

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2020-21/9992-9994]

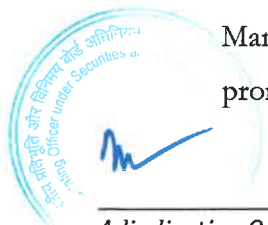
UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

1. Mr. Prannoy Roy
2. Ms. Radhika Roy
3. M/s RRPR Holding Pvt. Ltd.

In the matter of New Delhi Television Limited

1. New Delhi Television Limited (hereinafter referred to as 'NDTV' / 'Company') is a listed company, whose scrip is listed on Bombay Stock Exchange Limited ('BSE') and National Stock Exchange Limited ('NSE'). Securities and Exchange Board of India ('SEBI') received complaint dated August 26, 2017 from Quantum Securities Pvt. Ltd. relating to the loan agreements signed between Mr. Prannoy Roy (hereinafter referred to as 'Noticee No. 1'), Ms. Radhika Roy (hereinafter referred to as 'Noticee No. 2') and RRPR Holding Pvt. Ltd. (hereinafter referred to as 'RRPR' / 'Noticee No. 3') (the Noticees No. 1, 2 and 3, hereinafter together referred as 'Noticees') as one party and ICICI Bank Ltd (hereinafter referred to as 'ICICI Bank') as another party and between the Noticees, as one party and Vishvapradhan Commercial Private Limited (hereinafter referred to as 'VCPL') as another party. Accordingly, the SEBI conducted an investigation to ascertain whether there was any violation of the provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act') and other regulations related to securities market by the Noticees in relation with their entering into loan agreements with ICICI Bank and VCPL.
2. The relevant findings and allegations against the Noticees, as observed from the investigation report are as follows:
 - 2.1 Mr. Prannoy Roy, Noticee No. 1, Ms. Radhika Roy, Noticee No. 2 and RRPR Holding Pvt. Ltd., Noticee No. 3 are the sole promoters of NDTV. Further, Noticee No. 1 and 2 are Chairman and Managing Director of NDTV, respectively. Also, Noticees No. 1 and 2 are the directors and sole promoters of Noticee No. 3.



2.2 The allegations against the Noticees have been made with respect to following three loan agreements:

- A. Loan agreement dated October 14, 2008 entered between Noticee No. 3 and ICICI Bank (hereinafter referred to as '**ICICI loan agreement**').
- B. Loan Agreement dated July 21, 2009 entered between the Noticees and VCPL [hereinafter referred to as '**VCPL loan agreement (2009)**'] for lending an amount of Rs. 350 crores (Rupees Three Hundred and Fifty Crores) by VCPL to Noticee No. 3.
- C. Loan Agreement dated January 25, 2010 entered between the Noticees and VCPL [hereinafter referred to as '**VCPL loan agreement (2010)**'] for lending an amount of Rs. 53.85 crores (Rupees Fifty-Three Crores and Eighty-Five Lakhs) by VCPL to Noticee No. 3.

2.3 **ICICI loan agreement:**

A brief summary of findings and allegations with respect to ICICI loan agreement is as follows:

- a. It was observed that a corporate rupee term loan facility agreement was entered into between RRPR and ICICI Bank on October 14, 2008. It was also observed that on August 06, 2009, an amended agreement for prepayment of the said loan was entered into between the Noticees and ICICI Bank. Further, ICICI loan agreement also make a mention of certain "Undertaking Documents". The relevant clauses of the said ICICI loan agreement are reproduced herein: -

(a) Corporate Rupee Loan Facility Agreement.

SCHEDULE-III SPECIAL CONDITIONS

...

...

(c) OTHER SPECIAL CONDITIONS

...

...

(2)The Borrower undertakes not to and shall ensure that the promoters do not permit any merger, de-merger, consolidation, reorganisation, scheme or arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstitution of New Delhi Television Limited without the prior written approval of the Lender.

(3)The Borrower shall ensure that in the event of any restructuring of New Delhi Television Limited, at least 63% of the shares of each of the resultant entities shall be placed under the Non Disposal Arrangement or under some similar arrangement by the Borrower and/or Promoters and/or such other shareholders as may be required by ICICI Bank.

- b. It was observed from Schedule-III of the ICICI Loan agreement, that the promoters of the Company viz, the Noticees, *prima facie*, agreed not to permit any merger, demerger, consolidation, reorganization, scheme or arrangement or compromise with its creditors or



shareholders or effect any scheme of amalgamation or reconstitution of NDTV without the prior written approval of ICICI Bank Limited.

- c. It was observed that the ICICI loan agreement had clauses which imposed certain restrictive conditions which were binding on the Company and required the approval of ICICI Bank before undertaking any corporate restructuring. It *prima facie* appears that the same adversely affected the interest of public shareholders of NDTV. Therefore, it was alleged that the ICICI loan agreement was material and price sensitive in nature and should have been disclosed to the Company by the Noticees, however, the Noticees failed to disclose the information regarding ICICI loan agreement to NDTV.
- d. Since the information regarding said ICICI loan agreement was not made available in public domain by the Noticees, it was alleged that the said information was concealed by the Noticees from the public, while Noticees No. 1 and 2 transferred/received shares of NDTV to/from Noticee No. 3 in their off-market deals. In the absence of material information relating to ICICI loan agreement being available to the public, the public shareholders were not in a position to take an informed decision regarding dealing in the scrip of NDTV during the relevant period. Therefore, it was alleged that by concealing such material information, while dealing in shares of the company, the Noticees have, *prima facie*, committed fraud on the minority public shareholders of the Company.

2.4 VCPL loan agreement (2009)

A brief summary of findings and allegations with respect to VCPL loan agreement (2009) is as follows:

- a. It was observed that a loan agreement dated July 21, 2009 was entered between VCPL ('lender') and the Noticees, wherein, VCPL extended a loan of Rs. 350 crores to the Noticee No. 3, subject to terms and conditions as mentioned in the said agreement. It was alleged that the loan agreement entered by the Noticees with VCPL contained certain clauses related to NDTV which, *prima facie*, appear to be material and price sensitive. The said loan agreement allegedly contained various restrictive clauses which were binding on NDTV in such a way that it could adversely affect the interests of public shareholders of NDTV. The relevant clauses of the said ICICI loan agreement are reproduced herein:

Loan Agreement

At the Borrower's request, subject to the terms and conditions set out in this Agreement, the Lender agrees to lend and advance to the Borrower and the Borrower agrees to borrow the sum of Rs.350,00,00,000 (Rupees Three Hundred and Fifty Crore only) (being, the Loan). The Loan shall not carry any interest.

Notwithstanding anything contrary in this Agreement, the Loan disbursed shall be repayable on the Maturity Date.

3. AUTHORISED PURPOSE

The Borrower shall utilize the Loan in full for repayment of an existing loan availed by the Borrower from ICICI Bank Limited pursuant to a loan agreement executed between ICICI Bank Limited and the Borrower dated 14th October 2008.

6. WARRANT AND OPTION

6.1 The Borrower shall issue a convertible warrant (the "**Warrant**"), convertible into Equity Shares aggregating to 99.99% of the fully diluted Share Capital of the Borrower at the time of conversion, to the Lender immediately upon execution of this Agreement. The Warrant shall be subject to the terms and conditions set out in Schedule 1.

6.2 The Lender shall have the right to purchase from the Promoters all the Equity Shares of the Borrower held by the Promoters at par value.

6.3 The Lender and its Affiliates shall not purchase shares of NDTV which will increase their holding in the aggregate to more than 26 percent of the paid up Equity Share Capital of NDTV without the consent of the other Parties.

9. CONDITIONS PRECEDENT

9.2 The Borrower and the Promoters having undertaken the following actions in a form and substance satisfactory to the Lender:

(c) Completion of the due diligence to the satisfaction of Lender of (i) investment of US\$ 85 million by NDTV Four Holdings Limited in NDTV Studios Private Limited (ii) the ability to transfer to NDTV and utilize US \$ 85 million either by merger of NDTV Studios Private Limited with NDTV or by any other method to the satisfaction of Lender

(e) Sale of 1,15,63,683 (one crore fifteen lakhs sixty three thousand six hundred & eighty three only equity shares of NDTV from the Promoters to the Borrower such that upon such sale the Borrower holds 1,63,05,404 (one crore sixty three lakhs five thousand four hundred & four only) Equity Shares of NDTV aggregating to 26% of the equity share capital of NDTV (adjusted for Adjustment Events) & such transfer qualifying under Regulation 3(1) of the Securities & Exchange Board of India (SAST) Regulations, 1997 (as amended, varied or supplemented from time to time).

SCHEDULE I

TERMS OF THE WARRANT

(a) At the sole option of the Lender, the Warrant may be converted, into such number of Equity Shares at par aggregating to 99.99% of the fully diluted Equity Share Capital at the time of conversion of the Borrower at any time during the tenure of the Loan or thereafter without requiring any further act or deed on the part of the Lender.

SCHEDULE 2

REPRESENTATIONS AND WARRANTIES

6. Assets

(a) The Borrower does not own or hold any assets other than 47,41,721 (Forty-seven lakhs, forth one thousand seven hundred and twenty-one only) Equity shares of NDTV.

SCHEDULE 3 PRIOR CONSENTS

2. Matters relating to NDTV or NDTV Group which require prior written consent of the Lender

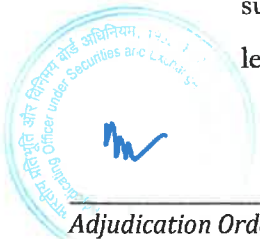
- (a) Issue any Equity Securities of NDTV which results in the aggregate valuation of NDTV being less than Rs 1346 crores (valuation at which Lender has put money into the Company);
- (b) Merger, amalgamation or consolidation of NDTV with any other entity;
- (c) Cause NDTV or any Person in NDTV Group to take any steps towards bankruptcy, insolvency or reorganisation, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief

with respect to it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or all or any substantial part of its property.

(d) *Buy back of Equity Securities, reduction or alteration of the share capital of NDTV;*

(e) *Take any action to issue any Equity Securities or enter into any agreement as a result of which the Promoters cease to be in sole control of NDTV or the NDTV Group.*

- b. The aforementioned loan was taken by the Noticee No. 3 on July 21, 2009 to repay the previous loan taken by it from ICICI Bank on October 14, 2008. It was observed that the VCPL loan agreement (2009) did not carry any interest rate on the loan while the loan taken by Noticee No. 3 from ICICI Bank carried an interest rate of 19.0%.
- c. As per Clause 6 of the VCPL loan agreement (2009), Noticee no. 3 was required to issue 'convertible warrants' to VCPL, which were convertible into equity shares aggregating to 99.99% of share capital of Noticee No. 3 at the time of conversion. Further, as per the terms of the said agreement, VCPL, at its sole option, was entitled to convert warrants into equity shares of Noticee No. 3 at any time during the tenure of the loan.
- d. Further, as per Clause 9 of the said agreement, one of the pre-condition for the execution of VCPL loan agreement (2009) was that the promoters of Noticee No. 3 and also of NDTV *viz*, Noticees No. 1 and 2 shall transfer 1,15,63,683 shares of NDTV to Noticee No. 3 so that the total shareholding in NDTV held by Noticee No. 3 increases from 47,41,721 shares to 1,63,05,404 shares, which were 26% of equity share capital of NDTV at the time of execution of VCPL loan agreement (2009). It was observed that at the time of execution of VCPL loan agreement (2009), Noticee No. 3 did not own any assets other than 47,41,721 shares of NDTV.
- e. There were certain other pre-conditions in the VCPL loan agreement (2009), which appear to be material and price sensitive with respect to the scrip of NDTV, such as the completion of due diligence by VCPL of the investment by the NDTV Four Holdings Limited of US\$ 85 million in NDTV Studios Private Limited and the ability to transfer to NDTV and utilize US \$ 85 million either by merger of NDTV Studios Private Limited with NDTV or by any other method to the satisfaction of VCPL.
- f. Further, Schedule 3 of the said agreement makes a mention of matters pertaining to NDTV or NDTV Group for which prior approval of VCPL was required to be taken. Such matters are given in Para 2 of Schedule 3 of the VCPL loan agreement (2009) and includes matters such as issue of equity shares of NDTV, which results in aggregate valuation of NDTV being less than Rs. 1346 crores (valuation at which VCPL put money into the Company), buyback



of equity shares by NDTV, merger, amalgamation or consolidation of NDTV with any other entity etc.

- g. Based on the aforesaid observations, it was alleged that the VCPL loan agreement (2009) had certain clauses which imposed certain binding conditions on NDTV and which, *prima facie*, required prior written consent of VCPL for such matter pertaining to NDTV. This, *prima facie*, affected the interest of public shareholders of NDTV. Therefore, the VCPL loan agreement (2009) was material and price sensitive in nature and the same ought to have been disclosed to NDTV by the Noticees, who in turn should have disclosed the same to the stock exchanges. It was observed from the submissions of the Noticees that the VCPL loan agreement (2009) and the salient features thereof were disclosed by Noticee No. 1 to NDTV during the Board meeting of NDTV held on August 05, 2015. Therefore, it was alleged that the VCPL loan agreement (2009) was not disclosed by the Noticees to the Company in a timely manner and was disclosed with a huge delay on August 05, 2015. It was also observed that NDTV failed to disclose the aforementioned price sensitive information to its shareholders.
- h. Since the information regarding VCPL loan agreement (2009) was not made available in public domain by the Noticees, it was alleged that the said information was concealed by the Noticees from the public, while Noticees 1 and 2 transferred/received shares of NDTV to/from Noticee No. 3 in off-market transactions. In the absence of material information relating to VCPL loan agreement (2009) being available to the public, they were not in a position to take an informed decision regarding dealing in the scrip of NDTV. Therefore, it was alleged that by concealing such material information while dealing in shares of the company, Noticees have, *prima facie*, committed fraud on the minority public shareholders of the company.

2.5 VCPL loan agreement (2010)

A brief summary of findings and allegations with respect to VCPL loan agreement (2010) is as follows:

- a. It was observed that the loan agreement dated January 25, 2010 between VCPL and the Noticees was entered between the parties for providing an additional loan of Rs. 53.85 crore by VCPL to Noticee No. 3. It was also observed that major conditions pertaining to the VCPL loan agreement (2009) were applicable in the agreement dated January 25, 2010 also, such as the promoters of NDTV permitting VCPL to acquire indirectly 30% shares of NDTV through conversion of warrants into equity shares of Noticee No. 3, not to allow any corporate action such as merger, amalgamation, buyback etc. in the scrip of NDTV without the prior written



consent of VCPL etc. The relevant clauses of the said ICICI loan agreement are reproduced herein:

Loan Agreement

At the Borrower's request, subject to the terms and conditions set out in this Agreement, the Lender agrees to lend and advance to the Borrower and the Borrower agrees to borrow the sum of Rs.53,85,00,000 (Rupees Fifty Three Crore and eighty five lakhs only) (being, the Loan). The Loan shall not carry any interest. Notwithstanding anything contrary in this Agreement, the Loan disbursed shall be repayable on the Maturity Date.

3. AUTHORISED PURPOSE

The Borrower shall utilize the Loan in full only for investment purposes.

6. WARRANT AND OPTION

6.1 The Borrower shall issue a convertible warrant (the "Warrant"), convertible into Equity Shares aggregating to 99.99% of the fully diluted Share Capital of the Borrower at the time of conversion, to the Lender immediately upon execution of this Agreement. The Warrant shall be subject to the terms and conditions set out in Schedule 1.

6.2 The Lender shall have the right to purchase from the Promoters all the Equity Shares of the Borrower held by the Promoters at par value.

6.3 The Lender and its Affiliates shall not purchase shares of NDTV which will increase their holding in the aggregate to more than 30 percent of the paid up Equity Share Capital of NDTV without the consent of the other Parties.

9. CONDITIONS PRECEDENT

9.2 The Borrower and the Promoters having undertaken the following actions in a form and substance satisfactory to the Lender:

(c) Sale of 25,08,524 (Twenty Five lakhs eight thousand five hundred and twenty four only) equity shares of NDTV from the Promoters to the Borrower such that upon such sale the Borrower holds 1,88,13,928 (one crore eighty eight lakhs thirteen thousand nine hundred and twenty eight only) Equity Shares of NDTV aggregating to 30% of the equity share capital of NDTV (adjusted for Adjustment Events) & such transfer qualifying under Regulation 3(1) of the Securities & Exchange Board of India (SAST) Regulations, 1997 (as amended, varied or supplemented from time to time).

SCHEDULE I

TERMS OF THE WARRANT

(a) At the sole option of the Lender, the Warrant may be converted, into such number of Equity Shares at par aggregating to 99.99% of the fully diluted Equity Share Capital at the time of conversion of the Borrower at any time during the tenure of the Loan or thereafter without requiring any further act or deed on the part of the Lender.

SCHEDULE 3

PRIOR CONSENTS

2. Matters relating to NDTV or NDTV Group which require prior written consent of the Lender

- (a) Issue any Equity Securities of NDTV which results in the aggregate valuation of NDTV being less than Rs 1346 crores (valuation at which Lender has put money into the Company);*
- (b) Merger, amalgamation or consolidation of NDTV with any other entity;*



(c) Cause NDTV or any Person in NDTV Group to take any steps towards bankruptcy, insolvency or reorganisation, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or all or any substantial part of its property.

(d) Buy back of Equity Securities, reduction or alteration of the share capital of NDTV;

(e) Take any action to issue any Equity Securities or enter into any agreement as a result of which the Promoters cease to be in sole control of NDTV or the NDTV Group.

- b. Based on the aforesaid observations, it was alleged that the VCPL loan agreement (2010) had certain restrictive clauses which imposed certain binding conditions on NDTV and which, *prima facie*, required prior written consent of VCPL for such matter pertaining to NDTV. This, *prima facie*, affected the interest of public shareholders of NDTV. Therefore, the VCPL loan agreement (2010) was material and price sensitive in nature and the same ought to have been disclosed to NDTV by the Noticees, who in turn should have disclosed the same to the stock exchanges. It is observed from the submissions of the Noticees that the VCPL loan agreement (2010) and the salient features thereof were disclosed by Noticee No. 1 to NDTV at the Board meeting of NDTV held on August 05, 2015. Therefore, it was alleged that the VCPL loan agreement (2010) was not disclosed by the Noticees to the company in a timely manner and the same was disclosed with a huge delay on August 05, 2015. It was also observed that NDTV failed to disclose the aforementioned price sensitive information to its shareholders.
- c. Since the information regarding VCPL loan agreement (2010) was not made available in public domain by the Noticees, it was alleged that the said information was concealed by the Noticees from the public, while Noticees no. 1 and 2 transferred/received shares of NDTV to/from Noticee No. 3 in off-market. In the absence of material information relating to VCPL loan agreement (2010) being available to the public, they were not in a position to take an informed decision regarding dealing in the scrip of NDTV. Therefore, it was alleged that by concealing such material information while dealing in shares of the company, Noticees have, *prima facie*, committed fraud on the minority public shareholders of the company.

2.6 In view of aforementioned observations with regard to the three loan agreements, it was alleged that the aforesaid acts of the Noticees, who are the promoters of the Company, were fraudulent act on their part and thereby the Noticees allegedly violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4 (1) of the PFUTP Regulations.

2.7 Further, as per the said *Code of Conduct* for Board of Directors and senior management of the Company, Noticees No. 1 and 2 were expected to comply with all applicable laws, rules and regulations and engage in and promote honest and ethical conduct which is free from fraud or deception. However, it was alleged that by concealing material information regarding the said three loan agreements from the Company and minority public shareholders and at the same time also



dealing in the scrip of NDTV, the Noticees no. 1 and 2 dealt in a fraudulent manner and therefore, they allegedly failed to comply with the *Code of Conduct* specified by NDTV. It was therefore alleged that, as a promoter-director of the Company, Noticees No. 1 and 2, failed in their fiduciary responsibility towards the Company, its Board as well as shareholders of the Company. It was also alleged that the Noticees No. 1 and 2 gave false affirmation in the Annual report of NDTV for FY 2008-09 and FY 2009-10 about compliance with the *Code of Conduct* during the same period. Therefore, Noticees No. 1 and 2 have allegedly failed to comply with the *Code of Conduct* specified by NDTV for its Board members under Clause 49(I)(D) of Listing Agreement read with Section 21 of SCRA.

3. By a *communication-order* dated January 07, 2020, this case which was pending before erstwhile Adjudicating Officers, was transferred to the undersigned with an advice that except for the change of the Adjudicating Officer, the other terms and conditions of the original orders '*shall remain unchanged and shall be in full force and effect*'.
4. On receipt of records, it was noted that on being *prima facie* satisfied that there are sufficient grounds to inquire and adjudicate certain alleged violations of the provisions of the SEBI Act, the SCRA, the PFUTP Regulations and the Listing Agreement, by the respective Noticees, SEBI, vide a *communication - order* dated March 19, 2018, appointed Shri Suresh B. Menon, Chief General Manager ('then AO'), under section 15I of the SEBI Act and under section 23I of the SCRA as adjudicating officer under Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') and under Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCRA Adjudication Rules'), to inquire and adjudge under section 15HA of the SEBI Act and Section 23H of the SCRA for the alleged violations of various provisions of the SEBI Act, the PFUTP Regulations and Equity Listing Agreement read with section 21 of the SCRA by the Noticees. The relevant provisions of the SEBI Act, the PFUTP Regulations and Equity Listing Agreement read with section 21 of the SCRA are as follows:

Equity Listing Agreement

49. CORPORATE GOVERNANCE

The company agrees to comply with the following provisions:

I. Board of Directors

...

(D) Code of Conduct

(i) The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.



(ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.

SCR Act

Conditions for listing.

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

SEBI Act

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

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

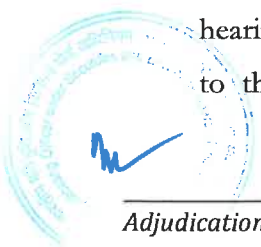
4. Prohibition of manipulative, fraudulent and unfair trade practice

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

5. Accordingly, in terms of Rule 4(1) of the SEBI Adjudication Rules and the SCRA Adjudication Rules read with section 15I of the SEBI Act and section 23(I) of the SCRA, the notice to show cause no.

SEBI/EAD-1/SBM/25307/1-3/2018 dated September 05, 2018 (hereinafter referred as 'SCN') was issued to the Noticees by the then AO, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the SEBI Adjudication Rules and the SCRA Adjudication Rules and penalty be not imposed under Section 15HA of the SEBI Act and under Section 23H of the SCRA for the aforesaid alleged violations of the provisions the SEBI Act, the PFUTP Regulations and Equity Listing Agreement read with section 21 of the SCRA by the Noticees.

6. The SCN was duly served upon the Noticees *via* Speed Post Acknowledgement Due. Vide letters dated September 25, 2018, the Noticees No. 1, 2 and 3 submitted that DMD Advocates will be their authorized representatives in the instant proceedings and also requested for inspection of all the documents/ records, including internal file noting's, relevant to or supporting or adverse to the charges of facts made in the SCN. Vide letters dated October 08, 2018, then AO granted inspection of documents to the Noticees and the authorized representative of the Noticees had undertaken the inspection of the relied upon documents, investigation report and its annexures on October 30, 2018. Thereafter, in terms of Rule 4(3) of the SEBI Adjudication Rules and the SCRA Adjudication Rules, then AO granted an opportunity of personal hearing to the Noticees on January 10, 2019, however, vide e-mail dated Advocate Pawan Sharma, DMD Advocates submitted that the inspection of the file containing the decision of the competent authority to appoint Adjudicating Officer in the matter and the internal file noting's has not been granted to the Noticees and thus, requested to fix the hearing only after the granting the complete inspection of documents to the Noticees.
7. Subsequently, by a communique dated March 25, 2019, this case was transferred to Shri Santosh Shukla (hereinafter referred to as 'erstwhile AO') upon transfer of then AO with the advice that except for the change of the Adjudicating Officer, the other terms and conditions of the original orders '*shall remain unchanged and shall be in full force and effect*' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*". Thereafter, vide hearing notice dated May 29, 2019, the erstwhile AO in terms of Rule 4(3) of the SEBI Adjudication Rules and the SCRA Adjudication Rules, granted an opportunity of personal hearing to the Noticees on June 19, 2019. In the aforesaid notice, the erstwhile AO communicated to the Noticees his decision of rejecting the request of inspection of internal file noting's of the Noticees and noted that - since all the relevant material relied upon in the instant proceedings have been provided to the Noticees, the request for further inspection of non-material and non-relevant documents as requested in e-mail dated January 08, 2019 has been declined. Accordingly, vide e-mail dated June 04, 2019, Advocate Pawan Sharma, DMD Advocates requested for 4 weeks' time to file the reply to the SCN on behalf of the Noticees and adjourn the hearing till first week of July, 2019. Considering the same, another opportunity of hearing was granted to the Noticees and same held on July 10, 2019. On scheduled date of hearing, Authorised



Representative of the Noticees submitted that the Noticees filed an appeal before the Hon'ble Securities Appellate Tribunal ("SAT") against the order dated June 14, 2019 of the learned Whole Time Member ("WTM") of SEBI in the parallel proceedings on same charges and allegations against the Noticees. He further submitted that the instant matter is on same identical facts which are pending adjudication by Hon'ble SAT and therefore, the instant proceedings may be kept on hold till disposal of aforesaid appeal by Hon'ble SAT. He further requested for granting two weeks' time to file replies of the respective Noticees to the SCN. The erstwhile AO recorded in the hearing minutes of said date that there is no embargo on instant proceedings by Hon'ble SAT and allowed two weeks' additional time to the Noticees for filing replies to the SCN. After several reminders the Noticees finally filed their replies to the SCN on August 23, 2019.

8. Thereafter, another opportunity of hearing was availed by the Noticees before erstwhile AO on September 11, 2019, wherein authorized representatives of the Noticees reiterated their earlier submission regarding matter pending before Hon'ble SAT and hearing was adjourned accordingly. Further, vide letter dated November 07, 2019, request of the Noticees regarding inspection of internal file notings made earlier and during hearings before erstwhile AO was rejected mentioning the judgements of Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh v. Directorate of Enforcement* [(2010) 2 SCC 497] and *Chandrama Tewari v. Union of India, Through General Manager, Eastern Railways*, (1988) 1 SCR 1102, wherein it was held that it is not necessary that each and every document must be supplied to the Noticee facing charges. Only material and relevant documents are necessary to be supplied. Since, all relevant material relied upon in the instant proceedings have been provided to the Noticees, the erstwhile AO found the request as not reasonable.
9. Subsequently, since January 07, 2020, the instant proceedings are inquired and adjudged by the undersigned. In accordance with the principle of natural justice and in terms of Rule 4(3) of the SEBI Adjudication Rules and the SCRA Adjudication Rules, another opportunity of personal hearing was granted to the Noticees on March 20, 2020, which was later adjourned due to ongoing pandemic situation. Meanwhile, the Noticees again reiterated their earlier request of inspection of internal file noting, which was rejected vide e-mail dated March 04, 2020. Thereafter, several opportunity of hearings were granted to the Noticees and finally hearing with respect to the Noticees in the matter got concluded on November 05, 2020. During such hearings the Noticees were represented by Ms. Fereshte D Sethna, Advocate, Mr. Adhiraj Malhotra, Advocate and Mr. Shreyash Taparia, Advocate (hereinafter together referred as 'ARs') The details of all the hearing before me are tabulated as follows:

Date of Hearing	Brief Submissions by the ARs	Brief Records of Hearing
20 March, 2020	ARs reiterated their request for re-inspection of all the documents and/ or	Inspection request rejected referring to earlier communications made in this regard

	material collected by the SEBI preceding/ during/ following investigations, including but not limited to internal file notings, orders/directions and statements recorded. (E-mail dated March 03, 2020)	by erstwhile AO. Hearing adjourned due to ongoing pandemic. (E-mail dated March 04, 2020)
11 August, 2020	ARs submitted that the matter not appropriate for virtual hearing, owing to complex legal issues and thus, requested for adjournment of hearing due to lockdown environment in State of Maharashtra until August 31, 2020. (E-mail dated August 10, 2020)	Hearing Adjourned for month of September.
11 September, 2020	ARs submitted that the matter not appropriate for virtual hearing, owing to complex legal issues and thus, requested for adjournment of hearing due to lockdown environment in State of Maharashtra until September 30, 2020. Reiterated request for inspection of records. (E-mail dated September 10, 2020)	Request of inspection of document rejected. There is no restriction on movement as per the Government of Maharashtra order No. DMU/2020/CR. 92/DisM-1 dated August 31, 2020. Therefore, the request of adjournment was not acceded to and hearing was held through webex, although same was also schedule in person. ARs insisted on hearing in person, therefore, considering the request of the ARs and in the interest of natural justice a last opportunity of hearing is given to the Noticee on September 17, 2020 at 3 PM onwards.
17 September, 2020	Hon'ble SAT vide its order dated June 18, 2019, has stayed the effect and operation of the impugned order dated June 14, 2019 passed by WTM in the identical matter under section 11B of the SEBI Act, till the next date of hearing. The hearing was conducted by Hon'ble SAT later on February 24, 2020 and April 21, 2020 and the stay is continuing. The final order of Hon'ble SAT in the instant matter is awaited. The ARs contested that the ongoing adjudication proceedings are	In support of continuance of the instant adjudication proceedings, pending Hon'ble SAT appeal, a ruling dated August 09, 2019 of Hon'ble SAT in the matter of Reliance Industries Limited was relied upon and it was ordered to provide the copy of the said order to the Noticees through email and the hearing was adjourned. The Noticees were allowed to file their written submission on the limited point related to the ruling of Hon'ble SAT, by September 25, 2020.

	equally covered by the said SAT order and this case is not fit for further proceedings.	
23 October, 2020	The matter could not reach to hearing due to arguments under another hearing with respect to NDTV in another SCN dated August 20, 2020, wherein the same ARs were appearing.	The hearing is adjourned with the consent of the ARs to October 27, 2020 to begin at 11 AM onwards till the conclusion.
27 October, 2020	The ARs made oral submissions at length and requested for the adjournment.	The hearing is adjourned with the consent of the ARs to November 05, 2020 to begin at 11 AM onwards till the conclusion
November 05, 2020	The ARs made oral submissions at length and requested that a written submission compiling with contents and submissions of all the previous replies will be filed within 3 weeks.	Hearing stands concluded. The request of ARs was considered and time to file written submissions by November 23, 2020 is granted.

10. After seeking additional time of one week, the Noticees filed their written submission on December 03, 2020 and filed a corrigendum to their written submission on December 07, 2020. The Noticees inter-alia made following submissions in their reply and post hearing submissions as under:

- a. SEBI Investigation Report No. IVD/ID9/2014-15/18 (First Investigation Report) in the year 2014-15 already considered the substantive allegations set forth in the SCN, to conclude a full exoneration of the Noticees. The Noticees are entitled to, and rely on the findings of the SEBI First Investigation Report, accordingly. It is apparent from the SCN juxtaposed against the SEBI letter at Annexure 1 that allegations concerning the Promoter Group *inter se* shareholding off market transfers have previously been examined and rejected. In particular, it has been duly considered by the SEBI that the Promoters had filed non- applicability reports under regulation 3(1)(e)(i) and an exemption was duly granted. Despite that finding in favour of the Noticees, and the plethora of information and records already available to SEBI, the SCN erroneously alleges concealment of such transfers, and alleges fraud, deception, failure of the Promoters to promote honest and ethical conduct.
- b. Similarly, the SEBI letter at Annexure 1, examines the allegation of 'change of control' in pursuance of the VCPL loan agreement, and after examining the VCPL loan agreement rejects it on the basis that "*As per the disclosures made on BSE website, RRPR is disclosed as a promoter of NDTV from September 2008 till date.*" The allegations in the SCN that purportedly restrictive covenants in the loan agreements bound NDTV and/or the alleged failure to disclose these loan agreements has precluded the public shareholders from being in a position to take an informed decision, are therefore *ex facie* erroneous and misconceived.

- c. The material variation in interpretation placed by the SCN on loan covenants previously examined in the year 2014-15 by SEBI specifically in the context of the VCPL loan facility entered into by RRPR Holdings Pvt. Ltd., whether concerning completion of due diligence by VCPL and/or ostensible convertible warrants and/or the terms of the VCPL loan as compared with the ICICI loan, cannot by virtue of a fallacious purported re-interpretation, render the Noticees liable to a fresh adjudicatory process. Principles analogous to *res judicata* and/or constructive *res judicata* have full force and application, and must operate to bar the SCN, in law.
- d. The SCN relies on an underlying purported Investigation Report dated 12 February 2018, which bears out a 'change of opinion' by SEBI, without new facts or evidence whatsoever, and which is thus and otherwise wholly impermissible, in law, and which was preceded by a SEBI letter dated 21 July 2017.
- e. The true legal scope, ambit and interpretation of the loan agreements dated 21 July 2009 and 25 January 2010 executed by the Noticees with VCPL ("Subject Loans") are *sub judice* before the Hon'ble SAT in Appeal Nos.294, 295 & 296 of 2019, filed by the Noticees, arising out of a prior SCN dated 14 March 2018, which had culminated in SEBI order dated 14 June 2019. The SEBI order dated 14 June 2019 inter alia concludes that: "...loan agreements with VCPL wrested control of NDTV to VCPL...", but has been stayed by order of the Hon'ble Tribunal on 18 June 2019. The 'stay' order of 18 June 2019 granted by the Hon'ble Tribunal, specifically records: "...Whether there was a violation of the SEBI laws including the PFUTP regulations are all required to be considered...". The ad-interim stay granted by the Hon'ble Tribunal vide order dated 18 June 2019 continues till date, with the next date of hearing scheduled for 13 January 2021.
- f. Parallel factual allegations in the SCN concerning the Subject Loans are contained in the prior SEBI SCN dated 14 March 2018, and as such, in circumstances where the order of the SEBI dated 14 June 2019 is 'stayed', adjudication of the present SCN will warrant fresh adjudication of the facts, since there is no jurisdictional fact in existence to support any requirement for disclosure of the loan agreement(s), much less allegations of fraud and/or concealment and/or actions adversely affecting the interest of the public shareholders of NDTV. Such a course of action, if adopted, by the Learned Adjudicating Authority prior to the date when the Hon'ble Tribunal disposes of the pending appeals (scheduled to be heard on 13 January 2021, or such other subsequent date as the current pandemic COVID-19 may cause the matter to stand adjourned to), will cause grave risk of inconsistent outcomes and perpetuate unwarranted multiplicity of proceedings.
- g. The Learned Adjudicating Authority purports to rely upon an order dated 9 August 2019 passed in the matter of *Reliance Industries Limited v. SEBI* [Appeal No.120 of 2017], wherein it was *inter alia* held as

follows: "...In our view simultaneous parallel proceedings can be initiated under Rule 4 of the Rule 1995 which is distinct and different from proceedings initiated under Section 11 and 11B of the SEBI Act, 1992. We, therefore, do not propose to stay the proceedings initiated under Rule 4 of the Rules 1995 pursuant to the notice dated November 21, 2017...", it appears to have no application to the facts of the present case.

- h. The ICICI loan agreement was executed in 2008, and the Subject Loan agreements were executed in 2009 and 2010, respectively, whereas the present SCN is issued on 5 September 2018, after a decade, without bearing cogent reasons as to the inordinate delay in issuance of the SCN. The delay in initiation of the SCN vitiates its validity, and constitutes illegal and unreasonable jurisdictional excess, thus tantamount to gross abuse of process and going to the root of jurisdiction to issue the SCN itself. Binding decisions of the Hon'ble SAT have consistently held that unreasonable delay must vitiate proceedings.
- i. The Noticees were granted inspection on 30 October 2018, when inspection of the investigation report along with its annexures was provided to the Noticees. The Noticees sought a copy of the investigation report, which came to be supplied, albeit without annexures. The Noticees further request for inspection of documents and/or material collected by the SEBI preceding the investigations, during the course of investigations and following the investigations, including but not limited to internal file notings, orders/directions and statements recorded, if any, in pursuance of issuance of the SCN, was rejected. In this regard, the Noticees has placed reliance on the judgements Hon'ble SAT in the matter of *Price Waterhouse v. SEBI* [SAT Appeal No.8 of 2011 – 1 June 2011], *Ms. Smitaben N. Shah v. SEBI* 2010 SCC OnLine SAT 24 and Hon'ble Supreme Court order in the matter of *Kashinath Dikshita v. Union of India & Ors.* (1986) 3 SCC 229.
- j. The assertion as to the interest of public shareholders of NDTV being affected through the ICICI loan or the Subject Loan remains entirely incomprehensible, in circumstances where the terms of loan covenants concerning the underlying security for the loan are boiler plate, secured in routine course, and there is no allegation in the SCN as to the basis on which the covenants operated or are capable of operating to the detriment of the public shareholders of NDTV in circumstances where it is bound to remain the common objective of both the lender and the borrower to ensure that no event should be permitted to jeopardize the value of the underlying collateral security, purely with a view to ensure that a lender is not left remediless in the event of a loan default.
- k. The Noticees have, at all material times, been and remain the registered legal and beneficial owners of their shareholding in NDTV, and also continue to remain directors of NDTV and in control of NDTV, and as such there is no scope to assert any manipulative or deceptive device or contrivance

or artifice, including but not limited to any purported purchase or sale of securities by virtue of the Subject Loan.

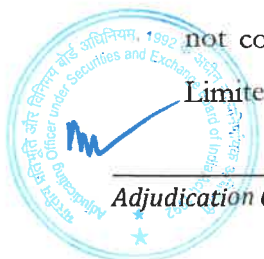
- l. The covenant imposed by ICICI legitimately sought to preserve the value of the collateral security, i.e. shareholding of NDTV, for a lender, in relation to public funds advanced to the borrower. Although paragraph 5.4 of the SCN asserts that for the reason that the ICICI loan agreement was material and price sensitive in nature and thus liable to disclosure to the company by the Noticees, and that there was failure to disclose such information to NDTV, significantly the Investigation Report runs to the contrary. These key findings bear relevance to the SCN, since it must follow that there is (A) no 'control' that came to be vested in ICICI Bank by virtue of the loan; and (B) there was no obligation to disclose the ICICI loan. In circumstances where covenants analogous to the ICICI Loan are contained in the VCPL Loans, neither can (A) 'control' be claimed to have vested in VCPL; nor (B) obligation to disclose the VCPL loan have arisen.
- m. The reasons for covenants mentioned in Schedule 3 of the Subject Loan is set out concerning "*Matters relating to NDTV or NDTV Group which require prior written consent of the Lender*" are entirely obvious from the standpoint of any lender, since it would be unreasonable to permit a corporate action to dilute or denude the value of the collateral security during the pendency of a loan - such an action would not be acceptable, whether to a State lender or a private lender, and is entirely usual business practice for such covenants to be in place when it comes to lending against the security of equity or preference shares, whether in listed or unlisted companies. It is a matter of industry practice for borrowers to execute loan agreements on terms dictated by lenders, since beyond negotiations around the commercial terms of loan amount, duration, interest rate and quality of collateral security with ancillary undertakings, there is scarcely any, if at all, negotiating room available to borrowers.
- n. In the absence of evidentiary basis in the SCN on which the ICICI loan or the Subject Loan has adversely affected the interest of the public shareholders of NDTV, the allegations in the SCN remains entirely ambiguous, vague, within the realm of speculation, conjecture and surmise, and thus incapable of being taken cognizance of by the Learned Adjudicating Authority. Since any default on the ICICI Bank Limited loan facility would have put to risk the controlling interest of the Noticees, it was strictly to preserve the interests of all stakeholders, and to discharge obligations to lenders, that the Noticees entered into the Subject Loan.
- o. The Noticees, on the contrary, have acted in manner that has preserved the interests of the public shareholders of NDTV, in that the Subject Loan was availed for repayment of the prior loan availed from ICICI Bank Limited, with a view to ensure against default in servicing loan obligations. It is not in dispute that funds availed from the Subject Loan were deployed towards the stated end-use. It is

fatally flawed, therefore, that an action adopted by the Noticees for preserving and safeguarding value in the NDTV scrip, through averting putting the collateral to risk, is misinterpreted in manner set forth in the SCN.

- p. The surmise that the loan covenants bind NDTV is completely erroneous, and overlooks elementary legal principles around corporate governance, with the nuance of interplay between shareholder rights and management rights. There is no evidentiary basis for the allegation in the SCN that the promoter directors, *viz.* Dr. Prannoy Roy and Mrs. Radhika Roy, who also held shares in NDTV, adopted any action that was in breach of fiduciary responsibilities owed to NDTV. *Ad hoc* inference is incapable of being legitimately drawn to the effect that on account of borrow against the security of shareholding in NDTV by the Noticees the discharge of fiduciary roles and responsibilities has been compromised. The Noticees has placed reliance on the judgement of *Rolta India Ltd. v. Venire Industries Ltd.* 2000 (3) *Mb. L.J.* 700; *Shrimati Jain v. Delhi Flour Mills Co. Ltd.* [1973 SCC OnLine Del. 137] in this regard.
- q. At the material time when the ICICI and/or VCPL loans were availed there was no obligation whatsoever upon the Noticees to disclose loan agreements, as the law then stood, and as such the SCN erroneously asserts that the Noticees are in violation of Clause 49(I)(d) of the Equity Listing Agreement and/or the Code of Conduct of NDTV. Further, there was no regulatory requirement for disclosure of loans availed by promoters of listed companies against collateral security comprised of equity shareholding in listed companies. As such, no scope arose for concealment of loan arrangements by the Noticees.
- r. The SCN fails to appreciate that the terms 'concealment', 'device' or 'contrivance' used in section 12A of the Act bear elements of *mens rea*, which are not borne out by the SCN. There is no evidence whatsoever contained in the Investigation Report and/or the SCN to support any alleged 'concealment', 'device' or 'contrivance', and as such it is apparent that the SCN is tainted by arbitrariness and perversity. The mere entering into of a loan agreement is not tantamount to contrivance or capable of being treated as a manipulative device or artifice, and the SCN fails to put forth any material beyond conjecture and surmise. Further, no gain is alleged to have accrued to the Noticees arising from any purported delay in disclosure of the loan agreements. The Noticees has placed reliance upon the judgements in the matter of *K.C. Builders v. CIT* (2004) 2 SCC 731; *Dilip N. Shroff v. CIT* (2007) 6 SCC 329; *Mohd. Ibrahim Azimulla v. CIT* [1980 SCC OnLine All 960] in this regard.
- s. The SCN levels an allegation of 'fraud' against the Noticees based on pure surmise and conjecture, with no iota or shred of evidence, much less appreciation of evidence allegedly collected during the investigation. It is settled law that inferential conclusions must be arrived at from proven and admitted facts. The Hon'ble Tribunal has held that allegations of 'fraud' ought to be based on evidence which

is admitted and glaring, and not mere preponderance of probabilities. Therefore, where the SCN is entirely bereft of facts or evidentiary basis to support 'fraudulent' conduct by the Noticees, there is no scope to take cognizance of the assertions in the SCN. The Noticees has placed reliance upon the judgements in the matter of *Price Waterhouse & Co. & Ors. v. SEBI [SAT Appeal No.6 of 2018 – 09.09.2019]* in this regard.

- t. The SCN has failed to appreciate that no convertible warrants were issued by the Noticee RRPR. Further, the loan covenants that protect the right of a lender in the event of default are not capable of being classified as 'fraud' without cogent basis, and none exists in the present case.
- u. In the instant case the Noticees are said to have knowledge of their own loan agreements which the market did not have and an *inter se* trade between them is alleged to be fraud. Both parties to this trade had identical access to information, i.e. no asymmetry whatsoever, and therefore have positively been absolved of the charge of insider trading. Further, the fact that they traded was promptly disclosed. It is pertinent to note that SEBI has not shown how this *inter se* transfer between the Noticees "*while having knowledge*" of the ICICI Loan Agreement has constituted "*fraud*" on minority public shareholders. It is submitted that in the absence of this, SEBI's allegation of fraud does not hold ground. Also, a trade between two promoters, evenly placed in respect of access, and conducted off-market trade can never be regarded as violative. In addition, no victims of the alleged fraud have been show. Therefore, by no stretch can one generically allege "fraud" in the instant case.
- v. When professional promoters of a listed company secure access to institutional funding such as the funding in the Loan Agreement, the development is a positive development and not an adverse development. Yet, inexplicably, a totally untenable proposition has been adopted in the SCN to summarily treat the loan agreements as being adverse. Likewise, when the Agreement was re-financed by way of VCPL Loan Agreement I and VCPL Loan Agreement 2 the effect can only be positive, and not to the detriment of the public shareholders.
- w. Clause 49(1)(D) of the Listing Agreement (extracted above) only required a listed company to formulate a Code of Conduct; table it before the Board of Directors; post it on the website; and for senior management and the Board to affirm compliance. There is nothing in the SCN to show which provision of the Code of Conduct stands allegedly violated by the Noticees for Clause 49(1)(D) of the Listing Agreement to be invoked.
- x. The SEBI (LODR) Regulations, 2015 ("LODR Regulations"), which were notified in 2015, i.e., well after the execution of the loan agreements would have no application whatsoever, and in any event do not contain disclosure obligations concerning the loan agreements entered into with ICICI Bank Limited and/or VCPL. Since disclosure of loan agreements entered into with ICICI Bank Limited or



VCPL is not contemplated thereunder, again, there was no omission on the part of the Noticees in relation to 'disclosure' obligations.

- y. The SCN is totally bald, devoid of substance and lacks necessary detail for the Noticees to be able to become aware as to what exactly is the case they are required to meet. It is submitted that the allegations of fraud are a serious matter and cannot be lightly taken in the light of the peculiar facts and circumstances of this case.
- z. The SCN is based refers to and relies upon a complaint dated 26 August 2017 by Quantum Securities Private Limited ("QSPL"). QSPL has a chequered history with the Noticee. QSPL had entered into advisory consultancy arrangements with NDTV, which eventually resulted in a bitter parting of ways. As a result of this acrimonious situation with QSPL, the Noticees and NDTV, have been subject to a multitude of complaints and actions, including defamatory statements at the behest of QSPL, leading to multiple litigations pursued by diverse statutory authorities and Courts of law. The mechanical issuance of show cause notices to the Noticees, premised on QSPL complaints, inconsistent with past findings of the SEBI, is bound to be rendered non est.
- aa. At the time of execution of the respective loan agreements there was no statutory or regulatory duty cast upon promoters of listed entities to disclose loan agreements either to the listed entities or to the stock exchanges. Pursuant to false rumors circulating in the media, Dr. Prannoy Roy duly clarified to NDTV, during a Board Meeting held on August 05, 2015, that there was no 'change in control' over NDTV, whether by virtue of the loan arrangements, or otherwise. Such clarification was voluntary, and purely to preclude speculation.
- bb. The Investigation Report, in reaching the conclusion that the VCPL loan agreements contained clauses binding NDTV, which were material and/or price sensitive in nature, and ought to have been disclosed and further that delayed disclosure adversely affected the interest of the public shareholders of NDTV, fails to appreciate that if the ICICI loan covenants did not bind NDTV, then the VCPL loan covenants too could not bind NDTV, and as such there was no scope for these being treated as material and/or price sensitive in nature. The observation in the Investigation Report concerning the ICICI loan agreement, that '*no violations of SAST Regulations, Listing Agreement and SCRA was observed*', must have equal application to VCPL.
- cc. Without prejudice to no material non-disclosure by the Noticees; in absence of deliberate and/or contumacious defiance of law, where there exists a technical or venial breach, coupled with *bona fide* belief and absence of *mens rea*, the adjudicating officer is liable to exercise discretion not to impose penal sanctions in pursuance of powers under Section 15J of the SEBI act and Section 23J of the SCRA.

11. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticees, documents produced by the Noticees and oral submissions made during the personal hearing before undersigned. Before dealing the case on merit basis, I would first deal with several preliminary technical/legal contentions raised by the Noticees as under: -

a. **Delay in issuance of SCN**

- i. The first contention is that in the instant proceedings the SCN is issued, after a decade, without bearing cogent reasons as to the inordinate delay in issuance of the SCN. In this regard, I note that complaint was received by SEBI on August 26, 2017 against the Noticees and the investigation was initiated in November, 2017. On February 12, 2018, the investigation in the matter got completed and final action was approved on February 14, 2018. After receiving the communication of appointment of the adjudicating officer ('AO') on March 19, 2018, the SCN was issued on September 05, 2018 by then AO. Further, initiating a proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of the fact finding exercise, which is the investigation done in this case, and just because the alleged violation was committed in a distant past cannot be a ground to vitiate initiation of these proceedings. Moreover, in this case the SCN makes a serious allegation of fraud under the PFUTP Regulations and although the alleged commission of fraud emanates from an agreement executed a decade ago, yet alleged fraudulent act continues even till date, as the said agreements are still in force. I, therefore, reject such contentions of the Noticees.
- ii. The Noticees have also contended that the delay in initiation of the SCN vitiates its validity, and constitutes illegal and unreasonable jurisdictional excess, thus tantamount to gross abuse of process and going to the root of jurisdiction to issue the SCN itself. The Noticees have placed reliance upon various judgements of Hon'ble Supreme Court, Hon'ble High Courts and Hon'ble SAT on the question of delay. In this regard, I note that there is no provision in the SEBI Act which lays down any limitation period for initiating any proceedings/ action under the SEBI Act. Therefore, citing such arguments are flawed in itself. For establishing the delay, if any, in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. Even in the case relied upon by the Noticees i.e. *State of AP Vs. N. Radhakrishnan (1998) 4 SCC 154*, regarding delay, Hon'ble Supreme Court has held that *it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case.* In *P. V. Mahadevan Vs.*

M.D., T.N. Hosuing Board (2005) 6 SCC 636, cited by the Noticees, the Hon'ble Supreme Court referring to N. Radhakrishnan's case (*supra*), decided the case in the context of the peculiar facts and circumstances in that particular case and therefore, this case renders no assistance to the Noticees. The aforesaid decision is not in contradiction or oppose to the decision in N. Radhakrishnan's case (*supra*).

- iii. I have perused the judgements pronounced by the Hon'ble SAT in *Subhkam Securities Private Limited Vs. SEBI* (Appeal no. 73 of 2012 decided on July 25, 2012), *Libord Finance Ltd. Vs. SEBI*, Appeal no. (165 of 2012 decided on March 31, 2008) and *HB Stockholdings Ltd. Vs. SEBI* (Appeal no. 112 of 2013 decided on August 08, 2013) and note that the decisions in these judgements, also endorses to the legal position regarding the delay, as stated in aforesaid paras. In fact, in *HB Stock Holding's case (supra)*, the Hon'ble SAT held that "*delay is not fatal in each and every case*". Further, in the case of *Ravi Mohan & Ors. Vs. SEBI (SAT Appeal No. 97 of 2014 decided on 16.12.2015)*, Hon'ble SAT while referring to its own decision in *HB Stock Holdings case (supra)* and decision of Hon'ble Supreme Court in the matter of *Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.)*, held as follows:

"...Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....."

- iv. I further observe that, the Hon'ble SAT in the matter of *Ashlesh Gunvantbhai Shah v. SEBI* made the following pertinent remarks:

"It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court [..]."



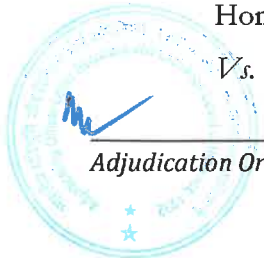
- v. I also note that, the Supreme Court recently in the case of Adjudicating Officer, *SEBI vs. Bhavesh Pabari* (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

- vi. In this regard I note that Hon'ble SAT has qualified the aforesaid ruling by saying that the reasonable period would depend on the facts and circumstances of each case and that no hard and fast rule can be laid down in this regard. I am of the view that present proceedings do not suffer from any infirmity on the ground of delay. I, therefore, hold that there is no protracted delay as contended and hence, the contention of the Noticee in this regard is rejected.

b. **Inspection of Documents**

- i. The Noticees have contended that principle of nature justice has not been followed in the instant proceedings as the Noticees request for inspection of documents and/or material collected by the SEBI preceding the investigations, during the course of investigations and following the investigations, including but not limited to internal file notings, orders/directions and statements recorded, if any, in pursuance of issuance of the SCN, was rejected. The Noticees has placed reliance on the judgements Hon'ble SAT in the matter of *Price Waterhouse v. SEBI* [SAT Appeal No.8 of 2011 – 1 June 2011], *Ms. Smitaben N. Shah v. SEBI* 2010 SCC OnLine SAT 24 and Hon'ble Supreme Court order in the matter of *Kashinath Dikshita v. Union of India & Ors.* (1986) 3 SCC 229, with regard to their aforesaid contention. In this regard, I note that subsequent to issuance of SCN, the Noticees had requested for the inspection of documents and same was availed by their authorized representative on October 30, 2018, wherein, their authorized representative had undertaken the inspection of the relied upon documents, investigation report and its annexures. Further, their request for re-inspection of internal file noting's and non-relied upon documents has been rejected multiple times by the erstwhile AO and the undersigned providing sufficient reason.
- ii. Moreover, in this context, it is a settled position of law that only the relied upon documents has to be provided for inspection to the Noticee and the same position has been upheld by the Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh v. Directorate of Enforcement* [(2010) 2 SCC 497], *Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways*, (1988) 1 SCR 1102 and *M/s Haryana Financial Corporation vs. Kailashchand Abuja* [2008(9) SCC31] and also by the Hon'ble SAT in number of its rulings. In the recent ruling of Hon'ble SAT in the case of *ShrutiVora Vs. Securities and Exchange Board of India*, in Appeal Number 28 of 2020 decided on February 12,



2020 held that “...The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon...”.

- iii. I also note that in the parallel proceedings before Ld. WTM, the Noticees had filed an appeal on similar issue of inspection before the Hon’ble Delhi High Court, wherein, the Hon’ble High Court vide its order dated August 29, 2018 (in *RRPR Holdings Pvt. Ltd. vs SEBI*) *inter alia* held that - *The SEBI shall ensure the inspection of all materials that have been investigated pertaining to the show cause notice, which is the subject matter of the investigation, is provided. However, if there is any confidential material concerning a third party, which too might be under investigation or other confidential material, which the SEBI feels would be prejudicial, it is open to it to segregate or de-tag such material while complying with the order.* The Noticees thereafter, further raised the matter of inspection by way of an application before the Hon’ble High Court contending that inspection of all materials as directed by the Hon’ble High Court has not been provided. However, such contention of the Noticees was not accepted by the Hon’ble High Court and accordingly the aforesaid application moved by the Noticees including their prayer for stay on the parallel proceedings before Ld. WTM was dismissed. Considering the aforementioned judgments and above fact, I am, of the view that since the copies of the relevant and relied upon material in the instant proceedings against the Noticees were provided to them along with the SCN and same were duly inspected by their authorized representative, no prejudice is caused to the Noticees on this account. Further, the Noticee’s reliance in rulings in the matter of *Price Waterhouse v. SEBI* [SAT Appeal No.8 of 2011 – 1 June 2011], *Ms. Smitaben N. Shah v. SEBI* 2010 SCC OnLine SAT 24 and *Kashinath Dikshita v. Union of India & Ors.* (1986) 3 SCC 229 is out of place and is not tenable. I, therefore, do not find any merit in the contentions of the Noticees.

c. Continuance of Adjudication Proceedings

- i. The Noticees has vehemently contended that, vide order dated June 18, 2019, the Hon’ble SAT has stayed the “effect and operation” of the impugned Ld. WTM order dated June 14, 2019 till the next date of hearing. Therefore, the order dated 18 June 2019 of the Hon’ble SAT is liable to be construed as having the legal effect of barring adjudication by SEBI on matters concerning the Promoter Loan Agreements, thus mandating that this adjudication be kept in abeyance pending



disposal of the pending appeals concerning the scope and ambit of the Promoter Loan Agreements, including alleged 'materiality' and/or price sensitive and/or binding conditions and/or disclosure requirement(s) purportedly affecting the interest of public shareholders of the Company. In this regard, I note that when a person violates the provisions contained in the SEBI Act and the regulations made there under, then SEBI may either initiate adjudication proceedings against that person under Chapter VIA of SEBI Act or issue directions in the interests of investors or securities market as it deems fit under Chapter IV of the SEBI Act or may initiate both the proceedings. I also note that the provisions of Section 11 & 11B of SEBI Act are different and independent of the provisions under Chapter VIA of the SEBI Act. Therefore, it does not preclude the Adjudicating Officer from initiating adjudication proceedings against the Appellants, even if an appeal is pending against an order under Section 11B before the Hon'ble SAT. In this regard, reliance is placed on Hon'ble SAT order dated August 09, 2019 in the matter of *Reliance Industries Limited vs SEBI*, wherein, in para 3 of the said order, it is held that - "*... In our view simultaneous parallel proceedings can be initiated under Rule 4 of the Rules of 1995 which is distinct and different from the proceedings initiated under Section 11 and 11B of the SEBI Act, 1992. We, therefore, do not propose to stay the proceedings initiated under Rule 4 of the Rules of 1995 pursuant to the notice dated November 21, 2017. We, however, permit the appellants and grant them four weeks' time to file reply to the notice issued by AO. We also direct the AO to consider the preliminary objection while deciding the matter on merits after giving the parties an opportunity of hearing ...*"

- ii. Similarly, with regard to pending appeals before Hon'ble SAT in parallel proceedings of SEBI, in its order dated February 28, 2018 in the matter of *Gurmeet Singh vs SEBI*, Hon'ble SAT has held that –

"Powers conferred on the WTM of SEBI under Section 11 & 11B of SEBI Act are different from the powers conferred on the Adjudicating Officer of SEBI to impose penalty for the violations enumerated in Chapter VIA of the SEBI Act. Therefore, fact that the appeals filed by the appellants against the order passed by the WTM of SEBI were pending before this Tribunal, did not preclude SEBI from initiating penalty proceedings against the appellants."

- iii. It can be inferred from the aforementioned Hon'ble SAT rulings that adjudication proceedings can continue pending appeal arising out of 11B order in Hon'ble SAT. With regard to the contention of the Noticee that vide order dated June 18, 2019, the Hon'ble SAT has stayed the effect and operation of the WTM order dated June 14, 2019, I note that, Hon'ble Supreme Court in the matter of *Shree Chamundi Mopeds Ltd. vs Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1* dated April 29, 1992 had held that - "*Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of*

operation of an order does not, however lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.” On perusal of the aforementioned order of Hon’ble Supreme Court and the interim order passed by the Hon’ble SAT, I am of the opinion that these adjudication proceedings can continue and an order on merits can be passed based on the material available on record, as the Hon’ble SAT in its interim order has only stayed the operation of the impugned order of Ld. WTM and not quashed the same.

d. Reference to another Investigation/ Examination Report:

- i. The Noticees has taken a reference of another investigation report of year 2014-15 and contended that the Promoter Group *inter se* shareholding off market transfers have previously been examined and violations under SEBI Regulations was rejected. The Noticees further contended that the investigation report dated February 12, 2018 bears a ‘*change of opinion*’ by SEBI, without new facts or evidence whatsoever, and which is thus and otherwise wholly impermissible, in law. In this regard, I note that in the earlier investigation by SEBI, the scope of investigation was with regard to violations of provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2003 (hereinafter referred to as ‘SAST Regulations’), Listing Agreements and SCRA. In the instant proceedings, the scope of investigation is with regard to violations of provisions of the PFUTP Regulations and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘PIT Regulations’). Further in para 5.1 of the investigation report dated February 12, 2018, the scope of the investigation has been clearly spelt out as – “*to ascertain whether (a) the agreement(s) entered into between RRPR and VCPL as well as between RRPR and ICICI Bank Ltd. were material, (b) there was any obligation on the part of the parties to the agreement(s) to disclose the same, (c) the said agreement(s) were price sensitive, (d) PR, RR and RRPR dealt in the scrip of NDTV while in possession of unpublished price sensitive information and (e) resultant possible violation of provisions of SEBI (PFUTP) Regulations, 2003 and SEBI (PIT) Regulations, 1992, if any*”.
- ii. In view of above, I note that the scopes of both the investigations are different and one investigation has no bearing on the findings of other investigation. Thus, I do not find merits in such contentions of the Noticees and note that the principles analogous to *res judicata* and/or constructive *res judicata* does not apply to the instant proceedings.

e. No allegations under PIT Regulations/ Vague SCN

- i. The Noticees has contended that the SCN does not allege violation of the PIT Regulations. Yet, evidently, in a perverse manner the SCN purports to allege violation only of the PFUTP Regulations, without any whisper of which provision of the PFUTP Regulations is attracted in

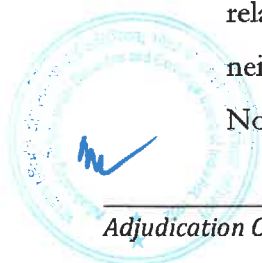


which manner. It must be noted that when the law contains specific special provisions to deal with a subject - in this case the PIT Regulations - it would not be open to ambiguously and vaguely allege "fraud" under the FUTP Regulations. In this regard, I note that the issue of violations of PIT Regulations or exonerating the Noticees for a violation of PIT Regulations in the instant matter during the investigation is not before me, I, therefore, reject such contentions of the Noticees.

- ii. I also note that, the SCN in the instant proceedings are issued for violations of SEBI Act, PFUTP Regulations, Listing Agreements read with SCRA and same has been clearly spelt out in the SCN. The salient and binding features of the impugned loan agreement, impugned off-market transactions by the Noticees, concealment of the material and price sensitive information by the Noticees from the Company and its minority shareholders, false affirmations regarding compliance of *Code of Conduct* of NDTV by Noticees No. 1 and 2 has been clearly brought out in the SCN. I also note that the charging provisions for aforementioned violations of SEBI Act, PFUTP Regulations, Listing Agreements read with SCRA under the SEBI Act and SCRA, respectively, has been mentioned in SCN and I note that there is no ambiguity regarding the same. The Noticees have placed reliance on the ruling of Hon'ble Supreme Court in *Gorkha Security Services v. Govt of NCT of Delhi & Ors. (2014) 9 SCC 105; Royal Twinkle Star Club Private Ltd. v. SEBI 2016 SCC OnLine SAT 16*. I have perused the said rulings in support of the Noticees contention and observe that the Hon'ble Supreme Court held that the consequence of non-compliance should be communicated to the Noticees in the show-cause notice. In the matter before me, I observe that consequence of failures was clearly communicated in the SCN to the Noticees and thus the ruling has no application. I therefore do not agree with the contention of the Noticee that the charge in the SCN is vague or not clear.

f. **Retrospective Application of SEBI Circular dated August 07, 2019 on encumbrance by promoter of listed entities**

I note that, through oral submissions during hearing and also in written submissions, the ARs vehemently submitted that the SEBI is trying to apply encumbrance circular dated August 07, 2019 on retrospective basis, whereas alleged violation is of period 2008-2010. In this regard, I note that nowhere in the SCN there is mention or an attempt to invoke the provisions of the said circular as argued by the ARs on behalf of the Noticees. I also note that the aforesaid argument flow from Non Disposal Undertakings facility given by ICICI Bank on October 23, 2008 and same was examined in another examination/ investigation, which was not a part of investigation related to instant proceedings. Considering the same, I note that any objection in this regard is neither relevant nor applicable in the instant proceedings and thus, such contentions of the Noticees are rejected hereby.



g. QSPL complaints due to chequered history with the Noticees

The Noticees has contended that the complainant QSPL has a chequered history with the Noticees and due to acrimonious relationship the Noticees and NDTV, have been subject to multitude of complaints and actions. In this regard, I note that complaint filed by the QSPL against the Noticees is only a basis to initiate the investigation. The findings of the investigation are based on the relied upon documents and which culminated into the instant proceedings due to the violations of certain provisions of the SEBI Act, PFUTP Regulations and Listing Agreements read with SCRA by the Noticees. In view of same, I reject the contentions of the Noticees with regard to mechanical issuance of SCN in the instant proceedings.

h. Mens rea not borne out by the SCN

- i. The Noticees in their submissions have contended that SCN fails to appreciate that the terms 'concealment', 'device' or 'contrivance' used in section 12A of the Act bear elements of *mens rea*, which are not borne out by the SCN. It is settled law, enunciated by the Hon'ble Supreme Court, that 'concealment' inherently carries elements of *mens rea*, and that a finding relating to 'concealment' can only be passed after appreciation of evidence gathered. In this regard the Noticees have placed reliance upon the Hon'ble Supreme Court judgements in the matters of *K.C. Builders v. CIT* (2004) 2 SCC 731; *Dilip N. Shroff v. CIT* (2007) 6 SCC 329; *Mohd. Ibrahim Azimulla v. CIT* [1980 SCC OnLine All 960]. In this regard, I note that Hon'ble SAT in its judgement in the matter of *Pyramid Saimira Theatre Ltd. v. SEBI* (2010) in which the ratio laid down by Supreme Court in *Chairman, Sebi v. Shriram Mutual Fund* (2006), that *mens rea* is not a *sine qua non* for establishing violation of chapter VIA of SEBI Act, was extended to all the provisions of SEBI Act and the PFUTP Regulations. It was also observed that the words indicated in the definition of 'fraud' under regulation 2(1)(c) of the PFUTP Regulations "*whether in a deceitful manner or not*" are significant and clearly indicate that intention to deceive is not an essential requirement of the definition of fraud. Further, Hon'ble Bombay High Court in *SEBI v. Skdc Consultants Ltd.* (2004) and in *SEBI v. Cabot International Capital Corporation* (2004) observed that as the imposition of the penalty under the SEBI Act and regulations is civil in nature and cannot be equated with penal character, *mens rea* is not essential for breaches of provisions of the SEBI Act and regulations.
- ii. It is also relevant to mention that the definition of 'fraud' under Regulation 2(c) of the PFUTP Regulation is a civil fraud as against criminal fraud and the prohibitions under Regulation 3 and 4 and consequent enforcement actions under Chapter VIA of the SEBI Act are also civil in nature. Thus, intention (*mens rea*) and proof beyond reasonable doubt are not indispensable requirements and the correct test to establish the charge under aforesaid provisions of the SEBI Act and PFUTP Regulations is one of preponderance of probabilities. Hon'ble Supreme Court, in *SEBI Vs.*



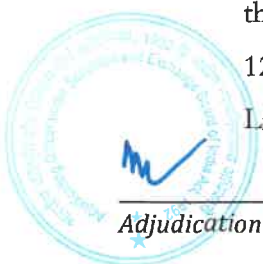
Kanaiyalal Baldev Bhai Patel (2018) 13 SCC 753 and SEBI Vs. Rakhi Trading Private Ltd. (2018) 13 SCC 753, has held as under:

“To attract the rigor of Regulations 3 and 4 of the 2003 Regulations, mensrea is not an indispensable requirement and the correct test is one of preponderance of probabilities. Merely because the operation of the aforesaid two provisions of the 2003 Regulations invite penal consequences on the defaulters, proof beyond reasonable doubt as held by this Court in Securities and Exchange Board of India Vs. Kishore R. Ajmera (supra) is not an indispensable requirement. The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified.”

- iii. I note that element of “concealment” as mentioned in Hon’ble Supreme Court judgements in the matters of *K.C. Builders v. CIT (2004) 2 SCC 731*; *Dilip N. Shroff v. CIT (2007) 6 SCC 329*; *Mohd. Ibrahim Azimulla v. CIT [1980 SCC OnLine All 960]*, on which the Noticees have placed reliance upon, arrived from non-disclosure of income or tax liability, which was due to not being careful or wary of liability and same was obviously not due to *fraud* or willful conduct. However, in the instant matter the Noticees were integral part of the impugned loan agreements and the charge upon them are of deliberately and consciously hiding material and price sensitive information from the Company and its minority shareholders. I am, therefore, of a view that aforesaid rulings of Hon’ble Supreme Court are of no help to the Noticees. Further, with respect to inferential conclusions the Noticees has placed reliance upon *Price Waterhouse Case (Supra)*. I note that, in the aforesaid case said ‘principle of preponderance of probability’ was rejected by the Hon’ble SAT, as there was no ‘*dealing in the securities*’ by the Noticees, however, in the instant matter the Noticees has transferred share among themselves and substantial shareholding of the Company has been vested to a third party through impugned loan agreements, which is equivalent to the dealing in securities. Therefore, the findings of Hon’ble SAT in the matter of *Price Waterhouse Case (Supra)* is not applicable in this case.

i. **Resort to Section 23H of the SCRA is abuse of process**

The Noticees in their submissions have contended that SCN establishes an abuse of process through resort to Section 23H of the SCRA. Therefore, it becomes necessary to examine whether Section 23H would apply with regard to alleged violation of the provisions of Clause 49 (1)(D) of Equity Listing Agreement read with Section 21 of SCRA. Section 23H applies only when there is failure to comply with - (i) a provision of the Act i.e. SCRA; (ii) a rules or articles or bye-laws of the recognised stock exchange i.e. BSE and NSE; and (iii) a direction issued by SEBI under Section 12A of the SCRA. Now, it becomes important to examine whether Clause 49 (1)(D) of Equity Listing Agreement read with Section 21 of SCRA falls within the contours of Section 23H. In this

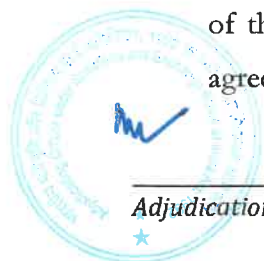


connection it is observed that Section 23H is a residuary provision encompassing within it non-compliance of provision of said Act, and other statutory enactments like bye-laws, rules, etc. where no separate penalty is prescribed under SCRA. In the present case charges against the Noticees No. 1 and 2 are for violation of provisions of Listing Agreement which itself is emerging from Section 21 of the SCRA, I observe that penalty under Section 23H can be imposed for non-compliance of such provisions and I, therefore, reject such contentions of the Noticees.

12. I now proceed to deal with the merits of the case. I observe that the Noticee No. 3 had entered into a loan agreement with ICICI Bank on October 14, 2008, whereby ICICI Bank agreed to lend a rupee term loan of Rs. 375 crores. The salient features of the ICICI loan agreement are as follows:

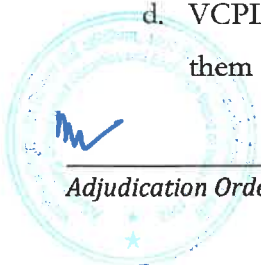
- a. The interest rate for the said loan, as on the date of the agreement, was 19 % per annum which was subsequently reduced to 9.65% per annum from August 06, 2009 with retrospective effect from October 14, 2008.
- b. The Noticee no. 3 was obliged to repay the loan amount in full to ICICI Bank at the end of 3 years from the date of disbursement of the first tranche.
- c. The loan could be pre-paid either in full or in part without any penal interest.
- d. Noticee no. 3 was liable to procure and deliver to ICICI Bank, irrevocable and unconditional guarantees from Noticees no. 1 and 2 for the due repayment of the loan. Further, Noticee no. 3 was liable to ensure that Noticees no. 1 and 2 observe all the covenants, terms, conditions, restrictions and prohibitions.
- e. The facility of loan so granted by ICICI Bank was subject to the compliance with the special conditions set out in Schedule III of the agreement, including *inter alia* the following:
 - i. The Noticees shall not permit any merger, de-merger, consolidation, reorganization, scheme or arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstruction of NDTV without the prior written approval of ICICI.
 - ii. Noticee no. 3 was liable to ensure that in the event of any restructuring of NDTV, at least 63% of the shares of each of the resultant entities shall be placed under the *Non Disposal Arrangement* or under some similar arrangement by the Noticees and/or such other shareholders.

13. The Noticees again entered into an agreement with ICICI Bank on August 06, 2009 for pre-payment of the loan availed by them under the ICICI Loan Agreement. Under the aforesaid pre-payment agreement, the Noticees agreed and undertook to prepay the balance outstanding loan amount along



with interest, on or prior to August 06, 2009. The Noticees, further undertook to pay to ICICI, a sum of Rs. 10 crores, within 5 days of the market capitalisation of the Company crossing to Rs. 2000 crore; and further Rs. 5 crores within 5 days of market capitalisation of the Company crossing to Rs. 2500 crore. However, at the option of the Noticees, such payments could have been made either by cash or in kind in the form of shares of the Company for equivalent value.

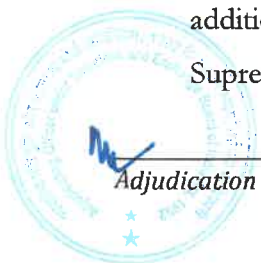
14. On examining the ICICI Loan Agreement, it may be inferred that the major consideration for ICICI Bank to extend the loan to the Noticee no. 3 was that the Noticees are the promoters and majority shareholders of NDTV. By executing this agreement, ICICI Bank has sought to secure the repayment of the loan amount by imposing certain binding conditions on the Noticees. In terms of the aforesaid agreement, it cannot be denied that these binding conditions on the Noticees, materially and significantly impacted the business interest of NDTV, a listed company, although NDTV was not a party to the said loan agreement. It is true that the said agreement was a loan agreement between the parties and the conditions stipulated therein were contingent only on default in repayment of the loan amount by the Noticees. Nevertheless, it is also a fact that at the time of availing of the loan from ICICI Bank, the Noticees, who had controlling interest in the Company, undertook and gave guarantee to comply with the said conditions imposed on them by ICICI Bank, which had significant implications on the interest of NDTV and was therefore, a material and price sensitive information.
15. I now refer to VCPL Loan Agreement (2009), which was executed on July 21, 2009 and the salient features of this agreement noted are as under:
 - a. The Noticees availed a loan amount of Rs. 350 crores from VCPL and it was meant to be utilised in full for repayment of the loan earlier availed by the Noticee 3 from ICICI Bank, vide loan agreement dated October 14, 2008.
 - b. This loan from VCPL did not carry any interest and the loan is repayable to VCPL on a distant maturity date i.e. the date falling at the end of 10 years from the draw-down date (the date on which loan is disbursed).
 - c. The Noticee no. 3, was required to issue warrants convertible into the equity shares aggregating to 99.99% of the fully diluted Equity Share Capital of the Noticee no. 3 in the Company, immediately upon the execution of the agreement. These warrants could be converted any time during the tenure of the loan or thereafter, without requiring any further act or deed on the part of VCPL.
 - d. VCPL got a right to purchase from Noticees no. 1 and 2, all the shares of Noticee no. 3 held by them at par value.



- e. Noticees no. 1 and 2 were required to sale/transfer shares of the Company to Noticee no. 3, so that the shareholding of the Noticee no. 3 in the Company becomes 26%
- f. In terms of Clause 12 of the said agreement, the Noticees were required to seek prior written consent of VCPL for all the matters specified under Schedule 3 to the said agreement. The matters specified in Schedule 3, especially those matters pertaining to the Company, which required prior written consent of VCPL are as under:
- i. Issue any equity securities of NDTV which results in the aggregate valuation of NDTV being less than Rs. 1346 crore;
 - ii. Merger, amalgamation or consolidation of NDTV with any other entity;
 - iii. Cause NDTV or any person in NDTV Group to take any steps towards bankruptcy, insolvency or reorganisation, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or all or any substantial part of its property;
 - iv. Buy-back of equity securities, reduction or alteration of the share capital of NDTV;
 - v. Take any action to issue any equity securities or enter into any agreement as a result of which the Noticees cease to be in the sole control of NDTV or the NDTV Group.
- g. Noticees no. 1 and 2 together with their affiliates were obliged to exercise their voting rights attached to the equity shares held by them in the Noticee no. 3 to give full and complete effect to the provisions of the Transaction Documents including but not limited to give effect to the provisions contained in Schedule 3 read with Clause 12.
- h. Similarly, the Noticees together with their affiliates were obliged to exercise their voting rights attached to the equity shares held by them in NDTV and NDTV Group to give full and complete effect to the provisions of the Transaction Documents including but not limited to give effect to the provisions contained in Schedule 3 read with Clause 12.
- i. The Noticees no. 1 and 2 together with their affiliates were obliged to amend the Charter Documents of the Noticee no. 3 to give full effect to the provisions of the transaction documents. For this purpose, transaction documents of the loan Agreement i.e. (i) the Loan Agreement (ii) the Call Option agreements and (iii) all other documents and agreements relating to the above and or designated as such by the lender in relation to the Loan, as such documents may be amended or supplemented from time to time.



16. In terms of aforesaid loan agreement, it is also noted that the two call options agreements, which have been described as integral part of VCPL Loan Agreement (2009), were entered into between the Noticees and Subhgami Trading Private Limited ("STPL") and Shyam Equities Private Limited ("SEPL") respectively on July 21, 2009. STPL and SEPL were associates of VCPL's shareholders at the relevant time. The call option agreements with STPL, gave STPL the right to purchase shares of NDTV from the Noticee no. 3, representing up to 14.99% of the equity share capital of NDTV. Similarly, call option agreements with SEPL, gave SEPL the right to purchase shares of NDTV from Noticee no. 3, representing up to 11.01% of the equity share capital of NDTV. Both the call option agreements provided for a fixed price of Rs. 214.65 per share at which STPL and SEPL would exercise their right anytime to purchase the NDTV shares.
17. Further, VCPL Loan Agreement (2010) dated January 25, 2010 was entered into between VCPL and the Noticees for giving an additional loan of Rs. 53.85 crore to Noticee no. 3. It is to be noted that the terms and conditions of the VCPL Loan Agreement (2010) were almost same as those of VCPL Loan Agreement (2009). Some of the additional terms and condition of VCPL Loan Agreement (2010) are as under:
- a. Loan amount was meant to be utilised in full, only for investment purpose.
 - b. Noticee no. 1 and 2 have to sale 25,08,524 shares of NDTV to Noticee no. 3, so that upon such sale, the borrower Noticee No. 3 holds 1,88,13,928 equity shares of NDTV aggregating to 30% of the equity share capital of NDTV.
18. Similar to VCPL Loan Agreement (2009), VCPL Loan Agreement (2010) was also a loan agreement between VCPL and the Noticees. This loan agreement also did not provide for any rate of interest payable on the amount agreed to be advanced as loan. Further, there was no loan default clause in the agreement. The loan has been made payable on the date of maturity which was falling 10 years after the disbursement of the loan. The said loan agreement also incorporated various conditionality's pertaining to NDTV, as mentioned in aforesaid para 15(f) which required prior approval of VCPL.
19. In order to institute as to if and how, the aforementioned acts of the Noticees and the terms and conditions of the loan agreements have resulted into violation of the provisions of SEBI Act and the PFUIP Regulations, 2003, it is necessary to have due regard to the preamble of the SEBI Act and the primary functions of the Board as defined under the SEBI Act. The same includes protection of interest of investors in securities and to promote the development of and to regulate the securities market and prohibiting fraudulent and unfair trade practices related to the securities market. In addition to certain guidance as available from the rulings of the various courts including Hon'ble Supreme Court needs to be kept in mind while examining the matter for the possible violations under



the SEBI Act and PFUTP Regulations. In this regard, following guiding principle laid down by the Hon'ble Supreme Court in the matter of *SEBI Vs. Kishore R Ajmera*, 5 (2016) 6 SCC 368 for understanding and interpreting the provisions of SEBI Act and the regulations made there under needed to be referred:

"....21. The SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/ Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light."

20. The aforesaid guiding principle has been endorsed in the subsequent judgments of the Hon'ble Supreme Court in the matter of *Kanaiyalal Baldev Bhai Patel (Supra)* and *SEBI Vs. Rakhi Trading Private Ltd.* (2018) 13 SCC 753. In the case of *N. Narayanan Vs. Adjudicating Officer, SEBI* (2013) 12 SCC 152, with respect to the objective of SEBI Act and specifically the provisions of Section 12A and Regulations 3 and 4 of PFUTP Regulations, Hon'ble Supreme Court have observed as under:

"....35. Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality. The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rise of scrip of the company. Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse."

21. The major issue before me is to examine, whether the agreements executed by the Noticees are loan agreements or whether the Noticees, under the garb of the aforesaid loan agreements, and by not

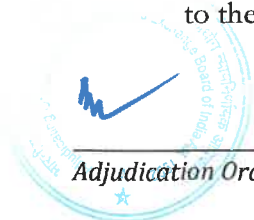


disclosing these agreements, acted upon to commit the fraud upon the shareholders of NDTV. For analyzing the same, it is essential to examine the implications of various clauses of the said loan agreements, to understand the intent of the Noticees behind consenting to such clauses, which render the agreements, *prima facie*, loaded against the Noticees and in favour of the lender VCPL. One of the submissions of the Noticees is that the agreements were mere loan transaction entered between two independent parties. However, upon analysing the clauses and the conditions set out and agreed upon by the Noticees to ascertain as to, whether these clauses were incorporated mainly for availing the facility of loan or these clauses were material and price sensitive in nature and by concealing such material information, whether the Noticees committed fraud on public shareholders of the Company. In this regard, I note as follows:

- a. Schedule I(a) of the VCPL Loan Agreement (2009) entitles absolute and sole discretion to the VCPL to Equity Shares aggregating to 99.99% of the fully diluted Equity Share Capital of Noticee no. 3 by converting the warrants, at any time either during the tenure of the loan or even thereafter. Thus, it is left to the absolute discretion of VCPL to decide when to acquire/ takeover the entire share capital of Noticee no. 3 and thereby, to take control over the entire shareholding of Noticee no. 3 in NDTV to the extent of 26% which was subsequently increased to 30% vide the VCPL Loan Agreement (2010).
- b. Clause 11 of the VCPL Loan Agreements provide for appointment of at least one director out of the 3 directors, nominated by VCPL on the Board of Noticee No. 3, whose presence was mandatory to constitute the quorum for any meeting of the Board.
- c. Clause 13 of the VCPL Loan Agreements provides that the Noticees can enjoy the interest free loan for a period of 10 years in case, they comply with the other terms and conditions of the two VCPL loan agreements most of which pertained to NDTV and acquisition of 30% stake in NDTV through the binding conditions upon Noticee no. 3. As amount taken as loan by the Noticees became payable only if there is a breach of the terms of the Loan Agreements or related agreements by the Noticees.
- d. One of the conditions precedents to the execution of agreement was sale of 11,563,683 shares of NDTV by Noticees no. 1 and 2, so that Noticee no. 3 has 26% shares of NDTV. Similarly, VCPL Loan Agreement (2010) provides for another sale of 25,08,524 equity shares of NDTV from Noticees no. 1 and 2 to Noticee no. 3 so that upon such sale, the Noticee no. 3 holds 1,88,13,928 shares of NDTV, aggregating to 30% of the equity share capital of NDTV. Therefore, in terms of the two VCPL loan agreements, Noticees no. 1 and 2 were mandated to sale their shareholding of NDTV to Noticee no. 3, so that VCPL eventually holds control over 30% of shareholding of the NDTV by virtue of ownership of the entire share capital of Noticee no. 3. In effect, the two VCPL

loan agreements mandated the Noticees to place substantial shareholding i.e. 30% of their shareholding in NDTV at the disposal of VCPL as a consideration of the amount of loan received.

- e. As noted above, the clause 6.1 read with Schedule I provide sole discretion to VCPL to convert the warrants entitling it to have 99.99% of equity share capital of Noticee no. 3. It clearly indicates the intention of the Noticees to transfer their stake in NDTV to VCPL through aforementioned VCPL loan agreements. Further, granting right of conversion of warrants into shares of Noticee no. 3, at any point of time to VCPL, enables VCPL to indirectly acquire 30% of equity shares of NDTV and same was not dependent on the repayment of the loan undertaken by the Noticees. VCPL is having independent rights to convert the warrants into shares of Noticee no. 3, at any time during the loan agreement or even thereafter.
- f. As noted above, VCPL's right to convert the warrants is absolute without being in any way connected to repayment of loan by the Noticees. Thus, in my view, the aforesaid VCPL loan agreements are not a loan transaction. It appears to undersigned as an outright transfer of 30% stake and voting rights in NDTV by the Noticees to VCPL, camouflaged in form of loan agreements, which did not possess the basic attributes and characteristics of a standard secured loan transaction. In my view, the VCPL Loan Agreements (2009) and (2010) are sham loan transactions executed by the Noticees with a motive to sell their substantial stake in NDTV to VCPL.
- g. It is also noted from the VCPL Loan Agreements that the lender has been conferred with the rights to assign the agreements, the loans and the rights therein *qua* Noticee no. 3 to a third party even during the prevalence of the tenure of the aforesaid loan agreements. However, similar right of assignment is not available to the Noticees. The aforementioned clauses craft a disadvantageous situation to the prejudice of the borrowers. It creates a state, whereby during the period when the loan agreements are in force i.e. the period when the Noticees are under the obligation to repay the loan after a period of 10 years, the lender can freely assign all its rights in the said loan agreements to any other party thereby rendering the loan agreement freely transferrable from lender's side. Moreover, there is also a provision observed in the loan agreement at clause 19 which states that "*over the next 3 to 5 years, the Borrower and the Lender will look for a 'stable' and 'reliable' buyer of RRPR, who will maintain the brand and the credibility of NDTV*". In view of the same, it is apparent that the Noticees have gone far beyond the normal commercial realm of a simple loan transaction, only for the reason of transferring their stake in the NDTV to VCPL by camouflaging it in form of said loan agreements. Considering the aforesaid facts and circumstances, the Noticees' contention that the VCPL loan agreements were pure loan agreements, is not credible and contrary to the facts and circumstances.

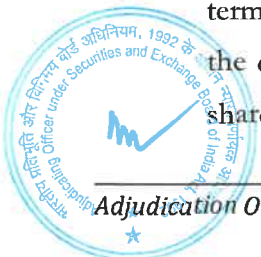


- h. As noted above, in terms of clause 6.1 of the VCPL Loan Agreements, it is stipulated that the borrower shall issue convertible warrants, which were convertible into equity shares aggregating to 99.99% of share capital of borrower *viz.* Noticee No. 3) to the lender *viz.* VCPL immediately upon execution of this agreement. Thus, the Noticee No. 3 was under the obligation to issue convertible warrants to VCPL immediately after executing the loan agreement dated July 21, 2009. However, records available indicate that these warrants have never been issued by the Noticee no. 3. In such circumstances, clause 13 of the said loan agreements, which stipulates the consequences of the default by way of breach of terms and conditions of the agreements by the promoters or borrowers, ought to have been enforced by the VCPL by demanding the repayment of the loan amount. In the instant matter, even after a lapse of more than ten years of execution of the agreements and despite the said default by the Noticees, pre-payment has inexplicably not been triggered, which reinforce a thought, that the so called loan was never planned to be repaid by the Noticees and implies that the amount was received by the Noticees as consideration for sale of their substantive stake in NDTV to VCPL.
- i. In terms of the market price of shares of NDTV prevailing on the day of execution of said VCPL loan agreements, it was noted that transfer of shares of NDTV by Noticees no. 1 and 2 to Noticee no. 3 as part of the precondition stipulated in the loan agreements was not proportionately correlated with the loan amount as per the prevailing market price of the shares of NDTV during VCPL loan agreements execution. From the information available in public domain the average price of shares of NDTV on BSE, as on the date of the execution of VCPL Loan Agreement (2009) i.e. on July 21, 2009 was Rs. 127.20/- per share and as on the date of VCPL Loan Agreement (2010) i.e. on January 25, 2010 was Rs. 138.70/- per share. In contrast, as noticeable from the said VCPL loan agreements, the valuation of the equity shares of NDTV for the purpose of advancing loan was adopted at Rs. 214.65/- per share for both the loan agreements. Thus, it emerges that Noticees and the lender *viz.* VCPL have purposefully overvalued the shares of NDTV for factoring in a premium of Rs. 87-76 per share respectively. This demonstrate that the said loan transaction defies and disregard all prudent commercial norms of lending and apparently, a substantially higher amount was predetermined to be received by the Noticees as a consideration for 30% shareholding in NDTV, by way of transferring the ownership of Noticee no. 3 to VCPL, irrespective of the market value of the shares of NDTV at the relevant point of time.
- j. In view of above fact, the alleged collateral securities thus offered by the Noticees under the aforesaid loan agreements were inexplicably inadequate in comparison with the amount received as loan. In a standard loan transaction, where shares are offered as collaterals, the lender demands substantial haircuts in collateral value and also insists on pledge invocation in case of adverse movement of share price, in case additional security is not provided by the borrower. However, in the instant case, instead of demanding haircuts in the value of collaterals, the so called loan was

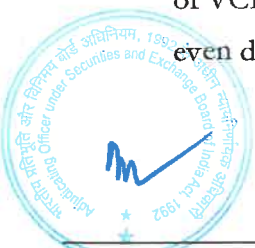
generously given by the VCPL to the Noticees with inadequate shareholding in the Company as collaterals and without creating any charge over such securities. In addition to the same, the said VCPL loan agreements did not have any clause to provide for additional securities in case of adverse movement in the price of shares of NDTV or for other exigencies. From the aforesaid facts and circumstances, it is evident that the two ostensible loan agreements with VCPL were prearranged in a deceitful manner with an intention to transfer substantial stakes in NDTV owned by the Noticees at a pre-negotiated price as consideration. Further, the said VCPL loan agreements do not carry any element, whatsoever of usual inter corporate loan transaction.

k. I note from the clause 20 of the VCPL loan agreements, that the Noticees were constrained to exercise voting rights attached to their equity shares in NDTV as may be necessary to give full and complete effect to the provisions of the loan agreements including but not limited to give effect to the provisions contained in Schedule 3 read with Clause 12 thereof. Thus, the said loan agreements did not give any discretion to the Noticees to independently exercise their voting rights in NDTV as they would have otherwise exercised as promoter shareholders, prior to the execution of loan agreement. Evidently, the Noticees have given up the 30 % of their voting rights in the Company, in furtherance of the terms of loan agreements, which were never disclosed to the public as they ought to have been. Therefore, I find no merit in the arguments of the Noticees that the said loan agreements were executed in exercise of their private property rights not impinging at all on the interest of NDTV. The aforesaid view is further supported by schedule 3 of the said loan agreement titled "*Prior Consents*", which imposes restriction in the form of obligations on the Noticees to obtain prior consent of VCPL, in case of any proposal for the changes in capital structure, constitution or re-structuring of NDTV is concerned.

l. It is also noted that the loan agreements did not contain any closure clause providing for termination upon repayment. Clause 7 of the said loan agreements provides for the payment upon maturity, which is 10 years after the drawdown of the release of the payment. In contrast to the aforesaid liberal and lenient stipulation regarding repayment of loan that too, without any interest thereon, Schedule I(a) of the loan agreements provided that the terms of the agreement can be invoked not only during the tenure of the loan but unexpectedly even after the expiry of the tenure of the loan. Such a clause defies all commercial prudence and rationale, since the terms of the agreements can only be invoked during the tenure of loan and on the occurrence a default and cannot ordinarily under any circumstances be invoked after the tenure of the loan. The provision of such loan covenants further manifest the clandestine intents of the Noticees of carrying out transfer of substantial stake in NDTV to VCPL under the garb of a loan agreement. Thus, the terms and conditions of the loan agreement explicitly indicate that the objective and intent behind the execution of the said loan agreements was nothing but to transfer beneficial interest in the shares of NDTV to VCPL.



- m. The deploying of the words “*balance is outstanding*” in clause 7 of the VCPL Loan Agreement is intriguing and lacks any rationale, given the fact that there was no contractual obligation fastened upon the borrower to make any repayment at all, during the tenure of the loan agreement and the entire loan amount would always stand as outstanding at any point of time during the life of the agreement. Therefore, the question of having any ‘*balance is outstanding*’ during the tenure of the agreement does not arise. Such an infirmity would not find place in a genuine loan agreement.
- n. Alike the VCPL Loan Agreements, the two call option agreements referred in above paras, which were also an integral part of the loan agreement, did not contain any clause providing for termination of these agreements even after repayment of the loan amount. This arrangement of incorporating the call option agreements into the VCPL Loan Agreements indicates that VCPL, apart from ensuring its ownership over Noticee no. 3 by way of conversion of warrants, has further made alternative arrangements to transfer the NDTV shares to its associate companies at a predetermined price of Rs. 214.65/- per share. Notably, it is observed that when the total loan amount i.e. Rs. 350 crore advanced by VCPL to Noticee no. 3, under the VCPL Loan Agreement (2009), is divided by the number of shares constituting 26% shares of NDTV i.e. 1,63,05,404 shares (which was set out to be held by Noticee No. 3 as a pre-condition for Noticees in the agreement) the amount per share advanced as loan comes to Rs. 214.65/- per share. Correspondingly, under the VCPL Loan Agreement (2010), when the loan of Rs. 53.85 crore advanced to Noticees is divided by number of shares i.e. 25,08,524 shares of NDTV, required to be additionally transferred by Noticees no. 1 and 2 to Noticee no. 3 (so as to take Noticee No. 3 stake in NDTV to 30%), the amount per share advanced as loan, again arrives to a price of Rs. 214.65/- per share. The aforementioned facts and circumstances shows that in the entire loan transactions including the provisions for call option, a conscious effort has been made to determine the valuation of NDTV shares at the rate of Rs. 214.65/- per share and the same has been linked to the quantum of the loan advanced. It again reinforces the position, as stated earlier, that the VCPL Loan Agreements were none more than sham loan agreements, while in essence the amount advanced as loan had a direct connection with the cost of the purchase of 30% shares of NDTV to be transferred by the Noticees to VCPL.
- o. As noted above, the VCPL loan agreements did not contain any termination clauses on default of repayment. With regard to aforesaid clauses, no justifiable explanation has been provided by the Noticees as to why the covenant in the said loan agreements were so heavily construed in favour of VCPL, providing extensive right to VCPL to invoke/get the conversion of warrants at any time even during the continuation of the agreement without there being any default by the Noticees.



22. As noted earlier, pursuant to execution of VCPL Loan Agreement (2009), Noticees no. 1 and 2 were required to transfer 11,563,683 shares of NDTV to the Noticee no. 3. Similarly, in terms of VCPL Loan Agreement (2010), Noticees no. 1 and 2 were mandated to transfer an additional number of 25,08,524 shares of NDTV to Noticee no. 3. In this regard, the following off-market transfers of shares of NDTV that took place among Noticees no. 1, 2 and 3, in compliance with the said loan agreements has been noted:

Table 1: Transfers of shares post VCPL Loan Agreement (2009) dated July 21, 2009:

Date	Description	No. of Shares	Cost Per Share (INR)	Total consideration (INR)
03-Aug-09	RRPR purchased NDTV shares from Mr. Prannoy Roy	5,781,842	4.00	23,127,368.00
03-Aug-09	RRPR purchased NDTV shares from Ms. Radhika Roy	5,781,841	4.00	23,127,364.00
Total		11,563,683		4,62,54,732/-

Table 2: Transfer of shares after VCPL Loan Agreement – 2 dated January 25, 2010:

Date	Particulars	No. of Shares	Cost Per Share (INR)	Total consideration (INR)
08-Mar-10	RRPR purchase NDTV shares from Mr. Prannoy Roy & Ms. Radhika Roy (Jointly)	4,836,850	140.00	677,159,000.00
08-Mar-10	RRPR sold shares of NDTV to Mr. Prannoy Roy	3,478,925	4.00	13,915,700.00
08-Mar-10	RRPR purchased shares of NDTV from Mr. Prannoy Roy	2,314,762	140.00	324,066,680.00
09-Mar-10	RRPR sold shares of NDTV to Ms. Radhika Roy	3,478,925	4.00	13,915,700.00
09-Mar-10	RRPR purchase shares of NDTV from Ms. Radhika Roy	2,314,762	140.00	324,066,680.00
Net transfer of Shares by Noticee no. 1 and 2 to Noticee no. 3		25,08,524	Net transfer of Shares by Noticee no. 1 and 2 to Noticee no. 3	129,74,60,960

23. The loan amount of Rs. 350 crore borrowed by the Noticees under the VCPL Loan Agreement (2009) was obtained to repay the earlier loan availed from ICICI Bank. The loan amount of Rs. 53.85 crore borrowed under the VCPL Loan Agreement (2010) by the Noticees was meant for investment

purposes. One of the conditions under the VCPL Loan Agreement (2009) was that Noticee no. 3 must hold 26% shares of NDTV. At the time of execution of the said loan agreement, Noticee no. 3 was holding only 47,41,721 (7.56%) shares of NDTV. Consequently, as noted from Table 1, to raise shareholding of Noticee no. 3 in NDTV to 26%, Noticee no. 1 transferred 57,81,842 (9.22%) shares and Noticee no. 2 transferred 57,81,842 (9.22%) shares, aggregating to 18.44% shares of NDTV to Noticee no. 3 at a nominal price of Rs. 4/- per shares. The loan amount of Rs. 350 crores [16,305,405 (26%) * 214.65], so received by the Noticees, was used to repay the loan of ICICI.

24. Similarly, one of the pre-condition under the VCPL Loan Agreement (2010) was that Noticee no. 3 must hold 30% (1,88,13,928) shares of NDTV. At the time of execution of the said loan agreement, Noticee no. 3 was holding 26% (16,305,405) shares of NDTV. Therefore, to raise the holding of Noticee no. 3 in NDTV to 30%, Noticees no. 1 and 2 were required to transfer further 4% (25,08,524) shares of NDTV to Noticee no. 3. As noted from Table 2, instead of transferring 25,08,524 shares of NDTV straight to Noticee no. 3, through single transaction, Noticees no. 1 and 2 sold 48,36,850 number of shares of NDTV to Noticee no. 3 at a price of Rs. 140/- per share, from their joint demat account. In another transaction, Noticees no. 1 and 2, each purchased 34,78,925 shares of NDTV from Noticee no. 3, at a nominal rate of Rs. 4/- per share. Again, through another transaction, Noticees no. 1 and 2, each sold 23,14,762 number of shares of NDTV to Noticee no. 3, at the rate of Rs. 140/- per share. Thus, in aggregate, Noticees no. 1 and 2 have sold 94,66,374 shares of NDTV to Noticee no. 3 at a price of Rs. 140/- per share whereas, 69,57,850 shares of NDTV were purchased simultaneously from Noticee no. 3 at a price of Rs. 4/- only per share. Thus, at the end of the aforesaid series of transactions, Noticees no. 1 and 2 have made a net sale of 25,08,524 shares of NDTV to Noticee no. 3 in compliance with the VCPL Loan Agreement (2010) to ensure that the total shareholding in NDTV by Noticee no. 3 goes upto 30%. The Table 2, also reflects that Noticees no. 1 and 2 have received a net amount of Rs. 1,29,74,60,960/- in exchange of the above stated 25,08,524 shares of NDTV from Noticee no. 3. The aforesaid transactions in NDTV shares and the consideration received by Noticees no. 1 and 2 clearly suggest that the amount of Rs. 53.85 crore received from VCPL by Noticee no. 3 under the VCPL Loan Agreement (2010) was actually meant to be paid to the Noticees no. 1 and 2 by Noticee no. 3. The aforementioned facts and circumstances demonstrate that these loan agreements were devised only to transfer beneficial interest in 30% shares of NDTV held with Noticee no. 3, to VCPL, at the rate of Rs. 214.65/- per share.

25. In view of aforesaid facts and circumstances, I am inclined to have a view that the Noticees in the garb of VCPL Loan Agreement (2009) and VCPL Loan Agreement (2010) had effectively transferred their shareholding of 30% in NDTV to VCPL. Although the alleged shareholding in NDTV technically remained with Noticee no. 3, the existence of warrants with VCPL, convertible at any time



during the tenure of the loan or thereafter without requiring any further act or deed on the part of the VCPL, into 99.99% equity shares of Noticee no. 3, along with the right of VCPL to purchase the shares of Noticees no. 1 and 2 in Noticee no. 3, clearly institute that 30% shares of NDTV were put at the absolute disposal of VCPL by virtue of the said loan agreements. Moreover, as per covenant the Noticees also agreed that prior written consent of VCPL shall be obtained *inter alia* with respect to issue of any equity shares of NDTV which could result in the aggregate valuation of NDTV falling below Rs. 1346 crores, which confirms that the alleged loan amount was determined on the basis of prevailing market valuation of NDTV. This fact establishes that the VCPL Loan Agreements were material and price sensitive, as they effectively involved passing of substantial controlling stake of 30% share capital of NDTV to VCPL and stipulated several binding conditions upon the promoters of NDTV i.e. the Noticees with respect to their dealing in the shares of NDTV, capital restructuring of NDTV etc. With regard to above, I am of a view that, the minority shareholder of NDTV and general investors of securities market were entitled to know such material and price sensitive transactions carried out by the promoters, which involved transferring the substantial stake in the Company by the promoters to a third party. I note that the Noticees without any valid reasons avoided the dissemination of the said material information to the general investors.

26. I note that, materiality is an important factor to gauge the importance of the disclosure of impugned loan agreements, which was supposed to be made by the Noticees. In this regard, I am of a view that, since the materiality has not been defined categorically, it has to be determined on a case to case basis depending upon the various facts specific to the case and circumstances relating to the case. In the order of Ld. WTM in the matter of *IPO of Onelife Capital Advisors Ltd* dated August 30, 2013, it was held that -

"The words 'material' and 'materiality' have not been defined in the ICDR Regulations. However, as understood in the market parlance and also defined in Explanation to regulation 5 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the same context, 'material' means anything which is likely to impact an investors' investment decision. In my view, the test to determine whether a fact is 'material' depends upon facts and circumstances of each case"

27. Further, Hon'ble SAT in its order dated March 13, 2015 in the matter of *DLF Limited v. SEBI (Appeal No. 331 of 2014)* had held that -

"The Materiality envisaged in the DIP Guidelines relates to adequacy and not the arithmetic accuracy of material facts necessary for the purpose of formulating a complete opinion by prospective investors to invest or not to invest in the IPO. Disclosure in the larger scheme of DIP Guidelines, which is required to be made in the Offer Documents, is one which, if concealed, would have a devastating effect on the decision making process"

of the investors, and without which the investors could not have formed a rational and fair business decision of investment in the IPO.”

28. In view of aforementioned rulings, I note that the Materiality can be determined either based on quantitative parameters or based on qualitative parameters. The quantitative parameters are linked to the financials of the entity whereas qualitative parameters are to be linked to the likely impact of the nondisclosure on the market, as also the decision making process of the investors. Therefore, I am of the view that, this information had a potential to influence the investment decisions of the shareholders and the prospective investors of NDTV.
29. Section 12A of the SEBI Act *inter alia* mandates that no person shall directly or indirectly employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange. Similar prohibition is contained in Regulation 3(b) of the PFUTP Regulations. Additionally, Regulation 3(a) of the PFUTP Regulations also prohibits buying selling or dealing in securities in a fraudulent manner. Regulation 4(1) of the PFUTP Regulations provides that no person shall indulge in a fraudulent or an unfair trade practice in securities. The definition of fraud, as provided in Regulation 2(1)(c) of PFUTP Regulations provides that “*fraud*” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss. In the case of *Kanaiyalal case (supra)*, two Hon’ble Judges of Hon’ble Supreme Court, in their separate but concurring judgments, dealt with the definition of “*fraud*” as given under Regulation 2(1) (c) of PFUTP Regulations, 2003 and held as under:

Per Hon’ble Justice N. V. Ramanna - “...26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of these security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.

27. On a comparative analysis of the definition of “*fraud*” as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of “*fraud*” under the FUTP regulation, 1995 adopts the definition of “*fraud*” from the Indian Contract Act, 1872 whereas the subsequent



definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation.

28. The definition of 'fraud' under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of the term "fraud"...."

Per Hon'ble Justice Ranjan Gogoi – "...5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/ had the effect of inducing another person to deal in securities.

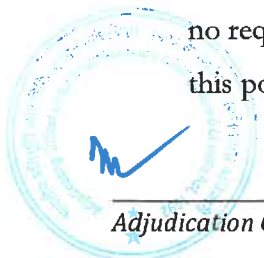
6. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"...."

Hon'ble Supreme Court further observed that in an 'inducement' required for constituting fraud, it is not necessary that such inducement should have an element of dishonesty or bad faith while offering the inducement.

30. In the instant case, the ICICI Loan Agreement and two VCPL Loan Agreements were containing clauses and conditions that substantially affected the functioning of NDTV. The VCPL Loan Agreements, in addition to having clauses substantively affecting the interest of NDTV, also warranted transfer of shares of NDTV by the Noticees, which they carried out off-market by way of various *inter se* bulk transactions, in compliance with the said loan agreements. Consequently, information about said agreements and the consequent off-market share transfers amongst the Noticees in compliance with the agreements, were essentially material and price sensitive and it would have influenced the decision of investors about trading in the shares of NDTV. Non-availability of such material information with investors unjustifiably deprived them of informed participation while dealing with the shares of NDTV.



31. The Noticees No. 1 and 2 have submitted that the binding requirement to discharge fiduciary roles and responsibilities being directors of the Company has been duly honoured by them. They have contended that there was no scope for the loan covenants executed to interfere with the rights of the shareholders of NDTV, since the overriding fiduciary duty of the Noticee-Promoters to NDTV remained intact at all times, and there was no scope for breach thereof merely by virtue of the obligation to secure affirmative consent of the lender around voting on corporate actions. In this regard, I note that the two VCPL loan agreements are still in force and have not been renounced by VCPL till date, shows that Noticees no. 1 and 2 have already placed their contractual obligations with VCPL above their fiduciary obligations as Directors of NDTV. Noticees No. 1 and 2 have relied upon the judgement of the Hon'ble Bombay High Court in the matter of *Rollta India Ltd. v. Venire Industries Ltd.* 2000 (3) Mh. L.J. 700; *Sbrimati Jain v. Delhi Flour Mills Co. Ltd.* [1973 SCC OnLine Del. 137] to contend that evidentiary basis for the allegation in the SCN regarding breach of fiduciary responsibilities by the Noticees owed to NDTV is missing. In my view, this contention is disproved by the terms of the loans agreements themselves as extracted and discussed at length above wherein, decision on vital matters pertaining to NDTV have been made subject to prior written consent of VCPL/ ICICI. All these loan agreements make it evident that the Chairman and Managing Director of NDTV (i.e. Noticees no. 1 and 2), who happen to be the promoters with majority stake in NDTV have put themselves under contractual obligation to take prior consent of VCPL/ICICI in execution of key decisions pertaining to the Company. Thus, all such decisions have become contingent on the affirmative consent of the lenders i.e. ICICI/VCPL and in a given case, consent could have been or may be refused by the ICICI/VCPL, therefore, imperiling the functioning of the listed company (NDTV).
32. I note that, such acts of the Noticees No. 1 and 2 amounts to acting in derogation of the fiduciary duty, by them. The contention of these Noticees exhibits internal inconsistency and contradiction in their arguments. On the one hand, it is contended that these Noticees have not acted against their statutory fiduciary duty, while on the other hand, it is contended that the agreements are private in nature and they have all the right at their disposal to enter into such agreements. The Noticees being fully aware and conscious about their pivotal role and positions in NDTV, still agreed/consented and executed agreements containing clauses which have adversarial effect on the shareholders of NDTV. It restricts NDTV from raising fresh capital, making any restructuring, going for a merger, etc., without the prior written consent of ICICI/VCPL.
33. The Noticees has vehemently raised the contention that NDTV was not a party and hence there was no requirement for the Noticees to make disclosure of the agreements to the stock exchange. I admit this position that NDTV was not a party to these loan agreements, however, contents and clauses of



loan agreements clearly demonstrate that the scheme was devised by the Noticees in such a way that though NDTV would not be a party to the said loan agreements, yet the loan agreements would contain certain crucial, onerous and hostile stipulations pertaining to NDTV, including its capital restructuring which were agreed to be undertaken by the Noticees no. 1 and 2, only with the prior consent of ICICI/VCPL. This was made possible only due to the fact that the Noticees were the promoters and majority shareholders of NDTV and Noticees no. 1 and 2 were also the Chairman and Managing Director, respectively, of the Company. The dominant positions enjoyed by the Noticees no. 1 and 2 enabled them to make promises to ICICI/VCPL thereby significantly impacting the interests of NDTV. The Noticees position in NDTV coupled with Noticees no. 1 and 2 position in Noticee no. 3 enabled them to effectively enter into the loan agreements as a *group acting in concert* and also to conceal the material information from the shareholders. The loan agreements were structured in such a manner that clauses on various matters pertaining to NDTV, which were material and price sensitive information, were concealed from the minority shareholders, thereby inducing the investors to trade in the shares of NDTV in obliviousness about such shift in *de-facto* control over NDTV and deprived them of informed participation in the securities market. The impugned loan agreements were part of colorable device and thus, “*it will be difficult for judicial process to accord its approval to it*”. Further, the act of the Noticees to allow VCPL to acquire indirectly the 30% shareholding of NDTV through conversion of warrants into equity shares of Noticee No. 3 without the knowledge of NDTV Board and its minority shareholders, was an act which was deceitful in nature and therefore the Noticees indulged in unfair trade practices. Thus, I am of a view that, such an arrangement and scheme deployed by the Noticees to transfer their substantial stake in NDTV to VCPL was fraudulent in nature and was in violation of Section 12A (a) and (b) of SEBI Act read with the Regulation 3(a), (b), (c) and (d) and 4(1) of the PFUTP Regulations.

34. The Noticees No. 1 and 2 have contended that the surmise that the loan covenants bind NDTV is completely erroneous, and overlooks elementary legal principles around corporate governance, with the nuance of interplay between shareholder rights and management rights. In this regard, I note that there is no ambiguity to the above proposition that a shareholder is free to exercise his voting rights in the manner he wishes to. However, the allegations against the Noticees is not that they could not have entered into such loan agreements or exercised their voting rights the way they desired to, but the case against the Noticees is that they have entered into certain transactions with a third party whereby they have agreed to comply with certain conditions which bind NDTV and the interest of its shareholders too. Therefore, by entering into such transaction, Noticees have brought their personal interest as a shareholder in conflict with their fiduciary duty towards the interest of NDTV.



35. I also note that, the existing '*Code of Conduct*' specified by NDTV for its directors provides for making disclosure in event of conflict of interest of its Board Members and senior management. However, the Noticees no. 1 and 2 evaded disclosure of the material and crucial clauses in the said loan agreements, which was required to be made under the said *Code of Conduct* of NDTV. In such a background, such contentions of the Noticees are not tenable. The Noticees arguments further fails to press their point, as despite being aware of the lawful position, they consented for such clauses, knowing well that their fiduciary responsibilities would not permit them to act against the interest of the Company and its shareholders. The arguments advanced by Noticees in this regard cannot be relied upon in terms of peculiar facts and circumstances of the instant matter. The Noticees has not provided any plausible explanation for consenting to such clauses in the loan agreements which restrict the Noticees from exercising their fiduciary duties towards the shareholders of NDTV, without the prior written consent of a third party.
36. As regards the violation of Clause 49(I)(D) of the Listing Agreement by the Noticees No. 1 and 2, respectively, I note that Clause 49(I)(D) requires the Board of every listed company to lay down a '*Code of Conduct*' and compliance by the Board Members and senior management of the company. Further, all the Board Members and senior management of the company are required to affirm their compliance with the Code on an annual basis. I note that NDTV had its *Code of Conduct* in place during the relevant period and the relevant extract of the said *Code of Conduct* is as under:

"Applicability"

This Code of Conduct applies to the following (hereinafter referred to as "officers")

- *All the members of the Board of NDTV and its subsidiaries*
- *Chief Finance Officer and Company Secretary*
- *Members of Senior Management*

Compliance With Laws, Rules and Regulations

Ethical business conduct is critical to our business. Officers are expected to comply with all applicable laws, rules and regulations including all laws prohibiting insider trading, engage in and promote honest and ethical conduct and abide by the policies and procedures that govern the conduct of the Company's business. Officer's responsibilities include helping to create and maintain culture of high ethical standards and commitment to compliance.

Prevent Conflicts of Interest

Officers should not make any investment, accept any position or benefits, participate in any transaction or business arrangement or otherwise act in a manner that creates or appears to create a conflict of interest unless they makes



full disclosure of all facts and circumstances. A "conflict of interest" arises when you take actions or have interests that conflict in any way with the interests of the Company...."

37. In terms of said *Code of Conduct* of NDTV, the Board members and senior management of NDTV were expected to comply with all applicable laws, rules and regulations and engage in and promote honest and high ethical conduct which is free from fraud or deception. Further, in terms of the said *Code of Conduct*, Board members and senior management of the NDTV were also required to make full disclosure of all facts and circumstances before making any investment, accepting any position or benefits, participating in any transaction or business arrangement which might create or appear to create a conflict of interest. In view of the observations and findings recorded in the abovementioned paragraphs establishing the fact that the Noticees no. 1 and 2 have indulged in a fraudulent and unfair trade practice, it can be inferred that both Noticees no. 1 and 2 have failed to comply with all applicable laws and have also engaged in a conduct which is not honest and ethical and not free from fraud or deception, as required under the said *Code of Conduct*. Further, Noticees no. 1 and 2 have entered into the said loan agreements which created conflict of their personal interest with the interest of the NDTV, without making disclosure as required by their own *Code of Conduct*. Therefore, the conduct of Noticee no. 1, as well as Noticee No. 2 was in violation of the *Code of Conduct* of NDTV and consequently, the affirmation as required in terms of Clause 49(I)(D) (ii) of the Listing Agreement and as given by Noticee no. 1 and also by Noticee No. 2 to NDTV, that they are compliant with the *Code of Conduct* during the period of 2008-09 and 2009-10 was incorrect.
38. Noticees have contended that at the time of execution of the respective loan agreements there was no statutory or regulatory duty cast upon promoters of listed entities to disclose loan agreements either to the listed entities or to the stock exchanges. In this regard I note that Clause 49 of the Listing Agreement was first introduced through Circular dated February 21, 2000 and was thereafter amended from time to time. Further, vide Circular dated October 29, 2004, Clause 49 was introduced. As can be noted from the above quoted provisions of *Code of Conduct* framed by NDTV itself, Board Members and senior management of the NDTV were required to make full disclosure of all facts and circumstances before making any investment, accepting any position or benefits, participating in any transaction or business arrangement or otherwise acting in a manner that creates or appears to create a conflict of interest. In the present case, Noticees no. 1 and 2 were not only the promoters of the Company but also the Chairman and Managing Directors of the Company, respectively. They entered into ICICI and VCPL loan agreements along with Noticee no. 3 which were material and in conflict with the interest of the Company and its shareholders. Thus, in terms of *Code of Conduct* of NDTV, full facts and circumstances pertaining to these loan agreements were required to be disclosed to the Company by the Noticees no. 1 and 2. In my view, there cannot exist any ambiguity on this



requirement from the Noticees No. 1 and 2. Therefore, I note that the Noticees No. 1 and 2 contentions in this regard is not tenable. I also note that the Noticees reference to SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations') is out of place, as the violations alleged has been with respect to the provisions of Clause 49(I)(D) of Equity Listing Agreement read with Section 21 of SCRA. The charge of violation of provisions of Clause 49(I)(D) of Equity Listing Agreement has been fastened upon the Noticees No. 1 and 2 as they were the board members of the Company at relevant time. Further, the provisions under Clause 49(I)(D) were in place since October 29, 2004 and therefore, the contention of the Noticees in this regard is rejected hereby.

39. In view of above findings, I conclude that the Noticees have violated of the provisions of Section 12A (a) and (b) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4 (1) PFUTP Regulations. Further, the Noticees No. 1 and 2, who are also the board members of the Company, have also violated provisions of Clause 49 (1)(D) of Equity Listing Agreement read with Section 21 of SCRA. Therefore, I am of the view that the Noticees are liable for imposition of monetary penalty as under:

- a. Noticees No. 1, 2 and 3 for violation of Section 12A (a) and (b) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4 (1) of the PFUTP Regulations, under Section 15HA of the SEBI Act; and
- b. Noticees No. 1 and 2 for violation of Clause 49 (1)(D) of Equity Listing Agreement read with Section 21 of SCRA, under Section 23H of SCRA.

The aforesaid penalty provisions are mentioned as under:

SEBI Act

Penalty for fraudulent and unfair trade practices

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

SCR Act

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*



40. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under section 15I of the SEBI Act and under Section 23I of the SCRA imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act and under Section 23J of the SCRA. The factors stipulated in Section 15J of the SEBI Act and under Section 23J of the SCRA, reads as follows: -

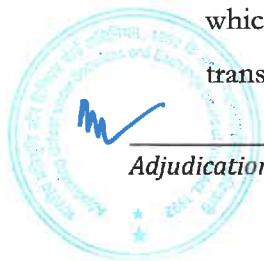
15J and 23 J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

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

41. Having regard to the factors listed in section 15J of the SEBI Act and under Section 23J of the SCRA and the guiding principles laid down by the Hon'ble Supreme Court in the matter of *SEBI v/s Bhavesh Pabari (CIVIL APPEAL NO(S).11311 OF 2013)*, it is noted from the material available on record, that quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. It is important to note that the Noticees no. 1 and 2 were the main promoters and majority shareholders of NDTV having 61.45% shareholding at the relevant time. Through the disclosures available in the public domain, including the prospectus issued for the Initial Public Offer of the Company, indicates that the Noticees no. 1 and 2 have been the face of the Company and the prime movers of all its activities. Moreover, as the Chairman and the Managing Director, respectively, Noticees no. 1 and 2 were also actively running the day to day management of the Company. Under these circumstances, the Noticees no. 1 and 2 have failed in their fiduciary duty to act in a fair and transparent manner, to protect the interest of their minority shareholders by indulging in fraudulent activity. Such acts by the Noticees is blameworthy and serious in nature considering the degree of responsibility bestowed upon them by the statute and the applicable regulations and Code of Conduct and by no means same can be construed as a *bona fide* act. I also observe that the concealment of material information is in respect of three impugned loan agreements and is such that the violations by the Noticees can be said repetitive in nature.

42. I further note that, Corporate Governance refers to the set of system, principles and processes by which a company is governed, such as, conducting the business with all integrity & fairness, being transparent with regard to all the transactions, making all necessary disclosures, complying with



applicable Law, accountability & responsibility towards the stakeholder, etc. In this regard the said Clause 49 of Listing Agreement deals with the complete guidelines for corporate governance. For good corporate governance company should make all necessary disclosures. It is also a responsibility on board members and senior management to make disclosures of all material matters which all stakeholders are supposed to know. Since stakeholder's / minority shareholders cannot attend all meetings so the disclosure is only way through which they can get information about the material and price sensitive information. The main motive of this clause is that company should be fair with its shareholders and stakeholders. Everything in the company must be done effectively & fairly. Since the shareholders and stakeholders have social and financial interest in the company hence company is bound to provide a safeguard to their interest. I am of a view that, stated guiding principle of Corporate Governance as envisaged under Clause 49 of the Listing Agreement has been blatantly violated in this case, wherein, the material and price sensitive information has been deliberately concealed from the Company and its minority shareholders.

43. I also note that, the Ld. WTM in his order dated June 14, 2019 has also found such acts of the Noticees in violation of the SEBI Act, PFUTP Regulations and Listing Agreements read with SCRA and held that – Noticees No. 1, 2 and 3 are in violation of the provisions of Section 12A (a) and (b) of SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4 (1) PFUTP Regulations; and Noticees No. 1 and 2 are also in violation of Clause 49 (1)(D) of Equity Listing Agreement read with Section 21 of SCRA.
44. I am of a firm opinion that, any fraudulent act directly designed to defraud the investors of the Company cannot be treated as good for the securities market and for the interest of investors. The law does not permit any allowance to be made for such fraudulent act as found in this case. The brazen failure as found in this case, had clearly defeated the purposes of the Regulations i.e. investor protection and orderly development of the securities markets. Considering the role and responsibility of the Noticees in these regards and important obligations cast upon it under the Listing Agreements and SCRA, in my view, the default by the Noticees is grave and the gravity of this matter cannot be ignored. Therefore, no lenient view should be taken in this matter and the case deserves imposition of deterrent monetary penalty to the fraudulent act as found in this case. Such acts, if not dealt with adequately and sternly, will send a wrong signal to the violators having same or similar propensity and will not be good message for the securities market.
45. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules and under section 23I of the SCRA read with rule 5 of the SCR Adjudication Rules, I hereby impose a maximum penalty of ₹25,00,00,000/- (Rupees Twenty-Five Crore only) payable jointly and severally, on the Noticees viz. Mr. Prannoy Roy, Ms. Radhika Roy and M/s RRRP Holding Pvt. Ltd. under section 15HA of

SEBI Act and penalty of ₹1,00,00,000/- (Rupees One Crore only) each upon the Noticees viz. Mr. Prannoy Roy and Ms. Radhika Roy under section 23H of the SCRA. In my view, the said penalty is commensurate with the violation committed by these Noticees in this case.

46. The Noticees shall remit / pay the said total amount of penalty within 45 days of receipt of this order by way online payment on SEBI website at following tabs on SEBI website www.sebi.gov.in – ENFORCEMENT -> Orders ->Orders of AO -> Pay Online or by way of using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case you face any difficulties in payment of penalties, you may contact the support at portalhelp@sebi.gov.in.
47. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery / settlement amount and legal charges along with order details)	

48. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
49. In terms of Rule 6 of the SEBI Adjudication Rules and SCR Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: December 24, 2020

Place: Mumbai



Amit Pradhan
Adjudicating Officer