 the AR was granted time till September 05, 2023 to file written submissions. Vide email dated September 07, 2023, the AR filed written submissions on behalf of Noticee No.3, wherein, the Noticee reiterated request for inspection of documents mentioned in representation dated June 26, 2023, August 09, 2023 and August 21, 2023. Additionally, the Noticee requested for inspection of copies of submissions on facts given by SEBI before the Hon`ble SAT as well as before the Hon`ble Supreme Court.

<u>Reply of Noticee No.7 and 9</u>

23. The Noticee No. 7 and 9 vide their separate email dated September 06, 2023 informed that they have withdrawn letter of authority from Regstreet Law Advisors with effect from September 06, 2023 and their new advocate will file letter of authority/vakalatnama in due course. SEBI vide email dated September 06, 2023 informed Noticee No. 7 and 9 that hearing is scheduled on September 07, 2023. Ms. Saachi Purohit, Advocate, vide emails dated September 06, 2023, filed separate application dated September 06, 2023, on behalf of Noticee No.7 and 9. The separate applications of Noticee No.7 and 9 are similarly worded as Noticee No.3 application dated August 21, 2023 and sought same set of documents by placing reliance on same set of judgments. Ms. Saachi Purohit vide email dated September 07, 2023 filed application dated September 07, 2023, on behalf of Noticee No.7 and 9, seeking inspection of submission on facts given by SEBI before the Hon`ble SAT and the Hon`ble Supreme Court. Further, vide another email dated September 07, 2023, Ms. Saachi Purohit sought adjournment of hearing dated September 07, 2023. Request for adjournment of hearing dated September 07, 2023 was rejected and the AR was advised vide email dated September 07, 2023 to appear for hearing dated September 07, 2023. Further, the AR was permitted to attend hearing dated September 07, 2023 through video conferencing.

<u>Hearing dated September 07, 2023</u>

24. On September 07, 2023, hearing was scheduled for Noticee No.1 to 11. Mr.Shyam Mehta, Senior Advocate, along with Mr. Amit Agarwal, Advocate, and Mr.Sumit

Agarwal, Advocate, submitted part arguments on behalf of Noticee No. 1, 2, 4-6, 8, 10, 11 and requested for adjournment of hearing. Ms. Saachi Purohit, Advocate, appeared for Noticee No. 3, 7 and 9 and sought adjournment of hearing stating that she has been recently engaged by the Noticee No.7 and 9. Accordingly, hearing was scheduled for the Noticee No. 1 to 11 on September 13, 2023.

The Noticee No.3, 7 and 9 reply dated September 13, 2023

25. The AR for the Noticee No. 3, 7 and 9 vide separate email(s) dated September 13, 2023 filed separate replies dated September 13, 2023 on behalf of Noticee No. 3, 7, and 9, thereby, reiterating the request for inspection and production of documents stated in their earlier applications/representations. The replies of the Noticee No. 3, 7 and 9 are similarly worded and have sought inspection of representations and undertakings of CUHL before the Arbitrators and settlement between the Government of India and CUHL. Further, the replies stated that the said representations and undertakings of CUHL should be procured from SEBI, in case the same are not on record. In case the same are not in possession of SEBI, SEBI should be directed to obtain the same from the records of Central Board of Direct Taxes (CBDT), Government of India.

26. Further, Noticee No.3, 6 and 9 have made submissions on merit which is same as Noticee No.1`s submissions on the point that directors cannot be held liable for non- payment of dividend. Additionally, Noticee No, 3,6 and 9 have stated that the SCN is vague and ambiguous.

Hearing dated September 13, 2023

27. On September 13, 2023, Mr. Amit Agarwal, Advocate, and Mr. Sumit Agarwal, Advocate, concluded arguments on behalf Noticee No. 1, 2, 4-6, 8, 10, 11. Ms.Saachi Purohit, Advocate, submitted arguments on behalf of Noticee No. 3, 7 and 9. The respective Counsel for the respective Noticee(s) reiterated submissions made in their respective application(s) and reply(ies). At the request of the AR for Noticee(s), the AR for Noticee No. 1, 2, 4-6, 8, 10, 11 was granted time to file written submissions till end of day of September 13, 2023. The AR for Noticee No. 3, 7 and 9 was granted time to file written submissions till end of day

of September 14, 2023. Pursuant thereto, written submission dated September 13, 2023 of Noticee No. 1, 2, 4-6, 8, 10, 11 was received vide email dated September 14, 2023, whereby, the Noticee(s), in addition to their reply dated September 06, 2023, submitted as follows:-

a) Section 127 of the Companies Actis identical/ *pari meteria* with Section 207 of the Companies Act, 1956. In relation to the said provision, the report of Joint Committee on Company's Bill 1953 had expressly stated that if the default is not due to the negligence of the company the company should not be made punishable for the default. The observations of the Joint Committee are extremely relevant in construing Clause (e) of the Proviso to Section 127 of the Companies Act.

b) There was no negligence of any kind on the part of Vedanta by non-payment of the dividend to CUHL. In fact, Vedanta was more than diligent and sought all necessary clarifications and did all that was within its power and control to see if it could release the dividend amounts to CUHL. Vedanta also wrote to CUHL informing of its efforts including by way of letter dated April 18, 2017.

28. Vide email dated September 14, 2023, the AR for the Noticee No. 3, 7 and 9 filed written submissions on behalf of Noticee No.3 and submitted that replies and submission of Noticee No.7 and 9 may be considered as their written submissions. Subsequently, the AR for Noticee No. 1, 2, 4-6, 8, 10, 11 vide letter dated October 13, 2023 filed additional submissions.

Notice Dated October 12, 2023 to CUHL

29. As CUHL appeared to be acquainted with facts and circumstances of the present matter and in possession of documents which may be useful for or relevant to inquiry in the present matter, SEBI issued notice dated October 12, 2023 to CUHL requiring CUHL to produce below mentioned documents. Further, CUHL was informed that hearing is scheduled for CUHL on November 8, 2023.

a. Pleadings and affidavits of CUHL before the PCA in the case of CUHL & Anr. Vs. The Republic of India.

b. The request for interim measures dated May 13, 2016, submitted by CUHL to the PCA, in which CUHL indicated that it would withdraw its request for interim measures if the Government of India pledged not to pursue any further enforcement actions against CUHL`s shares in CIL.

c. The procedural order dated June 09, 2017, issued by the PCA to CUHL and the Government of India in response to the Parties' relief requests on this matter.

d. The letter dated March 09, 2017, allegedly authored by CUHL and addressed to the Government of India, insisting that the Government of India directly communicate to CIL that it could release the dividends.

e. Representations made and undertakings given by CUHL in the Arbitration proceedings and settlement proceedings before the PCA.

30. CUHL vide letter dated October 26, 2023 submitted as follows: -

a) Pleadings, affidavits and correspondence filed in PCA Case No.2016-7 are confidential and are not publicly available.

b) CUHL`s claims in arbitration were brought against the Republic of India and arose out of a retroactive application of an amendment to the Income- tax Act, 1961, by the Republic of India and the subsequent recovery by the Republic of India of tax amounts allegedly owed by CUHL. Vedanta was not a party to these arbitration proceedings.

c) Vedanta failed to pay dividends to CUHL after CUHL had initiated arbitration proceedings against the Republic of India. Vedanta's deliberate non-compliance with, and violation of, Section 124 of the Companies Act and LODR Regulations are matters to be decided in the present proceedings whereas the matters in issue in PCA Case No. 2016-7 concerned the violation of certain international law obligations of the Republic of India under a bilateral investment treaty.

d) CUHL is bound to maintain confidentiality in respect of all materials filed by the parties in PCA Case No. 2016-7 (including any correspondence between CUHL, the Republic of India and the tribunal) and the procedural orders issued by PCA. This position is made clear in certain orders of the PCA which relate to confidentiality. Pursuant to Procedural Order No. 2 dated August 12, 2016 and Procedural Order No. 16 dated March 18, 2019 issued by PCA, CUHL and India are subject to, inter alia, the following restrictions: -

> (a) *"neither Party shall make public, in part or in whole, any other document submitted, produced or created in connection with this proceeding, including but not limited to procedural correspondence*" (Procedural Order No. 2); and
>
> (b) *"…having now considered the Parties' detailed positions, the Tribunal confirms … … … that the applicable procedural framework … … …prevents the Parties from disclosing to any third party (including a court of law) any Arbitration Materials without express consent from the other Party or an order of the Tribunal …."*; (Procedural Order No. 16) and
>
> (c) *"…the Tribunal emphasizes that this prohibition does not mean that the Parties may never submit Arbitration Materials to another dispute resolution body. It simply means that, to do so, that Party requires the other Party's consent or the Tribunal's permission."* (Procedural Order No. 16).

e) To disclose the documents sought, CUHL would require appropriate directions from the tribunal in PCA Case No. 2016-7. This is not possible as the PCA was dissolved upon the pronouncement of its final award dated December 21, 2020.

f) The undertakings made by CUHL to the Republic of India were made in accordance with the Income-tax (31st Amendment) Rules, 2021 and Form No. 1 appended thereto.

31. SEBI vide email dated November 7, 2023 sought response of CUHL on following:-

a. As per complaint dated 13.04.2017 of CUHL, payment of dividend to CUHL by CIL was restricted by Income Tax Department (ITD) pursuant to its attachment order dated 22.01.2014, which was extended from time to time and expired on 31.03.2016.

b. Award dated 21.12.2020, in PCA Case No.2016-17, in matter titled as Cairn Energy Plc Cairn UK Holdings Limited and The Republic of India, in para 282 observed as follows: -

> 282. By letter of 9 March 2017 (CCom-81), the Claimants insisted that they required the Respondent to directly inform CIL that it could release the dividends, "because CIL continues to be under direct orders from the Indian Income Tax Authority to withhold the dividends."[392] The Claimants explained that "[i]n January 2014, the Income Tax Authority formally directed CIL 'not to remit/pay' the dividends to CUHL, which direction has never been clearly rescinded."[393] The Claimants also alleged that "the Income Tax Authority has more recently 'informally advised' CIL not to remit the dividends until CIL receives a specific government 'response' authorising any such transfer."[394] On this basis, the Claimants argued that "it is difficult to accept in good faith India's representation to this Tribunal that the disposition of the dividends is strictly 'a matter between' CIL and CUHL with 'no role to play' for India, when the Income Tax Authority has specifically instructed CIL (off the record) that it must withhold the dividends until further notice."[395] However, the Claimants noted that CIL had indicated that it might be willing to accept formal written confirmation by India to this Tribunal that the dividends were legally unrestricted. As a result, in the absence of any reasoned objections by the Respondent, the Claimants indicated that they intended to send to CIL on Friday 10 March 2017 (i) the Respondent's email of 6 March 2017, together with the appended ACIT letter of 1 March 2017, and (ii) an excerpted and redacted copy of the witness statement of Mr Sanjay Puri, in which Mr Puri confirmed the status of the dividends (which the Claimants attached as Annex C to their letter).[396]

c. As per said submissions of CUHL before the Permanent Court of Arbitration(PCA), stand of CUHL before PCA was that CIL did not release dividends owing to restraint from ITD.

32. CUHL vide letter dated November 16, 2023 responded to SEBI email dated November 7, 2023 and submitted as follows: -

a) CUHL confirms and declares that its complaint dated April 13, 2017(CUHL's Complaint") to the SEBI records the correct facts, i.e., (i) pursuant to an order dated January 22, 20 l 4 of provisional attachment under Section 281B of the Income Tax Act, 1961 (the "Income- tax Act"), the Deputy Director of Income Tax, Circle, International Tax department (the "Income-tax Department") had restricted the payment of dividends to CUHL (the Provisional Order); (ii) the Provisional Order was extended four (4) times by the Income-tax Department; (iii) the Provisional Order finally expired on March 31, 2016; and (iv) on and after April 1, 2016, there was no restriction on Vedanta under the Income- tax Act to pay dividends to CUHL, including on the date of CUHL's Complaint.

b) The disputes and issues in PCA Case No. 2016-7, which have now been adjudicated by way of the Award, were between the CUHL and the Republic of India. The arbitration proceedings in PCA Case No. 2016-7 were initiated by CUHL under the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the Promotion and Protection of Investments. CUHL's complaint to the SEBI has been filed on account of a violation by Vedanta of the provisions of the Companies Act, 2013 (the "Companies Act") read with the applicable provisions of the SEBI Act and the SEBI Regulations. These two proceedings are unconnected not only because these have been initiated' by CUHL against different patties, but also because these have been filed under distinct and unconnected legal provisions, reflecting different legal obligations.

c) As on the date of CUHL's Complaint, according to Vedanta itself, there was no impediment on Vedanta to pay the dividend to CUHL. This position was confirmed by the Income-tax Department in its letters of December 30, 2016 and March 1, 2017, which were supplied to Vedanta much prior to CUHL's Complaint. In fact, the letter dated March 1, 2017, issued by the Assistant Commissioner of Income Tax, Circle 1(2)(1), International Taxation, New Delhi, to the Principal Commissioner of Income Tax, International Taxation-1, New Delhi, was supplied to Vedanta specifically to rebut Vedanta's contention that it was restrained by the Income-tax Department from releasing dividends to CUHL.

d) Vedanta admitted that there was no legal impediment to the payment of dividends in its letters dated September 22, 2016 and March 27, 2017.

e) From the clarifications issued by the Income-tax Department and Vedanta's own admissions, it is clear that there was no legal impediment (including any purported restraint by the Income-tax Department) on Vedanta to pay dividends to CUHL. Vedanta knowingly acted in violation of and is liable to face the consequences, inter alia, under Section 127 of the Companies Act for such violation.

f) Paragraph 282 of the Award makes it clear that:

i. In January 2014, the Income-tax Department formally directed Vedanta not to remit/ pay the dividend to CUHL. This is consistent with the Provisional Order issued under Section 281 B of the Income-tax Act. The Provisional Order expired on March 31, 2016.

ii. As Vedanta was refusing to release dividends to CUHL without a confirmation from the Income-tax department, CUHL was forced to request the arbitral tribunal to direct the Republic of India (the Respondent in PCA Case No. 2016-7) to instruct the Income-tax department to issue a written confirmation to Vedanta to release dividends to CUHL. This request was in the nature of an interlocutory application and not the main relief which CUHL sought in PCA Case No. 2016-7. This request was made as although there was no legal impediment, Vedanta wanted a direct confirmation from the Income-tax department that it could release dividends to CUHL.

iii. CUHL sought the aforesaid directions from the arbitral tribunal as it alleged (based on information received from Vedanta) that (a) the Income Tax department had informally advised Vedanta not to remit the dividend to CUHL; and (b) accordingly, CUHL found it difficult to accept in good faith Republic of India's representation that the disposition of the dividends is strictly a matter between Vedanta and CUHL with the Republic of India having no role to play. Accordingly, CUHL's aforesaid allegations were denied by the Republic of India.

iv. Republic of India's stand in the arbitration was that the disposition of dividends was strictly a matter between Vedanta and CUHL with Republic of India and the Income-tax Department having no role to play. As a corollary, this confirms CUHL's grievance in CUHL's Complaint, i.e., Vedanta was not restricted by the Income-tax Department from releasing dividends to CUHL.

Hearing dated January 3, 2024

33. Hearing dated November 08, 2023 was adjourned to January 3, 2024. On January 3, 2024, Mr. Pesi Modi, Senior Advocate, along with Mr. Neville Phiroze Lashkari, Mr. Shahezad Abdulkarim Kazi and Mr. Abhishek Tewari appeared for CUHL and reiterated submissions made in reply dated November 16, 2023.

Consideration

34. I have gone through the SCN, replies of the Noticee(s), submissions made by the Noticee(s) and submissions made by CUHL. Before proceeding further, it will be relevant to consider the applications and submissions of the Noticee(s) for production and inspection of documents.

Inspection and Production Of Documents

35. The Noticee(s) have sought inspection and production of same or similar set of documents, therefore, I proceed to examine and deal with Noticee No. 1 to 11 representation dated June 26, 2023, the Noticee No.3`s representation dated August 09, 2023, August 21, 2023, September 7, 2023, September 13, 2023, the Noticee No. 7 and 9 representations dated September 06, 2023, September 07, 2023 and September 13, 2023, the Noticee No. 1, 2, 4-6, 8, 10 and 11 representation dated September 06, 2023 and September 07, 2023.

36. I note that the AR, on behalf of Noticee No. 1 to 11, vide letter dated June 26, 2023 sought inspection of following documents: -

S.No.	Document
1.	Copy of order of SEBI Executive Director appointing investigating authority under Section 11(C) of the SEBI Act, 1992.
2.	Copy of the investigation/enquiry/supplementary report filed by the investigating authority.
3.	Copy of note (including documents and annexures thereto) put up to SEBI Executive Director for appointing of investigating authority under Section 11(C) of the SEBI Act, 1992.

S.No.	Document
4.	Copy of SEBI Whole Time Member`s approval for initiation of proceedings under Section 11(4A) and 11B(2) of the SEBI Act, 1992.
5.	Copy of note(including documents and annexures thereto) put up to SEBI Whole Time Member seeking approval for initiation of proceedings under Section 11(4A) and 11B(2) of the SEBI Act, 1992.
6.	Copy of approval of SEBI Chief General Manager/Deputy General Manager for issuance of the show cause notice(s).
7.	Copy of note (including documents and annexures thereto) put up to SEBI Chief General Manager/Deputy General Manager for issuance of the show cause notice(s).
8.	Copy of opinion formed under Rule 3 of SEBI(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.
9.	Copy of any other statements recorded by SEBI during its investigation in present proceedings.
10.	Copy of documents/information received by SEBI from stock exchanges/registered intermediaries during its investigation in the present proceedings.
11.	Copy of documents/information received by SEBI from Income Tax Department during its investigation in the present proceedings.
12.	Copy of any other document/information in possession of SEBI in relation to the present proceedings.

37. The AR, on behalf of Noticee No.1 to 11, inspected relied upon documents on July 10, 2023.The AR neither stated any objection in minutes of inspection dated July 10, 2023 nor stated that inspection of complete document has not been granted. Till September 06, 2023, the AR for Noticee No. 1, 2, 4-11 kept requesting for grant of time to file reply to the SCN.

38. The AR, on behalf of the Noticee No. 1-2, 4-6, 8, 10 and 11, vide email dated September 06, 2023 submitted reply dated September 06, 2023, inter-alia, stating that inspection of documents sought vide representation dated June 26, 2023 be provided to the Noticee(s). The AR for the Noticee(s) vide email dated September 07, 2023 filed an application dated September 07, 2023 which, inter-alia, stated that specific documents and information sought by them have not been provided.

Further, the AR sought that following documents should be procured from CUHL or other government agencies and the same be made available to the Noticee(s):-

a. Pleadings and affidavits of CUHL before the PCA in the case of CUHL & Anr. Vs. The Republic of India.

b. The request for interim measures dated April 13, 2016, submitted by CUHL to the PCA, in which CUHL indicated that it would withdraw its request for interim measures if the Government of India pledged not to pursue any further enforcement actions against CUHL`s shares in CIL.

c. The procedural order dated June 09, 2017, issued by PCA to CUHL and the Government of India in response to the Parties' relief requests on this matter.

d. The minutes of the meeting between Cairn`s representatives and the ITD, during which the ITD informed Cairn that no written confirmation would be provided to CIL regarding the release of dividends to CUHL.

e. The letter dated March 09, 2017, allegedly authored by CUHL and addressed to the Government of India, insisting that the Government of India directly communicate to CIL that it could release the dividends.

39. In the meantime, Noticee No.3 vide email dated August 09, 2023 sought inspection of following documents, in addition to documents mentioned in the said letter dated June 26, 2023: -

a. Any evidence to suggest that the Noticee No.3 was aware of the facts stated in the SCN dated June 06, 2023 at the relevant time.

b. Any evidence to suggest that the Noticee No.3 had any role to play within the company in any decision making related to issue/matter involved in present matter.

c. Date on which action was approved against the Noticee No.1- Vedanta Ltd. and the date on which action was approved against directors of the Noticee No.1.

40. Additionally, Noticee No.3 vide email dated August 21, 2023 sent an application letter dated August 21, 2023, whereby, following documents were sought: -

    a. Investigation reports by the investigating authority as the 1st report and all subsequent investigating reports – be they preliminary, supplementary, interim, or ad hoc- that were presented to the Whole Time Member/Executive Director. All file noting(s) from the date of 1st report to the date of the SCN.

    b. All file noting from date of 1st report to date of the SCN.

    c. Order of appointment of Quasi-Judicial Authority in terms of Section 19 of the SEBI Act, 1992 read with SEBI (Delegation of Statutory and Financial Powers), 2019 and the scope of such authority.

41. Ms. Saachi Purohit, Advocate, AR for Noticee No.7 and 9, vide separate emails dated September 06, 2023 filed separate application dated September 06, 2023, on behalf of the Noticee No.7 and 9, seeking direction for inspection and production of documents and/or issuance of summons for production of documents by SEBI. The applications of Noticee No.7 and 9 are similarly worded as Noticee No.3 application dated August 21, 2023 and sought same set of documents by placing reliance on same set of judgments. Additionally, the AR vide email dated September 07, 2023 filed application dated September 07, 2023, on behalf of the Noticee No.7 and 9, seeking inspection of submission on facts given by SEBI before the SAT and the Hon`ble Supreme Court.

42. The Noticee No.3, 7 and 9, in support of their contention that inspection of documents mentioned in their representation/application be provided, has placed reliance on observations made by the Hon`ble SAT in its order dated August 3, 2011, in the matter of **M/s. Amadhi Investments Ltd. Vs. SEBI, Appeal No. 186 of 2010**, which are reproduced hereunder: -

"3…It must be remembered that gone are the days when public bodies and statutory regulators could work in the cover of darkness and keep back certain

documents from the delinquents for different technical reasons. Today we are in an era where the Right to Information Act is in place and the need of the hour is that public bodies and statutory regulators function transparently in the open gauge of all concerned. Sunlight is the best disinfectant and public faith in these statutory bodies would be further strengthened if they function transparently. There is nothing confidential or privileged in the documents sought for. This is not a case involving security of state. The Board must allow full inspection of the record. Since we are accepting the plea that there has been violation of the principles of natural justice, it is not necessary for us to examine the other contentions raised by the learned counsel for the parties which are kept open.

In the result, the appeal is allowed and the impugned order set aside. The case is remanded to the Board with a direction that the appellant be allowed complete inspection of the records pertaining to the charge levelled against it in the show cause notice and thereafter allow the appellant to file its reply and proceed further in accordance with law…"

43. Further, the Noticee(s) have contended that documents relied upon as well as documents that have close nexus with the matter have to be provided to the Noticee. In this regard, reliance is placed on the Hon`ble Supreme Court of India judgment dated February 18, 2022, in the matter of **T. Takano Vs. SEBI & Anr (2022) 8 SCC162**. Further, the Noticee (s) have placed reliance on the judgment, passed by the Hon`ble Supreme Court of India, in the matter of **Reliance Industries Vs. SEBI (2022) 10 SCC 181 or 2022 SCC online SC979**.

44. I note that the Hon`ble SAT order dated August 3, 2011, in the matter of **M/s. Amadhi Investments Ltd. Vs. SEBI (Supra)**, recorded split verdict. The Noticee(s) are relying on the minority view of the Hon`ble SAT order dated August 03, 2011 which held that inspection of complete record of the case should be given. On the contrary, the majority view in the Hon`ble SAT order dated August 3, 2011 held that the Appellant therein is not entitled to inspection of complete record in the case and observed as follows:-

"………..None of these documents have been referred to or relied upon either in the show cause notice or in the impugned order. If any material collected during the course of investigation has not been relied upon in the show cause notice, it will not deprive the appellant to present his case before the Board.

45. I note that matter of **T. Takano Vs. SEBI & Anr (2022) 8 SCC162** involved the issue whether investigation report must be disclosed to the person to whom a notice to show cause is issued. In that context, the Hon`ble Supreme Court vide

judgment dated February 18, 2022 held that the Noticee has right to disclosure of the material relevant to the proceedings initiated against him and observed as follows: -

"42 In Khudiram Das (supra), a four-Judge Bench of this Court laid down a two-prong test for the standard of 'relevancy'; firstly, the material must have nexus with the order and secondly, the material might have influenced the decision of the authority. "

46. I note that matter of **Reliance Industries Vs. SEBI (2022) 10 SCC 181** involved issue of providing inspection and copy of opinion(s) taken by SEBI during the course of examination. In that context, the Hon`ble Supreme Court vide its judgment dated August 5, 2022 directed furnishing of copy of opinion and reports, inter-alia, observed as follows: -

"54. The simple test in this case is whether SEBI has launched the prosecution on the basis of the investigation report alone. The answer seems to be 'No' by SEBI`s own admission in its reply where it states that the investigation report was inconclusive and hence further scrutiny of the transactions by experts was called for. That being the case, further Reports and opinions obtained, from whomsoever it may be, are only an extension of the investigation to help SEBI as a Regulator to ascertain the facts and reach conclusions for prosecution or otherwise."

47. In view of the above, I proceed to examine the documents whose inspection is sought by the Noticee(s): -

S.No.	Document	Observations
Documents sought by Noticee No. 1 to 11 vide representation dated June 26, 2023.		
1.	Copy of order of SEBI Executive Director appointing investigating authority under Section 11(C) of the SEBI Act, 1992.	During inspection dated July 10, 2023, inspection of Investigating Authority appointment order has been given to the AR of the Noticee(s). Further, copy of such appointment order was also given to the AR. I do not find order of SEBI Executive Director appointing

S.No.	Document	Observations
		investigating authority as relevant as it has not been relied upon in the SCN. Accordingly, request for such order is declined.
2.	Copy of the investigation/enquiry/supplementary report filed by the investigating authority.	Inspection of investigation report along with annexure(s) has been given to the AR of the Noticee(s) in inspection dated July 10, 2023. Further, copy of investigation report along with annexures has been given to the AR.
3.	Copy of note (including documents and annexures thereto) put up to SEBI Executive Director for appointing of investigating authority under Section 11(C) of the SEBI Act, 1992.	Inspection of Investigating Authority appointment order has been given to the AR of the Noticee(s) in inspection dated July 10, 2023. Further, copy of investigation report, annexures thereto and such appointment order has been given. I find that note (including documents and annexures thereto) put up to SEBI Executive Director for appointing of investigating authority is not relevant as it has not been relied upon in the SCN. Accordingly, request for such note is declined.
4.	Copy of SEBI Whole Time Member`s approval and reasons for initiation of proceedings under Section 11(4A) and 11B(2) of the	. Section 11(4A) and 11B(2) of the SEBI Act have not been invoked in the SCN. Reasons and evidences

S.No.	Document	Observations
	SEBI Act, 1992. Date on which the approval was given.	forming basis of initiation of proceedings against the Noticee(s) are mentioned in the SCN In view of the above, request of the Noticee(s) for copy Whole Time Member`s approval and reasons for initiation of proceedings under Section 11(4A) and 11B(2) of SEBI Act, date of approval and note/ material put up to Whole Time Member seeking approval for initiation of proceedings under Section 11(4A) and 11B(2) of the SEBI Act is found to be not relevant. Accordingly, request of Noticee(s) is declined.
5.	Copy of note/material(including documents and annexures thereto) put up to SEBI Whole Time Member seeking approval for initiation of proceedings under Section 11(4A) and 11B(2) of the SEBI Act, 1992 along with date on which such note was put up for the first time as well as any subsequent dates on which the note was put up or any revisions in the note.	
6.	Copy of approval as well as reasons of SEBI Chief General Manager/Deputy General Manager for issuance of the show cause notice(s).	Investigation report contain observations made during the course of investigation and basis of such observations. Based on investigation report, the SCN has been issued mentioning the observations recorded in the investigation report. Investigation Report along with annexure(s) and the SCN have already been provided to the Noticee(s). In view of the above, I find that note containing approval of Chief
7.	Copy of note (including documents and annexures thereto) put up to SEBI Chief General Manager/Deputy General Manager for issuance of the show cause notice(s) along with the date on which such note was put up.	

S.No.	Document	Observations
		General Manager/Deputy General Manager, reasons for issuance of the SCN and date of approval are not relevant as they have not been relied upon in the SCN. Accordingly, request of Noticee(s) is declined.
8.	Copy of opinion formed under Rule 3 of SEBI(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.	No such opinion is available as the SCN has been issued under Section 11(1), 11(4) and 11B (1) of the SEBI Act read with Section 24(2) of the Companies Act, 2013. Hence, the request made by the Noticee is untenable.
9.	Copy of any other statements recorded by SEBI during its investigation in present proceedings.	This request for documents is sweeping and roving. The request does not specify any particular document referred in the SCN. No such statement is referred or relied upon in the SCN. Hence, the request made by the Noticee(s) is untenable.
10.	Copy of documents/information received by SEBI from stock exchanges/registered intermediaries during its investigation in the present proceedings.	This request for documents is sweeping and roving. The request does not specify any particular document referred in the SCN. Hence, the request made by the Noticee(s) is untenable.
11.	Copy of documents/information received by SEBI from Income Tax	This request for documents is sweeping and roving. The request

S.No.	Document	Observations
	Department during its investigation in the present proceedings.	does not specify any particular document referred in the SCN. Orders and communications of Income Tax Department referred and relied upon in the SCN have been annexed along with the SCN. Hence, the request made by the Noticee is untenable.
12.	Copy of any other document/information in possession of SEBI in relation to the present proceedings.	This request for documents is sweeping and roving. The request does not specify any particular document referred in the SCN. Hence, the request made by the Noticee is untenable.
<u>Documents sought vide Noticee No.3 representation dated August 09, 2023, August 21, 2023, Noticee No. 7 and 9 representations dated September 06, 2023.</u>		
13.	Investigation reports by the investigating authority as the 1st report and all subsequent investigating reports – be they preliminary, supplementary, interim, or ad hoc- that were presented to the Whole Time Member/Executive Director. All file noting(s) from the date of 1st report to the date of the SCN.	Investigation report, on basis of which the SCN has been issued, has been given to the AR of the Noticee(s) in inspection dated July 10, 2023. I do not find File noting(s) and other reports to be relevant for adjudicating allegations made in the SCN.
14.	All file noting from date of 1st report to date of the SCN.	This request for file noting is sweeping and roving. I do not find file noting(s) to be relevant for adjudicating allegations made in the SCN.

<table>
<tr><th>S.No.</th><th>Document</th><th>Observations</th></tr>
<tr><td>15.</td><td>Order of appointment of Quasi-Judicial Authority in terms of Section 19 of the SEBI Act, 1992 read with SEBI(Delegation of Statutory and Financial Powers), 2019 and the scope of such authority.</td><td>I do not find order of appointment of quasi judicial authority as relevant for adjudicating allegations made in the SCN. SEBI (Delegation of Statutory and Financial Powers) Order, 2019 is available on SEBI website under the head RTI Act, 2005. Accordingly, request of the Noticee(s) is declined.</td></tr>
<tr><td>16.</td><td>Any evidence to suggest that the Noticee No.3, 7 and 9 were aware of the facts stated in the SCN dated June 06, 2023 at the relevant time.</td><td rowspan="2">These requests for documents is sweeping and roving. Documents relied upon in support of allegations made in the SCN dated June 06, 2023 have been provided to the Noticee(s). Hence, the requests made by the Noticee(s) are untenable.</td></tr>
<tr><td>17.</td><td>Any evidence to suggest that the Noticee No.3, 7 and 9 had any role to play in any decision making related to issue/matter involved in present matter; within the company.</td></tr>
<tr><td>18.</td><td>Date on which action was approved against the Noticee No.1 and the date on which action was approved against directors of the Noticee No.1.</td><td>Copy of investigation report has been provided to the AR of the Noticee(s) in inspection dated July 10, 2023.
Common SCN has been issued to all 11 Noticees.
I do not find this request for documents to be relevant for adjudicating allegations made in the SCN.</td></tr>
</table>

S.No.	Document	Observations
<u>Documents sought vide Noticee No.7 and 9 application dated September 7, 2023</u>		
19.	Copies of submissions on facts given by SEBI before the SAT as well as before the Hon`ble Supreme Court	The SCN referred to filing of complaint dated April 13, 2017 by CUHL, disposal thereof by SEBI and filing of appeal before the Hon`ble SAT.  Copy of the Hon`ble SAT order dated July 19,2019 in appeal no. 319/2017, order dated July 05, 2022 in appeal no. 02/2021 and the Hon`ble Supreme Court Order dated October 14, 2022 in Civil Appeal No. 6563/2022 are annexures to the SCN and have already been provided to the Noticee. The said orders contain factual matrix, details of orders impugned therein and the context in which the said appeals have been preferred. No allegation has been made in the SCN on basis of submissions on facts given by SEBI before the Hon`ble SAT as well as before the Hon`ble Supreme Court. In view thereof, I do not find this request of the Noticee(s) to be tenable

48. I note that quasi-judicial authority has to act within four corners of the SCN issued for the proceedings and can issue the directions only against the Noticee(s) as per the provisions mentioned in the SCN. It cannot act as a writ court or court of justice or court of record or convert quasi-judicial proceedings into adversarial or judicial proceedings. A quasi-judicial authority cannot collect fresh evidence which does not form part of the allegations made in the SCN or issue directions to entities which are not Noticee(s) in the SCN or take such action which is not mentioned in the SCN. Acting on behalf of the Noticee(s) against other entities, are fraught with unintended consequences such as, hereunder:

a) The presenting officer of SEBI may make request to collect evidence which investigating authority could not collect during investigation to improve upon case of SEBI;

b) Noticee(s) will be put to disadvantage as there will be no finality to allegation made in the SCN which they are supposed to answer;

c) Noticee(s), at their whims and fancies, in order to derail or divert the proceedings initiated against the Noticee(s), will make request to collect evidence which are not relied on in the SCN such as representations made and undertakings given by CUHL in Arbitration proceeding and settlement between the Government of India and CUHL, pleadings and proceedings of Arbitration between the Government of India and CUHL, in the pretext of exculpatory evidences or to understand the matter in its entirety;

d) The entities such as Income Tax Department or Central Board of Taxes will be put to inconvenience as they would be required to furnish information/documents at the whims and fancies of Noticee(s);

e) There will be further proceedings for not directing to furnish or for non-furnishing of information directed to be furnished and will be embroiled into further litigation on the same and also it may be contested by such other entities on the ground that whether a quasi-judicial authority can issue directions other than the directions mentioned in the SCN to other entities who are not Noticee(s);

f) The quasi-judicial proceedings will be converted into investigation proceedings;

g) The quasi-judicial proceedings will go hayware and never be concluded as Noticee(s) may keep on asking for roving and new evidences and provisions of law as alleged to be violated in the SCN, will not be enforced in an effective or timely, manner.

49. The SCN has not referred to or relied upon the representations made and undertakings of CUHL in Arbitration proceedings and settlement between the Government of India and CUHL before the PCA in the case of CUHL & Anr. Vs. The Republic of India. Further, the SCN has not referred to or relied upon following documents mentioned in Noticee No. 1, 2, 4-6, 8, 10, 11 representation dated September 06, 2023 and September 07, 2023: -

a) Pleadings and affidavits of CUHL before the PCA in the case of CUHL & Anr. Vs. The Republic of India.

b) The request for interim measures dated April 13, 2016, submitted by CUHL to the PCA, in which CUHL indicated that it would withdraw its request for interim measures if the Government of India pledged not to pursue any further enforcement actions against CUHL`s shares in CIL.

c) The procedural order dated June 09, 2017, issued by the PCA to CUHL and the Government of India in response to the Parties' relief requests on this matter.

d) The minutes of the meeting between Cairn`s representatives and the ITD, during which the ITD informed Cairn that no written confirmation would be provided to CIL regarding the release of dividends to CUHL.

e) The letter dated March 09, 2017, allegedly authored by CUHL and addressed to the Government of India, insisting that the Government of India directly communicate to CIL that it could release the dividends.

f) Representations made and undertakings given by CUHL in the Arbitration proceedings and settlement proceedings before the PCA.

Accordingly, request of Noticee No. 1, 2, 4-6, 8, 10, 11 made vide representation dated September 06, 2023 and September 07, 2023 is declined.

CUHL request for inspection of documents

50. I note that vide notice dated October 12, 2023 CUHL was called upon to produce documents relating to proceedings before the PCA. In response thereto, CUHL vide reply dated October 14, 2023 sought copy of the SCN, its annexures and replies and documents filed by Vedanta in response to the SCN. Subsequently, CUHL reiterated request for the said documents vide reply dated October 26, 2023 and November 16, 2023.

51. Present proceedings are quasi-judicial proceedings and not adversarial proceedings. Adjudication of allegations made in the SCN is to be done based on the SCN, documents relied in the SCN and reply of the Noticee(s). CUHL`s version of facts and violation is contained in its SCORES complaint. Any grant of opportunity to CUHL to file response on reply of the Noticee(s) and the SCN will require grant of an opportunity to the Noticee(s) to respond to CUHL submissions. Therefore, in my view, no fruitful purpose will be served by providing of copies of such documents to CUHL. Accordingly, I find that CUHL is not entitled to copy of the SCN and replies of the Noticee(s) as CUHL is neither Noticee in the present proceedings nor any allegation has been made in the SCN.

SCN is vague and ambiguous

52. I note that Noticee No. 3, 7 and 9 have placed reliance on the Hon`ble SAT order dated April 20, 1999 in the matter of **Dhanalakshmi Bank Limited Vs, SEBI**, wherein, it was observed as follows:-

> *"the show cause notice issued to the Appellant in the case is vague. The notice merely stated violation of certain provisions of the rule/regulations in a general manner without mentioning the particulars on which the charge against the appellant was based…… An abstract notice like the one in the instant case will not serve the purpose."*

53. Having perused the SCN, I find that the SCN details the facts on basis of which violations have been alleged against Noticee(s) including Noticee No. 3, 7 and 9. The SCN also mentions meetings which were attended by Noticee No.3, 7 and 9 and observations recorded therein on basis of which it is alleged that Noticee No.3, 7 and 9 have been alleged to be responsible for violations committed by Noticee No.1. Further, the SCN mentions provisions of law which are alleged to have been violated by the Noticee No.3, 7 and 9. In view thereof, I find that the Hon`ble SAT order dated April 20, 1999 in the matter of Dhanalakshmi Bank Limited Vs, SEBI is not applicable to the present case.

Consideration on Merits

54. In order to consider the matter on merits, I have considered the SCN, replies of the Noticee(s) and submissions made by the Noticee(s). Before proceeding further, it is pertinent to refer to relevant provisions of law which are reproduced hereunder: -

Companies Act, 2013

"127. Punishment for failure to distribute dividends.—Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed: —

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company."

SEBI(LODR) Regulations, 2015 –

“4. Principles governing disclosures and obligations –

(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: -

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

(i) All shareholders of the same series of a class shall be treated equally.”

55. The chronology of relevant communications of ITD, CIL and CUHL is as follows: -

Date	**Particular**	**Relevant extract**
22.01.2014	Deputy Director, ITD. Copy to CUHL, CIL and others	*“16. In view of the above facts and circumstances, I am of the opinion that for the purpose of protecting the interests of the revenue and in terms of the provisions of section 281B of the Act, it is necessary to attach provisionally the properties as given in the schedule below. It is hereby ordered that:- …… (B) So far as the receivable by Cairn UK Holdings Ltd in the books of Cairn India Limited are concerned the Principal Officer of Cairn India is directed not to remit/pay any amount to Cairn UK Holdings Ltd.”*
14.01.2016	Deputy Commissioner, ITD (Addressed to CUHL and Copy to CIL and others)	*“It is to inform you that provisional attachment of assets vide order u/s 281B of the Income tax Act 1961 dated 22.01.2014 stands extended upto 31.03.2016.”*
31.03.2016	Deputy Commissioner, ITD	*“2 In this case assessment order u/s 143(3) r.w.s. 144C(13) was passed on 25/01/2016 raising a demand of Rs.29102.51crore. CIT(IT)-1 New Delhi vide letter dated 3.03.2016 has already directed the undersigned not to pursue the demand in your case till 30.06.2016 to give*

Date	Particular	Relevant extract
	(Addressed to CUHL and Copy to CIL and others)	*you time to consider the offer extended by the Finance Minister of India in his budget speech on the floor of the Indian parliament. The matter will be reviewed after issue of formal notification in this regard.* *3. While the demand is not being pursued for the time being, keeping in view the provisions of Section 281 of the Income- tax Act, 1961 you or your nominee or any other person on behalf of you may not create a charge on or part with the possession in favour of any person (by way of sale, mortgage, gift, exchange, or any other mode of transfer, whatsoever) of any asset without previous permission of the undersigned as any such transfer would be rendered void as against any claim in respect of any tax or any other sum payable as a result of completion of the assessment proceedings."*
13.04.2016	Deputy Commissioner, ITD (Addressed to CIL)	*"2. In this connection, you are requested to inform whether any dividends have been paid or have become due in respect of the aforesaid shares held by Cairn UK Holdings Limited."*
20.04.2016	Cairn India Limited (Addressed to Deputy Commissioner, ITD)	*"Further, the details of dividend due/payable to CUHL are as under, however, the same have not been paid to CUHL pursuant to order issued by your good office u/s. 281B of the IT Act, as renewed time to time, and lying in unpaid dividend bank accounts."*
22.09.2016	Cairn India Limited (Addressed to Deputy Commissioner, ITD.	*"Prior to completion of aforesaid assessment, a provisional attachment order was issued by your office dated 22 January 2014 (as extended from time to time) attaching all receivables pertaining to Cairn UK Holdings Ltd, including dividends payable by Cairn India Ltd. to Cairn UK Holdings Ltd.* *We have now been informed by Cairn UK Holding Ltd. that the section 281B order has expired, and, therefore, Cairn India Limited is liable to remit the final dividend payable to Cairn UK Holding Ltd, declared in respect of the financial year 2015-16 and which became payable on 21 July 2016, together with all*

Date	Particular	Relevant extract
		outstanding dividends for financial years 2013-14 and 2014-15. *While we had hitherto kept in abeyance the dividend payments referred to herein, and specifically the dividends for the financial years 2013-14 and 2014-15 in light of operative section 281B orders, we no longer find any impediment in remittance of the subject dividend to Cairn UK Holding Ltd, in light of your afore referred letter, and clarify that our interpretation thereof is that there is no statutory restraint in operation relating to the payment of dividend by Cairn India Ltd. to Cairn UK Holding Ltd. in relation to its shareholding in Cairn India Limited.* *In the circumstances, you are humbly requested to please clarify at the earliest, please note that if we do not hear from your office to the contrary, we will proceed on the basis that we are entitled to remit the subject dividend, to Cairn UK Holdings Ltd."*
30.12.2016	Assistant Commissioner ITD to Commissioner of ITD	*"……..the provisional attachment order u/s 281B on dividend expired on 31 March 2016 and as on date there is no attachment in force. The decision to release the dividend to CUHL is an internal matter between two companies and the same may be dealt accordingly."*
31.01.2017	Cairn India Limited (Addressed to The Commissioner, ITD)	*"…It is submitted that CUHL has shared with CIL an internal communication dated 30 December 2016 of the Income tax department, which states provisional attachment order under section 281B of the Income tax Act, 1961(the "Act") expired on 31 March 2016 and release of dividend is a matter between two companies….. The aforesaid internal communication of the Income tax Department has not been served upon us.* *We request you to please clarify at the earliest in response to our letter dated 22 September 2016."*
01.03.2017	Assistant Commissioner ITD to The Pr.	*"So far as the payment of dividend is concerned, it is a matter between the company(CIL) and its shareholder(CUHL). This office presently has no role to play in this matter."*

Date	Particular	Relevant extract
	Commissioner of ITD	
27.03.2017	Cairn India Limited (Addressed to Commissioner, ITD)	*"Pursuant to its ongoing arbitration proceedings against The Republic of India, CUHL has been permitted to disclose to us the 1st March Letter, as well as the enclosed email to the arbitration tribunal in those proceedings. ….* *We thank you for clearly setting out the legal position. Given previous correspondence between us on the subject, as a matter of courtesy, we hereby inform you that in light of the above mentioned clarifications, we will be paying the outstanding dividend payments to CUHL without further delay."*
18.04.2017	Cairn India Ltd (Addressed to CUHL)	*Further to our letter dated 27 March 2017 (written by erstwhile Cairn India Limited- since merged with Vedanta Limited)filed with Commissioner of Income Tax (Intl Tax)-1, New Delhi, we understand from meeting with Revenue authorities that pursuant to the order passed by the Income tax Appellate Tribunal dated 9 March 2017, the Indian tax authorities have issued a notice to CUHL to pay the tax demand within 3 months in line with the commitment made by the Government of India to an arbitration tribunal formed in a dispute between CUHL and the Government of India under the Bilateral Investment Treaty (BIT) between……* *This action of tax authorities of issuing notice for payment of demand is subsequent to letter of Assistant Commissioner of Income Tax (ACIT) dated 1 March 2017 written to Principle Commissioner of Income Tax. The Revenue Secretary during our recent meeting advised us that the tax authorities will revert back to us.* *In this regard, we continue to engage with Revenue Authorities for their approval……*

56. I note that ITD vide order dated January 22, 2014, issued under Section 281 B of the Income Tax Act **("IT Act")**, provisionally attached 196,174,600 equity shares held by CUHL in CIL and receivables by CUHL from CIL. Further, ITD directed the

principal officer of CIL (a) not to do/ pemit any transfer of such shares to anybody; (b) not to remit/pay any amount to CUHL. Vide order dated July 18, 2014 and January 16, 2015, ITD extended attachment order dated January 22, 2014. Subsequently, ITD vide order dated January 14, 2016 extended provisional attachment of assets, ordered vide order u/s 281B of the Income Tax Act, 1961 dated 22.01.2014, upto 31.03.2016. Thereafter, ITD vide letter dated March 31, 2016, addressed to CUHL and copy to CIL, stated that "…*In this case assessment order u/s 143(3) r.w.s. 144C(13) was passed on 25/01/2016 raising a demand of Rs.29102.51crore. CIT(IT)-1 New Delhi vide letter dated 3.03.2016 has already directed the undersigned not to pursue the demand in your case till 30.06.2016 to give you time to consider the offer extended by the Finance Minister of India in his budget speech on the floor of the Indian parliament. The matter will be reviewed after issue of formal notification in this regard."* From reading of ITD order dated January 14, 2016 and March 31, 2016, I find that order under Section 281B of IT Act expired on March 31, 2016 as there was no extension order after January 14, 2016. Further, ITD vide letter dated March 31, 2016 clarified that demand is not being pursued till June 30, 2016 and the matter will be reviewed after formal notification in this regard. ITD letter dated March 31, 2016 referred to Section 281 of IT Act and prohibited CUHL or its nominee or any other person on behalf of CUHL from creating a charge on or part with possession in favour of any person of any asset without previous permission of the signing authority of letter dated March 31, 2016.

57. CIL, upon receipt of CUHL communication stating that Section 281B Order has expired, vide letter dated September 22, 2016 to ITD stated its finding that CIL no longer find any impediment in remittance of subject dividend to CUHL and sought clarification from ITD in this regard. CIL also stated that, in case CIL do not hear from ITD, CIL will proceed on basis that CIL is entitled to remit subject dividend to CUHL. Subsequently, upon receipt of ITD internal communication dated December 30, 2016, shared by CUHL with CIL, CIL again requested ITD to issue clarification in response to CIL letter dated September 22, 2016. Thereafter, upon receipt of ITD internal communication dated March 01, 2017 and email to the Arbitral Tribunal, shared by CUHL with CIL, CIL vide letter dated March 27, 2017

stated that CIL will pay outstanding dividend payments to CUHL without further delay. Vedanta (CIL merged with Vedanta Limited) vide letter dated April 18, 2017 stated that Vedanta understood from meeting with Revenue authorities that Indian Tax Authority has issued notice, pursuant to ITAT Order dated March 09, 2017, to CUHL to pay tax demand within 3 months. Further, Vedanta stated that action of Tax Authorities of issuing notice for payment of demand is subsequent to the said letter dated March 01, 2017. In view thereof, Vedanta continued to withhold dividend payment until June 19, 2017. On June 19, 2017 and June 20, 2017, Vedanta transferred the subject dividend to ITD in compliance with ITD notice dated June 16, 2017. I note that CIL/Vedanta has not furnished any evidence of meeting with Revenue Authorities or direction from Revenue Authorities restricting payment of dividend to CUHL after March 31, 2016. I note that Noticee No.4 – CEO in his report, presented in the Board of Directors meeting held on May 15, 2017, inter-alia, mentioned *"…. We have been trying to get a formal communication from IT Dept. before the release of the funds* ***(which were under provisional attachment by IT Dept. for over 2 years until 31st March 2016)****, given that a demand has been crystalized on CUHL post ITAT order and is due by 15th June 2017. We have intimated SEBI and CUHL accordingly".* In view of the above, I find that provisional attachment order, issued by ITD under Section 281B of IT Act, expired on March 31, 2016. I proceed to examine whether there was any reasonable cause for CIL/Vedanta to withhold dividend after March 31, 2016.

CUHL has not approached SEBI with clean hands

58. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have submitted that cause of action in the Arbitration proceedings covered subject of dividend as well, which is inextricably interwoven with the tax demand by the ITD, with the attachment being only in aid of the tax demand. When CUHL settled dispute with the Government of India, cause of action of delay in payment of dividend also came to an end. CUHL filed claims/application between April 2016 and till June 2017, seeking following direction from the PCA against the Government of India towards release of dividend by CIL: -

a) To direct the Government of India to issue necessary instructions to ITD, Government of India, to send a letter to the Company confirming that Company is not prohibited from releasing the dividends to CUHL;

b) An order by the Arbitral Tribunal allowing CUHL to submit copy of the submissions made by the Government of India confirming that the Company can release the dividends to CUHL.

59. From perusal of Part IV(A) of the Arbitral Award dated December 21, 2020 **("Arbitral Award")**, filed before me by Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 along with their reply dated September 06, 2023, which inter-alia reproduces request for relief made by the Claimant in their Statement of Claim, I find that release of dividend by CIL to CUHL was not subject matter before the PCA. From perusal of part III (C) of the Arbitral Award, I note that CUHL had filed request dated February 21, 2017, before the PCA in relation to the release of dividends owed to CUHL by CIL, requesting the Tribunal to invite the Respondent therein i.e. the Government of India to procure that ITD send a letter to CIL confirming that CIL is not prohibited from releasing the dividends to CUHL or the Respondent procure that ITD address similar letter to Cairn indicating that it is intended to be shared with CIL. During the consideration of the said application, the Respondent therein on January 06, 2017 submitted ITD letter dated December 30, 2016. By email of March 6, 2017, the Respondent, inter-alia, submitted that *"payment of CUHL dividends was a matter between the company (CIL) and its shareholder (i.e. CUHL) and therefore the office of the ACID had no role to play"* Further, it was argued by the Respondent therein that the Tribunal had no jurisdiction over the relationship between India and its assesses, including CIL, nor did it have jurisdiction to order the Respondent to write to CIL to confirm that CIL was not prohibited from releasing the dividends to CUHL. Pursuant thereto, on March 07, 2017, the PCA noted that given the content of the Respondent`s email of March 06, 2017, it did not see a need for its intervention. On April 26, 2017, the Respondent submitted before the PCA, reiterating its position that there was no basis for the Claimants' request for urgent relief and stated that ITD categorically denied having attempted to inhibit release of dividends of having advised CIL in this matter, formally or informally, after March 31, 2016. On April 27, 2017, the Respondent clarified that *"there was no message or advice given by the Hon`ble Revenue Secretary to CIL/Vedanta Limited to hold the dividends payable to*

CUHL." On June 09, 2017, the Tribunal issued procedural order 7, memorialising India`s representations made before the PCA concerning issue of release of dividends by CIL, ruling on Claimants' request on dividend and allowed that relevant part of the order be shared with CIL. In view of the above, I find that delay in payment of dividend and liability for delay in payment of dividend by CIL to CUHL was not subject matter adjudicated upon by the PCA.

<u>Noticee(s) contention that SEBI is barred from unreasonably adopting a volte face</u>

60. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have contended that SEBI vide order dated September 14, 2017 and December 26, 2019 found CIL not to be in violation of any laws. Thus, the principle of estoppel shall apply in the present case and issuance of SCN is unreasonable, arbitrary and in violation of principles of natural justice.

61. I note that CUHL filed complaint dated April 13, 2017 on SCORES, inter-alia, alleging non- payment of dividend and violation of Section 127 of the Companies Act. In response thereto, SEBI vide communication dated September 14, 2017 informed CUHL that CIL has submitted that matter is pending with ITD, it may not be appropriate to SEBI to take any further action against CIL till matter is pending before ITD. Based on the said submissions of CIL, SCORES complaint was closed. In the appeal filed by CUHL, the Hon`ble SAT vide order dated July 19, 2019 directed SEBI to reconsider violation of provisions of the Companies Act and LODR Regulations and pass appropriate orders, inter-alia, observing as follows: -

> *"6. However, if the company, namely, Cairn India had violated the provisions of the Companies Act in not releasing the dividend when there was no embargo upon it, it is SEBI's duty to inquire into the alleged violation and if it exists take action against the said company and, if necessary, under Section 124 of the Companies Act. This aspect has not been considered by SEBI."*

62. In compliance with the Hon`ble SAT order dated July 19, 2019, SEBI reconsidered CUHL complaint and vide communication dated December 26, 2019, inter-alia, informed CUHL that it is difficult to assume that non-payment of dividend was due to any default on part of CIL and CIL voluntarily failed to pay dividend. Further,

SEBI informed CUHL that documents do not establish that Vedanta/CIL has discriminated in their treatment of shareholders since non-payment of dividend was due to absence of clarity on the issue whether the amount can be released to CUHL in the specific circumstances of the case.

63. In the appeal preferred by CUHL against SEBI communication dated December 26, 2019, the Hon`ble SAT vide order dated July 05, 2022 set aside SEBI communication dated December 26, 2019 while observing that *"We are of the opinion that a prima-facie, case is made out by the appellant in its complaint. We consequently direct SEBI to initiate an enquiry under Section 11(4)(A) of the SEBI Act and hold an enquiry in the prescribed manner, investigate the violations of the Companies Act, LODR Regulations, etc.,…"* Pursuant thereto, SEBI investigated the present matter and came to findings, as stated in the SCN dated June 06, 2023.

64. As SEBI communications dated September 14, 2017 and December 26, 2019 were set aside by the Hon`ble SAT vide order dated July 19, 2019 and July 05, 2022, therefore, in my view, the findings made by SEBI in its communications dated September 14, 2017 and December 26, 2019 cannot be relied upon and cannot act as bar or estoppel for SEBI to arrive at findings contrary to findings made in the said communications.

65. In my view the Hon`ble SAT Order dated April 12, 2023 in the matter of **S.K. Chowdhary Vs. SEBI**, Order dated June 08, 2021 in the matter of **Nirmal N. Kotecha Vs. SEBI**, relied on by the Noticee(s), are not applicable to the present case as issue involved therein was different from the issue in the present case. The said orders dealt with an issue that once an AO after making an inquiry and after adjudicating the matter quashes the proceedings, is it open to another authority of SEBI to adjudicate the same issue on the same facts under Section 11 and 11B of the SEBI Act and pass contradictory order. The Hon`ble SAT Order dated November 14, 2019 in the matter of **Ashok Dayabhai Shah Vs. SEBI** involved the issue whether disposal of SCORES complaint by computer generated

communication can be treated as appealable order within meaning of 15 T of SEBI Act or not. However, in the present case, no such questions are involved.

Noticee(s) contention that SEBI proceedings are non- est and without jurisdiction

66. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have contended that power under Section 127 of the Companies Act including power to order compensation is expressly given to the concerned jurisdictional Special Court for company offences. SEBI cannot directly or indirectly appropriate to itself the power of awarding compensation at the penal rate of 18% which is expressly reserved for Special Court.

67. Further, the Noticee(s) have contended that ITD letter dated March 31, 2016, marking a copy to CIL, implied that CUHL remained prohibited from transferring CUHL`s shares in CIL or receiving any dividend thereof. It also restricted any other person to create a charge or part with possession of assets by any mode of transfer whatsoever without prior approval of ITD. Language of letter dated March 31, 2016 was similar to attachment order issued by ITD previously. Thus, CIL could not have parted with assets of CUHL unless ITD permitted for the same. This letter effectively stated that whatever asset of CUHL is lying with any entity, it must remain there only and should not be transferred to “any” person. ITD letter dated March 31, 2016 has force of law. Unless a court of competent jurisdiction stayed operation of the order, such law would have to be complied with. CUHL did not make any challenge or obtain a stay on the restrictions imposed on CIL by ITD.

68. Further, it is contended that the purpose of ITD marking copy to CIL together with SEBI, BSE, NSE, CDSL, operates as a mandate to CIL to not transfer monies abroad to CUHL. NSDL admitted that it would have sought confirmation from ITD prior to release of restrictions on the securities held by CUHL. CIL`s actions were in line with NSDL`s approach requiring an express confirmation from ITD prior to any release restrictions against CUHL assets. CIL acted in a legal and bonafide

manner and did not release dividend on account of operation of law, provided in proviso (a) to Section 127 of the Companies Act.

69. Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have also contended that during March 31, 2016 to June 16, 2017, there was dispute as to CUHL`s right to receive dividend. The dispute between the Government of India and CUHL was going on before ITAT and in the PCA. The matter of dividend was being pursued before the PCA as part of claim by CUHL long before March 31, 2016. ITD letter dated March 31, 2017 certainly and unambiguously informed CIL of the existence of dispute and clouded, questioned, and deferred CUHL`s right to receive dividend. Clause (c) of Section 127 of the Companies Act is not limited to circumstances of dispute between the company declaring dividend and the shareholder who has to receive the dividend. The provision does not limit the dispute to be inter-se the company and shareholder.

70. Further, Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have contended that no clear answer was given by the Government of India which would have acted as a valid discharge to CIL had it made the payment. No declaratory decree or order had been obtained by CUHL establishing its right to receive dividend. The Government of India vide notice dated June 16, 2016 staked its claim on the dividend. There was no default or offence on part of Noticee(s) as they acted reasonably and honestly. Non- payment of dividend by CIL was on account of operation of law, dispute and other reasons. Thus, acts of CIL are covered within proviso (d) to Section 127 of the Companies Act, 2013.

71. I note that the SCN has alleged that the Noticee No.1 to 11 have violated Section 127 of the Companies Act read with Regulation 4(1)(g) and 4(2)(c)(i) of LODR Regulations and called upon them to show cause as to why suitable direction under Section 11(1), 11(4) and 11B(1) of SEBI Act read with Section 24(2) of the Companies Act should not be issued against them for such violations. Section 24(2) of the Companies Act reads *“ The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred*

upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992". Section 24(1) of the Companies Act provides that provisions contained in chapter III, Chapter IV and Section 127 shall, in so far as they relate to (i) issue and transfer of securities (ii) non-payment of dividend, by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under the Companies Act, 2013, be administered by SEBI. In view of the above, I find that Section 24 (1) of the Companies Act, 2013 empowers SEBI to administer Section 127 of the Companies Act, 2013 in so far as it relates to non-payment of dividend by listed companies. Further, Section 24(2) of the Companies Act empowers SEBI to exercise, in respect of matters specified in Section 24(1) of the Companies Act, power conferred upon it under sub-section (1), (2A), (3) and (4) of Section 11, Section 11A, 11B and 11D of the SEBI Act.

72. I note that the Hon`ble High Court of Bombay vide judgment dated May 02, 2002 in the matter of **BP Plc (Formerly BP Amoco Plc) Vs. SEBI, 2002(3)MHLJ402**, held as follows:-

> *"19. After considering the rival contentions of both the parties we find as far as the first issue is concerned i.e. whether SEBI has statutory power to award interest or not one has to see the main objective of the said Act which is to protect the interest of the investors in securities and also to promote the development of and to regulate the securities market. Section 11(1) of SEBI Act clearly provides that it is the duty of the Board to protect the interest of investors in securities and they have been empowered to take such measures and regulations as it thinks fit. Section 11(2) also makes it clear that without prejudice to the generality of the above provisions in Section 11(1) certain measures have been mentioned in Section 11(2). That is to say Section 11(2) does not preclude SEBI from taking such measures as and when need arises…… There is no regulation or statutory provision which debars SEBI from awarding such an interest.."*

73. In view of the above, I find no merit in the submission of the Noticee(s) that SEBI does not have power to grant interest in cases of delay in payment of dividend. In my view, SEBI in exercise of its powers under Section 11(1) and 11(B) of the SEBI Act read with Section 24(2) of the Companies Act is vested with power to grant interest in case of delay or non-payment of dividend.

74. As noted above, ITD vide order dated January 14, 2016 extended provisional attachment of assets of CUHL, ordered vide order u/s 281B of the Income Tax

Act, 1961 dated 22.01.2014, upto 31.03.2016.” Thereafter, ITD vide letter dated March 31, 2016, addressed to CUHL and copy to CIL, stated that “…*In this case assessment order u/s 143(3) r.w.s. 144C(13) was passed on 25/01/2016 raising a demand of Rs.29102.51crore. CIT(IT)-1 New Delhi vide letter dated 3.03.2016 has already directed the undersigned not to pursue the demand in your case till 30.06.2016 to give you time to consider the offer extended by the Finance Minister of India in his budget speech on the floor of the Indian parliament. The matter will be reviewed after issue of formal notification in this regard.”* ITD letter dated March 31, 2016 clarified that the matter will be reviewed after formal notification in this regard. ITD letter dated March 31, 2016 referred to Section 281 of IT Act and prohibited merely CUHL or its nominee or any other person on behalf of CUHL from creating a charge on or part with possession in favour of any person of any asset without previous permission of the signing authority of letter dated March 31, 2016. In my view, ITD letter dated March 31, 2016 neither expressed intention to pursue tax demand against CUHL after June 30, 2016 nor it prohibited release of dividend by CIL/VIL. ITD letter dated March 31, 2016 merely prohibited creation of charge or transfer of assets, by way of sale/mortgage/gift/exchange/any other mode of transfer, by or on behalf of CUHL. ITD letter dated March 31, 2016 did not restrain CIL/VIL from releasing dividend to CUHL. In view of the above, I do not find merit in submission that CIL/VIL did not pay dividend on account of operation of law within the meaning of proviso (a) to Section 127 of the Companies Act. Also, for the foregoing reasons, I find that there was no requirement of furnishing of declaratory decree or order by CUHL to establish its right to receive dividend.

75. As noted above, issue of payment of dividend by CIL/VIL to CUHL was not subject matter for adjudication before the PCA as no relief in respect thereof was claimed in the Statement of Claim by CUHL. CUHL had filed request dated February 21, 2017, before the PCA in relation to the release of dividends owed to CUHL by CIL, requesting the Tribunal to invite the Respondent to procure that ITD send a letter to CIL confirming that CIL is not prohibited from releasing the dividends to CUHL or the Respondent procure that ITD address similar letter to Cairn indicating that it is intended to be shared with CIL. It is not the case of the Noticee(s) that issue

before the ITAT involved adjudication on payment of dividend by CIL/VIL to CUHL. In my view, there was no dispute on ownership of shares held by CUHL in CIL, resultantly, no dispute with respect to CUHL`s entitlement to dividend on the shares held. The only issue involved is about distribution of dividend to CUHL on time. After expiration of ITD order under Section 281B of the IT Act on March 31, 2016, there was no restraint on payment of dividend to CUHL. Accordingly, I do not find merit in the Noticee(s) submission that CIL withheld dividend owing to dispute regarding right to receive dividend within the meaning of proviso (c) of the Companies Act. During April 01, 2016 to June 15, 2017, there did not exist any reasonable cause which prohibited or restrained CIL from releasing dividend to CUHL. I do not find merit in submission of the Noticee(s) that dividend was not paid to CUHL during April 01, 2016 to June 15, 2017 due to any other reason, where default was not of CIL. Accordingly, I find that Noticee(s) omission to pay dividend is not protected by proviso (e) of Section 127 of the Companies Act.

Non- Release of dividend is identical to freeze on shares of CUHL by NSDL, a public authority

76. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have also contended that right to receive dividend is similar to feature of free transferability of shares of a listed company. Shareholding of CUHL in CIL was put under freeze by NSDL during April 01, 2016 till February 23, 2018, date of direction from ITD. Similar to NSDL, CIL kept freeze on pay-out of dividends to CUHL. As no action has been taken against NSDL for freeze of shares during the said period, therefore, no action should be taken against CIL.

77. It is reiterated that ITD vide order dated January 14, 2016 extended provisional attachment of assets, ordered vide order u/s 281B of the Income Tax Act, 1961 dated 22.01.2014, upto 31.03.2016. ITD vide letter dated March 31, 2016, addressed to CUHL and copy to CIL, stated that "…*In this case assessment order u/s 143(3) r.w.s. 144C(13) was passed on 25/01/2016 raising a demand of Rs.29102.51crore. CIT(IT)-1 New Delhi vide letter dated 3.03.2016 has already directed the undersigned not to pursue the demand in your case till 30.06.2016 to give you time to consider the offer extended by the Finance Minister of India in his*

budget speech on the floor of the Indian parliament. The matter will be reviewed after issue of formal notification in this regard. ….. keeping in view the provisions of Section 281 of the Income-tax Act, 1961 you or your nominee or any other person on behalf of you may not create a charge on or part with the possession in favour of any person (by way of sale, mortgage, gift, exchange, or any other mode of transfer, whatsoever) of any asset without previous permission of the undersigned as any such transfer would be rendered void as against any claim in respect of any tax or any other sum payable as a result of completion of the assessment proceedings." ITD letter dated March 31, 2016 referred to Section 281 of IT Act and prohibited merely CUHL or its nominee or any other person on behalf of CUHL from creating a charge on or part with possession in favour of any person of any asset without previous permission of the signing authority of letter dated March 31, 2016. In my view, facts and ITD directions relating to NSDL and CIL were different, therefore, CIL cannot be allowed parity with NSDL. It is relevant to note that ITD order under Section 281B of IT Act, restricting payment of dividend to CUHL, expired on March 31, 2016. However, ITD vide letter dated March 31, 2016 directed that transfer of shares by CUHL or its nominee or any other person on behalf of CUHL shall continue to remain restricted. For the foregoing reasons, I do not find merit in submission of the Noticee(s) that CIL is entitled to parity with NSDL.

Non release of dividend by CIL has been stated by CUHL to be on account of decision of the Government of India under the bilateral investment treaty arbitration

78. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have also contended that grievance of CUHL in respect of non-receipt of dividends from CIL was, as per the stand of CUHL in the arbitration, on account of Government of India. The grievance of CUHL in respect of non-receipt of dividend from CIL already stands fully and finally adjudicated.

79. While dealing with contention of the Noticee(s) that CUHL has not approached SEBI with clean hands, I have observed in the foregoing paragraphs that delay in payment of dividend and liability for delay in payment of dividend by CIL to CUHL

was not subject matter adjudicated upon by the PCA. Further, I note that CUHL`s submissions before the PCA that CIL withheld payment of dividend due to ITD instructions were based on reasons for withholding dividend indicated by CIL to CUHL. In this regard, I note that Para 278 of the Award which, inter-alia, records that *"the Claimants indicated that they had forwarded the ACIT letter of 30 December 2016 to CIL, asking it to release the dividends, but CIL had refused to do so, alleging that this letter was internal government correspondence that was neither addressed nor copied to CIL, and that it required certainty of written confirmation from ITD before it would act. The Claimants understood that ITD had advised CIL to make a formal written request for clearance and to await a response from the ITD to release the dividends; however, in meetings between Cairn`s representatives and the ITD, the ITD had informed Cairn that no written confirmation would be given to CIL in this regard*." Subsequently, the Respondent before the PCA clarified that payment of CUHL dividends was a matter between CIL and its shareholder i.e. CUHL. Further, on April 26, 2017, the Respondent therein stated that ITD categorically denied having attempted to inhibit release of dividends or having advised CIL in this matter, formally or informally, after March 31, 2016 (when provisional attachment order under section 281B of IT Act expired). In view thereof, I find no merit in submission of the Noticee(s) that CUHL`s grievance in respect of non-receipt of dividend from CIL was adjudicated by the PCA and stands fully and finally adjudicated.

Inter- departmental communication cannot be relied upon as a basis to claim any right and are not conclusive of controversy.

80. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have submitted that CUHL`s complaints are primarily based on inter-departmental communications dated December 30, 2016 and March 01, 2017, written by Assistant Commissioner of Income Tax (ACIT) to Commissioner of Income Tax (CIT). Both of these letters were neither marked nor addressed to CIL and CUHL. Internal noting of department does not operate as conclusive of issue or can be construed as any final order on basis of which any action can be taken by any person.

81. It is reiterated that ITD vide order dated January 22, 2014, issued under Section 281B of IT Act, had restricted payment of dividend by CUHL to CIL. ITD order dated January 22, 2014 was renewed vide order dated July 18, 2014 and January 16, 2015. ITD vide order dated January 14, 2016 extended order under Section 281B of IT Act till March 31, 2016. After March 31, 2016, ITD did not extend order under Section 281B of IT Act. I note CUHL had communicated ITD letter dated December 30, 2016 and March 01, 2017 to CIL to clarify legal position that there is no attachment in force after March 31, 2016 which restricts payment of dividend to CUHL. In view of the fact that ITD order under Section 281B of IT Act, which acted as restraint on payment of dividend, expired on March 31, 2016, I find no force in Noticee(s) contention that ITD letter dated December 30, 2016 and March 01, 2017 were mere internal communications and dividend could not have been released based on such letters.

CIL did not enjoy unpaid dividend amount- No occasion arises to pay any interest

82. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have submitted that CIL transferred total amount of unpaid dividend to unpaid dividend account and CIL has not unjustly enriched itself from unpaid dividend. Pursuant to ITD letter dated June 16, 2017, CIL transferred dividend amount to ITD on June 19 and June 20, 2017. Therefore, CIL is not liable to be penalised with levy of interest under Section 127 of the Companies Act.

83. I note that purpose of award of interest is to compensate for the time value of money that the person was unlawfully deprived of. Such interest should account for likely use to which the party would have put the relevant amount but for the unlawful withholding of payment of dividend. The purpose of award of interest is not merely to eliminate enrichment of the wrong doer. Its purpose is to reflect loss caused to the claimant or person who has been wrongfully deprived of his entitlement. In **Executive Engineer, Dhenkanal, Minor Irrigation Division, Orissa and Others vs. N.C. Budharaj (Deceased) by Lrs. And Others [(2001) 2 SCC 721]**, Hon`ble Supreme Court held that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the

deprivation by whatever name it may be called, namely, interest, compensation or damages. As observed above, there is no restriction or statutory bar on providing of interest in exercise of power under Section 11B of the SEBI Act. I find that Section 24(2) of the Companies Act empowers SEBI to exercise its power under 11B of the SEBI Act in respect of violation of Section 127 of the Companies Act. Accordingly, I reject contention of the Noticee(s) that CIL is not liable to burdened with interest as it has not enriched itself from unpaid dividend.

CIL acted in bonafide manner in the interest of its other public shareholders.

84. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have reiterated that ITD letter dated March 31, 2016 prohibited CIL from parting assets of CUHL without prior permission. Further, it is submitted that CUHL did not produce any order of court or any competent authority or any document which conclusively could have given full and final discharge to CIL. Under general property law, seeking declaration from the court is essential in case where right of a claimant, who may even be in possession of asset, is under cloud. CUHL sought to rely on internal note-sheets of ITD for its claim is conclusive of fact that CUHL`s entitlement and right to receive dividend was under cloud.

85. As observed earlier, payment of dividend was restricted by virtue of ITD order dated January 22, 2014, issued in exercise of power under Section 281B of ITD Act, which expired on March 31, 2016. However, ITD letter dated March 31, 2016 referred to Section 281 of IT Act and restricted transfer of assets by CUHL or its nominee or by any other person on behalf of CUHL without prior permission. ITD letter dated March 31, 2016 did not restrict payment of dividend. In view thereof, I find that, after March 31, 2016 till June 16, 2017, there was no cloud over entitlement of CUHL to receive dividend. Therefore, I reject contention of the Noticee(s) that CIL withheld payment of dividend after March 31, 2016 due to uncertainty regarding entitlement of CUHL to receive dividend.

All Similarly placed shareholders were treated similarly

86. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have submitted that the SCN has alleged violation of Regulation 4(2)(c)(i) of LODR Regulations which is a principle

to be applied in interpreting rest of LODR Regulations and cannot be a charging provision.

87. I note that Regulation 4(2)(c)(i) of LODR Regulations is part of Chapter II of LODR which provides for principles governing disclosures and obligations of listed entity. Such principles are required to be followed by the listed entity while making disclosures and discharging its obligations. In case of failure to follow or abide by such principles, the listed entity is liable to be attended with necessary directions or penalty or prosecution in accordance with gravity of the violation. In the present case, the SCN has called upon the Noticee(s) to show cause as to why necessary directions in exercise of power under Section 11(1), 11(4), 11B(1) of the SEBI Act should not be issued against them for violation of Section 127 of the Companies Act, 4(1)(g) and 4(2)(c)(i) of LODR Regulations. Since, the SCN doesn't provide for imposition of penalty, therefore, respective charging provision providing for penalty for violation of the concerned Regulation has not been invoked.

88. I note that CIL has failed to make payment of dividend to CUHL after cessation of restraint on payment of dividend on March 31, 2016. CIL made payment of dividend to other shareholders when there was no restraint on release of dividend. In view thereof, I find that CIL failed to treat CUHL at part with other shareholders in respect of payment of dividend. Accordingly, I find that CIL violated Regulation 4(1)(g) and 4(2)(c)(i) of LODR Regulations.

SAT Order dated July 19, 2019 has already held that no interest can be charged from CIL

89. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have submitted the Hon`ble SAT vide order dated July 19, 2019 held that *" 5…. we are of the opinion that the complaint of the appellant has not been considered by the respondent in the right perspective. Only a part of the complaint has been considered by SEBI in so far as the prayer of the appellant directing Cain India to pay the dividend along with interest. We are of the opinion that SEBI was justified in holding that since an amount has been transferred to the income tax authorities pursuant to some orders issued by them, the question of paying the dividend by the appellant along*

with interest does not arise. In our opinion, it is open to the appellant to pursue his remedies for return of dividend amount from the income tax authorities." Hon`ble SAT has already adjudicated on the issue that CIL cannot be held liable to make payment to CUHL for the dividend along with interest and claim, if any, by CUHL, would lie against ITD.

90. I note that the Noticee(s) have not referred to para 6 of the Hon`ble SAT order dated July 19, 2019, which records that *"6. However, if the company, namely, Cairn India had violated the provisions of the Companies Act in not releasing the dividend when there was no embargo upon it, it is SEBI`s duty to inquire into the alleged violation and if it exists take action against the said company and if, necessary, under Section 124 of the Companies Act. This aspect has not been considered by SEBI."* Upon reading of para 5 and 6 of the Hon`ble SAT order dated July 19, 2019, I find that the Hon`ble SAT held that *"6. However, if the company, namely, Cairn India had violated the provisions of the Companies Act in not releasing the dividend when there was no embargo upon it, it is SEBI`s duty to inquire into the alleged violation and* ***if it exists take action against the said company……"***. I do not agree with the Noticee(s) submission that the Hon`ble SAT vide order dated July 19, 2019 held that CIL is not liable to pay interest on delayed payment of divident for period April 01, 2016 to June 15, 2016 i.e. when there was no embargo on payment of dividend.

CIL did not pay dividend as it acted in compliance with instructions of Government of India

91. The Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 have submitted that CIL vide letter dated April 18, 2017 informed SEBI and CUHL as follows: -

> *"This action of tax authorities of issuing notice for payment of demand is subsequent to letter of Assistant Commissioner of Income Tax (ACIT) dated 1 March 2017 written to Principle Commissioner of income Tax. The Revenue Secretary during our recent meeting advised us that the tax authorities will revert back to us.*
>
> *In this regard, we continue to engage with Revenue Authorities for their approval."*

92. In this regard, I note that the Arbitral Award in para 299 records that the Respondent stated that ITD categorically denied having attempted to inhibit release of dividends or having advised CIL in this matter, formally or informally, after 31 March 2016. Further, the Respondent clarified that there was no message or advice given by the Hon`ble Revenue Secretary to CIL/Vedanta Limited to hold the dividends payable to CUHL. The Noticee(s) have not placed any evidence supporting its submission that CIL was advised that tax authorities will revert back to them. Accordingly, I reject the contention of the Noticee(s) that dividend was withheld owing to instructions of the Tax Authorities.

93. As noted above, ITD order under Section 281B of IT Act restraining payment of dividend expired on March 31, 2016. Even Noticee No.4 report, presented in board meeting dated May 15, 2017, noted that "We have been trying to get a formal communication from IT Dept. before the release of the funds **(which were under provisional attachment by IT Dept. for over 2 years until 31st March 2016).** However, despite cessation of restraint, Noticee No.1 continued to withhold payment of dividend to CUHL during April 01, 2016 to June 15, 2017. In view of the above, I find that Noticee No.1 violated Section 127 of the Companies Act, Regulation 4(1)(g) and 4(2)(c) of LODR Regulations. Now, I proceed to examine whether Noticee No.2 to 11 are responsible for the violations committed by Noticee No.1.

Directors cannot be held liable for non-payment of dividend

94. The Noticee No. 2 to 11 denied that any contravention was committed with their consent. The Noticee(s) submitted that they, as directors, are not responsible for day-to-day affairs of Noticee No.1. As per J.J. Irani Report of the Expert Committee on Company Law, duty of Board of directors is to provide strategic oversight and guidance rather than undertake implementation of the operational tasks of the company. The Noticee No.6 to 10 were non-executive directors. A non-executive director is not usually involved in day-to-day affairs of the company and can be held liable only when he/she was at the helm of its affairs. The role of independent director is to act as guide, mentor and a coach for the company which appoints him. They are not responsible for day-to-day affairs of the company. The

Noticee(s) have placed reliance on the Hon`ble SAT judgment in matter of **Dr. Uppal Devinder Kumar Vs. SEBI, Sayanti Sen Vs. SEBI** and the Hon`ble Supreme Court Judgment in **Pooja Ravinder Devidasani Vs. State of Maharashtra**.

95. I note that Hon`ble SAT vide order dated October 05, 2012 in the matter of **N. Narayanan Vs. SEBI**, inter-alia, observed as follows: -

> *"The director of a company is expected to exercise due care and diligence in the approval of documents brought on the table during Board meetings. It is the responsibility of a director to identify deficiencies wherever possible by employing verification and scrutiny expected of a prudent man. Meetings of Board of Directors are not rituals where documents are signed at the behest of the chairman or managing director. A director cannot take a stand that he has approved the documents totally depending on the integrity and expertise of the managing director. We are not observing that the director of a company should be a know all, but the duty expected of a prudent person cannot be abdicated by him.*
>
> *… A whole time director is a director employed to devote the whole of his time and attention in carrying on all the affairs of the company. The role of a whole time director is very significant and material in running day to day affairs of a company. His role and responsibility are equivalent to that of a managing director in as much as he is expected to spend his whole time in the management of the company. This implies a high level of accountability and knowledge of the overall functioning of the company………… As a whole time director he was duty bound to examine the accounts with a critical eye as expected from a prudent person and identify irregularities which were prominent in the financials of the company.*
>
> *In the case of Equitable Life Assurance Society, the 'duty of care' owed by a director has been clearly illustrated. The first is the skill and knowledge expected from a reasonably diligent person. The second is actual knowledge, skill and experience of a director. The following observations are very relevant to the issue at hand.*
>
> > *"Mr Milligan QC referred me to another general statement about the duties of directors which I find helpful as it both expresses what may be expected of a 'reasonably diligent' director and acknowledges the obvious qualification that what the test requires must depend on the particular circumstances before the court. The reference is in the judgment of Morritt LJ in Baker v Secretary of State for Trade and Industry [2001] BCC 273 at p.285 where the Court of Appeal approved the summary given by Jonathan Parker J at first instance in these terms:*
> >
> > *'(i) Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company's business to enable them properly to discharge their duties as directors.*

(ii) Whilst directors are entitled (subject to the articles of association of the company) to delegate particular functions to those below them in the management chain, and to trust their competence and integrity to a reasonable extent, the exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.

(iii) No rule of universal application can be formulated as to the duty referred to in (ii) above. The extent of the duty, and the question whether it has been discharged, must depend on the facts of each particular case, including the director's role in the management of the company."

16. With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto.

96. I note that the Noticee(s) have relied upon following observations made by the Hon`ble SAT in its judgment dated September 25, 2019 in the matter of **Dr. Uppal Devinder Kumar Vs. SEBI**: -

"14…………In our view, it is not necessary that every director is required to be penalized merely because he is a director on the ground that he was deemed to responsible for the affairs of the company. If the director can explain that he had no role to play in the alleged default or that he was not responsible for the affairs of the company in which case penalty could not be fastened upon him on the mere ground that he was a director."

97. I note that above observations in the matter of Dr. Uppal Devinder Kumar were made by the Hon`ble SAT in view of factual observation that "*There is no specific finding by the AO that the appellant was involved in carrying on the CIS or was involved in the execution of the scheme or was involved in the collection of the money pursuant to the scheme. There is no evidence brought on record to show that the appellant attended any meeting of the Board of Directors nor there is any document to show that the appellant had any role at all in connection with the CIS or sponsoring a CIS or being responsible for the registration of the CIS."*. However, in the present case, evidence of participation of Noticee(s) in the meetings, wherein, observations were made with regard to non- payment of dividend to CUHL, is on record. It is not the case of Noticee(s) that they did not

attend meetings alleged in the SCN. Therefore, I find that observations made by the Hon`ble SAT in the judgment dated September 25, 2019 in the matter of Dr. Uppal Devinder Kumar Vs. SEBI, relied upon by the Noticee(s), is not applicable to the present case.

98. I note that the Noticee(s) have relied upon following observations made by the Hon`ble SAT in its judgment dated August 09, 2019 in the matter of **Sayanti Sen Vs. SEBI**: -

> *26. In the light of the aforesaid the WTM has held that the Company has violated provisions of Section 73(2) of the Companies Act and has therefore in the same breadth has booked all the Directors to be responsible for the day today affairs of the Company. This approach as stated earlier was wholly incorrect. Section 73(2) of the Companies Act makes it apparently clear that if in the first instance it was the Company which was liable to repay the monies received from the investors and if the Company failed to repay the amount then the amount would be recovered jointly and severally from every Director of the Company as an officer in default. Therefore, where the Company is the offender vicarious liability of the Directors cannot be imputed automatically."*

99. I note that the Hon`ble SAT made above observations in the matter of Sayanti Sen Vs. SEBI while dealing with connotation of "every director of the company who is an officer- default", in Section 73(2) of the Companies Act, 1956. In the said case, contention of the appellant therein was that she had nothing to do with issuance of NCDs and had never attended any meeting of the Board of directors nor was signatory to any resolution in relation to the issuance of NCDs. The Hon`ble SAT noted that *"The WTM held that even though the appellant may not be involved in the decision making process, nonetheless, the appellant cannot wriggle out of her responsibility as a Director of the Company and plead ignorance of the affairs of the Company and therefore held that being a Director the appellant was responsible for the ……..".* However, in the present case, it is not the case of the Noticee(s) that they were not part of meetings, alleged in the SCN. I note that sufficient evidence is on record to show that the Noticee(s) were part of committee/meeting, wherein, issue of non-payment of dividend to CUHL was apprised to the constituents of the committee/meeting. In view thereof, I find that Hon`ble SAT judgment dated August 09, 2019 in the matter of **Sayanti Sen Vs. SEBI** , relied upon by the Noticee(s), is not applicable to the present case.

100. I note that Noticee No. 1, 2, 4 to 6, 7, 8 and 10 to 11 vide letter dated October 13, 2023 have filed judgment dated July 12, 2022, passed by the Hon`ble High Court of Karnataka, in the matter of **Mukkaram Jan & Anr. Vs. SEBI**, Criminal Petition No. 3755/2017, wherein, it is observed as follows: -

> *"A combined reading of Section 55(4) and Section 207 clearly indicates that the SEBI is invested with power to safeguard the interests of the shareholders in the matter of non-payment of dividends and the moment the dividends are paid, the **SEBI has no power to initiate any action against the company or its directors who have defaulted in payment of dividend within 30 days as specified under Section 207 of the Act.** Section 621 clearly specifies that the shareholder/registrar of companies/person authorized by a central government can only maintain a complaint for the offence punishable u/s 207 even though the dividends are paid, since criminality does not get absolved on payment of dividends after the stipulated time. Hence, Point No.2 is answered affirmatively in favor of the Petitioners."*

101. I note the Hon`ble High Court of Karnataka vide judgment dated May 19, 2022, in the matter of M**/s. Kavveri Telecom Products Ltd & Others Vs. SEBI**, Criminal Petition No. 3454/2017, observed as follows: -

> *"9. As regards to the third contention raised by the learned counsel for the petitioners is that once the amount has been paid, the penal provision should be exonerated. He has also relied upon the judgment of the Madras High Court in the case of **N. Kumar** stated supra. On perusal of the judgment of the Madras High Court, where it is pertaining to the Directors who was already left the Company and he was not a Director as on the date of complaint. Therefore, that judgment will not be applicable to the case on hand. Here in this case, there is a clear violation of the provision of law for non-depositing the amount within five days and also not disbursing within thirty days and it was paid nearly for three years**. Even some of the payments were made after filing of the complaint. Such being the case, the penal provision cannot be exonerated and otherwise, there is no meaning in mentioning the penal provision under the statute book.** Therefore, considering all these facts, I am of the view that the petitioner has not made out the ground for quashing the criminal proceedings and on the other hand, they have to face the trial before the Court.*

102. I note that SEBI has challenged judgment dated July 12, 2022, passed by the Hon`ble High Court of Karnataka, in the matter of **Mukkaram Jan & Anr. Vs. SEBI**, Criminal Petition No. 3755/2017, by filing SLP(Crl.) No. 10923/2022 before the Hon`ble Supreme Court. SLP(Crl.) No. 10923-10924/2022 is pending adjudication before the Hon`ble Supreme Court. I find that judgment dated May

19, 2022, in the matter of M/s. Kavveri Telecom Products Ltd & Others Vs. SEBI, Criminal Petition No. 3454/2017, is in consonance with legislative intent of Section 207 of the Companies Act, 1956 and Section 127 of the Companies Act, 2013. Accordingly, I find that violation of Section 127 of the Companies Act, 2013 stands committed when dividend is not paid within thirty days from date of declaration of dividend. Payment of dividend after 30th day from declaration of dividend cannot wipe out violation of Section 127 of the Companies Act, 2013.

103. I note that Noticee No. 2 to 11 have placed reliance on the Hon`ble Supreme Court judgment in the matter of **Pooja Ravinder Devidasani Vs. State of Maharashtra (2014) 16SCC 1** to contend that a person does not become liable for actions of company merely because he is a director of company. I note that the said case arose out of complaint filed under Section 138 of the Negotiable Instruments Act, 1881. The appellant therein had filed writ petition seeking quashing of complaint filed against her, however, the Hon`ble Bombay High Court dismissed the same. Against the impugned order of the Hon`ble High Court, the Appellant therein preferred appeal before the Hon`ble Supreme Court. Hon`ble Supreme Court noted that cheques in question were issued in the year 2008, however, the appellant had resigned in 2005 itself. Further, it was observed that *"the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There was not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged."* I find that judgment in the matter of Pooja Ravinder Devidasani Vs. State of Maharashtra is not applicable to the present case as it is not the case of the Noticee(s) that they were not directors of Noticee No.1 during the time of withholding of dividend by Noticee No.1.

104. I note that Section 149 (12) of the Companies Act, 2013 provide that an independent director, non- executive director not being promoter shall be held liable in respect of such acts or omission or commission by a company which had

occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

105. I note that Section 166 of the Companies Act, 2013, inter-alia, require that director should: -

a) act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;

b) exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;

106. I note that letter addressed by Mr Navin Jain, Head – Taxation, (reported to the head of Corporate Finance, who in turn reported to Mr Sudhir Mathru, Acting CEO & CFO, who in tum reported to the Board) on September 22, 2016, inter-alia stated"...*please note that if we do not hear from your office to the contrary, we will proceed on the basis that we are entitled to remit the subject dividend, to Cairn UK Holdings Ltd."*

107. I note that letter addressed by Mr Sunil Bohra, Chief Commercial and Marketing Officer (who reported to Mr. Sudhir Mathur, Acting CEO and CFO, who in tum reported to the Board) on March 27, 2017, inter-alia stated "... *we thank you for clearly setting out the legal position. Given previous correspondence between* us *on the subject, as* a *matter of courtesy, we hereby inform you that in light of the above mentioned clarifications, we will be paying the outstanding dividend payments to GUHL without further delay."*

108. I note that Audit Committee of Noticee No.1 in its meeting dated February 09, 2017 made note of the fact that CIL was seeking clarification from the Tax Department if dividend due to CUHL in respect of their shareholding in CIL could be released. The Noticee No. 3- Whole Time Director**("WTD")**, Noticee 9 and 11- Independent Director had attended the Audit Committee meeting dated February 09, 2017. Noticee No.9 had acted as Chairman of the Audit Committee. The minutes of Audit

Committee meeting dated February 09, 2017 were placed before the Board of Directors of the Noticee No.1 in its meeting held on March 30, 2017. The meeting dated March 30, 2017 was attended by Noticee No. 2(Chairman), Noticee No.3 (WTD), Noticee No. 6 (Non-Executive Director), Noticee No. 9 and 11 (Independent Directors). During the Board of Directors meeting held on May 15, 2017, the Noticee No.4 (Chief Executive Officer) in his report inter-alia mentioned *"…. We have been trying to get a formal communication from IT Dept. before the release of the funds (which were under provisional attachment by IT Dept. for over 2 years until 31st March 2016), given that a demand has been crystalized on CUHL post ITAT order and is due by 15th June 2017. We have intimated SEBI and CUHL accordingly".* The Board of directors meeting dated May 15, 2017 was attended by the Noticee No.2 (Chairman), Noticee No.3(WTD), Noticee No.4(CEO and WTD), Noticee No.5 (CFO and WTD), and Noticee No.7,8,10(independent directors). In view of the above, I find that Noticee No. 2 to 11, being persons in charge of and responsible for the affairs of the Noticee No.1, were party to the decision to withhold dividend payment to CUHL even after cessation of restraint on March 31, 2016. I also find that omission of Noticee No.1 to release dividend to CUHL after March 31, 2016 was done with the consent of Noticee No.2 to 11 as they have not produced any evidence on record to suggest that they objected to such withholding of dividend payment to CUHL. Accordingly, I find that Noticee No.2 to 11 are responsible and liable for violations committed by Noticee No.1 by withholding dividend payment to CUHL after March 31, 2016.

No Penalty should be imposed

109. I note that the Noticee No. 1,2, 4, 5, 6, 8, 10 and 11 have submitted that no penalty should be imposed as they acted bonafide and not malafide. I note that the SCN neither invoked penalty provisions nor called upon the Noticee(s) to show cause as to why penalty under Chapter VI-A of the SEBI Act should not be imposed, therefore, I find that it is not relevant or necessary to examine Noticee`s contention that penalty should not be imposed.

110. As noted above, Noticee No.1 violated Section 127 of the Companies Act, Regulation 4(1)(g) and 4(2)(c) of LODR Regulations. For the foregoing reasons, I find that Noticee No.2 to 11 are responsible for the violations committed by

Noticee, therefore, I find that Noticee No. 1 to 11 violated Section 127 of the Companies Act, Regulation 4(1)(g) and 4(2)(c) of LODR Regulations. Taking note of position held by each of Noticee No.2 to 11, I proceed to examine directions which are required to be issued in the present matter.

111. I note that Noticee No.1 has submitted that in compliance with Section 124 (1) of the Companies Act it deposited unpaid dividend amount in special account called unpaid dividend account. Noticee No.1 did not benefit from the unpaid dividend amount during April 01, 2016 to June 15, 2017.

112. As noted above, purpose of award of interest is to compensate for the time value of money that the person was unlawfully deprived of. Such interest should account for likely use to which the party would have put the relevant amount but for the unlawful withholding of payment of dividend. The purpose of award of interest is not to eliminate enrichment of the wrong doer. Its purpose is to reflect loss caused to the claimant or person who has been wrongfully deprived of his entitlement.

113. I note that Noticee No.1 vide letter dated April 20, 2016 informed ITD that details of dividend due/payable to CUHL and lying in unpaid dividend bank accounts are as follows:-

DP-CL ID : IN30263810025710
Name : CAIRN UK HOLDINGS LIMITED
No. of Shares as on 31.03.2016 : 184,125,764

Particulars	Final Dividend-2013-14 (@ 6.50 p/s)	Interim Dividend-2014-15 (@ 5.00 p/s)	Final Dividend-2014-15 (@ 4.00 p/s)
Date of Dividend declaration	23.07.2014	17.09.2014	21.07.2015
Dividend amount payable to CUHL	INR 1,196,817,466.00	INR 920,628,820.00	INR 736,503,056.00

114. I note that Section 127 of the Companies Act provide that the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which default continues.

115. I note that details of dividend due and payable by CIL to CUHL is as follows: -

Table No.3

S.No.	**Shares held by CUHL in CIL**	**Date of declaration of dividend**	**30 days from date of declaration**	**Dividend per share (In Rs.)**	**Total Dividend payable**	**Period for which interest @ 18% is payable**	**Total (In Rs.)**
1	18,41,25,764	23.07.2014	22.08.2014	6.5	119,68,17,466	01.04.2016 to 15.06.2017	25,96,92,995
2	18,41,25,764	17.09.2014	16.10.2014	5.00	92,06,28,820	01.04.2016 to 15.06.2017	19,97,63,843
3.	18,41,25,764	21.07.2015	20.08.2015	4.00	73,65,03,056	01.04.2016 to 15.06.2017	15,98,11,074
4.	18,41,25,764	21.07.2016	20.08.2016	3.00	55,23,77,292	20.08.2016 to 15.06.2017	8,14,49,167
5.	18,41,25,764	30.03.2017	29.04.2017	17.70	325,90,26,023	29.04.2017 to 15.06.2017	7,55,37,973
Total					**666,53,52,657**		**77,62,55,052**

Order

116. 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), 11B(1) and 19 of the SEBI Act read with Section 24(2) of the Companies Act, 2013, direct as under:-

a) Noticee No.1 shall pay to CUHL Rs.77,62,55,052/- (Rupees Seventy Seven Crore Sixty Two Lakh Fifty Five Thousand and Fifty Two Only) i.e. simple interest @ 18%per annum for delayed payment of dividend, due and payable by Noticee No.1 to CUHL, within 45 days from the date of this order;

b) The Noticee No.2 to 5 are, hereby, 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 Two Months, from the date of coming into force of this order;

c) The Noticee No.6 to 11 are, hereby, 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 Month, from the date of coming into force of this order;

d) In case of failure of Noticee No.1 to comply with aforesaid direction, SEBI, on expiry of 45 days from the date of this order, may initiate appropriate action against Noticee No.1 for such failure.

117. This Order is without prejudice to any action that might be taken by SEBI in respect of the above violations committed by the Noticee(s).

118. This Order shall come into force with immediate effect.

119. This Order shall be served on all the Noticee(s), recognised stock exchanges and depositories for information and necessary action.

K. SARAVANAN

Date: March 12, 2024 **CHIEF GENERAL MANAGER**

Place: Mumbai **SECURITIES AND EXCHANGE BOARD OF INDIA**