Reliance
Industries Limited

September 29, 2021

BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai 400 001

Scrip Code: **500325 / 890147**

National Stock Exchange of India Limited
Exchange Plaza, Plot No. C/1, G Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai 400 051

Trading Symbol: **RELIANCE / RELIANCEP1**

Dear Sirs,

Sub.: Disclosure under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

The adjudicating officer of SEBI, vide his order number BS/2021-2022/13447 dated September 20, 2021, has passed an order and disposed off the Show Cause Notice dated 5th April, 2016 issued against the Company for failure to disclose the correct Diluted Earnings Per Share during the quarters June 2007- September 2008, without any levy of penalty. The said order of SEBI is attached.

Kindly take the same on record.

Thanking you,

Yours faithfully,
For **Reliance Industries Limited**

Savithri Parekh
Joint Company Secretary
and Compliance Officer

Copy to:
The Luxembourg Stock Exchange
35A Boulevard, Joseph II
L-1840 Luxembourg

Singapore Stock Exchange
2 Shenton Way,
#19- 00 SGX Centre 1,
Singapore 068804

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/BS/2021-22/13447]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Reliance Industries Limited

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1. Adjudication proceedings have been initiated against Reliance Industries Ltd (hereinafter referred to as "RIL/Noticee") for its alleged failure to make correct disclosure of diluted Earnings Per Share in its Quarterly Financial Results for the quarters ended June 2007, September 2007, December 2007, March 2008, June 2008 and September 2008 in violation of Clause 41 of the Listing Agreement read with Sections 21, 23A and 23E of Securities Contracts (Regulation) Act, 1956 (SCR Act, 1956).

APPOINTMENT OF ADJUDICATING OFFICER

2. Initially, Shri S.V. Krishnamohan, Chief General Manager was appointed as Adjudicating Officer **(AO)** vide order dated January 19, 2016 to inquire into and adjudge the alleged violations of provisions of Clause 41 of the Listing Agreement read with Sections 21, 23A and 23E of SCR Act, 1956, by the Noticee for its failure to disclose correct diluted Earnings per Share (**EPS**) in quarterly Financial Results for the quarters ended June 2007 to September 2008 despite the existence of share warrants. Subsequently, the undersigned was appointed as the Adjudicating Officer vide SEBI's order

dated September 15, 2017 in the place of Shri S. V. Krishnamohan in the present matter.

BRIEF FACTS OF THE CASE

3. It was observed that RIL had issued 12 crore warrants to its promoters on April 12, 2007 which were convertible within a period of 18 months with an exercise price of Rs. 1402/- per warrant entitling its holders to subscribe to equivalent number of equity shares of RIL, and subsequently on October 03, 2008, the Board of Directors of RIL allotted 12 crores equity shares of Rs.10/- each to the allottees, upon exercise of warrants at the exercise price. Since the warrants were outstanding during the period April 2007 to September 2008 and the fair value of the underlying shares during the period was more than the exercise price, the warrants had dilutive impact on the EPS and RIL should have disclosed diluted EPS computed as per the provisions of AS-20. However, the Quarterly Financial Statements of RIL filed with National Stock Exchange of India Ltd. for the quarters ended June 2007 to September 2008, contained the same figures for Basic as well as Diluted EPS ("**DEPS**") despite the existence of share warrants. In view of the aforesaid, it was alleged that the Noticee did not disclose correct DEPS in its Quarterly Financial Statements to stock exchange for six consecutive quarters ended June 2007, September 2007, December 2007, March 2008, June 2008 and September 2008 despite the existence of share warrants and thereby violated the provisions of Clause 41 of the Listing Agreement read with Sections 21, 23A and 23E of SCR Act, 1956.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated April 05, 2016 (*hereinafter referred to as '**SCN**'*) was issued to the Noticee in terms of Section 23I of the SCR Act, 1956 read with Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005

(hereinafter referred to as "***Rules***") for the violations as specified in the SCN.

5. The Noticee submitted its reply to the SCN vide letter dated May 02, 2016, and following are the main submissions made therein –

7. Computation of DEPS by RIL

a. On 12th April 2007, the Board of Directors of RIL issued 12 crore warrants on preferential basis exercisable into equal number of equity shares of Rs. 10/- each of RIL.

b. The said warrants were exercisable at any time during 18 months from the date of issue i.e. 12th April 2007 at an exercise price of Rs. 1,402/- per share.

c. These warrants were issued and priced in accordance with the DIP Guidelines. The exercise price of Rs. 1402/- per share was fixed in accordance with the DIP Guidelines at the higher of (i) The average of the weekly high and low of the closing prices of RIL shares during the six months preceding the relevant date and (ii) The average of the weekly high and low of the closing prices of RIL shares during the two weeks preceding the relevant date.

d. Such average of the share price of RIL during six months preceding the relevant date was Rs. 1252/69 per share and during two weeks preceding the relevant date was Rs. 1401/98 per share.

e. Thus, it can be observed that the exercise price of Rs. 1402/- was higher than the fair value of the RIL shares at the time of issuance.

f. Once the exercise price is fixed higher than the fair value (Rs. 1402/- per share as against Rs. 1252/69 per share), there cannot be any dilutive potential equity shares out of the 12 crore potential equity shares. The calculations in accordance with paragraph 37 of AS 20 is given below:

i. Proceeds from issue of 12 crore shares at Rs. 1402 per share = Rs. 16,824 crores

ii. Number of shares that could have been issued for Rs. 16,824 crores at the fair value of Rs. 1252/69 = 16,824 divided by 1252/69 = 13.43 crore shares

iii. Dilutive Potential equity shares = 12 less13.43 = -1.43 - to be considered as zero

g. Accordingly, RIL determined and disclosed the DEPS as per the following table:

Quarter	No. of equity shares outstanding during the quarter (in crore)	Net profit during the period (Crore)	No, of potential equity shares warrants outstanding during the period (in crore)	Dilutive Potential Shares	Number of Equity Shares	Diluted EPS after providing for potential equity considered for shares
(A)	(B)	(C)	(D)	(E)	(F) = (B) + (E)	(G) = (C)/(F)
June 2007	139.4	3264	12	0	139.4	23.4
Sep 2007	145.4	3837	12	0	145.4	26.4
Dec 2007	145.4	8079	12	0	145.4	55.6

8. Interpretation of AS 20 according to the SCN

(a) According to the SCN :

(i) At every reporting period, simple average of the weekly closing prices of the previous six months of RIL shares should be determined. The average so determined becomes the fair value for the relevant reporting period.

(ii) The fair value so arrived at should be compared against the exercise price.

(iii) If in a particular reporting period the fair value is more than the exercise price, then it would mean the existence of dilutive potential equity shares for the reporting period.

(iv) If in a particular reporting period the fair value is less than the exercise price, then there is no dilutive potential equity shares for the reporting period.

(v) Thus, the same potential equity shares either (i) will have a component of "dilutive potential equity shares" in some reporting periods or (ii) will not have a component of "dilutive potential equity shares" in some reporting periods.

(vi) *As per the table in the SCN, it has been shown that at the end of every quarter, during the reporting periods June 2007 to September 2008 based on the fair value of RIL shares, determined in accordance with point (i) above, part of the 12 crore potential equity shares were dilutive since at the end of every reporting period, the fair value was more than the exercise price of Rs. 1402/-.*

(vii) On this basis, SEBI has determined that the dilutive potential equity shares has varied from 0.72 crore shares in the quarter June 2007 to 4.63 crore shares in September 2008 touching a maximum of 5.63 crore shares in the reporting period ended March 2008.

(viii) Accordingly SCN has determined that the figures in column (I) of

Annexure III should have been disclosed as DEPS against the figures disclosed by RIL given in the column (G) of table at 7(g) above.

(ix) A comparison of the DEPS as determined by the SCN and as disclosed by RIL (as given in column (I) and (J) of the Annexure III to the SCN is given below)

Quarter ended	*DEPS as determined by SCN (Rs.)*	*DEPS as disclosed by RIL (Rs.)*	*% difference*
June 2007	*23.3*	*23.4*	*0.45%*
Sep 2007	*25.9*	*26.4*	*1.71%*
Dec 2007	*53.8*	*55.6*	*3.24%*
Mar 2008	*25.9*	*26.9*	*3.71%*
June 2008	*27.3*	*28.3*	*3.60%*
Sep 2008	*27.5*	*28.4*	*3.26%*

(f) It is submitted that even though Sections 23A and 23E of the SCRA contains the words 'shall be liable to a penalty' there is no strict or mandatory obligation on the part of the alleged defaulter to suffer such penalty.

(g) The Hon'ble Supreme Court of India in the case of Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity (reported at (1979) 4 sec 85) has held that the word "liable" occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be". It is submitted that the above ratio decidendi as pronounced by the Supreme Court is further strengthened by a conjoint reading of the provisions of Section 23J of the SCRA. It is submitted that the SCRA vests a certain degree of discretion in the Adjudicating Officer for the purpose of imposing penalty and that discretion is governed by the provisions under Section 23J of the SCRA, which provides the factors to be taken into consideration for the purpose of deciding the quantum of penalty.

6. A personal hearing in the matter was conducted on April 05, 2016 wherein the Noticee was represented by Mr. Janak Dwarkadas (Senior Advocate), Mr. Amey Nabar, Mr. Vivek Shetty, Mr. K Sethuraman, Mr. K R Raja, Mr. V

Ramchandran and Mr. Vishal Jhaveri, and submissions were made in support of the Noticee's reply dated May 02, 2016. The Noticee was granted time till August 03, 2016 to file written submissions. Vide letter dated August 02, 2016, the Noticee filed written submissions in the matter and following are the main submissions made therein –

A. ***<u>"Dilutive effect" is not a shifting goal-post and is determined only once:</u>***

(I) ***Fair value at the time of issuance of warrants is the only relevant factor for ascertaining potential dilutive equity shares***

(a) *The exercise price of Rs. 1402/- was higher than the fair value of the RIL shares at the time of issuance of warrants i.e. Rs. 1252/ 69 per share.*

(b) *Once the exercise price is fixed higher than the fair value at the time of issuance, there cannot be any dilutive potential equity shares out of the 12 crore potential equity shares.*

(c) *The calculations in accordance with AS 20 is given below:*

(i) *Proceeds from issue of 12 crore shares at Rs. 1402 per share = Rs. 16,824 crores*

(ii) *Number of shares that could have been issued for Rs. 16,824 crores at the fair value of Rs. 1252/ 69 = 16,824 divided by 1252/ 69 = 13.43 crore shares*

(iii) *Dilutive Potential equity shares = 12 less13.43 = -1.43 - to be considered as zero in light of the provision contained in second sentence of paragraph 37 (a) of AS - 20, which reads as under:*

"The shares to be so issued are fairly priced and are assumed to be neither dilutive nor anti-dilutive. They are ignored in the computation of diluted earnings per share"

(d) *Accordingly, RIL correctly determined and disclosed the DEPS in the quarterly financial statements during the period April 2007 to September 2008.*

(II) ***Meaning of the expression "during the period" and the expression "during the reporting period" appearing in AS- 20***

(a) *Paragraph 35 to 38 of AS-20 are reproduced below:*

35. For the purpose of calculating diluted earnings per share, an enterprise should assume the exercise of dilutive options and other dilutive potential equity shares of the enterprise. The assumed proceeds from these issues should be considered to have been received from the issue of shares at fair value. The difference between the number of shares

issuable and the number of shares that would have been issued at fair value should be treated as an issue of equity shares for no consideration.

36. Fair value for this purpose is the average price of the equity shares during the period. Theoretically, every market transaction for an enterprise's equity shares could be included in determining the average price. As a practical matter, however, a simple average of last six months weekly closing prices are usually adequate for use in computing the average price.

37. Options and other share purchase arrangements are dilutive when they would result in the issue of equity shares for less than fair value. The amount of the dilution is fair value less the issue price. Therefore, in order to calculate diluted earnings per share, each such arrangement is treated as consisting of:

(a) a contract to issue a certain number of equity shares at their average fair value during the period . The shares to be so issued are fairl y priced and are assumed to be neither dilutive nor anti-dilutive. They are ignored in the computation of diluted earnings per share; and

(b) a contract to issue the remaining equity shares for no consideration. Such equity shares generate no proceed s and have no effect on the net profit attributable to equity shares outstanding. Therefore, such shares are dilutive and are added to the number of equity shares outstanding in the computation of diluted earnings per share.

Illustration VI attached to the Standard illustrates the effects of share options on diluted earnings per share.

38. To the extent that partly paid shares are not entitled to participate in dividends during the reporting period they are considered the equivalent of warrants or options.

(b) Paragraph 35 of AS 20 is the operative part dealing with the mode of computation of DEPS. Accordingly to Paragraph 35 "the difference between the number of shares issuable and the number of shares that would have been issued at fair value should be treated as an issue of equity shares for no consideration". The expression, 'during the period' does not appear at all in paragraph 35 of AS 20.

(c) Paragraph 35 of AS 20 requires an assumption that the proceeds from issue of potential equity shares "should be considered to have been received from the issue of shares at fair value". The very fact that such an assumption is required

to be made for the purpose of calculating DEPS, would itself demonstrate that it is required to be made at one point of time alone, namely: "the issue of potential equity shares" i.e. when the warrants are issued

It is only when potential equity shares are issued at less than fair value that the question of dilutive effect of such potential equity shares would arise.

*(d) Paragraph 36 of AS 20 enumerates how the fair value is to be ascertained. Accordingly to Paragraph 36 "fair value for this purpose is the average price of the equity shares **during the period**". The last sentence of paragraph 36 defines this period to mean "simple average of Last six months weekly closing prices are usually adequate for use in computing the average price."*

(e) Whereas fair value has to be ascertained at the time of issuance of potential equity shares as stated above, for the purpose of computing the fair value, "the period" is "the average price of the last "6 months' weekly closing prices preceding the date of the contract for issuance of potential equity shares", which has to be taken into consideration and not of the "6 months preceding the reporting period".

*(f) It must also be taken into account that the expression, "**during the period**" appearing in paragraphs 36 and 37 of AS 20 must be distinguished and cannot be equated to the expression, "**during the reporting period**" which appears as an independent expression in paragraph 38 of AS 20. The very fact that paragraphs 36 and 37 of AS 20 uses distinct language from paragraph 38 of AS 20 shows that, the two expressions were clearly not meant to be one and the same thing.*

(g) In The Member, Board of revenue Vs. Arthur Paul Benthall reported in AIR 1956 SC 35, the Constitution Bench of the Hon'ble Supreme Court held that:

> *When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression "distinct matters" in section 5 and "description" in section 6 have different connotations.*

In CIT vs. East West import and export (P) Ltd., reported in 1989 (1) SCC 760 the Hon'ble Supreme court held that:

> *7. The Explanation has reference to the point of time at two places: the first one has been stated*

as "at the end of the previous year" and the second, which is in issue, is "in the course of such previous year". Counsel for the Revenue has emphasised upon the feature that in the same Explanation reference to time has been expressed differently and if the legislative intention was not to distinguish and while stating "in the course of such previous year" it was intended the convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. <u>There is abundant authority to support the stand of the counsel for the Revenue that when the situation has been differently expressed the legislature must be taken to have intended to express a different intention.</u>

(Emphasis Supplied)

(h) In view of the above, it is respectfully submitted that the expression "during the period" as appearing in clause 36 and 37 (a) of AS-20 is relevant only to arrive at the fair value of the warrants at the time when the same are issued, and the same is "period immediately preceding the issue of the warrants" and not any period thereaf ter.

(i) In other words, it is the period of 6 months immediately prior to the date of the contract/ date of issuance of shares which would come within the expression "during the period" which appears in paragraph 36 as well as paragraph 37 of AS 20.

(j) This is more so because whereas in paragraph 36 of AS 20, the expression "during the period" would mean a simple average of <u>the last 6 month</u>s' weekly closing prices, the expression, "reporting period", would mean a subsequent period of 3 months after the issuance of warrants.

B. <u>Certification by statutory auditors</u>

(a) It is submitted that section 227(2) of the Companies Act, 1956 requires the auditors of the company to make a report to the members of the company on the accounts examined by them and on every balance sheet and profit and loss account.

(b) Such report requires the auditors to state:

- *whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by the Companies Act, 1956 in the manner so required and*
- *give a true and fair view (i) in the case of the*

balance sheet, of the state of the company's affairs as at the end of its financial year and (ii) in the case of the profit and loss account, of the profit or loss for its financial year.

(c) *It is submitted that the statutory auditors of the Company are expert in the field of application of accounting standards and in expressing opinion about the true and fair nature of the financial statements of the company. The joint statutory auditors have certified that RIL had complied with provisions of accounting standards and that the DEPS computed by RIL is in accordance with accounting standards, as under:*

(i) *For the financial year ending 31stMarch 2008 (period included in the SCN), the joint statutory auditors have certified (Exhibit- 1), inter alia, that the DEPS disclosed in the profit and loss account reflect a true and fair view of the state of affairs of the company and is also in compliance with all the accounting standards.*

(ii) *The Quarterly Financial Statements filed with the Stock Exchanges (Exhibit- 2A to 2E), have also been subject to 'Limited Review' by the joint statutory auditors of the company in compliance with clause 41(I)(e)(i) of the Listing Agreement, wherein, the joint statutory auditors have certified inter aha, that the DEPS disclosed in the Quarterly Financial Statements reflect a true and fair view of the state of affairs of the company and is also in compliance with all the accounting standards.*

(iii) *By way of certificate dated 28th March 2013 (Exhibit- 3), the joint statutory auditors have confirmed that the disclosure of DEPS in the Quarterly Financial Statements for the Relevant Period is in accordance with clause 41of the Listing Agreement and in conformity with AS-20. The joint statutory auditors in their certificate have inter alia reasoned that since the issue price of the warrants was higher than the fair value, i.e., the average of last six months' weekly closing prices of the shares of the relevant period, there was no dilution and that the issue of equity shares on conversion of the warrants would result in an increase in resources, which would be more than commensurate. Hence, in accordance with paragraph 37 of AS-20, they are ignored in the computation of DEPS.*

(d) *It is submitted that* ***SEBI's contention that the exercise of such potential equity shares would decrease the net profit is against the views of the joint statutory auditors who are***

expert in the field of application of accounting standards and in expressing opinion about the true and fair nature of the financial statements of the company.

C. Compliance with Clause 41 of the Listing Agreement

(i) Clause 41 - IV(f) of the Listing Agreement provides that,
"The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 (AS 25 - Interim Financial Reporting) issued by the Institute of Chartered Accountants of India (ICAI) / Company (Accounting Standards) Rules, 2006, whichever is applicable." (Emphasis Supplied).

(ii) The 'Recognition and Measurement Principles' are set out in Paragraphs 27 to 38 of Accounting Standard 25 ("AS 25") issued by the Institute of Chartered Accountants of India. These paragraphs do not lay down or specify any measurement principles with respect to Basic EPS or DEPS.

(iii) Clause 41of the Listing Agreement does not even mention or refer to AS 20 nor do paragraphs 27 to 38 of AS 25 lay down that DEPS has to be computed in accordance with AS 20. This is significant because Clause 41of the Listing Agreement makes specific references to other Accounting Standards [such as 'Accounting Standard 17' issued by the Institute of Chartered Accountants of India relating to Segment Reporting, (b) 'Accounting Standard 5' issued by the Institute of Chartered Accountants of India relating to Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies]. Therefore, in accordance with settled principles of interpretation, it is clear that Clause 41 of the Listing Agreement advisedly and deliberately does not refer to AS 20.

(iv) It is submitted that applying the well-recognized principle of expressio unius ex excludio alterius (meaning: the specific mention of one thing is the exclusion of other things), clause 41of the Listing Agreement impliedly does not provide for compliance with AS 20.

(v) In Khemka & Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, reported in 1975 SCC 22, the Constitution Bench of Hon'ble Supreme Court held that

> *70. I think that the maxim of interpretation to apply here is: "Expressio Unius exclusio alterius", this is explained as follows in Maxwell on the Interpretation of Statutes (12th Edn. p. 293);*

By the rule usually known in the form of this Latin Maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class; expressing facit cessare taciturn.

In Union of India (UOI) Vs. Shiv Dayal Soin & Sons Pvt. Ltd . and Ors., reported in 2003 (4) SCC 695, the Hon'ble Supreme Court held that

> *6. The lessee under the above said terms of lease deed is in fact precluded from using the house for any purpose other than residential purpose. This interpretation would be further supported by the phraseology of the relevant Clause l(vii) of Appendix XIII, cited above, which contains no reference to the word 'residential '. As a canon of statutory interpretation, expressio unius est exclusio alterius, what is expressly mentioned in one place but not in another must be taken to have been deliberately omitted. The argument raised by the learned counsel for the appellant proceeds on assumption that a house by its meaning and definition is capable of being used exclusively for residential purposes and not for non-residential purposes which is not a correct interpretation of Sub-clause (vii) of Clause I of Appendix XIII.*

(vi) *Further, Clause 24(i) of the Listing Agreement provides that,*

> *"The company agrees that, ·while filing for approval any draft Scheme of amalgamation /merger / reconstruction, etc. ·with the stock exchange under sub-clause (j),* ***it shall also file an auditors' certificate to the effect that the accounting treatment contained in the scheme is in compliance with all the Accounting Standards specified by the Central Government in Section 211(3C) of the Companies Act, 1956****." (Emphasis Supplied).*

(vii) *It is apparent that where necessary (i.e., in respect of mergers and acquisitions), the Listing Agreement has expressly provided for requirements to ensure that all the Accounting Standards are duly complied with.*

(viii) *It is a settled law that where a statute contains both a general provision as well as a specific provision, the latter must prevail. This is a well settled maxim of "generalia specialibus non derogant", which means that general provisions will not abrogate special provisions. Thus, the general provision in clause 50 of the Listing Agreement that listed companies are required to prepare and disclose financial information after complying with all the Accounting Standards cannot overrule the specific provisions of*

clause 41.

(b) In Commercial Tax Officer, Rajasthan Vs. Binani Cements Ltd . and Anr., reported in 2014 (8) SCC 319 the Hon'ble Supreme Court held that :

> *29. It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin maxim of generalia specialibus non derogant i.e., general law yields to special law should they operate in the same field on same subject*

(i) The format in which the quarterly financial statements are to be furnished to the Stock Exchanges is provided for in Annexure 1of the Listing Agreement. Items 19 (i) and 19 (ii) specify only that Basic EPS and DEPS are to be disclosed. The method of computation of DEPS is not prescribed therein.

(ii) As stated by SEBI in its SCN, clause 50 of the Listing Agreement mandates that the financial statements should be in compliance with all the accounting standards. This means "all accounting standards read together". One of the essential requirements which comes out on a reading of all the accounting standards together is that, policies adopted by the company should result in true and fair disclosure in the financial statements and not result in any misleading disclosures.

(iii) As explained above, ***the method of determination of DEPS adopted by RIL results in true and fair disclosure and is in compliance with accounting standards and provisions of Listing Agreement.***

D. ***SEBI has no jurisdiction to regulate compliance of provisions of Section 211 of Companies Act, 1956***

(a) It is submitted that section 211 (3B) of the Companies Act envisages situations where profit and loss accounts and balance sheets do not comply with accounting standards and mandates certain disclosures in such cases.

(b) It is submitted that once the compliance with the accounting standard is in the domain of section 211 of the Companies Act, for any alleged non-compliance thereof, the Ministry of Corporate Affairs can only be the competent authority for enforcement.

(c) It is therefore submitted that SEBI has no jurisdiction to regulate compliance of provisions of Section 211of

Companies Act, 1956.

E. Section 23A of SCRA is not applicable

(a) Section 23A(a) of the SCRA is applicable inter alia to cases where there is a failure to furnish information to a recognised stock exchange. Section 23A(a) of the SCRA stipulates that,

> *"Any person, who is required under this Act to or any rules made thereunder, to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure." (Emphasis Supplied)*

(b) Even assuming (strictly without admitting and only for the sake of argument) that the computation of the DEPS was not in accordance with AS 20, the same does not amount to a failure to disclose the DEPS, as contemplated under Section 23A(a) of the SCRA. It is submitted that a penalty for contravention of a statutory obligation is attracted only where such contravention is clearly established.

(c) Thus, penalty under Section 23A(a) of the SCRA can be imposed only in circumstances where there is a failure to disclose the information and not where there is a bona fide disclosure made, even if the said disclosure is considered to be incorrect..

(d) The Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Reliance Petroproducts Private Limited (322 ITR 158 (SC)) has held as follows:

> *"In order to expose assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked." (Emphasis supplied)*

(e) As aforesaid, since there is no "failure" to disclose the DEPS in the present case, there can be no charge against RIL under section 23A of SCRA.

F. Section 23 E of SCRA is not applicable

(a) Section 23 E of SCRA is a special provision and is applicable only in case of a failure to comply with the listing conditions by a company managing 'collective investment schemes' or 'mutual fund'. Section 23E is not attracted in cases of

companies other than those managing 'collective investment schemes' or 'mutual fund'. This will be evident on the basis of amendments made to SCRA by various amending Acts, as under:

(i) Prior to 22.2.2000, SCRA was not applicable to "collective investment scheme" and "mutual fund".

(ii) By Act 31of 1999, definition of "Securities" as provided in section 2 (h) of SCRA was amended with effect from 22.02.2000 to include "units or any other instrument issued by any collective investment scheme to the investors in such schemes"

(iii) By Act 1of 2005, definition of "Securities" as provided in section 2 (h) of SCRA was further amended with effect from 12.10.2004 to include "units or any other such instruments issued to the investors under any mutual fund scheme"

(iv) By the same Act (Act 1of 2005), Section 23 of SCRA was amended and sections 23E was added, which provided :

> *"If a company or any person managing collective investment scheme or mutual fund fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees."*

(v) Thus, section 23E, as introduced vide (amending) Act 1 of 2005, was applicable only in case of company managing 'collective investment schemes' or 'mutual fund'. ***Section 23E does not apply to a listed company (other than those managing collective investment schemes' or 'mutual fund') which failed to comply with the listing conditions****.*

Without prejudice to the above submissions, we also submit as under:

G. <u>*Both interpretations are prevalent in the industry - Benefit must go to RIL*</u>

(a) RIL has filed Quarterly Financial Results of some of the listed companies in India (Exhibit- 4) which confirm that they have also adopted the same accounting treatment as adopted by RIL in computing, determining and reporting the Basic and Diluted EPS in compliance with the requirements of AS 20.

(b) RIL is also aware that few listed companies are following the

method of computation of DEPS as per the interpretation of SEBI. According to RIL however, such interpretation is erroneous and does not give true and fair view.

(c) *Accordingly, even if there are two interpretations to AS 20, then there is no question of penalizing persons who have adopted one of the two interpretation.*

H. ***The difference between the reported DEPS and as computed by SEBI is negligible and would have no impact***

In the instant case, even if it is assumed (without admitting) that the interpretation adopted by SEBI in the computation of DEPS is correct and that of RIL is incorrect, it is submitted that the difference between the DEPS as computed by SEBI and RIL is very negligible with the difference between the reported DEPS by RIL being on the higher side than that computed by SEBI to the extent of 0.45% to 3.71%. This marginal difference in the reported DEPS is not bound to impact the decisions of the shareholders or prospective investors in any manner whatsoever. It is also pertinent to note that none of the shareholders or prospective investors are before SEBI contesting the correctness of the computation of DEPS by RIL in this matter.

I. ***There is no justification for SEBI to impose penalty***

(a) *It is submitted that the Adjudicating Officer is statutorily mandated to take into consideration the following criteria specified in Section 23J of the SCRA while determining the quantum of penalty:*

a. *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
b. *the amount of loss caused to an investor or group of investors as a result of the default;*
c. *the repetitive nature of the default.*

(b) *In the instant case, even if it is assumed (without admitting) that there has been incorrect disclosure of DEPS, no mala fide can be attributed to RIL. There is no question of any disproportionate gain or unfair advantage made as the result of incorrect disclosure of DEPS. No amount of loss has been caused to an investor or group of investors as a result of incorrect disclosure of the DEPS. There is also no repetitive wrong disclosure of DEPS.*

(c) *Accordingly, it is submitted that it is not mandatory for the Adjudicating Officer to impose penalty every time he comes to the conclusion that any person may have failed to comply with the specified requirements under the SCRA.*

7. Subsequent to the appointment of the undersigned as AO, an opportunity of personal hearing was granted to the Noticee on March 27, 2018. The Noticee vide its letter dated March 22, 2018 requested for adjournment of the said hearing. Accordingly, the hearing was rescheduled on April 19, 2018. The said hearing was attended by Mr. Janak Dwarkadas (Senior Advocate), Mr. Rohan Rajadhyaksha, Ms. Sonali Mathur, Mr. Vivek Shetty, Ms. Tanvi Dattani, Mr. Ramachandran Venkatraman, Mr. Deepak Kabra, Mr. Amey Nabar, and Ms. Gitanjali Sharma on behalf of the Noticee. In the said hearing, the Noticee primarily re-iterated the submissions made vide its written submissions dated August 02, 2016, and further, copies of the following judgments relied upon by the Noticee were presented during the hearing –

i. Commissioner of Income Tax, Ahmedabad vs Reliance Petroproducts Pvt Ltd,
ii. Commercial Tax Officer, Rajasthan vs Binani Cements Ltd and another,
iii. Union of India vs Shiv Dayal Soin & Sons (P) Ltd and others,
iv. Khemka & Co. (Agencies) Pvt Ltd vs State of Maharashtra, and State of Mysre vs Guldas Narasappa Thimmaiah Oil Mills,
v. Commissioner of Income Tax, New Delhi vs East West Import and export (P) Ltd,
vi. The Member, Board of Revenue vs Arthur Paul Benthall, and
vii. M Venugopal vs Divisional Manager, Life Insurance Corporation of India Ltd, Machlipatnam, A.P. and Another.

8. Vide letter dated May 02, 2018, the Noticee made additional submissions as follows –

i. *The word "assume" which appears in paragraph 35 of AS 20 shall be constructed as a deeming fiction in law and must be taken to its logical conclusion. This principle has been enumerated in by the Supreme Court of India in M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. and Anr.(1994) 2 SCC 323):*

"11. The effect of a deeming clause is well-known. Legislature can introduce a statutory fiction and courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in this case of East End Dwellings Co. Ltd. v. Finsbury Borough Council that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs. In view of the amendments aforesaid introduced in Section 48 it has to be held that Regulation 14 referred to above in respect of termination of the service of an employee of the Corporation within the period of probation shall be deemed to be a rule framed under Section 48(2) (cc) having overriding effect over Section 2(oo) and Section 25-F of the Industrial Disputes Act."

9. As the Noticee contended that similar accounting methods are being followed by other entities and the same is in accordance with the norms of ICAI, one more opportunity of hearing was granted to the entity on November 22, 2018. During the course of the hearing, the Noticee was advised to submit any ruling or clarification issued by ICAI as regards the contentions raised by it. It is noted that though sufficient time was granted to the Noticee, no ruling or clarification has been submitted by it. The Noticee was granted one more opportunity to file additional written submissions in the matter. In this regard, Noticee vide their letter dated April 21, 2021 submitted the additional replies in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully examined the replies and submissions of the Noticee and the material available on record. The issues that arise for consideration in the present case are :

    a. Whether the Noticee failed to disclose correct diluted EPS in its Quarterly Financial Statements to stock exchange for six consecutive quarters ended June 2007, September 2007, December 2007, March 2008, June 2008 and September 2008 despite the existence of share warrants and thereby violated the provisions of Clause 41 of the Listing Agreement read with Sections 21, 23A and 23E of SCR Act, 1956?

    b. Does the violation, if established, attract monetary penalty under Section 23A and 23E of SCR Act, 1956?

    c. If yes, then what should be the quantum of penalty?

FINDINGS

11. RIL had issued 12 crore warrants to its promoters on April 12, 2007 which were convertible into equity shares within a period of 18 months with an exercise price of Rs. 1402/- per warrant entitling its holders to subscribe to equivalent number of equity shares of RIL. On October 03, 2008, the Board of Directors of RIL allotted 12 crores equity shares of Rs. 10/- each to the allottees, upon the exercise of warrants at the exercise price. The fact of issuance of warrants, its exercise price, and its pendency during the 6 quarters from June 2007 to September 2008 is not disputed by the Noticee.

12. In terms of Clause 41 of the Listing Agreement, companies are required to disclose both Basic and diluted EPS in the quarterly financial statements filed with the stock exchanges. As per Clause 50 of the Listing Agreement,

listed companies are required to prepare and disclose financial information after complying with all the Accounting Standards. Based on the facts and materials available on record, it is observed that the Quarterly Financial Statements of RIL filed with National Stock Exchange of India Ltd. (hereinafter referred to as "NSE") for the quarters ended June 2007 to September 2008, contained the same figures for Basic as well as diluted EPS despite the existence of share warrants. It is not disputed by the Noticee that the disclosures made during the quarter ended June 2007 to quarter ended September 2008 contained the same figures for diluted EPS as well as for Basic EPS and no separate diluted EPS was disclosed.

13. On perusal of the submissions of the Noticee, I note that one of the primary contentions of the Noticee relates to determination of fair value which is relevant for calculating diluted earnings per share for purposes of financial reporting. In this regard, I note that Paras 35 to 37 of AS 20 (Earnings Per Share) read as follows –

"35.For the purpose of calculating diluted earnings per share, an enterprise should assume the exercise of dilutive options and other dilutive potential equity shares of the enterprise. The assumed proceeds from these issues should be considered to have been received from the issue of shares at fair value. The difference between the number of shares issuable and the number of shares that would have been issued at fair value should be treated as an issue of equity shares for no consideration.

36. Fair value for this purpose is the average price of the equity shares during the period. Theoretically, every market transaction for an enterprise's equity shares could be included in determining the average price. As a practical matter, however, a simple average of last six months weekly closing prices are usually adequate for use in computing the average price.

37. Options and other share purchase arrangements are dilutive when they would result in the issue of equity shares for less than fair value. The amount

of the dilution is fair value less the issue price. Therefore, in order to calculate diluted earnings per share, each such arrangement is treated as consisting of:

(a) a contract to issue a certain number of equity shares at their average fair value during the period . The shares to be so issued are fairly priced and are assumed to be neither dilutive nor anti-dilutive. They are ignored in the computation of diluted earnings per share; and

(b) a contract to issue the remaining equity shares for no consideration. Such equity shares generate no proceed s and have no effect on the net profit attributable to equity shares outstanding. Therefore, such shares are dilutive and are added to the number of equity shares outstanding in the computation of diluted earnings per share.

Illustration VI attached to the Standard illustrates the effects of share options on diluted earnings per share."

14. From the above, it is noted that while computing diluted Earnings Per Share, as on the reporting date, a company should assume the exercise of dilutive options and other dilutive potential equity shares, such as, share warrants of the company, and the assumed proceeds from these issue of shares should be considered to have been received from the issue of shares at fair value. As per para 36 of AS-20, fair value for the purpose is the average price of equity shares during the period. It also provides that while every market transaction for an enterprise's equity shares could be included in determining the average price, as a practical matter, however, a simple average of last six months weekly closing prices are usually adequate for use in computing the average price. Accordingly, for the purpose of financial reporting as on quarters ended from June 30, 2007 to September 30, 2008, the fair value of the shares of RIL are as follows –

Quarter Ended	Preceding Six month Period		Average weekly closing prices during the preceding six months period (Rs.)	Exercise price of the underlying shares
	From	To		
30-Jun-07	01-Jan-07	30-Jun-07	1491.79	1402
30-Sep-07	01-Apr-07	30-Sep-07	1764.04	
31-Dec-07	01-Jul-07	31-Dec-07	2325.99	
31-Mar-08	01-Oct-07	31-Mar-08	2639.83	
30-Jun-08	01-Jan-08	30-Jun-08	2492.52	
30-Sep-08	01-Apr-08	30-Sep-08	2282.30	

15. It is observed from the above that the average of last six months weekly closing price have been considered for computing the average price as provided in para 36 of AS-20 read with Illustration VI of AS-20, and the said fair values during all the six quarters were found to be higher than the exercise price of Rs.1402. Since the warrants were outstanding during the period April 2007 to September 2008 and the fair value of the underlying shares during the period was more than the exercise price, the warrants had dilutive impact on the EPS, and accordingly, RIL should have disclosed diluted EPS computed as per the provisions of AS-20.

16. Para 37 of AS-20 provides that options and other share purchase arrangements are dilutive when they would result in the issue of equity shares for less than fair value. In the instant case, the share warrants were issued with an exercise price which is lower than the fair value of the underlying shares during the six quarters from quarter ended June 30, 2007 to September 30, 2008. Since the exercise price of the warrants was lower than the fair values for all six reporting periods, potential equity shares should be treated as dilutive. The following table shows the computation of dilution in EPS pursuant to issuance of share warrants by RIL. The below

table also contains columns showing diluted EPS after providing for potential equity shares pursuant to share warrants and the basic and diluted EPS actually disclosed by RIL and the difference thereto.

Quarter ended	No. of equity shares outstanding during the quarter (In Crore)	Net profit for the period (Rs. In Crore)	No. of potential equity shares (share warrants) outstanding during the period (in crore)	Fair value as per Para 36 of AS-20 (Average weekly closing prices during the preceding six months period (Rs.))	Excess of fair value over the exercise price(Rs.)	Effective potential equity shares (as adjusted against Fair value)(In Crore)	Total shares outstanding during the period including potential equity shares (In Crore)	Diluted EPS after providing for potential equity shares pursuant to share warrants (Rs.)	Basic and Diluted EPS as disclosed in RIL book (Rs.)	Difference (Rs.)	Difference in %

(A)	(B)	(C)	(D)	(E)	(F)=(E)-1402	(G)=(D) x(F)/(E)	(H)=(B) +(G)	(I)=(C)/ (H)	(J)	(K)=(J)-(I)	(L)=(K)/ (J)
June 2007	139.4	3264	12	1491.79	89.79	0.72	140.12	23.3	23.4	0.1	0.45%
Sep 2007	145.4	3837	12	1764.04	362.04	2.46	147.86	25.9	26.4	0.5	1.71%
Dec 2007	145.4	8079	12	2325.99	923.99	4.77	150.17	53.8	55.6	1.8	3.24%
Mar 2008	145.4	3912	12	2639.83	1237.83	5.63	151.03	25.9	26.9	1.0	3.71%
June 2008	145.4	4110	12	2492.52	1090.52	5.25	150.65	27.3	28.3	1.0	3.60%
Sep 2008	145.4	4122	12	2282.30	880.30	4.63	150.03	27.5	28.4	0.9	3.26%

17. It is noted from the SCN, that a minor discrepancy have been mentioned in Annexure – 2, wherein while calculating the fair value of shares for the quarter ending on June 2007, the closing price for the week ending on March 16, 2007 has not been included. However, it does not have a material bearing in the allegation against the Noticee as the error is insignificant (difference as mentioned in column (L) for the quarter ending June 2007 will change from 0.45% to 0.41%).

18. In view of the above, it is observed that the Noticee did not disclose correct diluted EPS in its Quarterly Financial Statements to stock exchange for six consecutive quarters ended June 2007, September 2007, December 2007, March 2008, June 2008 and September 2008 despite the existence of

dilutive share warrants in accordance with the provisions of Clause 41 of the Listing Agreement.

19. The notice also contended that:

a. On 29.08.2013, the Companies Act, 2013 ("2013 Act") was notified and the 2013 Act consolidated and amended the law relating to companies. Pursuant thereto, companies like the Noticee, hitherto governed by the 1956 Act, came to be governed by the 2013 Act.

b. One of the accounting standards notified in IndAS is 'Ind AS 33 – Earnings Per Share'. The said accounting standard Ind AS 33. It is pertinent to note that both AS 20 (under the 1956 Act) and Ind AS 33 (under the 2013 Act) deal with the same subject of computation of Earnings Per Share. The provisions of AS 20 and Ind AS 33 are basically similar. However, there are some significant changes that are found in Ind AS 33 when compared and contradistinguished with AS 20.

c. A comparative analysis of the relevant portions of AS 20 and Ind AS 33, which deal with the situations when warrants are dilutive was provided by the Noticee in its reply dated April 21, 2021.

AS20	**Ind AS 33**
35. For the purpose of calculating diluted earnings per share, an enterprise should assume the exercise of dilutive options and other dilutive potential equity shares of the	45. For the purpose of calculating diluted earnings per share, an entity shall assume the exercise of dilutive options and warrants of the entity. The assumed proceeds from these

enterprise. The assumed proceeds from these issues should be considered to have been received from the issue of shares at fair value. The difference between the number of shares issuable and the number of shares that would have been issued at fair value should be treated as an issue of equity shares for no consideration.	instruments shall be regarded as having been received from the issue of ordinary shares at the average market price of ordinary shares during the period. The difference between the number of ordinary shares issued and the number of ordinary shares that would have been issued at the average market price of ordinary shares during the period shall be treated as an issue of ordinary shares for no consideration.
36. Fair value for this purpose is the average price of the equity shares during the period. Theoretically, every market transaction for an enterprise's equity shares could be included in determining the average price. As a practical matter, however, a simple average of last six months weekly closing prices are usually adequate for use in computing the average price.	46. Options and warrants are dilutive when they would result in the issue of ordinary shares for less than the average market price of ordinary shares during the period. The amount of the dilution is the average market price of ordinary shares during the period minus the issue price. Therefore, to calculate diluted earnings per share, potential ordinary shares treated as consisting of both the following:
37.Options and other share purchase arrangements are dilutive when they would result in the issue of equity shares for less than fair	(a) a contract to issue a certain number of the ordinary shares at their average market price during

value. The amount of the dilution is fair value less the issue price. Therefore, in order to calculate diluted earnings per share, each such arrangement is treated as consisting of: (a) a contract to issue a certain number of equity shares at their average fair value during the period. The shares to be so issued are fairly priced and are assumed to be neither dilutive nor antidilutive. They are ignored in the computation of diluted earnings per share; and (b) a contract to issue the remaining equity shares for no consideration. Such equity shares generate no proceeds and have no effect on the net profit attributable to equity shares outstanding. Therefore, such shares are dilutive and are added to the number of equity shares outstanding in the computation of diluted earnings per share.	the period. Such ordinary shares are assumed to be fairly priced and to be neither dilutive nor antidilutive. They are ignored in the calculation of diluted earnings per share. (b) a contract to issue the remaining ordinary shares for no consideration. Such ordinary shares generate no proceeds and have no effect on profit or loss attributable to ordinary shares outstanding. Therefore, such shares are dilutive and are added to the number or ordinary shares outstanding in the calculation of diluted earnings per share.

Appendix VI illustrates the effects of share options on diluted earnings per share. NONE	47 Options and warrants have a dilutive effect only when the average market price of ordinary shares during the period exceeds the exercise price of the options or warrants (i.e. they are 'in the money'). Previously reported earnings per share are not retroactively adjusted to reflect changes in prices of ordinary shares.

d. From the above comparative analysis, the following position emerges:

(i) Paragraph 45 and 46 of Ind AS 33 are similar to paragraphs 35 to 37 of AS 20 ; and

(ii) Paragraph 47 of Ind AS 33 is conspicuous by its absence in AS 20.

e. Paragraph 47 of Ind AS 33 is very critical for the dispute under adjudication in as much as it now specifically provides as to when warrants are dilutive. It provides thus:

(i) Options and warrants have a dilutive effect only when the average market price of ordinary shares during the period exceeds the exercise price of the options or warrants;

(ii) Options and warrants have a dilutive effect only if those options and warrants are 'in the money'; and

(iii) Previously reported earnings per share are not retroactively adjusted to reflect changes in prices of ordinary shares.

f. The dispute under adjudication is whether the market price of ordinary shares to be considered for comparing it with the exercise price of the warrants should be

(i) the price that prevailed at the time of issue or warrants or

(ii) the price that is prevalent during the reporting period.

g. The answer to this question is not categorically and explicitly provided for under AS 20. However, paragraph 47 of lnd AS 33 now categorically and explicitly provides that the warrants are dilutive only if they are *'in the money'.* The term 'in the money' though not defined in lnd AS 34, is a commonly used financial jargon in the derivatives market across the world. A warrant is in-the-money when the exercise price is less than the current market price. Resultantly, for a warrant to be 'in the money', its exercise price should be less than the current market price and not any past market price. Thus, the market price that prevailed at the time of issue of warrants are not relevant to ascertain whether the warrants are dilutive. It is only the market price prevalent at the time of computation of DEPS is relevant to ascertain whether the warrants are dilutive or not.

h. Thus, Ind AS 33 through insertion of a new paragraph 47 (which hitherto was missing in AS 20) has clearly provided as to when a

warrant will be dilutive. The benefit of this prescription under Ind AS 33 was not however available to the Noticee at the time of preparation and presentation of its financial results for the quarters June 2007, September 2007, December 2007, Marcha 2008, June 2008 and September 2008.

i. Applying the well-recognized "Mischief Rule" of interpretation of statutes, it is evident that paragraph 47 in lnd AS 33 is inserted in the new Statute with an object to cure or remove the mischief i.e. the ambiguity that existed in the prior Statute (being AS 20). In view of the ambiguity that existed in the law as it existed then (AS 20), no fault could be attributed to the Noticee.

20. With regard to the said contentions raised by the Noticee, it is pertinent to note that there appears to be no substantial difference between AS 20 and lnd AS 33 as reproduced above. Both deal with the same aspect except the fact that lnd AS 33 has one more paragraph added to explain it as a separate item. Compared to this the earlier provision of AS 20 was more in the nature of a self-contained provision and subsequest illustrations also clarify the provision with examples. In view of the same, the contention of the Noticee that the SCN is the result of the wisdom gained in hind sight i.e., it was an attempt to apply the provisions of lnd AS 33 cannot be accepted. AS-20 in spirit imbibed all the parameters of Ind AS-33.

21. I note that the Noticee has submitted that there is no dilutive effect on the EPS due to the warrants on the grounds that the fair value of the underlying equity shares during the time of issuance of warrants (Rs. 1252.69 per share) was lower than the exercise price (Rs. 1402 per share), and that it had disclosed the correct diluted EPS in the quarterly financial statements during the period from quarter ended June 30, 2007 to September 30, 2018. I further note that the Noticee in its written submissions had submitted as follows -

*"(d) The warrants were issued in accordance with the then prevailing SEBI (Disclosure and Investment Protection) Guidelines, 2000 ("**DIP Guidelines**"). The exercise price of Rs. 1402/ - per share was fixed m accordance with the DIP Guidelines at the higher of -*

(i) The average of the weekly high and low of the closing prices of RIL shares during the six months preceding the relevant date and

(ii) The average of the weekly high and low of the closing prices of RIL shares during the two weeks preceding the relevant date.

(e) Such average of the share price of RIL during six months preceding the relevant date was Rs. 1252/ 69 per share and during two weeks preceding the relevant date was Rs. 1401/ 98 per share."

22. In this regard, attention may be drawn to the SEBI (Disclosure and Investment Protection) Guidelines, 2000 ('**SEBI DIP Guidelines**') which prescribes that when warrants are issued on a preferential basis with an option to apply for and be allotted shares, the issuer company shall determine the price of the resultant shares (i.e. the exercise price) by following the pricing formula that is prescribed for the determination of the issue price of shares issued on preferential basis, and the said pricing formula stipulates that the issue price shall not be less than the higher of the following –

i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date;

OR

ii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

23. From the submissions of the Noticee, I note that the Noticee has claimed that for arriving at the fair value of shares at the time of issuance, they have considered the minimum issue price formula stipulated in the SEBI DIP Guidelines. In this regard, I note that the contention of the Noticee cannot be accepted due to the following - a) the disclosure of diluted EPS has to be

done as per the provisions of AS-20, and the fair value to arrive at the diluted EPS also has to be computed as per the provisions of AS-20(Para 36); b) the formula prescribed in the SEBI DIP Guidelines for issuance of warrants only prescribes the minimum issue price for securities (i.e. warrants, shares) issued on preferential basis, and the same cannot be considered as the fair value for the purpose of disclosure of diluted EPS; c) if the Noticee's contention regarding adoption of the SEBI DIP Guidelines pricing formula for determination of fair value is to be accepted, there would never be a requirement to disclose diluted EPS for listed companies on account of issue of warrants as the fair value so determined would never be higher than the exercise price, in other words it is implausible to derive both the fair price(for the purpose of AS-20) and the minimum issue price(for the purpose of SEBI DIP Guidelines) from the same pricing formula (viz. the formula of SEBI DIP Guidelines).

24. Regarding the figure of fair value computed by the Noticee, I also find that the value determined as Rs. 1252.69 in the Noticee's submission (i.e. average of the weekly high and low of the closing price of RIL during six months preceding the relevant date), was for a specific purpose, namely, for arriving at the exercise price of share warrants and is not relevant for subsequent reporting periods. Such price so computed for determining the exercise price of share warrants as per SEBI guidelines cannot be applied and has no relevance while calculating diluted earnings per share for on-going financial reporting purposes in compliance with the requirements of AS-20 (Earnings Per Share). Accordingly, I find that the claim of the Noticee that Rs. 1252.69 was the fair value for calculating diluted EPS is not tenable.

25. The Noticee has submitted that "*The exercise price of Rs. 1402/- was higher than the fair value of the RIL shares at the time of issuance of warrants i.e. Rs. 1252/ 69 per share*". The Noticee also contended that insisting on adherence to DIP guidelines at the time of issue of warrants and subsequently insisting on adherence to different valuation method for disclosures is nothing but shifting the goal post by SEBI as and when it suits it. This argument is totally devoid of merit as at the time of issue of the warrants SEBI insists on strict adherence to the preferential issue guidelines so that the issue is fairly priced in accordance with the average of the price of the scrip during the relevant period. The same argument justifies the

subsequent requirement that adequate disclosures regarding the dilutive effect of the warrants as reflected in the difference between fair price and exercise price have to be clearly disseminated so that investors can take well informed investment decisions. In this context, in a changing scenario of trading in the stock exchanges, disclosures regarding the value of shares can never be static. So the dilutive effect of the outstanding shares in warrant with that of the prevailing market price of the traded shares on the stock exchange would vary depending on the movement of the price of the share on the stock exchange.

26. The Noticee has contended that the computation of diluted EPS by it is harmonious with SEBI DIP Guidelines. It was submitted that the DEPS should be calculated only once at the time of the issuance of the warrants and once the existence or otherwise of any free shares (out of the warrants) is determined at the time of issuance of warrants, that figure remains constant for the calculation of DEPS for all the quarters during the tenure of the warrants. In this regard, as already explained in paragraph 22 above, I note that the exercise price of share warrants are to computed in accordance with the SEBI DIP guidelines, while the DEPS has to be computed in accordance with the provisions of AS – 20. Accordingly, I find no merit in the above submissions of the Noticee. Further, if the Noticee's contention regarding adoption of the SEBI DIP Guidelines pricing formula, for determination of fair value is to be accepted, then there would never be a requirement to disclose the Diluted EPS for listed companies on account of issue of warrants, as the fair value so determined would never be higher than the exercise price of the warrants. This would obviate the need for computing or disclosing diluted EPS for listed companies in the context of warrants.

27. The Noticee has submitted that any dilution of EPS in order to be meaningful should only be calculated based on unadjusted or unaffected prices existing before the announcement of the preferential offer and offer price thereof and this is the reason that any dilution thereof should be checked only once i.e. at the time of the preferential offer. It has further submitted that any calculation of DEPS with adjusted market prices (adjusted for the effect of the announcement of preferential issue) will result in wrong depiction of diluted EPS thereby

affecting the true and fair view of the financial statement and sending wrong signals to the investors. In this regard, I note that the calculation of diluted EPS is not a one-time exercise and has to be computed for all reporting period.

28. The Noticee has submitted that Clause 41 of the Listing Agreement does not even mention or refer to AS 20 while it makes references to other Accounting Standards such as to other Accounting Standards such as AS-17 issued by the Institute of Chartered Accountants of India (ICAI) relating to Segment Reporting, (b) 'Accounting Standard 5' issued by the ICAI relating to Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies. The Noitcee has further submitted that Clause 41-IV(f) of the Listing Agreement provides that "*The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 (AS 25 - Interim Financial Reporting) issued by the Institute of Chartered Accountants of India (ICAI) / Company (Accounting Standards) Rules, 2006, whichever is applicable*." In this regard, I note that as per Clause 50 of the Listing Agreement, listed companies are required to prepare and disclose financial information after complying with all the Accounting Standards. Hence, a reiteration of the above requirement in Clause 41 of the Listing Agreement is not warranted. Further, the AS-20 itself states that "This Accounting Standard is mandatory for all companies"; the only exception being that the disclosure of diluted earnings per share (both including and excluding extraordinary items) is not mandatory for Small and Medium Sized Companies, as defined in the Notification. From perusal of the above, it is clear that AS-20 is the basis on which the computation and presentation of EPS and diluted EPS has to be done for the purpose of disclosure under Clause 41 of the Listing Agreement. Accordingly, I find no merit in the contentions of the Noticee in this regard. In support of its contentions, the Noticee has submitted certain judgements of various courts to substantiate that the circumstances prevailing at the time of issue of the warrants have to be taken into account so as to determine the subsequent disclosures warranted under the Listing Agreement. The case laws submitted by the Noticee refer to factual situations different from the facts surrounding the present case. It is noted that the Noticee has not submitted any judicial precedent directly on

the issue of interpretation of AS20. Hence, I am of the view that the case laws cited by the Noticee do not support the contentions raised by it.

29. The Noticee has also submitted that quarterly financial results for certain quarters of some of the listed companies also show the same accounting treatment as adopted by RIL in computing, determining, and reporting the Basic and Diluted EPS. The Noticee has further submitted that "*RIL is also aware that few listed companies are following the method of computation of DEPS as per the interpretation of SEBI*". It is noted from the contentions raised by the Noticee it is adopting similar accounting practices. The Noticee also contended that the interpretation of the accounting standard is in line with the interpretation given by ICAI. In view of the said submissions, the Noticee was granted an opportunity to obtain a confirmation or clarification from ICAI. In this regard the Noticee submitted that, it did not find any clarification issued by ICAI on AS 20.

30. The Noticee has *inter alia* submitted that the joint statutory auditors have certified that RIL had complied with provisions of accounting standards and that the DEPS disclosed in the profit and loss account reflect a true and fair view of the state of affairs of the company and is also in compliance with all the accounting standards. In this regard, I note that the disclosures made by the Noticee in the quarterly financial statements, during the quarter ended June 2007 to quarter ended September 2008 contained the same figures for Diluted EPS as well as for Basic EPS and no separate Diluted EPS was disclosed. I further note that the diluted EPS has to be computed in the manner as laid out in AS – 20 (Earnings per Share). As detailed in paragraph 16 above of this order, the Diluted EPS were different from the Basic EPS during the quarter ended June 30, 2007 to September 30, 2008. In view of the above, I find that the Noticee did not disclose the correct diluted EPS for the abovementioned quarters and thus the above grounds of the Noticee cannot be accepted.

31. The Noticee has contended that the compliance with the accounting standard is in the domain of Section 211 of the Companies Act, 1956 and for any alleged non-compliance thereof, the

Ministry of Corporate Affairs can only be the competent authority for enforcement. The Noticee has further submitted that SEBI has no jurisdiction to regulate compliance of provisions of Section 211 of Companies Act, 1956. In this regard, I note that Clause 41 of the Listing Agreement mandates listed companies to disclose both Basic and Diluted EPS in the quarterly financial statements filed with the stock exchanges. As observed from above, RIL failed to disclose the correct diluted EPS in its quarterly financial statements for the quarter ended June 30, 2007 to September 30, 2008 to the stock exchanges. Accordingly, I find that the aforesaid failure by the Noticee, is in violation of Clause 41 of the Listing Agreement read with Section 21 and 23E of the SCRA, 1956, and SEBI has the purview to initiate enforcement actions in this regard.

32. The Noticee has submitted that penalty under Section 23A(a) of the SCRA can be imposed only in circumstances where there is a failure to disclose the information and not where there is a bona fide disclosure made, even if the said disclosure is considered to be incorrect. The Noticee has further submitted that "*Even assuming (strictly without admitting and only for the sake of argument) that the computation of the DEPS was not in accordance with AS 20, the same does not amount to a failure to disclose the DEPS, as contemplated under Section 23A(a) of the SCRA*". In this regard, it is observed that the despite the existence of warrants, and the warrants having a dilutive effect on the EPS, the Noticee had disclosed the same figures for Diluted EPS as well as for Basic EPS. I further note that the Hon'ble Supreme Court in its order dated March 7, 2017 in the matter of Bonanza Biotech Ltd vs SEBI, *inter alia* referred to the observation of the expert group constituted by SEBI under the chairmanship of Late Mr. Justice M.H.Kania, former Chief Justice of India. The expert group inter alia observed as follows - "*as per the provisions of Chapter VIA of SEBI Act, SEBI can impose monetary penalty for failure to furnish information or delay in furnishing information. However, there is no provision for monetary penalty for giving false information*". Having regard to these observations, the Hon'ble Supreme Court, set aside the order of Hon'ble Securities Appellate Tribunal as not sustainable.

33. I note that one of the penal provisions in the present adjudication proceedings is Section 23A of SCR Act, 1956 which is analogous to the provisions of Section 15A of SEBI Act, 1992. I note that Section 15A(a) of the SEBI Act, 1992 prescribes the penalty for not furnishing documents, returns or reports to SEBI, and the penalty ensuing out of the same was subject to litigation in the Hon'ble Supreme Court in the matter of Roofit Industries Ltd. The said matter was decided by the Hon'ble Supreme Court vide Order dated November 26, 2015 as regards the quantum of penalty under section 15A(a) of the SEBI Act, 1992. The same issue was again dealt by the Hon'ble Supreme Court in the case of Siddharth Chaturvedi v. SEBI and thereafter in the judgement in Adjudicating Officer Vs Bhavesh Pabari vide Order dated February 28, 2019.

34. Further, I note that with regard to furnishing false, incorrect or incomplete information, document, books, return or report, the provisions of Section 23A of SCR Act, 1956 were amended by the Finance Act, 2018 w.e.f March 08, 2019 with prospective effect only. Hence being ex post facto law, provisions of Section 23A of SCRA cannot be made applicable with retrospective effect in the present matter.

35. The Noticee in its submissions has contended that Section 23E of SCRA, 1956 is applicable only in case of a failure to comply with the listing conditions by a company managing 'collective investment schemes' or 'mutual fund' and is not attracted in cases of other companies. With regard to the above contention of the Noticee, I note that the provisions of Section 23E of SCRA, 1956 reads as, *"If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees".* A reading of the provisions of Section 23E of SCRA, 1956, makes it amply clear that apart from persons who are managing collective investment scheme or mutual fund, the said section is applicable to companies who fail to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof. Therefore, I find no merit in the above submissions of the Noticee. The Noticee's contention that Section 23E

of the SCRA is applicable only to companies which manage CIS or mutual fund is not tenable as the intention of the legislature to include within the ambit of the provision all listed companies is clearly apparent (whether or not it manages CIS or mutual fund). If the intention of the legislature was to restrict the applicability of Section 23 of the SCRA only to companies managing CIS or mutual funds, then the said section would have directly started with "Any person managing CIS or mutual fund..." and the words "a company" would not have been expressly enumerated in the said section.

36. The Notice has inter alia contended that even if it is assumed (without admitting) that the DEPS computed by the Noticee is incorrect, the difference between the Diluted EPS as computed by SEBI and RIL is very negligible and the difference was to the extent of 0.45% to 3.71%. In this regard I note that the Noticee was disclosing the same figures for the diluted EPS and Basic EPS in its financial statements for six consecutive quarters between June 30, 2007 to September 30, 2008, essentially portraying that there was no dilution in the earnings per share, when in fact the same was not the case.

37. The Noticee has inter alia submitted that *"In the instant case, even if it is assumed (without admitting) that there has been incorrect disclosure of DEPS, no mala fide can be attributed to RIL. There is no question of any disproportionate gain or unfair advantage made as the result of incorrect disclosure of DEPS. No amount of loss has been caused to an investor or group of investors as a result of incorrect disclosure of the DEPS. There is also no repetitive wrong disclosure of DEPS".* The Noticee has further submitted that it is not mandatory for the Adjudicating Officer to impose penalty every time he comes to the conclusion that any person may have failed to comply with the specified requirements under the SCRA, 1956.

38. In view of the aforesaid observations, facts and records of the case, I am of the opinion that aforesaid failure by the Noticee, is in violation of Clause 41 of the Listing Agreement read with Section 21 of the SCRA, 1956. The aforesaid violations make the Noticee liable to penalty under 23E of SCRA. In this regard, the Hon'ble Securities Appellate Tribunal in the

matter of Suzlon Energy Ltd. vs SEBI vide its order dated May 03, 2021 held that the penalty imposed under 23E of SCRA is erroneous on the basis of the following findings::

> *"That Section 23E has nothing to do with the violation of the provisions of listing agreement (esp. clause 36). Section 23E applies where a company fails to comply with listing/delisting conditions or grounds or commits breach thereof. Section 23E refers to the conditions which are imposed on a company while applying for listing of its shares on Stock Exchange. Section 23E has to be read a/w Rule 19 of the SCR Rules which provides certain requirements w.r.t. listing of securities. Further, Rule 19A provides for requirements of a company to continuously maintain listing requirements."*

39. As per Hon'ble SAT, failure to comply with these listing agreement under clause 36 attracts penalty under Section 23A(a) of SCRA and not under Section 23E of the Act. While it is noted that SEBI has filed an appeal in the matter before the Hon'ble Supreme Court, no stay has been granted by the Supreme Court in the matter.

40. Considering the same as well as considering the fact that the amendment with regard to furnishing false, incorrect or incomplete information, document, books, return or report, made punishable under the provisions of Section 23A of SCR Act, 1956 effected by the Finance Act, 2018 with effect from March 08, 2019 came into effect only with prospective effect, I am of the view that no penalty is warranted in terms of the said provisions in the present adjudication proceedings. Hence, the present adjudication proceedings are disposed of without imposition of penalty.

41. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to SEBI.

Place: Mumbai **BIJU S.**

Date: September 20, 2021 **ADJUDICATING OFFICER**