

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

**UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 12A OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 - IN THE MATTER OF DECCAN CHRONICLE HOLDINGS LIMITED**

**In respect of:**

Sl. No.	Notices /Name of the entities	PAN
1	Deccan Chronicle Holdings Ltd.	AABCD6737D
2	Sri T. Venkatram Reddy (Chairman)	AAWPT6829M
3	Sri T. Vinayak Ravi Reddy (Vice Chairman)	ABAPT1371Q
4	Sri Parasuraman Karthik Iyer (Vice Chairman)	AFTPK1261M
5	Sri N. Krishnan (Managing Director)	AAQPK7339C
6	Sri V. Shankar (Company Secretary)	AAZPS3984J
7	Sri Mani Oommen, Partner M/s. C.B. Moulli & Associates, Chartered Accountants	AAAPO5818N

(Hereinafter individually referred by their corresponding name/number and collectively referred to as “Notices”)

**Background in brief**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation to ascertain if the promoters of the Deccan Chronicle Holdings Ltd. (hereinafter referred to as “DCHL” or the “Company”) viz. Sri T. Venkatram Reddy (Chairman of DCHL), Sri T. Vinayak Ravi Reddy (Vice Chairman of DCHL) and Sri Parasuraman Karthik Iyer (Vice Chairman of DCHL), have made any fraudulent pledging of shares of DCHL and have made wrong, misleading or inadequate disclosures to the stock exchange, as alleged in the media reports. The investigation was also conducted to ascertain as to whether there was understatement of loans by DCHL in its financial statements for the financial years from 2008-09 to 2011-12. DCHL is a publisher of newspapers such as ‘Deccan Chronicle’, ‘Asian Age’, ‘Financial Chronicle’ and ‘Andhra Bhoomi’. The Company had come out with a public issue of 80,13,100 shares of ₹10 each at ₹162 per share in December 2004 and had got its shares listed on BSE and NSE.
2. During the investigation, in order to ascertain the veracity of the loans, interest thereon and

financial charges reported by the *Company* in its financial statements for the financial years 2005-06 to 2011-12, the *Company* as well as its major lenders were asked to furnish details regarding the short term loans and long term loans availed by *DCHL*. The investigation, *inter alia*, revealed that:

- (1) The aggregate amount of outstanding long term and short term loans of *DCHL* at the end of FY 2008-09 was **₹1,693.67 crore**, whereas the *Company* in its Annual Reports for FY 2008-09 had disclosed only **₹354.49** crore as outstanding long term and short term loans.
- (2) *DCHL* had understated its outstanding loans to the tune of **₹1,339.17 crore** for the year 2008-09.
- (3) Similarly, the differences between the actual and reported outstanding loans for FY 2009-10 and FY2010-11 were found to be **₹2,982.07 crore** and **₹3,347.41** crore, respectively.
- (4) The *Company* had understated the interest and financial charges from financial year 2005-06 onwards and the cumulative amount of such understated amount stood at approximately **₹753.91** crore by the end of 2011-12 (up to September 30, 2012).
- (5) For the buyback announcement made by *DCHL* on May 06, 2011, as per the accounts, the maximum limit available for buyback of its shares was only **₹116.02** crore after adjusting for understatement of interest/finance cost, whereas the *Company* announced buyback for an amount aggregating up to **₹270 crore** from the open market at a price not exceeding **₹180** per share. *DCHL* had carried out buyback of shares during FY11-12 which was more than 25% of its total paid up capital. Thus, without having adequate free reserves *DCHL* carried out buyback of its shares which misled the uninformed investors / shareholders about the perceived valuation / strong financials / adequate free reserves of the company which actually was not true and might have influenced / induced the decision of investors / shareholders, particularly when the price of the share was declining since May 2010.
- (6) The *Company* has manipulated its financials and the announcement for buyback of its securities was made even in the absence of adequate reserves.
- (7) The *Company* has carried out the buyback of shares beyond the prescribed limit and also did not make any disclosure about change in its shareholding consequent to the buyback.

- (8) The promoters and directors of *DCHL*, namely, *Sri T. Venkatram Reddy*, *Sri T. Vinayak Ravi Reddy* and *Sri Parasuraman Karthik Iyer* while making disclosure to the stock exchanges for the quarter ending on September 30, 2012 have for the first time stated/disclosed that 99.81% of their shareholding in *DCHL* is encumbered / pledged whereas the promoters had obtained loans from financial institutions / banks / finance companies either by way of pledging their shareholding or by way of entering into Non-disposal Undertaking (hereinafter referred to as “*NDU*”) or Security Net Agreements (hereinafter referred to as “*SNA*”) since March 2011.
- (9) Deccan Chronicle Marketers (hereinafter referred to as “*DCM*”) is a partnership firm with *Sri T. Venkatram Reddy*, *Sri T. Vinayak Ravi Reddy* and Deccan Chronicle Marketers Pvt. Ltd. (hereinafter referred to as “*DCMPL*”) as its partners.
- (10) *DCM* owed a sum of **₹4,084.81 crore** to *DCHL* on account of non-payment of advertisement charges, interest and financial charges and above stated amount remained outstanding dues for years. No steps have been taken by the *Company* to recover the said amount, hence liability had been accruing in the books of *DCHL* with each passing day.
- (11) In order to settle the said dues, a settlement agreement was entered into between *DCM* and *DCHL* on September 28, 2012 wherein *DCM* agreed to transfer, assign, sell all its rights, title, interest, etc. in the brands "*Deccan Chronicle*" and "*Andhra Bhoomi*" to *DCHL* for a consideration of **₹2,905.32 crore** and the said dues were settled in terms of the settlement agreement dated September 28, 2012 executed between *DCM* and *DCHL*.
- (12) However, it was observed from the disclosures/statements relating to brands and trademarks made in the Prospectus dated December 6, 2004 issued by *DCHL* and the Annual Report of *DCHL* for FY 2005-06 that the brands “*Deccan Chronicle*” and “*Andhra Bhoomi*” have already been disclosed to be owned by *DCHL* and have been duly recognized in its books of accounts as assets of *DCHL*.
- (13) *DCM*, owned and controlled by the promoters of *DCHL*, had dues payable to *DCHL* to the tune of **₹4,084.21 crore**. *DCHL* falsely claimed to have acquired the brands “*Deccan Chronicle*” and “*Andhra Bhoomi*” which were already owned by *DCHL*. Thus, under the guise of acquisition of brands, the promoters of *DCHL* had in their books of accounts, fraudulently transferred the liability of *DCM* to *DCHL* against the interest of other shareholders of *DCHL* to the extent of **₹2905.32 crore**.
- (14) *Sri T. Venkatram Reddy*, *Sri T. Vinayak Ravi Reddy* and *Sri Parasuraman Karthik Iyer* had failed to make disclosures with respect to their encumbered shares with ICICI Bank

Ltd. (through NDU), with IDFC Ltd. (through pledge), with Religare Securities Ltd. (through irrevocable power of attorney), with Future Capital Holdings Ltd. (hereinafter referred to as "FCHL") (through NDU) and also failed to make disclosures about the invocation of encumbrance of shares done by ICICI Bank Ltd., IDFC Ltd. and Religare Securities Ltd. They also failed to make disclosures of change in shareholding exceeding 1% of total share capital on account of buyback of equity shares by *DCHL*.

(15) *DCHL* alongwith *Sri T. Venkatram Reddy*, *Sri T. Vinayak Ravi Reddy* and *Sri Parasuraman Karthik Iyer* who are responsible for the overall management of *DCHL* have, *inter alia*, failed to comply with the following conditions of the listing agreement, namely -

- (a) Failed to disclose to the stock exchange material price sensitive information on the date of entering into agreement with *DCM*.
- (b) Misleading financial information (i.e. understatement of interest and outstanding loans and thereby overstatement of profits) in its Annual Report for FY 2008-09, FY 2009-10 and FY 2010-11 which were not true and fair.
- (c) Delay in filing shareholding pattern for quarters ended Sep-12 and Dec-12 to the stock exchange.
- (d) Failure to provide updated information on the shareholding pattern from quarter ended Mar-13 onwards on its website.
- (e) Failure to appoint Company Secretary of the *Company*.
- (f) Failure to disclose related party transactions pertaining to funds advanced to Flyington Freightors Ltd., a related entity.

**Show cause notice, reply and hearing:**

3. Pursuant to the investigation, a common show cause notice (hereinafter referred to as "SCN") dated May 10, 2016 was issued to *DCHL* (*Noticee 1*), its promoters and directors, namely, *Sri T. Venkatram Reddy* (*Noticee 2*), *Sri T. Vinayak Ravi Reddy* (*Noticee 3*), *Sri Parasuraman Karthik Iyer* (*Noticee 4*), *Sri N. Krishnan* (*Noticee 5*), its Company Secretary *Sri V. Shankar* (*Noticee 6*) and its statutory auditors *Sri Mani Oommen* - Partner M/s CB Mouli & Associates - (*Noticee 7*) alleging, *inter alia*, that:

- (a) *DCHL* has understated its outstanding loans to the tune of **₹ 1,339.17 crore** for the year 2008-09 and also wrongly disclosed the difference between the actual and reported outstanding loans for FY 2009-10 and FY 2010-11 as **₹ 2,982.07 crore** and **₹ 3,347.41 crore**, respectively.
- (b) There has been understatement of the loan amounts, interest payments and financial charges in its financial statements since the year 2008-09 onwards and disclosure of artificially inflated profit of the *Company* to the public at large, causing thereby misleading

appearances of its financial affairs to the investors, thereby inducing them to trade in the shares of the *Company* based on those misleading financial results of the *Company*.

- (c) *DCHL*, by carrying out buyback of shares beyond the prescribed limit of 25% of its total paid up capital and free reserves during the FY 2011-12 has acted in violation of the provisions of section 77A of the Companies Act, 1956.
- (d) The *Company* has manipulated its financials and announced buyback of shares in the absence of adequate reserves, at a rate which was 234% of the ruling market price of its scrip, which further misled the innocent investors by inducing them to trade on the above stated perceived valuation of the scrip believing that the *Company* has strong financials and adequate free reserves as disseminated by it to the public. In effect, such misrepresentation of facts resulted in influencing the decision making of the investors from whom material information was concealed and they were not aware of the true and correct information about the actual state of financial affairs of the *Company*.
- (e) Failure to make disclosure required under the provisions of regulation 13(4), 13(4A) read with regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “the PIT Regulations, 1992”) for the change in shareholding by more than one percent pursuant to the buyback by the *Company*.
- (f) The acts of concealing or not disclosing the pledge/encumbered shares to the investors have also been alleged to be in violation of regulation 31 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the “Takeover Regulations”), since non-disclosures about the same by the promoters misled the investors into believing that promoters are having substantial stake in the *Company* which had an influencing impact on the decision making by the investors to trade in the shares of *DCHL*.
- (g) The promoters of *DCHL*, who were also the owners of *DCM*, under the guise of acquisition of brands, have fraudulently transferred the liability of *DCM* towards *DCHL* and have misled the investors thereby further causing a loss to the extent of **₹2,905.32 crore** to the *Company* and to the innocent shareholders of *DCHL*.
- (h) *DCHL* has acted in breach of the conditions prescribed under the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “the SCRA, 1956”) for failure to comply with the following:
  - (i) Failure to disclose to the stock exchange about advancing an amount of **₹99.45 crore** to a related party, namely, Flyington Freightors Ltd., for purchase of a Cargo Aircraft and connected expenses (**Clause 32 of the Listing Agreement**).

- (ii) Delay in filing shareholding pattern for the quarters ended on September 30, 2012 and December 31, 2012 to the stock exchange (**Clause 35 of Listing Agreement**).
  - (iii) Failure to provide updated information on the shareholding pattern from March 2013 quarter onwards on its website (**Clause 54 of Listing Agreement**).
  - (iv) Failure to appoint a new Company Secretary subsequent to the resignation of the existing Company Secretary on September 1, 2012 (**Clause 47(a) of Listing Agreement**).
  - (v) Failure to disclose to the stock exchange material price sensitive information about the date of entering into agreement with *DCM* dated September 28, 2012 (**Clause 36 of Listing Agreement**).
  - (vi) Misleading financial information (i.e., understatement of interest and outstanding loans and thereby overstatement of profits) in its Annual Report for FY 2008-09, FY 2009-10 and FY 2010-11 which was not true and fair. (**Clause 41 of Listing Agreement**)
4. In view of the facts as enumerated above, the *Notices* have been alleged to have violated the following provisions:
- (1) *Notice 1* - section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the SEBI Act, 1992”) read with regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (Prohibition of Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “the PFUTP Regulations, 2003”), clauses 32, 35, 36, 41, 47(a) and 54 of the Listing Agreement read with section 21 of the SCRA, 1956 and sections 68 and 77A of the Companies Act, 1956.
  - (2) *Notices 2 to 4* - section 12A(a), (b) and (c) of the SEBI Act, 1992 read with regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003, regulation 31(1) and 31(2) read with regulation 31(3) of the Takeovers Regulations, 2011, regulations 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations, 1992, section 21 read with section 24(1) of the SCRA, 1956 and section 77A read with section 68 of the Companies Act, 1956.
  - (3) *Notices 5 and 6* - section 12A(a), (b) and (c) of the SEBI Act, 1992 read with regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003 and section 77A read with section 68 of the Companies Act, 1956.
  - (4) *Notice 7* - section 12(a), (b) and (c) of the SEBI Act, 1992 read with regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003.

5. The SCN has also listed out the issuance of directions proposed in respect of each of the *Notices*, which are indicated herein below:
- (a) *Notice 1* has been called upon to show cause as to why action in terms of Section 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 and Section 12A of the SCRA, 1956 including disgorgement should not be initiated.
- (b) *Notices 2 to 4* have been called upon to show cause as to why action in terms of Section 11(1), 11(4) and 11B of the SEBI Act, 1992 and Section 12A of the SCRA, 1956 including disgorgement should not be initiated.
- (c) *Notices no. 5 to 7* have been called upon to show cause as to why action in terms of Section 11(1), 11(4) and 11B of the SEBI Act, 1992 should not be initiated.
6. Before I proceed to deal with the charges in respect of each of the *Notices*, for the purposes of clarity, I deem it worthwhile to list out the allegations made in the SCN against each of the *Notices* based on the findings in the investigation conducted by SEBI and the specific violations of the relevant provisions of the SCRA, 1956, the SEBI Act, 1992 and provisions of different rules, regulations, circulars, code of conduct, policy or guidelines issued thereunder etc., as alleged against them, in the following table:

Name of the entity	Nature of violations	Breach of provisions	Proposed directions
<i>DCHL</i>	<p><b><i>DCHL</i> understated outstanding loans and interest and finance charges, etc. in the annual report for FY 08-09, FY 09-10 and FY 10-11.</b></p> <p><i>DCHL</i> carried out buyback of shares without having adequate free reserves which misled the uninformed investors / shareholders about the perceived valuation / strong financials / adequate free reserves of the company which have wrongfully influenced / induced the decision of investors / shareholders to invest in the <i>Company</i> based on such</p>	Section 12(a), (b) and (c) of the SEBI Act, 1992 r/w regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations.	Direction in terms of Section 11(1), 11(4), 11A, 11B of the SEBI Act, 1992 and Section 12A of the SCRA, 1956 including direction to disgorge.

	misleading financial information particularly when the price of the share was declining since May 2010		
	<i>DCHL</i> carried out buyback of its equity shares which was more than 25% of its total paid up capital limit during the financial year 2011-12.	Section 68 and Section 77A of the Companies Act, 1956.	
	Failed to disclose to the stock exchanges material price sensitive information on the date of entering into an agreement with <i>DCM</i> .	Clause 36 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Gave misleading financial information (i.e. understatement of interest and finance charges on outstanding loans and thereby overstatement of profits) in its Annual Report for FY08-09, FY09-10 and FY10-11.	Clause 41 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Delay in filing SHP for quarters ended Sep-12 and Dec-12 to the stock exchange.	Clause 35 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Failure to provide updated information on the SHP from quarter ended March-13 onwards on its website.	Clause 54 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Failure to appoint Company Secretary of the <i>Company</i> .	Clause 47(a) of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Failure to disclose information about related party transactions pertaining to funds advanced to Flyington Freightors Ltd., which was a related entity of the promoters of <i>DCHL</i> .	Clause 32 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
<i>Sri T. Venkatram Reddy</i> (Chairman) ( <i>Noticee 2</i> )	<i>DCHL</i> understated outstanding loans and interest and finance charges, etc. in the annual report for	Section 12(a), (b) and (c) of the SEBI Act, 1992 r/w	Direction in terms of Section 11(1),

<p><i>Sri T. Vinayak</i> <i>Ravi Reddy</i> (Managing Director) (<i>Noticee</i> 3)</p> <p><i>Sri Parasuraman</i> <i>Karthik Iyer,</i> (Executive Director) (<i>Noticee</i> 4) (were also the promoters)</p>	<p>the FY 2008-09, FY 09-10 &amp; FY 10-11.</p> <p>Were signatories to the public announcement made by the <i>Company</i> on May 6, 2011 for buy back of its equity shares without having adequate free reserves. This misled the uninformed investors/ shareholders about the perceived valuation/ strong financials/ adequate free reserves of the <i>Company</i> which have wrongfully influenced / induced their investment decision particularly when the price of the share was declining since May 2010.</p> <p>Caused loss to its other non-promoter shareholders / stakeholders to the extent of ₹2905.32 crore.</p>	<p>Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003, and section 68 and section 77A of the Companies Act, 1956.</p>	<p>11(4), 11B of the SEBI Act, 1992 and Section 12A of the SCRA, 1956 including direction to disgorge.</p>	
	<p>Failure to make disclosures with respect to encumbered shares with ICICI Bank (NDU agreement), IDFC Ltd. (pledge), Religare Securities Ltd. (irrevocable power of attorney), Future Capital Holdings Ltd. (NDU agreement).</p> <p>Failure to make disclosures about the invocation of encumbrance of shares by ICICI Bank, IDFC Ltd. and Religare Securities Ltd.</p>	<p>Regulation 31(1) and 31(2) r/w Regulation 31(3) of the Takeover Regulations, 2011.</p>		
	<p>Failure to make disclosure with respect to change in shareholding exceeding 1% of total share capital on account of buy back of securities by <i>DCHL</i>.</p>	<p>Regulation 13(4) and Regulation 13(4A) read with Regulation 13(5) of</p>		

		the PIT Regulations, 1992.	
	<i>DCHL</i> failed to comply with the conditions of the listing agreement and since these <i>Notices</i> were responsible for the overall management of <i>DCHL</i> , these entities have violated Section 21 read with Section 24(1) of the SCRA, 1956.	Section 21 read with Section 24(1) of the SCRA, 1956.	
	Failed to disclose to the stock exchanges material price sensitive information about the date of entering into an agreement with <i>DCM</i> .	Clause 36 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Misleading financial information (i.e., understatement of interest and financial charges on outstanding loans and thereby overstatement of profits) in its Annual Report for FY08-09, FY09-10 and FY10-11.	Clause 41 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Delay in filing SHP for quarters ended Sep-12 and Dec-12 to the stock exchange.	Clause 35 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Failure to provide updated information on the shareholding pattern from quarter ended Mar-13 onwards on its website.	Clause 54 of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Failure to appoint Company Secretary of the <i>Company</i> .	Clause 47(a) of the Listing Agreement r/w Section 21 of the SCRA, 1956	
	Failure to disclose information regarding related party transactions pertaining to funds advanced to Flyington Freightors Ltd., a related entity.	Clause 32 of the Listing Agreement r/w Section 21 of the SCRA, 1956	

<p><i>Sri N. Krishnan</i> (Executive Director, Finance) (<i>Noticee</i> 5)</p> <p><i>Sri V. Shankar,</i> (Company Secretary) (<i>Noticee</i> 6)</p>	<p>DCHL understated outstanding loans and interest and finance charges in the annual report for the FY 2008-09, 09-10 &amp; 10-11.</p> <p>As signatories to the public announcement made by the <i>Company</i> on May 6, 2011 for buy back of its equity shares without having adequate free reserves which misled the uninformed investors / shareholders about the perceived valuation / strong financials / adequate free reserves of the company and these actions have wrongfully influenced / induced the decision of investors / shareholders particularly when the price of the share was declining since May 2010.</p>	<p>Section 12(a), (b) and (c) of the SEBI Act, 1992 r/w Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003, and section 68 and Section 77A of the Companies Act, 1956..</p>	<p>Direction in terms of Section 11(1), 11(4), and 11B of the SEBI Act, 1992.</p>
<p><i>Sri Mani Oommen,</i> Partner M/s. CB. Moulli &amp; Associates, Statutory Auditor of DCHL (<i>Noticee</i> 7)</p>	<p>DCHL understated outstanding loans and interest and finance charges, etc. in the annual report for the FY 2008-09, 09-10 &amp; 10-11.</p>	<p>Section 12(a), (b) and (c) of the SEBI Act, 1992 r/w Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003.</p>	

### **Replies of the respective noticees**

7. The aforementioned *Noticees* replied to the SCN issued to them on different dates as mentioned in the following table:

### **Replies of the *Noticees*.**

Sl. No.	Noticee	Date of reply
1.	<i>DCHL (Noticee 1)</i>	October 06, 2016, October 4, 2018, October 31, 2018 and September 16,

		2019.
2.	<i>Sri T. Venkatram Reddy (Noticee 2)</i>	October 08, 2016, November 14, 2018, December 17, 2018.
3.	<i>Sri T. Vinayak Ravi Reddy (Noticee 3)</i>	October 08, 2016, November 14, 2018, December 17, 2018.
4.	<i>Sri Parasuraman Karthik Iyer (Noticee 4)</i>	August 22, 2016 and August 29, 2017
5.	<i>Sri N. Krishnan (Noticee 5)</i>	<b>No reply filed</b>
6.	<i>Sri V. Shankar (Noticee 6)</i>	June 08, 2016, November 19, 2018, December 24, 2018.
7.	<i>Sri Mani Oommen, (Noticee 7)</i>	August 31, 2016, October 08, 2016, December 18, 2018 and March 01, 2019

8. The *Notices* were also granted opportunities of personal hearing on several occasions. After receipt of replies, the *Notices* were granted an opportunity of personal hearing on October 9, 2018. The *Company* and its directors (*Notices 1 to 5*) did not appear for personal hearing. *Sri V. Shankar (Noticee 6)* requested for adjournment. The notice of personal hearing could not be served upon *Sri Mani Oommen (Noticee 7)*. Therefore, in the interest of natural justice, another opportunity of personal hearing was granted on November 19, 2018. *Sri V. Shankar* appeared for hearing on November 19, 2018 in person and made submissions on the lines of the written reply dated June 08, 2016 filed by him in the matter. None appeared for hearing on behalf of *Noticee 1 to 5 & 7*, however, they sought four weeks' time to appear for the hearing. Accordingly, one more opportunity of hearing was granted to *Notices 1 to 5 & 7* on December 18, 2018. However, no one appeared for hearing on behalf of *Notices 1 to 5*. Sri KRCV Seshachalam (Advocate) appeared for hearing on behalf of *Noticee 7* and made oral and written submissions. During the personal hearing several queries were raised to him with respect to which he sought another opportunity of personal hearing to respond and to submit supporting documents in that regard. Accordingly, one more opportunity of hearing was granted to *Noticee 7* on February 4, 2019. However, the counsel for *Noticee 7* could not appear for the hearing on February 4, 2019 and sought time to file written submissions. The written submissions on behalf of the *Noticee 7* was filed on March 1, 2019.
9. I have perused the replies and submissions of the *Notices* who have appeared before me. I find that some of the contentions made by the *Notices* in their written replies are common and identical to each other. For the sake of brevity, the common contentions of the *Notices* shall be dealt with at the time of discussing item-wise allegations against the *Notices*, hence are not being discussed now while dealing with the individual replies and oral and written submissions made by each of the *Notices*, which are hereunder:

**A. DCHL (Noticee 1):**

- (1) On the issue of the requirement to make disclosure under regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 it is contended that the same would arise only when the change in shareholding is on account of an overt act on the part of the *Noticee* and not when it is incidental to buyback of shares of other shareholders.
- (2) Even if it is assumed that a disclosure was required to be made, the non-disclosure could not be said to be critical as the promoters had sufficiently disclosed their pre and post buyback shareholding in:
  - (i) Form B;
  - (ii) Letter of offer issued in connection with the buyback;
  - (iii) Post offer public advertisement dated August 29, 2011; and
  - (iv) SEBI order dated April 15, 2011 in connection with the exemption application filed under regulation 4(2) the Takeover Regulations, 2011.
- (3) As regards non-disclosure of alleged pledge/encumbrances, the agreement in its entirety would show that the nature of documents was not pledge but it was NDUs entered into with ICICI Bank, IDFC Ltd. and Religare Finvest Ltd. and pledge would have been created only upon satisfaction of certain conditions. The ICICI letter dated January 16, 2013 has specifically provided details of pledge request forms dated July 28, 2012. This also indicates that pledge/encumbrance over the shares were created pursuant to the pledge agreement and not under the NDU agreement.
- (4) There was no pledge agreement with IDFC as is apparent from pledge master report submitted by IDFC. It has been stated that no pledge was created in favour of Religare Finvest Ltd. and that the promoters had only granted power of attorney which was improperly and illegally utilised by Religare Finvest Ltd. Further, the invocation of pledge has been challenged by the concerned parties and the matter is *sub-judice*.
- (5) There was no requirement to intimate NDU at the relevant time. Regulation 31(1) of the Takeover Regulations, 2011 requires promoters to disclose encumbered shares in a prescribed form. The prescribed form does not specify that an NDU is required to be intimated to the stock exchange/company. It is vide circular no. CFD/POLICYCELL/3/2015 dated August 5, 2015 that an NDU was mandated to be disclosed to stock exchange/company. As there was no requirement to make disclosure (before 2015), therefore, there can be no intent on the part of promoters to camouflage transaction of encumbrances to escape disclosure requirements.
- (6) *DCHL* entered into a bulk space selling and brand building agreement with *DCM* (who

are the owners of the brand /logo *Deccan Chronicle* and *Andhra Bhoomi*).

- (7) As per the agreement, *DCHL* was not required to pay any amount for use of the logo and the brand name, however it was required to undertake development and promotion of the brand. *DCHL* used to bill *DCM* a certain amount in respect of bulk space sale. The amount receivable from *DCM* in respect of bulk space sale was not realised. As *DCM* was not able to discharge its liability, the *Company* took short term loans from banks and financial institutions in its name. These short term loans were raised against the receivables from *DCM* and were accounted to *DCM* account in the books of accounts on the last day of the financial year in order to reflect/disclose the true assets and liabilities of *DCHL* in the audited balance sheet. The interest and financial charges paid on the above said short term loans were also receivable from *DCM*, hence accounted to *DCM's* account on the last day of respective financial years.
- (8) In view of the arrangement/agreement between *DCHL* and *DCM*, certain short term loans and interest payments thereon were not reflecting on the face of the balance sheet and not charged to the profit and loss account respectively for the financial years 2008-09, 2009-10 & 2010-11 in order to report the true and fair view in the case of balance sheet and profit and loss account.
- (9) The annual reports were drawn up on the basis of professional advice given by accredited financial consultants and there was no understatement of loans, interest and finance charges in the financial statements of the *Company*, therefore, it cannot be said that the profit was overstated. This also renders the allegation of violation of Section 77A of the Companies Act, 1956 fallacious.
- (10) The SCN relies on information provided by entities with whom the *Company* has certain on-going dispute wherein the claims of the said entities have been challenged. Therefore, any reliance on the information provided by them in the absence of the same being found to be true by a court of law can be speculative in nature and would be prejudicial to the *Company* and its shareholders in their dispute with the lenders.
- (11) The delay in making disclosure of quarterly shareholding pattern, as alleged, was inadvertent.
- (12) The *Company* had made sufficient efforts for appointment of a whole time company secretary. However, they did not receive adequate response.
- (13) It is inaccurate to state that *DCHL* has stated before the Registrar of Companies (hereinafter referred to as the "RoC") that Flyington Freighters Pvt. Ltd. is a related party. They are not related, therefore, no disclosure was required.

- (14) Canara Bank, being one of the financial creditors of the *Company* had filed an insolvency petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the *Company* before the Hon'ble National Company Law Tribunal, Hyderabad. The said petition bearing CP No. IB71/7/HBD/2017 was admitted by the NCLT on July 05, 2017.
- (15) The Hon'ble National Company Law Tribunal (NCLT) vide order dated July 19, 2017, has appointed an interim insolvency resolution professional and has further ordered a moratorium. Subsequently, vide order dated January 25, 2018, NCLT has appointed a Resolution Professional and has confirmed the appointment of the Resolution Professional vide order dated February 8, 2018.
- (16) During the corporate insolvency resolution process of the *Company* a resolution plan was considered and approved by the CoC members. The Hon'ble NCLT, Hyderabad had approved the Resolution plan on June 03, 2019.
- (17) The trading on equity shares of the *Company* has been suspended w.e.f. February 25, 2015 from Bombay Stock Exchange vide Notice No. 20150203-27 dated February 03, 2015 and further the *Company* has been delisted from the Stock Exchange w.e.f August 23, 2017 pursuant to order of the Delisting Committee of the Exchange in terms of rule 21(2)(b) of the Securities Contracts (Regulation) Rules, 1957.
- (18) The trading in equity shares of the *Company* has been suspended w.e.f. January 23, 2013 from National Stock Exchange vide Letter Ref. No. NSE/LIST/5581 dated May 11, 2017 and further the *Company* has been delisted from the Stock Exchange w.e.f. May 12, 2017 as per Chapter V of the SEBI (Delisting of Equity Shares) Regulations, 2009.
- (19) There has been no restraining order issued against the promoters/ directors of *DCHL* by any stock exchange.

***B. Sri T. Venkatram Reddy and Sri T. Vinayak Ravi Reddy (Notices 2 & 3) -***

The written submissions filed by these two *Notices* are identical hence are summarized together herein below:

- (1) *Sri T. Venkatram Reddy* and *Sri T. Vinayak Ravi Reddy*, directors of *DCHL*, in their common reply dated December 17, 2018, have also stated that they were the Chairman and Vice-Chairman of the *Company*, respectively.
- (2) They had nothing to do with the accounting and financial functions. The accounts and finance department was headed by a General Manager who was reporting to the Executive Director/ Managing Director.

- (3) *Sri N. Krishnan* was the Managing Director (hereinafter referred to as “MD”) of *DCHL* during the relevant time.

**C. *Sri Parasuraman Karthik Iyer* (Noticee 4) –**

*The Noticee has mostly adopted the reply of DCHL ad verbatim. Therefore, the submission of the Noticee are not being repeated herein.*

**D. *Sri N. Krishnan* (Noticee 5) – No reply has been filed**

**E. *Sri V. Shankar*, Company Secretary, *DCHL* (Noticee 6) -**

- (1) He was appointed as a company secretary of *DCHL* on April 21, 2009 and resigned from the services of the *Company* vide resignation letter dated May 1, 2012. He had stopped attending the office and discharging his official duties at *DCHL* from June 1, 2012. The *Company* has filed Form No. 32 showing relieving of Company Secretary on August 31, 2012.
- (2) During his employment in *DCHL*, he was not invited to the meetings of the board of directors of the *Company*. The promoters/directors used to meet prior to the scheduled time on the board meeting date (for approval of results, etc.) and would direct him to send the financial results to the stock exchanges. He is not aware as to what transpired in those meetings. Based on the requirement for loan/borrowings any resolutions to be passed were discussed in the meeting.
- (3) With regard to non-disclosure of encumbrance/pledge of shares it has been stated that neither he was involved in the transactions nor he had knowledge of the same. Further, the responsibility to make disclosure under regulation 31(1) r/w regulation 31(3) of the Takeover Regulations, 2011 is solely on the promoters.
- (4) With regard to alleged mis-statement in books of accounts, it has been stated that at no point of time he was entrusted with any duties or responsibilities relating to the accounting or finance function of the *Company* by the management and as such he had no knowledge of the loan, bank correspondences, pledge etc.
- (5) The presumption as to correctness of the Audited Financial statement is established immediately upon signing of the same by the Statutory Auditors and if any understatement of outstanding loans is noticed upon investigation then a person who is merely a company secretary may not be held liable as he was not involved in preparation and finalisation of annual accounts. He had signed the financial statements of the *Company* under the provision of Section 215 of the Companies Act, 1956 with a view only to authenticate that the documents were approved by the board of the

*Company.*

- (6) He had ascribed his signature on the public announcement for buyback in his capacity as a Company Secretary. It was only in relation to the compliances of procedural formalities for the buy-back of shares and not in respect of financial statements and information contained therein.
- (7) The alleged non-compliances with certain clauses of the Listing Agreement by *DCHL* have taken place after he had resigned from the *Company* as Company Secretary. Therefore, he may not be held responsible for the same.

**F. *Sri Mani Oommen***, Partner M/s. C.B. Moulli & Associates, the Statutory Auditor of *DCHL* (**Noticee 7**) –

The *Noticee 7* has filed replies vide letters dated August 31, 2016, October 8, 2016 and December 18, 2018. The reply dated October 8, 2016 is on the similar lines as that of the *Company*. The *Noticee* has filed additional written submissions and related documents on March 1, 2019 pursuant to the queries raised during the hearing on December 18, 2018. Summary of the same is as under:

- (1) That M/s. C.B. Moulli & Associates, Chartered Accountants, was the Statutory Auditor of *DCHL* during the financial years 2008-09 to 2010-11 and *Shri Mani Oommen*, Partner, had signed the annual reports of the company in the capacity of Statutory Auditors.
- (2) M/s. BSR and Co. were the Joint Statutory Auditors along with M/s C.B Mouli & Associates for FY 2008-09. Both auditors have issued the same Auditors' Report and signed the same financial statements for FY 2008-09.
- (3) That the responsibility for preparation and presentation of the financial statements as well as designing, implementation and maintenance of internal controls relevant for the preparation and presentation of financial statements so that they are free from material misstatements, is of the management of the *Company*.
- (4) The responsibility of a Statutory Auditor is only to express an opinion on the financial statements based on Internal Audit (Standard on Auditing - 200). There are standards prescribed by ICAI which clearly specify what an Auditor is expected to do reasonably to reduce the risk of any misstatement in the financials, but that would not imply that an Auditor could be charged with gross negligence or fraud where some misstatements remain undetected, though the Auditor has performed the procedures properly.
- (5) That the audit was carried out as per standards notified by the ICAI. The Auditor's

report states that the evidence supporting the amounts and disclosures in the financial statements were examined on test basis and opinions expressed in the report has reasonable basis.

- (6) As per the information and explanations given to the Auditors by the management during the course of audit of books of accounts for the FY2011-12, most of the short term loans taken in the name of the *Company* and interest and finance charges thereon were not disclosed in the Trial Balance and Balance Sheet for the FY2008-09, 2009-10 and 2010-11 on account of following accounting adjustment and arrangement:
- (i) As per Memorandum of Agreement dated December 16, 2002, the brands '*Deccan Chronicle*' and '*Andhra Bhoomi*' were transferred by *Deccan Chronicle* partnership firm (with *Shri T. Venkatram Reddy* and *Shri T. Vinayak Ravi Reddy* as its partners) to *DCMPL*, a closely held company belonging to *Shri T. Venkatram Reddy* and his family.
  - (ii) Subsequently, the other assets and liabilities of the firm *Deccan Chronicle*, as on December 31, 2002, were transferred to *DCHL*. However, the firm *Deccan Chronicle* continued to exist and it also filed ITRs for later assessment years.
  - (iii) Vide Deed of Addendum to Partnership dated April 1, 2004, *DCMPL* (the owner of the brands '*Deccan Chronicle*' and '*Andhra Bhoomi*') was admitted as a partner in the partnership firm *Deccan Chronicle*.
  - (iv) *DCMPL* introduced the brands owned by it as its share capital in the firm for a consideration of ₹98/-.
  - (v) Upon admission of *DCMPL* as partner of the firm, the name of the firm '*Deccan Chronicle*' was changed to '*Deccan Chronicle Marketeers*' (*DCM*) and the firm became owner of the brands.
  - (vi) On April 2, 2008, *DCM* entered into an agreement with *DCHL* to acquire and obtain prioritised advertisement space in the publications of *DCHL* for the purpose of developing and building the brand names owned by it.
  - (vii) The revenue billed by *DCHL* to *DCM* was accounted as income/revenue in the hands of *DCHL* and the same was included in the total advertisement revenue of the *Company*.
  - (viii) In the hands of *DCM*, the expenditure billed by *DCHL* was treated as capital expenditure for brand building and was accounted as "*Brand and Brand Development Expenditure*" under the group "*fixed assets*" in the Balance Sheet of *DCM*.
  - (ix) *DCHL* and *DCM* had also agreed that in the event of *DCM* being unable to meet its financial obligations against the sale of advertisement space, *DCHL* shall be at liberty to raise loans to meet the cash flow deficit arising on account of default on the part of *DCM* in meeting with financial obligations/

commitments and in turn *DCM* agreed to take over such loans, corresponding to its payables to *DCHL*, alongwith financial costs (interest and financial charges) as their loans for due discharge to the lenders.

- (x) As the *DCM* was not fulfilling its financial obligations, *DCHL* was borrowing and repaying loans and transferring the loans raised on account of non-performance of financial obligations by *DCM* which were outstanding as on the last day of every financial year to *DCM* account against the receivables from *DCM* along with financial costs at the end of financial year.
  - (xi) As the loans were raised by *DCHL* and accounted in the books of accounts of the company for operational convenience and considering the arrangement between *DCHL* and *DCM* being distinct from the agreement between *DCHL* and its lenders, the adjusted entries of loans and receivables were reinstated on the first day of the financial year.
  - (xii) The interest and finance charges incurred on the above said transferred loans were also not charged to profit and loss account of *DCHL*.
  - (xiii) The Trial Balances were generated and Financial Statements of *DCHL* were prepared for the FY 2008-09, 2009-10 and 2010-11 after taking into account the adjustment of loans, receivables and interest and finance charges incurred/paid on the loans transferred to *DCM*.
- (7) The loans were drawn by *DCHL* in its name and the receipt and utilisation of loans has been accounted by *DCHL* in entirety in its books of accounts.
- (8) The loans and interest/finance charges which were accounted (adjusted against receivables) on behalf of *DCM* account have not been reflected in the Trial Balances and Balance Sheets for the FY 2008-09 to 2010-11. These balance sheets were prepared by the management of the *Company* after netting-off loans against receivables and the understated loans/liabilities which were not disclosed in the Balance Sheet and were also not part of the ITRs. The *Company's* assessment for all these years were scrutiny assessment under section 143(3) of the Income Tax Act.
- (9) The transaction between *DCHL* and *DCM* was not disclosed as related party transaction in the financial statements of *DCHL* since the transactions/ arrangement were not recorded/disclosed in the register maintained under Section 301 of the Companies Act, 1956.
- (10) The transactions and agreements between *DCHL* and *DCM* were brought to their notice for the first time during the audit of books of accounts for the FY 2011-12. When they noticed the arrangement/transactions, the same was categorically qualified in the Auditors' Report (page No. 22 & 23 of Annual Report for FY 2011-12).

- (11) The above accounting adjustments (non-disclosure of loans by transferring to other entity) were brought to the notice of the auditors for the first time during the audit of the books of account for FY 2011-12 in the month of October/November 2012. The loans appearing in the Trial Balances furnished for FY2008-09 to 2010-11 during the course of audit for the respective years have matched with the balance sheets submitted for the above financial years.
- (12) In the year 2011-12, the management of *DCHL* undertook an exhaustive review of its policies with regard to sale of its advertisement space and brand building strategies. Based on the review, management of *DCHL* discontinued the arrangement with *DCM* w.e.f. April 1, 2011 as *DCM* had reneged on its commitments and the *Company* had no other option but to reinstate the liabilities to protect its credibility with the lenders.
- (13) The above adjustments may be considered as an omission to make suitable disclosure in the financial statements for the abovesaid financial years and cannot be treated as misleading financial information.

### **Consideration and findings**

10. I have gone through the contents of the SCN, replies received in the matter, documents available on record and the written submissions made by the *Noticeses*. The main allegation against the *Noticeses* is that they have underreported the loan amounts, interest payments and financial charges in the books of accounts of the *Company* during FY2008-09 to 2010-11 and thereby misled the investors and shareholders by reporting to the public such manipulated financials of the *Company*. The *Company* has also made buyback announcement at a price which was 234% higher than the ongoing market price so as to induce the investors to trade/invest in the securities of the *Company*. Further, the promoters of *DCHL* have also concealed material information about the pledge/encumbrances created on their shareholding in the *Company*, from the shareholders of *DCHL* and have made misleading statements about ownership of brands. It has been alleged that the *Noticeses* have violated the provisions of section 12 A(a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003. In order to appreciate the charges levelled against the *Noticeses*, it would be proper and necessary to refer to the abovestated relevant provisions of the PFUTP Regulations, 2003 which have a bearing on the allegations made against the *Noticeses*. These relevant provisions of the PFUTP Regulations, 2003 are reproduced hereunder for facility of reference:

#### **The SEBI Act, 1992 -**

Section 12A - 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;*

*(d) ... ..;*

*(e) ... ..;*

*(f) ... ..”*

### **The PFUTP Regulations, 2003-**

#### **Regulation 3. Prohibition of certain dealings in securities**

*“No person shall directly or indirectly –*

*(a) buy, sell or otherwise deal in the 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 there under;*

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

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

#### **Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices**

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

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

*... ..*

*(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

*... ..*

*(k) an advertisement that is misleading or that contains information in a distorted manner and which may*

*influence the decision of the investors;*

... ..

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

... ..”

11. Having perused submissions of the *Notices*, I note that, for the purposes of clarity, it would be desirable to classify the submission of the *Notices* based on the nature their contentions and explanations. I note that submissions of the *Notices* can broadly be classified into three categories – (a) preliminary objections; (b) technical objections; and (c) submissions on merit. I would endeavour to deal with each category of submission separately although some of the submissions may overlap with each other.
12. I, therefore, find it prudent and logical to first deal with the submissions of the *Notices* raising some preliminary objections. The *Notices* have taken a plea that an application was filed before the NCLT, Hyderabad Bench, by Canara Bank, a financial creditor, under section 7 of the Insolvency and Bankruptcy Code, 2016. The NCLT, Hyderabad Bench had admitted the application and passed an order on July 19<sup>th</sup>, 2017 appointing an insolvency resolution professional and had further ordered a moratorium (on other proceedings) in terms of section 14 of the Insolvency and Bankruptcy Code, 2016. I note from the submissions of the *Notices* that the order of the NCLT, Hyderabad was challenged by one of the Financial Creditors before the Hon'ble NCLAT. The Hon'ble NCLAT by its order dated 20<sup>th</sup> July, 2018 have directed that the Insolvency Resolution Process of the *Company* be completed by the end of February, 2019 and also have maintained the moratorium u/s 14 of the Insolvency and Bankruptcy Code, 2016 till that period. For the purposes of better understanding, some of the relevant provisions of section 14 of the Insolvency and Bankruptcy Code, 2016 are reproduced hereinbelow:

**Section 14(1)(a) provides:**

*“(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

.....

.....

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

***Provided that*** where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order

*for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

13. Having perused submissions of the *Notices* and provision of section 14(1)(a) of the Code, it would be in the fitness of things to mention that in I.A. No. 66 of 2019 in CP(IB). No. 41/7/HDB/2017, the NCLT, Hyderabad Bench, vide order dated June 03, 2019, while approving the resolution plan in respect of *DCHL*, has ordered that “*The moratorium order passed under Section 14 shall cease to have effect from today.*” Copy of the said order has been forwarded by *DCHL* vide its letter dated September 16, 2019. Thus, in terms of section 14(4) of the Insolvency and Bankruptcy Code, 2016, the said moratorium order has ceased to be in force with effect from June 03, 2019. Considering the foregoing, I find that the contention of the *Notices* with regard to proceedings pending under the Insolvency and Bankruptcy Code, 2016 stands infructuous and hence need not be dealt with any further.
14. I also note that some of the *Notices* have stated in their submission that the Central Bureau of Investigation (hereinafter referred to as “CBI”) had also investigated the matter relating to the suspected fraud and some of the *Notices* in the instant proceedings have not been arrayed in any of the complaints/charges that have been filed against the promoter directors of the *Company*, others and the auditors. In this regard, it is worthwhile to iterate here that proceedings before different law enforcement agencies have different implications and connotations, and jurisdiction of SEBI is confined to contraventions, if any, by the *Notices* of the Securities Laws. The contention that some of the *Notices* have not been arrayed in any of the complaints/charges that have been filed against the promoter-directors of the *Company* pursuant to the investigation by CBI, cannot have any impact on the instant proceedings, as the investigations by CBI do not pertain to the Securities Laws. Having said that, the factum of investigations by CBI into the affairs of the *Company* all the more reinforces the *raison d’être* for initiation of the instant proceedings. In view of the foregoing, I do not find any merit in the contentions of the *Notices* with regard to proceedings by CBI.
15. Having dealt with the preliminary objections of the *Notices*, I now proceed to deal with the technical objections raised by some of the *Notices* pointing out that there is no mention of exact provision of the SEBI Act, 1992 in the SCN while alleging the contraventions thereof by the said *Notices*. Some of the *Notices* have constantly harped that the charges in the SCN are vague. I note that the SCN contains detailed enumeration of the allegations, the factual basis of each allegation, the documents relied upon for making such allegation and, wherever necessary, the SCN also has invoked the relevant provisions of the SEBI Act, 1992 read with the relevant regulations. Certain typographical errors in the SCN in mentioning the relevant section of the SEBI Act, 1992, viz. inadvertent mentioning of section 12(a), (b) and (c) of the SEBI Act, 1992 instead of section 12A(a), (b) and (c) of the Act, have already been clarified to the concerned *Notices*. Further, while section 12A of the Act prohibits, *inter alia*, manipulative

and deceptive devices, the PFUTP Regulations, framed under the SEBI Act, lay down in detail as to what constitutes ‘*fraud*’ and manipulative, fraudulent and unfair trade practices, etc. Since, the SCN contains the specific provisions of the PFUTP Regulations alleged to have been contravened by the *Notices*, I do not find any prejudice that could have been caused to the *Notices* by the typographical error in mentioning section 12A of the Act. Without prejudice to the foregoing, the Hon’ble Supreme Court has held in the case of *Fortune Impex vs Commissioner – 2004 (167) ELT S 134 (SC)*, that “*non-mentioning of particular section of Customs Act 1962 would not vitiate the proceedings when allegations and charges against the appellants were mentioned in clear terms in the show cause.*” This position has been reiterated by the Hon’ble Supreme Court in several cases. I reiterate that in the instant proceedings the SCN contains detailed enumeration of the allegation, the factual basis of each allegation, the documents relied upon for making such allegation and, wherever necessary, the relevant provisions of the SEBI Act, 1992 and the relevant regulations. I, therefore, do not find any merit in the contentions of the *Notices* and hence reject the same.

16. I will now proceed to deal with the submissions of the *Notices* on merit. Considering the fact that allegations in the SCN are multifarious, it will be best to deal each allegation under a separate head as has been enumerated in paragraph 49 of the SCN. Further, for the purpose of clarity, the role of the *Company* and its directors (i.e., *Notices 1 to 5*) in respect of various allegations made against them are being dealt with together, while the allegations pertaining to the role of the Company Secretary and the statutory auditor of *DCHL (Notices 6 and 7)* shall be dealt with separately. Before I deal with each of the allegations separately in the manner explained above, I would like to summarize hereinbelow, the chronology of events, as observed during investigation in the instant matter.

Sl. No.	Date (DD/MM/YYYY)	Event
1.	1938	‘ <i>Deccan Chronicle</i> ’ formed as a partnership firm
2.	2002	‘ <i>Deccan Chronicle</i> ’ restructured as <i>DCHL</i> . The assets and liabilities of the partnership firm transferred to the company with effect from January 01, 2003.
3.	2004	<i>DCHL</i> came out with a public issue of 8013100 equity shares.
4.	July 31, 2009	<i>DCHL</i> announced the first buy-back for up to 3.50 cr. equity shares of ₹2 each (minimum of 1 cr. equity shares) from the open market through stock exchanges at a price not exceeding ₹100/- per equity share for an aggregate amount not exceeding ₹180 crore.

5.	January 25, 2010	The buyback commenced on August 12, 2009 and closed on January 25, 2010 wherein 26.54 lakh equity shares were bought back at an average price of ₹97.78 aggregating ₹25.95 crore.
6.	May 06, 2011	DCHL announced another buy-back of its equity shares up to 3.45 cr. equity shares and minimum of 1 cr. equity shares from the open market through stock exchanges. Since these shares were extinguished, the shareholding of the promoters increased.
7.	August 16, 2011	Regulations 13(4) and 13(4A) of the PIT Regulations came into effect.
8.	August 29, 2011	DCHL issued a public advertisement on completion of buyback offer in compliance with regulation 19(7) of the Buyback Regulations.
9.	September 23, 2011	The three promoters jointly entered into an NDU with ICICI Bank. <b><i>The NDU is in the nature of encumbrance/pledge of shares. Neither the pledge nor the invocation of pledge was disclosed by the promoters.</i></b>
10.	October 17, 2011, November 22, 2011, January 6, 2011 and January 17, 2012	Agreements entered into between the promoters and DCHL.
11.	March 2012	The promoter shareholding increased from 63.37% in March 2011 to 73.83% as on March 2012.
12.	June 1, 2012	Date of irrevocable power of attorney whereby shares of DCHL were encumbered by the promoters of DCHL, namely, <i>Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer</i> to Religare Securities Ltd..
13.	June 2, 2012	As per the irrevocable power of attorney dated June 1, 2012, 3 cr. equity shares (1 crore share of each of the three promoters) were deposited with Religare Finvest Ltd. acting as the depository participant.
14.	July 27, 2012	FCHL (Future Capital Holdings Ltd., now known as, <i>Capital First Ltd.</i> ) on behalf of promoters (in exercise of power of attorneys dated July, 11 & 12, 2012) of DCHL have disclosed that the promoters of DCHL have pledged 11,28,51,000 shares to it on July 26, 2012.

15.	July 28, 2012	In terms of the NDU, on failure to fulfil their obligations by the promoters, pledge was created in favour of ICICI Bank.
16.	July 30, 2012	<i>Religare Finvest Ltd.</i> has made disclosure to BSE on July 30, 2012 with respect to pledging of shares by the promoters of <i>DCHL</i> .
17.	July 2012	<p>Promoters of <i>DCHL</i> pledged 5 crore shares constituting 23.93% of the total share capital with IDFC. <b><i>Neither the pledge nor the invocation of pledge was disclosed by the promoters.</i></b></p> <p>Promoters of <i>DCHL</i> pledged 3 crore shares constituting 14.37% of the total share capital with Religare Finvest. <b><i>Neither the pledge nor the invocation of pledge was disclosed by the promoters. Religare had disclosed the same to BSE on July 30, 2012.</i></b></p> <p>Promoters of <i>DCHL</i> had pledged shares constituting 28.93% of the total share capital with <i>FCHL</i>. <b><i>Neither the pledge nor the invocation of pledge disclosed by the promoters.</i></b></p> <p><b><i>FCHL had disclosed the same to BSE on July 26, 2012. FCHL on behalf of the promoters of DCHL had made disclosure on July 27, 2012 with respect to the pledged shares.</i></b></p>
18.	September 28, 2012	<i>DCHL</i> entered into deed of compromise settlement with <i>DCM</i> .
19.	Quarter ending September 2012	<ul style="list-style-type: none"> <li>- The promoters' shareholding declined from 73.83% to 38.40%.</li> <li>- The promoters have disclosed that 99.81% of their shareholding is encumbered / pledged shares.</li> <li>- <i>Religare Finvest Ltd.</i> invoked shares pledged with them during the quarter ended September 2012.</li> </ul>
20.	September 2012	The brands which were believed to be owned by <i>DCHL</i> was once again purchased by <i>DCHL</i> .
21.	January 23, 2013	<i>DCHL</i> had filed the shareholding pattern for the quarter ended September 30, 2012.

22.	February 08, 2013	<i>DCHL</i> had filed the shareholding pattern for the quarter ended December 31, 2012.
23.	July 4, 2013	<i>DCHL</i> in its reply dated July 4, 2013 to the Ministry of Corporate Affairs had stated that the company secretary resigned w.e.f. September 1, 2012 and since then the <i>Company</i> has been trying to fill the vacancy caused due to his resignation.
22.	August 08, 2013 and September 10, 2013	Information provided by <i>DCHL</i> with respect to loans outstanding to the investigating authority.
23.	September 30, 2013	<i>DCHL</i> had furnished details on the interest and finance charges.

**A. Allegation in SCN:** *DCHL*, its directors (*Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy, Sri Parasuraman Karthik Iyer, Sri N. Krishnan*), *Sri V. Shankar*, Company Secretary and its Statutory Auditors (*Sri Mani Oommen*, Partner, M/s. CB Moulli & Associates) understated outstanding loans and interest and finance charges in the annual report for the FY 2008-09, 09-10 & 10-11.

- (1) The instant allegation stems from the information submitted by *DCHL* vide its letters dated August 08, 2013 and September 10, 2013 whereby the *Company* had furnished details regarding its outstanding short term and long term loans, and interest and financial charges thereon for the financial years 2008-09, 2009-10 & 2010-11.
- (2) As per the SCN, the *Company* is alleged to have understated its outstanding loans to the extent of ₹1339.17 cr., ₹2982.07 cr. and ₹3347.41 cr. and interest and financial charges to the extent of ₹133.39 cr., ₹305.68 cr. and ₹293.62 cr. for the financial years 2008-09, 2009-10 & 2010-11 respectively in its Annual Report / financial statements filed with the stock exchanges, thereby misinforming and misleading its shareholders / stakeholders and the investors at large.
- (3) The *Company*, its directors and the Statutory Auditor, in their reply to the SCN, have claimed that the amounts of loans, interest and finance charges which were adjusted against receivables from *DCM*, have not been reflected in the Balance Sheets of *DCHL* for the FY2008-09 to FY2010-11. These short term loans were raised against the receivables from *DCM* and were transferred from the books of accounts of *DCHL* to the Books of Accounts of *DCM* on the last day of the Financial Year in order to reflect/disclose the true assets and liabilities of *DCHL* in the Audited Balance Sheet. The interest and financial charges paid on the abovesaid short term loans by *DCHL* were also shown as receivable from *DCM* and therefore were transferred to *DCM*'s

accounts on the last day of the next financial year. Hence, certain short term loans availed by *DCHL* and interest payments thereon were not incorporated into the Balance Sheet and were also not charged to the Profit and Loss account of *DCHL* for the FY2008-09, FY2009-10 and FY2010-11, respectively in order to report the true and fair view of the Balance Sheet and Profit and Loss Account of the *Company*. Therefore, according to the *Notices*, the figures of outstanding loans and interest and finance charges payable as shown by them in the Balance Sheets of *DCHL* for the aforesaid 3 financial years are correct and SEBI has erroneously considered the figures of loans outstanding and interest and bank charges which were transferred by *DCHL* to the books of *DCM* to be the outstanding amounts of loans, interest and bank charges of *DCHL* and has wrongfully alleged understatement of outstanding loans and interest and finance charges in the annual report for the financial years 2008-09, 09-10 & 10-11 by the *Notices*.

- (4) With regard to the above arrangement, I find it imperative to emphasise that in this era of disclosure based regime, a company's documents, viz. balance sheet, audited financial results, annual reports, etc. must reflect, *inter alia*, true and fair picture of its finances. The true and fair picture the finances of a company shall invariably contain the details of actual assets and liabilities of the said company. In the instant case, since *DCHL* had availed the loans from banks/FIs, the loans were required to be serviced by *DCHL* and as such the outstanding loans, interests and financial charges must be part of the *Company's* documents. However, purportedly, an internal arrangement was made to show and claim that certain loans did not belong to *DCHL* but to *DCM*. In the process, the *Company* had resorted to a practice of transferring the loan amounts taken by it in its name and the interest and bank charges payable by it thereon, to the books of account of *DCM* at the end the financial year so that the said loan liabilities were not shown as liability of *DCHL* towards the banks/ FIs from which the loans were availed. Further, *DCHL* merely showed those outstanding loans and interest and finance charges thereon as transferred to *DCM* by making transfer entries in its books of accounts without any corresponding entries being made in the books of accounts of *DCM*. It has also been noted that the *Company* again restored back those entries of loans, interest & finance charges to its own books of account on the next day, i.e., the beginning of the next financial year. Thus, practically the liabilities pertaining to these short term loans and interest & finance charges thereon were removed from the accounts of *DCHL* only for a day (i.e., the last date of the Financial year) so as to understate the liabilities, overstate the assets and income in the annual accounts of the financial year and present a fabricated and misleading financial state of affairs to the public. *DCHL*, despite being a listed company, and its directors and auditors, who were under statutory obligation to report all transactions which have prejudicial impact to the interest of the *Company* or to the interest of the shareholders of the *Company*, knowingly

preferred to not to disclose such material information pertaining to transfer entries of its outstanding loans, to the shareholders or to the public at large and thereby adversely influenced their decision making process in the scrip of *DCHL*. The contention of the *Notices* that they have done these accounting manipulations to show true and fair view of the Balance Sheet of *DCHL* is deplorable and not acceptable by any measure of accounting standards. Instead, by their act of such accounting adjustments, they have deprived the shareholders and investors from a view of the true and fair financial state of affairs of the *Company*.

- (5) As regards the contentions of the *Notices* that the SCN has considered wrong amounts of outstanding liabilities towards loans, interest and bank charges in the accounts of *DCHL* by erroneously considering the liabilities of *DCM* payable to *DCHL*, I observe that such a contention and assertion on the part of the *Notices* is factually incorrect and grossly misleading. In fact, the SCN has rightly made an attempt to present the correct amount of outstanding loan that was supposed to be reflected in the balance sheet of *DCHL* as on the closing dates of the aforesaid 3 financial years. However, by way of diverting a substantial portion of loan liabilities from the books of *DCHL* to the books of *DCM* on the last date of each of the aforesaid three financial years, the *Notices* have deliberately understated the loan liabilities of *DCHL*. The SCN has merely brought back those diverted liabilities that were actually outstanding in the books of accounts of *DCHL* and were rightfully required to be presented in the balance sheet of *DCHL* for those 3 financial years. Similar is the case with interest and bank charges on the said loans taken by *DCHL*, supposedly against the receivables from *DCM* to offset those receivables and infuse cash flow into its account. Even though *DCHL* has actually serviced those loans and paid necessary bank charges thereon, the *Notices* have deliberately transferred those revenue expenditures from the accounts of *DCHL* against all principles of accounting only to overstate profit and to understate the loss in the books of *DCHL*. Therefore, the plea taken by the *Notices* about wrong presentation of loan amount in the SCN has to be rejected for being without any basis. At this point, it would be relevant to have a look at the bifurcation of the details of year-wise loans taken by *DCHL*, loans transferred to *DCM* and the remaining amount of loans shown in the balance sheet of the *Company* as reported by the auditors vide their reply dated December 18, 2018 which will be pertinent for consideration in adjudication of the issues at hand. The same are presented in the table below:

Sl. No	Financial Year	Total Outstanding Loans (₹ in Crore)	Loans transferred to <i>DCM</i> A/c (₹ in Crore)	Loans disclosed in the B.S. (₹ in Crore)	Remarks made by Statutory Auditors' in their reply.

1	2008-09	1347.67	828.23	519.44	The total long term and short term loans disclosed in the Balance Sheet were ₹519.44 crore. Out of total loans disclosed in the Balance Sheet, ₹18.21 crore long term facilities repayable within next one year and OD facilities of ₹146.74 crore were grouped under current liabilities.
2	2009-10	2780.34	2128	652.34	The total long term and short term loans disclosed in the Balance Sheet were ₹652.34 crores. Out of total loans disclosed in the Balance Sheet, ₹23.59 crores long term facilities repayable within next one year and short-term loan of ₹299.88 crores were grouped under current liabilities.
3	2010-11	3678.50	2895.90	782.60	The total long term and short term loans disclosed in the Balance Sheet were ₹782.60 crores. Out of total loans disclosed in the Balance Sheet, ₹24.15 crores long term facilities repayable within next one year and OD facilities & short-term loan of ₹445.34 crores were grouped under current liabilities.

- (6) From the above table, it is apparent that the *Company* had disclosed only a small portion of its actual outstanding loan liabilities in its Balance Sheet and there is no dispute that the *Company* had not reported the outstanding loan amount of ₹828.23 crore during the FY 2008-09, ₹2,128 crore during FY 2009-10 and ₹3,678.90 crore during FY 2010-11 in its Balance Sheet as it had resorted to a mechanism of transferring the same out of its account to the accounts of *DCM* on the last date of each financial year and further bringing back the same to the account of *DCHL* on the first day of the next financial year. The very fact remains that *DCHL* availed all the loans in its own name and then in complete disregard of the accounting norms and accounting standards, have shown the said outstanding loan amounts as belonging to *DCM's* account on the last day of the financial year. No plausible explanations have been advanced by *DCHL* to justify the transfer of such amounts at the end of each financial year and bringing the same back to its books of accounts on the very first day of the next financial year. As a result

of such acts of the said *Notices* in resorting to such unfair practices in flagrant violations of accounting principles the annual accounts have been understated to the extent of such large amounts which have been shown as transferred to the accounts of *DCM*, thereby deliberately causing dissemination of wrong, incorrect and distorted information to the public at large. I further note that no disclosures with respect to the amounts of loan outstanding including interest & bank charges thereon so transferred to *DCM* or about the internal agreement entered into between *DCM* and *DCHL*, if any, to support the claim that these loans had been availed against amounts receivable from *DCM*, have been made in the Annual Reports so as to enable the investors to take an informed view about its affairs and informed decision about their investment in the *Company*. It is a settled position under the law that any arrangement or decision which has an effect on the financial affairs of the company must be adequately disclosed in its annual reports for the benefit of the shareholders. The *Notices*, by not disclosing such private and discreet arrangement between *DCHL* and *DCM*, to which only the promoters/directors of *DCHL* were privy, have kept the shareholders in dark about the understatement of such huge amounts of loans & liabilities in the annual accounts of *DCHL*.

- (7) The said *Notices* have admitted that the interest paid to the lenders on the amount of the loans taken in the name of *DCHL* (and transferred to *DCM* against dues receivable from it) were also not charged to the profit and loss account of *DCHL*. As per the reply of the auditor dated December 18, 2018, the interest and finance charges not charged to profit and loss account of *DCHL* for the FY 2008-09, FY 2009-10 and FY 2010-11 stood at ₹143.41 crore, ₹315.39 crore and ₹293.62 crore, respectively. Thus, the *Company* and its directors have eloquently concealed the said revenue liabilities from the investors at large and their shareholders in particular. The *Company* and its directors have even not disclosed these facts to the lenders, i.e., banks and financial investigations by apprising them that though the loans have been availed by *DCHL*, the liability to pay the interest would be chargeable from the accounts of *DCM* since the loans so availed by *DCHL* were taken primarily for compensating/offsetting the non-payment of the accumulated dues payable by *DCM* to *DCHL* towards advertisement expenses. In the process, the *Company* and its directors have been transferring their liabilities towards outstanding loans, interest & finance charges thereon, etc. to the books of *DCM* at the end of the financial year and re-transferring the same to the books of *DCHL* immediately upon the commencement of next financial year, behind the back of the lenders, shareholders and public at large. The *Noticee* directors were aware about the financials affairs/status of *DCM* and it was also within their knowledge that *DCM* would not be in position to pay their accumulated dues payable to *DCHL*. In spite of this well-known truth, the *Company* and directors kept availing loans and kept on transferring the liability from the books of *DCHL* to *DCM* only for a day with an

objective to conceal the true and correct financial conditions of the *Company* from the investors at large and in the process, the said *Notices* have deliberately understated the liability of the *Company* in the audited annual accounts. The contentions that *DCHL* had taken those loans year after year to recover the accumulated dues receivable from *DCM* hence the liabilities arising out of the said loan were kept out of its accounts, shall neither be permissible by any fundamental principles of accountancy nor by the accounting standards prescribed by ICAI. Moreover, such an explanation *per se* is blatantly unacceptable, since *DCHL* on the relevant date was a public listed corporate entity and it cannot disown the liabilities of its own borrowings availed by it in its own name and transfer the book entries of such liabilities out of its accounts to another legal entity just because that entity (*DCM*) owed money to *DCHL*. This is not a tenable proposition under any law.

- (8) In this regard, I would like to draw from the findings of the Hon'ble SAT in the matter of *V Natarajan vs SEBI* in the matter of Pyramid Saimira Ltd.– (*Appeal no. 104/2011 – date of decision June 29, 2011*) wherein the Hon'ble Tribunal held as under:

*“It has been found that the financial results as disclosed to the public through the stock exchanges were false and inaccurate and the finding in this regard is not being challenged before us. It is also not in issue that the appellant being the chairman and whole time director was a part of the board of directors which approved the financial results. This being so, we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities. It is by now well understood that unaudited financial results that are required to be published by every listed company on a quarterly basis do form the basis for the investing public to take informed decisions. Any false information or false accounts depicting inflated revenues and profits by fictitious entries in accounts is, indeed, a very serious wrong doing which directly impacts the securities market and the investors. Since the appellant was a part of the board of directors which approved the financial results of the company which were actually false and untrue, we are satisfied that the appellant is guilty of the charges levelled against him.”*

- (9) In my opinion, the allegations against the said *Notices* and more specifically the *Noticee* directors about understatement of financial statements are fully covered within the four walls of the findings of the Hon'ble Tribunal in the matter of *V Natarajan vs SEBI (supra)*. Considering the foregoing, it is absolutely clear that the said *Notices* have knowingly and consciously contributed in dissemination of wrong, factually incorrect, understated and distorted information related to the annual financial statements of *DCHL* to the public.

**Role of *Sri V. Shankar (Noticee 6)* -**

- (10) In the instant case, as admitted by *Sri V. Shankar*, he was appointed as Company Secretary in *DCHL* on April 21, 2009. He resigned from the services of the *Company* vide his resignation letter dated May 01, 2012. The *Noticee* has further claimed that he had stopped attending the office and discharging his official duties at *DCHL* w.e.f. from June 01, 2012. The *Noticee* has, *inter alia*, also contended that during the time when he was in the employment of *DCHL*, he was not invited to the meetings of board of directors of the *Company*. The *Noticee* has claimed that the promoters/directors used to meet prior to the scheduled time on the dates of board meeting (for approval of results, etc.) and would direct him to send the financial results to the stock exchanges and that he was not aware as to what transpired in those meetings. With regard to the alleged mis-statement in books of accounts, the *Noticee* has stated that at no point of time he was entrusted with any duties or responsibilities relating to the accounting or financial transactions of the *Company* by the management and as such he had no knowledge of the loan, bank correspondences, pledge, etc. The presumption as to correctness of the Audited Financial statement is established immediately upon signing of the same by the Statutory Auditors and if any understatement of outstanding loans is noticed upon investigation, then a person who is merely a company secretary may not be held liable as he was not involved in preparation and finalisation of annual accounts. He had signed the financial statements of the *Company* only pursuant to the statutory requirement under Section 215 of the Companies Act, 1956 which is mandatory and the signing was only in the nature of attestation to the effect that these financials have been considered and approved by the directors. He has also contended that as per the provisions of the Companies Act, 1956 the responsibility for accounts and financials rests ultimately on the board of directors.
- (11) In this regard, I would like to draw attention to the requirements of section 215 of the Companies Act, 1956 regarding authentication of balance sheet and profit and loss account.

*“215. AUTHENTICATION OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT*

*(1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors –*

*(i) in the case of a banking company, by the persons specified in clause (a) or clause (b), as the case may be, of subsection (2) of section 29 of the Banking Companies Act, 1949 (10 of 1949);*

*(ii) in the case of any other company, by its manager or secretary if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.*

*(2) In the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non-compliance with the provisions of sub-section (1).*

*(3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.”*

- (12) Thus, in the context of the present case before me, as per section 215 of the Companies Act, 1956 every Balance Sheet and every Profit and Loss account of the company shall be signed on behalf of the board of directors, in case of companies, (other than banking companies) by its manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one. Further, the Balance sheet and the Profit and Loss account shall be approved by the board of directors before they are signed on behalf of the board in accordance with the provision of this section and before they are submitted to the auditors for their report thereon. It is a trite law of interpretation that the heading or title prefixed to a particular section or group of sections in a statute can be referred to for construing the legislative intent of an Act of the Legislature, and so, in this case also, section 215 of the Companies Act, 1956, which deals with “*authentication of accounts*” should be treated as a preamble to the other provisions spelt out in the Act following the said title on the subject of authentication of accounts. I note that there exists a Government clarification on section 215 of the Companies Act, 1956 vide circular no. 7/72, dated May 12, 1972 whereby it was clarified that the Department (erstwhile Department of Company Affairs) is of the view that as the authentication by the Secretary is “*on behalf of the board of directors*” and not in his personal capacity, secretary can be held responsible regarding errors, as an “*officer*” of the company within the meaning of section 628 of the Companies Act, 1956 and not because of authentication by him under section 215 as such. Where, however, the secretary is charged with the responsibility of maintaining the accounts and also assisting the auditor at the time of auditing, he cannot conceivably escape the consequence of any wrong statement in the accounts.

- (13) The Hon'ble SAT has examined the role of company secretary, insofar as the requirement of making timely and absolutely true disclosures under the Securities Laws is concerned in various appeals filed in the matter of GHC Ltd. In this regard, I would also like to draw attention to the findings of the Hon'ble Tribunal in the matter of *Mr. Bhummesbwar Mishra vs SEBI* (Appeal no. 7 of 2014 – Date of decision – July 31, 2014) which are as under:

*“19. Therefore, the company, the Company Secretary and the Chairman of the company have a greater responsibility on their shoulders to ensure, in a free and fearless manner, that the promoters make timely and absolutely true disclosures as regards their respective shareholding in the company in consonance with various regulations prescribed by SEBI and the Listing Agreement. In fact, the companies are required to maintain a register in this respect and if a vast variation is noted by the company, the Company Secretary and the Chairman, in the shareholding pattern of the promoters they are duty bound to inform to the stock exchange or even to SEBI accordingly. Such acts of wrong disclosures are condemned as fraudulent and unfair trade practices.*

.....

.....

*23. In this connection, it is pertinent to note that the Company, the Company Secretary and the Chairman are not mere conduit to pass-on whatever details they receive from the promoters to the Stock Exchanges irrespective of the records maintained by the Company in respect of the shares which may be held by a promoter at given point of time. The Appellants should have acted more diligently and responsibly and should not have been guided by mere legal opinions. It is settled law that legal opinions are only advisory in nature and not binding on anyone. Therefore, no legal infirmity can be attributed to the impugned order which holds all the appellants guilty of violating the PFUTP Regulations, 2003 and imposes monetary penalties on them.”*

- (14) Admittedly, the *Noticee 6* has served as a Company Secretary in *DCHL* during the financial year 2009-10 and 2010-11 which means, he has attested the Balance Sheet and Profit and Loss accounts of *DCHL* for two of the three financial years in which the accounts have been allegedly fraudulently understated. The provisions of section 215 of the Companies Act, 1956 fastens a duty on the Company Secretary to authenticate the Balance Sheet and Profit and Loss account of the company on behalf of the board of directors. Under the circumstances, as a Company Secretary, the *Noticee 6* cannot plead innocence by stating that he has merely fulfilled a statutory duty by signing the audited accounts which were prepared by the auditors and approved by the board of directors of the *Company*. The *Noticee 6* was performing the job of a secretary to the board of directors and it was his duty to aid and advice and assist the board in ensuring that the accounts contained all the true information before the same were approved. Further, he was not merely supposed to attest the accounts but was required to authenticate the Balance Sheet and Profit and Loss account of the *Company*, which

cannot be undermined as a mere routine attestation job but has to be taken up as a serious responsible job of declaring the authenticity of the contents of the accounts and all the information contained therein. The *Noticee 6* ought to have verified if the audited accounts have contained all the assets & liabilities or any other material facts that needed to be incorporated in the accounts. In view of the above, I find that *Sri V. Shankar* has failed to act diligently and responsibly while acting as the company secretary of *DCHL* at a time when the *Company* and its directors (*Notices 1 to 5*) understated outstanding loans and interest and finance charges in the annual reports for FYs 2008-09, 2009-10 and 2010-11 and thereby overstated the profits of the *Company* for all the three successive financial years.

**Role of *Sri Mani Oommen (Noticee 7)* -**

- (15) *Sri Mani Oommen*, partner of, M/s C B Moulli & Associates, which was the statutory auditor of *DCHL* has submitted that the preparation and presentation of the financial statements and the job to ensure that they are free from material misstatements, whether due to fraud or error, is the responsibility of the management. The *Noticee*, as statutory auditor, was responsible only to express an opinion on the financial statements based on internal audit. Therefore, he was not involved in the alleged mis-statement in the balance sheets of the *Company*. It has been also stated that the accounting adjustments (non-disclosure of loans by transferring the same to the other entity) were brought to their notice for the first time during the audit of the books of account of the *Company* for the financial year 2011-12 in the month of October/November 2012.
- (16) The aforesaid contentions of the *Noticee 7* are considered but are found to be without any merit. In this respect, it would be apt to refer Section 224 r/w Section 227 of the Companies Act, 1956. In terms of the above mentioned sections in case of a public listed company, the statutory auditors owe an obligation to the shareholders of a company to report the true and correct facts about its financials since it is not only appointed by the shareholders in the AGM of the company but at the same time required to report true and correct position to the member of the company. Since, auditor are required to function for the betterment of the company and its member, a duty is cast upon it to do all necessary steps as contemplated and provided under Section 227 of the Companies Act, 1956 so as to ensure that no steps prejudicial to the interest of the Company and its member are taken at any cost. In order to perform their duties towards the shareholders effectively the statutory auditors should plan and perform an audit with an attitude of professional scepticism. While conducting audit, an auditor knows that there could be various circumstances which may cause the financial statements to be materially misstated. Therefore, while performing his job, a statutory auditor should not only comply with the relevant accounting standards prescribed by

the ICAI but also should identify and understand major classes of transactions in the entity's operations, how such transactions are initiated and also should examine the significant accounting records, supporting documents and specific accounts in the financial statements, the accounting and financial reporting process, and the significant transactions as well as the extra-ordinary events that might have taken place during the year which ought to be incorporated in the financial statements of the company. The outstanding loans - short terms as well as long term, availed by a company, and interest and finance charges payable thereon which were not reported in the accounts prepared by the *Company* and its directors, by all standards had significant financial implications for the *Company* during the year which could not have been overlooked by a Statutory Auditor, who audits the accounts of a listed corporate entity by following the Accounting Standards prescribed by ICAI. In this connection, observations made by the Hon'ble Gujarat High Court in the case of *CA Rajesh Dudhwala vs. Disciplinary Committee* (decided on 6th November, 2012) is also pertinent to refer to. The relevant paragraph is as under:

*“27. A Chartered Accountant has an obligation, not only statutory but also moral and social, to be absolutely and completely diligent and cautious and careful while preparing, signing and certifying Annual Accounts and/or Audit report. Several Government and private organizations and individuals rely on the report / certificate by Chartered Accountant and once a particular factual aspect or entries, etc. are prepared, signed and certified by Chartered Accountant they are ordinarily accepted without further probing or investigation. In such circumstances, the duty and obligation of being absolutely diligent, conscious and careful is multiplied manifold and a Chartered Accountant should not, and cannot take, such obligation or perform his duties lightly or casually. A mistake by a petty clerk or lower level accountant may be dealt with in different manner but a mistake by a Chartered Accountant cannot be treated with indifference or casually or lightly. ....”*

- (17) Undoubtedly an auditor is duty bound to be absolutely and completely diligent and cautious while preparing, signing and certifying Annual Accounts and/or any other Audit report. It is noted that *DCHL* had billed an amount of ₹2380.64 crore to *DCM* (towards advertisement charges) during the period from April 1, 2004 to March 31, 2011 and the above amounts of revenue so billed to *DCM*, was also included in the total revenue of the *Company* from year to year in its profit and loss accounts. It is observed that the percentage of outstanding loan amount transferred to the books of *DCM* constituted 61.46% of the total outstanding loan amount of *DCHL* during the FY 2008-09. During the next two financial years also, the percentage of loans taken by *DCHL* supposedly against the dues receivable from *DCM* vis-à-vis the total outstanding

loans availed by the *Company* in its own name increased to 76.54% and 78.73%, respectively. In the financial year 2008-09 itself the outstanding loan amount transferred to *DCM's* account was more than ₹800 crore thereby understating the liabilities of *DCHL* for that year to the extent of the said amount of ₹800 crore (approx.).

- (18) In such circumstances, the auditor certainly had an obligation to check the outstanding loan details from banks or other independent sources before being satisfied with the amount of outstanding loan presented by the management. The auditors have stated in Auditors' Report that "*audit includes examining on a test basis*". The auditor has not demonstrated in his reply as to whether independent confirmation from the banks regarding outstanding loans was obtained by him at least on a test basis from some banks. Considering the materiality and the magnitude of outstanding loans, the auditor should have at least carried out some independent assessment based on documents other than the statements provided by the *Company*. The audit evidence is necessary to support the auditor's opinion and report. It is cumulative in nature and is primarily obtained from the audit procedures performed during the course of the audit. I note that under the Auditing and Assurance Standard (AAS) 5 prescribed by the ICAI, "*Audit Evidence*" states that the reliability of audit evidence is influenced by its source and nature. It indicates that, in general, audit evidence from external sources is more reliable than audit evidence generated internally, and that written (documentary) audit evidence is more reliable than audit evidence in oral form. Accordingly, audit evidence in the form of written responses directly received in response to confirmation requests made by the auditor from third parties who are not related to the entity being audited, helps in reducing audit risk for the related financial statements to a very low level.
- (19) In this case, the loans were being transferred /adjusted by the *Company* reportedly from the year 2005-06 onwards, hence, the auditors were duty bound to understand the major sources of revenue generation and realisation of the revenue from that source. It is strange to observe that the auditors remained oblivious to the fact that the *Company* was borrowing from banks/FIs, year after year, to offset the amounts receivable from *DCM* against such borrowings and was doing such book entry transfer of liabilities on the last day of every financial year. It shows that the auditors miserably failed to identify and verify the loan accounts of the *Company* despite conducting statutory audit of the *Company* for a long period of three years, during which the other *Notices* were continuously understating the accounts of the *Company*. The contention of the auditors that they became aware of the adjustment of loan for the first time during their auditing exercise for the financial year 2011-12 is highly improbable, and such an explanation rather indicates a high probability of complicity of the auditor with the *Company* in their strategy to manipulate the accounts and to understate the liabilities in the Balance Sheets of the *Company*.

- (20) I further find that *Sri Mani Oommen* has not disputed the fact that the interest amount on the loans taken by the *Company* was not being shown as expenditure in the profit and loss account of the *Company*. In fact, no explanation has been furnished by *Sri Mani Oommen* justifying as to why the loans and interest liability thereon was shown as transferred to the books of *DCM* on the last date of a financial year and again were brought back to the accounts of *DCHL* on the first date of the next financial year. *Sri Mani Oommen* has not brought any evidence to show that he had audited the books of accounts with due diligence and care and that he had raised all possible queries expected to be raised by any prudent auditor to the management in the normal course of his work. I find that *Sri Mani Oommen*, by not pointing out the bogus transfer of loan liability to and fro between the books of *DCHL* and *DCM*, has not only failed to perform his basic duty of an auditor but at the same length has blindly allowed the fudging of the books of accounts of *DCHL* to be continued for years together. Such a serious lapse on his part clearly suggest that the *Company's* auditor has actively colluded with other *Notices* and has contributed in dissemination of wrong, factually incorrect, understated and distorted information related to the financial affairs of *DCHL*.
- (21) Considering the above, I find that *Notices 1 to 7* have knowingly and consciously not reported the exact financial position in the financial statement and rather have resorted to unfair practices by transferring their loans and interest liability to the books and accounts of *DCM* on the last day of the financial year just to suppress those liabilities from the annual accounts of *DCHL* and then again by bringing back those liabilities to the books and accounts of *DCHL* on the very first day of the succeeding financial year, have reinstated the liabilities in the books of the *Company*. Hence, the *Notices* have misled the shareholders by not disclosing the true, actual and correct financial position of the *Company* for the relevant years and also have presented misleading financial statements to the investors of securities market. Further, by not disclosing such important and material financial information about *DCHL* and by concealing such material information from the public, they have caused artificial inducement to the investors to trade in the scrip of *DCHL*. I, therefore, hold the *Notices 1 to 7* liable in terms of provisions of section 12A(a), (b) and (c) of the SEBI Act, 1992 read with regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003, for the deliberate and fraudulent acts on their part to understate the accounts of *DCHL* by suppressing a major portion of the outstanding loan and interest and finance charges thereon from the annual financial statements of the *Company* from the public.

**B. Allegation in the SCN:** *DCHL* carried out buyback of its equity shares which were more than 25% of its total paid up capital limit during the financial year 2011-12. Also, by carrying out buyback of its shares without having adequate free reserves, *DCHL* misled the uninformed

investors / shareholders about the perceived valuation, strong financials and adequate free reserves of the *Company* which have wrongfully influenced / induced the decision of investors / shareholders, more particularly when the price of the share was declining since May 2010. *DCHL* has also provided misleading financial information (i.e., understatement of interest and outstanding loans and thereby overstatement of profits) in its Annual Report for FY 08-09, FY 09-10 and FY 10-11.

and

**C. Allegation in the SCN:** *Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer, Sri N. Krishnan and Sri V. Shankar* as the signatories to the public announcement made by the *Company* on May 6, 2011 for buyback of its equity shares without having adequate free reserves, have misled the uninformed investors / shareholders about the perceived valuation, strong financials and adequate free reserves of the *Company* which have adversely influenced / induced the decision of the investors / shareholders particularly when the price of the share of *DCHL* was declining since May 2010.

The factual basis of allegation at clauses B and C above, and the iteration of the allegations at paragraph 49 (b) and (c) of the SCN, are common. It is also observed that the submissions made by the said *Notices* on these allegations are also similar. Therefore, the aforesaid allegations and replies received from the *Notices* thereon deserve to be discussed together. Towards this objective and to avoid repetition, I have endeavoured to deal with the allegations made at paragraph 49 (b) and (c) of the SCN and the submissions/explanations offered by the *Notices*, point-wise, hereinbelow.

- (1) The SCN alleges that the *Company* has manipulated its financials and has announced buyback of its shares in the absence of adequate reserves which misled the uninformed investors with respect to the perceived valuation of the *Company*. The SCN enumerates that *DCHL* had undertaken buyback of its shares on two occasions, for the first time in the year 2009-10 and for the second time in 2011-12. The *Company* had reported a net profit of ₹260.92 crore and ₹162.59 crore for FY 09-10 and FY 10-11, respectively. However, if understatement of interest expenses and financial charges is taken into consideration and the profit and loss account is recast accordingly it will be seen that the *Company* actually had suffered an operating loss of ₹44.76 crore in FY 09-10 and a loss of ₹131.03 crore in FY 10-11. It is noted that the second buyback announcement for buying back up to 3.45 crore equity shares from the open market was made by *DCHL* on May 06, 2011.
- (2) During the relevant period, section 77A of the Companies Act, 1956 prescribed a limit on the maximum number of securities which can be bought back by a company. The relevant extract of the provision is as under:

*“Power of Company to purchase its own securities*

(1) *Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buyback") out of –*

- (i) *its free reserves; or*
- (ii) *the securities premium account; or*
- (iii) *the proceeds of any shares or other specified securities*

*Provided ... ..*

(2) *No company shall purchase its own shares or other specified securities under sub-section (1), unless -*

(a) *... ..*

(b) *... ..*

(c) *the buy-back is of less than twenty-five per cent of the total paid-up capital and free reserves of the company.*

*Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year.*

(d) *... ..*

*... ..”*

- (3) In terms of section 77A(2)(c) of the Companies Act, 1956, the amount of buyback by a company of its own securities shall be less than twenty-five per cent of the total paid-up capital and free reserves of the company. Thus, the buy-back of equity shares by a company in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year. Further, the details of reserves reported in the Annual Reports of DCHL for FY 2008-09, 2009-10 and 2010-11 vis-a-vis its actual free reserves that were available for buyback of shares during these years have been tabulated as under-

(in ₹ crore)

<b>FY</b>	2008-09	2009-10	2010-11
Paid up capital (A)	48.97	48.44	48.69
Reserves and surplus (B)	1100.89	1209.57	1231.45
Less: Debenture redemption reserve (C)	17.62	30.64	80.64
Total= A+B-C	1132.24	1227.37	1199.50
Maximum limit available for the company to buy-back its own shares as per annual report figures (25% of total)	283.06	306.84	299.87
Interest / financial charges not disclosed by the Company in the	-133.39	-439.07	-732.69

FY	2008-09	2009-10	2010-11
Annual Reports as discussed (refer para 10.2 of the AR) (D)			
Maximum limit available for buy-back of its own shares after adjusting for non-disclosed interest and financial charges (i.e. 25% of (Total - D))	249.71	197.07	116.02
Total buy-back offer as per announcement	180.00	-	270.00

- (4) It can be observed from the table above that in the FY 2010-11 the maximum limit available with the *Company* for buyback after adjusting for understatement of interest / finance cost incurred during the previous years was only ₹116.02 crore, whereas the *Company* announced buyback for an aggregate amount of ₹270 crore out of which it made a buyback to the extent of ₹227.66 crore. The allegation of understatement of outstanding loans, interests and finance charges has already been dealt with earlier in detail, hence, in my opinion, does not need further iterations. It is, therefore, now clear that by understating the interest amount and financial charges, the *Company* was able to show artificially inflated profits to the shareholders when there was actually a loss. As the profits were overstated, the *Company* was able to buyback its shares in excess of the amount which was statutorily permissible to it. Hence, by carrying out buyback of shares, the company *DCHL*, has surreptitiously exceeded the prescribed limit of 25% of its total paid up capital during the financial year 2011-12 and thereby has violated provisions of section 77A of the Companies Act, 1956.
- (5) Further, the *Company* had announced that it would purchase its own shares at a price not exceeding ₹180/- per equity share for an aggregate amount not exceeding ₹270 cr. The buyback commenced on May 16, 2011 and closed on August 29, 2011 wherein 3.45 cr. equity shares were bought back at an average price of ₹65.79 aggregating ₹227.66 cr. The market price of the scrip was Rs.76.75 on the date of announcement. However, the *Company* announced buyback at 234% of the ruling market price of its scrip which misled the uninformed investors/shareholders about the perceived valuation, strong financials and adequate free reserves of the *Company* particularly at a time when the price of the share was actually declining since May 2010 financial were not good and free reserves were not adequate.
- (6) It is thus clear that, at the time when prices of the shares of *DCHL* was on a declining trend, the *Company* announced a buyback at 234% of the ruling market price in the absence of adequate reserves for implementing the buyback in order to mislead the investors and to induce them into investing in the shares of the *Company*. In this backdrop, I find it prudent to reproduce hereinbelow the provision of section 68 of the Companies Act, 1956:

*“68. PENALTY FOR FRAUDULENTLY INDUCING PERSONS TO INVEST MONEY*

*Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into –*

*(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures; or*

*(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures;*

*shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to 1 one lakh rupees, or with both.”*

- (7) As discussed above, the *Company* and its directors, namely, *Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy, Sri Parasuraman Karthik Iyer and Sri N. Krishnan (Notices 2 to 5)* by their overt actions and misconduct, first by understating the liabilities and overstating the profit in the accounts of the *Company* and then by offering buyback of shares at a price that was 234% of the ruling market price of the scrip despite absence of required amount of free reserves, have knowingly deceived the investors and induced them into investing in the shares of the *Company*. Moreover, the *Company* had carried out buyback of its equity shares which was more than 25% of its total paid up capital limit during the financial year 2011-12.
- (8) Considering the foregoing, I have to hold that *DCHL and Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy, Sri Parasuraman Karthik Iyer and Sri N. Krishnan (Notices 2 to 5)* have violated the provisions of sections 68 and 77A of the Companies Act, 1956 and regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of the SEBI Act, 1992.
- (9) Having dealt with the role of the *Company* and its directors vis-à-vis the aforesaid allegation, I now proceed to deal with the role of *Sri V. Shankar* as company secretary/signatory to the public announcement made by the *Company* on May 6, 2011 for buyback of its equity shares.
- (10) I note from the submissions of *Sri V. Shankar* that he was appointed as Company Secretary in *DCHL* on April 21, 2009. He resigned from the services of the *Company* vide his resignation letter dated May 01, 2012. The *Noticee* has further claimed that he had ascribed his signature on the Public Announcement for buyback in his capacity as a Company Secretary and that it was only as a matter of compliance of procedural formalities for the buyback of shares and not in respect of any financial statements or

information contained therein.

- (11) Thus, it is not in dispute here that the *Noticee* was acting as the Company Secretary of *DCHL* during the FY 2010-11 when buyback offer worth ₹270 crore was made by the *Company*. It is also an admitted fact that the *Noticee* had ascribed his signature on the public announcement for buyback in his capacity as a Company Secretary of *DCHL*. In this regard, I would once again like to rely upon the findings of the Hon'ble Tribunal in the matter of *Mr. Bhunmeshwar Mishra vs SEBI (Supra)* and my observations recorded at clauses A(12) to (14) of para 16 of this Order about the roles & responsibilities vested in the *Noticee 6* as the Company Secretary, towards the *Company* and its board of directors. I reiterate that as a statutory official of the *Company*, the *Noticee 6* should have exercised utmost due diligence and checked the veracity of the buyback offer document and its legal compliances before authenticating such a document and signing the aforesaid public announcement which apparently violated the provisions of the Companies Act, 1956.
- (12) In the light of the above, I do not have any hesitation in holding *Sri V. Shankar (Noticee 6)* responsible as the company secretary of *DCHL* for signing the public announcement made by the *Company* on May 6, 2011 for buyback of its equity shares, without having adequate free reserves, which misled the uninformed investors/shareholders about the perceived and artificially overstated valuation, strong financials and adequate free reserves of the *Company* which might have certainly influenced/induced the decision of investors/shareholders particularly when the price of the share was declining since May 2010. Considering the foregoing, I hold *Sri V. Shankar* equally liable for violation of the provisions of sections 68 and 77A of the Companies Act, 1956 and regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of the SEBI Act, 1992.

**D. Allegation in the SCN:** *Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer* have failed to make disclosures with respect to encumbered shares with ICICI Bank Ltd. (NDU), IDFC Ltd. (pledge), Religare Securities Ltd. (irrevocable power of attorney) and Future Capital Holdings Ltd. (NDU) and also have failed to make disclosures for invocation of shares by ICICI Bank Ltd., IDFC Ltd. and Religare Securities Ltd. *Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer* have also failed to make the statutory disclosures of change in their shareholding exceeding 1% of the total share capital of the company consequent to the buyback of the equity shares by *DCHL*.

- (1) As per the aforesaid allegation, *Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer (Noticees 2 to 4)* have failed to make disclosures with respect to their encumbered shares with ICICI Bank Ltd. (through an NDU), IDFC Ltd.

(through a pledge agreement), Religare Securities Ltd. (through an irrevocable power of attorney), FCHL (NDU) and also have failed to make disclosures for invocation of shares by ICICI Bank Ltd., IDFC Ltd. and Religare Securities Ltd. and thereby, have failed to comply with the requirements of regulation 31(1) and 31(2) read with regulation 31(3) of the Takeover Regulations, 2011. Before I proceed any further, in this regard, it is relevant here to list out some of those agreements signed by the *Notices* hereinbelow:

Sl. No.	Party to the agreement	Type of the agreement	Date of agreement
1.	ICICI Bank	NDU	September 23, 2011
2.	IDFC Ltd.	Pledge Agreement	July 2012
3.	Religare Finvest Ltd.	Irrevocable Power of Attorney	June 01, 2012
4.	FCHL	NDU	October 17, 2011 November 2, 2011, November 22, 2011, January 6, 2011, January 17, 2012 January 27, 2012

- (2) It is an admitted fact that pursuant to buyback of shares by *DCHL*, the shareholding of the *Notices 2 to 4* (who are also the promoters of *DCHL*) had increased from 63.37% as on March 2011 to 73.83% as on March 2012. However, by quarter ending September 2012, shareholding of the *Notices 2 to 4* had decreased from 73.83% to 38.40% only.
- (3) The requirements of regulation 31 of the Takeover Regulations is reproduced hereinbelow:

*“Disclosure of encumbered shares.*

*31 (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*

*(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*

*(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to, —*

*(a) every stock exchange where the shares of the target company are listed; and*

*(b) the target company at its registered office.”*

- (4) In accordance with the requirement of the aforementioned provisions, SEBI had issued circulars from time to time including circular no. SEBI/CFD/DCR/SAST/1/2011/09/23 dated September 23, 2011, SEBI/CFD/DCR/SAST/2/2011/10/20 dated October 20, 2011 and CIR/CFD/POLICYCELL/11/2013 dated October 21, 2013 and CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015 whereby the format for disclosure of encumbered shares and details of any invocation/release of such encumbrances to the stock exchanges and the target company have been specified. I find that even the formats prescribed vide circular dated September 23, 2011, amongst others, also provided that the promoters specify whether the said encumbrance was in the nature of pledge, lien, NDU or others. The same formats prescribed by SEBI for disclosure of encumbered shares in various modes, including through the mode of NDUS, have been continuing to be in force since September 2011.
- (5) In the instant case, the *Notices 2 to 4* (who are also the promoters of *DCHL*) had signed various types of agreements with certain financial institutions thereby encumbering their shareholdings, viz. ICICI Bank, IDFC Ltd., Religare Finvest Ltd. and FCHL. While the agreements signed by the concerned promoters with ICICI Bank and FCHL were in the nature of NDU, the agreement with IDFC Ltd. was by way of pledge agreement and agreement with Religare was by way of an irrevocable power of attorney. The allegation is that those agreements that went by the terminology, viz: - '*Non-Disposal Agreement*' (NDU) were, in effect, another such instruments executed to create encumbrance on shareholding (just like pledge agreements) hence, the aforesaid *Notices* were mandatorily required to make necessary disclosure about the encumbrances created on their shares through those NDUs and through other such instruments to the stock exchanges.
- (6) The contentions made by the *Notices 2 to 4* are that certain clauses in the NDU and the pledge agreement point to the fact that the promoters (being the pledgers therein) possessed legally valid and marketable title to the pledged shares and that the same were free from any encumbrance and as such, a combined reading of the NDU and the Pledge Agreement would clearly establish that the NDUs signed by them were not camouflage transactions for encumbrance / pledge of their shares to the third parties. The *Notices* have also contended that it was only vide SEBI circular no. CFD/POLICYCELL/3/2015 dated August 5, 2015, that an NDU was mandated to be disclosed to stock exchange/company and, as such, at the relevant point of time of signing of NDUs, it was not mandated by SEBI for disclosure of NDUs to the stock exchanges.
- (7) I have perused the copies of NDUs and other pledge agreements entered into between

the *Notices 2 to 4* and ICICI Bank, IDFC Ltd., Religare Finvest Ltd and FCHL. As mentioned in the SCN, these agreements were mostly in the nature of creating encumbrances. This is evident from the very provisions of NDU signed by the said *Notices* with ICICI as quoted hereunder:-

- Clause 3.2 of the NDU signed between the aforesaid *Notices* and ICICI mandates the *Notices* “to create or attempt or agree to create or permit to arise or exist, any encumbrance on the NDU shares in favour of any person and save and except as provided under this Agreement and other related deeds and documents, creation of any Encumbrance or attain to create any Encumbrance on the NDU Shares, in violation of the provisions of this Agreement shall be null and void.”

**Further, as per Clause 10.7 of the said NDU, the Lender may, at any time and from time to time, by power of attorney or in any other manner delegate to any person or persons or fluctuating body or persons of all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender under this Agreement. in relation to the NDU Shares or any part thereof and any such delegation may be made on such terms and conditions (including power to sub-delegate) and subject to such regulations as may be necessary or desirable, or that the Lender may request and the Lender shall not in any way be liable or responsible to the Obligor/s for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate except loss or damage arising due in gross negligence or wilful misconduct or fraud of the Lender or its delegate or sub-delegate or any of their officers directors, employees or agents.”**

- (8) There are similar other clauses in the agreements signed between the aforesaid *Notices* and other institutions like IDFC Ltd., Religare Finvest Ltd. and FCHL. A cursory look at various clauses of these agreements clearly reveals that these agreements, including the NDUs executed by the said *Notices* with different lending institutions, were in practice and in spirit, executed with a view to create encumbrance on their shares in favour of those lending institutions and the terminologies that have been used to describe these agreements, including the name NDU, were meant only to camouflage the creation of actual encumbrance / pledge in favour of the lenders. The essence and spirit of all these agreements have essentially been to create a pledge/encumbrance in favour the respective financial institutions. As regards the contention of the said *Notices* that NDU was required to be disclosed only pursuant to the SEBI circular dated August 05, 2015, I do not agree with the same. Regulation 31(1) of the Takeover Regulations, *inter alia*, prescribed that the promoter of every target company shall disclose the details of shares in such target company encumbered by him. Further, as highlighted by me earlier, SEBI has been issuing various circulars to that effect beginning with September 23, 2011 mandating the companies and their promoters to disclose to the stock exchanges encumbrances created on their shareholding in any form and manner

including through the medium of signing NDUs. This is apparent from the formats prescribed by SEBI for making these disclosures as early as in September 2011 wherein encumbrance created through various instruments (by way of pledge, lien, non-disposal undertaking, etc.) have to be disclosed by the concerned promoters and also disclosure has to be made when such encumbrances are invoked.

- (9) Coming to the specifics of the NDUs signed by the promoters, I find that in the case of ICICI Bank the NDU was entered into between the concerned parties on September 23, 2011 whereby the concerned promoters had agreed not to divest or deal with the shares held by them and their shares representing 28.71% of the paid up capital of the *Company* was also deposited in the beneficiary account maintained with depository participant. Further, upon failure of the NDU, I note that the encumbered shares were invoked by ICICI on various dates in November 2012. As regards NDUs with FCHL, it is noted that 6 separate NDUs were entered into between the said *Noticeses* and FCHL between October 2011 and January 2012. The SCN elaborately mentions the terms of those agreements that clearly lend the character of encumbrance to these NDUs. For the sake of brevity, I do not intend to reiterate such clauses in this Order. Similarly, another instrument, viz. the irrevocable power of attorney signed by the said *Noticeses* in favour of Religare Finvest Ltd. had all the character of creation of encumbrance.
- (10) In the instant case, whatever be the terminologies used conveniently by the said *Noticeses*, the effect of the said agreements including the NDUs was in the nature of creating an encumbrance over their shares in favour of the lending Institutions. The submissions that the said *Noticeses* continued to be the beneficial owners of those encumbered shares would not be of any assistance in rescuing them from the charges levelled against them. The intention of the said *Noticeses* to create encumbrances in favour of lending institutions further find strength from their conduct, as the *Noticeses*, who had failed to seek any timely recourse against the lending institutions against the invocation of pledge/encumbrance and rather willingly allowed those encumbrances on shares to be invoked by not taking timely recourse. Therefore, the contention of the said *Noticeses* that the requirement to disclose an NDU agreement came much later is fallacious and reflects the dubious intentions of the *Noticeses*, hence, is devoid of any merit. It is a matter of record that circulars have been issued by SEBI since September 23, 2011 prescribing the format of disclosure of encumbrance created by way of pledge, lien, NDU, etc. and also prescribing for disclosure by the concerned promoters when such encumbrances are invoked. The circular referred to by the said *Noticeses* in their defence to escape from their liability to disclose the NDUs to the stock exchanges cannot defend them from the allegations of non-disclosure of encumbrances created over their shareholding in favour of third parties through various instrument under the garb of different terminologies such as NDU, irrevocable power of attorney, which in reality, were

nothing but instruments that created encumbrances over the shares of the promoters/directors just like the pledge agreement signed by them. In fact, in the instant case, the *Notices* not only have failed to disclose to the stock exchanges the creation of the encumbrances on their shareholding but also have failed to make disclosure regarding the invocation of such pledges/ encumbrances by the lending institutions.

- (11) In continuation of the foregoing, I find it worthwhile to state that the SEBI Act, 1992 and the regulations made thereunder are pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors. In a disclosure-based regime, it is the right of the common investor to have access to timely and fair disclosures and it is the duty of a listed company, its promoters and directors, and officers of the company entrusted with such responsibility to facilitate such disclosures to be made to the public in a fair and transparent manner. It is also a well-known canon of construction that when court is called upon to interpret provisions of a social welfare legislation, the paramount duty of the court is to adopt such an interpretation so as to further the purposes of law and, if possible, eschew the one which frustrates it. This principle has been upheld by the courts in the matter of *Ramrakh R. Bobra vs SEBI* [(1999) 33 CLA 243 (Bom)] and the Hon'ble Supreme Court in the matter of *RBI vs Peerless General Finance & Investment Co. Ltd.* [(1996) 20 CLA 195/AIR 1996 SC 646]
- (12) Considering the foregoing, I do not have any hesitation in holding that *Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer* have maliciously failed to make relevant disclosures about encumbrances on shares held by them, created pursuant to signing of those NDUs, irrevocable power of attorney or pledge agreements with various lending institutions and hence, have failed to comply with the requirements of regulation 31(1) and 31(2) read with regulation 31(3) of the Takeover Regulations, 2011.
- (13) Further, as per the afore-stated allegation, *Notices 2 to 4* have also failed to make disclosures under regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 about the increase in their shareholdings from 63.37% as on March 2011 to 73.83% as on March 2012 on account of buyback of shares by *DCHL*.
- (14) I note that the facts of this allegation, viz. increase in shareholding of the promoters pursuant to the buyback of shares is an undisputed fact. In their defence, the said *Notices* have contended that the requirement to make disclosure under regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 would arise only when the change in shareholding is on account of an overt act on the part of the said

*Notices* to acquire shares and not when the increase in their shareholding is incidental to buyback of shares of other shareholders by the company. Since, change in the shareholding of the *Notices* occurred pursuant to the buyback of securities by the *Company* and no act, particularly any positive act, can be attributed to the *Notices* for the said change in their shareholding, there is no requirement on their part to make any disclosure as alleged in the SCN. To buttress the submissions, the *Notices* have contended that the non-disclosure could not be said to be critical, as the promoters had sufficiently disclosed their pre and post buyback shareholding in the requisite formats, therefore, at the most lapses on their part, if any could be called technical/procedural in nature.

- (15) I have perused the contentions of the said *Notices* in this regard and the requirements of the relevant provisions of the PIT Regulations, 1992 as was applicable at the relevant time. It is worthwhile to note that the increase in the shareholding of the said *Notices* was on account of buyback of shares of the *Company* and not by any overt act of the said *Notices*. I also note from the contentions of the said *Notices* that the disclosure/filings regarding promoters' shareholding was done by the *Company* to the stock exchanges pursuant to the buyback. Considering these mitigating circumstances, this specific issue involved herein pertaining to disclosure under the PIT Regulations, 1992 has lost significance for the purposes of the instant proceedings.

**E. Allegation in SCN:** *DCHL* alongwith *Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer* who are responsible for the overall management of *DCHL* have failed to comply with the conditions of the listing agreement, namely –

- (i) Failed to disclose to the stock exchange the material price sensitive information about the date of entering into agreement with *DCM*. **(Clause 36)**
- (ii) Misleading financial information (i.e. understatement of interest and outstanding loans and thereby overstatement of profits) in its Annual Report for FY 2008-09, FY 2009-10 and FY2010-11. **(Clause 41)**
- (iii) Delay in filing SHP for quarters ended Sep-12 and Dec-12 to the stock exchange. **(Clause 35)**
- (iv) Failure to provide updated information on the SHP from quarter ended Mar-13 onwards on its website. **(Clause 54)**
- (v) Failure to appoint Company Secretary of the company. **(Clause 47(a))**
- (vi) Failure to provide related party transactions pertaining to funds advanced to

Flyington Freightors Ltd., a related entity. (Clause 32)

The aforesaid set of allegations pertain to the non-compliances of the various clauses of the Listing Agreement by *DCHL, Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy and Sri Parasuraman Karthik Iyer and Shri N. Krishnan i.e., Notices 1 to 5.* The aforesaid allegations are discussed in detail as under:-

- (1) It was observed during the investigation that *DCHL* had filed the shareholding pattern for the quarter ended September 30, 2012 on January 23, 2013 and for the quarter ended December 31, 2012 on February 08, 2013. As per Clause 35 of the Listing Agreement, companies are required to file shareholdings details in the required format on a quarterly basis, within 21 days from the end of each quarter. Therefore, it has been alleged that *DCHL* has filed the shareholding pattern to the stock exchange after delay, thereby has failed to comply with the requirements of Clause 35 of the Listing Agreement. The *Company* has admitted the delay, however, it has submitted that the delay was inadvertent. In this connection it is to be noted that dissemination of material information about a listed company to the investors in a timely manner is a necessary condition to ensure transparency and efficiency of the market and to facilitate fair play amongst market participants. It is with this end in view, that disclosures are required to be made within a certain time frame so that investing public is not deprived of vital information. Therefore, negligence in making timely disclosure has to be viewed seriously.
- (2) In terms of clause 54 of the Listing Agreement, *DCHL* was required to maintain a functional website containing basic information about the *Company* e.g. details of its business, financial information, shareholding pattern, etc. and to ensure that the contents of the said website are up-to-date at any given point of time. It is observed that the *Company* had not provided updated information of its shareholding pattern on its website after December 31, 2012. Further, *DCHL* has admitted that it has not been able to appoint a Whole Time Company Secretary since September 1, 2012. Therefore, it has violated Clause 47(a) of the listing agreement also.
- (3) With regard to the allegation that *DCHL* has failed to disclose under clause 32 of the Listing Agreement about advancing an amount of ₹99.45 crore to a related party, namely, Flyington Freightors P. Ltd., for purchase of a Cargo Aircraft and other connected expenses, the *Company* has contended that the transaction was not a related party transaction. However, contrary to their claim, I note that *DCHL* in its reply dated July 4, 2013 to the Ministry of Corporate Affairs had informed that the *Company* had advanced funds of ₹99.45 cr. to Flyington Freightors P. Ltd., a related entity for purchase of Cargo Aircraft and to meet legal and other connected

expenditure. However, the said information has not been disclosed under the head, 'related party transaction' in the relevant schedule of the Annual Report. It is, therefore, not open to the said *Notices* to now contend that advancing an amount of ₹99.45 crore to Flyington Freightors P. Ltd. was not a related party transaction.

- (4) As regards no-disclosure by the *Company*, *DCHL* about its private agreement/arrangement with *DCM* to offset its receivable from *DCM* with loans raised by it from various lenders and disclosure of grossly understated liabilities in its financial statements for various years, the same have been discussed in detail in the preceding paragraphs of this Order in which the *Company* has been held liable for suppression of the accounts and information from the public and for its accounting manipulations and illegal financial adjustments with *DCM*. In view of the aforesaid undisputable facts, I find that *DCHL* has failed to comply with clauses 36, 41, 35, 54, 47(a) and 32 of the Listing Agreement in violation of Section 21 of the Securities Contracts (Regulation) Act, 1956. Since, *Sri T. Venkatram Reddy, Chairman, Sri T. Vinayak Ravi Reddy, Managing Director and Sri Parasuraman Karthik Iyer, Executive Director* are responsible for the overall management of *DCHL*, I find that these *Notices* have violated Section 21 read with Section 24(1) of the SCR Act.

**F. Allegation in SCN:** *DCM* which was owned and controlled by the promoters of *DCHL*, had dues payable to *DCHL* to the tune of ₹4,084.21 cr. *DCHL* falsely claimed to have acquired the brands "Deccan Chronicle" and "Andhra Bhoom?" from *DCM* which were already owned by *DCHL*. Thus, under the guise of acquisition of brands from *DCM*, "the promoters" of *DCHL* have reduced/waived huge liability worth of ₹2905.32 crore payable by *DCM* to *DCHL*, which was a fraudulent act and against the interest of minority shareholders of *DCHL* thereby causing loss to its non-promoter shareholders/stakeholders to the extent of ₹2905.32 cr.

- (1) It is pertinent to look into the details of the entities/persons who were involved in the agreements between *DCHL* and *DCM*. The *Notices* have claimed in their submission that the partnership firm 'Deccan Chronicle' was formed with *Sri T. Venkatram Reddy* and *Sri T. Vinayak Ravi Reddy* as its partners and this firm was initially the owner of the brands 'Deccan Chronicle' and 'Andhra Bhoom?'. These brands were transferred by the partners of 'Deccan Chronicle' to *Deccan Chronicle Marketeers Pvt. Ltd. (DCMPL)* for a consideration of ₹98 only through a MoU dated December 16, 2002 entered with *DCMPL*. This transfer of brands happened just a fortnight before transferring all other assets and liabilities of the firm to *DCHL* (on December 31, 2002).
- (2) *DCMPL* is a closely held company belonging to *Sri T. Venkatram Reddy* and family. Subsequently, *DCMPL* (the new owner of the brands) was admitted as a partner in

the old partnership firm 'Deccan Chronicle' vide a Deed of Addendum on April 1, 2004 through which DCMPL introduced the brands ('Deccan Chronicle' and 'Andhra Bhoomi') so acquired by it for ₹ 98/- from the same firm as its share capital in the firm again for a consideration of ₹98/-. Upon admission of DCMPL as partner, the name of the partnership firm 'Deccan Chronicle' was changed to 'Deccan Chronicle Marketeers' (DCM) and thus the firm which originally owned the brands till December 16, 2002 became owner of the same brands through the aforesaid Addendum on April 1, 2004.

- (3) As can be seen from above, the entire beneficial ownerships of the original partnership firm 'Deccan Chronicle', the closely held company, i.e., DCMPL and also the ownership of the new partnership firm DCM, were all along held by Sri T. Vinayak Ravi Reddy and Sri T. Venkatram Reddy and his family. Further, these persons were also the promoters and directors of DCHL. So, all the entities mentioned above were very closely connected and managed by only one group of persons. The transactions involving transfer of brands, as have been presented before me, were crafted in a circuitous manner so as to retain ownership of the brands with certain persons/entities to the exclusion of DCHL. The *Notices* have artificially concocted the transactions in such a manner to suggest that all the assets of the partnership firm 'Deccan Chronicle' were transferred to the DCHL in 2002 except for the brands which went to DCMPL only to return back to the old partnership firm with a new name (DCM) only after about 15 minutes. However, contrary to the aforesaid explanation offered by the *Notices* narrating the events as to how the ownership over the brands travelled from the partnership 'Deccan Chronicle' to DCM, via DCMPL, I note that during the IPO in December 2004, DCHL had made the following disclosures relating to brands and trade marks in its prospectus (page 38) under sub-heading 'Established Business'. The relevant extract is as under:

*"Our Company was formed as a public limited company in January 2003 by acquiring the business of the Firm. The Firm started the newspaper publishing business in the year 1938 and the newspaper "Deccan Chronicle" has been in existence since then. See 'Our History and Certain Corporate Matters' on page 49 of this Red Herring Prospectus for further details. Our brands "Deccan Chronicle" and "Andhra Bhoomi" have a strong brand image and enjoy a strong brand recall, which is substantiated from the fact that Deccan Chronicle is the leading English newspaper in the state of Andhra Pradesh. Further, our leadership position provides us the flexibility to charge premium advertisement rates".*

- (4) Further, the prospectus under the sub-section 'Our History and Certain Corporate Matters' states with regard to the background of the *Company* as follows:

*“We were initially formed as a partnership firm in 1938 by the name of “Deccan Chronicle”..... In an effort to corporatize its operations, the Firm was restructured to form a public limited company. The restructuring was undertaken by the incorporation of a new entity Deccan Chronicle Holdings Ltd. and the transfer of all the assets and the liabilities of the Firm as a going concern with effect from January 1, 2003 to our Company. This restructuring was effected through an agreement dated December 27, 2002 between our Company and the Firm, ... ..”*

- (5) Under sub-section 'Objects of the Issue' of page 24 and page 26 of the prospectus, the *Company* has made the following additional disclosure with regard to brands and the extracts of the same is as under:

*"The objects of the Issue also include creating a public trading market for the Equity Shares of our Company by listing them on the Stock Exchanges. We believe that the listing of our Equity Shares will enhance our visibility and brand name and enable us to use our Equity Shares for strategic growth opportunities"*

.....

*We also plan to continue investing in and developing the “Deccan Chronicle” brand in Indian newspaper industry".*

- (6) Further, *DCHL*, in its prospectus, under the heading 'Risk related to non-registration of our trademark' on page (xiii) of the prospectus, has made the following additional disclosure with regard to trademarks which is as under:

*"We have applied on September 30, 1996 (Application number 729889) to the Registrar of Trademarks, Mumbai for registration of our trademark “Deccan Chronicle”. Whilst the registration is awaited, we may not be able to prohibit any person from using the said trademark to their advantage and any unfavourable use of such trademark may adversely affect our goodwill and business".*

- (7) From a comprehensive reading of the above cited disclosures and the proclamations made by the promoters of *DCHL* in their IPO Prospectus, it has been made succinctly clear to the public that the brands formerly owned by the firm ‘*Deccan Chronicle*’ have already been transferred to *DCHL* consequent upon restructuring of the firm and transfer of its all assets and liabilities to *DCHL*. Further, it has been also represented to the world at large that ‘*Deccan Chronicle*’ and ‘*Andhra Bhoom?*’ are the brands of the *Company* and that it enjoys a strong brand recall amongst the public. Further, in the disclosure about risk factors it has been mentioned that till the time their trademark registration application for the brands is pending, their ability to prohibit unauthorised use of the trademark is restricted. Thus, it can be reasonably inferred even by a layman from the representations made by promoters of the

*Company* in their IPO documents, that the brands ‘*Deccan Chronicle*’ and ‘*Andhra Bhoom*’ were always owned by *DCHL*.

- (8) Further, *DCHL* in its Annual Report for FY05-06 *DCHL* has disclosed the following:

*"Reconciliation of net assets under IFRS – 31 March 2006*

.....

*The biggest contributors to the increase in net assets were the recognition of the Deccan Chronicle brand (₹529 million) and the fair valuation of tangible fixed assets (₹96 million).*

*..... The Deccan Chronicle brand, which has been in existence since 1938, is considered to have an indefinite useful life and will be annually tested for impairment. Indian GAAP only permits the recognition of acquired intangible assets at cost. ...."*

- (9) Thus, apart from the representation made in the IPO prospectus, it is clearly stated in the Annual Report for FY2005-06 of *DCHL* that the brands ‘*Deccan Chronicle*’ and ‘*Andhra Bhoom*’ were owned by *DCHL* and the same was also recognized as such, in its books of accounts.
- (10) Under the circumstances, the submissions now being made before me by the *Notices* to demonstrate through a narration as to how *DCM* become owner of the brands and trademarks of the *Company* remain an unsubstantiated claim, sans any supporting verifiable evidence and is devoid of any credence. As has been indicated in the chronology of events under paragraph 16 of this Order, all the assets & liabilities, of ‘*Deccan Chronicle*’ were transferred to *DCHL* from January 1, 2003 pursuant to restructuring of the erstwhile Partnership Firm. Therefore, the explanations being offered now that the brands & trade marks were transferred to by ‘*Deccan Chronicle*’ *DCMPL* for ₹98/- through an MoU and again were re-introduced by *DCMPL* into ‘*Deccan Chronicle*’ for the same amount through a Deed of Addendum, not only sounds absurd, but also appears to be a clear cut after thought argument advanced only to defend the lame arguments of the *Notices* that the brand and trademark were owned by *DCM* (new name of *Deccan Chronicle*).
- (11) In the circumstances described above, it is noted from the documents available on record that on April 2, 2008, *DCM* had entered into a settlement agreement with *DCHL* to acquire and obtain prioritised advertisement space in the publications of *DCHL* for the purpose of developing and building the brands owned by it. *DCHL* and *DCM* had also agreed that in the event of *DCM* being unable to meet its financial obligations against the sale of advertisement space, *DCHL* shall be at liberty to raise loans to meet the cash flow deficit arising on account of default on the part of *DCM*

in meeting their financial obligations/commitments and, in turn, *DCM* agreed to take over such loans, corresponding to its payables to *DCHL*, alongwith financial costs (interest and financial charges) treating them as their loans, for due discharge to the lenders.

- (12) There is no dispute that *DCM* was continuously not fulfilling its financial obligations since the time the above noted agreement was entered with *DCHL*. Therefore, in terms of the above discussed so called agreement with *DCM*, *DCHL* was borrowing and utilising the loans taken in its own name and also was repaying those loans and financial charges thereon but, as a dubious strategy, was transferring the said loans which were outstanding as on the last day of every financial year, to the books of accounts of *DCM* alongwith financial costs at the end of financial year. It has been seen from the tabulated reply of the auditor at paragraph 9 of this Order that large portion of the outstanding loan availed by *DCHL* in its name, year after year, was transferred by *DCHL* to *DCM*'s account on the last date of the financial years. The percentage of outstanding loan amount so transferred to *DCM* as against the total outstanding loan amount sitting in the books of accounts of *DCHL* during the FY 2008-09 was 61.46%. During the next two financial years also the percentage of loans taken by *DCHL* against dues payable by *DCM* vis-à-vis its total outstanding loans increased to 76.54% and 78.73%, respectively. It shows that *DCHL* was transferring major portion of its own outstanding loans and the financial charges thereon to *DCM* on the last date of the financial year so as to understate the liabilities in its balance sheets and interest expenditure in its profit and loss accounts under the garb of the abovenoted agreement in which *DCM* agreed to own up those loans and financial charges that rightfully belonged to *DCHL*. This is how, it appears, *DCHL* was able to understate its outstanding loans as at the end of FY 2008-09 by ₹1339.17 crore, as alleged in the beginning of this Order.
- (13) As already noted earlier, the same set of persons / promoters were controlling both *DCM* and *DCHL*. However, it is noted from the auditor's reply that the aforesaid transaction and agreement between *DCHL* and *DCM* were never disclosed as related party transaction in the financial statements of *DCHL* nor even the said agreement/ arrangement between *DCM* and *DCHL* was recorded/disclosed in the register maintained under section 301 of the Companies Act, 1956. Thus, *DCHL* has been misleading and filing false statements to the RoC and the stock exchanges, year after year, and has been concealing its related party transactions from its financial statements for several years. Moreover, by entering into an internal arrangement with *DCM*, a public listed corporate entity like *DCHL* cannot commit itself to take loans from Banks & FIs to offset the said loans against the revenue receivable from a related entity (i.e., *DCM*) and to indulge in transfer of entries of those loan liabilities

from its books to the books of the related entity back and forth, so as to suit its needs & convenience. The loans have been taken by *DCHL*, hence the entire liabilities with its interest & finance charges have to be charged to its accounts only. An undisclosed agreement with its related entity on the sidelines cannot defy basic accounting principles, disclosure obligations and corporate governance of a listed company and cannot be allowed to manipulate the financial statements just to comply with the terms of an undisclosed agreement with its related entity. Without prejudice, in any case, by taking those loans *DCHL* cannot substitute the same with the advertisement revenues receivable for *DCM* since the character of loans obtained (capital receipt) cannot partake the character of advertisement fees (revenue receipts) receivable from *DCM*.

- (14) It is a trite law to state that financial statements are the most important medium through which shareholders know the financial health of a company. As shareholders are not involved in day to day management of the company, financial statements provide a source of information based on which shareholders can take their investment decisions. Any wrong disclosure or concealment of information would result in perverse analysis/decision by shareholders to the detriment of their interests. Therefore, the corporate/securities laws have vested an essential obligation on the companies/board of directors to present a true and fair view of the state of the affairs of the company at all times. Such true presentation of financials of the company ensures that there is no information asymmetry between shareholders and management. Further, such true presentation also instil faith of shareholders in the governance of the company. The financial statements of the company are also used by various other persons (financial institutions, research analysts, regulators, etc.) for different purposes and the accuracy of decisions/analysis made by such persons depends on the accuracy of financial statements. Therefore, accuracy of financial statements is of utmost importance to ensure transparency, fairness and also efficient functioning of the securities market, which cannot be permitted to be compromised at any cost.
- (15) In the instant matter, the *Notices* have however, miserably failed to disclose in the financial statements of the *Company*, the correct amount of loan taken by them from banks/FIs. Moreover, by under-reporting loans in one financial year, *DCHL* was able to raise more loans from banks/FIs in the next financial year, as can be seen from the Table at clause A(5) of paragraph 16 of this Order. It is common knowledge that banks/FIs look into various factors while sanctioning loans to companies (such as profits, capital adequacy, assets, solvency, liquidity position, debt-equity ratio, financial stability, management competency, etc.). By under-reporting the loans and interest, *DCHL* was able to show better financial stability, better financial ratios

(debt-equity ratio, debt service coverage ratio, etc.) based on which, the banks/FIs have sanctioned additional loans to them year after year. Further, the aforesaid under-stating of interest expenditure has also resulted in over-statement of net profits. It is noticed that after reinstatement of interest amount in the Profit & Loss account (which were transferred to the books of *DCM*), the *Company* turned from profit-making to loss-making in 2 out of the 3 years (2008-09 to 2010-11). Had the loans and interest amount been reported accurately, the banks/FIs may also have taken a different view while sanctioning additional doses of loans every year to *DCHL*. Further, shareholders would have also taken different informed view while investing in the shares of *DCHL* had the correct financial statements been presented to them through the stock exchanges. The market price of the shares of the *Company* could have also been adjusted/rectified by the market based on true financial positions. However, because of the unscrupulous intent of the *Notices* to understate & suppress the liabilities in the balance sheet and understate the interest expenditure in the Profit & Loss account, the lending institutions, shareholders and the investors in the scrip of *DCHL*, were all deprived of the knowledge about the true & correct financial affairs of the *Company*.

- (16) Needless to emphasise here that the directors of a company owe a sacrosanct duty to act in good faith and to discharge their duties for the benefit of the company. They also owe a duty to exercise reasonable care, skill and diligence and a duty to exercise independent judgment. It may also be noted that the directors' report prepared for each financial year of a company must contain sufficient disclosure for shareholders to help them understand the state of the company's affairs. Further, it is the statutory duties of a director that if he is in any way, directly or indirectly, interested in any transaction or arrangement involving the company, he must declare the nature and extent of his interest to the other directors either before the transaction occurs or at least as soon as it becomes reasonably practicable for him. Any failure by a director to disclose his conflict of interest, if any, or to comply with any of the duties bestowed upon him, has potentially serious consequences for him as well as for the *Company*.
- (17) Therefore, by concealing material information and understating of outstanding loans and interest and finance charges in the annual report for the FY 2008-09, FY 2009-10 and FY 2010-11, *DCHL*, its directors (*Sri T. Venkatram Reddy, Sri T. Vinayak Ravi Reddy, Sri Parasuraman Karthik Iyer, Sri N. Krishnan*) have undoubtedly violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003 read with Section 12(a), (b) and (c) of the SEBI Act, 1992.

17. At this juncture, I note from the SCN that an allegation has been made against the *Notices*

regarding unlawful gain. In my view, disgorgement as an equitable remedial measure is imposed on those entities who, because of their wrongful dealings, make unlawful gains at the cost of the company or its shareholders. The Black's Law Dictionary defines disgorgement as '*the act of giving up something (such as profits illegally obtained) on demand or by legal compulsion*'. The primary purpose of disgorgement is to deter violations of securities laws by depriving violators of their ill-gotten gains and to bring to books such violators who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of the Securities Laws and by directing them to disgorge an amount equivalent to the wrongful gain made or loss so averted by such contraventions. In this case, however, what the promoters or directors have done is that they have tried to suppress their receivables from *DCM* by way of adjusting a large portion of such receivable to the extent of **₹2905.32** crores against an equal amount mutually determined by *DCHL* and *DCM* as payable to *DCM* towards acquisition of brands and trade rights from *DCM*. Such adjustments made in books of accounts of the *Company* were certainly a manipulative and fraudulent act since those brands and trade rights had already been disclosed as assets in the offer documents filed by *DCHL* and as such, *DCM* was never the rightful owner of the trade rights and brands as has been pointed out in detail earlier in this Order. Considering the foregoing observations and findings on the issue, the question of making any payment to *DCM* in exchange of such brand and trade rights did not arise. Therefore, the attempt made by the directors and promoters of *DCHL* to offset the receivable from *DCM* towards advertisement fees to the extent of **₹2905.32** crores by way of manipulative accounting entries in the books of accounts of *DCHL* can at best be called an accounting fraud by the *Company* and its directors. As such, from the materials available on record and the allegations against the *Notices* in the SCN, I find that there is no allegation of any tangible gains having been accrued or realised in the hands of the promoters or directors pursuant to such accounting adjustments made by them to accommodate the liabilities of a related entity, and hence, in my view, the same would not fit into the scope of unlawful gains by the *Company* or its directors so as to warrant a disgorgement order. In my opinion, an act of a person resulting into accrual of positive gains or avoidance of loss by dealing in securities in any manner should be visited by a disgorgement order. However, manipulation in books of accounts, so as to understate the receivable from a related entity, as narrated earlier, does not lead to any gains or avoidance of any losses in the hands of the company or its directors/promoters by way of dealing in any securities. In the instant case, as discussed above in the foregoing paragraphs, there was a manipulation in the books of accounts of the *Company* by understating the receivable from *DCM*, which was a related entity of *DCHL*, and as such no tangible gains would have accrued or realised to the credit of the promoters or directors of the *Company* pursuant to such accounting adjustment to accommodate the liabilities of *DCM*. I am, therefore, not inclined to consider the aforesaid breach by the *Company* or its directors for the purpose of passing a disgorgement order.

18. To sum up my foregoing observations, dissemination of material information about a listed company to the investors in a timely and accurate manner is *sine qua non* to ensure efficiency and integrity of the market and to facilitate fair play amongst market participants. In a disclosure based regime, on the basis of issuer's disclosures, shareholders are able to make informed decisions. Shareholders also hold board and management of a *Company* accountable for any misallocation or misuse of their invested funds and keep a watchful eye on the performance & business conduct of the *Company*. If shareholders are not pleased with the performance of the company or its board, they have the ability to change the behaviour of management and direction of the company by exercising their votes or, alternatively, by selling their shares. In view of this, I find the violations and breaches committed by the *Notices* the instant case are fully addressed by the findings and observations of the Hon'ble Supreme Court in the matter of *N. Narayanan vs SEBI* (Civil Appeal Nos.4112-4113 of 2013) and the same is reproduced hereinbelow:

*“28. We notice in this case that the Directors of the company had clearly violated provisions of Section 12A of SEBI Act read with Regulations 3 and 4 of 2003 Regulations. Companies whose securities are traded on a public market, disclosure of information about the company is crucial for the accurate pricing of the companies' securities and also for the efficient operation of the market.*

***Corporate Governance and Directors***

*29. SEBI Act read with Regulations of the Companies Act would indicate that the obligations of the Directors in listed companies are particularly onerous especially when the Board of Directors makes itself accountable for the performance of the company to shareholders and also for the production of its accounts and financial statements especially when the company is a listed company.*

*30. The Directors of the company or the person in charge directly or indirectly use or employ, in connection with the issue, purchase or sale of any securities listed in stock exchange, any manipulative or deceptive device or contrivance in contravention of SEBI Act or the Regulations made thereunder have necessarily to be dealt with in accordance with the provisions of the Act and the Regulations which is absolutely necessary for the investor's protection and to avoid market abuse.*

*31. The facts clearly indicated that the company had made false corporate announcement stating that it had entered into agreements with 802 theatres and that false corporate announcement gave false figures relating to advance, security deposit and income pertaining to the theatres which were not inexistence. The deposits shown were turned out to be not genuine but mere book entries to hide receivables in the balance sheet.*

*32. Responsibility is cast on the Directors to prepare the annual records and reports and those accounts should reflect 'a true and fair view'. The over-riding obligation of the Directors is to approve the accounts only if they are satisfied that they give true and fair view of the profits or loss for the relevant period and the correct financial position of the company.*

33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in **Official Liquidator v. P.A. Tendolkar** (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.

34. The facts in this case clearly reveal that the Directors of the company in question had failed in their duty to exercise due care and diligence and allowed the company to fabricate the figures and making false disclosures. Facts indicate that they have overlooked the numerous red flags in the revenues, profits, receivables, deposits etc. which should not have escaped the attention of a prudent person. ....

### **Securities Market – Market abuse**

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.

36. We have, on facts, clearly found that the Directors of the company have “created artificiality” by projecting inflated figures of the company’s revenue, profits, security deposits and receivables and that the manipulation in the financial results of the company resulted in price rise of the scrip of the company and the promoters of the company then pledged their shares to raise substantial funds from financial institutions. The conduct of the appellant and others was, therefore, fraudulent and the practices they had adopted, relating to securities, were unfair, which attracted the penalty provisions contained in Section 15 HA read with 15J of the SEBI Act.

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38. *The Companies Act casts an obligation on the company registered under the Companies Act to keep the Books of accounts to achieve transparency. Previously, it was thought that the production of the annual accounts and its preparation is that of the Accounting Professional engaged by the company where two groups who were vitally interested were the shareholders and the creditors. But the scenario has drastically changed, especially with regard to the company whose securities are traded in public market. Disclosure of information about the company is, therefore, crucial for the accurate pricing of the company's securities and for market integrity. Records maintained by the company should show and explain the company's transactions, it should disclose with reasonable accuracy the financial position, at any time, and to enable the Directors to ensure that the balance sheet and profit and loss accounts will comply with the statutory expectations that accounts give a true and fair view. Companies (Amendment) Act, 2000 has added clause (a)(iii) under which SEBI has also been given the power of inspection of listed companies or companies intending to get listed through such officers, as may be authorized by it.*

39. ....We have noticed that the Directors and the Chief Financial Officers of the company had caused to publish forged and misleading results of the company, various quarterly financial results and the annual results for the year 2007-08, were reported to the stock exchanges containing inflated figures of the company's revenue, profits, security deposits and receivables and those financial statements which were relied upon by investors in making investment decisions, which did not reflect a true and fair view of the state of affairs of the company.

40. ....The appellant, admittedly, was a whole time Director of the company, as regards the preparation of the annual accounts, the balance-sheet and financial statement and laying of the same before the company at the Annual General Meeting and filing the same before the Registrar of the Companies as well as before SEBI, the Directors of the company have greater responsibility, especially when the company is a registered company. Directors of the companies, especially of the listed companies, have access to inside knowledge, such as, financial position of the company, dividend rates, annual accounts etc. Directors are expected to exercise the powers for the purposes for which they are conferred. Sometimes they may misuse their powers for their personal gain and makes false representations to the public for unlawful gain.

41. We have indicated, so far as this case is concerned, the subsequent conduct of pledging their shares at artificially inflated prices, based on inflated financial results and raising loan on them would indicate that they had deliberately and with full knowledge committed the illegality and hence the principle of "acta exterior indicant interiora secreta" (meaning external actions reveals inner secrets) applies with all force, a principle which this Court applied in **Sahara's** case.

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**A word of caution:**

43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know,

*is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity."*

19. The discussions made in the foregoing paragraphs, the analysis of facts and evidences which have been alluded to by the SCN and the explanations offered by the *Noticees* to unfasten them from the liabilities that have been fastened on to them in the SCN for the violations committed by them, succinctly bring out a case, where one finds the *Company*, its directors and management in cahoots with its company secretary and auditor, have manipulated the accounts by understating the liabilities and expenditure over many years from 2005-06 onwards with an objective to mislead the shareholders and defraud the investors with an artificially projected strong financial statements which were full of falsehood and misrepresentations. The attempt to buyback shares of the *Company* by the directors and promoters based on the falsely reported reserves amount despite the *Company* actually lacking the requisite free reserves was another attempt to hoodwink innocent investors and to sell the *Company's* misplaced false story about its strong fiscal position to its shareholder/investors. The Company Secretary went on generously authenticating and attesting the financial statements and the buyback offer documents without any application of mind and with an intent to aid and abate the malicious conduct of the *Company* and its promoters and directors. Similarly, the statutory auditors continuously closed their eyes in complete disregard of the prescribed audit standards and the basic minimum accounting vigil that is expected of a statutory auditor, and have certified the accounts of the *Company* for five years oblivious to the fact that huge liabilities to the tune of ₹2905.32 and interest and finance charges to the tune of ₹753.91 have been diverted from the books of *DCHL* on the last date of every accounting year and have been reintroduced to the books on the next day just to avoid disclosure of the same to the public. The *Company* and all the other *Noticees* have also been successfully concealing the series of encumbrances created on promoter's shareholding in favour of financial institutions under the garb of NDUs which were nothing but pledge agreements signed with these institutions and have also chosen to conceal the invocation of the encumbrances from the public shareholders. The *Noticees* have also blatantly made specious claims about the ownership of brands such as *Deccan Chronicle* and *Andhra Bhumis* claiming that these brands were owned by *DCM* (and not by the *Company*) only to accommodate their manipulative accounting adjustments and to waive huge amount of financial obligations to the tune of ₹2905.32 crore which *DCM* owed to the *Company*. Such

actions of the *Notices* are replete with glaring manipulations, fraudulent intents and exaggeration of accounts to the extent that it went on for a number of years with the connivance of the Company Secretary and Auditors. Such blatant and egregious misconduct on the part of the *Notices* is not conducive for the integrity of securities market and cannot be spared to be viewed leniently, rather such mis-conduct of the *Notices* deserve to be dealt with strictly.

20. Without prejudice to the abovesaid, at this juncture, I find it relevant to mention here that as per the records available before me, vide order dated June 03, 2019, the Hyderabad Bench of NCLT has approved the resolution plan dated December 11, 2018 submitted by the Resolution Applicant SREI Multiple Asset Investment Trust Vision India Fund. Further, *DCHL* has been compulsorily delisted at BSE since August 23, 2017. As per the provisions of Regulation 24(1) of the SEBI (Delisting of Equity Shares) Regulations, 2009, a delisted company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting. Considering the peculiar facts and circumstances of this case and further considering the orders passed by NCLT and the fallout in terms of regulation 24(1) of the Delisting Regulations, 2009, in my view, no further directions to the *Company* is warranted at this stage, hence, the instant proceedings *qua Noticee 1*, i.e., *DCHL* is disposed of without issuance of any directions.

21. However, keeping in view the foregoing factual findings and observations, I, in order to protect the interest of the investors in the securities market, in exercise of the powers conferred upon me under sections 11(1), 11B(1), 11(4) read with section 19 of the SEBI Act, 1992 hereby issue the directions to other *Notices* as follows:

(1) *Notices 2 to 5* are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **two years**. It is also clarified that during the period of restraint, the existing holding, including units of mutual funds, of the said *Notices* shall remain frozen.

(2) *Notices 2 to 5* are restrained and further prohibited from holding and occupying any managerial post or being associated directly or indirectly with any listed public company and/or any public company which intends to raise money from the public, or any intermediary registered with SEBI and such restraint and prohibition shall be for a period of **two years**.

(3) *Noticee 6* shall not directly or indirectly provide company secretarial services for a period of **one year** to any listed company or offer services pertaining to compliance of obligations of listed companies and intermediaries registered with SEBI in terms of the requirements

under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, those provisions of the Companies Act, 2013 which are administered by SEBI under section 24 thereof and the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI.

(4) For a period of **one year**, *Noticee 7* shall not directly or indirectly issue any certificate of audit and render any other auditing services including issuances of certificates of compliances whatsoever, to any listed companies and intermediaries registered with SEBI in compliance with the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, and those provisions of the Companies Act 2013 which are administered by SEBI under section 24 thereof and also the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI. For removal of operational difficulties, this Order will not impact audit assignments already undertaken by the *Noticee 7*. However, the *Noticee 7* shall complete such ongoing audit assignments as expeditiously as possible but not later than **6 months** from the date of this Order.

(5) For a period of **one year**, listed companies and intermediaries registered with SEBI shall not engage the *Noticee 6* for company secretarial services, or engage any audit firm associated with *Noticee 7* in any capacity, for issuing any certificate with respect to compliance of statutory obligations which SEBI is competent to administer and enforce, under various laws.

22. The above directions shall be effective from the date of this order. Further, the directions passed under paragraph 21 shall be subject to the orders, directions otherwise passed by the National Company Law Tribunal in proceedings against *DCHL*. A copy of this Order shall be forwarded to Serious Fraud Investigation Office for action, if any, on their part. A copy of this Order shall also be forwarded to the Institute of Chartered Accountants of India for action, if any, on their part *qua Noticee 7*.

**DATE: DECEMBER 31, 2019**

**PLACE: MUMBAI**

-Sd/-

**S. K. MOHANTY**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**