BINNY LIMITED

Estd 1799
CIN No. : L 17111TN1969PLC005736

August 1, 2024

The Manager-Corporate Service Department
BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai-400 001

SCRIP CODE: BINNY\514215

Dear Sir/Madam,

Sub: Next Meeting of the Board of Directors of Binny Ltd.

Meeting of the Board of Directors of Binny Ltd is scheduled on Saturday, 10Aug24 at 11.00 am at Binny Ltd, 1 Floor, Doshi Towers, P H Road, Kilpauk, Chennai 10 to consider the following agenda:

1. Taking note of SEBI order. Copy of the SEBI order attached for your reference. We have received this order through email today.
2. Action to be taken on SEBI order:
3. Moving application to BSE/SEBI/NCLT on Independent Directors
4. Binny Ltd is also taking legal advice on filing appeal before Securities Appellate Tribunal against the SEBI order in respect of it.

Thanking You.
Yours Faithfully,
For **BINNY LIMITED**

M. Nandagopal
Managing Director & Executive Chairman
Encl; aa

Regd. Office :
No. 1, Cooks Road, Perambur, Chennai - 600 012.
Tel No. : 044-2662 1053, Fax : 044-2662 1056 e-mail : binnyho@binnyltd.in
GSTIN: 33AAACB2529G1Z6 Website: www.binnyltd.in

QJA/GR/CFID/CFID/30579/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

Against

Noticee No.	Name of the Noticee(s)	PAN
1.	Binny Limited	AAACB2529G
2.	Mr. M. Nandagopal	AADPN2678L
3.	Mr. Arvind Nandagopal	AAFPA6259G
4.	Mr. Nate Nandha	AACPN7263L
5.	Mr. S. Natarajan	AADPN2679M
6.	Mr. T. Krishnamurthy	AAAPK7442G

(These entities shall be hereinafter collectively referred to as the "Noticees" and individually by their respective name or the Noticee No. in the order.)

IN THE MATTER OF BINNY LIMITED

Background

1. Securities and Exchange Board of India ("**SEBI**") received several complaints alleging siphoning / diversion of the funds of Binny Limited ("**Binny**", "**BL**" or "**the Company**"), misstatements in its financial statements, undisclosed and unauthorized related party transactions. Upon analysis of the same, SEBI appointed Chokshi & Chokshi LLP on November 17, 2021, to *inter alia*, conduct a forensic audit of the consolidated financial statements of BL for 8 financial years ("FY") from 2013-14 to 2020-21 ("Investigation Period" or "IP") with a special focus on misrepresentation of its financial statements and siphoning/diversion of its funds during this period resulting in the possible violation of the provisions of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**"), the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**

Regulations") and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**").

2. The forensic audit report ("**FAR**") was submitted on March 29, 2022 to SEBI. Upon examination of the same, the Annual Reports of BL, the corporate announcements made by BL to the stock exchanges, the replies and recorded statements of its directors including independent directors, Chief Financial Officer(s) and auditors, SEBI caused the issuance of a notice ("**SCN**") dated November 24, 2022 upon the Noticees calling upon them to show cause as to why suitable directions be not issued and/or penalty be not imposed upon them as deemed appropriate in terms of Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Sections 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Rule 5 of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 and Section 23E of SCRA for the violations alleged in the SCN. The Noticees were also advised to file their replies within 21 days from the date of receipt of the SCN. The SCN was duly served on the Noticees along with the following documents that were deemed relevant and relied upon in the SCN:

   i. Forensic Audit Report with its Annexures, Exhibits and supporting documents;
   ii. Statement recordings of the entities whose statements were recorded;
   iii. Relevant extract of the Annual Report for FY 14-15 and corporate announcements made to the stock exchange;
   iv. Relevant extract of the Annual Report of the Company for FY 2015-16;
   v. Email dated March 21, 2022 submitted by the Company;
   vi. Relevant extract of the Independent Auditor's Report for FY 2015-16;
   vii. Audit committee meeting minutes for FY 2013-14 to 2020-21;
   viii. Board meeting minutes dated November 14, 2013, June 12, 2014, August 14, 2014, November 14, 2014, November 08, 2016, September 06, 2017, March 26, 2018 and August 30, 2021;
   ix. Bank account statement of Mr. T. Krishnamurthy.

3. While Noticees No. 1,2,3,4 and 6 (collectively referred to as "Group A Noticees") emailed on December 17, 2022, seeking time till December 31, 2022 to file their replies on the ground that they were in the midst of filling a settlement application under the SEBI (Settlement Proceedings) Regulations, 2018 ("**Settlement Regulations**"), Noticee No. 5 in his email dated December 20, 2022, sought time till January 05, 2023 to file his reply. Vide email dated December 20, 2022, all the Noticees were granted time.

4. Group A Noticees, in their respective emails, all dated December 29, 2022, requested for keeping the proceedings in abeyance till the disposal of the settlement applications. They were advised through an email dated January 06, 2023 to file their merit-based replies within 10 days and further advised that in terms of Regulation 8 of the Settlement Regulations, the filing of a settlement application for any proceedings would not affect the continuance of such proceedings except that the final order would be passed after the disposal of the settlement applications. Vide emails dated January 14, 2023, aforesaid Noticees made request for extension of time till January 31, 2023 to file their replies, which was granted. Group A Noticees, vide their respective emails dated January 31, 2023 filed their replies to the SCN. Noticees No. 2,3,4 and 6, vide their separate replies all dated January 31, 2023 adopted the reply of BL (to the extent applicable) stating that the allegations against them and the company are substantially the same. Noticee No. 5, who had not filed the settlement application in the matter, filed his merit based reply dated January 04, 2023.

5. For the hearing scheduled on February 06, 2023, the Group A Noticees sought for adjournment citing personal inconvenience. Considering the identical facts, the hearing for all the Noticees (including Noticee No. 5) was rescheduled to February 20, 2023. Noticee No. 6 and the authorized representative (**AR**) of the other Group A Noticees attended the hearing in person. Noticee No. 5 attended the hearing virtually.

6. Upon conclusion of the hearing (1st hearing), the Noticees sought time till March 15, 2023 to file additional documents. In the interim, the settlement applications of the Group A Noticees were rejected in terms of Regulation 5(5) of the Settlement Regulations, which fact was intimated to them on March 16, 2023.

7. When no reply was received from the Noticees even after the due date, *suo moto* extension was granted to enable them to file their additional submissions, if any, by March 27, 2023. Noticee No. 5 filed additional written submissions vide email dated March 27, 2023. The Group A Noticees requested additional four weeks until the end of April to submit their filings, records, and documents. Since considerable time had elapsed from the date of issuance of the SCN and since adequate opportunities had been granted to them, Group A Noticees were informed on March 31, 2023, that if they so desired, any additional submissions be filed latest by April 12, 2023.

8. The Group A Noticees through their authorised representative(AR), vide letter/email dated April 12, 2023, requested more time to submit a comprehensive

reply along with another opportunity for a personal hearing after submitting the reply and also requested for copies of the complaints received in the matter. All the documents were provided on April 20, 2023 with the reminder that ample time had been granted to them and that since they had already filed their replies in the matter and personal hearing had also been provided, another personal hearing was not warranted but that in view of their request, they were advised to file additional written submissions, if any, by April 30, 2023, which would be considered as part of their consolidated response in the matter.

9. However, in their letters/emails dated April 29, 2023, the Group A Noticees requested for an additional three-weeks' time. However, they did not submit any filings within that timeframe. Instead, vide email dated May 20, 2023, another extension of four weeks was sought citing the poor health of Noticee No. 2 as a ground for the same. Hence time till June 15, 2023 was granted to file additional written submissions, if any, with yet another advise that in case no additional submissions were received, the matter would be proceeded on the basis of the material available on record. Despite the same, no submissions were filed within the requested time frame. Instead Group A Noticees vide their email dated June 12, 2023 informed that they had filed petition(s) before the Bombay High Court challenging the rejection of their settlement applications and vide another email dated June 15, 2023, sought extension of time on the ground that their draft submissions in the matter are to be placed before their Board of Directors in the meeting scheduled on June 22, 2023.

10. Later, vide email dated June 22, 2023, additional written submissions were filed. Further, vide emails dated July 17, 2023 and July 31, 2023, another set of documents stated to be relevant were filed along with another request for a personal hearing. In the interest of justice, another hearing (2nd hearing) was scheduled on August 17, 2023, wherein the AR of the Group A Noticees appeared along with Noticee No. 6 and only elaborated on the submissions contained in the replies filed by them as on the day of the hearing. Thereafter, they send additional documents on August 18, 2023.

11. Noticee No. 5 vide his email dated October 11, 2023, referred to his communication dated October 10, 2023 through which he had forwarded copies of two emails dated June 27, 2019 and October 01, 2019, both addressed to Noticee 2, a legal notice dated June 10, 2020 addressed to Noticees 1, 2 and 3 and certain other entities who are not party to these proceedings.

12. In conformance with the principles of natural justice, these documents were forwarded to the Group A Noticees and were requested for their comments, if any, latest by October 25, 2023. In response, Group A Noticees vide their email dated October 20, 2023 sought time till October 31, 2023 and on October 31, 2023, *inter alia*, submitted that the emails and legal notice referred to by Noticee No. 5, narrate only the transactions already covered in the SCN issued by SEBI to which their response had been filed and that the same may be treated as part of their reply to the emails and legal notice sent by Noticee No. 5.

13. Subsequently, Noticee No. 1, vide email dated November 06, 2023 forwarded additional documents in support of the contentions filed earlier.

14. Noticee No. 2 sent an email on January 08, 2024 and while referring to the events/communications sent earlier, stated that certain crucial developments had taken place and new evidence had come to light since the last hearing and since more than 10 months had elapsed, another personal hearing accrued to him.

15. In order to preempt another round of requests made separately by the remaining Noticees, on one ground or the other, the said email dated January 08, 2024, was treated as a combined representation of the other Group A Noticees, more so since all along they had previously filed joint submissions and were represented by a common AR, and hence another hearing (3rd hearing) was scheduled on January 17, 2024. Vide his email dated January 11, 2024, Noticee No. 2 withdrew his request for the personal hearing while Noticees 1,3 and 6 vide their respective emails dated January 11, 2024 informed that they had not sought for any hearing and did not propose to attend or appear for the hearing scheduled on January 17, 2024.

16. On the other hand, Noticee No. 4, vide his email dated January 14, 2024, sought up-to-date information/correspondence entered into between SEBI and the other five Noticees in relation to the hearing scheduled on January 17, 2024. He was advised to rely upon all the information/correspondence exchanged between SEBI and the Noticees including him and/or their AR which was available with him or shared with him. Vide another email dated January 16, 2024, Noticee No. 4 informed that he had authorized another AR to appear for the hearing scheduled on January 17, 2024, who would seek an adjournment during the hearing. In response, he was informed that while multiple opportunities had been provided to him and availed by him to make submissions and further that he had previously been heard on two occasions (February 20, 2023 and August 17, 2023) through his AR, one final opportunity would be provided considering that he had now

engaged another advocate, and accordingly his hearing was scheduled on January 31, 2024.

17. An email/letter dated January 23, 2024 was received from Noticees 1 and 2 seeking another personal hearing. It was unclear whether hearing was sought by Noticee no. 1 and 2 for themselves only or also on behalf of Noticees 3 and 6. Yet again, to avoid further adjournments, since the Group A Noticees, had filed common submissions and were being represented by a common AR during the previous hearings, another opportunity of hearing was provided to Noticees 1, 2, 3 and 6 on January 31, 2024. i.e. the date on which the hearing in respect of Noticee No. 4 was scheduled. On January 27, 2024, Noticee No. 3 informed that he would not attend since he had not sought for any personal hearing.

18. On January 31, 2024, the Noticee No. 4 and his AR appeared and despite being advised to only make submissions that had not been made earlier, they once again reiterated the earlier submissions and upon conclusion of the hearing, requested for time to submit written submissions along with documents in support thereof. The AR of Noticee 1 and 2 also reiterated the submissions made earlier and requested for 10 days' time i.e. by February 10, 2024 to submit written submissions. Noticee 6 appeared in person and reiterated the submissions made earlier. Noticee No. 4 filed post hearing submissions vide letter dated February 01, 2024. Noticee 1 and 2 filed their post hearing submissions simply reiterating the submissions made earlier vide their respective emails dated February 13, 2024 (much after the due date).

19. It is pertinent to mention here that upon conclusion of hearing on January 31, 2024, the Noticees i.e. 1,2,4 and 6 were advised that since the proceedings had considerably been delayed, no further adjournment would be granted and that the matters stood reserved for orders. This docket order was recorded in the presence of all the Noticees/ARs who vehemently undertook not to seek any further hearing or extension of time for filing any written submissions or documents.

20. Despite their assurance and even after the case was reserved for orders, as an indicator of the utter contempt that they displayed towards the present processes and the irreverence they held of their own undertaking, Noticees 1 and 2 sought another personal hearing and an opportunity to cross-examine Noticee No.5 which request was reiterated by Noticee No. 1 in their additional submissions filed vide email February 21, 2024.

21. Noticee No. 1 sent a letter dated March 29, 2024 and another letter dated April 18, 2024, acting through its Executive Chairman (Noticee No. 2) on behalf of the Group A Noticees, making certain other submissions (that I have dealt with later in this order) and on the basis of the same sought for disposal of the proceedings.

22. It would be pertinent to mention here that, Group A Noticees had filed 2 writ petition(s) before the Hon'ble Bombay High Court challenging the rejection of their settlement applications. After detailed arguments, the Hon'ble High Court, vide Judgment dated July 04, 2023 dismissed the petitions on merits and notably observed that the purpose of the writ petitions was to prolong and delay the adjudication of the SCN and in view thereof imposed costs of ₹2.5 lakhs on the petitioners (Group A Noticees) in each of the 2 writ petitions.

23. Specifically, the Hon'ble Court, observed as follows: -

"18. ...It does not end there. Although it is clear that there is no appeal, it is useless for these Petitioners to pretend as if that is the end of their recourse to remedies. As we are now painfully aware, having spent the better part of two hours on this matter, they have ready recourse to a writ court, where the Petitioners expect to have no questions asked of their time, and seem to be entitled to help themselves greedily to vast amounts of very scarce judicial time. Undoubtedly, any order the Board makes under the Regulations will instantly be challenged in yet another writ petition. This process will go on indefinitely with no end in sight. All the while, the show cause notice will remain without final decision. Thus, the Regulation 8(1) abeyance will go on forever, with any Settlement Application 'decision' being queried, questioned and challenged at every single turn.

19. This is precisely what the Regulations do not contemplate: protracted litigations in the face of serious violations required to be answered.

...

24. Viewed from any perspective, these Petitions, like the Settlement Application, are entirely without substance. We understand quite clearly now that the only purpose of the Settlement Application and indeed these Writ Petitions was to prolong and delay the adjudication of the show cause notice. If there was any doubt about this, it is surely put to rest by one look at the prayers in the Binny Petition, and in particular prayer clause (b) which is really the prayer that is being sought, for a stay of the adjudication on the show cause notice. Interestingly, although prayer clause (a) ought to be really for a certiorari not a mandamus, there is not even a prayer for a direction to SEBI to reconsider the

Settlement Application. In other words, an order on this Writ Petition would effectively put an end to all SEBI action as a regulator. That is simply unthinkable."

24. The Group A Noticees challenged the aforesaid Judgment before the Hon'ble Supreme Court which, vide its Order dated August 04, 2023 dismissed it and observed that it did not find any good ground and reason to interfere with the impugned judgment.

25. For ready reference, the chronology of events including the dates of the replies, letters sent by or on behalf by the Noticees, the dates of extensions sought by them and the details of the opportunities availed by them are detailed below.

Table No. 1 (Chronology of Correspondence)

Date	Correspondence
November 24, 2022	SCN Issued to the Noticees providing them 21 days to file their respective replies to the SCN
December 17, 2022	Noticees No. 1,2,3,4 and 6 (Group A Noticees) sought extension of time till December 31, 2022 to file their replies
December 20, 2022	Noticee No. 5 sought time to file reply
December 29, 2022	*Group A Noticees* informed about the filling of settlement application
January 04, 2023	Noticee No. 5 filed his reply.
January 14, 2023	*Group A Noticees* sought extension of time till January 31, 2023 to file their replies.
January 31, 2023	*Group A Noticees* filed their replies.
February 06, 2023	1st Hearing was scheduled which was adjourned upon the request of the Noticees
February 20, 2023	Hearing took place for all the Noticees. Time given to *Group A Noticees* till March 15, 2023 to file post hearing submissions.
March 15, 2023	No response received from the Group A Noticees. *Suo motu* extension of time granted till March 27, 2023 to file post hearing submissions.
March 16, 2023	Communication of rejection of settlement applications to the *Group A Noticees*
March 27, 2023	Additional Submissions filed by Notice No. 5

Date	Correspondence
March 27, 2023	*Group A Noticees* sought additional four weeks' time to file their submissions. Time granted till April 12, 2023 to file the submissions.
April 12, 2023	*Group A Noticees* sought copies of complaints in the matter.
April 20, 2023	Complaints' copies shared with *Group A Noticees* and time granted till April 30, 2023 to file additional submissions.
April 29, 2023	Vide email dated April 29, 2023, *Group A Noticees* sought further extension of three weeks.
May 20, 2023	Once again, *Group A Noticees* sought extension of four weeks' on the grounds of poor health of Noticee No. 2. Extension granted till June 15, 2023.
June 12, 2023	*Group A Noticees* informed that they have filed writ petition before Hon'ble Bombay High Court challenging the rejection of their settlement applications
June 22, 2023	*Group A Noticees* filed post hearing submissions
July 04, 2023	Hon'ble Bombay High Court dismissed the writ petitions filed by *Group A Noticees* whereby the rejection of their settlement applications was challenged
July 17, 2023	Additional documents submitted by the Noticee.
July 31, 2023	Additional documents submitted by the Noticee.
August 04, 2023	Hon'ble Supreme Court dismissed the appeals filed by the *Group A Noticees* challenging the Bombay High Court Order
August 17, 2023	2nd Hearing held which was attended by AR of *Group A Noticees*
August 18, 2023	Group A Noticees submitted additional documents.
October 11, 2023	Noticee No. 5 forwarded a communication containing copies of two emails dated June 27, 2019 and October 01, 2019, addressed to Mr. M. Nandagopal (Noticee No. 2) and a legal notice dated June 10, 2020 addressed to Noticee Nos. 1, 2 and 3 and others. The Communication was forwarded to Noticees No. 1, 2, 3, 4 and 6 (i.e., Group A Noticees) seeking their comments, if any.
October 31, 2023	*Group A Noticees* submitted that the emails and legal notice forwarded by Noticee No. 5 narrate only the transactions which are already covered in the SCN issued by SEBI and response thereto has already been filed by

Date	Correspondence
	them and the same may be treated as their reply to the emails and legal notice sent by Noticee No. 5 as well.
November 06, 2023	Additional documents filed by Noticee No. 1
January 08, 2024	Email from Noticee No. 2 seeking another opportunity of hearing. The request made by the Noticee was acceded to and 3rd Hearing was scheduled for *Group A Noticees* on January 17, 2023
January 11, 2024	Noticee No. 2 withdrew his request for personal hearing and informed that he had sought the hearing only in its personal capacity.
January 11, 2024	Noticees No. 1,3 and 6 informed that they had not sought any personal hearing
January 14, 2024	Noticee No. 4 sought up-to-date correspondence between SEBI and other Noticees.
January 15, 2024	The request made by Noticee No. 4 was rejected as he/ his AR was privy to all the correspondence exchanged earlier. He was advised to attend the hearing scheduled for January 17, 2023.
January 16, 2024	Noticee No. 4 sought adjournment of hearing. Hearing was rescheduled to January 31, 2024
January 23, 2024	Email from Noticee No. 1 and 2 seeking opportunity of hearing.
January 24, 2024	Hearing also granted to Noticee No. 1, 2 ,3 and 6.
January 25, 2024	Email from Noticee No. 6 confirming his presence for the hearing scheduled for January 31, 2024
January 27, 2024	Email from Noticee No. 3 informing that he had not sought any personal hearing.
January 30, 2024	Email from Noticee No. 4 confirming his presence and submission of authority letter
January 31, 2024	3rd Hearing held for Noticee No. 1,2,4 and 6
February 02, 2024	Noticee No. 4 filed his post hearing submissions
February 13, 2024	Noticee No. 2 filed his post hearing submissions dated February 10, 2024
February 13, 2024	Noticee No. 1 filed its post hearing submissions dated February 12, 2024
February 20, 2024	Additional Submissions filed by Noticee No. 4
February 21, 2024	Additional Submissions filed by Noticee No. 1
March 30, 2024	Letter dated March 29, 2024 filed by Noticee No.1

Date	Correspondence
April 08, 2024	Letter dated April 08, 2024 filed by Noticee No. 1 on behalf of *Group A Noticees*
April 18, 2024	Additional documents submitted by *Group A Noticees* vide email/letter dated April 18, 2024

26. As is evident from the sequence of events detailed above, every possible tactic was being adopted by the Group A Noticees merely to delay the conclusion of the proceedings. Fifteen months after the issuance of the SCN dated November 24, 2022 and with the consent of all the Noticees on January 31, 2024, the case was reserved for passing of orders. It was delayed to this extent only, on account of the procedural gamesmanship adopted by all the Noticees. The Noticees kept sending multiple letters and emails, more or less reiterating the same issues again and again.

27. In order to ensure that justice must be relentlessly pursued and to obviate the Noticees finding refuge in procedural technicalities, every individual request made by the different Noticees, at different points of time, was accommodated, either by granting them additional time and/or multiple opportunities of hearing or submitting additional documents. But such manipulative legal tactics and procedural machinations in the name of justice is nothing short of abuse of the legal process meant to obstruct the delivery of true justice, especially in a case dealing with such serious allegations.

28. It is evident that aqequate opportunities have been granted and availed by the Noticees and hence no just cause lies to delay the determination of the issues in the present case.

CONSIDERATION OF ISSUES:

29. I have considered the main allegations contained in the SCN against the Noticees, their written submissions and those made during the course of the hearings and the post-hearing submissions. The issues and details related thereto have been briefly headlined and thereafter dealt with in the following six parts of the order:

I. Allegations related to the diversion and siphoning of funds

i. Advances amounting to ₹329.29 Crore given to vendors involved in business activities not related to BL;

ii. Out of ₹329.29 Crore advanced to various vendors by BL, diversion of ₹148.72 Crore to Related Parties of BL;

iii. Diversion of the sale proceeds of land through various vendors (having common director).

II. Transactions between BL and its related party, Mohan Breweries and Distilleries Limited ("MBDL")

i. Advance given by BL to MBDL for purchase of 37.2 MW Wind farm project between October 18, 2013 to January 23, 2015;
ii. Advance given by BL to MBDL for purchase of 7.07 acres of land between December 05, 2014 to June 24, 2015;
iii. Advance given by BL to MBDL for purchase of 12.43 acres of land between June 24, 2015 to November 30, 2015.

III. Settlement Scheme framed by BL

IV. Allegations related to non-disclosure of related party transactions ("RPTs")

i. Non-disclosure of RPTs with RRB Energy Limited;
ii. Non-disclosure of RPTs /Transfer of outstanding balances via a journal entry to a third party.

V. Other allegations

i. Non-recognition of income from the sale of land in the books of accounts of BL amounting to ₹ 41.70 Crore in the FY 2018-19;
ii. Non-provision of documents with respect to Advances of ₹15 Crore paid to Malgudi Township Developers for purchase of land.

VI. Role of the Noticees

I. ALLEGATIONS RELATED TO THE DIVERSION AND SIPHONING OF FUNDS

30. In the SCN issued to the Noticees, BL was alleged to have paid amounts aggregating ₹329.29 Crores to 19 vendors involved in business activities that had no relation to the activities undertaken by it, e.g. amounts were paid to these entities grouped as under, for the purchase of items such as glass goods, liquor bottle, TMT Bar, curtain fabric, etc.:

Table No. 2 As on September 30, 2021

Vendor Group	Amounts paid (₹ Crore)	Period for which amount was made (Financial years)	Amount outstanding (₹ Crore)
Devi Group[1]	44	18-19 to 20-21	44
Malgudi Township Developers Limited	15	16-17	15
Rammohan group[2]	145.61	16-17 to 17-18	145.61
RRB Energy Limited	29.18	16-17 to 17-18	29.18
Sunbright Group[3]	51.33	14-15 to 18-19	51.33
Others[4]	44.17	16-17 to 18-19	44.17
Total	**329.29**		**329.29**

i. An age wise analysis of these amounts indicated that around 86% i.e. ₹ 284.29 Crore was outstanding for more than five years at the time of issuance of SCN.

ii. Some of these amounts for purchases were given to the vendors who in turn advanced them to entities that appeared to be connected with BL:

a. Mr. Natrajan VS (Common Director of Devi group entities) ,also a Director of Mohan Breweries and Distilleries (AP) Private Limited, a private limited Company, along with Noticee No.2 (Chairman and Promoter of BL).

b. The IMFL Unit and Brewery Unit owned by MBDL at Chennai :- given on lease to M/s. Devi Innoventures LLP (One of the Devi group entities).

c. The Glass Manufacturing Unit at Puducherry :- given on lease to Devi Innoventures in February 2018.

[1] As per the SCN, four entities namely, Devi Glass Tradecorp LLP, Devi Innoventures LLP, Mr. Natarajan VS and Subramaniam Bottles LLP constitute "Devi group".
[2] As per the SCN, four entities namely, Mass International, Premium Steel & Alloys Pvt Ltd., Nurture Traders Pvt. Ltd., Parshvi Global Interlinks Pvt Ltd. constitute "Rammohan group".
[3] As per the SCN, four entities namely, Modest Imperia Trading Pvt ltd, Sunbright Industries Pvt Ltd., Maxima Accord trading Pvt ltd., Sun Bright Designers Pvt. Ltd constitute "Sunbright group"
[4] As per SCN, Radiance Technoplast Pvt ltd., R K Utilities Private Ltd., Glints Ventures Pvt Ltd., Bencon Exim Ventures Pvt Ltd., Benkatesh Ventures Pvt. Ltd constitute "others"

iii. The amounts continued to be given to these entities/vendors over the years, despite earlier amounts not being settled/goods received. For instance, amounts were provided for 3 consecutive years to Nurture Traders Pvt Ltd and Devi Innoventures LLP and for 2 consecutive years to Parshvi Global Interlinks Pvt Ltd, Mr. Natarajan VS and RRB Energy Limited ("RRB").

iv. Despite giving amounts for such purchases, no supporting document such as quotations or negotiation details, copies/dates of acknowledgement of receipt by vendors, speed post/courier details, etc. were available on record. The purchase orders did not indicate payment terms and in certain cases, the core business objects of the vendors did not match with the items for which amounts were given.

v. No interest was charged nor was any provisioning made for these amounts, that continued to remain outstanding for more than 5 years. No balance confirmation was provided by BL for the outstanding balance to the forensic auditor despite being advised to seek new balance confirmation. In all, no due diligence was exercised, while advancing money to its vendors.

vi. Noticee No. 2 in his statement recording, submitted that BL was purchasing material to enter into the textile business. As per the minutes of the Board Meeting of BL dated June 12, 2014, the Board only granted approval *"to complete the feasibility study"* for establishment of spinning mills, with a capital outlay of ₹150 Crore, for manufacturing of textiles and provided necessary recommendation to the Board of BL to consider the suitability of setting up of a new factory. BL did not submit any other documentary evidence to substantiate the commencement of its textile business.

vii. The statement recordings of the Directors of BL, revealed inconsistent replies by its Promoters, Executive Directors, Independent Directors and Auditors. Noticee No. 2 stated that BL was only planning to venture into the textile business during the year 2016, for which it had paid amounts for procurement of curtains. Noticee No. 5 stated that BL was not dealing in curtains, fabric, glass but were only stating the same since they were advancing money to these entities and then diverting funds to MBDL.

31. In the context of the amounts paid to the vendors, the Group A Noticees made the following submissions: -

i. The understanding/perception of SEBI that the vendors to whom the business advances were made by BL are related parties is unfounded.

ii. Neither Mr. Natarajan V.S. nor the Devi Group is a related party within the provisions of the Companies Act or the SEBI Act and the Regulations nor do they fall under the category of Promoter Group. Probably, based on the observation and incorrect understanding about the directorship of Noticee 5, he was alleged to be a related party even though the transaction of BL with Noticee 5 is not a related party transaction.

iii. During the years that such advances were made to the textile vendors, BL had its showrooms in all major cities throughout India. Fabrics being manufactured and marketed by BL were very popular, especially school uniforms. Even after closure of the mills, a lot of traders would procure school uniforms manufactured in other Textile Mills and Industries embossed with "Binny" name and sell them making huge profits since the brand name "Binny" carried a very good image. In that background, BL wanted to enter into a Trading Business of textiles once again and placed the orders for all Textile Fabrics at a time when the State Sales Tax laws were in force.

iv. When the GST laws made uniformly applicable across the country came into force, disputes arose between BL and the vendors on the tax implications on the changed law. The rates of sales tax was different under the previous Sales Tax Act and the General Sales Tax Act. This changed tax law severely affected the viability of the proposed trading business envisaged by BL. Coupled with the problem of dispute with the vendors and the long term viability of trading business, BL had to abandon the idea of trading business and was forced to cancel the purchase orders and call back the advances. The vendors having received the money along with the purchase orders on a particular term of contract, refused to return the money, as they could not afford to suffer the financial loss due to the unilateral action of BL in cancelling the purchase orders.

v. BL had an established process for issue of purchase orders and payment against the same where the vendors are called for a discussion and based on such discussions, the orders are finalized. The purchase order issued was a permanent document kept by BL for its records. Copies of the purchase orders were produced during the Audit and on the said basis, it was denied that the documents produced were factually incorrect. (Copies

of the purchase orders issued by BL to all the vendors, as submitted during the audit were submitted by Noticee No. 1).

vi. There is no law or legal requirement for a company in the private sector (unlike government companies) to seek quotations before release of any purchase order.

vii. Since the vendors created disputes for the reasons narrated above, BL initiated legal action against them. Since BL was concerned with the recovery of the advances paid, copies of the legal notices issued to the vendors were provided to the Auditors' (copies enclosed with the reply). Hence there was no absence of "due diligence' by BL while advancing money to its vendors

viii. Understanding the overall situation of immediate possibility of recovery of these amounts and the business decision taken by the management and considering that the commercial wisdom at the relevant point of time of making these amounts proved to be unviable, the promoters decided to take upon themselves the entire financial burden of recovery of these amounts. Accordingly, BLtransferred the dues of such amounts from the vendors at the same value of the amounts realizable from such vendors, notwithstanding the fact that such vendors were disputing the dues of BL to "MBDL" and adjusted the same against the dues admittedly payable. This was duly reflected in the books of accounts of BL to MBDL. There was no intention even remotely to divert/siphon off the funds belonging to BL.

ix. All these facts were placed before the shareholders in the General Meeting held on October 09, 2021 who after being informed of the factual background, approved the corporate action with an overwhelming majority. The approval of the corporate action was voted only by the public shareholders and the promoters did not vote for the item of agenda.

32. I have considered the submissions of Group A Noticees in their reply(ies) under this head of allegation and note that the very basis of their submissions, that the amounts were not made to 'related parties' by BL or that Mr. Natrajan V.S. is neither a related party of BL nor its Promotor, has no relation to the present allegation against BL which is, that an amount of ₹ 329.29 Crore was advanced to 19 vendors for the purchase of items like glass goods, liquor bottle, curtain fabric, TMT bar, etc. which are clearly items unrelated to the business activities of BL. Hence, this

particular issue is not regarding payment of advances to 'related parties' as defined in Companies Act or LODR Regulations but dwells on the issue of ₹ 329.29 Crore given by BL to 19 vendors.

33. I have noted the observations made in the FAR and findings in the investigation report and reviewed the purchase orders provided by BL and the core business objects of the various vendors to which amounts were paid. It is apparent that the core business objects of the vendors did not match with the items for which amounts were transferred. For e. g., advances were made for the purchase of TMT bar from the vendor; Sunbright Industries Pvt. Ltd. whose main object as per the ROC records was trading in pharma, garments and textile products. Similarly, advances were made to certain vendors for purchase of curtain fabrics, whose main objects were metal and commodities, marketing of HDPE Pipe and irrigation equipment, consumer food Items and real estate. I note that in some cases, even purchase orders were not provided to the forensic auditor and yet advances were shown to have been made to such entities.

34. BL had made advance payment to various vendors from the financial year 2016-17 to as late as 2018-19. It is clear that advances were made to various vendors even after the introduction of GST was implemented across India from July 01, 2017. Thus, the argument that with the introduction of GST, disputes arose between various vendors which led to the cancellation of orders has no merit and is factually unsubstantiated.

35. The contention of the Group A Noticees that BL wanted to re-enter into the textile business and for that purpose made various advances for the purchase of textile business or the statement of Noticee No. 2 before the Investigating Authority that BL was purchasing material to get into the textile business, has no basis since the Board of BL in its meeting dated June 12, 2014 had only resolved that BL would complete the feasibility study for establishment of the spinning mills manufacturing and suitability of the setting up of a new factory with a capital outlay of ₹ 150 Crore. Apart from the aforesaid board resolution, no documentary evidence was brought on record to substantiate the contention of venturing into the textile business.

36. It is rather strange that just at the nascent stage of conducting the feasibility study for setting up of spinning mills, BL advanced such huge sums of money to vendors for which no goods were delivered nor was it repaid but continued to remain outstanding. There appears to be no reason whatsoever for a listed company that is accountable to its shareholders to advance such huge sums of money to various vendors without authorisation of its Board of Directors and/or its shareholders or

even with the necessary authorisation merely on the basis of a feasibility report. Clearly even to a layman, such lack of accountability in advancing huge amounts of money does not make any commercial sense and that too continuously for more than 5 years. The material available on record also does not suggest as to whether BL eventually entered into the textile business.

37. I am not convinced by the argument that there is no law or legal requirement for companies in the private sectors to obtain quotations before release of any purchase order. It is relevant to emphasize that absence of a mandatory legal requirement to obtain quotations before issuing purchase order, does not validate the absence of any due diligence by the company in its business dealings especially when it is a public listed company and is required by law to take all decisions in the interests of its shareholders. -The Company on the one hand has stated that advances were made for procurement of textile material and on the other hand contended that the documents provided indicate that the purported purchase orders were placed for purchase of curtain fabrics from various private entities whose business activities were unrelated which is rather strange.

38. Further, the argument by the Group A Noticees that BL initiated legal action against the vendors and submitted certain copies of legal notices issued to the vendors provides me no comfort when from a perusal of these notices stated to have been issued, I note that all these notices are dated June 01, 2019 i.e., much after the time when the advances were paid to them (from year 2016 to 2018) and they did not have any proof of delivery and proof of receipt or acknowledgement thereof by the vendors. Furthermore, through these legal notice(s), the company had apparently called upon the vendors to pay the outstanding sums along with interest within 15 days from the date of receipt of these notice(s) failing which the Company would be constrained to initiate appropriate civil and criminal action. However, the Group A Noticees have not provided any additional document which may demonstrate any follow up action post issuance of the notices. Thus, none of the documents lend credence to the argument that the advances were bonafide in nature. On the contrary, it appears that the advances made and the documents provided thereafter apparently to recover them, are merely an eyewash and a device or scheme contemplated for siphoning off its funds.

39. It is also pertinent to mention that Noticee No. 5, the former promoter and non-executive director of BL, in his statement before the Investigating authority, which was shared with the other Noticees, stated that BL is not dealing in these goods (i.e. curtain, fabric, glass) and that BL and its executive directors are only saying this because they had advanced money to these entities and then diverted the

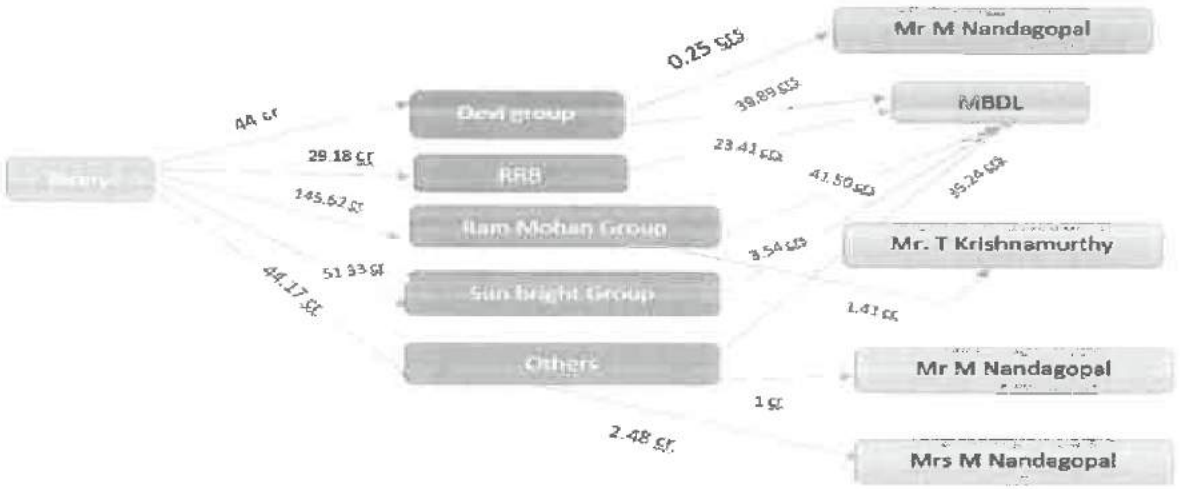
funds to MBDL, its related party. Thus, the statement of Noticee No. 5, which was mentioned in the SCN, and shared with the other Noticees and acknowledged by them but never refuted by them also corroborates the findings recorded in the preceding paragraphs.

40. Thus I am of the view that there is merit in the allegation that BL advanced funds aggregating to ₹ 329.29 Crore to various vendors (a part whereof was transferred to BL's related parties as discussed in the subsequent paragraphs), which were outstanding as on the date of issuance of the SCN and those acts led to the misrepresentation of financial statements of the Company. in light of the above, I find that there are adequate reasons to hold that under the guise of purchasing items, by making such advances for unspecified and unrelated businesses, BL had diverted/siphoned off the funds belonging to its shareholders.

Diversion of ₹ 148.72 Crore to related parties of BL out of ₹ 329.29 Crore advanced to various vendors by BL

41. In this context, the SCN alleged that of ₹ 148.72 Crore transferred by various vendors, a major portion of the funds viz. ₹ 143 Crore was received by MBDL and MBDL and BL are 'Related Parties" and that funds to the tune of ₹ 1.25 Crore, ₹ 2.48 Crore and ₹ 1.41 Crore were respectively transferred to Mr. M. Nandagopal, Mrs. M. Nandagopal and Mr. Krishnamurthy. In this manner, under the garb of business transactions, these funds were, through these vendors, transferred to the related/connected parties of BL almost on the same/nearby dates. The subsequent transfers of the amounts received by the vendors to the related/connected parties of BL, are illustrated as under:

Flowchart No. 1



42. Responding to these allegations, Group A Noticees submitted the following:-

Transactions with the Devi Group Companies:

43. In the IMFL and Brewery Divisions, where there are huge operations, several financial transactions between MBDL and Devi Group Companies on a day-to-day basis, were part of the normal business transactions between them. Merely giving advances during this time to the Devi Group by BL, was no basis to allege diversion of funds by BL to MBDL.

Transactions with the RRB group:

i. BL placed an order with RRB Energy Ltd. for putting up a 50 MW Wind Farm Project on a turn-key basis at a contract price of ₹325.23 Crore involving land infrastructure and Plant and Machineries Installation and Commissioning and in this context paid an advance of ₹29.18 Crore.

ii. For executing the order placed by BL for setting up the said wind farm project, RRB paid a sum of ₹23.41 Crore[5] to MBDL for acquiring the land and infrastructure facilities from MBDL in their 37 MW Wind Farm Project. The land required for the wind farm project of BL was required to be in a wind prone zone. Free surplus lands were available with MBDL in the Western Ghats and Southern region of Tamil Nadu, which are considered as wind prone zones. Moreover, the infrastructure facilities, i.e. Ready Made Power Purchase Agreements (PPAs), would have been quite difficult to obtain, as the process takes a long time to apply for and obtain a new one.

iii. Thus the payment of ₹23.41 Crore by RRB Energy Limited to MBDL is an independent and separate transaction for the procurement of land and infrastructure facilities from MBDL for putting up the 50 MW Project and had nothing to do with BL and the advance paid by it to RRB Energy Limited for setting up the wind farm project. RRB stated that they owed a sum of ₹29.18 Crore to BL as on 31st March, 21 and enclosed the copy of the Balance Confirmation letter dated July 17, 2021 issued by RRB in this regard.

iv. On receiving the draft auditors' report, BL made enquiries with MBDL regarding the transactions between MBDL and RRB Energy Ltd and was provided with

[5] There is a minor factual inconsistency w.r.t the advance paid by RRB to MBDL. FAR and SCN at some places observed it to be ₹ 23.41 Crores whereas, vide letter dated April 19, 2021, RRB has confirmed it to be ₹ 22.71 Crores.

a copy of the minutes signed between MBDL and RRB Energy Ltd dated 19.04.2021, which vindicated their stand that the transaction between BL and RRB Energy Ltd. was independent of the transactions between MBDL and RRB Energy Ltd. A copy of the said minutes was duly enclosed in this regard.

v. The allegation of diversion of funds by BL to MBDL based on a valid and justifiable business transactions between RRB and MBDL is unjustified. The above factual details were also shared with the Auditors' in response to their draft audit report and hence the allegation that BL did not provide any basis behind the transfer of funds by the aforesaid vendors to MBDL was factually incorrect. The advance of ₹29.18 Crore was given by BL to RRB Energy Limited in the financial year 2016-17 and a sum of ₹22.71 Crore was paid by RRB to MBDL in the financial year 2016-17 and 2017-18 belying the allegation that "these transfers were done on the same day/nearby dates ".

Transactions with others

vi. The companies are market players in their respective fields. MBDL/the other parties may have separate business transactions with these parties and in the normal course of business, there could have been payment /receipt of funds. Hence, it was not proper to draw any adverse inference against BL based on its independent transactions with MBDL/the other parties or to link its business transactions with its vendors vis-à-vis the transactions between the said vendors and MBDL/the other parties. This was also submitted to the Auditors' in response to their draft audit report and thus the allegation that BL did not provide any basis behind transfer of funds is factually incorrect.

44. The present issue is on the allegation of diversion of ₹148.72 Crore out of ₹329.29 crore by the vendors to other related parties under the guise of business transactions, of which, MBDL was the primary beneficiary in that a major portion of ₹ 143.58 Crore out of ₹148.72 Crore, was received by MBDL. Other than that ₹ 1.25 Crore was transferred to Noticee No. 2 and ₹ 2.48 Crore to Mrs. M. Nandagopal (relative of Noticee No. 2). Noticees 1 and 2 have chosen to ignore the transfers of funds amounting to ₹ 3.73 Crore which were made to Noticee No. 2 and his relative, Mrs. M. Nandagopal and no reasonable explanation has been provided for the said transfers.

45. As regards the allegation in the SCN that out of ₹ 44 Crore advanced to the Devi group entities, ₹39.89 Crore were transferred to MBDL and ₹0.25 Crore were

transferred to Noticee No. 2, the Group A Noticees have dismissed this as regular financial transactions between MBDL and the said Devi group and advances were given to Devi Group by BL as part of the normal business transactions during the time and thus, the finding that there is diversion of funds is unfounded. The fact that MBDL is a promoter group company of BL while the Chairman/promoter of BL i.e. Noticee No. 2 and the Managing Director/promoter i.e. Noticee No. 3 were common directors with MBDL, is a matter of record. The Group A Noticees have not denied the connection between them, the Devi Group entities and MBDL. It is this connection that enables such transfers and diversion of funds of the shareholders without any accountability and simply stating that the transactions between them are regular day to day transactions and regular business activities and the amounts paid are expenses required for running the huge operations, does not justify the genuineness of the transactions.

46. In this context, it would be relevant to examine the import of the word 'connection', and the following finding of SAT in the matter of Sanjay Kumar Poddar HUF[6] is worth reproducing

> *".....In order to appreciate the arguments of the group, it would be necessary to find out what is meant by the term 'connection'. This term is not a term of art. Respondent SEBI often use this term in order to explain a link between entities. The link can be anything like personal relationship, off-market transaction, financial relationship or even a location proximity etc. In view of the fact that on the stock exchanges platform numerous faceless transactions in large numbers within a fraction of a second take place between the parties across the globe unknown to each other's, any link between a set of entities trading in similar manner or with each other or the company etc. if found, cannot be easily brushed aside as a mere coincidence. The issue therefore will be whether the link would be a factor indicating that there is a high probability of the alleged group working in tandem to achieve a certain goal i.e. to increase the price of the shares in the present appeals."*

47. The fact that no documentation was maintained is also an indicator that the transfers were done between related/connected parties on the basis of the comfort of the relationship between them which gave them the liberty not to honour the terms of the façade of the business arrangement. Unrelated companies dealing at arm's length would always ensure relevant documentation to deal with the possibility of any dispute in the future. Since the Chairman/promoter i.e. Noticee

[6] Appeal No. 326 of 2020

No. 2 and the Managing Director/promoter i.e. Noticee No. 3 of the Company were common directors with MBDL, it cannot be argued that BL was not aware of the subsequent transfer of funds to MBDL. On the one hand, BL paid huge sums of advances to these Devi Group entities and did not make any efforts to recover the money, while on the other hand, the money advanced was subsequently transferred to related parties of the Company. This clearly suggests that these entities were merely conduits for siphoning the funds of the Company to the Promoters and their associated Companies at the expense of public shareholders. Under these circumstances, the rather lame argument raised by these Group A Noticees that the transactions were normal business transactions cannot be accepted.

48. It is also noted that out of these ₹44 Crore, Noticee No. 2 was the direct beneficiary of ₹ 0.25 Crore. For the said transfer of ₹ 0.25 Crore, neither the transferor i.e. Noticee No.1 nor the beneficiary Noticee No. 2 provided any documentary evidence or any justification regarding this transfer. BL merely made an unsubstantiated statement without providing any documentary proof and justification that these transfers are separate business transactions during the course of business between MBDL and these entities. Such a statement without any documentary proof to justify the rationale behind the transfer has no credence and is liable to be rejected.

49. It was also alleged that out of ₹29.18 Crore advanced to RRB Energy Ltd, against the order for putting up of a 50MW wind farm project with RRB Energy Ltd, a majority of these funds amounting to ₹ 23.41 Crore was transferred to MBDL under the guise of the said funds being used for acquiring land and infrastructural facilities from MBDL. This amount of ₹ 29.18 Crore advanced to RRB Energy Ltd. is still outstanding in the books of BL. RRB Energy Ltd. has neither delivered the project for which funds were allegedly advanced to it nor has it paid the funds back. Further, no land or infrastructure facility has been acquired by RRB Energy Ltd. from MBDL out of the ₹23.41 Crore. BL has provided a letter dated July 17, 2021 issued by RRB Energy Ltd. which confirms that ₹ 29.18 Crore is due to BL.

50. Group A Noticees have stated that pursuant to the draft auditors' report, BL enquired with MBDL on the transactions between MBDL and RRB Energy Ltd. and was provided with a letter dated April 19, 2021 issued by RRB Energy Ltd. to MBDL indicating transactions between them. Noticee No. 1 and 2, in their post hearing additional submissions filed vide email dated February 13, 2024, also submitted that the transactions and fund transfers by BL to MBDL are based on valid and justifiable business transactions between RRB and MBDL and denied the

allegations of fund diversion by stating that since RRB had expressed its inability to complete the project for various reasons, it had agreed to return the money and further that a settlement was arrived between RRB and BL wherein it was agreed that RRB would square off the advance of ₹ 29.18 Crores by transferring land parcels in Maharashtra and Tamil Nadu. It was stated that since discrepancies were noticed by BL and raised by it vide letter dated November 24, 2023 in the documents relating to the aforesaid land parcels, the settlement was rejected by BL and RRB was directed to return ₹ 29.18 Crores. It is also submitted that BL has initiated case for recovery against RRB before the National Company Law Tribunal and a demand notice dated December 14, 2023 demanding payment of unpaid operational debt under the provisions of IBC has been sent.

51. The fact that MBDL owned land and infrastructural facility, which was required by BL for setting up of wind mills project would have been known to BL since both (MBDL and BL) are related parties and had common directors. I have perused the Memorandum of Association (MoA) of BL and noted that BL had *inter alia* inserted "dealing in windmills & other renewable energy and supply and distribution of electricity", in its Objects Clause on December 19, 2016. However, it started payment of advances to RRB for setting up of wind farm project from September 17, 2016 onwards i.e. even before it was authorised to do so as per its Objects Clause. In this scenario, the payment of ₹ 29.18 Crores to RRB, which in turn transferred major portion of ₹ 23.41 Crores to MBDL, coupled with the fact that neither the money advanced was paid back by MBDL to RRB, nor was any land or infrastructure facility transferred, leads to the inference that funds were advanced not for the stated purpose. Furthermore, the submission that BL was buying land or infrastructure facility from MBDL by paying advances to RRB appears as an afterthought.

52. In the above factual context, the argument that *post facto* modification of the 'Objects Clause' i.e., two months after the payment of advances to RRB would lend validity to the transaction since, the shareholders of the Company eventually approved the said changes to Objects Clause is not acceptable for the following reason. Section 13(8) of the Companies Act, 2013, *inter alia*, provides that a company, which has raised money from the public through a prospectus and has unutilised amount out of the money so raised, shall not change its objects unless a special resolution is passed by the company and the details, in respect of such resolution are published in the newspapers and website of the company, indicating therein the justification for such change. Section 13(8) further requires that the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations specified by SEBI. In

this regard, procedure had been specified by SEBI under Chapter VI-A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. Thus, in the factual scenario discussed above and in light of the procedure specified in section 13(8) of the Companies Act read with the provisions of ICDR Regulations, 2009, the payment of advances to RRB for setting up of wind farm project from September 17, 2016 cannot be accepted as justifiable on account of the post facto modification of the Objects Clause to that effect.

53. It is a settled principle of law that what cannot be done directly cannot also be done indirectly. In the instant case, BL could have directly dealt with MBDL despite being a related party, subject to the approval of its Board/audit committee/shareholders, as the case may be. Instead, it chose to ignore the said approval requirements and transferred funds to MBDL indirectly through a third entity without any justifiable reasons. The issue in hand regarding transactions with RRB is not an acknowledgement of outstanding amount due to the Company by RRB which has been clearly admitted by both of them, but the act of BL using the help of their related parties in diverting large sums of money of the company. The letters dated April 17, 2021 and April 19, 2021 and also the stated actions of BL of corresponding with RRB or filling case against RRB, do not inspire any confidence and appear to be contrived as an afterthought.

54. I have also noted other transfers to related parties of BL through various vendors viz. ₹ 41.50 Crore through Mass International; ₹3.54 Crore through Sunbright Industries Pvt. Ltd.; ₹0.25 Crore through Devi Glass Trade Corp; ₹3.48 Crore through Benkatesh Ventures Private Limited; ₹1.41 Crore to Noticee No 6 through Parshvi Global Inter Links Pvt Ltd and ₹35.24 Crore through others. The Group A Noticees have submitted that these Companies are market players in their respective fields and MBDL/the other parties may have separate business transactions with these parties and in the normal course of business between MBDL/the other parties and the said parties, for which there could have been payment/receipt of funds. For example, for the transfer of ₹1.41 Crore to Noticee No 6 through Parshvi Global Inter Links Pvt Ltd, the Noticee No.6 has justified this transaction as an independent transaction in the nature of unsecured loan based on the clarification in the form of tax return provided by the management of the Company during forensic audit and has relied upon the observation of FAR for the same.

55. However, I am not inclined to agree with such an observation of the FAR without the documentary proof (either by way of a loan agreement or payment proofs or interest payment, etc.). The fact is that this amount still remains unclaimed and is

currently outstanding. I note that many a times the advances were continued to be given to certain parties like in the case of Nurture Traders Pvt. Ltd. and Devi Innoventures LLP for three consecutive years and in case of Parshvi Global Interlinks Pvt. Ltd. for two consecutive years despite the earlier advances remaining unpaid and outstanding. It is also noted that neither was interest charged nor was provisioning made for these advances, some of which have been outstanding till date.

56. Group A Noticees have stated that it is not proper to draw any adverse inference against the Company based on independent transactions between MBDL/the other parties or proper to link the business transactions of the Company with its vendors vis-à-vis the transactions between the said vendors and MBDL/the other parties. However, I find that an adverse inference has been only drawn when despite giving adequate opportunities, no justifiable reasons was provided to explain the transactions discussed above nor were services rendered for the payments received. Instead, the pattern of such transfers is to be seen recurring.

57. On a cumulative analysis of the facts above stated, it is clear that these transfers that have no accompanying details including documentary proof or provide no justifiable reason were effected for the purpose of diversion/siphoning off the funds of BL.

Diversion of the sale proceeds of land through various vendors (having common director)

58. Under this head, the following was alleged against the Noticees:

i. BL had entered into an Agreement for Sale of a land parcel with M/s KLP Project Limited ("KLP"), formerly known as 'Landmark Barracks Projects Pvt Ltd', on December 31, 2014 for ₹ 370 Crore and received approximately ₹ 110.65 Crore from KLP between August 01, 2016 to October 13, 2016, stated to be the final instalment of the sale consideration of ₹ 370 Crore. Out of this amount, ₹97.13 Crores were transferred in FY 2016-17 by BL to three vendors i.e. Premium Steel & Alloys Pvt Ltd (PSAPL), Nurture Traders Pvt Ltd (NTPL) and Parshvi Global interlinks Pvt Ltd (PGIPL), all of which had a common Director i.e. Mr. Rammohan.

ii. These advances were made for unrelated business activities to the entities, who had not filed their annual returns since March 31, 2015 and were found

to have been struck off from the Registrar of Companies (RoC) as on October 29, 2019.

iii. No supporting documents e.g. quotations, agreements, etc. were available relating to the transfers amounting to ₹ 97.13 Crore given by BL to the aforesaid three vendors.

iv. These advances were outstanding in the books of BL as on March 31, 2021 and for which provisioning had been done. These advances has turned into bad debts and BL appeared to have no way of recovering the amount. No goods were received in exchange of the transfer of the aforesaid funds.

v. There were no other corresponding bank receipts (apart from the transfers made by BL), in the bank accounts of these vendors.

vi. ₹ 33.28 Crore and ₹ 32.32 Crore was noted to have been transferred from NTPL and PGIPL respectively to PSAPL and ₹ 88.49 Crore was noted to have been transferred by these three entities (PSAPL: ₹ 80.49 Crore, NTPL: ₹ 7 Crore, PGIPL: ₹ 1 Crore) to KLP, within a span of 0-11 days, from the date of the receipt of funds. No legitimate purpose was identified behind the aforesaid transfers between these vendors and KLP. Incidentally, KLP had bought the land from BL in the same year, in which the money was transferred by the vendors to KLP.

vii. The transaction for the alleged sale of land by BL to KLP was executed by way of an Agreement to Sale on a Stamp paper of value of ₹100, supported by a Power of Attorney by BL, being the sellers of the land. The sale transaction was not followed up by any registered sale deed even after the stated completion of the entire project by the buyer.

59. Noticee No. 1 *inter alia* countered these allegations with the following submissions:-

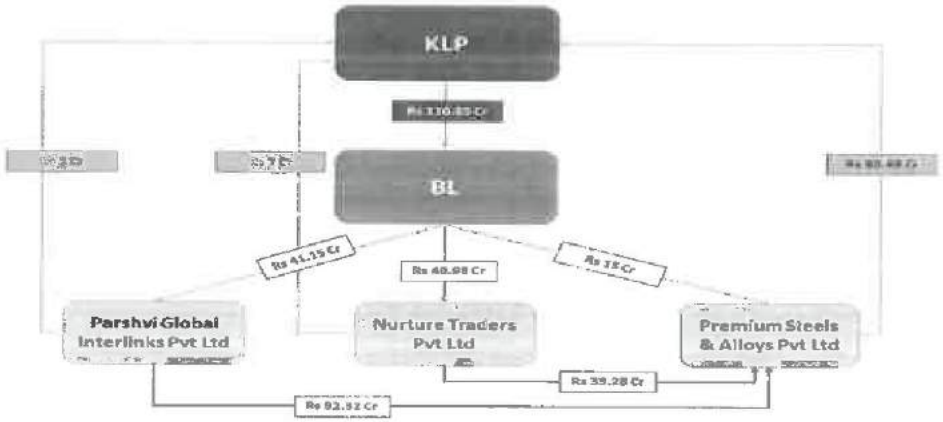
i. BL received advance against the sale of land which was used for the business transaction of the Company and the payments as narrated in the SCN were made to certain vendors. Such vendors may have independent business transaction with many parties including the purchaser of the land and there was no reason to suggest that such a transaction was an act of diversion of funds.

ii. BL had given a detailed response on the allegations of payment made to vendors without the supporting documents, quotations etc. and for the sake of brevity has not been repeated. Hence, the same may be considered as their reply/response to this allegation. Noticee No. 1 and 2, in their post hearing submissions filed vide email dated February 13, 2024, stated that the transaction with KLP was in respect of an agreement of sale of a land parcel for which an amount of ₹ 110.65 Crore was received by BL between August 01, 2016 and October 13, 2016 and that for the said transaction, an agreement for sale dated December 31, 2014 was entered into between BL and KLP. The said transaction is independent of other transactions with other entities, for the transactions entered with PSAPL, PGIPL and NTPL, the Noticees 1 and 2 submitted purchase orders and legal notice(s) stated to have been sent to PSAPL, PGIPL and NTPL.

iii. It was also submitted that purchases were made for TMT bars and curtain fabric as per the Objects of the business conducted by BL from March/August 2016 whereas, the transaction with KLP was from August to October 2016 and thus there is no co-relation between them. The entities (PSAPL, PGIPL and NTPL) belong to the Rammohan group and these advances have been taken over by MBDL and are being received by BL through the MBDL Settlement. Noticees 1 and 2 are unaware about the transfer of funds by these three entities to KLP and there is insufficient evidence to draw any adverse inference.

60. I have considered the submissions advanced by the Noticees. Admittedly, BL had entered into an agreement of sale for the land parcel with KLP Project Limited (KLP) for ₹ 370 Crore and received approximately ₹ 110.65 Crore stated to be the final instalment of the sale consideration. In so far as the allegation related to transfer of ₹ 97.13 Crore out of ₹ 110.65 Crore which was paid to three vendors having a common director for diverting the funds of the Company is concerned, I have noted the movement of funds which is summarised as under:

Flowchart No. 2



61. The Group A Noticees have denied these allegations, without submitting documentary proofs vide their reply sent in email dated February 13, 2024, Noticees 1 and 2, provided the copy of the purchase order(s) stated to have been made to these entities and legal Notice(s) dated June 01, 2019 stated to have been issued for recovery of the money from these entities.

62. But other than the receipts from Noticee No. 1, there were no other bank receipts in the bank statement of the three entities (apart from the transfers made by BL), which suggests that these entities were created solely for the purpose of transfer of funds to other parties and had no commercial operations.

63. The Noticees had no comment to offer on the findings of the FAR that these companies were struck off from ROC records as on October 29, 2019 and that they had not filed any annual returns since March 31, 2015 or on the fact that these entities are interlinked through a common director.

64. The above facts cumulatively imply that these entities were incorporated as conduit entities just for the purpose of diversion of funds from BL. The purchase order(s) dates are also stated to be in March/ August 2016 before the receipt of money from KLP so as to colour these transactions as genuine. In my view, the purchase order(s) and the legal Notice(s) provided by the Noticees No. 1 and 2 are far from genuine and appear to be created merely as an afterthought in the absence of supporting bills or follow-ups or any development on the legal Notice(s). Hence they are liable to be rejected. There is also no counter to the findings that out of the fund received by these three vendors, ₹88.49 Crore was subsequently transferred to KLP within a short span of 0 to 11 days from the date of receipt of funds from Noticee No.1.

65. I have perused the agreement to sale dated December 31, 2014 stated to have been entered into between BL and KLP to contend that the transaction was genuine and independent of other transactions with other entities. The agreement of sale cannot be considered as a valid document in light of the applicable legal requirements which requires a proper sale deed to validate the arrangement. This legal position in this regard has been elaborately dealt in later part dealing with the settlement scheme submitted by the Group A Noticees. Yet the said agreement to sale has not been followed up with any action to complete the process by entering into a sale deed. Further, on analysing the various sale transactions (by BL) of land parcels located in the vicinity, on a comparative basis it is clear that land parcels were sold at varying rates, with the price of the land parcel sold to KLP in 2014 being the highest. On one hand, Group A Noticees tried to justify that these transactions with the 3 entities (PSAPL, PGIPL and NTPL) are genuine and independent business transactions, while, on the other hand, it was submitted that these entities belong to the Rammohan group and that these advances have been taken over by MBDL and are being received by the Company through settlement with MBDL.

66. In light of the aforesaid discussion, including the fact that MBDL has taken over these advances and claimed to settle it with BL, it is clear that the above discussed transactions entered into by BL were non-genuine establishing the charge of diversion of ₹ 97.13 Crore by BL to the three vendors as is reinforced by the subsequent transfers back to KLP which adds to the concerns over the authenticity of these transactions and shows misuse of the funds of the shareholders by BL.

II. TRANSACTIONS BETWEEN BL AND ITS RELATED PARTY; MBDL.

For the purchase of 37.2 MW Wind farm project

67. The SCN brought out the following chronology of events between October 18, 2013 to January 23, 2015:

Table No. 3

Dates	Details
October 18, 2013 to April 12, 2014	₹ 4.25 Crore advanced
May 03, 2014	In-principle approval from the Board of BL for the said acquisition for a consideration of ₹ 120 Crore
November 08, 2016	Subsequent to the survey of wind electric generators, since some of the machines were found to be faulty and needing repairs, the Board agreed to cancel the agreement and recall

	the advance amount of ₹ 60 Crore, within a period of 90 days. In the Board Meeting dated March 26, 2018, BL decided to charge interest @ 15% p.a, on a monthly basis with effect from March 2018 and the advance to be collected on or before September 30, 2018.

68. In all BL was alleged to have advanced ₹ 4.25 Crore to MBDL, for the purpose of purchasing a 37.2 MW wind farm, before taking the in-principle approval from its Board of Directors, which was only obtained on May 03, 2014. However, the approval from its shareholders for this material related party transaction was not obtained.

69. Group A Noticees contended that the transaction was agreed to in the Board Meeting held on May 03, 2014 pursuant to which the payments were made and that at the relevant point in time neither the approval of the Audit Committee nor that of shareholders was required. Since Clause 49 of the Listing Agreement mandating such requirement was introduced only with effect from October 01, 2014. Further, since the said contract for purchase of windmill was called off (due to certain technical difficulties), the requirement of compliance under Regulation 23(8) of the LODR Regulations also did not arise.

For the purchase of 7.07 acres of land

70. For this transaction between December 05, 2014 to June 24, 2015, the SCN recorded the following:

Table No. 4

Dates	Details
Annual report for 2014-15	₹ 107.10 Crore advanced to MBDL
February 11, 2015	Approval from its Board for the said acquisition for a consideration of ₹ 155.54 Crore, subject to the approval of shareholders
March 31, 2015	Approval of its shareholders for the transaction through special resolution
March 26, 2018	Board meeting - decision to complete the registration of the property within a period of 6 months.

71. As per the SCN, ₹107.1 Crore were stated to have been advanced by BL to MBDL, even before taking an approval from its Board of Directors which was finally

obtained on February 11, 2015. For the said transaction, ₹140 Crore, were advanced which were outstanding in the books of the Company even as on March 31, 2021. In its Annual Report for FY 20-21, BL had mentioned that it is in the process of recovering the advance by acquiring/taking over certain assets of related party subject to the approval of its shareholders. Yet, even after six years, BL did not receive possession of any land. Further, the decision taken in the Board meeting held on March 26, 2018, to complete the registration of this land within 6 months also did not materialize.

For the purchase of 12.43 acres of land

72. For this transaction between June 24, 2015 to November 30, 2015, the SCN alleged the following.

Table No. 5

Dates	Details
February 10, 2016	Approval from BL's board for purchase of 12.43 acres of land for a total consideration of ₹ 300 Crore subject to the approval of its shareholders.
June 24, 2015-April 29, 2016	Advance of ₹ 183.65 Crore to MBDL
March 21, 2016	Advance to be recalled from MBDL within 90 days due to shareholders' dissent
March 25, 2016	Letter from MBDL to BL requesting for 180 days for repayment instead of 90 days
March 26, 2018	Letter from BL to MBDL fixing the timelines and interest for the advances paid (₹60 Crore for windmill + ₹183.65 for 12.43 acres of land)
May 11, 2018	Reply from MBDL to BL consenting to the following terms stipulated by BL. a) ₹ 60 Crore to be paid within 6 months (i.e. on or before September 30, 2018 with 15% interest payable on monthly basis) b) ₹ 183.65 Crore to be paid within 2 years (i.e. on or before September 05, 2019 with 18% interest payable on monthly basis) with arrear interest from September 06, 2017 to March 20, 2018 payable with the principal

73. Thus, while ₹ 183.65 Crore was alleged to be given by BL to MBDL, no approval for the same was taken from its shareholders before entering into the said transaction. Rather, BL transferred the funds to MBDL, despite dissent from its shareholders in violation of Regulation 23(4) of LODR Regulations. In this regard, Group A Noticees have submitted that it is incorrect that the transaction was without the shareholders' approval as after the advance payment, BL had approached the shareholders for their approval. However, the proposal was rejected by the shareholders and accordingly, the transaction was called off and MBDL agreed to return the money with interest.

74. Apart from the above, no legal agreements were seen to have been entered into between BL and MBDL for the purchase of any of the lands as evident from the email dated March 21, 2022 by BL, the relevant extract of which, is reproduced hereunder:

> *"As no registered agreements for any of the land purchased from MBDL was executed, there is no legal need to register any cancellation of unregistered agreements as well. However, such cancellations were carried out by necessary written communications between the Company and MBDL and a copy of the same is enclosed as Letter dated 21.03.2016, letter dated 25.03.2016 and letter dated 11.05. 2018."*

75. No title clearance reports were submitted by BL for the land parcels/ windmill farm to the forensic auditor clearly indicating that without conducting any due diligence on these transactions, BL had advanced money to MBDL. The then statutory auditor of BL viz. M/s CNGSN & Associates LLP Chartered Accountants ("CNGSN"), had qualified the audit report for the FY 2015-16 with an entry- "Emphasis of Matter" to highlight the issue of advancement of BL's funds, without the shareholders' approval. BL too did not make any efforts to recover the funds advanced to MBDL, that were outstanding for more than 5-6 years, leading to the possible inference that such amounts were meant to be diverted to its related party; MBDL.

76. I note that for these transactions with MBDL, SCN has mainly alleged ; violation of provisions of the LODR Regulations and erstwhile listing agreement and diversion of funds. My views on the same are discussed as under:

Reference to violation of LODR Regulations:

77. The LODR Regulations were notified on September 02, 2015 and came into force with effect from December 02, 2015. Prior to this date, listed entities were required to comply with the conditions for listing and make disclosures as provided under the Listing Agreement. Clause 49 of the Listing Agreement, *inter alia*, provided for the corporate governance requirements including requirements related to related party transactions. Pertinently, SEBI, vide its Circular CIR/CFD/POLICYCELL/2/2014 dated April 17, 2014 amended Clause 49(VII) of the Listing Agreement. The amendment mandated for all related party transactions to be entered into only after seeking the prior approval of the audit committee and all material RPTs requiring the approval of its shareholders through a special resolution. The Circular dated April 17, 2014 further provided that all existing material related party contracts or arrangements, which were likely to continue beyond March 31, 2015 to be placed for the approval of the shareholders in the first General Meeting subsequent to October 01, 2014. The same requirement were also mandated by Regulation 23(8) of the LODR Regulations.

78. I have noted that the advance of ₹ 4.25 Crore was transferred by BL to MBDL for the purchase of windmill for its 37.2 MW wind farm project during the period October 18, 2013 to April 12, 2014 and also the fact that funds amounting to ₹60 Crore in aggregate were advanced by BL to MBDL during October 18, 2013 to January 23, 2015. A perusal of the Annual Report of BL reveals that its revenue for the financial year 2015-16 was ₹ 1.8 Crore and for the financial year 2014-15 was ₹ 8.35 Crore. Seen in this light, it is apparent that a transaction of ₹ 4.25 Crore is materially significant and definitely required approval by BL in its first general meeting after October 01, 2014.

79. However, as borne out from the records, BL did not obtain the approval of its shareholders on the grounds that the requirement of obtaining shareholders' approval was introduced only with effect from October 01, 2014. However, this contention fails to address the issue of BL not obtaining the approval of its shareholders even after October 01, 2014, clearly in violation of clause 49(VII) of the erstwhile Listing Agreement read with Regulation 103 of LODR Regulations.

80. I am also not inclined to accept the contention of BL that the requirement of compliance under Regulation 23(8) does not arise for the purchase of the windmill from MBDL since it was called off due to certain technical difficulties. During the Board Meeting held on November 08, 2016, the Board had agreed to cancel the agreement and recall the advance amount of ₹ 60 Crore from MBDL, which implies that it was only on November 08, 2016 that the agreement was proposed to be cancelled. Given that the LODR Regulations were notified on September 02, 2015,

BL was obligated to abide by Regulation 23(8) of the LODR Regulations and required all existing material related party transactions to be approved by the shareholders of BL, which it failed to do. BL justifying the basic non-compliance of a regulatory requirement brought out in the interest of transparency of the activities of a listed company on the ground that it was effected a year later is a feeble attempt at clutching at straws, in absolute non-compliance with the provisions of Regulation 23(8) of the LODR Regulations.

81. On the same premise, the SCN also refers to the related party transactions involving purchase of 12.43 acres of land for which ₹183.65 Crore were advanced by BL to MBDL, out of this amount ₹ 82.65 Crore was advanced between June 24, 2015 to November 30, 2015 and ₹100.70 Crore was advanced between December 1, 2015 to April 29, 2016. The SCN has brought out that on March 21, 2016, the advances so paid were sought to be recalled from MBDL within 90 days due to the dissent of BL's shareholders. On March 25, 2016, MBDL wrote a letter to BL requesting for 180 days for repayment of funds instead of 90 days. Despite the dissent from its shareholders, BL continued to provide advances to MBDL until April 29, 2016. Thus, the contention of the Group A Noticees that BL made the advance payment and approached the shareholders for their approval is of no significance since, it continued to advance funds despite the dissent from its shareholders. This action was clearly in violation of Regulation 23(4) of the LODR Regulations, which mandates listed entities to ensure all material related party transactions to be approved by a shareholders' resolution.

82. Aside the afore discussed violations of the LODR Regulations, it is clear that BL failed to make any efforts to recover the funds advanced to MBDL which were outstanding for 5-6 years, extensions were granted to MBDL for a period of two years, no monthly interests were received by BL and no action was taken by it against MBDL or submit to the Forensic Auditor the title clearance reports for the purchase of the land parcels/ windmill farm, indicating lack of due diligence on these transactions. There was no seriousness and genuineness on part of BL to recover the said advances which were allegedly diverted to MBDL, resulting in the misrepresentation of its financial statements in violation of Section 12A(a), (b) and (c) of the SEBI Act, Regulations 3(b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations.

83. In this context, the SCN has referred to the settlement scheme stated to have been adopted by BL in the meeting dated August 30, 2021 which was approved by its shareholders at the Extra Ordinary General meeting held on October 09, 2021. The

responses of the *Group A* Noticees in this regard shall be dealt with extensively in later part of this Order.

84. However, in connection with the alleged diversion of the money to MBDL, *Group A Noticees* have submitted the following.

i. The observation that the "Valuation Reports were not available on record on the date of transaction to evidence Title and Valuation of Land Parcels" was incorrect. Prior to the approval of the Board for the proposed transaction, BL had obtained the Valuation Report dated February 05, 2015 in respect of the transaction relating to 7.07 acres of land in Valasaravakkam from M/s Jones Lang Lasalle Property Consultants (I) Pvt. Ltd. (JLL), a Multi-National Corporation, that did many valuation reports on a PAN India basis that are accepted by almost all the Regulators and Investigation Agencies. JLL had their own policy of naming the Valuation Reports and accordingly stated the same as "Opinion on Market Value". JLL had committed a typographical error while mentioning the name of the owner of the land as BL as confirmed by JLL vide email dated March 10, 2022.

ii. For the 12.43 acres of land it has been submitted that since it was adjacent to the land of 7.07 acres for which valuation was already obtained, no separate Valuation Report was obtained as the value of the land would be the same. The Valuation Report for 37.20 MW Wind Farm was not obtained, as the approval given by the Board was only an in-principle approval. The Board had directed the operation team to carry out due diligence including the valuation of the Wind Farm Project and submit a report to the Board for the final approval for the same. However, upon receipt of such Technical Report, the proposal was cancelled by the Board. A copy of the Report submitted by an Independent Consultant dated December 10, 2014 was provided.

iii. Since the lands were purchased from a related company i.e. MBDL, which was in possession of the property for many years and the management had personal knowledge that the properties are undisputedly owned by the selling company, the management of BL was of the view that there is no need to go for a separate legal opinion. The legal opinion dated August 10, 2021 referred to in the FAR is in the background of BL realising its various dues from MBDL in the form of real estate and business assets, as approved by the Board in the Meeting held on August 30, 2021 and the shareholders in the General Meeting held on October 09, 2021 had nothing to do with the transaction done in the year 2015 that confirmed the clear title of MBDL with regard to the said properties. This is ample

proof that the approach of the management in the year 2015-16 was correct that there is no need for a separate legal opinion.

85. I have examined the submissions advanced for justifying the advances of ₹ 383.35 Crore to MBDL during the period between December 05, 2014 to April 29, 2016 allegedly for the purchase of land parcels measuring 7.07 acres and 12.43 acres and for the purchase of the 37.20 MW windmill farm.

86. Given the amount involved, it is just not possible that these transactions had no underlying legal agreement signed between BL and MBDL as has been advanced by BL vide email dated March 21,2022 in response to the queries raised by SEBI. Regardless of the relationship between two transacting entities, every financial transaction between them is always backed by some agreement or understanding. The requirement becomes more necessary when listed entities are involved and the dealings involve the money of public shareholders.

87. In the instant case, given the funds amounting to ₹ 383.35 Crore were stated to have been advanced by BL to its related party, BL till date has been unable to provide a copy of any legal agreement backing these transactions. Such transactions in the commercial space involving such huge amounts without documentation seem raise concerns regarding their authenticity.

88. BL has reported a ₹10 crore discrepancy in the amounts due from MBDL, with their books showing ₹373.35 crores and SEBI's investigation (as noted in the SCN) showing ₹383.35 crores. However, BL has not provided any documentary evidence to explain this discrepancy during the three hearings held before me or in any of its submissions other than stating that the amount of ₹10 Crore had been refunded by MBDL to BL but was not considered resulting in the erroneous entry. In the absence of any documentary proof and justification, a mere claim regarding the receipt of ₹ 10 Crores by BL from MBDL cannot be accepted.

89. On the allegation that no title clearance report for land parcels/windmills farm was provided to the forensic auditor clearly indicating a lack of due diligence on the part of BL, the points shared with the forensic auditor has essentially been repeated i.e. that they acquired a Valuation Report dated February 5, 2015 for a transaction involving 7.07 acres of land in Valasaravakkam from JLL. Aside from this, no documentary evidence has been produced to demonstrate their due diligence regarding the advance payment of ₹ 140 Crore to MBDL.

90. The FAR also noted several discrepancies in the valuation report, including naming the owner as 'BL' (indicating the Company itself), implying that BL was buying land from itself. The response in this regard by BL that it was a typographical error by JLL, as admitted by JLL via email on March 10, 2022, is also not correct since upon reviewing the email exchange between T. Krishnamurthy on behalf of BL and JLL, it is clear that BL itself stated that to be an error. It is equally unlikely for an entity like JLL which is stated to have a PAN India presence and with their dealings with government agencies and regulators to make in their valuation report such a typographical blunder especially about the name of the owner. Even if the error was genuine, it still supports the accusation that BL did not conduct proper due diligence.

91. The justification provided by BL for not obtaining valuation report for 12.43 acres of land on the ground that the land was adjacent to the 7.07 acres of land for which valuation was obtained, is bereft of any sound reasoning when in fact an advance payment of ₹183.35 Crore was paid by BL to its related party. There was no valuation report to substantiate the transaction. Group A Noticees also did not provide any other documentary evidence to show that BL conducted sufficient due diligence. This strongly implies that the transaction was not genuine but rather executed to divert the funds of BL to MBDL.

92. This was perhaps the reason for a qualified report by the then statutory auditor of the Company viz. M/s CNGSN & Associates LLP which in its audit report for the FY 2015-16 included an "Emphasis of Matter" paragraph in the independent audit report and reported that *"advances to related party for purchase of land for which the members of the company have not approved the resolution. The company had called back the advances and these advances for purchases land are pending for recovery"*. *'Emphasis of matter'* paragraph is included in the audit reports when the auditor feels it is necessary to draw reader's attention to a matter presented or disclosed in the financial statements that, in the auditor's opinion, is of such importance that it is fundamental to understanding of the financial statements. Thus, the auditor of BL had highlighted that the Company had advanced money to its related party without shareholders' approval and even after calling back the advances, had not been able to recover it. The said observation was made by the statutory auditor far back in May 17, 2016. Despite the above BL did not take any efforts to recover the advances till September 30, 2021.

93. The fact that the amount of ₹ 383.35 Crore advanced by BL to MBDL which is still outstanding suggests that there was no sincere effort to recover the money or there was no intention to actually recover it since it was clearly given to divert funds to

its related party-MBDL, in violation of Section 12A(a), (b) and (c) of the SEBI and Regulations 3(b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations.

III. SETTLEMENT SCHEME ADOPTED BY BL

94. As stated earlier by the Noticees in their defence, the Board of Directors of BL in its meeting dated August 30, 2021, *inter alia,* approved the settlement of transactions entered into by BL with MBDL which were also approved by its shareholders in the Extraordinary General meeting held on October 09, 2021, which, *inter alia*, provided the following.

a. MBDL owed BL ₹528.77 crores which was set off between it and MBDL by way of BL acquiring parcels of land worth ₹554 crores from MBDL.
b. Transfer of receivables amounting to ₹ 285.30 crores by BL from third parties to MBDL to set off the aggregate dues of ₹ 268.63 crores, to MBDL, on account of redemption of preference shares (issued to MBDL by BL) along with cumulative dividends. Such transfer of receivables took place by way of exchange of letters between BL and MBDL.
c. The net balance of ₹ 8.56 [(554 -528.77) - (285.3-268.63)] Crores payable by BL to MBDL, as a result of the effect of transactions mentioned at point (a) and (b) above, was waived off by MBDL.

95. The details of land parcels stated to have been purchased by BL from MBDL in the purported settlement are as under:

Table No. 6

Sr no.	Particulars	₹ in Crores
A	62 KLPD Distillery Unit at Chegelpet on an on-going concern basis along with Land, Building, Plant & Machinery, all its licenses and other assets	**100**
B	12.43 acres of factory land located in M.M.Nagar Valasaravakkam	**265**
C	42.46 acres of land located at Ozhalur village in Chengelpet taluk of Kancheepuram District	**53**
D	62.386 acres of land located at Irunkundrampalli Village in Chengelpet Taluk of Kancheepuram District	**109**
E	850 acres of Wind Mill Land at Tirunelveli District valued at (Net)	**27**

	Total	554

96. In the SCN, it has been stated that with respect to all the land parcels mentioned in the table above, which BL was stated to purchase in lieu of the outstanding balance due from MBDL, BL only submitted an "agreement to sell" and a General Power of Attorney for the land mentioned at Sr. No. (b). Copies of registration token for registering the sale agreement(s) and power of attorney for lands mentioned at Sr. No. (c) and (d) were also provided.

97. The purported settlement is meant to convey that BL recovered all the advance payments it had made to MBDL and other third parties. Noticees No. 1 and 2, in their post hearing submissions, filed vide email dated February 13, 2024, also provided information stated to be the updated status of the implementation of the Scheme by stating that the taking over of receivables of BL by MBDL is favourable and in the best interest of its shareholders.

98. The clarification provided by BL and the summary in respect of the amount receivable from the vendor group and stated to be taken over by MBDL is as under:

Table No. 7

Vendor Group	**Company Name**	**Amount of advance made (In ₹ crores)**	**Period of Advance**	**Comments**
Devi Group	Devi Glass Tradecrop LLP	22.42	2018-2019 to 2020 - 2021	MBDL has taken over the said receivable
	Devi Innoventures LLP	6.57		
	Natarajan Bottles (Devi)	5.80		
	Subramaniam Bottles LLP	9.21		
Total		**44**		
Malgudi	Malgudi Township Developers Limited	**15**	2016 - 2017	The dues from Malgudi are in recovery process
Rammohan group	Mass International	48.28	2016 – 2017 to	

			2017 - 2018	MBDL has taken over the said receivable
	Premium Steel & Alloys Pvt. Ltd	15.00		
	Nurture Traders Pvt. Ltd	41.18		
	Parshvi Global Interlinks Pvt. Ltd	41.16		
Total		**145.61**		
RRB Energy Limited		**29.18**	2016 – 2017 to 2017 - 2018	The dues from RRB Energy Limited are in the recovery process and the matter is pending before NCLT
Sunbright Group	Modest Imperia Trading Pvt. Ltd	14.98	2014 – 2015 to 2018 - 2019	MBDL has taken over the receivable
	Sunbright Industries Pvt. Ltd	3.62		
	Maxima Accord Trading Pvt. Ltd	7.50		
	Sun Bright Designers Pvt. Ltd	25.23		
Total		**51.33**		
Others	Radiance Technoplast Pvt. Ltd	2.27	2016 – 2017 to 2018 - 2019	MBDL has taken over the receivable
	R K Utlities Private Ltd	4.25		
	Glints Ventures Pvt. Ltd	19.00		
	Bentakesh Ventures Pvt. Ltd	9.35		
	Bencon Exim Ventures Pvt. Ltd	9.30		

Total	44.17		
Grand Total	329.29		

99. The final status of implementation of the Scheme of settlement of realization of dues as submitted by Group A Noticees is stated to be as under:

Table No. 8

Sr. no.	Nature	Amount (In ₹ Crores)		Remarks By Company
		As per SCN	Final	
1.	Advances to Vendors	329.29	285.30	• Amount due from Malgudi Township Developers of ₹15 Crores and from RRB Limited of ₹29.18 Crores dealt separately and not included in the final amount. • Amount of ₹ 0.20 Crores due from Devi Bottles LLP is omitted but included in the final settlement. • SCN considered the amount due from Rammohan Group as ₹145.61 Crores instead of ₹145.60 Crores which is considered in the final settlement.
2.	Diversion to related parties out of advances to vendors	148.72		
3.	Transaction with MBDL	383.35	373.35	₹ 10 Crores returned by MBDL
4.	Interest Charged on MBDL		155.42	
Total Outstanding			**814.07**	

100. The method of realization of the dues was stated to be as under:

Table No. 9

Sr. No.	Method	Amount In ₹ Crores	Status
1.	Redemption of preference shares issued by BL held by MBDL	117.22	Redeemed and accounted for in the books of accounts for year ended March 31, 2022
2.	Arrears of preference dividend adjusted	151.41	Arrears of preference dividend adjusted and accounted for in the books of accounts for year ended March 31, 2022
3.	Acquisition of properties from MBDL	554	as per **Table No. 6**

101. The summary of implementation of the Scheme as provided by Noticee No. 2 in his submissions filed vide email dated February 13, 2024 is as under:

Table No. 10

Particulars	Amount in ₹ Crores	% of Total
Book Advances factoring	285.30	35%
Money Advances	373.35	46%
Interest Charges on Money advances	155.42	19%
Alleged transfer to MBDL	**814.07**	**100%**
Scheme Implemented with takeover of MBDL assets	414.00	51%
Scheme implemented with extinguishing liability to MBDL	268.63	33%
Scheme Complete	**682.63**	**84%**
Balance Scheme Work In progress	**131.44**	**16%**

102. Subsequently, vide letter dated April 18, 2024, Noticee No. 1 provided additional documents and *inter alia* stated that it has transferred all the properties from MBDL to BL and the entire settlement scheme has been compieted. A summary of documents in support of the claimed transfer of properties to BL, submitted by Group A Noticees, vide different communication during the course of these proceedings, is tabulated as under:

Table No. 11

Sr no.	Particulars of land	Stated Value of the land (in ₹)	Supporting Documents produced
a	62 KLPD Distillery Unit at Chegelpet on an on-going concern basis along with Land, Building, Plant & Machinery, all its licenses and other assets	100	1. Business transfer agreement executed on February 15, 2023 for sale of plant and machinery of MBDL vested for ₹35 Crores (slump sale agreement) 2. Registered sale agreement along with registered general power of attorney for ₹65 Crores
b	12.43 acres of factory land located in M.M.Nagar Valasaravakkam	265	1. Registered agreement to sale along with registered general power of attorney
c	42.46 acres of land located at Ozhalur village in Chengelpet taluk of Kancheepuram District	53	1.Registered agreement to sale along with Registered power of attorney in respect of 19.77 acres of land out of 42.46 acres for consideration of ₹ 24.68 Crores. 2. Registered agreement to sale along with Registered power of attorney in respect of 22.69 acres of land located at Ozhalur village along with 62.386 acres of land located at Irunkundrampalli Village and 5.19 acres of land at Vedananarayanapuram village for 134 ₹ Crores*

Sr no.	Particulars of land	Stated Value of the land (in ₹)	Supporting Documents produced
d	62.386 acres of lands located at Irunkundrampalli Village in Chengelpet Taluk of Kancheepuram District	109	1.Registered agreement to sale along with Registered power of attorney in respect of 22.69 acres of land located at Ozhalur village along with 62.386 acres of land located at Irunkundrampalli Village and 5.19 acres of land at Vedananarayanapuram village for 134 ₹ Crores*
e	850 acres of Wind Mill Lands at Tirunelveli District valued at (Net)	27	1.Tripartite sale agreement between MBDL, BL and the purchasers for 600 acres of land for a sum of 36 Crores and 250 acres for a sum of 10.33 Crores. 2.₹ 6.61 Crores received as on June 22, 2023. 3. Sale deed for 546 acres for ₹ 30.01 Crores and entire amount has been received. For the balance land of 304 acres sale deeds are being executed for ₹ 16.32 Crores#
	Total	**554**	

* provided joint documents for property at (c) and (d)

Documents not provided

103. BL provided a business transfer agreement stated to be the slump sale agreement entered with MBDL for the purported sale value of ₹ 35 Crores for the property mentioned at Sr. No. (a) in the Table above and submitted that the process adopted for acquiring the land was exactly the same as that of the acquisition of land of 12.43 acres mentioned at Sr. No. (b) for which Group A Noticees have provided registered Sale Agreement along with a registered General Power Attorney. It was stated that in view of the same, the land and building vested with BL with absolute right pursuant to completion of all the documentation formalities and carrying out the necessary entries in the books of accounts reflecting the said acquisition/vesting of properties. In support of its submissions, BL relied upon a legal opinion which, *inter alia,* provided that with

the execution and registration of the aforesaid documents, BL had a title over the said property and further provided a certificate from the Chairman of the Company that the vesting of the land is already reflected in the books of the company.

104. For the properties mentioned at Sr. No. (c) and (d), in its earlier replies, no documents were provided and it was merely stated by BL that it is in process of completing the acquisition formalities with regard to 62.386 acres of land amounting to ₹109 Crores, 42.46 acres of land amounting to ₹53 Crores and that the process was expected to be completed by July 31, 2023. However, vide its reply dated July 31, 2023, BL stated that when they were in the process of effecting the necessary documentation for vesting of property, the original documents were lost at the sub-registrar's office when taken there for seeking certain clarifications for the purpose of registration. It was further submitted that as per the new guideline issued by the Government of Tamil Nadu, in respect of registration of properties when the original documents are lost, certain additional procedures like issuance of newspaper advertisement, filling of FIR, etc. are required to be followed. Hence, BL advised MBDL to release the newspaper advertisement stating loss of original documents. A copy of the advertisement issued on July 24, 2023 was provided before me and stated that they were in the process of completing the outstanding procedural formalities for completing the legal/documentation requirements.

105. During the personal hearing held on August 17, 2023, it was reiterated that the BL is in the process of completing the legal formalities for transfer of these land parcels which would be completed within 30 days. Vide its letter dated November 04, 2023, BL provided a registered Agreement to Sale along with a registered General Power Attorney for 19.77 acres of land out of 42.46 acres of land (Mentioned at Sr. No. c) for a consideration of ₹ 24.68 Crores. BL further submitted that it is very keen and committed to complete the registration formalities in respect of the balance land. In its written submissions filed vide email dated February 13, 2024 also, BL reiterated that the balance land has not been transferred since Bank of India has lost the original documents and it is in the process of taking alternative steps for the said transfer.

106. During the 3rd hearing, all the Noticees present for the hearing had agreed that no extension of time would be sought thereafter. However, vide letter dated March 29, 2024, Noticee No. 1, while reiterating the summary of the implementation of settlement scheme, informed that for the balance land (to the extent of 85 acres) out of the land mentioned at Sr. No. (c) and (d) above and

sought to be transferred to MBDL as part of the settlement scheme had been arranged but the registration of the said land for consideration of ₹134 Crores due to holidays and election duties assigned to the Sub-Registrar Office (SRO), could not be completed and hence sought additional one week for submitting the copies of registered documents. A challan copy issued by SRO was also attached. On April 08, 2014, Noticee No. 1 acting through its CFO (Noticee No. 6), while referring to the earlier letter dated March 29, 2024, informed that despite their best efforts, the registration formalities could not be completed since the SRO officials are busy with Loksabha elections duty and sought further 2 weeks' time to complete the registration. On April 18, 2024, Noticee No. 1 on behalf of itself and other *Group A Noticees* provided registered sale agreement along with registered power of attorney in respect of 22.69 acres of land located at Ozhalur village along with 62.386 acres of land located at Irunkundrampalli Village and 5.19 acres of land at Vedananarayanapuram village for 134 ₹Crores. Thus, even though there was a clear understanding and express agreement that no further documents would be submitted after the conclusion of the 3rd hearing, in the interest of natural justice, I am compelled to take into consideration the documents submitted by the Group A Noticees on April 18, 2024 and accordingly necessary changes were made in the status of implementation scheme.

107. For the property mentioned at Sr. No. (e), it was stated that for the acquisition of 850 acres of windmill land for an amount of ₹ 27 Crores, a tripartite Sale Agreement was entered between BL, MBDL and the purchasers. Specifically, BL entered into a Tripartite Sale Agreement with one purchaser for 600 acres of land @₹ 36 Crores and with another purchaser for 250 acres of land @₹10.33 Crores and was thus able to realise a sum of ₹46.33 Crores against the acquisition price of ₹ 27 Crores alone from MBDL and it had effected a Sale Deed in favour of the purchaser for 110 acres and received a sum of ₹6.61Crores. The Company vide its letter dated April 18, 2024 informed that out of 850 acres of land, sale deeds have been executed as per the agreement for 546 acres of land for a consideration of ₹ 30.01 Crores and the entire amount has been received. For the balance land of 304 acres, sale deeds are being executed for ₹ 16.32 Crores.

108. I have considered all the submissions made in this regard and have carefully perused the documents provided by the Group A Noticees in support of the settlement scheme.

109. With regard to the purchase of 12.43 acres of land (Sr. No. b), the *Group A Noticees* stated that all the documentation formalities have been completed and the property has been vested with the company with absolute right over the property while providing the registered Agreement to Sale along with a registered General Power Attorney.

110. In this context, I feel it relevant to refer to the observations and findings made by the Hon'ble Supreme Court in *Suraj Lamp & Industries Pvt Ltd. Vs State of Haryana & Anr*[7] while discussing the ill effects of Sale Agreement/General Power of Attorney/Will transfers (for short 'SA/GPA/WILL' transfers) and the relevant legal provisions:

> *"12... Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.*
>
> *13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.*
>
> *15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank – 94 (2001) DLT 841, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized*

[7] MANU/SC/1222/2011

or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law. We therefore reiterate that immovable property can be legal.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized as a valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act."

111. Further, the Hon'ble Supreme Court in its Order and Judgment dated June 02, 2023 in the matter of *Ghanshyam vs Yogendra Rathi*[8] elucidated the law on the transfer of property while also referring to the Order of the Hon'ble Court in the matter of Suraj Lamp (*supra*) and observed the following:

"14... In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognizing these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and its registration so as to confer right and title in an immovable property of over ₹.100/- in value. The decisions of the Delhi High Court in the case of Veer Bala Gulati Vs. Municipal Corporation of Delhi and Anr. following the earlier decision of the Delhi High Court itself in the case of Asha M. Jain Vs. Canara Bank and Ors. holding that the agreement to sell with payment of full consideration and possession along with irrevocable power of attorney and other ancillary documents is a transaction to sell even though there may not be a sale deed are of no help to the plaintiff-respondent inasmuch as the view taken by the Delhi High Court is not in consonance with the legal position which emanates from the plain reading of Section 54 of the Transfer of Property Act, 1882. In this regard, reference may be made to two other

[8] MANU/SC/0642/2023

decisions of the Delhi High Court in Imtiaz Ali Vs. Nasim Ahmed and G. Ram Vs. Delhi Development Authority 1 (2003) 104 DLT 787 2 (2001) 94 DLT 841 3 AIR 1987 DELHI 36 4 AIR 2003 DELHI 120 9 which inter-alia observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Indian Registration Act, 1908. The decision of the Supreme Court in Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr. also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed."

112. Furthermore, Hon'ble Supreme Court in the matter of Shakeel Ahmed Vs. Syed Akhlaq Hussain[9] vide its Judgement dated November 1, 2023 also observed the following.

"10....it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis.

11. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the case of Suraj Lamps & Industries (supra) lays down the same proposition.

13. The argument advanced on behalf of the Respondent that the judgment in Suraj Lamps & Industries (supra) would be prospective is also misplaced. The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act. The ratio in Suraj Lamps & Industries (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view."

[9] MANU/SC/1257/2023

113. It is thus clear from the above observations of the Hon'ble Supreme Court that the title of any immovable property may be transferred/conveyed only by a registered deed of conveyance and not by a registered agreement to sale and/or General power of Attorney.

114. Having said that, I have also perused the sale agreement for 12.43 acres of land and deem it necessary to highlight the following terms of the sale agreement:

> *"1. Vendor (MBDL) has agreed to sell and purchaser (Binny) has agreed to buy the scheduled property free from all encumbrances for a consideration of 2,65,00,00,000 ... the purchaser paid the entire sale consideration which the vendor doth acknowledge and admit, and agrees to hand over the possession at the time of registration of sale deed.*
>
> ...
>
> *6. The stamp duty and registration expenses for the sale deed shall be borne by the purchaser or his nominee.*
>
> ...
>
> *13. The vendor hereby undertakes to provide vacant possession of the property at the time of the registration of the sale deed."*

115. Thus, even from the terms of the agreement submitted, it is clear that the title of the land has not been transferred to BL. Instead, it has been agreed between the parties that the title of the land will only be handed over at the time of registration of the sale deed which has not been executed. I also note that while the applicable stamp duty in Tamil Nadu is at least 5%, a stamp duty of only 1% has been paid by the parties on the sale agreement.

116. I have also perused the registered GPA provided by the Group A Noticees and note that as per the terms thereof, "*the principal (MBDL) only nominate, constitute and appoint the attorney holder (BL) to be true and lawful attorney/agent of the principal to exercise all or any of the acts, deeds and things in regard to the scheduled property mentioned in the GPA including the act to execute any deed or deeds of conveyance in the name of the principal, for the principal and on behalf of the principal.*"

117. Thus, even the terms of the GPA, make it clear that the GPA has only created a principal-agent relationship between MBDL and BL. While BL is, *inter alia*, authorised to sell the property and keep the proceeds, the GPA does not

provide any indication about conferring the title of the property upon BL. Under those circumstances, there is no valid ground to hold the documents (registered agreement to sale and GPA) provided by BL in support of its submissions as sufficient and hence the same cannot be accepted.

118. I also note that BL has placed reliance upon a legal opinion that has referred to the following observations of Hon'ble Supreme Court in *Suraj lamp case* (supra) to opine that the General Power of Attorney and Sale Agreement does give a title over the property i.e., 12.43 acres of land, to the Party 2 – M/s. Binny Limited under the prevailing laws and precedent set by the Hon'ble Courts in India:

> *"19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions."*

119. I have perused the legal opinion and read the Judgement referred supra in totality in holding that the Hon'ble Supreme Court has clearly laid down the law regarding transfer of title in an immovable property in the Suraj lamp case and other cases (noted earlier). A statement has been made by the Noticees that the transaction between MBDL and BL is genuine and that the GPA and agreement to sale provide BL a title over the property. The Group A Noticees have not been able to submit any satisfactory proof or document to demonstrate that the transactions between BL and MBDL are covered within the ambit of bonafide / genuine transactions as mentioned by the Hon'ble Supreme Court in the paragraph noted above (relied upon by the legal opinion). Thus in the absence of any reasons to hold otherwise, the legal opinion provided by BL does not help its cause and cannot be taken into consideration.

120. I note from a perusal of the Explanatory Statement to the notice to the shareholders dated August 30, 2021 under Section 102 of the Companies Act, for the proposed settlement scheme, BL is noted to have *inter alia* stated that MBDL had secured a loan from State Bank of India amounting to ₹92.75 Crores by creating a first charge on the factory land, which shall be settled or released by MBDL before the said property is transferred to BL as proposed by it. Clearly, BL by its own admission to the shareholders has stated that the 12.43 acres of factory land is not free from encumbrances and that the State Bank of India has the first charge over the property. Yet, the said land is sought to be transferred to BL through an agreement of sale, when the title of the land itself is not clear. Thus, without an NOC from the first charge holder i.e. State Bank of India, which has not been submitted on record, the factory land could not be transferred.

121. For the property mentioned at Sr. no. (a) in the aforementioned table i.e. 62 KLPD Distillery Unit at Chegelpet, it is noted that BL / Group A Noticees have provided a business transfer agreement and GPA (For slump sale agreement for ₹35 Crores) and further vide submission dated July 17, 2023 have provided a registered sale agreement along with registered general power of attorney for the Land, Building, Plant & Machinery of the property for the stated value of ₹65 Crores.

122. In this regard, firstly, BL has not provided any justification for the stated valuation and bifurcation of the property and ascribed value of ₹35 Crores to the business of the distillery along with its plant and machinery, current assets, liabilities and leasehold premises and other interests, and a value of 65 Crores is ascribed to the land and building of the distillery unit. Secondly, the business transfer agreement which contemplates transfer of assets and liabilities of MBDL to BL is not registered and is merely an agreement which does not convey any legal title to BL in view of the discussion in the earlier paragraphs. Thus no evidentiary value can be attached to it. Lastly, even the transfer of land and buildings stated to be of a value of ₹ 65 Crores is sought to be transferred through a registered agreement to sale and GPA.

123. In light of the discussion in the preceding paragraphs and the above–quoted observations of the Hon'ble Supreme Court, the documents provided for the transfer of 62 KLPD Distillery Unit at Chegelpet stated to be ₹ 100 crores are clearly deficient and cannot be taken into consideration since in my view, the transfer of the said unit has not been effected and accordingly, it would not reduce the outstanding receivables of BL

124. I note that BL had obtained the shareholders' approval for the Settlement Scheme on October 09, 2021 and had sufficient time to complete the effective transfers of lands in accordance with the said Scheme. However, even after the lapse of more than two years, the transfer of land had not been completed and BL only submitted a registered agreement to sale and a registered power of attorney, that too only for a partial land parcel (vide its letter dated November 04, 2023). Had BL been serious, the acquisition formalities would have been completed. Post the 3rd hearing, BL vide its letter dated April 18, 2024 provided only the registered agreement to sale along with registered power of attorney in respect of remaining land (22.69 acres of land located at Ozhalur village along with 62.386 acres of land located at Irunkundrampalli Village and 5.19 acres of land at Vedananarayanapuram village) for a stated consideration of 134 ₹Crores.

125. As discussed above, the registered agreement to sale along with registered power of attorney cannot be taken into consideration in light of the discussion and finding given above in light of the Judgements of the Hon'ble Supreme Court and on the same basis, the documents provided by BL for the transfer of partial land parcel mentioned at Sr. No. (c) and (d) above also cannot be taken into consideration.

126. For the property mentioned at Sr. no. (e) i.e. 850 acres of Wind Mill Lands at Tirunelveli District for the purported value of ₹27 Crores, BL provided a tripartite sale agreement entered into between MBDL, BL and third party purchasers and stated that BL entered into two such agreements with two purchasers for 600 acres of land and another 250 acres of land and also effected a sale deed for 110 acres of land for which it received a sum of ₹6.61 Crores. Vide BL in their letter dated April 18, 2024 informed that out of 850 acres of land, sale deeds have been executed as per the agreement for 546 acres of land for a consideration of ₹ 30.01 Crores and that the entire amount has been received. For the balance land of 304 Acres, the sale deeds are being executed for ₹ 16.32 Crores. Yet, only the payment receipt of ₹ 6.61 Crores was provided by BL out of ₹ 30.01 Crores as claimed in its letter dated April 18, 2024.

127. The crux of these agreements is that the land owned by MBDL is to be sold to third parties, who would transfer the land in multiple tranches to the ultimate purchasers, who would in turn, pay the consideration to BL in lieu of the outstanding liabilities that MBDL owed to BL.

128. On perusal of these documents provided by BL. I note that one of the 'agreement of sale' of 600 acres of land has been entered into with one Mr. M. Dhivakaram, who as per the terms of the said agreement, agreed to buy the land for ₹36 Crores and paid a sum of ₹ 5 Crores to BL. The other tripartite document is with one SAV Construction represented by Mr. M. Thivaharan for the sale of 250 acres of land and it is noted in the agreement that ₹ 25 lakhs has been paid by the purchaser to BL. Based on these master tripartite agreements, BL also provided various sale deeds between MBDL, BL and the third party purchaser. These sale deeds are between purchasers other than those mentioned in the agreement of sale(s). BL received ₹6.61 Crores as on June 22, 2023 and made the accounting entries in this regard in its books and also provided documentary proof of receipts of ₹6,54,82,560 (after deduction of 1% TDS of approximately 7 lakhs) in its account. In its letter dated April 18, 2024, it is claimed that the Company has executed sale deeds for 546 acres for a consideration of ₹ 30.01 Crores and the entire amount was received. However, I find it relevant to reiterate here that no documents have been provided by BL to support its claim of receipt of ₹ 30.01 Crores. Thus, after perusal of the sale deeds submitted by BL along with documentary proof of receipt of ₹6.61 Crores in its bank account, I am inclined to accept this submission of BL to the extent of ₹ 6.61 Crores which can be reduced from the outstanding receivables of BL.

129. Thus, it is clear from the discussion above that the documents provided by BL in support of the purported settlement arrangement between MBDL and BL are deficient and insufficient to substantiate their claims and cannot be taken into consideration (except to the extent has been noted above). BL attempted to mislead the shareholders and defraud them and under the garb of shareholders' approval, tried to portray that it had received the money which in fact was diverted to MBDL. The various methods stated to have been adopted by BL for bringing back the money have serious shortcomings which indicates that the purported settlement scheme adopted by it was grossly inadequate to achieve the desired objective.

130. The SCN has also brought out that under the settlement arrangement, BL transferred receivables amounting to ₹ 285.3 Crores from third parties to MBDL and set it off against the aggregate dues of ₹ 268.63 Crores owed to MBDL on account of redemption of preference shares along with cumulative dividends. Such transfer of receivables took place by way of exchange of letters between BL and MBDL.

131. The Group A Noticees have submitted that there is no need for any tripartite agreement for transfer of these amounts due by BL to MBDL as long as BL and MBDL agree to the same in the letters exchanged between them. In the reply filed vide letter/email dated February 13, 2024, Noticees 1 and 2 have provided the status of the implementation of the Scheme.

132. Upon perusal of the copies of letters provided by BL, I note that the letters from MBDL were written by Mr. M. Nandagopal (Noticee No. 2) in the capacity of Executive Chairman of MBDL, whereas on behalf of BL, the letters were written by Mr. Arvind Nandagopal (Noticee No. 3) in his capacity of Managing Director of BL. As brought out earlier, Noticee No. 3 is the son of Noticee no. 2 and both have / had directorship in MBDL and BL. It is pertinent to note that MBDL purportedly wrote a letter dated June 28, 2021 to BL mentioning about the proposal for transfer of undertaking and land and for adjustment of the purchase consideration against various advances. In response thereto, BL purportedly through its letter dated June 29, 2021 (i.e. just a day after the stated letter of MBDL) agreed to the proposal made by MBDL. Thus, the exchange of letters between MBDL and BL is meant to indicate that the proposal to clear the outstanding dues amounting to ₹ 538.77 Crores and transfer of receivable of ₹ 285.3 Crores from third parties to MBDL was cleared within a single day.

133. Given the above and the fact that both the signatories are related to each other, the exchange of letters appears to be more of an eyewash or an attempt by the parties to give legal sanctity to a concocted transaction. This appears more plausible when viewed in light of the contention of BL that the tripartite agreement to transfer the receivables from third parties to MBDL is not required, which submission is wholly ill-conceived and without any basis. I fail to understand as to how receivables of ₹285.30 Crores from many third parties can be transferred by BL to MBDL without the approval of those third parties. The SCN has observed that out of ₹ 329.29 Crores advanced by BL to various vendors, approximately ₹143 Crores was transferred by these vendors to MBDL. Yet, under the proposed Settlement, MBDL is attempting to settle all ₹285.30 Crores which, as discussed above, appears to be non-genuine and also clearly establishes the fact that the amount belonging to BL was earlier diverted to MBDL by BL and later a Settlement arrangement was conceived, by which an attempt was made by BL to clear its outstanding dues.

134. As highlighted earlier, in the Explanatory statement to the notice to shareholders dated August 30, 2021 under Section 102 of the Companies Act, 2013, simply to justify the permissibility of the set off of cumulative preference

dividend payable to MBDL and redemption of preference share capital against the dues of MBDL as it is now apparent, BL was stated to have obtained an opinion dated March 07, 2021 from a Practising Company Secretary in terms of which the set off is in accordance with the provisions of Section 55, Section 123 read with Clause (d) of the proviso to Section 127 of the Companies Act, 2013.

135. Although the said opinion was not provided to SEBI, after perusal of Section 55 of the Companies Act which, *inter alia*, provides for issue and redemption of preference shares and Section 123 which, *inter alia*, provides for declaration of dividend, I note that both these provisions explicitly provide that redemption of preference share capital and the dividends can only be paid out of the profits of a company and not otherwise. Further, Section 127, *inter alia*, provides that where a dividend has been declared by a company but has not been paid from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company if he is knowingly a party to the default shall be punishable for failure to distribute dividends. In this context, Clause (d) of the proviso to Section 127 provides that where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder, the same shall not be deemed as an offence.

136. It is clear from the Settlement Scheme proposed by BL that it is proposing to redeem the preference share capital and pay the dividend against the outstanding dues owed by it to various third parties and its related party and not out of the profits of BL. This is clearly in contravention of the provisions of Section 55 and 123 and is not legally permissible. Further, Clause (d) of the proviso to Section 127 only exempts adjustment of dividend against any sum due to the Company from shareholders when the same is declared but not paid. In the instant case although the dividend was pre fixed, the same was not paid from 2005 but is now sought to be paid cumulatively. Further, the cumulative dividend is being adjusted against dues of various third parties which are not the shareholders of BL and thus, the legality of the discussed acts of BL is also questionable. Under these circumstances, I am not inclined to accept the submissions of BL in this regard.

137. The SCN has also brought out that the Valuer engaged by BL for the valuation of the aforesaid land parcels forming part of the Settlement Scheme was not registered as a valuer with Insolvency and Bankruptcy Board of India ("IBBI"). Group A Noticees submitted that the Scheme as approved by the shareholders was not under the provisions of IBC and thus the provisions of Section 247 of

the Companies Act, 2013 would not be attracted in respect of the purchase of land and other assets by BL from MBDL.

138. Section 247 of the Companies Act, 2013, *inter alia*, provides that where a valuation is required to be made in respect of any property or any other assets of a company under the provisions of the Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner on such terms and conditions as may be prescribed. Further, in terms of Companies (Registered Valuers and Valuation) Rules, 2017, the Registration Authority means the IBBI. Thus, if any valuation of property is required to be done under the provisions of Companies Act, 2013, the valuer has to be registered with IBBI. In this regard, as has already been noted in the earlier paragraphs, BL justified, as a part of the settlement scheme, the permissibility of setting off of the cumulative preference dividend payable to MBDL and redemption of preference share capital against the dues of MBDL, in terms of Section 55, Section 123 read with Clause (d) of the proviso to Section 127 of the Companies Act, 2013. Thus, at least in relation to the part of the Settlement Scheme pertaining to redemption and set-off of preference shares and dividend noted above, BL ought to have received the valuation from a valuer registered with IBBI.

139. I also note that the statutory auditor of BL, issued the Independent auditors report on the Audited Financial results of the Company for the quarter and year ended March 31, 2023 which was qualified. I have perused the qualified opinion of the auditor as disclosed by BL on BSE Ltd. on November 30, 2023 and also forming part of the Annual Report of BL for the financial year 2022-23. Some of the observations made by the Auditor based on which it had qualified its opinion are as under:

> *"The 62 KLPD Distillery Unit has to be taken over by the holding Company with effect from 09.10.2021 as an on-going concern basis, in pursuance to the Scheme approved by the Shareholders in their EGM dated 09.10. 2021. The Operational results of the Distillery Division for the period from 09.10.2021 to 31.03.2023 was arrived at Rs 603.96 Lakhs. The assets and liabilities of the Distillery Unit was transferred to the Company as on 15.02.2023. The profit for the period from 09.10.2021 to 15.02.2023 was provisionally arrived at Rs 765.00 Lakhs and transferred from the Related Party to the holding Company which is Provisional and the relevant accounting entries are not verified by us. <u>The consequential impact on account of the above is not ascertained.</u>*

As approved by the Shareholders in the EGM dated 09.10.2021, for settlement of the advances recoverable from MBDL, the holding Company has to acquire / take over certain business and immovable properties of MBDL. The holding Company has entered into Registered Sale agreements along with Registered General Power of Attorney with right to sell, receive entire sale consideration and appropriate for its own, with MBDL for transfer of certain assets in pursuance of the Scheme approved by the Shareholders. On enquiry with the management, it was clarified that it is the industry practice of transferring land prevailing in Tamil Nadu and legal opinion has been obtained in this regard, however We are of the opinion that including the said land under inventory is not correct as per Generally Accepted Accounting Principles.

The holding company did not obtain/receive balance confirmation from many vendors/parties including loans and advances other than related parties for the balances as on 31st March, 2023. We could not obtain external confirmations as required in SA-505 Standards on Auditing and are unable to comment on adjustments or disclosures if any that may arise.

Transfer of properties at Ozhaiur & Irukkandrampally is yet to be implemented as per the scheme approved by Share holders of holding company on 09.10.2021. The management clarified that the process of the transfer of properties is possible only after the transfer of License since the said land is adjacent to the Distillery. Hence the respective sale consideration of Rs. 16200 Lakhs are being shown as "Outstanding" from Mohan Breweries & Distilleries Limited (MBDL) as on 31.03.2023.

Rs. 4539.05 lacs is the amount of outstanding in Trade/project advances to various parties for a period exceeding five years for which no provision has been made in the holding company, since the Management is confident about the recovery. We are unable to comment on the recoverability of these Advances.

A difference of Rs. 290.73 Lakhs between Cash balance as per Books Rs.290.77 Lakhs and Physical cash of Rs. 0.04 Lakhs as on 31.03.2023 as reported by the Internal Auditors of the holding Company was observed. On enquiry, Management expressed that the differential amount was given as advances, but for which details like parties to advances, nature of

advances, terms and conditions were not provided. The consequential impact on account of the above is not ascertained.

Noncompliance of Ind AS 118 with regards to accounting of receipts from sale under the head Revenue received in advance Rs. 2258.65 Lakhs for the Sales booked through sale agreement between the Company and M/s Sanklecha Infra Projects Private Ltd which is not taken as revenue since the title to the property (Land) has not been transferred from the Company. On enquiry, it was noted that though the title to the land is not transferred, Sankhlecha Infra Projects Private Ltd has taken possession of the land and completed the construction activities thereon without payment of the balance amount of Rs 1912.00 Lakhs as per the Sale Agreement between the holding Company and Sankhlecha Infra Projects Private Ltd. However, the management clarified that the land will be registered on receipt of balance payment."

140. Thus, the practices adopted by BL were not found to be satisfactory by its statutory auditor who qualified its opinion. It is pertinent to note that the auditor categorically stated that the transfer of land by BL under the Settlement Scheme is not as per Generally Accepted Accounting Principles and also raised certain issues which form part of the SCN. I note that in response to the qualified opinion of the auditor, BL *inter alia* stated that necessary Accounting Records including the Audited Financials of MBDL are being arranged for Auditors' verification and that the same will be duly reconciled with their records and that the transfer of land as per the scheme approved by shareholders is as per the practice prevailing in the real estate industry in Tamil Nadu for which necessary legal opinion had been obtained. Furthermore, BL also stated that necessary steps are being taken by them to obtain the Confirmation of Balance from the rest of the parties.

141. I have perused the response of BL and note that the response to the auditor's opinion is similar to its response to the SCN which has already been discussed in this order in great detail and the same has been found to be unsatisfactory. I have also noted that vide disclosure dated January 29, 2024 the then statutory auditors of BL i.e. M/s Sagar & Associates, who had qualified its opinion, had also resigned from its services on January 25, 2024. It is also noted that BL had not filed its quarterly results for two consecutive quarters ending March 31, 2023 and June 30, 2023 for which BSE vide its public Notice dated November 15, 2023 had suspended its trading. The quarterly results for June 23 were belatedly disclosed on February 28, 2024 with limited review report. The new

auditor also qualified its opinion. Thus, the fact that the statutory auditor(s) have qualified their opinion(s) on the operations of BL further strengthens the view that BL was involved in large scale diversion of the funds to its related parties that belonged to shareholders.

142. BL have submitted that the settlement agreement was approved by the public shareholders of BL who are ultimate and supreme and that once the shareholders approve a scheme of arrangement/ settlement, it can be reasonably concluded that the shareholders accepted the totality of the transactions including the past transactions and that based on such approval, BL is in the process of registering the land in its name. I have noted the contentions made by BL and agree that while shareholders are supreme in the functioning of a Company, they generally rely on the disclosures made by the Company. Public shareholders do not have any day-to-day control over the affairs of a Company. It is the paramount task of the management of the Company to disclose the true and fair picture of the Company. The Settlement arrangement as discussed earlier was an attempt by the Company to defraud the shareholders who clearly did not go into the technicalities of the arrangement and approved it. However, such approval based on flawed and false premise does not *ipso facto* absolve the Company from its liabilities and cure the illegality of the process. In view thereof, I am not inclined to accept the submissions of BL / Group A Noticees in this regard.

143. It is established that BL had diverted ₹ 712.64 Crores (₹329.29 Crores to various vendors and ₹ 383.35 Crores to MBDL)[10]. Through the settlement scheme as discussed above, BL was able to recover ₹ 6.61 Crores only. Thus ₹ 706.03 Crores continue to remain outstanding and are required to be brought back along with interest. Upon a detailed perusal of the statements of bank accounts mentioned in the FAR and the findings in the investigation report, it is seen that there are thousands of entries reflecting debits from the bank accounts of BL, many of which correspond to the transactions discussed above and which have been established as payments made by BL to various vendors under the guise of regular business transactions. To cull them out and reproduce them in this Order would be an exercise of repetition and hence for the sake of brevity, is not being done.

[10] Although the SCN allege that the total funds diverted by BL are ₹851.27 Crores. However, it is noted that ₹97.13 Crores [funds diverted through various vendors having a common director] and ₹41.5 Crores [through journal entry to MBDL] have already been covered in the amount of ₹329.9 Crores, which have been discussed in earlier part of this Order.

IV. NON-DISCLOSURE OF RELATED PARTY TRANSACTIONS

Non-disclosure of Related Party Transactions with RRB Energy Limited

144. In terms of the SCN, BL entered into RPTs with RRB between September 17, 2016 and July 05, 2017 and transferred an amount of ₹29.18 Crore for setting up the wind power project of 48.16 MW in Tamil Nadu. This transaction was not disclosed as a RPT in its Annual Report for the FY 2016-17 and 2017-18 and no prior approval was sought from its audit committee and shareholders was not taken. Out of ₹29.18 Crore advanced to RRB, ₹ 22.71 Crore was subsequently diverted to MBDL between September 17, 2016 to March 28, 2018. BL was also alleged to have failed to comply with AS-18, which required disclosure of RPTs between a reporting enterprise and its related parties and therefore, it violated Regulations 4(1)(a), 4(1)(b) and Regulation 48 of the LODR Regulations.

145. Thus the SCN alleged that BL and RRB are related parties under the provisions of Section 2(76)(iv) of the Companies Act, 2013, due to the presence of common directors namely Mr. M. Nandagopal (Noticee No. 2) and Mr. S. Jagadeesan.

146. The Group A Noticees submitted that transaction with RRB is not a RPT since both Mr. Nandagopal (Noticee No. 2) and Mr. S.M. Jagadeesan, are only Independent Non-Executive Directors in RRB Energy Limited.

147. In their counter to these allegations, the Group A Noticeess sought to place reliance on Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014, which provides as follows.

> *"For the purpose of Sub-clause (ix) of Clause 76 Of Sec 2 of the Companies Act, 2013, a Director (other than an Independent Director) or Key Managerial Personnel of the Holding Company or his relative with reference to a Company shall be deemed to be a Related Party".*

148. Thus, it has been argued that as per Rule 3, Independent Directors have been excluded from the definition of a Director for the Related Party Transactions and since this is not a RPT, there is no requirement for obtaining shareholders' approval under Regulation 23(4) of LODR Regulations and for disclosures under Para 23 of AS- 18.

149. I note that as per clause (iv) of Section 2(76) of the Companies Act, 2013, a 'related party', with reference to a company, means a private company in which a director or manager is a member or director. Thus, BL and RRB are charged as related parties with the premise that RRB is a private company. However, a perusal of the MCA records reveals that RRB in which Mr. S.M. Jagadeesan is an independent director is a public company and not a private company. Thus, clause (iv) of Section 2(76) would not be applicable in the present case. Rather, the applicable clause would be clause (v) of Section 2(76) which provides that 'related party', with reference to a company means a public company in which a director or manager is a director and holds along with his relatives, more than two per cent. of its paid-up share capital. Thus, it is not sufficient for a public company to merely have a common director with the other Company to establish related party connection. It would also be required to establish that the said director or member along with his relatives hold more than two per cent of the paid-up share capital of the Company.

150. However, the material available on record does not suggest that Mr. S.M. Jagadeesan, the common independent non-executive director between BL and RRB along with his relatives, holds more than two percent of the paid-up share capital of BL. Further, considering that Mr. M. Nandagopal had resigned from RRB before the advances were paid to RRB (Mr. M. Nandagopal / Noticee No. 2 ceased to an Independent non-executive Director of RRB with effect from August 03, 2016), there appears no valid ground to suggest that BL and RRB are related parties of each other. Accordingly, the issue of obtaining the approval from the audit committee and shareholders as required under Regulations 23(2) and 23(4) of LODR Regulations does not arise, Similarly, the issue of complying with AS-18 and the alleged violation of Regulation 48 of LODR Regulations also does not arise as the basis of allegation is the relationship between BL and RRB Energy Ltd has not been established.

151. As regards the allegation in the SCN that out of ₹ 29.18 Crore, which were advanced to RRB by Noticee No.1, amounts of ₹ 22.71 Crore were subsequently diverted to MBDL during the period September 17, 2016 to March 28, 2018.

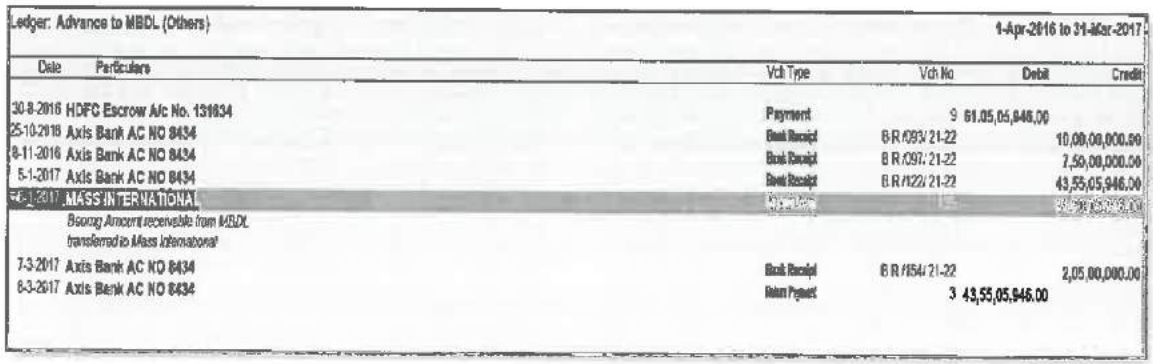
152. I have already recorded detailed findings in the earlier part of this order wherein it has been established that funds were diverted and siphoned off to MBDL by BL resulting in misrepresentation of financial statements and violation of various provisions of PFUTP Regulations and provisions of SEBI Act and hence see no reason to reiterate my findings on the said allegations.

Non-disclosure of RPT/Transfer of outstanding balance via a journal entry to the third party

153. As per the SCN, Noticee No. 1/BL was also alleged to have advanced ₹ 61.05 Crore to MBDL on August 30, 2016 which was reflected as a ledger entry "Advance to MBDL(Others)" and received ₹ 17.50 Crore from MBDL during October 25, 2016 to January 05, 2017. These transactions were alleged to be in addition to other transactions with MBDL, which were reflected in other accounting ledgers. On January 06, 2017, the accounting entries identified a journal entry transferring balances amounting to ₹ 41.50 Crore to M/s Mass International (an unrelated party) which is one of the vendors of BL and a proprietary concern of Mr. Rammohan, who is also a director in certain other vendors of BL. On March 07, 2017, the pending balance from MBDL amounting to ₹ 2.05 Crore was received, thus nullifying the balance in the "Advance to MBDL (Other)" ledger. A total of ₹ 19.55 Crore (₹17.50 Crore + ₹ 2.05 Crore) was received from MBDL.

154. The narration in the books of accounts did not provide any reason for passing such Journal entries for transfer of balance to M/s Mass International.

155. The print screen image of the Journal entry passed in the books of BL is as under:



Ledger: Advance to MBDL (Others) 1-Apr-2016 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No	Debit	Credit
30-8-2016	HDFC Escrow A/c No. 131834	Payment	9	61,05,05,946.00	
25-10-2016	Axis Bank AC NO 8434	Bank Receipt	BR/093/21-22		10,00,00,000.00
8-11-2016	Axis Bank AC NO 8434	Bank Receipt	BR/097/21-22		7,50,00,000.00
5-1-2017	Axis Bank AC NO 8434	Bank Receipt	BR/122/21-22		43,55,05,946.00
6-1-2017	MASS INTERNATIONAL	[illegible]	[illegible]		[illegible]
	Bearing Amount receivable from MBDL transferred to Mass International				
7-3-2017	Axis Bank AC NO 8434	Bank Receipt	BR/154/21-22		2,05,00,000.00
8-3-2017	Axis Bank AC NO 8434	Return Payment	3	43,55,05,946.00	

156. The SCN brought out that with respect to this particular transaction of payment of advance of ₹ 61.05 Crore to MBDL, the following entries have been noted for which no disclosures have been made by BL:

Table No. 12

Particular	Amount (₹ in Crore)
Amounts advanced to MBDL in FY 2016-17	61.05
Amount received back from MBDL in FY 2016-17	19.55
Amount transferred by MBDL to M/s Mass International	41.50

157. These transactions were not disclosed in the Annual Report of BL, who also failed to obtain the approval from its Audit Committee and shareholders for these RPTs in violation of Regulations 23(2) and 23(4) of LODR Regulations and AS-18, read with Regulation 4(1)(a), (b) and Regulation 48 of LODR Regulations.

158. SCN also alleged that no tripartite agreement was entered into between BL, MBDL and Mass International for these transactions for netting off the outstanding balance between them since these transactions were non-genuine and that Noticee No.1 diverted the funds through transfer of outstanding balance to a third party and thus misrepresented financial statements of BL.

159. In their response, the Group A Noticees submitted the following: -

a. The transactions are business and financial transactions between BL and Mass International. The provisions relating to related party transactions do not arise in respect of such transactions
b. On the instructions of Mass International, payments were made to MBDL and similarly, BL also received the payment back from Mass International from MBDL.
c. The outstanding amounts of ₹41.50 Crore is ultimately reflected as payments made to Mass International in the Audited Accounts.
In any case, the entire due of ₹41.50 Crore is realized by BL in the Settlement Scheme and there is no financial loss to the Company. The confirmation of balance from Mass International for the amount of ₹41.50 Crore as on March 31, 2017 was enclosed.

160. I have considered the allegations and responses made and note that an advance of ₹ 61.05 Crore was paid by Noticee No. 1 to its related party, MBDL on August 30, 2016 for which the approval of the audit committee and its

shareholders was not obtained. It is observed in the FAR that this transaction was in addition to other transactions entered into by BL with MBDL.

161. The Noticees have not provided any documentary evidence suggesting as to why and for what purpose the advance amount of ₹ 61.05 Crore was paid by it to MBDL, a related entity. Secondly, out of ₹ 61.05 Crore, ₹ 41.50 Crore were adjusted with Mass International to tally the ledger account of MBDL. The Group A Noticees did not provide any tripartite agreement between BL, MBDL and Mass International nor any document to suggest as to why such a ledger entry was made in the account of MBDL apart from merely stating that the same was done on the instructions of Mass International. Yet no documentary evidence was provided in support of the contention of receipt of such instructions from Mass International.

162. Interestingly, Mass International is a proprietorship concern of Mr. Rammohan who was also the director of Premium Steel & Alloys Pvt Ltd, Nurture Traders Pvt Ltd and Parshvi Global Interlinks Pvt. Ltd. I have already dealt in the earlier parts of this order as to how ₹145.61 Crores were advanced by BL to Rammohan Group of entities allegedly for the purpose of purchase of items like curtain fabric and TMT bar during 2016-17, and that out of ₹145.61 Crore, ₹ 48.28 Crores were advanced to Mass International ostensibly to purchase curtain fabric but that this amount remained outstanding and was not recovered by it till September 30, 2021. Furthermore, the allegation related to payments made by BL to various vendors has also been dealt in the previous paragraphs and it has been established that the same was done for the purpose of diversion and siphoning off the funds by BL. Out of ₹48.28 Crore, ₹41.50 Crore was transferred to MBDL, i.e. the exact amount which has now been shown as recovered back from MBDL in the ledger account balance of advance to MBDL (others). No tenable justification was provided by the Group A Noticees for the said transaction except stating that the same is a separate business transaction with Mass International.

163. The Group A Noticees provided a letter from Mass International to BL dated April 17, 2017 which is stated to be the balance confirmation of ₹42,80,05,946/- as on March 31, 2017 due from Mass International.

164. The letter does not inspire confidence firstly, since it provides no justification and reasoning as to how and why any payment was made or details of the recovery schedule of the payment and thus, appears to be an afterthought. Secondly, on one hand, the Group A Noticees stated that it is a separate

business transaction of Mass International with MBDL in the normal course of business for which BL is not liable, but on the other hand, BL claimed through this letter that the amount is due from Mass International to BL. Additionally, it has also been submitted that the amount has been recovered by BL from MBDL through the settlement scheme which has also been discussed in the preceding paragraphs.

165. Regulation 23(2) of the LODR Regulations, as it existed at the relevant point of time, inter alia provided that all related party transactions shall require the prior approval of the audit committee of the listed entity. Similarly, Regulation 23(4) of the LODR Regulations provided that all material related party transactions shall require the approval of the shareholders through a resolution. The Group A Noticees have not provided any justification or any documentary evidence to explain the reason for paying the said advance to MBDL other than stating that this particular transaction is between BL and Mass International and not between BL and MBDL and that on the instructions of Mass International, payments were made to MBDL and similarly, payment was also received back from Mass International from MBDL. Yet the Group A Noticees have no documentary evidence to show as to how and when the said instructions were given by Mass International to BL, assuming that such an explanation can even be accepted.

166. I also am not inclined to agree with the submission that since the transactions are not financial transactions between BL and MBDL but only between Mass International and BL, the provisions relating to related party transactions would not apply as the same is without any basis and bereft of any legal substance. The ledger entry clearly reflects that the payments were made to MBDL, which is undisputedly a related party of BL and any transaction with a related party would trigger disclosure requirements and requirements relating to obtaining the approval from the Audit Committee and shareholders, as the case may be. Since approvals were not obtained from the Audit Committee and the shareholders by Noticee No.1 for the said transaction, the violation of Regulation 23(2) and 23(4) of the LODR Regulations stands established.

167. BL is also alleged to have not complied with para 23 of AS-18, which, inter alia, requires that If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following:

(i) the name of the transacting related party;

(ii) a description of the relationship between the parties;
(iii) a description of the nature of transactions;
(iv) volume of the transactions either as an amount or as an appropriate proportion;
(v) any other elements of the related party transactions necessary for an understanding of the financial statements;
(vi) the amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and
(vii) amounts written off or written back in the period in respect of debts due from or to related parties.

168. Once again, the Group A Noticees have submitted that since the transactions are not financial transactions between BL and MBDL and are only between BL and Mass International, the provisions relating to related party transactions do not apply.

169. In the preceding paragraphs, I have already noted that the Group A Noticees have not provided any justification or documentary evidence to buttress their argument and that mere unsubstantiated claims / submissions cannot be accepted. Additionally, the reasons discussed in the above praragraphs regarding applicability of the disclosure and approval requirements under the LODR Regulations, would equally be applicable for compliance with the Accounting Standards. Accordingly, by not disclosing these transactions with MBDL, BL failed to comply with para 23 of AS 18 and thus violated Regulation 4(1)(a), (b) and Regulation 48 of the LODR Regulations.

170. There are clearly inconsistencies galore in the submissions of BL and complete absence of any plausible justification for the transaction with MBDL even though admittedly BL has transferred the amount to MBDL through Mass International. The only conclusion that emerges is that the money was diverted and siphoned off to MBDL by BL and that to cover this fact, various entries were made in the ledger accounts in violation of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) & 4(1), 4(2) (f), (r) of SEBI (PFUTP) Regulations, 2003.

V. OTHER ALLEGATIONS

Non-recognition of income from the sale of land in the books of accounts amounting to ₹ 41.70 Crore in the FY 2018-19

171. As per the SCN, an agreement of sale dated August 16, 2016 was entered into by BL with Sankhlecha Infra Projects Private Limited ("Sankhlecha") which is a 100% subsidiary of KLP Projects Pvt Ltd, for sale of 3.336 acres of land for a consideration of ₹ 41.70 Crore. ₹22.58 Crore was received from Sankhlecha as consideration from August 2016 till the Financial Year 2021 in various tranches which was reflected in the books of accounts as "Advance towards sale". The remaining amount of ₹ 19.12 Crore was not received by BL till the date of issuance of SCN.

172. The competent authority (Greater Chennai Corporation) on October 01, 2018 issued permission to Sankhlecha to construct, which is considered equivalent to handing over possession of the land to the buyer. The construction of the building was completed in February 2020 and completion certificate from Competent Authority was received on February 12, 2020. The SCN alleged that despite transferring "all risks and rewards" to Sankhlecha on October 01, 2018, BL continued to reflect ₹ 22.58 Crore received from Sankhlecha (in various tranches from August 2016 till FY 2021), as "*Advance towards sale*" and did not recognize the remaining receivables of ₹ 19.12 Crore. Thus, BL neither recognized the receivables of ₹ 19.12 Crore nor did it recognize the amount classified as advance under the head 'advance from customers' in FY 2018-19 amounting to ₹ 22.58 Crore and thus understated the revenue of ₹ 41.70 Crore in the FY 2018-19 on the said land and misrepresented the financial statements by not complying with Ind AS-18 and thus violated Regulations 4(1)(a), (b), (c), Regulation 33(1)(a), (c) and Regulation 48 of LODR Regulations.

173. In response to these allegations, the Group A Noticees made the following submissions.

i. The financial statements of BL were prepared in accordance with IND AS notified u/s 133 of the Companies Act, 2013. Accordingly, in the financial statements for the year ended March 31, 2019, BL reported the following Accounting Policy for revenue recognition as reproduced below...:

"Revenue for real estate projects is recognised upon transfer of control and ownership of such real estate/property, as per the terms of the contracts entered into with buyers, which generally coincides with the firming of the sales contracts / agreements / other legally enforceable documents".

ii. Out of the total consideration of ₹41.70 Crore, they had yet to receive ₹19.12 Crore from the buyer. As per the Accounting Standards adopted for preparation of financial statements, the transfer of ownership is the main parameter.

iii. Under the Income Tax Act, handing over of possession is relevant for the purpose of computation of capital gains tax liability. Since the sale was not completed and the payment received was kept as "Land Advance received", the sale consideration was to be considered as Revenue only on receipt of the full consideration amount and on execution of the Sale Deed by BL since it had executed only an Agreement for Sale. The provisions of Para 14 on The Sale of Goods which deals with the Recognition of Revenue under IND AS 18 would be applicable.

iv. For the real estate companies, the applicable accounting standard is IND AS 115 with effect from 01.04.2018, the core principle of IND AS 115 is that an entity (in real estate business) would recognise Revenue to depict the transfer of goods or services to customers, which had not happened in this transaction. Relevant extracts of IND AS 115 on Revenue Recognition as in Para No.16 read with Para No. 15, are as under:

"Paragraph 16:
An entity shall recognise the consideration received from a customer as a liability until one of the events in paragraph 15 occurs or until the criteria in Paragraph 9 are subsequently met.

Paragraph 15:
When a contract with a customer does not meet the criteria in paragraph 9 and an entity receives consideration from the customer, the entity shall recognise the consideration received as revenue only when either of the following events occur:

(a) The entity has no remaining obligation to transfer goods or services to the customer and all or substantially all of the consideration promised by the customer has been received by the entity and is non-refundable.

(b) The contract has been terminated and the consideration received from the customer is non-refundable. "

v. Due to Covid and the long term impact of the same in the real estate sector, there is a challenge to sell flats, especially in the state of Tamil Nadu. Thus there was no failure on the part of BL as alleged.

174. I have considered the submissions advanced and in this regard note that the agreement for sale was executed on August 16, 2016. When the building permission was granted to the buyer on October 01, 2018, the proposed project was completed on February 12, 2020. Thus, BL transferred all the significant risks and rewards of ownership to the buyer and retained no effective control of the real estate.

175. I have also perused the Income Tax Assessment Order dated August 24, 2021 (contained in the FAR) wherein it is observed that BL had taken a similar stand before the Income Tax Authorities as is being advanced now that as and when the full payment would be received from Sankhlecha, the said income would be offered for taxation. The Income Tax authorities had also assessed this particular transaction of BL and had observed that the same appeared to be under reporting of income by BL.

176. BL had objected to the proposal of the Income Tax authority to tax the entire sale consideration of ₹ 41.70 Crore as income but, after considering the submissions made by the assessee (BL) and perusal of the agreement of sale dated August 16, 2016, the authorities had observed the following:

"7.4...It is clearly agreed between the parties herein that the purchaser (M/s Sanlekcha infra Projects Private Limited) shall be solely responsible for the construction work on the schedule 'B' property and the Vendor (M/s Binny Limited) is not in any way responsible or liable for the same...

7.5 The registration of the Agreement of sale has been made on 12.05.2017....

7.6 from the above fact, it is conclusively proved that the possession of the said land has been given by M/s Binny Limited (Assessee) to M/s Sanlekcha infra Projects Private Limited on 12.05.2017."

177. I have also noted the contention of Group A Noticees that rather than Ind AS 18, which has been applied by the forensic auditor and relied upon in the SCN, AS 115 is applicable to BL since it is a real estate company. It has been argued that the core principle of Ind AS 115 is that an entity (in the real estate business) will recognise revenue to depict the transfer of goods or services to customers, which has not happened in this transaction. In other words, they are contesting the completion of the transaction of transfer of goods or services between BL and Sankhlecha.

178. The SCN relies upon Ind AS 18 on Revenue which is, *inter alia*, applicable in accounting for Revenue arising from the sale of goods, rendering of services and the use by others of entity assets yielding interest, royalties and dividends. Para no.14 of the Ind AS 18 for sale of goods states the following:

"Revenue from the sale of goods shall be recognized when all the following conditions have been satisfied:
(a) the entity has transferred to the buyer the significant risks and rewards of ownership of the goods;
(b) the entity retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
(c) the amount of revenue can be measured reliably;
(d) it is probable that the economic benefits associated with the transaction will flow to the entity; and
(e) the costs incurred or to be incurred in respect of the transaction can be measured reliably".

179. Further, paragraph 4.2 of the Guidance Note of ICAI on Accounting for Real Estate Transactions (Revised 2012) provides that the completion of the revenue recognition process is usually identified when the following conditions are satisfied:

a) *The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;*
b) *The seller has effectively handed over possession of the real estate unit to the buyer forming part of the transaction;*

c) *No significant uncertainty exists regarding the amount of consideration that will be derived from the real estate sales; and*

d) *It is not unreasonable to expect ultimate collection of revenue from buyers."*

180. Thus, although the Group A Noticees have countered this interpretation by advancing their submissions as detailed above, the material available on record clearly suggests that the land has been transferred to Sankhlecha with all the risks and rewards. On the transferred land, Sankhlecha has also constructed the building. That being the case, the contention that transfer of goods or services has not happened is unfounded and without any basis. Since BL transferred the possession of the land along with all the risks and rewards to the buyer, the complete consideration amount of ₹ 41.70 Crore ought to have been recognised as revenue by BL. The fact that some part of the payment is yet to be received from the buyer does not imply that the entire consideration amount should not be reported. BL should have recognised ₹ 22.58 as revenue and the remaining amount of ₹ 19.12 Crore as receivables. By continuing to reflect ₹ 22.58 crores as '*advance from customers*', and not recognizing it as revenue, there was gross understating of the revenue resulting in the misrepresentation of its financial statements. The contention that Covid and its long-term impact, created challenge in selling the flats does not provide dispensation from this requirement. As far as their role in the sale of the land is concerned, their part of the contract has been performed. Thereafter whether Sankhlecha was able to sell the flats to its prospective buyers or not, should not be of any concern to BL. Thus, even if Ind AS 115 were to be considered, it is clear that BL should have recognised the consideration received as revenue. But by failing to do so, BL failed to comply with the Accounting Standards. By failing to recognise the Revenue, BL grossly understated its revenue and misrepresented its financial statements by not complying with applicable Accounting Standards and thus violated Regulations 4(1)(a), (b), (c), Regulation 33(1)(a), (c) and Regulation 48 of the LODR Regulations.

Transaction with Malgudi Township Developers for purchase of land on 27.05.2016

181. As per the SCN, BL paid ₹15 Crore to Malgudi Township Developers Ltd. (**"MTDL"**) for the purchase of land on May 27, 2016 out of the total consideration of ₹ 20 Crore. The sale was as per the Board Resolution dated May 27, 2016, reproduced as under:

"The Chairman further informed that M/s Malgudi Township Developers, Chennai has offered to sell its 50 cent of land along with building situated at No 9, Sridevikuppam Main Road, Valasaravakkam comprised in Survey No 45/3C for consideration of ₹ 20 Crore."

182. On verification of the land records from the information available in the public domain (Tamil Nadu Government Land Records - https://eservices.tn.gov.in), the FAR observed that there was no specific Survey No 45/3C in the land records. However, certain land parcels bearing similar separate survey numbers were identified as under:

i) 45/3C1 - standing in the name of "Sudarshan Trading Company Limited"
ii) 45/3C2 - standing in the name of "Mohan Breweries & Distilleries Limited"

183. Except for the Board Resolution dated May 27, 2016 mentioning advances and payment terms, no details / balance confirmations on recoveries were available from the records and no interest on such advances was accounted. SCN brought out that BL advanced money to MTDL without conducting any due diligence and did not even charge any interest on such advances which continued to remain outstanding for more than 5 years as on March 31, 2021. Thus, it is alleged that these acts on their part resulted in the diversion of funds of the shareholders to other entities and misrepresentation of its financial statements.

184. In this regard, the Group A Noticees contended the following.

i. It is common practice in the real estate industry that on many occasions, the sale and purchase of land takes place based on Power of Attorneys or Agreement to Sale. The provisions of the Transfer of Property Act adequately covers specific relief to the buyer of the property to enforce the Agreement to Sale or Power of Attorney. The case of Malgudi Township Developers is one such situation in that Malgudi Township Developers already executed the Agreement to Sale in 2006. A copy of the Sale Agreement between the vendor of the property and Malgudi Township Developers was enclosed to convey that Malgudi Township Developers had agreed to purchase the said property in Survey no.45/3C.

ii. In Tamil Nadu, the land ownership is substantially on the basis of Sale Deed/Agreement to Sale/Power of Attorney and the seller of that land is the rightful owner of the property at Survery No.45/3C and BL accordingly

entered into the agreement for purchase with the said Malgudi Township Developers.

iii. In addition to registration of the land, some land owners may also go and correct the land records with the Revenue Department of the State of Tamil Nadu, which is called as "Patta" (in the State of Tamil Nadu). While it is desirable that even Patta is obtained, on many occasions it is not generally done.

iv. In cases, where larger portions of the land are sold in parts, the Survey Number are sub divided into that many parts that are being sold. Therefore, it is not appropriate to come to any conclusion based on sub divided survey numbers.

v. Thus BL was completely justified in proposing to purchase the land from Malgudi Township Developers and accordingly paid certain advances.

185. As alleged in the SCN, BL paid ₹ 15 Crore to MTDL on May 27, 2016 for the purchase of land without any due diligence allegedly for diverting its funds. The FAR on verification of the land records available online observed that the land comprising the particular Survey Number 45/3C which BL claimed to purchase did not exist in state land records. The Group A Noticees attempted to justify the said advance payment by making an unsubstantiated statement that it was common practice in the real estate industry to purchase land on the basis of power of attorneys or Agreement to Sale. In support thereof, only an unregistered agreement of sale between one Smt. K.R. Vijaya and MTDL dated December 15, 2006 was provided to suggest that MTDL is the original owner of land and that the subsequent transfer to BL is valid in law.

186. With regard to the above allegations and submissions, I find it pertinent to refer to my findings given above in 'Part III' in relation to the issue of sale or purchase of land on the basis of only an agreement to sale. In the present case also, the agreement to sale submitted by the Group A Noticees was not even registered. More so, the obvious allegation that could be levelled against BL is that it failed to exercise due diligence and act in a bona fide manner in the matter of the payment of advance of ₹ 15 Crore for the purchase of land by entering into the transaction without really going into the ownership of land by MTDL.

187. Group A Noticees have not been able to submit any documentary evidence to exhibit the due diligence done on their part or anything to establish the bona

fide of the transaction. They have claimed that the sale may happen through power of attorney/agreement to sale and hence not provided any registered document. There is no dispute to the finding that the sale consideration of ₹15 Crore remained outstanding for more than 5 years and no interest was charged on the advance at the time of SCN and continues to remain outstanding as admitted by BL itself. The explanation provided by Group A Noticees regarding the absence of particular survey number (i.e., 45/3C, which has been highlighted in the FAR) in the land records clearly appears to be an afterthought and suggests lack of due diligence on the part of the BL.

188. These facts lead to the inevitable conclusion that the advance was paid by Noticee No. 1 to MTDL only for the purpose of diversion / siphoning of the funds belonging to BL which has resulted in misrepresentation of the financial statements of BL.

VI. ROLE OF THE NOTICEES

Role of Noticee No. 1 (BL)

189. In the SCN BL is alleged to have diverted the shareholders' funds, misrepresented its financial statements by showing the diverted funds as outstanding in its books of accounts and resultantly failed to present a true and fair picture of its financial statements and thus failed to act in the interest of its shareholders. On account of these acts, BL is alleged to have violated Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d), Regulations 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations, Clause 49(VII) of the erstwhile Listing Agreement read with Regulation 103 of the LODR Regulations, Section 21 of SCRA, Regulations 23(2), 23(4), 23(8), Regulations 4(1)(a), (b), (c), (g), (h), (j), read with Regulation 33(1)(a), (c) and Regulation 48 of the LODR Regulations.

190. BL, in its reply dated February 12, 2024, *inter alia*, submitted that PFUTP Regulations are intent based regulations and a mere averment of their violation does not establish the charge of fraud. It was argued that in order to establish the charges of violations of PFUTP Regulations, the SCN ought to have demonstrated acts in 'relation to dealing in securities', that the foundation of such allegations can only be premised upon price impact, volume, etc. of the shares of the concerned company and that only generic allegations have been levelled rather than the ingredients of PFUTP Regulations. It was also submitted that the company was not involved in any price manipulation and that

price of its scrip has only moved in line with market sentiments only. Reliance was placed on several orders[11] of SEBI and while referring to the Judgement of the Hon'ble Supreme Court in the matter of *Mary Pushpam Vs Telvi Curushmary & Ors* (2024 INSC 8), it was submitted that the bench of equal strength has to follow the decisions laid down by the other coequal bench.

191. I have already discussed in the preceding paragraphs that by indulging in the acts described earlier, BL siphoned off the money of the company and thus failed to provide a true and fair picture of its financial statements by misrepresenting its financial statements. Such fraudulent acts and practices and the use of various manipulative and deceptive devices are meant to deceive not only its shareholders but also affect the interest of the investors trading in the securities market.

192. In the above context, I draw reference to the following observations of Hon'ble Supreme Court in the matter of *N Narayanan Vs Adjudicating Officer*[12]:

> *"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*

[11] In the matter of Tatia Global Venture Limited (Order dated May 28, 2021)
In the matter of Inter Globe Finance Limited (Order dated June 15, 2021)
In the matter of JMD Ventures Limited (Order dated September 14, 2021)
In the matter of V.B Industries Limited (Order dated July 08, 2021)
In the matter of ARSS Infrastructure Projects Limited (Order dated November 25, 2021)
In the matter of Iris Media works Limited (November 17, 2021)
In the matter of Venmax Drugs & Pharmaceuticals Limited (Order dated July 14, 2021)
In the matter of Twillight Litaka Pharma Limited (Order dated February 28, 2019)
[12] AIR 2013 SC 3191

"creation of artificiality'. The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rice 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.

38... 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."

193. Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3 (b), (c) and (d) of the PFUTP Regulations, *inter alia*, prohibit, buying, selling, dealing in securities in a fraudulent manner, employment of any manipulative/ deceptive device, scheme or artifice to defraud in connection with dealing in securities, engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Regulation 4(1) of the PFUTP Regulations prohibits manipulative, fraudulent or unfair trade practices relating to securities market. The term 'fraud' has been defined in Regulation 2(1)(c) of PFUTP Regulations, and its definition is 'inclusive'. The expressions 'unfair trade practices' and 'manipulative' may not be defined in the PFUTP Regulations but have been illustrated and their scope enlarged upon by different Courts in several judgments. The Explanation to Regulation 4(1) of the PFUTP Regulations not only includes the element of price manipulation which is explicit but also covers price manipulation which can be implied by an act or omission or conduct of the listed company.

194. I also note that the acts mentioned in the Explanation to Regulation 4(1) were already covered under Regulation 4(1) as being fraudulent as well as unfair trade practices. What was earlier implicit has now been made explicit by adding the 'Explanation' to Regulation 4(1) of PFUTP Regulations with effect from October 19, 2020. The aforesaid amendment, though made effective introduced on October 19, 2020, does not change the ambit of Regulation 4(1) rather it clarifies that acts of diversion/ mis-utilisation/ siphoning of funds of a listed company or employment of any device, scheme or artifice to manipulate the books of accounts or financial statements of such company, that would directly or indirectly manipulate the price of the securities of that company, thereby

inducing the investors to deal in securities or to remain invested in the securities of that company, are undoubtedly fraudulent and amount to unfair trade practices relating to the securities market, which are covered by the rigor of Regulation 4(1) of the PFUTP Regulations.

195. On the basis of such understanding, any act of concealment of information related to mis-utilization of funds by a listed company, which, if disclosed, would have the potential to impact the share price of that listed company, is undoubtedly fraudulent and an unfair trade practice relating to the securities market and covered under Explanation to Regulation 4(1) of the PFUTP Regulations. In view of the findings in the preceding paragraphs, it is clear that BL misrepresented its financial statements which amounts to fraud and an unfair trade practice and makes it liable for the violation of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d) and 4(1) of the PFUTP Regulations.

196. On the issue of the consequences of BL not making fair and true disclosure or concealing material information from the shareholders or utilizing the resources of the listed company for purposes other than the objects as shared and disclosed to the shareholders, the Hon'ble SAT in the matter of *V. Natarajan Vs. SEBI*[13] (Appeal No. 104 of 2011) held as follows.

> *"...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*

[13] MANU/SB/0156/2011

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. Having regard to the nature of the serious market violation committed by the appellant, the Board was justified in keeping him out of the market for a period of three years and not allowing him to be a director on any listed company for that period."

197. In this backdrop, on account of concealment of information related to mis-utilization of the funds by a listed company and the failure to make true and correct disclosure in the books of account in a transparent and fair manner, the violation of Regulation 4(2)(f), (k) and (r) of the PFUTP Regulations stands established against BL i.e. Noticee no. 1.

198. I have noted the reliance placed on various Orders passed by SEBI. A detailed reading of the findings contained therein, I am of the considered opinion that except for the Order passed in the matter of *Twilight Litaka Pharma Ltd,* the remaining Orders were passed pursuant to the receipt of a letter from the Ministry of Corporate Affairs (MCA) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and Regulations.

199. Forensic audit of these companies was ordered, the scope of audit was to *inter alia* examine the possible misrepresentation including their financials and/or businesses and/or possible violation of the LODR Regulations. Based on the financial audit report, Show Cause Notice(s) were issued to the companies for allegations related to violation of the LODR Regulations and PFUTP Regulations. I note that the competent authority in these matters observed that the scope of work of the financial audit report was mainly limited to examination of possible violation of the LODR Regulations. In these matters the Investigating Authorities, after examining the Forensic Audit report, incorporated these findings as part of the Show cause Notice(s) and also included allegations of

violation of provisions of Section 12A(a), (b) and (c) of the SEBI Act and various provisions of the PFUTP Regulations.

200. It is noted that while inserting the allegations of the PFUTP violations, no additional facts or findings were provided. Basis thereof, the competent authority *inter alia* observed that the non-compliance of the provisions of the LODR Regulations or violation of related party transaction do not automatically attract provisions of the PFUTP Regulations and thus, exonerated the entities from the charge of fraud.

201. In the matter of Twilight Litaka Pharma Ltd, the competent authority exonerated the entity on the basis of absence of sufficient material either in the forensic audit report or in the investigation report to support the allegation of financial irregularity or manipulation of financial statements. In the present case, the terms of reference of the forensic auditor were to, *inter alia,* conduct forensic audit of the consolidated financial statements of BL for the Investigation Period with a special focus on the misrepresentation of financial statements and siphoning/diversion of funds and to look into the possible violation of the provisions of the PFUTP Regulations. It has also been detailed as to how the acts and omissions of BL amount to violation of the PFUTP Regulations.

202. Thus, the cases on which reliance is sought to be placed by Noticee No. 1 are clearly distinguishable from the present case and accordingly, the related contentions are rejected.

203. Regulation 4 of the LODR Regulations lays down principles governing disclosures and obligations of a listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provide that the listed entity shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a)Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b)The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c)The listed entity shall refrain from misrepresentation and ensure that the information provided to recognized stock exchange(s) and investors is not misleading.

...

...

(g)The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h)The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

...

(j)Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

204. In the present proceedings, considering that violation of Clause 49(VII) of the erstwhile Listing Agreement read with Regulation 103 of LODR Regulations and Regulation 48, 23(2), 23(4), 23(8), 33(1)(a), 33(1)(c) and 48 of LODR Regulations has already been established against BL, it stands to reason that it failed to act in compliance with the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, the violation of Regulation 4(1)(a), (b), (c), (g), (h), (j) of the LODR Regulations also stands established.

ROLE OF THE DIRECTORS

205. Before dealing with the role of the directors of BL, i.e. Noticees no. 2, 3, 4 and 5, I note that the allegations levelled against them are linked to the allegations levelled against BL (the Company/Noticee No. 1) which have been dealt within the preceding paras.

206. Noticees. 2 and 3 adopted the reply filed by BL and requested for treating the reply of BL as incorporated by reference in their respective replies. Noticee No. 2 separately filed his additional submissions vide letter dated February 13, 2024, while Noticee No. 4 also separately filed his additional submissions vide emails dated February 02, 2024 and February 20, 2024. Noticee No. 5 filed a separate reply which has been discussed later in the Order. Thus, for Noticees No. 2, 3 and 4, my findings against the Noticee No. 1 would *mutatis mutandis*

apply, unless a different interpretation would arise from the responses of these Noticees.

207. For the sake of brevity and clarity, the allegations which have already been discussed are not being repeated. However, their individual roles with respect to the allegations is examined hereunder.

Role of Noticees No. 2 and 3

208. The SCN had detailed the terms of Noticee No. 2 and 3 on the Board of the Company and brought out that during the entire investigation period, Noticees 2 and 3 being at the helm of the affairs of the Company, were aware about the day-to-day operations of the Company and yet had undertaken the transactions, which were allegedly not in the interest of shareholders in violation of various regulatory requirements.

Table No. 13

S. No.	Name of the Director	Category	Original Date of Appointment	Date of appointment at current designation	Date of Cessation
1	Mr. M Nanadagopal	Promoter & Executive Chairman	March 23, 1996	October 03, 2013	Not applicable
2	Mr. Arvind Nandagopal	Promoter & Managing Director	March 25, 2005	October 03, 2013	Not applicable

209. As mentioned earlier, Noticees 2 and 3 are also the common directors in MBDL, a related party of the Company. As members of the Board of Directors, they misused the shareholders' funds, misrepresented the financials and diverted the funds and thus violated Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations read with Sections 12A(a), (b),(c) of SEBI Act and Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2),(6),(7), 4(2)(f)(iii)(1),(3),(6),(12) and Regulation 33(2)(b), Regulation 48 of LODR Regulations read with Section 27 of the SEBI Act. The fact, that advances were made to related party without taking approval from the shareholders and the Audit Committee, resulted in the violation of Clause 49(VII) of the erstwhile

Listing Agreement read with Regulation 103 of LODR Regulations, Section 21 of SCRA, Regulations 23(2), 23(4) and 23(8) of LODR Regulations.

210. It is also observed that Noticee No. 3 certified in the Annual Reports of the Company that the financial statements present a true and fair view of the Company's affairs and in compliance with the existing accounting standards, applicable laws and regulations which as earlier detailed was a complete falsehood and thus is alleged to have violated Clause 49(V), Clause 49(IX) of the erstwhile Listing Agreement, Regulation 17(8) of LODR Regulations.

211. Noticee No. 3 was also a member of the Audit Committee during the financial years 2014-15 to 2017-18. The details of the meetings attended by the Noticee No. 3 are provided below. During the meetings held on August 10, 2016 and February 11, 2017, the RPTs entered by the BL with MBDL, for the purchase of the windmill, 12.43 acres of land and 7.07 acres of land as were discussed earlier, the said Noticee did not exercise any due diligence to determine the genuineness of these transactions

Table No. 14

Financial year	Date of meetings attended
2015-16	May 27, 2015
	August 12, 2015
	November 04, 2015
	February 10, 2016
2016-17	May 17, 2016
	August 10, 2016
	February 11, 2017
2017-18	September 06, 2017

212. As has been already detailed, the various violations alleged against the Noticees 2 and 3 are connected with the violations alleged against Noticee No. 1 and the allegations regarding diversion of its funds and misrepresentation in its financial statements have already been established.

213. In this context, it is relevant to refer to Section 27 of the SEBI Act, which provides that where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the

business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Section 27 was amended on March 08, 2019 and the word 'offence' was substituted by the word contravention'. Noticees 2 and 3 are guilty of violating various provisions of the LODR Regulations and PFUTP Regulations prior to March 08, 2019. This violation continued even beyond March 08, 2019. Hence, Section 27 is attracted in their case.

214. Noticee No. 2, in his reply dated February 10, 2024, has mainly reiterated the submissions earlier filed by Noticee No. 1 which were adopted by him. Further, in his reply dated February 10, 2024, Noticee No. 2 provided his brief profile, his history of association with MBDL and how he came to be associated with the Company and his age and health issues. He also alleged non-receipt of a copy of any of the complaints received prior to the issue of the SCN or Annexures relied upon in the SCN and called for copies of complaints to be provided to him in terms of the principles of natural justice. He also submitted that he was on the board of the Company as the Executive Chairman from March 23, 1996 to October 03, 2013 and during this period, he was not the Managing Director but only an Executive Chairman. It was submitted that when there is a Managing Director in a Company, the day-to-day operations are managed by him while the Executive Chairman is kept informed of only non-routine matters. On the said basis, he claimed ignorance about the alleged violations and reports by Auditors as well as findings in the audit report.

215. I have considered all these contentions raised by the Noticee No. 2 and shall deal with them pointwise. The contention of not being provided with copies of complaints and annexures to the SCN is factually incorrect. As earlier detailed, vide their letter/email dated April 12, 2023, Group A Noticees had sought for copies of the 'anonymous complaints and other complaints' filed in the matter and additional time to file a comprehensive reply in the matter. In response, vide email dated April 20, 2023, all the complaints filed against them in the matter were provided as also the documents relied upon in the SCN and relevant for the proceedings and more than sufficient opportunities were provided to them to submit their responses to the point of them abusing the principles of natural justice.

216. Company being a juristic person cannot act on its own. Vicarious liability is imposed upon every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of its company. A company acts through its directors and other key

managerial persons who manage its day-to-day functions. The directors of a company, who manage the affairs of a company, cannot evade accountability in respect of irregularities found against a company. Noticees 2 and 3 are the promoters of the Company and are holding a position in the Board of Company from March 23, 1996 and March 25, 2005, respectively. As seen from the Annual Report of BL for the Financial Year 2022-23 filed on December 09, 2023, they were holding the position of the Executive Chairman and Managing Director of the Company. Their respective positions in the Company allowed them access and knowledge of the day-to-day affairs and operations of the Company. A mere statement by Noticee No. 2 of his non-involvement in the day-to-day affairs of the Company simply on the ground of age or health issues, would not absolve him from his liabilities when the material available on record clearly establishes the actions of the company and by virtue of his position in the company and his role in the decision making of the company. More pertinently Noticees 2 and 3 are also the common directors in MBDL, the related party of the Company, to which majority of its funds were diverted. Thus, independent of the provisions contained in Section 27 of the SEBI Act, the violations committed by Noticee No. 1 are clearly imputable to Noticees 2 and 3 who under general principles of corporate law, also would be vicariously liable for the acts of the Company, since they were the persons managing the affairs of the Company. Accordingly, I am of view that Noticees 2 and 3 have violated Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Sections 12A(a), (b), (c) of the SEBI Act. By advancing funds to the related party without taking the approval of the shareholders and the Audit Committee, Noticees 2 and 3 have also violated Clause 49(VII) of the erstwhile Listing Agreement read with Regulation 103 of LODR Regulations and Regulations 23(2), 23(4), 23(8) of the LODR Regulations. In addition to the above, Sections 128 and 129 of the Companies Act also casts an obligation, *inter alia*, on the Managing Director, Whole Time Director in charge of finance and CFO to prepare and maintain the books of accounts and financial statements of a company, which give a true and fair view of its state of affairs.

217. Other than the violations committed by Noticee No. 3 as discussed above, certain specific violations are also alleged against him that being the Managing Director of the Company, he had falsely certified in the Annual Reports of the Company that the financial statements present a true and fair view of the Company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

218. The SCN brought out that Noticee No. 3 was the member of the Audit Committee and attended its various meetings. In the meeting of Audit Committee dated February 10, 2016, the consent for entering into the transaction with MBDL (its related party) for the purchase of 12.43 acres of land was accorded by the Committee and advance was paid to MBDL. Noticee No. 3 did not exercise any due diligence to verify the genuineness of the transaction and thus failed to discharge his duties as a member of the Audit Committee and hence, I am of the view that the Noticee No. 3 has violated Clause 49(III)(D) of the erstwhile Listing Agreement and Regulation 18(3) read with Part C of Schedule II of LODR Regulations.

219. Regulation 33(2)(a) provides that the Chief Executive Officer and Chief Financial Officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

220. As has been established, the Company diverted its funds and thus its financial statements did not reflect the true and fair view of its affairs. By issuing false and misleading compliance certificate, Noticee No.3 violated Clause 49(V) of listing agreement read with SEBI Circular dated October 29, 2004 and Clause 49(IX) of the Listing Agreement read with SEBI Circular dated April 17, 2014 and Regulation 17(8) of the LODR Regulations and was in non-compliance with Regulation 33(2)(a) of the LODR Regulations.

221. I also note that Regulations 4(1) of the LODR Regulations provides for principles governing disclosure and obligations to be complied with by a listed entity. Regulation 4(2) of the LODR Regulations *inter alia* provides that corporate governance provisions as specified in Chapter IV shall be implemented in such a manner by the listed entity so as to achieve the objectives of the principles as mentioned thereunder.

222. In this regard, Regulation 4(2)(f)(ii) specially stipulates the responsibilities of the Board of Directors and its key functions. The various provisions of Regulation 4(2) are as under.

Regulation 4. (2) (f) Responsibilities of the Board of Directors:

(i) Disclosure of information:

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same

time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) Key functions of the Board of Directors –

(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(iii) Other responsibilities:

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders

(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

223. None of these responsibilities were complied with by Noticees 2 and 3 and instead they failed to discharge the duties and responsibilities in accordance with the LODR Regulations in violation of various provisions of the LODR Regulations. I am thus of the view that Noticee No. 2 and 3 have also violated Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii)(1), (3), (6), (12) of the LODR Regulations.

Role of Noticee No. 4,

224. The SCN has recorded that Noticee No. 4 was on the Board of the Company as a Non-Executive Director from November 04, 2013 to March 31, 2015. He is also the elder son of Noticee No. 2 and also a promoter of the Company till March 31, 2015. The following table details the attendance of Noticee No. 4 at the board meetings of the Company, during the financial years 2013-14 and 2014-15:

Table No. 15

Financial year	Number of board meetings held	Number of board meetings attended	Date of meetings attended
2013-14	9	1	November 14, 2013
2014-15	10	3	June 12, 2014, August14, 2014 and November 14, 2014

225. During his tenure as a member of Board of Directors, the Company had entered into the following transactions:
   a) Advancement of ₹ 140 Crore during the period December 05, 2014 to June 24, 2015, for the purchase of 7.07 acres of land by BL.
   b) Advancement of ₹ 60 Crore, during the period October 18, 2013 to January 23, 2015, for the purchase of 37.2 MW wind farm by BL.
   c) Advancement of ₹ 25.23 Crore to Sun Bright Designers Pvt Ltd, during 2014-15, for purchase of curtain fabric.

226. A brief summary of the proceedings of the meetings, attended by Noticee No. 4, as stated in the SCN is as under:

Table No. 16

Date of the meeting	Record of proceeding
June 12, 2014	Approval to work out the modalities and evaluate the proposal for acquisition of 10MW wind farm/10 MW solar power unit from third party along with the proposal to buy 37.2 MW from a related party.
August 14, 2014	Fresh valuation report to be obtained from an independent valuer for 37.2 MW wind farm to be purchased from MBDL

November 14, 2014	Company had decided to pay an advance of 25% to MBDL, in addition to earlier advance of 25% viz ₹ 30 Crore, already paid by the Company. It was done on the condition that if the transaction is not completed, the entire advance would be refunded by MBDL to the Company.

227. Noticee No. 4 not only attended the Board meetings of the Company wherein the decision was taken to advance funds to MBDL for the 37.2 MW wind farm but he was also a Promoter and Non-Executive Director of the Company as well as a director in MBDL. Thus, he could not be unaware of the RPTs approved by the Board. ₹ 4.25 Crore was advanced by the Company to MBDL before May 03, 2014 i.e. date of taking in-principle approval, from the Board of Directors, for making advances to buy such wind farm

228. Thus, by not taking approval from its shareholders for the aforediscussed material RPTs, Noticee No. 4 is alleged to have failed to comply with Clause 49(VII) of the erstwhile listing agreement read with Regulation 103 of LODR Regulations and Section 21 of SCRA. Further, 50% of advances made by BL during his tenure which were nothing but diversion of funds, in violation of Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Sections 12A(a), (b), (c) of SEBI Act and Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6),(7), 4(2)(f)(iii)(1),(3),(6),(12) of LODR Regulations read with Section 27 of the SEBI Act.

229. Noticee No. 4 had earlier adopted the reply filed by BL and had made common submissions with other Group A Noticees. The essence of the defence earlier put forth by him was that when the payments were made to MBDL and another parties during the financial year 2014-15, he had ceased to be a Director as of 31st March 2015. The payments to MBDL and another party were just a few months prior to his cessation as a Director of the Company.

230. Further, in his reply dated February 01, 2024, Noticee No. 4 sought to delink himself from the common replies filed on behalf of the remaining Group A Noticees (earlier adopted by him) and made separate submissions (some of them reiterations), *inter alia,* stating the following:

    a. He was appointed as a Director of Company on March 25, 2005 and resigned on April 30, 2009.
    b. He was again appointed as Non-Executive Director on November 04, 2013 and resigned on March 31, 2015.

c. After resigning, he gifted all his shareholding i.e. 8,10,800 shares of Binny to his father, Noticee No. 2 and relevant disclosures were made to the stock exchange (BSE) in this regard.
d. In respect of the alleged violation of the PFUTP Regulations read with Section 12A(a), (b), (c) of SEBI Act, since he had not traded in the shares of Binny except gift of shares to his father, violation of PFUTP does not arise at all. SEBI's Order dated May 28, 2021 in the matter of Tatia Global venture Limited was to be referred to in this regard.
e. The alleged RPT with MBDL as mentioned in the SCN (advancement of ₹140 Crores during the period December 05, 2014 to June 24, 2015 and the advancement of ₹ 60 Crores during the period from October 18, 2013 to January 23, 2015 were duly reported as RPT in the Annual Report of the Company, the relevant form AOC-2 was also filed. Thus, there was proper disclosures in respect of the RPTs. For the purchase of 7.07 acres of land, special resolution was also passed on March 31, 2015 by special Ballot.
f. Advance of ₹ 25.23 crores was made to Sun Bright which is not a related party.
g. In the 45th and 46th AGM, the Annual Reports of the year 2013-2014 and 2014-2015 were approved.
h. BSE had asked for certain clarifications/information pertaining to the agreement signed by the Company with a real estate firm; SPR Group and a detailed response was provided by the Company to BSE, which indicates that surveillance and supervision department of BSE had proper monitoring and controlling mechanism at the relevant time.
i. During his tenure of directorship, Mr. P.K. Sundaresan was the CFO and Company Secretary who retired on June 30, 2014 but no adverse inferences are found in the SCN about his role as a CFO and Company Secretary of BL.
j. The Order dated September 24, 2018 passed by the AO, SEBI in respect of Tiger Farms Private Limited in the matter of Binny Ltd needed to be relied upon.
k. As a non-executive director, he was not involved in the day-to-day operations of BL and had not earned any monetary benefit in respect of his directorship. Thus, no adverse inference ought to be drawn against him. Reliance was placed on various Judgements/orders passed by the Hon'ble Supreme Court, SAT, WTM and AO of SEBI.
l. His name is not mentioned in the anonymous complaints and other complaints received against BL.

m. Since he was the Non-Executive Director from November 04, 2013 to March 31, 2015 and since LODR Regulations, 2015 came into force w.e.f December 01, 2015, the violation of LODR Regulations are not attracted against him.

n. In Section 27 of the SEBI Act, the word 'offence' was substituted with the word 'contravention' w.e.f March 08, 2019. The present case is about contravention, if any, by the Company. In support, the Order dated December 04, 2023 passed by SAT in the matter of Reliance Industries Ltd. vs SEBI was referred.

o. Section 21 of the SCRA pertains to compliance with the conditions of the listing agreement with the Stock Exchanges which are executed between listed company and Stock exchange and thus, it is only applicable to the Company.There are no findings in the SCN about any inducement made to existing and/or prospective investor to trade in the shares of BL. The charge of fraud should be made only on the basis of cogent evidence pertaining to dealing in securities, inducement to deal in securities, impact on price or volume etc. The Order dated June 19, 2013 of SAT in the matter of Ess Ess Intermediaries Vs SEBI was referred.

p. Vide SEBI Circular dated November 18, 2013, the stock exchange had the responsibility to verify the adequateness of disclosures made and hence there was no merit in the allegation of violation of clause 49(VII) of the listing agreement.

q. The observations made in respect of 4 board meetings attended by him in the FY 2013-2014 and 2014-2015 were also provided.

231. The violations alleged against Noticee No. 4 are connected with the violations alleged against the Noticee No. 1, which have already been dealt with in detail. Thus, the findings therein are not being repeated to avoid reiteration. In so far as some of the points filed by the Noticee No. 4 are considered, it is required to be examined as to whether during his tenure as Non-Executive Director and promoter, he had any role in the acts committed by Noticee No.1.

232. I have perused the minutes of the Board meetings attended by Noticee No. 4 and note that in the Board meetings dated June 12, 2014, August 14, 2014 and November 14, 2014 held in year 2014-2015, the proposal related to purchase of 37.2 MW wind farm from MBDL was discussed and reviewed but was not approved by the Board of Directors. It is also recorded that steps were being taken by BL to obtain the valuation report from an independent valuer. Thus, it is pertinent to highlight that while the Board had not approved the said project and it was being deliberated and reviewed, BL had already paid an advance

amount of ₹ 60 Crore to MBDL. It has been recorded in the minutes of the Board meeting dated November 14, 2014 that for the proposal of buying 37.2 MW wind farm from MBDL, the consideration offered was ₹120 Crore and the Board had approved the proposal to pay 50% payment amounting to ₹ 60 Crore as advance to MBDL. It is also recorded in the minutes of Board meeting dated November 14, 2014 that BL had initiated due diligence, independent valuation and feasibility reports of the project and the same was to be placed before the Board once it was ready and the consideration paid i.e., ₹60 Crores was based on the offer made by MBDL and not on the basis of the valuation report, which still was not available. It is also noted that BL had initially paid a sum of ₹ 30 Crores as advance and on the insistence of MBDL, paid another ₹ 30 Crores as advance which was approved on the condition that if the transaction is not consummated, the entire advance amount would be refunded by MBDL.

233. Thus, I note that Noticee No. 4 (being the Non-Executive Director of BL and the Director of MBDL) was aware that the advances were being paid to MBDL for the purchase of 37.2 MW wind farm without proper due diligence and without the supporting documents. When such advances were paid by Noticee No. 1 to MBDL, Noticee No. 4 was also the director of MBDL and was also the common link between MBDL and the Company. This fact has not been denied by Noticee No. 4 and instead, it has been stated that these transactions were duly reported in the Annual Reports of the Company and that adequate disclosures were made. While these transactions were duly reported and other procedural requirements were complied with, the fact remains that these transactions were done without due diligence and with the knowledge and consent of Noticee No. 4.

234. I have perused the order relied upon by Noticee No. 4 i.e. Order dated September 24, 2018 passed by AO, SEBI in respect of *Tiger Farms Private Limited;* a promoter group entity of Binny Ltd, against whom SEBI had initiated proceedings for the alleged violation of Regulation 13(2A) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 as it was noted that Noticee in that case, belonging to the promoter group, had failed to submit the requisite disclosures. This is not the issue in the present case since the facts of the said case are distinctly distinguishable, the findings of the AO therein are not relevant for the present proceedings.

235. Noticee No. 4 has also stated that BSE's surveillance and supervision department had proper monitoring and controlling mechanism at the relevant time. He also stated that during his tenure of directorship, Mr. P.K. Sundaresan

was the CFO and Company Secretary and yet no adverse inferences are found in the SCN against him.

236. I note that the present proceedings have been proposed and initiated against the Noticees (including Noticee No. 4) based on allegations against each of them as have been clearly brought out in the SCN . As a quasi-judicial authority, the issue before me is to adjudicate the gravity of the allegations contained in the SCN and arrive at a just and fair finding. Noticee No. 4 has been provided with ample opportunities to defend his case and he has also been supplied with all the required documents based on which the alleged violations have been levelled against him. Thus, a reference to other facts highlighted by him would not absolve him of the liabilities, when the violations levelled against him stand established.

237. It remains undisputed that he was a Non-Executive Director of BL from November 04, 2013 to March 31, 2015 and also its promoter. I note that Section 149(12) of the Companies Act, 2013 *inter alia* provides that an independent director or a non-executive director not being promoter or key managerial personnel shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently. The Companies Act does not make any distinction between executive directors and non-executive directors (who is also a promoter or key managerial personnel) for the purpose of attributing any liability in respect of acts of omission or commission by a company. Only in respect of Independent Directors and/or non-executive director (not being promoter or key managerial personnel), can liability be imposed if the acts and omissions committed by the Company had occurred with their knowledge, attributable through Board processes, and with their consent or connivance or where they had not acted diligently. The same position has also been clarified by the Ministry of Corporate Affairs vide its Circular dated March 02, 2020.

238. In the present case, not only was Noticee No. 4 the promoter and non-executive director of BL during November 04, 2013 to March 31, 2015, when various RPTs were undertaken with MBDL, but it has also been established that these transactions, particularly the transaction for purchase of 37.2 MW wind farm by Company from MBDL, was done without due diligence and with the knowledge and consent of Noticee No. 4. Thus, Noticee No. 4 cannot escape his liability in terms of the provisions of the Companies Act as well as on account of lack of

due diligence on his part and involvement in the decision making in relation to the transfer of funds to MBDL which has already been established.

239. With respect to the alleged violation of Clause 49(VII) of the erstwhile listing agreement, the same has been denied by Noticee No. 4 citing the reason that vide SEBI Circular dated November 18, 2013, the stock exchange had the responsibility to verify the adequateness of the disclosures made. It has already been established that the said transaction was never approved by the shareholders of BL and that ultimately the said transaction to purchase the wind mill farm was cancelled. Thus, the requisite approvals of the Audit Committee and shareholders in terms of clause 49 (VII) of the erstwhile listing agreement were never obtained by the Company before payment of advances to MBDL. For the said RPT, the role of Noticee No. 4 has already been discussed in the preceding paragraphs. Thus, in addition to the Company, Noticees 2, 3 and 4 shall also be responsible for the non-compliance with clause 49 (VII) of the erstwhile listing agreement. Noticee No. 4 denying his responsibility citing the SEBI Circular dated November 18, 2013 is misplaced because the requirement of seeking audit committee's and shareholders' approval is independent of the role assigned to the stock exchanges vide the above SEBI Circular, which is to monitor the adequacy of the disclosures, if any, made by the companies in relation to clause 49 of the listing agreement. Noticee No. 4 cannot escape his liability merely on this basis as his submissions are totally lacking in merit.

240. However, I agree with his contention that since he resigned as a non-executive director on March 31, 2015 i.e. before the notification of the LODR Regulations, the violation of 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6),(7), 4(2)(f)(iii)(1),(3),(6),(12) of LODR Regulations are not attracted in his case. Accordingly, the charges against him for violations of provisions of LODR Regulations are dropped.

241. I have perused the Judgements/orders cited by Noticee No. 4 to contend that during his tenure as Non-Executive Director and promoter of the Company, he was not involved in the day-to-day functioning of the Company and thus no adverse inference ought to be drawn against him. I note that the underlying theme and crux in these Judgements/orders is that mere directorship in any Company does not make the entity vicariously liable for the violations committed by the Company and that the liability arises only if the person is in charge of and responsible for the conduct of the business at the relevant time. I also note that in the matter of *Amazan Capital Ltd* (also cited by the Noticee No. 4) it has been held that liability of a director should flow out of knowledge and consent or connivance, whether explicit or implied, in the alleged act.

242. In thus contextual background, I note that in the preceding paragraphs, the role and involvement of Noticee No. 4 regarding the RPTs with MBDL stand established. It is clear that the transaction was done with his knowledge, and his consent since he was also the director in MBDL and he was also the promoter of the Company till March 31, 2015. Thus, the contention that being the non-executive director, no adverse inference can be drawn against him is misplaced and he would be liable for the violations committed by Noticee No. 1 to the extent of his involvement discussed hereinabove.

243. The argument that simply on account of the fact that Noticee No. 4 has not traded in the shares of BL except gifting of shares to his father or that no inducement was made to existing and/or prospective investors to trade in the shares of BL, the violation of PFUTP Regulations does not arise at all, lacks grounds as does the contention that the charge under the PFUTP Regulations would only apply on cogent evidence pertaining to dealings in securities, inducement to deal in securities, impact on price or volume, etc. This aspect has been extensively dealt with as a general principle.

244. I have already detailed above as to how the diversion and siphoning of funds took place which constitutes fraud under the PFUTP Regulations and that on account of the same the provisions of Section 12A(a), (b) and (c) of SEBI Act and Regulation 3(b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP regulations would be attracted in case of Noticee No.1. The same principle is equally applicable to Noticee No. 4 and thus his contention in this regard is misplaced and rejected.

Role of Noticee No. 5

245. The SCN alleges that the Noticee No. 5 was on the Board of the Company as Promoter and Non-Executive Director since January 11, 1988 till August 29, 2021 i.e for more than 23 years and have been aware of all the decisions including the non-material ones taken by BL and the rationale behind the same. The SCN also brought out the fact that being a member of the Audit Committee, Noticee No. 5 attended 17 Audit Committee meetings and that during these meetings, various decisions on the related party transactions with MBDL were taken by BL. Accordingly, Noticee No. 5 was alleged to have failed to exercise due diligence or raise concerns when such transactions were entered into between BL and MBDL thereby acting against the interest of the shareholders.

246. In his reply dated January 04, 2023 and his email/letter dated March 27, 2023, Noticee No. 5 summarised his submissions and denied all the allegations levelled against him. The gist of the submissions is as follows:

i. Contrary to the allegation contained in the SCN that he had started to dissent only from the year 2018, he had in the Audit Committee Meeting and the Board Meeting held on March 27, 2015 dissented against a Scheme of Arrangement proposed between BL and MBDL, whereby the cumulative redeemable preference shares issued by BL to MBDL was envisaged to be converted to high interest bearing non-convertible debentures. This action would have been highly detrimental to the interest of BL and the minority shareholders and hence was dissented to by him.

ii. The purchase of 12.43 acres of land by BL from MBDL for a sum of ₹300 Crore was not even in the agenda of the Audit Committee and the Board Meeting held on 10.02.2016 and he had no idea that such a large-scale related party transaction would be brought as a Table item and that the Board consisting of independent directors would approve the same. As soon as it came to his knowledge, when the minutes of the Board Meeting of February 10, 2016 were circulated, he had diligently objected to the transaction and suggested postponement of the item to the next meeting as it involved huge sums of money. His dissent was overruled and his objections were ignored and a very important decision to overrule his objection was endorsed by all the other directors including the independent directors and the minutes were also approved in the Board Meeting held on February 17, 2016.

iii. In the Board Meeting held on November 08, 2016, wherein the transaction of setting up a windmill project by RRB was considered by the Board, he had raised questions regarding the transaction, especially on the financial position of the said RRB and the viability of the said project to protect the interest of BL, yet the Board gave scant regard for the concerns and approved the transaction with RRB. As a matter of record when his email was put forth to the Board members, the Minutes recorded that all the other directors "*unanimously overruled his request to defer the item and decided to go ahead with the Agenda item for discussion and approval*".

iv. He had also dissented on the MoU between BL and MDBL for refund of the advance paid towards purchase of 12.43 acres of land and sought for it to be considered in the Board instead of approving it by circulation. The

rationale behind his dissent was that the entire arbitration exercise would have been futile and against the interest of BL, more so when MBDL is a company owned and controlled by the same majority promoter of BL and hence susceptible to an unfair outcome.

v. From these facts as also recorded in the minutes of the meetings of BL, it is clear that he had taken all efforts to prevent all related party transactions because they were not in the interest of BL. All his suggestions and advices were ignored/overruled by the other board members including the independent directors and the transactions were carried out by the Company. Hence, the allegations that he had not exercised due-diligence or raised concerns regarding the related party transaction between BL and MBDL is erroneous and contrary to the documents on record.

vi. It is an admitted position that most of the independent directors are acquaintances or friends of the majority promoters and they have admitted in their own statements that they have no experience of serving as directors in any listed company. He had attempted to bring in an independent director with adequate qualifications which was overruled by the promoter director.

vii. SEBI failed to notice the role of independent directors of BL, even though documents were available with SEBI to show that the independent directors failed to exercise any caution or due-diligence in protecting the interest of the Company and acted contrary to the expectations and allowed transactions with related parties, which were not in the interest of the Company. While he had dissented, they had supported the majority promoters for executing such transactions.

viii. When related party transactions between BL and MBDL started taking place, he had serious reservations on the decisions taken by the Board, supported by the independent directors, ignoring his suggestions and advices. In such a context, he would have naturally resorted to voting against such related party transactions in the General Meeting through his shareholding block of around 19% to reject the RPTs from being implemented/executed. However, the then prevailing regulations prohibited all the shareholders who formed part of the promoter group (whether a related party or not to a transaction) from voting in such transactions. This denied the minority promoter shareholder like him a very critical tool for exercising an important right to reject the related party transaction even after knowing that the same was not in the interest of BL.

ix. He did not surrender to such a hapless position created by SEBI Regulations and actively took up the issue with SEBI on many occasions starting from his first letter in 2015 to the then Chairman of SEBI with a copy to the Ministry of Corporate Affairs as early as on June 09, 2015 and another letter on March 07, 2016 to address this lacuna by suggesting a constructive methodology that would uphold corporate governance norms in listed companies much before the year 2018.

x. SEBI saw the merit in his suggestion and accordingly amended Regulation 23(4) of the LODR Regulations in the year 2018 (vide SEBI (LODR) (Amendment) Regulations, 2018 – dated May 09, 2018) in the manner suggested by him. BL did not carry out any related party transactions after the Regulation was amended, knowing that he would not have voted for approving such related party transactions in the General Meeting.

xi. None of the related party transactions of BL as referred to in the SCN are with him or any of his companies and there is no allegation in the SCN that he is the beneficiary of any of the related party transaction since he is not the beneficiary of any of these transactions directly or indirectly.

xii. Thus, SEBI should consider the totality of the circumstances, in which he served as a director in BL and the fact that he was always in a minority to defend the Company's interest.

247. I have noted the contention of Noticee No. 5, for determining his liability, his involvement and his conduct during the board and Audit Committee meetings during which approvals to various RPTs with MBDL were granted is required to be seen. It is clear that he started dissenting even before 2018. This is evident from a perusal of the document which supported his statement that in the Board Meeting held on March 27, 2015, he had dissented to a scheme of arrangement proposed between BL and MBDL i.e. the minutes of the meeting of the Board of Directors held on March 27, 2015. Noticee No. 5 had indeed sought clarifications from the Board in that meeting. The minutes record that after a detailed discussion during the meeting, the Board passed the resolution with the consent of all the directors present except Noticee No. 5.

248. Even in the transaction involving the purchase of 12.43 acres of land by BL from MBDL for ₹ 300 Crore, i have noted from the submissions made by Noticee 5 and the minutes of the Board Meeting and Audit Committee meeting dated

February 10, 2016 that this proposal of BL to enter into an agreement with MBDL for purchase of 12.43 acres of land with advance payment was approved but Noticee No. 5 was absent during the meeting. Further, the minutes of the Board Meeting held on February 17, 2016, where the minutes of the Board Meeting dated February 10, 2016, were tabled before the Board for consideration and approval, record that Noticee No. 5 was absent. The minutes of the board meeting dated February 17, 2016 also record that Noticee No. 5 had indeed objected to the transaction for purchase of 12.43 acres of land and had suggested that the item required detailed discussion and it could be postponed to the next meeting or otherwise, he was unable to express any opinion on it. Since Noticee No. 5 had objected to the transaction and suggested detailed discussion on it and the fact that the transaction was approved in his absence, I am inclined to give the benefit of doubt to Noticee No. 5 as regards his involvement in the transaction.

249. The SCN has brought out that in the Board meeting dated March 26, 2018, Noticee No. 5 had submitted to have dissented to charging interest prospectively, on the funds advanced to MBDL and suggested for the same to be charged on a retrospective basis but that the material available on record did not suggest that he had dissented to the related party transactions, which were undertaken by BL with MBDL during the financial years 2013-14, 2014-15 and 2015-16.

250. On perusing the document, I note that in the meeting dated March 26, 2018, Noticee No. 5 was absent. However, the minutes of the meeting suggest that Noticee No. 5 had, vide his email dated March 25, 2018, given his views on the draft minutes of the Audit Committee Meeting dated March 21, 2018 and had suggested to the Board to collect the interest from MBDL from the date of payment of advance, whereas the minutes of the Audit Committee Meeting dated March 21, 2018 suggest that the audit committee had approved the charging of interest from MBDL from March 2018 onwards and not from the date of advance. It is pertinent to note that Noticee No. 5 was absent during the Audit Meeting dated March 21, 2018. It is natural and expected in any loan transaction or transaction where money has been advanced, to charge the interest from the date of grant of such advance or loan. I note that Noticee No. 5 was absent from both the meetings dated March 21, 2018 and March 28, 2018, and advocated for charging of interest from the dare of advance and not from prospective date. Thus, I am of the view that no adverse reference can be drawn against Noticee no. 5 with respect to this particular transaction too.

251. The SCN has also alleged that the records available on record do not suggest that Noticee No. 5 had dissented to the RPTs which were undertaken by BL with MBDL during FYs 2013-14 to 2015-16 and had brought out that during his membership of the Audit Committee, Noticee No. 5 had attended 17 audit committee meetings (out of 34 such meetings) wherein various RPTs with MBDL were discussed and approved. The SCN particularly referred to the Audit Committee meetings dated February 11, 2015, August 10, 2016 and May 28, 2018.

252. In this regard, I have perused the minutes of these Audit Committee Meetings and note that in the meeting dated February 11, 2015 where Noticee No. 5 was present, the Audit Committee had considered and approved the proposal of BL to enter into an agreement with MBDL for the purchase of 7.07 acres of land at a consideration value of ₹ 155.54 Crore. However, no advance was proposed to be paid to MBDL during that meeting. It is further noted that Noticee No. 5 was absent during the Audit Committee meeting dated February 10, 2016. In the meeting dated May 28, 2018, Noticee No. 5 was present and had dissented to the financial statements of BL. It is also noted that Noticee No. 5 had raised objections for charging interest on prospective basis and argued that it should be charged retrospectively from the date of advance. The same objection was also recorded in the minutes of the Board Meeting dated March 28, 2018. I have also perused the minutes of other audit committee meetings and the Board Meetings and note that Noticee no. 5 was either absent during the meetings when various RPTs were discussed or had raised objections to them. Under these circumstances, no adverse reference can be drawn against Noticee No. 5 and I am inclined to give him the benefit of doubt.

253. As regards the contention of Noticee No. 5 that the role of the independent directors of BL and their active concurrence and approval to all the RPTs as alleged in the SCN was ignored, it is relevant to note that this cannot be a valid ground to justify inaction against any of the Noticees for their alleged violations. Whether they are or not made part of the current proceedings is immaterial. The liability of the Noticees in respect of the acts/omissions done by them stand on a separate footing and are independent of the liability and the responsibilities of other entities that may have been incurred by them. This principle of law has been well enunciated in several dicta of the Hon'ble Supreme Court of India. Thus, it is incorrect to state that SEBI has failed to notice the role of independent directors and their active concurrence and approval of RPTs.

254. Without prejudice to the said contention, I have noted that based on the facts and circumstances of the case and only after considering the role played by different entities, proceedings were initiated against a total of 13 entities including the 6 Noticees in the present proceedings. Adjudication proceedings were initiated against 5 entities out of which settlement orders have been passed in respect of 4 entities and for the remaining 1 entity, adjudication proceedings are pending. As regards the remaining 2 entities, reference was made to the NFRA to examine their role as statutory auditor(s).

255. I have also taken note of the contentions of Noticee No. 5 as regards his role to address the lacuna in the LODR Regulations. Noticee No. 5 had indeed written letters to SEBI and suggested changes in the then existing regulations and . It Regulation 23(4) of LODR Regulations was amended and the words "the related parties shall abstain from voting on" was substituted with the words "no related party shall vote to approve". However, this fact has no bearing on the outcome of the current proceedings in the context of his role in the discussed violations.

256. I also note that Noticee No. 5 had vide his email dated October 11, 2023 submitted additional submissions dated October 10, 2023 wherein he had submitted his emails dated June 27, 2019 and October 01, 2019 addressed to Noticee No. 2 and one legal Notice dated June 10, 2020 addressed to Noticee No 1, 2, 3 and others. On perusal of the contents of these emails and legal Notice, I note that he had raised the objections related to the affairs of BL, particularly related to the related party transactions with MBDL and diversion of the money from BL. He had also highlighted that he had been consistently dissenting to these RPTs with MBDL in the past even before receipt of the complaints by SEBI. In fact, Noticee No. 5 had also sent a legal Notice dated June 10, 2020 to Noticees No. 1, 2, 3 and others including the independent directors of BL stating that he had provided them adequate time of 12 months (vide email dated June 27, 2019 and a follow up email dated October 01, 2019) to implement remedial actions to revive prudent corporate governance by BL but that BL failed to take any remedial action and hence they should ensure that the money which has been diverted by BL is brought back, else he would initiate appropriate legal proceedings. I note that in response to the same, BL vide its letter dated June 25, 2020, had denied the allegations raised by the Noticee No. 5 and sought additional time to file its reply. However, there is no document on record to evidence the subsequent proceedings or action initiated, if any, by Noticee No 5.

257. It would be relevant to place on record that in the present proceedings, in the interest of natural justice, all the submissions filed by Noticee No. 5 were forwarded to Group A Noticees to seek their comments, if any. In response thereto, while referencing the emails and legal notice submitted by Noticee No. 5, the Group A Noticees *inter alia* submitted that these documents narrate only the transactions which are already covered in the SCN issued by SEBI and that their response thereto has already been filed by them which may be treated as their reply to the emails and legal notice sent by Noticee No. 5.

258. From the additional documents submitted by Noticee No. 5 and the response of Group A Noticees thereto, it is apparent that Noticee No. 5 had taken sufficient steps to prevent the wrong doings which had been happening in BL and had time and again raised the issues related to corporate mis-governance of the Company and had also recorded his dissent on multiple occasions. The additional documents submitted by him go on to support his contentions which he had raised in his replies dated January 04, 2023 and March 27, 2023 earlier filed in the matter.

259. Having considered all these contentions and the fact that Noticee 5 was either absent from the Audit Committee/Board Meetings or that even while being absent, he had time and again dissented or raised objections while various RPTs with MBDL were discussed, I am of the view that the present proceedings and the SCN against Noticee No. 5 are liable to be disposed of without any directions.

Role of Noticee No. 6

260. I note from the SCN that Noticee No. 6 was the CFO and Company Secretary of BL from October 13, 2014. He resigned from the post of Company Secretary on December 14, 2020 but continued to hold the position of CFO. He was appointed as Director (Finance) & CFO for a period of 5 years with effect from September 04, 2021. Incidentally, Noticee No. 6, was a 'KMP' / 'key managerial personnel' in BL by virtue of his designation as the CFO as per the definition in terms of Section 2(51) of the Companies Act, 2013.

261. This SCN alleged that Noticee No. 6 being a KMP failed to exercise due diligence with respect to the transactions undertaken by BL with its related party and other vendors, thus undermining the interests of the shareholders and further alleged that Noticee No. 6 was one of the recipients of the money

amounting to ₹ 1.41 Crore diverted by BL through various conduits, to its related parties.

262. Noticee No. 6 was also alleged to have furnished compliance certificate (from FY 2014-15 to 2020-21) to the Board of directors which did not reflect the true and fair view of the Company's affairs and thus violated Regulation 17(8) of the LODR Regulations read with Part B of Schedule II and Regulation 33 of LODR Regulations. Allegedly, despite being the CFO of BL and in charge of its day to day financial decisions, he failed in his duty as CFO and violated Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Sections 12A(a),(b),(c) of SEBI Act, Clause 49(IX) of the Listing Agreement read with Regulation 103 of LODR Regulation, Section 21 of SCRA, Regulations 17(8) read with Part B of Schedule II, Regulation 33(2)(a) and Regulation 48 of LODR Regulations read with Section 27 of the SEBI Act.

263. Noticee No. 6 adopted the same reply filed by BL and in addition thereto, *inter alia* stated the following:

i. The allegations against BL failed to stand the test of law and hence nothing survived against him also since there are no separate/specific allegation against him in the SCN except that he was a recipient of certain sums of money from a party, to whom advance was paid by BL.

ii. Unrelated transactions have been linked to allege that funds paid by BL to the party as advance were received by him when in fact, the amount received from the party was a loan, the details of which including bank statement were produced before the Auditors and the investigation team of SEBI, along with copies of his income tax return reflecting the amount received as loan and confirmation of balance of due from him to the said party.

iii. The Auditors had observed in their final report that these transactions appeared to be independent transactions. In this regard the following extract was referred to:

> *"3) Transactions with vendors classified as 'Others' - As identified in Observation No.2 of the Report, limited information such as Purchase Orders were available. However, no evidence of subsequent receipt of such goods was available. The transactions as identified in the table appear to be questionable in nature.*

However, in one instance (i.e. advance to M/s. Parshvi Global Inter Links Pvt Ltd.), management has provided clarifications in form of tax returns etc. that further advances of ₹1.41 crores given to Mr.Krishnamurthy by Parshvi Global Inter Links Pvt. Ltd. appeared to be an independent transaction in the nature of unsecured loan and same being relied upon (Refer Annexure of Management Responses received). "

iv. Thus, the extract of the FAR clearly establishes that the transaction with the party and the transaction between BL and the said party are independent. All the findings of the Auditors were accepted and stated in the SCN and yet the SCN did not provide any reason for not accepting the above finding of the Auditor. Since SEBI had accepted the findings of the Auditors in all other respects, there was no justifiable reason for not accepting their finding in this regard alone.

264. I have considered all the contentions advanced by Noticee No 6 which are similar and connected with the violations alleged against BL. My findings on the allegations against BL regarding misrepresentation of its financial statements and diversion of funds to its related party(ies) have been detailed above and hence are not detailed to avoid reiteration.

265. I now proceed to deal with the specific allegation raised against Noticee No. 6 i.e. of BL having advanced funds to the tune of ₹ 145.62 Crore to Rammohan group of entities, out of which ₹41.16 Crore were paid to Parshvi Global Interlinks Pvt Ltd. I have noted in the preceding paragraphs that out of ₹ 145.62 Crore, ₹41.50 Crore was diverted to MBDL by BL and that out of ₹41.50 Crore, an amount of ₹1.41 Crore was directly transferred to Noticee No. 6 as one of the recipients of the money diverted by BL through its various conduits.

266. It appears that the forensic auditor seemingly relied upon the clarification provided by Noticee No 6 in the form of his bank statement, income tax returns and balance confirmation to observe in the FAR that this transaction was an independent transaction in the nature of unsecured loan. On analysis of the same, these observations made in the FAR were not accepted in the investigation report and basis thereof, the SCN alleged that they were dealing in Noticee No. 6's personal capacity for which he took loans from other companies and paid interest on them. Yet, an analysis of his bank statement from September 01, 2016 to November 30, 2016, did not reflect the periodic

debit of interest amount on such loans. Given the corresponding lack of entries in his bank statements, it would appear that the money was diverted to Noticee No. 6.

267. To establish the extent of the role of Noticee No. 6, in the diversion of funds from BL, the whole scheme as devised by BL needs to be kept in mind. I have already dealt with in detail the role of conduit entities like Parshvi Global Interlinks Pvt Ltd, a part of Rammohan Group of Companies, in diverting the funds from BL. The diversion of funds through the sale proceeds of land via various vendors including Parshvi has also been established as well as the fact that the same Parshvi was struck off by RoC and its bank statement showed that majority of the money had been received from BL and was transferred to KLP Projects and Mass International. BL was unable to establish the bonafide of the transactions and that the same has been held to be a clear case of the diversion of the funds by BL.

268. Keeping the scheme as devised by BL in perspective, of the majority of funds received by Parshvi, ₹1.41 Crore was transferred to Noticee No. 6. Although the same was stated to be an unsecured loan taken by him, there is no basis or no documentary proof indicating the relationship between him and Parshvi. There is no justification as to why a private entity, whose credentials are suspicious, would give an unsecured loan to a person who is the CFO of the Company from which the said suspicious entity obtained the funds in the first place. I have also perused the bank statement of Noticee No. 6 and note that no interest was paid by him to Parshvi. A normal loan transaction is generally backed by some documentation or it is based on some relationship. Securing of loan also entails repayment along with timely interest. Yet Noticee No. 6 has not provided any loan document and has not paid any interest to Parshvi. Noticee No. 6 was also not able to establish any relationship with Parshvi. On the basis of preponderance of probabilities, it has to inferred that Noticee No. 6 is one of the beneficiaries of the scheme devised by BL for diverting its funds.

269. Noticee No. 6 has stated that he had provided documents like his Income Tax return for financial year 2016-17, his Tax Audit Report where he had disclosed to having availed the unsecured loan of ₹ 1.41 Crore and his balance sheet for the year 2016-17 to contend that his transaction with Parshvi was bonafide for the purpose of availing unsecured loan. In this regard, It is not in dispute that the Noticee No. 6 had received ₹1.41 Crore from Parshvi. The Income tax return, audit returns and balance sheets also reflect the receipt of the funds from Parshvi. However, as observed above, Noticee No. 6 failed to provide any

documentary proof to establish that his transaction with Parshvi was bonafide. Noticee No. 6 had only provided one balance confirmation letter dated April 03, 2017 from Parshvi which states that Noticee No. 6 had taken an unsecured loan of ₹ 1.41 Crore from Parshvi which is outstanding as on March 31, 2017. Remarkably, the said lender / Parshvi's name has been struck off from the Register of Companies. Under these circumstances, the balance confirmation letter does not inspire any confidence considering the absence of normal conditions surrounding with a commercial deal and the scheme of diversion of funds devised by BL. After considering these facts and circumstances, I am inclined to disagree with the observation of FAR regarding the transaction of Noticee No. 6 with Parshvi and am willing to agree with the charge in the SCN based on investigation findings that Noticee No. 6 is one of recipients and beneficiary of the money diverted by the Company.

270. It has already been established that BL diverted its funds and that thus its financial statements did not reflect the true and fair view of its affairs. The responsibility to furnish the compliance certificate lies upon the CEO and CFO of the Company. Noticee No. 6 being the CFO of the Company furnished the compliance certificate to the Board of Directors. The SCN has mentioned the financial years, for which CEO/CFO certification was signed by Noticee No. 6 which are as under:

Table No. 17

Sr. no	Financial year	CEO/CFO certification required under
1	2014-15	Clause 49(IX) of the listing agreement (SEBI circular dated April 17, 2014)
2	2015-16	Regulation 17(8) of LODR Regulations
3	2016-17	
4	2017-18	
5	2018-19	
6	2019-20	
7	2020-21	

271. Noticee No. 6 was holding the position of CFO from 2014-15 to 2020-21, i.e. during the whole investigation period. Being the CFO of BL, Noticee No. 6 was in charge of all the financial decisions taken or to be taken by BL. He was required to exercise due care involving its financial transactions. Having failed to provide a certificate which did not reflect the true and fair view of the Company's affairs as required under Regulation 17(8) of the LODR Regulations and for having issued a false and misleading certificate, despite being the CFO

of the Company and in charge of the day to day financial decisions of the Company, Noticee No. 6 has breached the mandate of Regulation 33(2)(a).

272. Thus, the violations committed by BL of diverting the funds and misrepresenting its financial statements clearly stand established. The Company being a juristic personality cannot act on its own and thus vicarious liability is imposed upon on every person who at the time the contravention was committed was in charge of and was responsible to the company for the conduct of the business of the company. In terms of Regulation 2(1(f) of the LODR Regulations, chief financial officer" or "whole time finance director" or "head of finance", shall mean the person heading and discharging the finance function of the listed entity as disclosed by it to the recognised stock exchange(s) in its filing under these regulations. Thus, the violations committed by Noticee No. 1 are also attributable to Noticee No. 6 and the various violations alleged against Noticee No. 6 are connected with the violations alleged against BL/ Company / Noticee No. 1. Further, since Noticee No. 6 continues to be in violation of various provisions of the LODR Regulations and PFUTP Regulations even beyond March 08, 2019, on the principles earlier discussed, Section 27 would also be attracted in his case and thus Noticee No. 6 is guilty of having violated Section 12A(a), (b) and (c) of the SEBI Act and Regulation 3(b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the PFUTP Regulations and Regulation 33(2)(a) and Regulation 48 of the LODR Regulations read with Section 27 of the SEBI Act.

Other Submissions made by Noticees 1, 2 and 4 post hearing dated January 31, 2024

273. Noticees No. 1 and 2, in their submission filed vide email dated February 13, 2024, while detailing the profile of the Company, its history and current status, submitted that they had around 55 employees and another 20 employees on its direct contract rolls and around 3900 employees on its indirect rolls for various projects. It was also submitted that the Company had 11,900 public shareholders as on Quarter ending December 2023 and that apart from these employees and shareholders, there are other stakeholders who would be impacted as a result of any adverse directions against them which in turn would affect the further development of the lands/assets under the Company's management.

274. Their business is on a going concern basis and that even the financial statement for FY 2022-23 is prepared on the future prospects of the business. A copy of the key matrix in the business plan of the upcoming 4 years was also submitted.

It was stated that the principle of proportionality has to be considered while passing any order/making any adverse inference against them.

275. In their support, reliance was placed on an order dated February 23, 2023 passed in the matter of *Jindal Cotex Limited & Ors. vs SEBI*. It was also submitted that it is a settled principle of law that courts do not interfere in the commercial decisions or substitute their own notions of what is sound business judgement in decisions. In support thereof, these Noticees relied upon the Order passed in the matter of *D-Link (India) Limited Vs SEBI* and Order passed by the Adjudicating Officer, SEBI in the matter of *Franklin Templeton Mutual Fund*.

276. I have considered all these submissions and the various allegations levelled against the Noticees such as large-scale diversion of funds to entities including related parties, huge advances paid to entities with unrelated business activities, non-disclosure of related party transactions, etc. and have examined at length and found that the same are in violation of the discussed provisions of the SEBI Act, the PFUTP Regulations and the LODR Regulations.

277. Neither the contents of the SCN nor any findings tantamount to interference or an attempt to interfere in the commercial decisions of the Company. While acknowledging the importance of management decisions and the commercial wisdom of the Company and its Board, the regulator cannot remain a mute spectator to the acts and omissions of a Company that has indulged in large scale siphoning of the funds belonging to its shareholders and more so when they are brought to its notice, then it becomes even more incumbent to look into it. In fact, the regulator would be failing in its mandate if it did not take into consideration such misdeeds of the Company. Action, if any, is initiated in order to protect the shareholders, employees and other stakeholders rather than to adversely affect them. The directions which may be issued by SEBI in these proceedings would only be aimed at protecting the interest of the shareholders and to alleviate their concerns. Any action by SEBI if warranted would also be proportionate to the violations established in the facts and circumstances of the case. Accordingly, the contentions of the Noticees 1 and 2 in this regard are devoid of any merit.

278. Noticees 1 and 2 in their email dated February 13, 2024 have also submitted that SEBI should clarify the exact measure it is contemplating in the SCN to enable the Noticees to make effective submissions, failing which these proceedings would violate principles of naturel justice. In support, they have

relied on the decision of the Hon'ble Supreme Court in the matter of *Gorkha Security Services Vs Govt of NCT of Delhi,* also referred by the Hon'ble SAT in the matter of *Royal Twinkle Star Club Private Ltd Vs SEBI* as also the decision of the Hon'ble Supreme Court in the matter of *Orxy Fisheries Pvt. Ltd Vs Union of India.*

279. In this regard, I note that vide SCN dated November 24, 2022, the Noticees have been, *inter alia,* called upon to show cause as to why suitable directions be not issued and//or penalty be not imposed as deemed fit under Sections 11(1), 11(4). 11(4A), 11B(1) 11B(2) read with Section 15HA and 15HB of SEBI Act and Section 23E of SCRA for the violations detailed in this Order.

280. A bare perusal of the above mentioned provisions of the SEBI Act reveals that a comprehensive list of possible directions have been outlined under Section 11(4) of the SEBI Act, which the competent authority under the SEBI Act, is empowered to issue. These aforesaid provisions have already been specifically referred to in the SCN.

281. Similarly, SEBI is also vested with discretionary powers under Section 11B to issue directions to any person in the interest of investors or for the orderly regulation of the securities market. The SCN contains detailed enumeration of the allegations, the basis of each of those allegations, the documents relied upon for making such allegations as well as the relevant provisions of the laws supporting those allegations. Further, section 11(4A) and 11B(2) read with sections 15HA and 15HB of the SEBI Act, confer upon SEBI, the power to impose penalty, the minimum and maximum quantum whereof is also indicated in the said provisions.

282. Needless to state in any proceedings akin to the present one, the exact measures that may be taken or the directions that may be issued against the Noticees can only be crystallised after the proceedings reach their logical conclusion after all the explanations and arguments are evaluated vis-à-vis the allegations based on the evidence - factual or circumstantial, available before the quasi-judicial authority. The SCN cannot always pre-judge or pre-ordain the remedial or punitive consequences with certainty, prior to the commencement of the proceedings. It can only acquaint the Noticees with the possible outcomes that may emanate from the proceedings based on the allegations of various contraventions brought against them which is what has exactly indicated in the SCN to the Noticees in the present case. Hence, I do not find

any merit in the contentions that the SCN did not precisely include the measures it proposes to take in the matter *qua* these Noticees.

283. Additionally, I find that the case of the *Gorkha Security* cited by the said Noticees is factually distinguishable and not applicable to the present proceedings, for the following reasons:

i. In the Gorkha Security case, the matter pertained to blacklisting of a contractor by a Government agency, which resulted in depriving the contractor from entering into any public contracts, thus violating the fundamental rights of such person. There is no such situation arising out of the present proceedings.

ii. In the Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract, whereas, the present SCN has been issued for violation of statutory provisions, and not for violation of any contractual obligation.

iii. Blacklisting was imposed by way of penalty whereas, in the instant proceedings, any action, if found necessary, would *inter alia* be preventive and remedial in nature.

iv. In the Gorkha Security case, blacklisting of the contractor was provided in the contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter, provisions of law under which directions are contemplated to be issued, confer discretion to initiate such actions as may be deemed appropriate in the interest of investors and the securities market.

284. Therefore, unlike the facts of the case referred to by these Noticees, the SCN has already stated the provisions of law under which the directions are proposed to be issued and the specific directions that may be issued by the competent authority can only be determined after the examination of the submissions and explanation of the Noticees by the quasi-judicial authority .

285. I have also perused the order passed in the *Royal Twinkle case* (supra) and I find that the Hon'ble Tribunal in the said case examined the Gorkha Security case extensively. However, the ultimate decision arrived at by the Hon'ble Tribunal is not based on the understanding of the Hon'ble Tribunal of the Gorkha Security case. On the contrary, it has been specifically recorded in the

order that *"However, applicability of the judgment of Hon'ble Supreme Court in the case of Gorkha to the facts of present case need not be gone into..."*. Thus, the observation regarding Gorkha Security matter in the order passed by the Hon'ble Tribunal in Royal Twinkle matter is only *obiter dicta*. In any case, the Gorkha Security case is factually distinguishable as observed above.

286. Similarly, the case of *Orxy Fisheries Pvt. Ltd* is also distinguishable. In this matter the authority had already made up his mind and reached a definite conclusion at the stage of SCN only and in that regard the Hon'ble Supreme Court had observed that *"It is obvious that at that stage, the authority issuing the charge sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony"*.

287. This is unlike the present case where the SCN mentioned all the allegations levelled against the Noticees and granted multiple opportunities to the Noticees to address the allegations levelled against them to the point of them actually misusing the judicial process to their own advantage. Accordingly, the said contention raised by the Noticees and the reliance upon *Gorkha Security (supra)* and *Royal Twinkle (supra)* and *Orxy Fisheries (supra)* by the aforesaid Noticees is also untenable both on facts and on law.

288. The Company / Noticee No. 1, in its additional submissions filed vide email dated February 21, 2024 sought to place on record the settlement orders passed by the Adjudicating Officer, SEBI against 4 Non-Executive Independent Directors (in the matter of Binny Ltd.) against whom adjudicating proceedings were initiated and thus have sought to equate the proceedings against the said entities with the present proceedings to state that since the cause of action / certain findings and observations are common against these 4 non-executive directors and the Noticees in the present case and that the subject matter is identical, on the grounds of equity, fair play and natural justice, directions against them should also not be issued.

289. Noticee No. 4 in his additional submissions dated February 19, 2024, has also referred to the settlement orders passed against four Non-Executive/Independent Directors in the matter of Binny Ltd. It has been stated that during the relevant time, these four entities were performing their duties as Non-Executive Independent Directors in its true sense and had an important

role in the decision-making process on the financial transactions entered into by BL on which observations and adverse findings were made in the investigation conducted by SEBI based on which proceedings were initiated against them.

290. Noticee No. 4 stated that he too was appointed as an Non-Executive Director on November 04, 2013 and resigned on March 31, 2015 and during this short tenure did not take any salary, remuneration or any compensation. Yet only the adjudication proceedings initiated against the 4 Independent Directors was settled under the Settlement Regulations, while vide the common SCN dated November 24, 2023, the present proceedings were initiated against Noticee No. 4 under Section 11(1), 11(4), 11(4A), 11B(1) and 11B(2), which are not tenable on the grounds of equity, fair play and natural justice. Noticee No. 4 also sought to rely on various Judgement/Orders[14] of the Hon'ble Supreme Court, SAT and SEBI to submit that no adverse inference were drawn against the Non-Executive Directors in these matters and accordingly, the proceedings against him should be dropped.

291. Similar to such submissions of Noticee No. 4, Noticee No. 1 in its additional submission filed vide email dated February 21, 2024 placed on record the settlement orders passed by the Adjudicating Officer against the 4 Non-Executive Independent Directors to contend that the SCN against it is not tenable on grounds of equity, fair play and natural justice.

292. The difference between Noticee No. 4 and the other Noticees who had filed settlement applications (which were subsequently rejected) is in their respective roles and responsibilities at the time of violation. While Noticee No. 2, 3 and 6 were holding the executive position in BL, Noticee No. 4 was a Non-Executive Director for a period of 15 months. I note that in the instant case, the basis for

[14] Order dated May 14, 2018 of Hon'ble Supreme Court in the matter of Chintalapati Srinivasa Raju Vs SEBI
Order dated July 27, 2020 of Hon'ble Supreme Court in the matter of Shailendra Swarup vs the Deputy Director, Enforcement Director
Order dated September 21, 2022 of Hon'ble SAT in the matter of Neha Nilesh Patil Vs SEBI
Order dated January 04, 2023 of Hon'ble SAT in the matter of Indian Infotech and Software Ltd. Vs SEBI
Order dated January 24, 2020 of SEBI's Whole Time Member in the matter of Raghukul Shares India Private Limited
Order dated August 30, 2022 of SEBI's Adjudicating Officer in the matter of Landmark Capital Advisors Private Limited
Order dated March 28, 2023 in the matter of Karvy Capital Limited

fastening liability on Noticee No. 4 is not merely because he was the Non-Executive Director of the Company but because he was also the promoter of BL (also the son of Executive Chairman of the Company) and more so because he was also the Director in MBDL, the beneficiary related party of the Company. It has already been observed in the earlier part of the order that he was aware that the advances were being paid to MBDL for purchase of 37.2 MW wind farm without proper due diligence and without supporting documents. Under the circumstances, he could not have pleaded ignorance as he was also the common director between MBDL and the Company. He also continued to be a director in MBDL until 2017 by when the Company had diverted majority of the funds belonging to the Company to MBDL and the same were neither returned by MBDL nor was the land and facilities transferred for which the advances were paid. There is sufficient evidence of the involvement of the Noticee No. 4 in the transactions of the Company with MBDL which have been found to be in violation of the applicable provisions as already discussed.

293. In his support, Noticee No. 4 relied upon various Orders/Judgements which are discussed as under:

294. In the matter of *Chintalapati Srinivasa Raju*[15], the Hon'ble Supreme Court had inter alia observed that "*we have not been shown how the appellant was in any manner responsible for actions taken by those in the management of SCSL*" whereas in the matter of *Shailendra Swarup vs the Deputy Director, Enforcement Directorate, the* Hon'ble Supreme Court observed that "*we have already noticed above that the plea of the appellant that he was part-time, non-executive Director not in charge of the conduct of business of the Company at the relevant time was erroneously discarded by the authorities and the High Court and there is no finding by any of the authorities after considering the material that it was the appellant who was responsible for the conduct of business of the Company at the relevant time*". I note that the underlying justification of exoneration of the entities relied upon in the other Orders by Noticee No. 4 is that merely because they were part of the Board, they cannot be held liable for the violations committed by the Company. In those cases, it was established that being non-executive directors, they were not involved in the day-to-day affairs of the Company, their role and involvement in the acts and omissions of the company which constitute the violations should be examined before imposing any penalty.

[15] MANU/SC/0598/2018

295. The law surrounding the liability of a Non-Executive/ Independent Director has been laid down in several judgements and it is a settled position that *"...A non-executive/independent director should be held liable only in respect of any contravention of any provisions of the Act which had taken place with his knowledge (attributable through Board processes) and where he has not acted diligently, or with his consent or connivance....*[16]". Further, the Hon'ble Bombay High Court in the matter of *Satvinder Jeet Singh Sodhi and Ors. Vs. State of Maharashtra and Ors.*[17] had also observed that *"...the independent director or non-executive director not being a promoter of or key managerial persons shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently..." "...Non-executive director is no doubt a custodian of the governance of the company but does not involve in the day to day affairs of the company for running of its business and observing/monitoring the activities..."*

296. The contention of Noticee No. 4 that being a Non-Executive Director, he cannot be held liable, is misplaced considering the facts and circumstances surrounding his roles and responsibilities.

297. SEBI had initiated proceedings against the Noticees and other entities including the said 4 Non-Executive Independent Directors after examining their respective roles and extent of their involvement while determining the violations as also their respective areas of their functionality. While the cause of action / certain findings and observations could be common between these Non-Executive Independent Directors and the Noticees, the extent of their involvement is admittedly different as opposed to that the role and responsibility of an Executive Director vis-a-vis a non-executive independent director are completely different and the expectations of the shareholders from them is also different

298. Based on these parameters, the competent authority approved proceedings wherein adjudicating proceedings, which contemplate only imposition of monetary penalty, were initiated against the non-executive independent directors, while proceedings under Section 11(1), 11(4), 11(4A), 11B(1) and

[16] Management and Board Governance, Report of the Expert Committee on Company Law, Ministry of Corporate Affairs
[17] MANU/MH/2364/2022

11B(2) of the SEBI Act which contemplates issuance of directions along with imposition of monetary penalty were initiated against the present Noticees.

299. Thus, the severity of the roles and involvement of Noticees in the present proceedings is different from that of the Non-Executive Independent Directors who are not parties to these proceedings. As stated there is a fundamental difference between their roles and extent of the involvement of the Noticees and the non-executive independent directors and for that reason, their cases are distinguishable and cannot be equated. Accordingly, the contention of the Company i.e., Noticee No. 1 in this regard is rejected.

300. As mentioned in the earlier part of this order, the Group A Noticees had filed settlement application(s), which were rejected based on the degree of seriousness of the violations after following the due process of law. The Group A Noticees had preferred appeal before the Hon'ble Bombay High Court against the rejection of their settlement application, which also dismissed their appeals with serious observations as recorded earlier which was also upheld by the Hon'ble Supreme Court while dealing with their appeal challenging the order of the Hon'ble Bombay High Court.

301. The Company, in its additional submissions dated February 19, 2024, also submitted that based on the facts and clarifications provided by it in the submissions, the allegations of violation of PFUTP Regulations are not applicable and relied upon various orders[18] passed by the Adjudicating Officer, SEBI to support their contention.

302. In this regard, I note that in the matter of *Taneja Aerospace and Aviation Limited*, the issue was to examine the alleged irregularities in the amalgamation of the entity Taneja Aerospace and Aviation Limited (TAAL) with its wholly owned subsidiary TAAL Technologies Private Limited. Considering the facts and circumstances of the case, the allegations connected with the issue were factually not established and thus the charges of violation of PFUTP regulations were dropped by the Adjudicating Officer.

303. In the matter of *Setubandhan Infrastructure Limited*, the violation of PFUTP Regulations was not even alleged against the Noticees involved in the case. In

[18] Order dated February 21, 2019 in the matter of Taneja Aerospace and Aviation Limited
Order dated September 18, 2023 in the matter of Setubandhan Infrastructure Limited
Order dated September 20, 2023 in the matter of Principal Mutual Fund
Order dated September 28, 2023 in the matter of Omkar Specialty Chemicals Limited,

the matter of *Principal Mutual Fund*, the SCN *inter alia* alleged violation of the provisions of Regulation 3(a), 4(1) and 4(2)(q) of the PFUTP Regulations, which in the circumstances of the case were not proved since the Adjudicating Officer did not find sufficient material to establish the charges against the Noticees in that case. Similarly, in the matter of *Omkar Specialty Chemicals Limited*, the Adjudicating officer observed that the material available on record did not bring out specific and adequate details as to how the alleged acts in respect of the Noticees were fraudulent and/or an unfair trade practice and thus the violation of the provisions of Sections 12A (b), (c) of the SEBI Act read with Regulations 3(c) and (d), 4(1), 4(2)(f), (k) and (r) read with 2(1)(b) and 2 (1)(c) (1) of the PFUTP Regulations was not established.

304. All orders cited as highlighted above, I note that all these cases are clearly and factually distinguishable from the present proceedings where the allegations of violation of the PFUTP Regulations are legally established as brought out in the earlier paragraphs.

305. It would be trite to repeat the request made by Noticees 1 and 2 vide their post hearing submissions sent by respective emails dated February 13, 2024 to cross examine Noticee No. 5. For the sake of reiteration, I find it pertinent to mention that the statement given under oath by Noticee No. 5, which forms the basis for the cross-examination request, had already been shared with these Noticees and was included in the SCN. Additionally, the statement made by Noticee No. 5 did not function as the sole basis for arriving at a finding. Instead, it is the material available on record that has formed the basis for the allegations levelled against the Noticees. Furthermore, as shown in Table No. 1 above, it is clear that the Noticees were given ample time and multiple opportunities to refute any facts or allegations levelled against them. Clearly, the request for personal hearing/cross-examination is another delaying tactic adopted by Noticees (1 and 2) and only meant to hinder the timely completion of these proceedings under the guise of exploring all legal processes. Accordingly, there is no justification for considering the request for further hearing and cross-examination of Noticee No. 5.

306. Having said that, I am also cognisant of the fact the Noticee No. 4 was part of the Board for a period of approximately 15 months and was a promoter and after his resignation, BL continued to divert substantial amount of funds belonging to the shareholders to its related party(ies) including MBDL. Given this same, I am inclined to treat this circumstance as a mitigating factor while issuing suitable directions / imposing penalty against him.

307. Having regard to the discussion in the earlier paragraphs regarding the role and responsibility of the Noticees, another issue that is required to be addressed is about the application of Section 23E of SCRA against the Noticees for violation of the clauses of the erstwhile listing agreement.

308. I am cognizant of the fact that during the past two years in every case decided by the Adjudicating Officer(AO), SEBI on the application of Section 23E of SCRA, the Hon'ble SAT has been holding that Section 23E of SCRA is not applicable in respect of the violation of the erstwhile listing agreement. All these decisions of the Hon'ble SAT have been challenged before the Hon'ble Supreme Court which was pleased to issue notices in all these cases. Directions have also been issued for posting the batch cases for final hearing.

309. I have also noted that, an Order of the Adjudicating Officer of SEBI in the matter of IFGL was passed wherein it was inter alia held that the entity is liable for violation of Section 23 of SCRA. However, the order categorically recorded that the enforcement of the order would be subject to the outcome of the appeals filed by SEBI before the Hon'ble Supreme Court.

310. Upon challenge of this appeal, Hon'ble SAT while allowing the appeal[19] on the basis of its decision in the matter of *Suzlon Energy Ltd. & Anr. Vs SEBI* on May 03, *inter alia* held that *"...penalty under Section 23E of the SCR Act cannot be imposed for the violation of the listing conditions in as much as Section 23E applies for non-compliance of listing conditions or delisting conditions of a Company to be listed on the stock exchange and has nothing to do with the violation of the listing agreement."* The Hon'ble SAT while imposing cost of ₹ 50,000 upon SEBI, further observed the following:

> *"12...findings given by the AO in paragraph 10 is a clear case of disrespect to the orders of this Tribunal in utter defiance. The principle of judicial discipline requires that the order of the Tribunal should be followed unreservedly by the AO which in the instant case has not been followed."*

311. Upon challenge, the Hon'ble Supreme Court vide its Order dated February 20, 2023, stayed the order imposing cost on SEBI. In light of the above facts and circumstances and developments, while I am cognizant of the fact that the Hon'ble Supreme Court has issued notices in all the Orders passed by SEBI

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under Section 23E of SCRA challenging the order of the Hon'ble SAT, I am equally cognizant that the final orders passed by the Hon'ble SAT are yet to be finally decided by the Hon'ble Supreme Court. In adherence to the principle of judicial discipline, I am constrained to follow the ratio decided by the Hon'ble SAT on the issue of application of Section 23E of SCRA for the violation of erstwhile listing agreement.

312. Section 11 of SEBI Act casts a duty on SEBI to protect the interests of investors in securities and to promote the development of and to regulate the securities market. Towards fulfilment of the said duty, SEBI has been authorized to take such measures as it deems fit. Pursuant to the said objective, PFUTP Regulations and LODR Regulations have been framed. These Regulations apart from bringing transparency and fairness in the functioning of a listed company also aim to preserve and protect the market integrity in order to boost investor confidence in the securities market by identifying actions that would amount to fraudulent activity.

313. The fund diversions as established in this case have taken place from the year 2013-14 to 2020-21, which essentially means that more than ₹700 Cores were never utilized for the purposes of the listed company i.e., BL, signifying a huge opportunity loss to its shareholders, which is difficult to be quantified. It is noteworthy that the promoter and promoter group shareholding in BL has gone down from 74.78% as on June 30, 2013 to 56.20% as on June 30, 2024. By misrepresenting the financial statements, and by failing to make true and adequate disclosures, Noticee No. 1 and other Group A Noticees have not presented the true and fair view of the affairs of BL, and thus have not only defrauded and misled the investors through their actions, omissions and contraventions as detailed above but have also impaired the integrity of the securities market. In view of the same and considering the violations committed by the said Noticees, it becomes necessary that appropriate directions be issued against them.

314. Given the facts detailed above, I am of the opinion that directing the Noticees to bring back the diverted money along with a reasonable rate of interest would be in the interest of the shareholders of BL. Given the facts and circumstances of this case 12% would be a reasonable rate of interest.

315. As mentioned earlier there are thousands of entries reflecting debits from the bank accounts of BL, many of which correspond to the discussed transactions that have been established as money diverted in tranches under the guise of

regular business transactions. Therefore, while levying the interest, the same shall be considered on the basis of the dates of different debit transactions.

316. Given the facts associated with the role of Noticee No. 5, as has been discussed in earlier paragraphs, the proceedings against him are liable to be disposed of.

317. Now the discussion turns towards the penalty warranted under Section 15HA and 15HB of the SEBI Act for which guidance is provided by Section 15J of the SEBI Act. The said provisions read as follows:

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

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

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

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

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

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

318. Although in the preceding paragraphs, I have detailed the amount diverted to other entities, there is no clear and identifiable figures to arrive at the exact profit made by the Group A Noticees on account of their actions nor are there details of the quantified loss caused to the investors on account of such violations.

319. However, it has been clearly established that an amount of ₹712.64 Crores was diverted from the Company by making advances mainly to its related parties which continue to remain outstanding even after a lapse of more than 10 years. In some instances, advances were paid without shareholders/audit committee approvals and in some instances despite the dissent from the shareholders of BL. Thus, the violations are repetitive in nature. The violations of the provisions of SEBI Act, LODR Regulations and PFUTP Regulations have also been established against the Group A Noticees in the preceding paragraphs. Therefore, exemplary penalty is required to be levied on the defaulting Noticees. Having said that and as noted earlier, Since Noticee No. 4 was on the Board of the Company for a relatively lesser period of time. I, find that this particular fact is required to be considered while arriving at the quantum of penalty to be levied against him.

ORDER

320. I, therefore, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the SEBI Act, hereby issue the following directions:

a. Noticee No. 1 i.e., BL shall, forthwith but not later than 3 months from the date of this Order, bring back to its Account, the amount of ₹706.03 Crores, which has been found to be diverted, along with interest @ 12% to be computed from the respective date of each of the debit transactions recorded in the Company's Account(s).

b. Noticees 1, 2, 3 and 6 are debarred from accessing the securities market and are also prohibited from buying, selling and otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever, for a period of three years from the date of this order.

c. Noticees 2, 3 and 6 are further restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity

including as a director or a key managerial person, directly or indirectly, for a period of three years from the date of this order.

d. Noticee No. 4 is debarred from accessing the securities market and is also prohibited from buying, selling and otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever, for a period of two years from the date of this order and also restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a director or a key managerial person, directly or indirectly, for a period of two years from the date of this order. (for the reasons mentioned at Paragraph No. 306)

321. Further, in exercise of the powers conferred upon me under sections 11(4A) and 11B(2) read with Sections 15 HA and 15HB of the SEBI Act, I hereby impose the following penal amounts on the following Noticees.

Table No. 18: Quantum of Penalty

Name of the Noticee	Penalty Amount (in ₹) u/s 15HA of SEBI Act	Penalty Amount (in ₹) u/s 15HB of SEBI Act	Total Penalty (in ₹)
Binny Limited	5,00,00,000	1,00,00,000	6,00,00,000
Mr. M. Nandagopal	5,00,00,000	1,00,00,000	6,00,00,000
Mr. Arvind Nandagopal	5,00,00,000	1,00,00,000	6,00,00,000
Mr. Nate Nandha	3,00,00,000	50,00,000	3,50,00,000
Mr. T. Krishnamurthy	5,00,00,000	1,00,00,000	6,00,00,000

322. In view of the reasons recorded in the earlier paragraphs, the proceedings against Noticee No. 5 are disposed of without issuance of any direction or imposition of any penalty.

323. The Noticees mentioned at above table shall remit / pay the said amount of penalties within forty-five (45) days from the date of receipt of this order through the online payment facility available on the website of SEBI, i.e. www.sebi.gov.in by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of ED/CGM (Quasi-Judicial Authorities) -> PAY NOW.

324. In case of any difficulty in the making of online payment of the penalties, the Noticees may seek support at portalhelp@sebi.gov.in. The confirmation of e-payment shall be sent to the Division Chief, Coordination Division, Corporation Finance Investigation Department, SEBI, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and copies to the e-mail id:-tad@sebi.gov.in as per the format given below:

Case Name	
Name of the Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (viz. penalties /disgorgement /recovery /settlement amount/legal charges along with order details)	

325. The settlement of obligations, if any, of the Noticees debarred vide this Order, in the cash segment or the F&O segment of the stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order.

326. A copy of this order shall also be served on all the recognized stock exchanges, depositories and the Registrar and Share Transfer Agents for ensuring its strict compliance.

DATE: JULY 31, 2024
PLACE: MUMBAI
SECURITIES AND EXCHANGE BOARD OF INDIA

BABITHA RAYUDU
EXECUTIVE DIRECTOR