

WTM/AB/IVD/ID2/16050/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL 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 and Sections 12A(1), 12A(2) and 23I of Securities Contracts (Regulations) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005.

Noticee No.	Name of Noticees	PAN
1.	RHC Holding Private Limited	AAKCS7686P
2.	Mr. Malvinder Mohan Singh	AABPS2552G
3.	Mr. Shivinder Mohan Singh	AAKPS4318M
4.	Malav Holdings Private Limited	AADCM1170B
5.	Shivi Holdings Private Limited	AAACO2664H
6.	Mr. Gagandeep Singh Bedi	AOJPB8749L
7.	Mr. Bhavdeep Singh	BHHPS8103F
8.	Fortis Hospitals Limited	AABCF3718N
9.	Fortis Healthcare Limited	AAACF6715A

(Aforesaid entities are hereinafter individually referred to by their respective name or noticee number and collectively as “the Noticees”.)

In the *matter of* Fortis Healthcare Ltd.

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1. The present proceeding owe its origin to an *ad-interim ex-parte* interim order dated October 17, 2018, passed by Securities and Exchange Board of India (hereinafter

referred to as “**SEBI**”) whereby certain directions were issued against Fortis Healthcare Limited (hereinafter referred to as ‘**FHL**’), Fortis Hospitals Limited (hereinafter referred to as ‘**FHsL**’), RHC Holding Pvt. Ltd. (hereinafter referred to as ‘**RHC**’/‘**RHC Holdings**’), Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Malvinder Mohan Singh, Shivinder Mohan Singh, Religare Finvest Limited (hereinafter referred to as ‘**RFL**’), Best Healthcare Pvt. Ltd. (hereinafter referred to as ‘**Best**’), Fern Healthcare Pvt. Ltd. (‘**Fern**’) and Modland Wears Pvt. Ltd. (hereinafter referred to as ‘**Modland**’), namely:-

“

- (a) *FHL (i.e. Noticee no. 1) shall take all necessary steps to recover the abovementioned amount of Rs.403 crore (approx.) along with due interest from Noticee nos. 2 to 11 (viz. FHsL, RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland), within three months of date of this order.*
- (b) *The Noticee nos. 2 to 11 (viz. FHsL, RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland) shall, jointly and severally, repay the above mentioned amount of Rs.403 crores (approx.) along with due interest to FHL, within three months of this order.*
- (c) *The Noticee nos. 2 to 11 (viz. FHsL, RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland) shall, pending completion of the investigation and till further order, not dispose of or alienate any of their assets or divert any funds, except for the purposes as mentioned under para 15. (b) and for meeting expenses of day-to-day business operations, without the prior permission of SEBI.*
- (d) *The Noticee nos. 6 and 7 (viz. Shri Malvinder Mohan Singh and Shri Shivinder Mohan Singh) shall not associate themselves with the affairs of FHL in any manner whatsoever, till further directions.*

.....”

2. I note that the interim order dated October 17, 2018, came to be passed on the basis of a preliminary examination by SEBI and forensic audit by MSA Probe Consulting Pvt. Ltd. (whose forensic audit report shall hereinafter be referred to as ‘**FAR**’), on the alleged diversion of Rs. 403 Crores (approx.) from FHL / FHsL, for the benefit of

promoter / promoter connected entities. Subsequent to the passing of the said interim order, a representation was moved by FHL and FHsL, seeking certain modification to the directions of the said interim order, hence the following directions came to be issued vide a modification order dated December 21, 2018:

- “
- (a) FHL and FHsL (i.e. Noticee nos. 1 & 2) shall take all necessary steps to recover the abovementioned amount of Rs.403 crore (approx.) along with due interest from Noticee nos. 3 to 11 (viz. RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland), within three months from the date of the Interim Order.
 - (b) The Noticee nos. 3 to 11 (viz. RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland) shall, jointly and severally, repay the abovementioned amount of Rs.403 crores (approx.) along with due interest to FHsL, within three months from the date of the Interim Order.
 - (c) The Noticee nos. 3 to 11 (viz. RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland) shall, pending completion of the investigation and till further order, not dispose of or alienate any of their assets or divert any funds, except for the purposes as mentioned under para 4(b) of this order and for meeting expenses of day-to-day business operations, without the prior permission of SEBI.
 - (d) The Noticee nos. 6 and 7 (viz. Shri Malvinder Mohan Singh and Shri Shivinder Mohan Singh) shall not associate themselves with the affairs of FHL and FHsL in any manner whatsoever, till further directions.
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3. The interim order dated October 17, 2018 and modification order dated December 21, 2018, are hereinafter collectively referred to as ‘**the Interim Order**’. I note that, after providing suitable opportunity of hearing to the entities, vide a confirmatory order dated March 19, 2019, SEBI confirmed the said directions issued vide the interim order, subject to certain modifications. The modified directions, as contained in Para 17 of the confirmatory order are as follows:

“

- i. The Noticee nos. 1 & 2 (viz. FHL and FHsL) shall continue to pursue the measures to recall the outstanding amount of Rs.403 crore (approx.) along with due interest from Noticee nos. 3 to 11 (viz. RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Religare Finvest Limited, Best, Fern and Modland);
- ii. The Noticee nos. 3 to 7 and 9 to 11 (viz. RHC, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd., Shri Malvinder Mohan Singh, Shri Shivinder Mohan Singh, Best, Fern and Modland), pending of the investigation, shall not dispose of or alienate any of their assets or divert any funds, except for meeting expenses of day-to-day business operations, without the prior permission of SEBI;
- iii. The Noticee no. 8 (viz. Religare Finvest Limited), pending completion of the investigation, shall not dispose of or alienate any of its assets or divert any funds, without the prior permission of SEBI, except for meeting expenses of day-to-day business operations and/or complying with the terms of the 'Corrective Action Plan' as stipulated by the Reserve Bank of India; and
- iv. The Noticee nos. 6 and 7 (viz. Shri Malvinder Mohan Singh and Shri Shivinder Mohan Singh) shall not associate themselves with the affairs of FHL and FHsL in any manner whatsoever.

.....”

4. Subsequently, RFL vide a letter dated May 22, 2019, *inter alia* requested SEBI for relaxation of the direction issued against it, as contained in para 17(iii) of the confirmatory order dated March 19, 2019, so as to allow it to execute revival plan for the betterment of RFL by taking required steps including the restructuring of its loans, securitization/ assignment of its assets to Asset Reconstruction Companies etc. to reduce its standing liability. After considering the aforesaid representation, SEBI passed the following directions vide order dated June 28, 2019, effectively modifying direction contained in para 17(iii) of the confirmatory order:

“.....The Noticee no. 8 (viz. Religare Finvest Limited), pending completion of the investigation, shall not dispose of or alienate any of its assets or divert any funds, without the prior permission of SEBI, except for meeting expenses of day-to-day business operations and taking all measures as it deems fit for revival of RFL(including restructuring of its debts/loans, assignment of its financial assets to ARCs, raising of capital, borrowing, etc.), subject to strict adherence to the terms

of “Corrective Action Plan” and any other norms stipulated by the Reserve Bank of India and provisions of all other applicable laws.....”

5. The confirmatory order dated March 19, 2019 and subsequent modification order dated June 28, 2019, are hereinafter collectively referred to as ‘**the Confirmatory Order**’. Being aggrieved by the directions in the Interim Order and the Confirmatory Order, Religare Enterprises Ltd. (hereinafter referred to as ‘**REL**’), preferred an Appeal no. 304 of 2019 before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as ‘**Hon’ble SAT**’). Vide its order dated January 29, 2020, the Hon’ble SAT had held as under:

“.....11. Having heard the learned counsel for the parties at some length, we find that the impugned orders cannot be sustained. The submission of the appellant contending that they had never taken loans or borrowed the money from the companies has not been dealt with by the WTM. A categorical submission was made that the appellant had given a loan to the three companies which has been refunded by them along with interest. In support of their submissions documents have been provided. It was, thus, imperative upon the WTM to consider the objections and deal with them and then give a finding on it which in the instant case was lacking. We find that the submissions raised by the appellant was set aside in one sentence in paragraph 16 of the impugned order, namely, “failed to effectively rebut the prima-facie finding”. In our view, this one line finding is insufficient.

12. We may remind that the respondent is a quasi-judicial authority and is required to give reasons while passing the order. The impugned order does not contain reasons nor deals with the submissions and, therefore, we are of the opinion that the impugned order was passed without any application of mind. When the appellant categorically states that no amount is due and loans were given which were repaid alongwith interest, it was essential for the respondent to give a finding on the issue which in the instant case has not been done

13. We also find that a specific plea was taken by the appellant that they owe Rs. 7036 crores to various banks and financial institutions and if not paid, the appellant would be declared defaulters which will lead to further legal consequences. A specific plea was raised that the restraint order passed in the ex-parte interim order should be

modified which again was not considered and the exparte order was mechanically confirmed.

14. We find that the WTM has passed two orders which appears to be contradictory to each other. In the impugned order, the appellant is required to refund a sum of Rs. 200 crores which is alleged to have been paid by the three companies. In another order the WTM has directed the appellant to recover more than Rs. 2000

15. In the light of the aforesaid, the impugned orders cannot be sustained and are quashed in so far as it relates to the appellant. The matter is remitted to the WTM to pass a fresh order if they so desire after giving an opportunity of hearing to the appellant. In order to balance the equities, we direct the appellant to maintain its assets worth Rs. 200 crores for a period of three months from today. If the WTM is unable to pass the order within the aforesaid period, this limited restraint order that we have passed will come to an end. In the circumstances of the case, parties shall bear their own costs.....”

6. I note that, subsequent to the aforesaid SAT order, no further orders came to be passed qua REL. I also note that Noticee no. 2 and 4 had also preferred an appeal bearing no. 307 of 2019, before the Hon’ble SAT, challenging the vigors of the Interim Order and the Confirmatory Order. The Hon’ble SAT vide its order dated January 7, 2021 disposed of the aforesaid appeal with the following directions:

“.....6. In the light of the aforesaid, without going into the merits of the ex-parte ad-interim order as confirmed by the order dated 19th March, 2019 we dispose of the appeal directing the appellant to file a reply to the show cause notice. It would also be open to the appellant to file an application for inspection, production and supply of various documents such as bank account statement, ledger account etc. It will also be open to the appellant to apply for cross examination of any witness, if required. If such an application is filed the same shall be dealt with in accordance with law by the WTM.....”

7. I also note that, pursuant to the completion of investigation in the matter and upon reconsideration of the facts and circumstances of the case in totality, a revocation

order dated November 12, 2020, came to be passed against Best, Fern and Modland, wherein the directions issued qua these entities in the Interim Order and Confirmatory Order, were revoked and adjudication proceedings under Chapter VI of the SEBI Act, 1992, were initiated against the entities. I also note that, after completion of investigation by SEBI, the matter was put up before the undersigned on October 28, 2020, for approval of show cause notice. Subsequently, show cause notice dated November 20, 2020, (hereinafter referred to as “**SCN**”), came to be issued to the Noticees herein, alleging the following violations:

Noticee	Violations alleged in the SCN
Noticee no. 1 to 8	Section 12A(a), (b) & (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “ SEBI Act, 1992 ”) and Regulations 3(b), (c) & (d) and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “ PFUTP Regulations, 2003 ”); Section 15HA of the SEBI Act, 1992.
Noticee no. 9	Sections 12A(a), 12A(b), 12A(c) of the SEBI Act, 1992 and Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(f) & 4(2)(r) of PFUTP Regulations, 2003 as well as Clauses 32, Clause 49(I)(C)(1)(a) and 49(I)(C)(1)(d), Clause 49(VII)(D) and Clause 49(VIII)(A)(1) of the Listing Agreement {post amendment dated April 17, 2014} read with Regulation 103 of the SEBI (LODR) Regulations, 2015 (hereinafter referred to as “ LODR Regulations ”) and Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “ SCRA, 1956 ”); Regulations 4(1)(a),(b),(c),(d),(g),(h),(i),(j), Regulations 23(2), 30(1) and 48 of LODR Regulations; Section 15HA and 15HB of SEBI Act, 1992 and Section 23E of SCRA, 1956.
Noticee no. 2, 6 and 7	Clause 49(IX) of the Listing Agreement (post circular dated April 17, 2014) read with Regulation 103 of the LODR Regulations and Section 21 of the SCRA, 1956, and Regulations 17(8) & 33(2)(a) of the LODR Regulations; Section 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956.
Noticee no. 2 and 3	Clauses 49(I)(D), 49(I)(D)(1)(a), 49(I)(D)(1)(b), 49(I)(D)(2)(f), 49(I)(D)(3)(c),(f),(g),(i),(l), 49(II)(E)(2) of the Listing Agreement

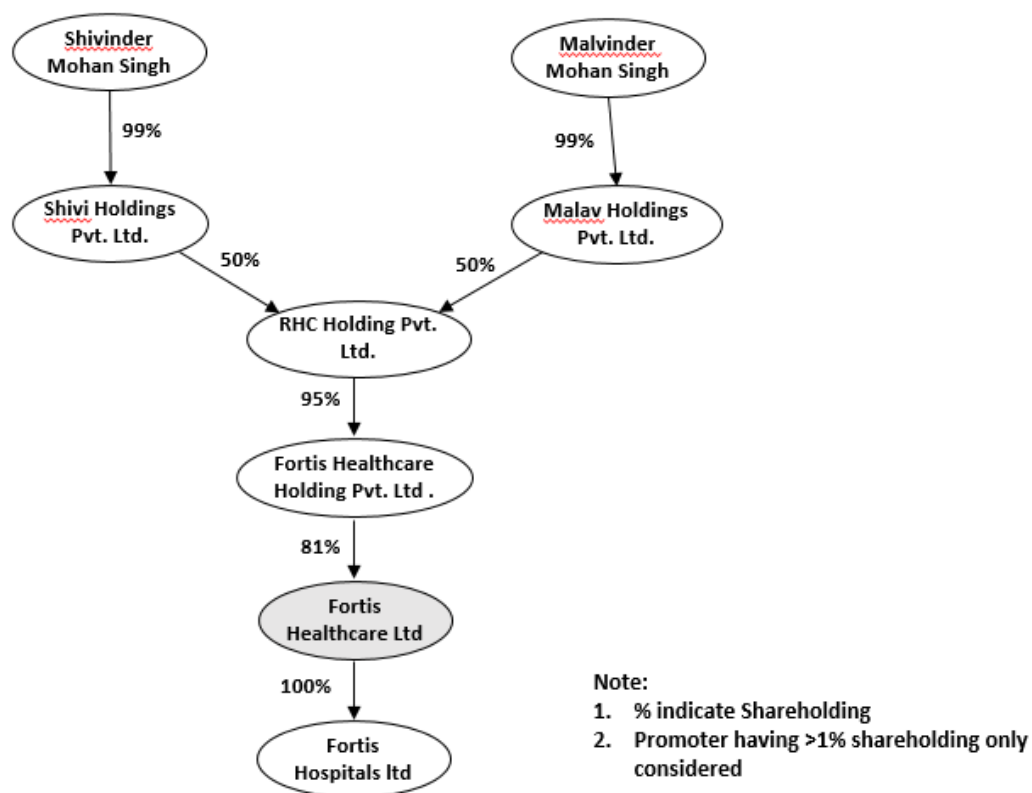
	read with Regulation 103 of the LODR Regulations and Section 21 of the SCRA, 1956 and Regulations 4(2)(f)(i)(1),(2), 4(2)(f)(ii)(6), 4(2)(f)(iii)(1),(3),(6),(7),(9),(12) & 26(3) of LODR Regulations, Section 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956.
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For the aforesaid alleged violations, the SCN has called upon the Noticees to show cause as to why appropriate directions as deemed fit under Sections 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992 and Section 12A(1) of SCRA, 1956, should not be issued against them. Noticees have also been also called upon to show cause as to why appropriate directions for imposing penalty under Sections 11(4A) and 11B(2) read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**the Rules**”) and Section 12A (2) of SCRA, 1956 read with Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as “**SCRA Rules**”), should not be issued against them.

8. The following paras are the extract of the SCN, mentioning the findings of the investigation by SEBI:

8.1. Ownership Structure of FHL (**Noticee no. 9**), a company having its shares listed on NSE and BSE, during the beginning of Investigation Period (i.e. during March 31, 2011) is shown below for easy reference:

Chart 1 – Ownership Structure of FHL



8.2. Shares of FHL were listed on NSE and BSE. It was observed from the shareholding pattern of FHL that majority shareholder in the promoter group of FHL was Fortis Healthcare Holdings Pvt. Ltd (hereinafter referred to as '**FHHPL**') and amongst other promoters were Shivinder Mohan Singh (**Noticee no. 3**), Malvinder Mohan Singh (**Noticee no. 2**) and RHC Holding Pvt. Ltd. (hereinafter referred to as "**RHC**"). Further, Fortis Healthcare Holding Pvt. Ltd. (hereinafter referred to as "**FHHPL**") was controlled by RHC, which was in turn entirely held by Shivinder Mohan Singh, and Malvinder Mohan Singh through Shivi Holdings Private Limited (**Noticee no. 5**) and Malav Holdings Private Limited (**Noticee no. 4**), respectively. Thus, Shivinder Mohan Singh, and Malvinder Mohan Singh, through entities controlled by them, were the controlling shareholders and promoters of FHL.

8.3. Also, Fortis Health Management North Limited (hereinafter referred to as 'FHMNL') (till its merger with FHsL in 2013) and FHsL were wholly owned subsidiaries of FHL during the Investigation Period (i.e. between April 01, 2011 to March 31, 2018).

8.4. **Funding from FHL to FHsL:** From the information collected during the course of investigation, it was observed that during 2011 to 2017, funds were moved out from FHL through FHsL. In this regard, information was obtained from FHL in reference to the financing facility between FHL and FHsL. Based on the reply obtained from FHL, the following was observed:

8.4.1. The Board of Directors of FHL in their meeting held on April 14, 2011 had given their approval for making loans to and / or give guarantee / provide any security in connection with loans so made or investments, by way of subscription, purchase or otherwise, in the securities of, any one or more of the FHL's subsidiaries, for an amount not exceeding Rs. 2,000 crore.

8.4.2. Thereafter, FHMNL and FHL entered into a MoU on June 01, 2011 by which FHL agreed to lend a sum of Rs. 20 crore to FHMNL in the form of ICDs at 10% interest p.a.

8.4.3. On November 15, 2011, FHMNL and FHL signed an Addendum to the aforementioned MoU by which the aforementioned ICD amount was increased from Rs. 20 crore to Rs. 600 crore. The rate of interest of this ICD was 13% p.a.

8.5. From the above, it was observed that during November 2011, FHMNL had arranged an amount of Rs. 600 crore from its parent company FHL. These funds were further lent / invested by FHMNL and thereafter by FHsL (post merger with FHMNL) to various other entities. The same is discussed in the subsequent paras.

8.6. **Findings of the investigation:-** During the investigation, a detailed analysis of ledger accounts of Best, Fern and Modland in the books of FHMNL / FHsL along

with the analysis of the bank account statements of Best, Fern, Modland, FHSL and other entities was carried. The transactions appearing in the ledger accounts of Best, Fern and Modland were verified with respective bank statements. Accordingly, transactions were classified into five categories:

8.6.1. Initial Loan Transactions and their repayments.

8.6.1.1. These include initial ICDs granted by FHMNL to Best, Fern and Modland on December 28, 2011 and its subsequent repayments. FHMNL (subsequently merged into FHSL) issued ICDs to Best, Fern and Modland for the first time during December, 2011. In this regard, it was observed that the said ICDs were linked to a land deal made by a subsidiary of FHL (i.e. Escorts Heart Institute and Research Centre Limited, hereinafter referred to as '**EHIRCL**'). The details of the land deal are explained hereunder:

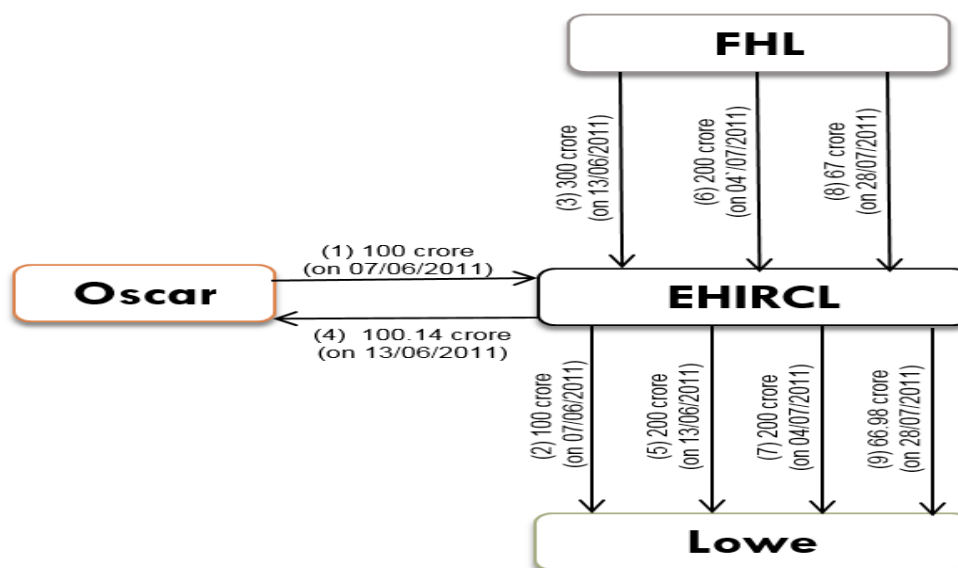
8.6.1.1.1. A parcel of land situated at Golf Course Extn. Road, Sector 62, Gurgaon was purchased by EHIRCL during May 2011. In this regard, the Board of Directors of FHL, in their meeting held on April 14, 2011 passed a resolution for making loans to and / or give guarantee / provide any security in connection with loans so made or investments, by way of subscription, purchase or otherwise, in the securities of, any one or more of the FHL's subsidiaries, for an amount not exceeding Rs. 2,000 Crore. Subsequent to required board resolutions, Rs. 567 crores were given by FHL to EHIRCL during the period June 07, 2011 to July 28, 2011, which were subsequently transferred by EHIRCL to Lowe Infra and Wellness Private Limited (hereinafter referred to as '**Lowe**') {which used the funds for purchasing the land from M3M}, in the following manner:

Table 1 Flow of funds relating to purchase of Land

Date	Transferred From	Transferred To	Amount (in Rs.)
07/06/2011	Oscar Investments Limited	EHIRCL	100,00,00,000
07/06/2011	EHIRCL	Lowe	100,00,00,000

13/06/2011	FHL	EHIRCL	300,00,00,000
13/06/2011	EHIRCL	Oscar Investments Limited	100,13,68,493
13/06/2011	EHIRCL	Lowe	200,00,00,000
04/07/2011	FHL	EHIRCL	200,00,00,000
04/07/2011	EHIRCL	Lowe	200,00,00,000
28/07/2011	FHL	EHIRCL	67,00,00,000
28/07/2011	EHIRCL	Lowe	66,98,00,000

Chart 2 – Flow of funds from FHL to Lowe during Land Deal



- 8.6.1.1.2. As can be seen from the above transactions, EHIRCL had transferred approx. Rs. 567 crore (that it had received from FHL) to Lowe in multiple transactions.
- 8.6.1.1.3. The Board of Directors of EHIRCL, in their meeting held on December 13, 2011 decided to cancel the collaboration agreement with Lowe (entered for the purpose of acquiring land) and call back the amount of Rs. 567 crore (along with interest @14%) that EHIRCL had given to Lowe.
- 8.6.1.1.4. Thereafter, RHC decided to take over Lowe and hence, the land was also acquired by RHC. Since RHC took over Lowe in December 2011, an amount of Rs. 603 crore (approx.) was transferred by RHC to Lowe on December 28, 2011 which was used by Lowe to repay EHIRCL.
- 8.6.1.1.5. However, on analyzing the bank account statement of RHC Holdings, Lowe, FHL, FHMNL and various other entities, a lot of high value fund movements were observed during December 28, 2011. It was also

observed that during the same time, FHMNL decided to issue ICDs to the tune of Rs. 576 crore to three entities (viz. Best, Fern and Modland) and funds were transferred by FHMNL to Best, Fern and Modland on December 28, 2011.

8.6.1.2. Hence, the bank account statements of aforementioned entities were analysed for December 28, 2011 to ascertain the actual movement of funds. However, on analyzing the bank account statement of other entities, it was observed that on December 28, 2011, EHIRCL / FHL effectively did not receive any funds. Rather a complex mirage of transactions by way of ICDs issued by FHMNL to Best, Fern and Modland were used to show that Lowe had paid back its loan to EHIRCL. In this regard, the series of bank account transfers that took place on December 28, 2011 has been explained below:

8.6.1.2.1. **Rotational movement of funds through Modland** - Initially, RHC Holding transferred Rs. 200 crore to FHHPL. Thereafter, FHHPL transferred the same amount to Lowe and Lowe transferred the same amount to EHIRCL (*indicating repayment of loan*). EHIRCL, in turn transferred the same amount to FHL which transferred further to FHMNL. Then, FHMNL transferred the same amount to Modland (*indicating issue of ICD*) and Modland transferred the same amount to RHC Holding through various entities, thereby completing the 1st circle of movement of money from RHC Holding back to RHC Holding.

8.6.1.2.2. **Rotational movement of funds through Best** -Thereafter, RHC Holding transferred Rs. 200 crore to RHC Finance which transferred it to Lowe and Lowe transferred the same amount to EHIRCL (*indicating repayment of loan*). EHIRCL transferred Rs. 176 crore to FHL which further transferred the same to FHMNL. Thereafter, FHMNL transferred Rs. 176 crore to Best (*indicating issue of ICD*). Additionally, EHIRCL transferred the remaining Rs. 24 crore to Best. Thereafter, Best

transferred Rs. 105 crore to Ranchem and Rs. 95 crore to ANR. Ranchem and ANR transferred the said amounts of Rs. 105 crore and Rs. 95 crore, respectively, to RHC, thereby completing the 2nd circle of movement of money from RHC Holding to RHC Holding.

8.6.1.2.3. **Rotational movement of funds through Fern** - Thereafter, RHC Holding transferred Rs. 83.50 crore each to FHHPL and RHC Finance Private Limited which were subsequently transferred by both entities to Lowe. Additionally, RHC Holding also transferred Rs. 36.50 crore to Adept Lifespaces Private Limited which were further transferred by Adept Lifespaces Private Limited to Lowe. Hence, Lowe in total got Rs. 203.5 crore in this round, which it then transferred Rs. 203.45 crore to EHIRCL (*indicating repayment of loan*). EHIRCL, transferred Rs. 203.30 crore to FHL and FHL transferred Rs. 200 crore to FHMNL. Then, FHMNL transferred Rs. 200 crore to Fern (*indicating issue of ICD*). Thereafter, Fern transferred Rs. 95.1 crore to ANR Securities Private Limited which were further transferred by ANR Securities Private Limited to RHC. Fern transferred the remaining Rs. 104.90 crore to RHC Holding directly, thereby completing the 3rd circle of movement of money from RHC Holding back to RHC Holding.

8.6.1.3. As can be seen from above, it was observed that no actual payments were received / made between the aforementioned entities on December 28, 2011 as funds were rotated circularly between various entities to show that Lowe had paid back the loan amount to EHIRCL. Whereas in actual, no payment was received by EHIRCL, instead the creditor in the form of Lowe in the books of account of EHIRCL got changed to Best, Fern and Modland in the books of account of FHMNL.

8.6.1.4. As a result, RHC Holding became the actual beneficiary of the aforementioned movement of funds as it got the land (by taking over Lowe) without having to pay any amount in respect of the same. However, from

the ledger account statements of Best, Fern and Modland, it was observed that these entities had paid back the ICD amount to FHsL (post merger with FHMNL) during September 2013 to July 2015 and RHC Holding had provided funds to said entities to repay to FHsL.

8.6.1.5. Details of flow of funds from FHMNL to RHC (through Best, Fern and Modland) on December 28, 2011 and the subsequent repayments of the same (along with the fund movements) is given below:

Outflow of funds from FHMNL

Table 2 Flow of funds from FHMNL to RHC Holding on December 28, 2011

28/12/2011	FHMNL 176,00,00,000	→	Best	→	Ranchem 105,00,00,000	→	RHC 105,00,00,000
	EHIRCL 24,00,00,000	→	200,00,00,000	→	ANR 95,00,00,000	→	RHC 95,00,00,000
	FHMNL 200,00,00,000	→	Fern 200,00,00,000	→	ANR 95,10,00,000	→	RHC 95,10,00,000
				→			RHC 104,90,00,000
	FHMNL 200,00,00,000	→	Modland 200,00,00,000	→	Ranchem 200,00,00,000	→	RHC 200,00,00,000

Inflow of funds to FHMNL / FHsL

Table 3 Flow of funds from RHC Holding to FHMNL / FHsL during December 2011 to July 2015

30/12/2011	FHMNL 10,00,00,000	←	Best 10,00,00,000	←	RHC 10,00,00,000
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01/11/2013	FHsL 85,00,00,000	←	Modland 10,00,00,000	←	Rexcin 10,00,00,000	←	Ranchem 38,00,00,000	←	RHC 85,00,00,000
			Best 8,00,00,000	←					
			Fern 20,00,00,000	←					
			Fern 30,00,00,000	←	Fortis Global 30,00,00,000	←			
			Fern 5,00,00,000	←	Fortis Global 5,00,00,000	←	ANR 17,00,00,000	←	
			Modland 2,00,00,000	←	BHMPL 2,00,00,000	←			
			Best 10,00,00,000	←					

31/12/2013	FHsL 100,00,00,000	←	Modland 100,00,00,000	←	Ranchem 100,00,00,000	←	RHC 100,00,00,000
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28/03/2014	FHsL 88,00,00,000		←								Modland 90,00,00,000		←	Shimal 280,00,00,000	←	Malvinder 150,00,00,000	←	RHC 280,00,00,000
	FHsL 145,00,00,000		←								Fern 150,00,00,000							
	FHsL 10,44,60,493		←	Best 6,91,00,000	←	ANR 4,30,00,000	←											
					ANR 2,61,00,000	←	Modland 3,45,00,000	←	Saubhagya 3,45,00,000	←								
	FHsL 32,00,00,000		←								Best 40,00,00,000							
	FHsL 4,55,39,507		←															

02/04/2014	FHsL 35,00,00,000	←	Best 40,00,00,000	←	Shimal 20,00,00,000	←	Malvinder 20,00,00,000	←	RHC 40,00,00,000
	FHsL 4,78,50,849				Shimal 20,00,00,000	←	Shivinder 20,00,00,000		

30/04/2015	FHsL 20,20,02,188	←	Best 20,20,00,000	←	Saubhagya 20,20,00,000	←	Modland 20,25,00,000	←	Ranchem 20,25,00,000	←	RHC 20,25,00,000
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29/05/2015	FHsL 20,40,04,385	←	Best 100,00,00,000	←	ANR 100,00,00,000	←	RHC 100,00,00,000
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01/07/2015	FHsL 20,62,82,742	←	Best 22,10,00,000	←	Ranchem 22,10,00,000	←	RHC 22,10,00,000
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31/07/2015	FHsL 6,06,69,701	←	Best 20,25,00,000	←	Ranchem 20,25,00,000	←	RHC 20,25,00,000
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8.6.1.6. From the above, it was observed that Rs. 576 crore was transferred from FHMNL to RHC Holding (through Best, Fern and Modland) on December 28, 2011. FHMNL, in its books of accounts showed this amount as ICD to the 3 borrower companies and as per the terms of the said ICDs, these ICDs were to be repaid by the 3 borrower companies to FHMNL by March 30, 2012. However, the repayments of said amounts was made by the 3 entities from the period December 30, 2011 to July 31, 2015 and such repayments were made through RHC Holding. Hence, it was observed that RHC Holding utilized this money (Rs. 576 crore approx.) for more than 3 years and no such disclosure was made by FHL in its financial statements during the concerned FYs.

8.6.1.7. From the above mentioned analysis and pattern of flow of funds, it is alleged that the same was carried out to falsely portray that RHC Holding had paid the consideration money of Rs.600 crores in three tranches to Lowe / FHL for the land on 28/12/2011. However, in reality, no consideration was paid by RHC Holding.

8.6.1.8. Although, RHC Holding was observed to have subsequently repaid Rs.600 crores to FHL through FHsL with 14% interest per annum, the said repayment was over a period of four years and was completed by July 31, 2015. Thus, though RHC Holding ultimately paid the consideration for land, it was after a period of more than 3 years. In other words, ICDs/loans that FHL provided to Best, Fern and Modland through FHMNL / FHsL was actually utilized by RHC Holding for a period of 3-4 years, without any such disclosure made by FHL in its consolidated financial statements during the concerned FYs.

8.6.2. Subsequent Short Term Loans / ICDs.

8.6.2.1. These include several short term ICDs that were given by FHMNL / FHsL to Best, Fern and Modland during the period December 2012 to March 2016. Subsequent to the initial loans / ICDs during December 2011, it was

observed that FHMNL and post-merger, FHsL had granted several other short term ICDs / loans to Best, Fern and Modland during the period December 2012 to March 2016. It was also observed that the funds for granting such short term ICDs / loans to the 3 borrower companies, were received by FHMNL/FHsL from FHL only. A summary of these short term loans and their repayments as appearing in ledger account of Best, Fern and Modland is reproduced in Table below:

Table 4 Extract of Ledger of Short term ICDs to Best

Instances	Date	Narration	Debit (INR)	Credit (INR)	Balance (INR)
1	26/12/2012	BEING AMOUNT PAID TO BEST	100,00,00,000		266,00,00,000
1	31/12/2012	REPAYMENT OF LOAN FRO BEST		100,00,00,000	166,00,00,000
2	26/07/2013	BEING AMOUNT TRANSFER TO BEST	75,00,00,000		241,00,00,000
2	29/07/2013	BEING AMOUNT RECD FROM BEST		75,00,00,000	166,00,00,000
3	20/08/2013	BEING AMOUNT TRANSFER TO BEST	75,00,00,000		241,00,00,000
3	30/08/2013	BEING AMOUNT RECD FROM BEST		75,00,00,000	166,00,00,000
4	16/09/2013	BEING AMOUNT TRANSFER TO BEST	60,00,00,000		226,00,00,000
4	23/09/2013	BEING AMOUNT RECD FROM BEST		60,00,00,000	166,00,00,000
5	21/11/2013	BEING AMOUNT TRASNFER TO BEST	100,00,00,000		248,00,00,000
5	21/11/2013	BEING AMOUNT RECD FROM BEST		100,00,00,000	148,00,00,000
6	18/12/2013	BEING AMOUNT TRANSFER TO BEST	100,00,00,000		248,00,00,000
6	23/12/2013	BEING AMOUNT RECD FROM BEST		100,00,00,000	148,00,00,000
8	24/09/2014	BEING AMOUNT TRANSFER TO BEST	100,00,00,000		166,00,00,000
8	26/09/2014	BEING AMOUNT RECD FROM BEST		100,00,00,000	66,00,00,000
11	16/09/2015	BEING FUND TRNASFER TO BEST	200,00,00,000		200,00,00,000
11	30/09/2015	BEING FUND RECD FROM BEST		50,00,00,000	150,00,00,000
11	30/09/2015	BEING CHQ. NO. 327330 DT. 30.09.15 RECD FROM BEST HEALTHCARE		150,00,00,000	0
12	26/11/2015	FUND TRANSFER TO BEST	200,00,00,000		200,00,00,000
12	30/12/2015	BEING FUND RECD FROM BEST		200,00,00,000	0
13	01/01/2016	FUND TRANSFER TO BEST	200,00,00,000		200,00,00,000
13	29/01/2016	FUND TRANSFER TO BEST	100,00,00,000		300,00,00,000
13	15/03/2016	FUND RECD FROM BEST		80,00,00,000	220,00,00,000
13	30/03/2016	FUND RECD FROM BEST		145,00,00,000	75,00,00,000
13	31/03/2016	FUND RECD FROM BEST		75,00,00,000	0

Table 5 Extract of Ledger of Short term ICDs to Fern

	Date	Narration	Debit (INR)	Credit (INR)	Balance (INR)
1	26/12/2012	BEING AMOUNT TRANSFER TO FERN	100,00,00,000		300,00,00,000
1	29/01/2013	BEING AMOUNT RECIEVED FROM FERN		100,00,00,000	200,00,00,000
2	26/07/2013	BEING AMOUNT TRANSFER TO FERN	100,00,00,000		300,00,00,000
2	29/07/2013	BEING AMOUNT RECD FROM FERN		100,00,00,000	200,00,00,000
3	20/08/2013	BEING AMOUNT TRANSFER TO FERN	80,00,00,000		280,00,00,000
3	22/08/2013	BEING AMOUNT RECD FROM FERN		25,00,00,000	255,00,00,000
3	30/08/2013	BEING AMOUNT RECD FROM FERN		55,00,00,000	200,00,00,000
4	16/09/2013	BEING AMOUNT TRANSFER TO FERN	65,00,00,000		265,00,00,000
4	23/09/2013	BEING AMOUNT RECD FROM FERN		65,00,00,000	200,00,00,000
5	21/11/2013	BEING AMOUNT TRASNFER TO FERN	100,00,00,000		245,00,00,000
5	21/11/2013	BEING AMOUNT RECD FROM FERN		100,00,00,000	145,00,00,000
6	18/12/2013	BEING AMOUNT TRANSFER TO FERN	100,00,00,000		245,00,00,000
6	23/12/2013	BEING AMOUNT RECD FROM FERN		100,00,00,000	145,00,00,000
7	05/08/2014	BEING AMOUNT TRANSFER TO FERN	100,00,00,000		100,00,00,000

	Date	Narration	Debit (INR)	Credit (INR)	Balance (INR)
7	08/08/2014	BEING AMOUNT RECD FROM FERN		100,00,00,000	0
8	24/09/2014	BEING AMOUNT TRANSFER TO FERN	100,00,00,000		100,00,00,000
8	07/10/2014	BEING AMOUNT RECD FROM FERN		100,00,00,000	0
9	25/11/2014	BEING AMOUNT TRANSFER TO FERN	250,00,00,000		250,00,00,000
9	28/11/2014	BEING AMOUNT RECD FROM FERN		250,00,00,000	0
11	16/09/2015	BEING FUND TRNASFER TO FERN	50,00,00,000		50,00,00,000
11	30/09/2015	BEING FUND RECD FROM FERN		50,00,00,000	0
12	26/11/2015	FUND TRANSFER TO FERN	100,00,00,000		100,00,00,000
12	30/12/2015	BEING FUND RECD FROM FERN		100,00,00,000	0
13	01/01/2016	FUND TRANSFER TO FERN T/W LOAN	100,00,00,000		100,00,00,000
13	15/03/2016	FUND TRANSFER TO FERN T/W LOAN	80,00,00,000		180,00,00,000
13	30/03/2016	FUND RECD FROM FERN T/W LOAN		130,00,00,000	50,00,00,000
13	31/03/2016	FUND RECD FROM FERN T/W LOAN		25,00,00,000	25,00,00,000
13	31/03/2016	FUND RECD FROM BEST HELATHCARE		25,00,00,000	0

Table 6 Extract of Ledger of Short term ICDs to Modland

	Date	Narration	Debit (INR)	Credit (INR)	Balance (INR)
5	21/11/2013	BEING AMOUNT TRASNFER TO MODLAND	100,00,00,000		288,00,00,000
5	21/11/2013	BEING AMOUNT RECD FROM MODLAND		100,00,00,000	188,00,00,000
7	05/08/2014	BEING AMOUNT TRANSFER TO MODLAND	100,00,00,000		100,00,00,000
7	07/08/2014	BEING AMOUNT TRANSFER TO MODLAND	50,00,00,000		150,00,00,000
7	08/08/2014	BEING AMOUNT RECD FROM MODLAND		150,00,00,000	0
9	25/11/2014	BEING AMOUNT TRANSFER TO MODLAND	250,00,00,000		250,00,00,000
9	28/11/2014	BEING AMOUNT RECD FROM MODLAND		250,00,00,000	0
10	04/02/2015	MODLAND WARE PVT. LTD. T/W LOAN	50,00,00,000		50,00,00,000
10	31/03/2015	MODLAND WARE PVT. LTD. T/W LOAN		40,00,00,000	10,00,00,000
10	31/03/2015	MODLAND WARE PVT. LTD. T/W LOAN		10,00,00,000	0
	10/02/2016	FUND TRANSFER TO MOODLAND	125,00,00,000		125,00,00,000
	11/02/2016	FUND RECD FROM MODLAND		125,00,00,000	0

8.6.2.2. The bank statements of Best, Fern and Modland were analyzed to check the actual movement of funds that were provided by FHsL to Best, Fern and Modland by way of grant of loans/ICDs. The movement of funds from FHMNL/FHsL to Best, Fern and Modland and the corresponding repayment entries (as appearing in the bank statements) for each of the short term ICD by FHMNL/FHsL during December 2012 to March 2016 were analysed and the following were observed:

8.6.2.2.1. The short term loans were given by FHMNL / FHsL to Best, Fern and Modland at various instances during the period December 2012 to September 2015.

8.6.2.2.2. Thereafter, the aforementioned funds were further transferred from Best, Fern, Modland to RHC on same date, through various entities.

8.6.2.2.3. RHC Holding utilized the said funds (indirectly received from FHsL) for certain period ranging from 2 days to 34 days and thereafter, returned the funds to Best, Fern and Modland, through various entities, which were then ultimately transferred by Best, Fern and Modland to FHMNL / FHsL.

8.6.2.2.4. The entities that were used to transfer the funds between RHC and Best, Fern, Modland were Saubhagya Buildcon Private Limited, Artifice Properties Private Limited, Best Cure Private Limited, Ranchem Private Limited, ANR Securities Private Limited, AD Advertising Private Limited and Rexcin Finance Private Limited.

8.6.2.3. In view of above, it is alleged that funds were repeatedly moved out of FHMNL / FHsL at different occasions for a short period of time, through borrower entities (Best, Fern and Modland) for the ultimate utilization by the promoter entity of FHL (i.e. RHC). Instead of giving loans directly to the company (i.e. RHC) owned by promoters of FHL (i.e. Noticee no. 2 and 3), funds were routed by way of loans to the 3 borrower companies i.e. Best, Fern and Modland. The same were also allegedly not disclosed in the consolidated financial statements of FHL during the relevant FYs.

8.6.2.4. Apart from the aforementioned, there were other instances also during which the loans were given by FHsL to Best, Fern and Modland for ultimate benefit of connected entities of promoters of FHL (i.e. RHC). However, in such instances repayment of such loans were initiated through another promoter related entity (i.e. RFL), instead of RHC. A summary of such fund movements out from FHsL and received by FHsL during the period November 26, 2015 to April 04, 2016), is given in table below:

Table 7 Summary of funds movements

Date	Amount of funds moved out from FHsL (approx.)	Name of Ultimate Beneficiary of funds	Amount of funds received by FHsL as repayment (approx.)	Name of entity through whom repayment made
26/11/2015	Rs. 300 crore	RHC		

30/12/2015			Rs. 300 crore	RFL
01/01/2016	Rs. 200 crore	RFL		
05/01/2016	Rs. 100 crore	RFL		
29/01/2016	Rs. 100 crore	RFL		
15/03/2016	Rs. 80 crore	RHC		
15/03/2016			Rs. 80 crore	RHC
30/03/2016			Rs. 275 crore	RHC
31/03/2016			Rs. 25 crore	RHC
04/04/2016			Rs. 100 crore	FHsL

8.6.2.5. From the above table, it was observed that out of a total loan / ICD amount of Rs.780 crore (approx.) that FHsL had granted to Best and Fern during November 26, 2015 to March 31, 2016, RHC was the beneficiary of Rs. 380 crore (approx.) while Rs. 400 crore (approx.) were observed to have been routed to RFL. Further, in terms of repayment of the aforementioned amounts, it was observed that RHC initiated the repayment for Rs. 380 crore (approx.) while the repayment for Rs. 300 crore (approx.) was through RFL during the aforementioned period. As regards the remaining Rs. 100 crore (approx.), repayment for the same was initiated by FHsL itself by issuing an ICD to Modland on April 04, 2016.

8.6.2.6. It was observed that ICD dated April 04, 2016 from FHsL to Modland was returned to FHsL on the same date routing through various entities (including Best and Fern). Through such rotation of funds, it was portrayed that the ICD amount of Rs. 100 crore that FHsL had issued to Best on January 29, 2016, was repaid by Best on April 04, 2016. However, as mentioned above, it was seen that such repayment was arranged by FHsL itself by issuing another ICD of Rs. 100 crore to Modland on April 04, 2016.

8.6.2.7. Thus, considering the above pattern of fund transactions, it was observed that RHC repaid the entire amount that it had indirectly received from FHsL during the period November 26, 2015 to March 31, 2016 whereas RFL repaid only Rs. 300 crore out of a total of Rs. 400 crore that it had received indirectly from FHsL during the aforementioned period. In this regard, from

the analysis of ledger accounts and bank statements, it was observed that the said Rs. 100 crore (approx.) pertain to the amount (Rs. 100 crore) that was transferred by FHsL to Best on January 29, 2016.

8.6.2.8. It was observed that RFL was a subsidiary company of Religare Enterprises Limited (hereinafter referred to as “**REL**”) (another listed company) which was also under the ownership and control of Noticee no. 2 and 3. Thus, it was examined whether the aforementioned Rs. 100 crore (that were routed from FHsL to RFL through various entities) were possibly further diverted to other promoter connected entities including RHC.

8.6.2.9. With reference to the said Rs.100 crore that were routed from FHsL to RFL through various entities on January 29, 2016 (as mentioned above), the bank account statements and the ledger accounts of last leg of entities from which the money was transferred to RFL (i.e. Best, Fern, Tiger Developers Private Limited, Zolton Properties Private Limited), was analysed. From the analysis, it was observed that Rs. 100 crore that were transferred by these four entities to RFL on January 29, 2016 were repayment of principal amount / interest amount of earlier loans / ICDs that these four entities had taken from RFL on December 30, 2015, October 28, 2015, August 25, 2015 & July 13, 2015, respectively. Further, on checking the bank account statements of these four entities for the period when they had taken such loans from RFL, it was observed that the amount of funds that they received from RFL were further diverted to RHC through various entities. The detailed flow of the same are as follows: -

Fund movement of the loan taken by Best from RFL

30/12/2015	RFL 100,00,00,000	→	Best 100,00,00,000	→	Torus 100,00,00,000	→	ANR 100,00,00,000	→	RHC 196,10,00,000
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Fund movement of the loan taken by Fern from RFL

28/10/2015	RFL 80,00,00,000	→	Fern 80,00,00,000	→	Tiger 1,08,00,000	→			RFL 97,39,110
					Saubhagya 78,40,00,000	→			RFL 3,62,46,575
						→	ANR 74,37,50,000	→	RHC 74,40,00,000

Fund movement of the loan taken by Tiger from RFL

25 /08/2015	RFL 76,25,00,000	→	Tiger 76,25,00,000	→	Fern 66,25,00,000	→	Saubhagya 66,25,00,000	→	Modland 66,25,00,000	→	Torus	→	ANR	→	RHC 36,25,00,000
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Fund movement of the loan taken by Zolton from RFL

13/07/2015	RFL 70,00,00,000	→	Zolton 70,00,00,000	→	Modland 70,00,00,000	→	Saubhagya 70,82,50,000	→	ANR 75,57,50,000	→	RHC 142,27,50,000
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8.6.2.10. Thus, as analysed above, during December 2012 to March 2016, FHMNL / FHsL gave numerous short term loans / ICDs to Best, Fern and Modland, which were further transferred to RHC Holding through a complex layer of various entities. RHC Holding utilized the money for certain days and thereafter, the funds were transferred back to FHsL by the aforementioned three entities wherein such repayment was arranged by RHC only. Hence, instead of transferring funds directly to RHC, FHsL managed to benefit its promoter company by transferring funds indirectly through various entities and in the process, FHL and FHsL circumvented the provisions of related party transactions as applicable in the case of a listed company i.e, FHL.

8.6.2.11. Out of various instances during the period December 2012 to March 2016, there was one instance (i.e. on January 29, 2016), when Rs. 100 crore was moved out from FHsL (through Best), wherein the repayment of the said loan was through FHsL itself. The ultimate beneficiary of the said amount of Rs. 100 crore was RHC. Hence, it is alleged that Rs. 100 crore were diverted from FHsL to RHC which ultimately benefitted Noticee no. 2 and 3, who jointly controlled RHC through Malav Holding Pvt. Ltd. and Shivi Holding Pvt. Ltd.

8.6.3. Diversion of Loans / ICDs:

8.6.3.1. These pertain to transactions that led to diversion of the funds from FHsL to promoter entities through Best, Fern and Modland. It was observed that

during December 2012 to December 2015, FHsL gave several short term loans / ICDs to Best, Fern and Modland for the ultimate benefit of RHC and the repayment of such loans were regular during the aforementioned period. However, after December 2015, FHsL was observed to have granted certain loans / ICDs again to Best, Fern and Modland for which the repayment was not received. The details of aforesaid funds are as follows:

8.6.3.1.1. Instance 1 – Funds Transfer from FHsL to Fern on April 04, 2016

Flow of funds from FHsL to RHC through Fern during April 2016

04/04/2016	FHsL 175,00,00,000	→	Fern 75,00,00,000	→	ANR 175,00,00,000	→	RHC 175,00,00,000
			Fern 100,00,00,000	→			

From the above, it was observed that FHsL gave a loan of Rs. 175 crore to Fern on April 04, 2016. Thereafter, Fern transferred Rs. 175 crore to ANR Securities Private Limited and ANR Securities Private Limited transferred the same amount to RHC on the same day. It was also observed that after receiving Rs. 175 crore from ANR Securities Private Limited, RHC Holding transferred Rs. 200.40 crore to HDFC Ltd on April 04, 2016. From the bank account statement of RHC Holding and the reply received from HDFC, it was observed that RHC Holding utilized this Rs. 175 crore in payment of its loan of Rs. 200 crore that it had taken from HDFC. Further, from the ledger account of Fern in the books of FHsL, it was observed that FHsL received these Rs. 175 crore from Fern on June 30, 2016. However, on analysis of bank account statement of FHsL and Fern, it was observed that the aforementioned payment by Fern was not a genuine payment and it was merely a “book entry” in the form of circular flow of transactions between FHsL and Fern to show that money had been received back whereas FHsL hasn’t received any actual money from Fern on that date. The details of the same were given at para no. 10.3.4 of the SCN.

8.6.3.1.2. Instance 2 – Funds Transfer from FHsL to Modland on April 04, 2016

Flow of funds from FHsL to RHC through Modland during April 2016

04/04/2016	FHsL 100,00,00,000	→	Modland 100,00,00,000	→	Torus 100,00,00,000	→	Addon Realty 132,65,00,000	→	RFL 125,00,00,000
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From the above, it was observed that on receiving the amount from Torus Buildcon Private Limited, Addon Realty Private Limited transferred Rs. 125 crore to RFL on the same day. It was observed that the last leg from which RFL received the money was Addon Realty Private Limited. The ledger account of Addon Realty Private Limited in the books of RFL were analysed and based on submissions of RFL in this regard, it was observed that Addon Realty Private Limited had transferred Rs. 125 crore to RFL as part of repayment of earlier loan of Rs. 156 crore taken from RFL. Thus, the utilization of loan taken by Addon Realty Private Limited from RFL was also analyzed. The utilization of the said are as follows:

Flow of funds from Addon Realty Private Ltd. after it received funds from RFL

27/03/2014	RFL 156,00,00,000	→	Addon Realty 156,00,00,000	→	Fern 93,09,80,322	→	Ligare Aviation 78,19,85,794	→	Oscar 78,19,52,137	→	Ranchem 112,50,00,000	→	RHC 225,00,00,000
						→					Ranchem 100,00,00,000		

From the above, it was observed that Addon Realty Private Ltd. had transferred Rs. 93.09 crore to Fern which were subsequently transferred to RHC through various entities (viz. Ligare Aviation Limited, Oscar Investments Limited, Ranchem Private Limited). All these fund transfers were observed to have happened on the same date i.e. March 27, 2014 and after receiving Rs. 225 crore from Ranchem Private Limited, RHC transferred Rs. 200 crore to RHC Holding Commercial Paper Account on March 27, 2014 from where the money was further transferred to IDBI Liquid Fund (Rs. 100 crore), Peerless Mutual Fund (Rs. 50 crore) and JM Financial Mutual Fund (Rs. 50 crore) on March

27, 2014, which was for RHC's own purpose and benefit. Further, as already mentioned Addon Realty Private Limited had used the funds indirectly received from FHsL (Rs. 100 crore) on April 04, 2016 to make the part repayment of the aforementioned loan amount that it had taken from RFL. Therefore, RHC was observed to be the ultimate beneficiary of Rs. 93.09 crore (approx.) as money received by Addon Realty Private Ltd. from RFL during March 27, 2014 were ultimately transferred to RHC and Addon Realty Private Ltd. had used the funds received by FHsL to make part repayment of this loan during April 04, 2016. Thus, it was observed that out of Rs. 100 crore that moved out from FHsL on April 04, 2016 (through Modland, Torus Buildcon Private Limited and Addon Realty Private Ltd, Rs. 93.09 crore (approx.) crore were diverted to RHC.

8.6.3.1.3. Instance 3 – Funds Transfer from FHsL to Modland on April 04, 2016

Flow of funds from FHsL to RHC through Modland during April 2016

04/04/2016	FHsL 100,00,00,000	→	Modland 100,00,00,000	→	Torus 100,00,00,000	→	Best 75,00,00,000	→	FHsL 75,00,00,000
						→	Fern 25,00,00,000	→	FHsL 25,00,00,000

From the above table, it was observed that the amount of Rs. 100 crores, was used to settle the earlier ICD amount that FHsL issued to Best & Fern on January 29, 2016. It was also noted in the earlier paras that the ultimate beneficiary of the amount of Rs.100 crore that went out from FHsL to Best on January 29, 2016, was RHC. Hence, it is alleged that Rs. 100 crore were diverted from FHsL to RHC.

8.6.3.1.4. Instance 4 – Funds Transfer from FHsL to Best on May 20, 2016

Flow of funds from FHsL to RHC through Best during May 2016

20/05/2016	FHsL 98,00,00,000	→	Best 98,00,00,000	→	Torus 98,00,00,000	→	Ranchem 98,00,00,000	→	RHC 98,00,00,000
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From the above table, it was observed that the said amount of Rs. 98 crores had been ultimately transferred to RHC and RHC had utilized this money for paying off Indiabulls Mutual Fund on the same day. Further, from the ledger account of Best in the books of FHsL, it was observed that FHsL received these Rs. 98 crores from Fern on June 30, 2016. However, on analysis of bank account statement of FHsL and Best, it was observed that the aforementioned payment by Best was not a genuine payment and it was merely a circular flow of transactions between FHsL and Fern to show that money had been received back whereas FHsL hasn't received any actual money from Fern on that date. The details of the same are being given at para no 10.3.4 of the SCN. Thus, it was observed that Rs. 98 crore was diverted from FHsL to RHC Holding, which utilized such funds for its own purpose.

8.6.3.2. Overall Allegation relating to Diversion of funds from FHsL – In view of above, it was observed that on several occasions till May 2016, funds were diverted from FHL through FHsL for the ultimate benefit of RHC Holding which include the following:

- 8.6.3.2.1. Rs. 175 crore (Refer Instance 1 – Outflow of funds on April 04, 2016 from FHsL to Fern for which the ultimate beneficiary was RHC Holding).
- 8.6.3.2.2. Rs. 93.09 crore (Refer Instance 2 – Outflow of funds on April 04, 2016 from FHsL to Modland for which the ultimate beneficiary was RHC Holding).
- 8.6.3.2.3. Rs. 100 crore (Refer Instance 3 and Para 10.3.2 of the SCN w.r.t Outflow of funds on January 29, 2016 from FHsL to Best for which the ultimate beneficiary was RHC Holding. The repayment of the said ICD dated January 29, 2016 was also arranged by FHsL by issuing another ICD of Rs. 100 crore to Modland on April 04, 2016.
- 8.6.3.2.4. Rs. 98 crore (Refer Instance 4 – Outflow of funds on May 20, 2016 from FHsL to Best for which the ultimate beneficiary was RHC Holding).

From the above analysis, it was observed that funds to the tune of Rs. 466 crore (approx.) were routed from FHL through FHsL to RHC Holding for the ultimate benefit of erstwhile promoters of FHL (i.e. Noticee no. 2 and 3) as RHC was jointly owned by Noticee no. 2 and 3. However, the complete and final allegations with respect to funds diverted from FHL through FHsL during the Investigation Period has been detailed in the succeeding paras.

8.6.4. Financial Misrepresentation – These include transactions executed between FHsL and Best, Fern, Modland that led to misrepresentation in the financial statements of FHsL:-

8.6.4.1. As discussed at paras 8.6.2 above, FHsL provided short term loans to Best, Fern and Modland for the ultimate benefit of RHC Holding from December 2012 to December 2015. It was also observed that during January 2016 to May 2016, funds were moved out of FHsL through Best, Fern and Modland which benefitted RHC Holding. This para deals with the analysis of fund movements between FHsL and the borrower companies (Best, Fern and Modland) after May 2016. On analysis of the ledger account statements of Best, Fern and Modland in the books of FHsL, it was observed that FHsL was granting loans to the aforementioned three companies during the 1st day of the quarter and these three companies were repaying the loan amount during the last day of the quarter. However, on observing the bank account statements of Best, Fern, Modland and FHsL, it was observed that that FHsL had entered into multiple structured transactions with these three companies for five quarters (i.e. from Q1 of FY 2016-17 to Q1 of FY 2017-18). The details of such transactions with each of the three entities are given below:

8.6.4.1.1. **Transactions with Best** – As per ledger statement - Below mentioned is the extract of ledger account statement of Best in the books of FHsL for certain transactions during the period from April 2016 to June 2017:

Table 8: Extracts from Ledger account statement of Best in the books of FHsL

Date	Particulars	Amount (in Rs.)	Cumulative Balance (in Rs.)
01/04/2016	Opening Balance		-
25/05/2016	Being amount t/w loan to Best Healthcare Pvt. Ltd. Dt. 20.05.16	98,00,00,000	98,00,00,000
30/06/2016	Being fund recd from Best Healthcare Pvt. Ltd. T/W Loan Repayment & Interest Recd Dt 30.06.16	-98,00,00,000	-
01/07/2016	Fund paid to Best Healthcare Pvt. Ltd. T/W Loan Dt. 01.07.16	98,00,00,000	98,00,00,000
30/09/2016	Being chq. Recd from Best Healthcare t/w repayment of loan chq. No. 000004 & 000005	-98,00,00,000	-
01/10/2016	Fund transfer to Best Healthcare t/w loan dt. 01.10.16	98,00,00,000	98,00,00,000
30/12/2016	Being fund recd from Best Healthcare Pvt. Ltd. T/w principal & interest received from best from 30th nov 16 to 29th dec on Rs. 98 crores dt. 30.12.16	-98,00,00,000	-
02/01/2017	Fund transfer to Best Healthcare t/w loan dt. 02.01.17	98,00,00,000	98,00,00,000
31/03/2017	Fund recd from Best Healthcare Pvt. Ltd. T/w principal & interest received from best from 01st mar 17 to 30 mar17 on Rs. 98 crores	-98,00,00,000	-
03/04/2017	Loan paid to Best Healthcare Pvt. Ltd. Dt. 03.04.17	1,50,00,00,000	1,50,00,00,000
30/06/2017	Fund recd from Best Healthcare Pvt. Ltd. T/w principal & interest received from best from 03rd apr 17 to 30 jun17 on Rs. 150 crores	1,50,00,00,000	-
01/07/2017	Fund trf to Best Healthcare Ltd. Dt. 01.07.17	1,55,07,00,000	1,55,07,00,000

8.6.4.1.1.1. From the above table, it is observed that FHsL provided funds to Best during the 1st day of the quarter and Best used to repay the same money to FHsL during the last day of the quarter. In order to further understand these movements of funds, the bank account statements of FHsL and Best were analysed.

8.6.4.1.1.2. As per Bank account statement - Below mentioned are some of the transactions appearing in the bank account statement of Best during quarter ending June 2016:

Table 9: Extracts from Bank account statement of Best maintained with Axis Bank

Bank Account statement of Best – Axis Bank Account				
Date	Particulars	Debit Amount (in Rs.)	Credit Amount (in Rs.)	Balance (in Rs.)
19/05/2016	Closing Balance as on 19/05/2016			2,16,01,573
20/05/2016	Received from Fortis Hospitals		98,00,00,000	
20/05/2016	Transferred to Torus	98,00,00,000		
20/05/2016	Closing balance as on 20/05/2016			62,74,176
29/06/2016	Closing Balance as on 29/06/2016			12,76,039
30/06/2016	Closing Balance as on 30/06/2016			3,39,71,710
01/07/2016	Received from Fortis Hospitals		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/07/2016	Received from Torus		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/07/2016	Received from Fortis Hospitals		50,00,00,000	
01/07/2016	Transferred to Torus	50,00,00,000		
01/07/2016	Closing balance as on 01/07/2016			3,14,71,652

8.6.4.1.1.3. From the above table, the following is observed:

- 8.6.4.1.1.3.1. On receiving the money to the tune of Rs. 98 crores from FHsL on 20/05/2016, Best transferred it instantly to Torus on same date. These transactions have been discussed at Para 8.6.3.1.4 Instance no 4 wherein it was observed that these funds were ultimately diverted to RHC Holding.
- 8.6.4.1.1.3.2. On 30/06/2016, Best did not have the required funds in its bank statement to pay Rs. 98 crores to FHsL as balance in the bank account statement of Best as on June 30, 2016 was Rs. 3.4 crores (approx.).

8.6.4.1.1.3.3. The actual repayment of Rs. 98 crores from Best to FHsL took place on July 01, 2016 (i.e. after Best received Rs. 98 crores from FHsL {through Torus Buildcon Private Limited }).

8.6.4.1.1.4. In view of above, it was observed that Best utilized the funds received from FHsL on July 01, 2016 to pay of its outstanding dues of Rs. 98 crores to FHsL as on June 30, 2016. Further, FHsL didn't receive any funds from Best on June 30, 2016 whereas in its books of accounts, FHsL recorded the receipt of funds of Rs. 98 crores from Best on June 30, 2016 only. This led to artificially inflation of the bank balance in the books of account of FHsL for quarter ending June 30, 2016.

8.6.4.1.1.5. A similar pattern of fund flow was observed between FHsL and Best during subsequent quarters also .i.e. from quarter ending September 2016 to quarter ending June 2017. Below mentioned are some of the transactions appearing in the bank account statement of Best during the aforementioned quarters:

Table 10: Extracts from Bank account statement of Best maintained with HDFC Bank

Bank Account statement of Best – HDFC Bank Account				
Date	Particulars	Debit Amount (in Rs.)	Credit Amount (in Rs.)	Balance (in Rs.)
Quarter ending September 2016				
30/09/2016	Closing Balance as on 30/09/2016			10,069
01/10/2016	Received from SaubhagyaBuildconPvt Ltd		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	48,00,00,000		
01/10/2016	Received from Fortis Hospitals		48,00,00,000	
01/10/2016	Transferred to SaubhagyaBuildconPvt Ltd	50,00,00,000		
01/10/2016	Closing balance as on 01/10/2016			10,069
Quarter ending December 2016				
31/12/2016	Closing Balance as on 31/12/2016			11,26,102
02/01/2017	Received from ANR Securities Pvt Ltd		98,00,00,000	
02/01/2017	Transferred to Fortis Hospitals	98,00,00,000		
02/01/2017	Received from Fortis Hospitals		98,00,00,000	
02/01/2017	Transferred to ANR Securities Pvt Ltd	98,00,00,000		

02/01/2017	Closing balance as on 02/01/2017			11,26,073
Quarter ending March 2017				
31/03/2017	Closing Balance as on 31/03/2017			75,64,266
03/04/2017	Received from Fortis Hospitals		1,50,00,00,000	
03/04/2017	Transferred to Fortis Hospitals	98,00,00,000		
03/04/2017	Transferred to Fortis Hospitals	1,10,51,178		
03/04/2017	Transferred to Torus Buildcon Pvt Ltd* (This amount was transferred from Torus to Modland and from Modland to Fortis on same date i.e. 03/04/2017)	50,90,00,000		
03/04/2017	Closing balance as on 03/04/2017			75,13,088
Quarter ending June 2017				
30/06/2017	Closing Balance as on 30/06/2017			29,07,002
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		5,07,00,000	
01/07/2017	Transferred to Fortis Hospitals	5,06,93,425		
01/07/2017	Closing balance as on 01/07/2017			4,11,499

8.6.4.1.1.6. From the above table, the following was observed:

- 8.6.4.1.1.6.1. The amount available in the aforementioned bank account of Best during the last day of each quarter (i.e. from quarter ending September 2016 to quarter ending June 2017) was insignificant compared to the repayment amount that Best had to make to FHsL at the end of each quarter.
- 8.6.4.1.1.6.2. Before making the repayment of loan / ICD to FHsL during the end of each quarter (i.e. from quarter ending September 2016 to quarter ending June 2017), Best had received funds from either FHsL itself or through other entities (like Saubhagya Buildcon, ANR Securities & Torus Buildcon and repayment to such entities were made by Best on the same day itself through the funds received from FHsL).

- 8.6.4.1.1.7. In addition to above, it was observed that prior to quarter ending June 2017, repayment by Best to FHsL were made in 1 or 2 transactions, however, during the quarter ending June 2017, cheques worth Rs. 30 crores were rotated in the bank accounts of FHsL and Best five times on a single day i.e. on July 01, 2017. During this period, FHsL had shown receipt of funds to the tune of Rs. 150 crores from Best as on June 30, 2017 in the ledger account of Best and also shown transfer of funds to the tune of Rs. 155.07 crores to Best on July 01, 2017. In this regard, information was sought from HDFC Bank (where the bank accounts of Best and FHsL were maintained). Based on the information received from HDFC bank, the following was observed:
- 8.6.4.1.1.7.1. Best had issued five cheques of Rs. 30 crores each dated June 30, 2017 in the name of FHsL (The cheque numbers were 00107, 00109, 00110, 00111, 00112). On the date of issuing such cheques, the balance available in the bank account statement of Best was Rs. 29 lakhs (approx.) only.
- 8.6.4.1.1.7.2. FHsL had issued five cheques of Rs. 30 crores each dated July 01, 2017 in the name of Best (The cheque numbers were 05832, 05833, 05834, 05835, 05836).
- 8.6.4.1.1.7.3. The bank account statement of Best and FHsL were maintained with the same bank i.e. HDFC bank, whereas, the branches were different (Bank account of Best was maintained with KG Marg, New Delhi Branch and the Bank account to FHsL was maintained with Bankhouse Gurgaon Branch). However, the aforementioned cheques of both Best and FHsL were deposited with Bankhouse Gurgaon Branch on the same date i.e. on July 01, 2017.

8.6.4.1.2. Transactions with Fern –

8.6.4.1.2.1. As per ledger statement - Below mentioned is the extract of ledger account statement of Fern in the books of FHsL for certain transactions during the period from April 2016 to June 2017:

Table 11: Extracts from Ledger account statement of Fern in the books of FHsL

Date	Particulars	Amount (In Rs.)	Cumulative Balance (In Rs.)
01/04/2016	Opening Balance		-
04/04/2016	Fund Transfer To Fern Healthcare T/W Loan Dt. 04.04.16	75,00,00,000	75,00,00,000
04/04/2016	Fund Transfer To Fern Healthcare T/W Loan Dt. 04.04.16	1,00,00,00,000	1,75,00,00,000
30/06/2016	Being Amount Of Interest Income Booked On Fern Healthcare	1,75,00,00,000	-
01/07/2016	Fund Paid To Fern Healthcare Pvt. Ltd. T/W Loan Dt. 01.07.16	1,75,00,00,000	1,75,00,00,000
30/09/2016	Being Chq. Recd from Fern Healthcare T/W Repayemnt of Loan Chq. No. 005028 005029 005030 & 005031	1,75,00,00,000	-
01/10/2016	Fund Transfer To Fern Healthcaer T/W Loan Dt. 01.10.16	1,75,00,00,000	1,75,00,00,000
30/12/2016	Fund Refd From Fern Healthcare T/W Principal & Interest Received From Fern From 30th Nov 16 To 29th Dec On Rs 175 Crores Dt. 30.12.16	1,75,00,00,000	-
02/01/2017	Fund Transfer To Fern Healthcare T/W Loan Dt. 02.01.17	1,75,00,00,000	1,75,00,00,000
31/03/2017	Fund Recd From Fern Healthcare T/W Principal & Interest Received From Fern From 01st Mar 17 To 30 Mar17 On Rs 175 Crores	1,75,00,00,000	-
03/04/2017	Loan Paid To Fern Healthcare Pvt. Ltd. Dt. 03.04.17	1,78,00,00,000	1,78,00,00,000
30/06/2017	Fund Recd From Fern Healthcare T/W Principal & Interest Received From Fern From 03rd Apr 17 To 30 Jun 17 On Rs 178 Crores	1,75,00,00,000	-
01/07/2017	Fund Trf To Fern Helathcare Ltd. Dt. 01.07.17	1,84,00,00,000	1,84,00,00,000

8.6.4.1.2.2. From the above table, it is observed that FHsL provided funds to Fern during the 1st day of the quarter and Fern use to repay the same money to FHsL during the last day of the quarter. In order to further understand these movements of funds, the bank account statements of FHsL and Fern were analysed.

8.6.4.1.2.3. **As per Bank account statement** - Below mentioned are some of the transactions appearing in the bank account statement of Fern during quarter ending June 2016 to quarter ending June 2017:

Table 12: Extracts from Bank account statement of Fern maintained with Axis Bank & HDFC Bank

Bank Account statement of Fern – Axis Bank Account				
Date	Particulars	Debit Amount (in Rs.)	Credit Amount (in Rs.)	Balance (in Rs.)
03/04/2016	Closing Balance as on April 03, 2016			5,66,276
04/04/2016	Received from Fortis Hospitals		75,00,00,000	
04/04/2016	Received from Fortis Hospitals		1,00,00,00,000	
04/04/2016	Transferred to ANR Securities Pvt Ltd.	1,75,00,00,000		
04/04/2016	Closing balance as on 04/04/2016			5,41,276
30/06/2016	Closing Balance as on June 30, 2016			15,52,313
01/07/2016	Received from Torus BuildconPvt Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	50,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	50,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	50,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	25,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		25,00,00,000	
01/07/2016	Transferred to Torus BuildconPvt Ltd	50,00,00,000		
01/07/2016	Closing balance as on 04/04/2016			15,42,163
Bank Account statement of Fern – HDFC Bank Account				
Quarter ending September 2016				
30/09/2016	Closing Balance as on 30/09/2016			81,975
01/10/2016	Received from SaubhagyaBuildconPvt Ltd		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	25,00,00,000		
01/10/2016	Received from Fortis Hospitals		25,00,00,000	
01/10/2016	Transferred to SaubhagyaBuildconPvt Ltd	50,00,00,000		

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01/10/2016	Closing balance as on 01/10/2016			81,975
Quarter ending December 2016				
31/12/2016	Closing Balance as on 31/12/2016			1,84,984
02/01/2017	Received from ANR Securities Pvt Ltd		1,50,00,00,000	
02/01/2017	Transferred to Fortis Hospitals	1,50,00,00,000		
02/01/2017	Received from Fortis Hospitals		1,50,00,00,000	
02/01/2017	Transferred to Fortis Hospitals	25,00,00,000		
02/01/2017	Received from Fortis Hospitals		25,00,00,000	
02/01/2017	Transferred to ANR Securities Pvt Ltd	1,50,00,00,000		
02/01/2017	Closing balance as on 02/01/2017			1,84,984
Quarter ending March 2017				
31/03/2017	Closing Balance as on 31/03/2017			11,56,934
03/04/2017	Received from Fortis Hospitals		1,78,00,00,000	
03/04/2017	Transferred to Fortis Hospitals	1,75,00,00,000		
03/04/2017	Transferred to Fortis Hospitals	1,97,34,247		
03/04/2017	Transferred to ANR Securities Pvt Ltd	1,03,00,000		
03/04/2017	Closing balance as on 03/04/2017			11,22,687
Quarter ending June 2017				
30/06/2017	Closing Balance as on 30/06/2017			1,18,763
01/07/2017	Received from SaubhagyaBuildcon		2,00,000	
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		4,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	4,01,56,197		
01/07/2017	Closing balance as on 01/07/2017			1,62,566

8.6.4.1.2.4. From the above table, the following was observed:

8.6.4.1.2.4.1. The amount available in the aforementioned bank accounts of Fern during the last day of each quarter (i.e. from quarter ending June 2016 to quarter ending June 2017) was insignificant compared to the repayment amount that Fern had to make to FHSL at the end of each quarter.

8.6.4.1.2.4.2. Before making the payment of loan / ICD to FHSL during the end of each quarter (i.e. from quarter ending September 2016 to quarter ending June 2017), Fern had received funds from either

FHsL itself or through other entities (like Saubhagya Buildcon Private Limited, ANR Securities Private Limited & Torus Buildcon Private Limited and repayment to such entities were made by Fern on the same day itself through the funds received from FHsL).

8.6.4.1.3. Transactions with Modland –

8.6.4.1.3.1. **As per ledger statement** - Below mentioned is the extract of ledger account statement of Fern in the books of FHsL for certain transactions during the period from April 2016 to June 2017:

Table 13: Extracts from Ledger account statement of Modland in the books of FHsL

Date	Particulars	Amount (in Rs.)	Cumulative Balance (in Rs.)
01/04/2016	Opening Balance		-
04/04/2016	Fund Transfer To Modland Wears T/W Loan Dt. 04.04.16	1,00,00,00,000	1,00,00,00,000
04/04/2016	Fund Transfer To Modland T/W Loan	1,00,00,00,000	2,00,00,00,000
30/06/2016	Fund Refd From Modland Healthcare T/W Loan Repayment & Interest Recd Dt.30.06.16	2,00,00,00,000	-
01/07/2016	Fund Paid To ModlandHelath Care T/W Loan Dt. 01.07.16	2,00,00,00,000	2,00,00,00,000
30/09/2016	Being Chq. RecdfromModland Healthcare T/W Repayemntof Loan Chq. No. 000007 000008 000009 & 000010	2,00,00,00,000	-
01/10/2016	Fund Transfer To ModlandHealthcaer T/W Loan Dt. 01.10.16	2,00,00,00,000	2,00,00,00,000
30/12/2016	Fund Refd From Modland Healthcare T/W Principal & Interest Received From Modland From 30th Nov 16 To 29th Dec On Rs 200 Crores Dt. 30.12.16	2,00,00,00,000	-
02/01/2017	Fund Transfer To Modland Healthcare T/W Loan Dt. 02.01.17	2,00,00,00,000	2,00,00,00,000
31/03/2017	FUND RECD FROM MODLAND HEALTHCARE T/W PRINCIPAL &INTEREST RECEIVED FROM MODLAND FROM 01st Mar 17 TO 30 Mar17 ON RS 200 CRORES	2,00,00,00,000	-
03/04/2017	Loan Paid To Modland Wears Pvt. Ltd. Dt. 03.04.17	1,50,00,00,000	1,50,00,00,000

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Date	Particulars	Amount (in Rs.)	Cumulative Balance (in Rs.)
30/06/2017	FUND RECD FROM MODLAND HEALTHCARE T/W PRINCIPAL & INTEREST RECEIVED FROM MODLAND FROM 03rd Apr17 TO 30 Jun 17 ON RS 150 CRORES	1,50,00,00,000	-
01/07/2017	Fund Trf To Modland Dt. 01.07.17	1,55,07,00,000	1,55,07,00,000

8.6.4.1.3.2. From the above table, it is observed that FHsL provided funds to Modland during the 1st day of the quarter and Modland use to repay the same money to FHsL during the last day of the quarter. In order to further understand these movements of funds, the bank account statements of FHsL and Modland were analysed.

8.6.4.1.3.3. **As per Bank account statement** - Below mentioned are some of the transactions appearing in the bank account statement of Modland during quarter ending June 2016 to quarter ending June 2017:

Table 14: Extracts from Bank account statement of Modland maintained with Axis Bank & HDFC Bank

Bank Account statement of Modland – Axis Bank Account				
Quarter ending June 2016				
Date	Particulars	Debit Amount (in Rs.)	Credit Amount (in Rs.)	Balance (in Rs.)
03/04/2016	Closing Balance as on April 03, 2016			3,36,50,316
04/04/2016	Received from Fortis Hospitals		1,00,00,00,000	
04/04/2016	Transferred to Torus Buildcon Pvt Ltd	1,00,00,00,000		
04/04/2016	Received from Fortis Hospitals		1,00,00,00,000	
04/04/2016	Transferred to Torus Buildcon Pvt Ltd	1,00,00,00,000		
04/04/2016	Closing balance as on 04/04/2016			1,73,28,190
30/06/2016	Closing Balance as on June 30, 2016			9,78,771
01/07/2016	Received from Ranchem Pvt Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	50,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	50,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	50,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		50,00,00,000	
01/07/2016	Transferred to Fortis Hospitals Ltd	50,00,00,000		
01/07/2016	Received from Fortis Hospitals Ltd		50,00,00,000	
01/07/2016	Transferred to Torus Buildcon Pvt Ltd	50,00,00,000		
01/07/2016	Received from Torus Buildcon Pvt Ltd		50,00,00,000	
01/07/2016	Transferred to Ranchem Pvt Ltd	50,00,00,000		
01/07/2016	Closing balance as on 04/04/2016			9,78,771

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Bank Account statement of Fern – HDFC Bank Account				
Quarter ending September 2016				
30/09/2016	Closing Balance as on 30/09/2016			2,36,330
01/10/2016	Received from SaubhagyaBuildconPvt Ltd		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to Fortis Hospitals	50,00,00,000		
01/10/2016	Received from Fortis Hospitals		50,00,00,000	
01/10/2016	Transferred to SaubhagyaBuildconPvt Ltd	50,00,00,000		
01/10/2016	Closing balance as on 01/10/2016			2,36,330
Quarter ending December 2016				
31/12/2016	Closing Balance as on 31/12/2016			2,01,470
02/01/2017	Received from ANR Securities Pvt Ltd		1,50,00,00,000	
02/01/2017	Transferred to Fortis Hospitals	1,50,00,00,000		
02/01/2017	Received from Fortis Hospitals		1,50,00,00,000	
02/01/2017	Transferred to Fortis Hospitals	50,00,00,000		
02/01/2017	Received from Fortis Hospitals		50,00,00,000	
02/01/2017	Transferred to ANR Securities Pvt Ltd	1,50,00,00,000		
02/01/2017	Closing balance as on 02/01/2017			2,01,470
Quarter ending March 2017				
31/03/2017	Closing Balance as on 31/03/2017			13,97,840
03/04/2017	Received from RHC Holding Pvt Ltd		1,99,00,00,000	
03/04/2017	Transferred to Torus Buildcon	3,35,00,000		
03/04/2017	Received from ANR Securities Pvt Ltd		3,30,00,000	
03/04/2017	Received from Torus Buildcon		3,35,00,000	
03/04/2017	Transferred to Fortis Hospitals	2,00,00,00,000		
03/04/2017	Transferred to Fortis Hospitals	2,25,53,425		
03/04/2017	Received from Fortis Hospitals		1,50,00,00,000	
03/04/2017	Received from Torus Buildcon		50,90,00,000	
03/04/2017	Transferred to ANR Securities Pvt Ltd	1,90,00,000		
03/04/2017	Transferred to RHC Holding Pvt Ltd	1,99,00,00,000		
03/04/2017	Closing balance as on 03/04/2017			18,44,415
Quarter ending June 2017				
30/06/2017	Closing Balance as on 30/06/2017			99,723
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		30,00,00,000	
01/07/2017	Transferred to Fortis Hospitals	30,00,00,000		
01/07/2017	Received from Fortis Hospitals		5,07,00,000	
01/07/2017	Transferred to Fortis Hospitals	5,06,93,425		
01/07/2017	Closing balance as on 01/07/2017			1,06,298

8.6.4.1.3.4. From the above table, the following was observed:

8.6.4.1.3.4.1. The amount available in the aforementioned bank accounts of Modland during the last day of each quarter (i.e. from quarter ending June 2016 to quarter ending June 2017) was insignificant compared to the repayment amount that Modland had to make to FHsL at the end of each quarter.

8.6.4.1.3.4.2. Before making the repayment of loan / ICD to FHsL during the end of each quarter (i.e. from quarter ending June 2016 to quarter ending June 2017), Modland had received funds from either FHsL itself or through other entities (like Saubhagya Buildcon Pvt Ltd, ANR Securities Pvt Ltd, Ranchem Pvt Ltd, RHC Holding & Torus Buildcon Private Limited and repayment to such entities were made by Modland on the same day itself through the funds received from FHsL).

8.6.4.2. In view of observations made at paras 8.6.4.1.1 to 8.6.4.1.3 above, it was observed that Best / Fern / Modland did not make any actual repayment of loans / ICDs to FHsL during the aforementioned 5 quarters i.e. from quarter ending June 2016 to quarter ending June 2017 as the repayments were made by these companies using the funds received from FHsL only. Thus, FHsL did not receive the repayment of ICDs that was given to Best, Fern and Modland during April / May 2016, details of which are summarised as under:

Table 15: Details of ICDs given by FHsL to 3 borrower companies during FY 2016-17

Date	Entity to which ICD was given	Amount
04/04/2016	Modland Wears Private Limited	2,00,00,00,000
04/04/2016	Fern Healthcare Private Limited	1,75,00,00,000
25/05/2016	Best Healthcare Private Limited	98,00,00,000

8.6.4.3. With respect to the above ICDs, it was further observed as under:

- 8.6.4.3.1. Through these transactions, the position of funds lying in the bank account of FHsL during the period between the end of quarter ending June 2016 to quarter ending June 2017, were artificially inflated as FHsL had recorded receipt of funds in the ledger accounts of Best / Fern / Modland on the last day of each quarter whereas FHsL actually didn't receive any funds from Best / Fern / Modland on the last day of the aforementioned quarters.
- 8.6.4.3.2. These synchronized transactions also aided FHsL in masking the fact that the short term loans / ICDs given to Best / Fern / Modland were not performing.
- 8.6.4.3.3. Through the aforementioned transactions, the position of funds lying in the bank accounts of FHsL at the end of each of the aforementioned 5 quarters had been artificially inflated by Rs. 473 crores
- 8.6.4.3.4. Since the 3 companies were not able to pay the aforementioned amount of ICDs, these should have been shown as bad debts in the books of accounts of FHsL for the aforementioned 5 quarters. This would have reduced the net profit of FHsL for the 5 quarters. Hence, the profits of the company were inflated by FHsL for the aforementioned 5 quarters by an amount of Rs. 473 crore.
- 8.6.4.3.5. Although FHsL had not actually received any repayment funds from the said 3 companies during quarter ended June 2016 to quarter ended June 2017, in its books of accounts FHsL had recorded that funds had been received from the aforementioned 3 entities during the end of each quarter from quarter ending June 2016 to June 2017. Thus, the rotational bank transactions through synchronized clearance of cheques were used to misrepresent the actual consolidated financial position by FHL and the three borrower companies and to manipulate the FHsL's books of accounts and for the aforesaid period.
- 8.6.4.3.6. The structured rotation of funds and the rollover of loans were used by FHsL to hide the real financial position of FHsL and the financial statements of FHsL for quarter ending June 2016 to quarter ending June

2017 were thus misrepresented. Consequently, did not provide a true and fair view of the consolidated financials of FHL to the shareholders of the said listed company.

8.6.4.4. Considering the above, it is alleged that the structured movement of funds resulted in artificial inflation of the bank balance and net profit of FHsL and non-disclosure of material information as well as misrepresentation in the financial statements of FHsL for the period from quarter ending June 2016 to quarter ending June 2017. The same further resulted in non-disclosure of material information and misrepresentation in the consolidated books of accounts of FHL for the aforesaid period.

8.6.5. Further Diversion / Repayment during 2017-18 (subsequent to Financial Misrepresentation) –

8.6.5.1. As discussed at para no 8.6.1 to 8.6.3 above, numerous fund transactions were observed between FHsL, the borrower companies (Best, Fern and Modland) and various other entities during the Investigation Period. All such transactions took place during the period from FY 2011-12 to FY 2015-16 and were categorised into initial loan transactions, subsequent short term loans / ICDs and diversion of funds. Thereafter, during June 2016 to June 2017, certain other transactions were observed that have been classified as financial misrepresentations and are mentioned at Para 8.6.4 above. Apart from the above, from the ledger accounts of the borrower companies in the books of FHsL, certain other transactions were observed during FY 2017-18 through which the amounts due to borrower companies changed. The details of such transactions and their impact on the net diverted amount has been discussed in this para. However, before explaining the details of such transactions (that took place during FY 2017-18), a summary of the amount observed to be diverted from FHsL to RHC

Holding through 3 borrower companies (as mentioned at paras 8.6.2 and 8.6.3) is reproduced below.

Table 16: Summary of amount diverted from FHsL (based on the findings mentioned at Para 8.6.3)

Sl. No.	Date of ICD	Details of the borrower company through which the funds were diverted		Details of the Ultimate Beneficiary		Para Reference in which such transactions are explained
		Borrower Company	ICD Amount (in Rs.)	Ultimate Beneficiary	Amount (in Rs.)	
1	04/04/2016	Fern	175 crore	RHC	175 crore	Para 8.6.3.1.1 - Instance 1
2	04/04/2016	Modland	100 crore	RHC	93.09 crore	Para 8.6.3.1.2- Instance 2
3	04/04/2016	Modland	100 crore	RHC	100 crore	Para 8.6.3.1.3 - Instance 3
4	20/05/2016	Best	98 crore	RHC	98 crore	Para 8.6.3.1.4 - Instance 4
TOTAL					466.09 crore	

8.6.5.2. From the above, it was observed that funds to the tune of Rs. 466 crore (approx.) were diverted from FHsL (through Best, Fern and Modland) for the ultimate benefit of RHC Holding during the period from January 2016 to May 2016. Thereafter, during June 2016 to June 2017, circular movements of funds were observed between bank accounts of Best, Fern and Modland through which FHsL could portray that the 3 borrower companies were regularly repaying the ICD amount. However, actually no money was received by FHsL from these 3 borrower companies during the aforementioned period. A detailed analysis of the same is provided at Para 8.6.4. Further, it was observed that the amount of funds rotated during June 2016 to March 2017 were different from that rotated during April 2017 to March 2018. To understand the same, a summary of ledger account of the 3 borrower companies in the books of FHsL during FY 2016-17 to FY 2017-18 along with the analysis on the transactions during such period is mentioned below:

8.6.5.2.1. **Transactions with Best and Modland –** An extract of ledger account of Best and Modland in the books of FHsL for FY 2016-17 and FY 2017-18 is given in table below:

Table 17: Extract of Ledger Account of Best in books of FHsL

S. No.	Date	Narration	Debit (INR)	Credit (INR)	Balance (INR)
1	25/05/2016	Being Amount T/W Loan To Best	98,00,00,000		98,00,00,000
2	30/06/2016	Being Fund Recd From Best		98,00,00,000	0
3	01/07/2016	Fund Paid To Best	98,00,00,000		98,00,00,000
4	30/09/2016	Being Chq. Recd From Best Healthcare		98,00,00,000	0
5	01/10/2016	Fund Transfer To Best	98,00,00,000		98,00,00,000
6	30/12/2016	Being Fund Recd From Best		98,00,00,000	0
7	02/01/2017	Fund Transfer To Best	98,00,00,000		98,00,00,000
8	31/03/2017	Fund Recd From Best		98,00,00,000	0
9	03/04/2017	Loan Paid To Best	150,00,00,000		150,00,00,000
10	30/06/2017	Fund Recd From Best		150,00,00,000	0
11	01/07/2017	Fund Trf To Best Healthcare	155,07,00,000		155,07,00,000
	Closing Balance as on February 28, 2018				155,07,00,000

Table 18: Extract of Ledger Account of Modland in books of FHsL

S. No.	Date	Narration	Debit (INR)	Credit (INR)	Balance (INR)
1	04/04/2016	Fund Transfer To Modland	100,00,00,000		100,00,00,000
2	04/04/2016	Fund Transfer To Modland	100,00,00,000		200,00,00,000
3	30/06/2016	Fund Refd From Modland		200,00,00,000	0
4	01/07/2016	Fund Paid To Modland	200,00,00,000		200,00,00,000
5	30/09/2016	Being Chq. Recd From Modland		200,00,00,000	0
6	01/10/2016	Fund Transfer To Modland	200,00,00,000		200,00,00,000
7	30/12/2016	Fund Refd From Modland		200,00,00,000	0
8	02/01/2017	Fund Transfer To Modland	200,00,00,000		200,00,00,000
9	31/03/2017	Fund Recd From Modland		200,00,00,000	0
10	03/04/2017	Loan Paid To Modland	150,00,00,000		150,00,00,000
11	30/06/2017	Fund Recd From Modland		150,00,00,000	0
12	01/07/2017	Fund Trf To Modland	155,07,00,000		155,07,00,000
13	28/07/2017	Fund Recd From Modland		21,71,00,000	133,36,00,000
	Closing Balance as on February 28, 2018				133,36,00,000

8.6.5.2.2. In the above tables, the analysis of transactions mentioned at Sl. No. 1 to 8 (in Table 18) and Sl. No. 1 to 9 (in Table 19) has been already provided at Para 10.3.4 of the SCN.

8.6.5.2.3. From Table 18, it was observed that during May 2016 to March 2017, an amount of Rs. 98 crore was rotated multiple times between Best and FHsL. However, during April 2017, the ICD amount to Best was increased from Rs. 98 crore to Rs. 150 crore. Similarly, from Table 19, it was observed that during May 2016 to March 2017, an amount of Rs.

200 crore was rotated multiple times between Best and Modland. However, during April 2017, the ICD amount to Modland was reduced from Rs. 200 crore to Rs. 150 crore.

8.6.5.2.4. In this regard, the bank account statements of Best, Modland and FHsL were analysed. Below mentioned is the flow of funds observed on April 03, 2017:

Flow of funds relating to ICD dated April 03, 2017 that FHsL issued to Best

03/04/2017	FHsL 150,00,00,000	→	Best 150,00,00,000	→	FHsL 98,00,00,000			
				→	Torus 50,90,00,000	→	Modland 50,90,00,000	→ FHsL 200,00,00,000

8.6.5.2.5. It was observed that FHsL transferred Rs. 150 crore to Best on April 02, 2017. Out of this Rs. 150 crore, Best had transferred Rs. 99 crore (approx.) back to FHsL portraying that it had paid off its earlier ICD amount of Rs. 98 crore along with interest. The remaining Rs. 50.90 crore (approx.) was transferred by Best to Modland (through Torus Buildcon Pvt. Ltd.). In addition to these Rs. 50.90 crore (approx.) that Modland received from Torus Buildcon Pvt. Ltd., Modland also received Rs. 150 crore from FHsL on April 03, 2017 (This Rs. 150 crore is shown at Sl. No. 10 in Table 19. FHsL has shown this Rs. 150 crore as a fresh ICD to Modland). On the same date (i.e. April 03, 2017), after receiving Rs. 200.90 crore (approx.) (Rs. 150 crore from FHsL and Rs. 50.90 crore from Torus Buildcon Pvt. Ltd.), Modland had transferred Rs. 200 crore to FHsL on the same date (FHsL has shown this receipt of Rs. 200 crore from Modland as repayment of earlier ICD which it had given to Modland. This transaction is shown at SL. No. 9 in Table 19).

8.6.5.2.6. From the above, the following was observed:

8.6.5.2.6.1. In the books of FHsL, ICD amount of Best was increased from Rs. 98 crore to Rs. 150 crore.

8.6.5.2.6.2. In the books of FHsL, ICD amount of Modland was decreased from Rs. 200 crore to Rs. 150 crore.

8.6.5.2.7. Hence, it is alleged that the net impact of the aforementioned transactions (with Best and Modland) that happened during April 2017, remained nil for FHsL as the outstanding amount to the extent of Rs. 50 crore was transferred from Modland to Best (which was a mere book entry). It was also observed that during FY 2016-17 and FY 2017-18 when the circular movement of funds took place between the 3 borrower companies and FHsL, the repayment for the principal amount as well as the interest amount (that the borrower companies had paid back to FHsL) was arranged by FHsL only. Hence, the transactions for the interest amount have not been shown separately.

8.6.5.2.8. **Transactions with Fern** – An extract of ledger account of Fern in the books of FHsL for FY 2016-17 and FY 2017-18 is given in table below:

Table 19: Extract of Ledger Account of Fern in books of FHsL

S. No.	Date	Narration	Debit (INR)	Credit (INR)	Balance (INR)
1	04/04/2016	Fund Transfer To Fern	75,00,00,000		75,00,00,000
2	04/04/2016	Fund Transfer To Fern	100,00,00,000		175,00,00,000
3	30/06/2016	Being Amount Of Interest Income Booked On Fern Healthcare		175,00,00,000	0
4	01/07/2016	Fund Paid To Fern Healthcare	175,00,00,000		175,00,00,000
5	30/09/2016	Being Chq. Recd From Fern		175,00,00,000	0
6	01/10/2016	Fund Transfer To Fern	175,00,00,000		175,00,00,000
7	30/12/2016	Fund Refd From Fern		175,00,00,000	0
8	02/01/2017	Fund Transfer To Fern	175,00,00,000		175,00,00,000
9	31/03/2017	Fund Recd From Fern		175,00,00,000	0
10	03/04/2017	Loan Paid To Fern	178,00,00,000		178,00,00,000
11	30/06/2017	Fund Recd From Fern		178,00,00,000	0
12	01/07/2017	Fund Trf To Fern	184,00,00,000		184,00,00,000
13	21/02/2018	Fund Recd From Fern		70,00,00,000	114,00,00,000
	Closing Balance as on February 28, 2018				114,00,00,000

8.6.5.2.9. In the above tables, the analysis of transactions mentioned at S. No. 1 to 9 (in Table 21) has been already provided at Para 8.6.4.

8.6.5.2.10. From Table 20 above, it was observed that during April 2016 to March 2017, Rs. 175 crore was rotated multiple times between Fern and FHsL. However, during April 2017, the ICD amount to Fern was increased from Rs. 175 crore to Rs. 178 crore. Thereafter, the ICD amount to Fern was further increased from Rs. 178 crore to Rs. 184 crore during July 2017. On analysing the bank account statements of Fern and FHsL during quarter ending April 2017 and June 2017, the following was observed:

Flow of funds relating to ICDs dated April 03, 2017 and July 01, 2017 that FHsL issued to Fern

03/04/2017	FHsL 178,00,00,000	→	Fern 178,00,00,000	→	FHsL 176,97,34,247		
				→	ANR 1,03,00,000	→	RHC 2,93,00,000
01/07/2017	FHsL 184,00,00,000	→	Fern 184,00,00,000	→	FHsL 184,01,56,197		

8.6.5.2.11. From the above, it was observed that out of increased ICD amount of Rs. 9 crore (from Rs. 175 to Rs. 184 crore), Fern used Rs. 7.97 crore (approx.) to pay off the interest on such ICD to FHsL. Further, out of increased ICD amount of Rs. 3 crore (Rs. 175 crore to Rs. 178 crore) during April 03, 2017, a sum of Rs. 1.03 crore (approx.) was routed to RHC Holding.

8.6.5.3. Apart from aforementioned transactions during FY 2017-18, one more transaction was observed between FHsL and Fern in which FHsL received a sum of Rs. 70 crore from Fern on February 07, 2018 (as repayment of ICD). The same was recorded by FHsL in the ledger of Fern on February 21, 2018.

8.6.5.4. Thus, total diverted amount from FHsL (through Fern) to RHC Holding, after adjusting for aforementioned transactions that took place during FY 2017-18 was as follows:

Table 20: Summary of amount diverted from FHsL through Fern

Particulars	Amount (in Rs. Crore)
Diverted amount during April 04, 2016 (Refer Para 10.3.2 of SCN – Instance 1)	175
Add – Further diversion during April 03, 2017 (mentioned above in this para)	1.03
Less – Repayment made during February 07, 2018 - (mentioned above in this para)	70
= Net Diverted amount from FHsL to RHC (through Fern) (as on February 28, 2018)	106.03

8.6.5.5. From the above, it is alleged that the balance of funds that were diverted from FHsL to RHC Holding (through Fern) as on February 28, 2018, was Rs. 106.03 crore (approx.).

8.7. Summary of Diverted amount – Based on the observations made at Paras 8.6.2 and 8.6.3 above, a summary of funds diverted from FHsL to RHC Holding was indicated at Table 16 at Para 8.6.5 above. However, considering the observations made thereafter under Para 8.6.5 (relating to certain transactions that happened during FY 2017-18), the details of funds that were diverted from FHsL to RHC Holding, through the 3 borrower companies as on February 28, 2018, is shown in the table below:

Table 21: Revised Summary of amount diverted from FHsL (based on the findings mentioned at Para 8.3.5)

S. No.	Date of ICD	Details of the borrower company through which the funds were diverted		Diverted to		Para Reference in which such transactions are explained
		Borrower Company	ICD Amount (in Rs.)	Diverted to	Amount (in Rs.)	
1	04/04/2016	Fern	175 crore	RHC	106.03 crore	SCN Para 10.3.3 - Instance 1
2	04/04/2016	Modland	100 crore	RHC	93.09 crore	SCN Para 10.3.3 - Instance 2
3	04/04/2016	Modland	100 crore	RHC	100 crore	SCN Para 10.3.3 - Instance 3 and

4	20/05/2016	Best	98 crore	RHC	98 crore	SCN Para 10.3.3 - Instance 4
TOTAL					397.12 crore	

From the above and after considering the submissions of various entities made during the process of investigation, it was observed that funds to the tune of Rs. 397.12 Crore (approx.) were diverted from FHsL for the benefit of RHC Holding (through Best, Fern and Modland) and ultimately for Noticee no. 2 and 3. In this regard, the aforementioned Rs. 397.12 crore (approx.) was only the principal amount excluding any interest component.

Apart from the pattern of fund movement through layers of various entities, it was also observed that borrower entities (Best, Fern and Modland), intermediate conduit entities (through which the funds were transferred) and the beneficiaries (RHC Holding) were all connected to each other and to the promoters of FHL / FHsL. The details and basis of such inter-connections amongst Noticees were provided at **Annexure-7** of the SCN.

9. The SCN was served upon all the Noticees (except Noticee no. 1) by Speed Post and through electronic mail. Noticee no. 1 refused to accept the delivery of SCN by Speed Post. Hence, delivery through affixture at its corporate office address was done for Noticee no. 1. Noticee no. 1 has neither filed any reply to the SCN, nor did it appear for the personal hearing which was scheduled for January 5, 2021. Thus, the matter is being proceeded qua Noticee no. 1 on the basis of material available on record.
10. Advocates appearing on behalf of Noticee no. 2 and 4 had requested for adjournment of the first hearing held on January 5, 2021, on the ground that they wanted to have an 'inspection of documents'. Accordingly, the matter was adjourned to February 15, 2021, and the opportunity for inspection of documents was availed by the said Advocates on January 14, 2021. At the hearing which was scheduled on February 15, 2021, none appeared for Noticee no. 2 and 4, neither any request for adjournment

was received from them. However, vide letter dated February 18, 2021, Mr. Vinod Rajgopalan, acting as the constituted attorney for Noticee no. 2 and 4, informed that he was unable to obtain clear instructions from Noticee no. 2 on account of his continued incarceration and ongoing pandemic situation. Mr. Rajgopalan had requested not to proceed any further in the matter or pass any adverse orders against Noticee no. 2. In this regard, I note that Noticee no. 2 and 4 had filed appeal no. 307 of 2019, impugning the Interim Order and the Confirmatory Order passed in the matter. During the hearing of the said appeal, the said Noticees had contended that Confirmatory Order was passed without considering their submissions and without considering the necessary documents. I note that the said appeal was disposed of by Hon'ble SAT vide its order dated January 07, 2021 *inter alia* directing these Noticees to file a reply to the SCN. Hon'ble SAT further directed that it would also be open to the Noticees to file an application for inspection, production and supply of various documents such as bank account statement, ledger account etc. and to apply for cross examination of any witness, if required. Hon'ble SAT further directed that if such an application is filed the same shall be dealt with in accordance with law by the WTM. I note that at the time of passing of said order by Hon'ble SAT, Noticee no. 2 was in judicial custody. From the order dated January 07, 2021, it is noted that Noticee no. 2 did not contend before Hon'ble SAT that due to his incarceration he would not be able to file his reply or to seek inspection of the documents. On the contrary, Noticee no. 2 seemed to have specifically prayed for these reliefs which were granted by Hon'ble SAT vide order dated January 07, 2021. Therefore, the contention of the Noticee no. 2 being made in these proceedings to the effect that the proceedings be adjourned *sine die* due to his continued incarceration is an attempt to avoid the outcome of these proceedings. Further, I note that during the hearing on January 05, 2021, the authorized representative of Noticee no. 2 and 4 sought for inspection of documents which was provided to them and was availed by them on January 14, 2021. Despite taking inspection of documents and specific direction of Hon'ble SAT to file reply, no reply was filed by the Noticee no. 2 and 4. In view of this, the request for adjournment *sine die*, from Noticee no. 2, was not acceded to. Therefore, the opportunity for personal hearing for Noticee no. 2 and 4 was closed and as a measure of equity and

justice, the said Noticees were granted another 15 days time from the date of receipt of the communication i.e. email dated February 17, 2021, to file their reply to the SCN. I note that more than one year had lapsed since the last communication dated February 17, 2021, by which these Noticees were asked to file reply, but Noticee no. 2 and 4 have yet not filed any reply to the allegations made in the SCN. I note that a letter dated February 9, 2022 and April 13, 2022, has been received from the authorized representatives of Noticee no. 2 and 4, in relation to a show cause notice issued in a separate matter i.e. Religare Enterprises Ltd, thus, these letters do not bear any relevance to the present proceedings. I also note that despite the directions of the Hon'ble SAT in Appeal no. 307 of 2019 (order dated January 7, 2021), to Noticee no. 2 and 4 to file their reply to the SCN, the said Noticees have failed to file any reply. In view of the aforesaid conduct of Noticee no. 2 and 4, the matter is now being proceeded qua these Noticees, on the basis of material available on record.

11. I note that Noticee no. 3 and 5 were granted numerous opportunities of personal hearing in the matter but continuous adjournments came to be sought by the advocates representing them, on various grounds (more specifically mentioned in the later part of this order) and thus the matter could never reach the stage of 'personal hearing for final arguments' because no merit based reply came to be filed by Noticee no. 3 and 5.
12. Noticee no. 6 and 7 were granted with the opportunity of personal hearing on January 5, 2021, February 15, 2021, March 19, 2021 and May 7, 2021, however, adjournments came to be granted on these dates on various grounds. The final arguments were heard on June 11, 2021. The Advocates representing Notice no. 6 and 7, availed the opportunity of inspection of documents on January 14, 2021. Noticee no. 6 has filed his merit based reply dated May 26, 2021 and Noticee no. 7 has filed his merit based reply dated March 19, 2021. I note that Noticee no. 6 had filed an Application for Settlement of the instant proceedings on January 22, 2021 and Noticee no. 7 had filed the Settlement Application with SEBI on January 28, 2021.

However, both the Settlement Applications came to be rejected by SEBI on August 4, 2021.

13. Noticee no. 8 and 9 had sought an adjournment for the hearing scheduled on January 5, 2021, on the ground of non-availability of arguing counsel. The submissions of Noticee no. 8 and 9 were heard on January 20, 2021. Noticee no. 8 and 9 had filed their joint reply dated December 28, 2020, joint written submissions dated February 2, 2021 and joint additional written submissions dated February 16, 2021.
14. I note that Noticee no. 8 and 9 at the personal hearing held on January 20, 2021, vide their joint reply dated December 28, 2020, joint written submissions dated February 2, 2021 and joint additional written submissions dated February 16, 2021, have raised the following key contentions to the SCN:
 - 14.1. As companies that have suffered immense financial losses and loss to their reputation as a consequence of the illegal and fraudulent acts of their erstwhile promoters, i.e. Mr. Malvinder Mohan Singh (Noticee No. 2) and Mr. Shivinder Mohan Singh ('Noticee No. 3") (collectively referred as the "**Erstwhile Promoters**"), and entities directly / indirectly owned and / or controlled by them, the Answering Noticees are greatly distressed by the SEBI's characterization of the wrongdoings of the Erstwhile Promoters as wrongdoings of the Answering Noticees. The SCN has been mechanically and routinely issued to the Answering Noticees, the victims of fraud, overlooking the fact that it were the mala fide and fraudulent acts of the Erstwhile Promoters, who were in control of the Answering Noticees at the time when the contraventions alleged in the SCN took place. The diversion of funds, misrepresentation in financial statements and inaccurate disclosures are actions that have injured the Answering Noticees and not actions of the Answering Noticees. The fraudulent acts against the Answering Noticees had brought them to the brink of bankruptcy and jeopardized the interests of investors in securities of the Answering Noticees apart from other stakeholders such as employees, creditors and shareholders. Through a publicly known

process, the Answering Noticees were then taken over in compliance with law by a new set of promoters to ensure that such bankruptcy was averted. To be issued the SCN today is therefore unfair, a travesty, inappropriate and unmindful of the law introduced into Section 27 of the SEBI Act., 1992.

14.2. All the allegations in the SCN, including allegations relating to the illegal transactions mentioned in para 10.3.1 of the SCN, pertain to actions that took place before the present board and management of FHL took over and steered the Answering Noticees to financial stability and legally compliant conduct. By seeking to prosecute the Answering Noticees, the SEBI is proceeding against entirely revamped entities for the offences committed when the Erstwhile Promoters controlled the affairs of the Answering Noticees. Such action would only punish the interests of investors in the Answering Noticees, whose interests were protected by the takeover and turnaround, and therefore the SCN deserves to be disposed of without any action being taken.

14.3. The aforementioned change in control is further particularised below:

14.3.1. On February 8, 2018, the Erstwhile Promoters, who, by virtue of being the Executive Chairman (Malvinder Mohan Singh) and the Non-Executive Vice-Chairman (Shivinder Mohan Singh) of FHL, were in full control of the Answering Noticees, resigned from the Board of Directors of FHL with immediate effect.

14.3.2. By February 28, 2018, the cumulative shareholding of the Erstwhile Promoters in FHL, held through their shareholding in Fortis Healthcare Holdings Private Limited, had reduced below one percent (1%).

14.3.3. On May 22, 2018, the board of directors of FHL came to be comprised solely of Independent Directors. The independent directors that approved the Investment by Northern TK Venture Pte. Ltd. ("**NTK**"), a wholly owned subsidiary of IHH Healthcare Berhad ("**IHH**") in FHL were nominated by

institutional investors and appointed by an overwhelming majority of FHL's shareholders, and had no links to the Erstwhile Promoters.

14.3.4. Thereafter, in view of the deteriorating financial condition of FHL, the Independent Board, in consultation with legal advisors and investment bankers, invited bids from interested parties to invest into FHL. During that time, FHL was struggling to service its debt and pay salaries to its employees. As such, FHL was struggling to keep its operations afloat.

14.3.5. On July 13, 2018, pursuant to IHH's bid, a Share Subscription Agreement was executed between FHL and NTK, to invest in the shares of FHL.

14.3.6. Between July 7, 2018 and October 29, 2018, various regulators approved the Investment. On October 9, 2018, the SEBI approved an indirect change in control in one of FHL's indirect subsidiaries, Stellant Capital Advisory Services Private Limited, thereby, effectively approving the Investment. Further, the investment by IHH in FHL also triggered an open offer, and the same was duly approved by SEBI on October 29, 2018.

14.3.7. On November 13, 2018, the Investment was consummated and NTK acquired a 31.1% stake in FHL by fresh subscription of shares for a consideration of Rs. 4000 Crore approx. The Erstwhile Promoters were neither involved nor were the beneficiaries of the Investment. The Investment averted the then impending insolvency of FHL, thereby protecting the interests of FHL's shareholders, employees and creditors.

14.3.8. IHH, through NTK, has presently appointed two-thirds of the directors on the board of FHL and consequently controls FHsL. Since the Investment, over a period of time, the entire management of FHL and FHsL has also been changed including the key managerial personnel.

14.3.9. Pursuant to representations of the Answering Noticees made to the stock exchanges and SEBI, that the Erstwhile Promoters were declassified as promoters of FHL on June 3, 2019.

14.4. Steps taken by the Answering Noticees against the Erstwhile Promoters.

14.4.1. After the SEBI's preliminary findings against the Erstwhile Promoters and in consonance with the SEBI's directions to seek recovery of the siphoned amounts, FHL and FHsL issued two demand notices dated November 10, 2018 and December 15, 2018, respectively, seeking recovery of such amounts from the Erstwhile Promoters.

14.4.2. Since SEBI's findings acting as a civil court were crystal clear, the Answering Noticees requested SEBI to use its powers under Section 28A of the SEBI Act to recover the monies from the Erstwhile Promoters. SEBI rejected this request. Therefore, on August 26, 2019, after two pleas by the Answering Noticees for recovery under Section 28A of the SEBI Act, were declined, FHsL filed a civil suit before the Hon'ble High Court of Delhi, against the Erstwhile Promoters and the relevant promoter-controlled entities for recovery of the siphoned amounts.

14.4.3. FHsL has incurred substantial court fees (amounting to Rs. 5.27 crore) in instituting the Civil Suit and continues to incur substantial legal costs to pursue the action pursuant to the direction given *vide* SEBI Orders. It is pertinent to mention here that in the Civil Suit, FHsL has claimed recovery of total principal amount of Rs. 402,43,00,000/- (INR Four Hundred Two Crores and Forty-Three Lakhs only), which includes the amount of Rs. 397.12 Crore (INR Three Hundred Ninety-Seven Crores and Twelve Lakhs only), that has been alleged in the SCN to have been diverted from FHsL to the benefit of the Erstwhile Promoters' related entities.

- 14.4.4. Further, on November 9, 2020, FHL filed a criminal complaint against, *inter alia*, the Erstwhile Promoters before the Economic Offences Wing of the Delhi Police for certain illegal transactions / dealings by the Erstwhile Promoters and sought registration of an FIR against them. The Complaint also accuses the Erstwhile Promoters of having orchestrated some of the transactions impugned in the SCN.
- 14.5. The allegations of financial misrepresentation and inaccurate disclosures against the Answering Noticees are unfounded because the alleged violations were a part of the illegalities and fraudulent actions perpetrated by the Erstwhile Promoters. As acknowledged in the SCN and the SEBI Orders, the Erstwhile Promoters abused their positions in the Answering Noticees for their personal benefit. The alleged financial misrepresentation by the Answering Noticees and the fraudulent actions of the Erstwhile Promoters cannot be seen as disjunctive acts. At the time of the alleged financial misrepresentations, FHL and FHsL were owned and controlled by the Erstwhile Promoters who were the directing minds of the said companies. Specifically, the said misrepresentations/ false disclosures were all undertaken and orchestrated by, and are attributable to, the Erstwhile Promoters.
- 14.6. The Answering Noticees are revamped entities with new management and a new controlling shareholder. The allegations in the SCN pertain to the Erstwhile Promoters actions during the Investigation Period. Therefore, prosecuting the Answering Noticees and thereby hurting their shareholders, who share literally no link with the Erstwhile Promoters, (their ownership being diluted to 0.16%) would be perverse.
- 14.7. Under the terms of Sec. 27 of the SEBI Act, 1992, in the event of a contravention by a company of the provisions of the SEBI Act, 1992 or rules, regulations or directions made thereunder, the company as well as **every person who at the time of the contravention** was in charge of, and responsible for the company's conduct may be acted against. Ordinarily, a company that is an actionee would

continue to remain under the control of the same hands and therefore, instead of attacking the very company that has been defrauded, those in control can be acted against due to this provision. This provision underlines the fact that the persons who were in charge **at the time of the commission of the wrong,** are the ones to be held responsible, and in the instant case, that would lead to the Erstwhile Promoters. Courts have held that such provisions would have to be interpreted with the “alter ego” doctrine. All those who were the alter ego of the company would be responsible. In the instant case, the Erstwhile Promoters have long stopped being the alter ego of the Answering Noticees. SEBI has protected the Answering Noticees from the Erstwhile Promoters. Accordingly, it is only the Erstwhile Promoters that can be held liable for any contravention that have been indulged in by them, as it is only the Erstwhile Promoters who were in charge of, and responsible for, the conduct of the company’s business at the time of the contraventions in question.

14.8. The following judicial precedents, are being relied upon:

14.8.1. Manish Kumar v. Union of India & Anr., Writ Petition (Civil) No. 26 of 2020 (decided by the Hon’ble Supreme Court of India on January 19, 2021)- Para 257, 258.

14.8.2. Tesco Supermarkets Ltd. v. Nattrass, 1971 All ER 127 pg. 187.

14.8.3. Hon’ble National Company Law Appellate Tribunal’s judgment in JSW Steel Ltd. & Ors. v. Mahender Kumar Khandelwal and Ors. (Company Appeal (AT) (Insol.) Nos. 957, 1034, 1035, 1055, 1074, 1126 and 1461 of 2019).

14.8.4. Pyramid Saimira Theatre Ltd. v. The Securities and Exchange Board of India, [2010] 100 SCL 224 (SAT) – Para 7.

15. Vide his reply dated May 26, 2021, Noticee no. 6 has raised the following key contentions to the allegations in the SCN:

- 15.1. The Noticee is Mr. Gagandeep Singh Bedi, the former Chief Financial Officer of FHL. The Noticee was the CFO of FHL from September 2014 till September 30, 2018 i.e., for a period of 4 years, and has an impeccable record of personal integrity and professional respect.
- 15.2. At the outset, it is submitted that the SCN is vague and does not make any specific averments against the Noticee to substantiate its allegations.
- 15.3. It is alleged that the Noticee failed to adequately discharge his duty of due diligence and merely relied on the assurances of the promoters and past records. It is submitted that due diligence is subjective, and the level of due diligence that should be expected of the Noticee should be based on a reasonable person standard. It is submitted that to satisfy the requirement of exercising independent judgement and conducting due diligence, the Noticee is required to do everything reasonable, and not everything possible.
- 15.4. The Noticee cannot be expected to look at each and every statement and information in front of him with suspicion unless the facts and circumstances demand the same. At the time of granting loans to the borrower entities, there was no material or information which indicated that the transactions were part of a fraudulent scheme intended to benefit the erstwhile promoters through a complex web of entities controlled by the Erstwhile Promoters. There was no reason at the relevant time for the Noticee to doubt the veracity of the information provided to him.
- 15.5. It is further pertinent to note that the SCN alleges that the loans were granted to borrower entities for the ultimate benefit of RHC Holding, a promoter group entity, in a circuitous manner. This is alleged to have been done in an attempt to circumvent the provisions of related party transactions as applicable to FHL. It is submitted that at the time of granting loans to the borrower entities, those entities were not categorised as related parties and neither was the Noticee aware of the

alleged ultimate beneficiary of the loans. As hereinabove stated, the entire fraudulent behaviour of promoters and promoter group entities was known only pursuant to a forensic audit and investigation. The borrower entities were not identified at the time of approving the loans as related parties, and the loans granted to borrower entities could not be considered as related party transactions. Further, the Noticee could not have reasonably known at that time that the ultimate beneficiary was RHC Holding, a related party. Hence, it is submitted that the Noticee was not aware and couldn't have known that the loans were structured in a manner to circumvent the provisions of related party transactions applicable to FHL.

- 15.6. At the foremost, it should be noted that ICDs were being issued to Best, Fern and Modland since 2011, much prior to the Noticee's joining as CFO in September 2014. All the ICDs for which the Noticee had given approval were repaid in full with interest. Thus, FHL had a long prior relationship with the borrower entities, and the Noticee had no reason to suspect any wrongdoing or treat the issuance of ICDs as a special event warranting additional due diligence.
- 15.7. It is submitted that the proposals for the ICDs contained the objectives, rationale and other relevant details. This was the prevalent process at the time and had been followed by FHL numerous times in the past, and no concerns were raised. Hence, contrary to the assertion in the SCN, it cannot be stated that the loans were granted without any rationale.
- 15.8. In his capacity as CFO of FHL and as a member of the Treasury Committee, the Noticee voted in favour of the renewal/ fresh grant of the ICDs only from September 2014 till September 2016 on the basis of a variety of factors, including (a) the fact that ICDs were being granted to Best, Fern and Modland since December 2011 and they had until then maintained a good payment track record; (b) the Desai Haribhakti Reports of 2013 and 2016 which revealed sufficient Asset Coverage Ratio of Best, Fern and Modland; (c) the scope and prospect of earning

incremental income from such lending; and (d) the repeated verbal assurances of the Chairman about the credibility of Best, Fern and Modland and their ability to repay the ICDs.

- 15.9. It is submitted that at the first instance of suspicion, the Noticee raised concerns with the Chairman, and stopped giving any approvals for the issuance of ICDs as a member of the Treasury Committee from the next quarter. In June 2016, when the borrowers started requesting for extension of ICDs, the issue caught the Noticee's attention and he had raised his concerns with the Chairman. The Chairman assured the Noticee that there was no risk in the investment and that the ICDs would be repaid. However, in spite of the verbal assurances, the ICDs remained unpaid by the end of September 2016 quarter. He did not give approvals for any fresh issuances of ICDs from October/November 2016.
- 15.10. On March 15, 2017, the Executive Committee/ECRM increased the number of authorised signatories who could operate accounts, thus effectively doing away with the Noticee's ability to halt any transactions. The Noticee and the CEO had, on this occasion, voiced their strong disagreement with the expansion of the signatories, as they believed it was not appropriate to give people with non-business roles unlimited financial signing authority. Subsequently, in order to nullify the effect of the dissenting votes of the Noticee and the CEO for issuance of ICDs, the composition of the Treasury Committee was increased to 5 members from the then existing 3 members. Thus, effectively, the Noticee and the CEO could be overruled by a majority voting in favour of the rollover/ renewal/ grant of ICDs to Best, Fern and Modland or any other decision taken by the Treasury Committee. The decision to dilute the voting power of the Noticee and the CEO was taken unilaterally by the Chairman/Executive Committee. The Noticee and the CEO strongly dissented to the increase in the composition of the Treasury Committee. Their strong and forceful reservations were expressed in emails sent by the CEO in March 2017 addressed to the Chairman.

- 15.11. In an effort to effectively discharge his role, the Noticee escalated the issue of ICDs and the rollover mechanism with the audit committee of FHL. The audit committee held weekly calls for some time to iron out the issues and resolve the matter. These calls were attended by most members of the audit committee, as well as the Executive Chairman. During these calls, the Executive Chairman assured the audit committee that the ICDs would be repaid. However, no material action was taken.
- 15.12. It is pertinent to note that the Notice heavily relies on the FAR, and in that context, it is also important to note the observations which deal with “*Promoters Assurances and Methodology for Repayment of the ICDs*” from the Luthra & Luthra report brought down in Annexure – 7 of the FAR *qua* the senior management of FHL, which includes the Noticee. These observations *inter alia* state:

“F. L&L in their report have separately observed the following:

“PROMOTERS ASSURANCES AND METHODOLOGY FOR REPAYMENT OF THE ICDs

During the personal interviews conducted by us, it was noted that the senior management of FHL did resist to the decision of roll over/ fresh grant of ICDs at that point in time.

Further, several emails / documents (as mentioned in detail above) have been identified where various possible options are being evaluated to settle the ICDs (such as sale of Brand, sale of RWL, etc.) by the management in the knowledge of the Promoters.

There have been systemic lapses and internal control frameworks have been compromised under the authority of the erstwhile Chairman, with an assurance that the investments in ICD’s are secure. Objections to aspects related to these are on record implying that the interviewees and other personnel in management were forced into undertaking these transactions on assurance of due repayment. Relevant

documents/information and interviews also indicate that management's objections were overruled. All these have been brought to the notice of the Audit Committee and discussed numerous times, over meetings and calls. Thus, in light of the above, it appears that **the senior management of FHL strongly objected to the decision of roll-over / fresh grant of ICDs wherever possible, however, there objections were overruled and they were instructed to grant the ICDs.** The senior management, considering the hierarchy, executed the instructions issued to them. The senior management was also given constant assurances by the Chairman that the money is safe and will be recovered. Further, the Promoters were evaluating the sale of Brands and / or use of control premium realized on sale of FHL for the settlement of ICDs. **Based on the above, it cannot be said that the senior management was in collusion with the Promoters to give the ICDs to Borrower Companies, nor is there any evidence that any of them personally gained from the ICD grant / roll-over.**”

(emphasis supplied)

- 15.13. It is stated in the SCN that the Noticee, being a CFO of a listed company, falsely certified that the financial results for the relevant financial years (FY 2015-16 and FY 2016-17) did not contain any false or misleading statement or figures and did not omit any material fact which may make the statements or figures contained therein misleading and that there were no transactions of the listed entity during the said FY's which were fraudulent in nature. On page 39 of the SCN, it is stated that the diversion of funds took place through FHL's subsidiary, viz. FHsL. It is alleged that the quarterly financial statements of FHsL for the quarter ending June 2016 to the quarter ending June 2017 were misrepresented. This conclusion was arrived at on the basis of bank statements of the three borrower entities (Best, Fern and Modland), as well as the bank statements of FHsL, which allegedly reveal that the three borrower entities did not repay the loans at the end of each quarter as stated in the FHsL's ledger statements. The money was allegedly routed in a circuitous manner which wasn't captured in the financial statements.

Thus, it is alleged that the bank balance in the books of FHsL was artificially inflated and the financial results of FHsL were misrepresented. As a corollary, it is stated that the consolidated financial statements of FHL were also misrepresented.

- 15.14. It is submitted that the Noticee was the CFO of FHL and was not directly involved in the preparation of financial statements of FHsL. It is important to note that FHL and FHsL are two separate and distinct entities, with FHsL having its own chief financial officer. There was no apparent reason to doubt the veracity of the standalone financial statement of FHsL. Thus, even if the financial statements of FHsL were misrepresented, it cannot be implied that the Noticee certified the consolidated financial statements of FHL knowing them to be wrong/misstated. It is submitted that, at that time, there was no reason to suspect that the loans/ ICDs that were granted were a part of a fraudulent scheme being perpetrated by the Chairman.
- 15.15. It is also pertinent to note that the Noticee, as CFO of FHL, issued a certificate in respect of the financial statement of FHL, and not FHsL. Any discrepancies in the statements of FHsL would not be the fault or liability of the Noticee on account of the facts that (a) the concerned financial statements (of FHsL) were prepared by FHsL's management; and (b) there was no reason to suspect any material omission, misrepresentation or misleading statement(s) in the financial statements of FHsL. Without the presence of any such factors which would indicate that the financial statement is false or contains misleading statements or figures, the Noticee cannot be charged of grave violations of fraud and deliberately falsifying accounts. It is reiterated that the Noticee had no reason to believe that there was any misrepresentation in the books of accounts of FHL or FHsL and the certification of the financial statements of FHL by the Noticee was not misleading.

- 15.16. While the Noticee was the Non-Executive Director of FHsL, that role meant that he was not involved in the day-to-day affairs of FHsL and he was not aware of any misrepresentation in the financial statements of FHsL.
- 15.17. Notwithstanding the above, it is submitted that the Noticee had not certified misleading financial statements as FHL and FHsL had followed standard accounting practice of preparing financial statements. It is to be noted that the allegation that the Noticee certified misleading financial statements arises from the alleged artificial inflation of the bank balance in the books of account of FHsL. It is submitted that FHsL had followed the standard accrual-based accounting practice while recording the receipt of cheques. As per the said practice, in the books of account of FHsL, the date of deposit of cheques in the bank, as evidenced by the bank stamp on the said cheques, was considered as the date of repayment of loan. Thus, as the cheques were received and deposited on the last day of the quarter, the ledger entries in the books of FHsL accurately showed that date as the date of repayment. It is relevant to note that this treatment of cheques in the financial statements is accepted by the auditors, who did not raise any objection. Furthermore, it is also pertinent to note that the bank statements and ledger accounts of the company normally differ at the end of a quarter or financial year and it is for this purpose that bank reconciliation statements are made, as provided in Ind AS 7. Thus, there was no artificial inflation of the bank balance and the Noticee did not certify misleading financial statements.
- 15.18. Thus, in view of the above, the allegation that the Noticee knowingly misrepresented the consolidated financial statement of FHL is baseless and contrary to the facts and is not sustainable.
16. Vide his reply dated March 19, 2021, Noticee no. 7 has raised the following key contentions to the allegations in the SCN:

- 16.1. At the outset, it is submitted that the Noticee joined FHL as its CEO in July 2015. He had submitted his resignation in November, 2018. However, on a request by the board of FHL, he continued till March 18, 2019 till a successor was found. He was also the CEO of FHL between February 2009 to January 2011, i.e., prior to the Investigation Period. Prior to joining FHL in 2015, he was the head of US Operations for Ahold in the USA. Earlier, he was the Chief Executive for Reliance Retail. He was appointed as the CEO of FHL to manage the operational side of the Indian hospital business of FHL, which is spread across the country.
- 16.2. Thus, his knowledge of the transactions of FHL, if any, is limited to this above-mentioned period. Further, given his operations focused role at FHL, he was not directly involved in all the financial transactions of the company and his knowledge of the same is limited.
- 16.3. In brief, it is submitted that FHL has its healthcare operations, both the hospital business and the diagnostic business, spread across countries. As the CEO, the Noticee used to head the operations of the hospital business only and reported to the Executive Chairman, Mr. Malvinder Mohan Singh. His role at FHL was primarily focused on the operational aspect of managing the business and not the financial side. All financial decisions were approved by the internal management, in accordance with the internal policies. It is important to note that with respect to all finance matters, the Executive Chairman was the ultimate decision-making authority and Board/Executive Committee lead.
- 16.4. With respect to the events mentioned in the Notice pertaining to a period prior to the commencement Noticee's job as CEO of FHL in 2015, it is submitted that the Noticee was not involved in the grant of these loans/ ICDs to Best, Fern and Modland before 2015 and he had no connection with them. It is important to note that the practice of granting ICDs to the borrowers, upon the majority approval by the Treasury Committee, was already underway prior to the commencement of

the Noticee's tenure as CEO. Thus, no inference(s) which is/ are based on the events that transpired prior to July 2015 can be imputed onto the Noticee.

- 16.5. With respect to ICDs issued during his tenure, it is pertinent to note that the same were issued in the ordinary course of business. The first issuance of ICDs to the Best, Fern and Modland was in the year 2011 and there were multiple issuances after that. The monies issued through the ICDs prior to the Noticee's tenure at FHL were all repaid with interest. Therefore, at the point of his commencement of work with FHL, Best, Fern and Modland had a pre-existing financial relationship with FHL and had a good track record. Since these ICDs were issued for a short-term and were all duly serviced and repaid on time (except one, as noted in the SCN), the Noticee had no reason to suspect any wrongdoing or a scheme for diversion of funds. Further, all these ICDs were given at market rates of interest. It is also pertinent to note that the Noticee had no connection whatsoever with either Best, Fern or Modland and had no reason to suspect that these entities were diverting the money to entities related to the promoters of FHL. During his tenure at FHL, the Noticee was not aware that the ICD monies was being diverted to the promoter related entities. The complex trail of money was ultimately discovered by SEBI only through a forensic audit. During his tenure, the Noticee had no reason to doubt the linkages, and was unable to detect such a complex web of transactions of these borrowers under normal operating conditions. The borrowers were never reported as 'related parties' by the statutory auditors, until December 2017. To the Noticee's best recollection, the creditworthiness of these parties was not doubted by statutory or internal auditors, management or the audit committee of the board of directors before FY 2017-18. An assessment report on the recoverability of loans from the borrowers was obtained from Desai Haribhakti and Co., chartered accountants, in 2013. Another assessment report was obtained from the same firm in 2016 also. In both these reports, the asset coverage ratio of the borrowers was found to be sufficient and hence, there was no reason to have any doubt or concern.

- 16.6. Further, the Noticee's role was primarily focused on hospital operations and the financial matters of the company were entrusted to Mr. Gagandeep Singh Bedi, the then chief financial officer and the Executive Chairman to be critically examined and evaluated. The Noticee relied on the expert advice and recommendation of the CFO, all of which was being clearly driven by the Executive Chairman.
- 16.7. On account of these reasons, the Noticee had given approval for the issuance of ICDs to the borrowers till March 2016. In March 2016, when the interest payments were delayed and the ICDs were rolled over/extended, the issue caught the Noticee's attention and he had raised concerns with the Executive Chairman. The Executive Chairman assured the Noticee that there was no risk in the investment. However, in light of a lack of clarity, he refused to give approvals to the issuance of any fresh ICDs since March 2016. It is extremely relevant to note that as on March 31, 2016, all the ICDs given to the borrowers, i.e., the ICDs for which the Noticee had given an approval and ICDs issued before his tenure at FHL began, were repaid with interest. After raising his concerns with the Executive Chairman, the Noticee had very clearly distanced himself from the Treasury Committee.
- 16.8. All the approvals for ICDs post March 2016 were given by the CFO and the Executive Chairman. In certain instances, when the CFO had also stopped approving the ICD transactions, the Executive Chairman had given the sole approval. As a result of the Noticee's refusal to approval additional loans, in March 2017, the Treasury Committee was expanded to include new members so that the approving majority could still be in place. The Noticee believes that the cause of this expansion was the refusal to approve fresh ICDs by the Noticee and CFO. At that time, the Noticee had expressed his strong and forceful disagreement with this expansion and resigned from the Treasury Committee. In addition to the expansion of the Treasury Committee, the number of bank signatories was also increased unilaterally and without due consultation. The Noticee had written to the Executive Chairman at that time to voice his strong disagreement with the

expansion of the signatories. He believed it was not appropriate to give people with non-business roles unlimited financial signing authority. However, the Executive Chairman overruled the Noticee in no uncertain terms and informed him that this was beyond his scope and authority and only the Executive Chairman could make such decisions relating to financial matters.

- 16.9. The Noticee had also requested the Executive Chairman on multiple occasions to take the issue of ICDs to the board of FHL. However, the Executive Chairman refused to do so. It was also made known to the Noticee by the Executive Chairman that the Treasury Committee was merely an extension of the Executive Chairman Review Meeting (erstwhile Executive Committee). Under the ECRM framework, the Executive Chairman has the sole decision-making power in respect of the matters referred to it. The Executive Chairman was a vociferous advocate of Best, Fern and Modland and was always in support of continuing the loans/ICDs to them. This is supported by the fact that he was always an approving authority for the ICDs, and in certain instances as hereinabove stated, the sole approving authority. It is absolutely clear that all instructions concerning the ICD activity came directly from the Executive Chairman.
- 16.10. The Noticee had also escalated the concerns to the audit committee. The audit committee held weekly calls for some time to iron out the issues and resolve the matter. These calls were attended by most members of the audit committee, as well as the Executive Chairman. However, no action was taken.

Consideration of issues and findings thereon:

17. After perusing through the findings of the investigation (as mentioned at para 8 above), I note that findings of the investigation can be broadly be classified under the following four heads:

- 17.1. **Initial loans by FHL for purchase of Land (Para 8.6.1)** - A land situated at Golf Course Extn. Road, Sector 62, Gurgaon, was first acquired indirectly by FHL through issue of ICD's/ short term loans to its subsidiary EHIRCL, which in turn entered into a collaborative agreement with another entity (Lowe) in May 2011 for the purchase of the Land. Later RHC Holdings acquired Lowe which gave them entitlement to the Land. RHC Holdings repaid the loan taken by Lowe to EHIRCL and EHIRCL paid back the loan to FHL. RHC Holdings could repay the loan taken by Lowe only when it had received the funds indirectly from FHMNL (wholly subsidiary of FHL) through various conduit entities including Best, Fern and Modland. Thus, the actual payment for the purchase of land by RHC Holding was made by it by taking indirect loan from FHL which was repaid by RHC Holding after a period of more than 3 years. In other words, RHC Holdings was able to acquire the Land through circular rotation of funds emanating from FHL itself.
- 17.2. **Subsequent short term ICDs issued by FHsL (Para 8.6.2)** – During December 2012 to March 2016, firstly, loans were given by FHL to FHsL/FHMNL and thereafter, FHMNL / FHsL gave numerous short term loans / ICDs to Best, Fern and Modland, which were further transferred to RHC Holding through a complex layer of various entities. RHC Holding utilized the money for certain days (ranging from 2 days to 45 days) and thereafter, the funds were transferred back to FHsL by the aforementioned three entities wherein such repayment was arranged by RHC Holding only. Thus, FHL was used as a cash cow by RHC Holdings to meet its infrequent requirement of funds. Further, instead of transferring funds directly to RHC Holding, FHL managed to benefit its promoter company by transferring funds indirectly through various entities and in the process, FHL avoided the provisions of related party transactions disclosures and compliances which otherwise would have been applicable in case if the funds were transferred to RHC Holding directly.
- 17.3. **Misrepresentation of financial statements (Para 8.6.4)** – From the first quarter of FY 2016-17 to the first quarter of FY 2017-18, the ICD's/loans given to Best,

Fern and Modland during April/May 2016, aggregating to 473 Crores, were shown as being repaid at the last day of each quarter and fresh loans/ ICD's were being shown as given at the first day of next quarter. However, in reality no loans/'ICD's were being repaid. Funds were flowing from FHsL to show the repayment of old loans. It was nothing but circular rotation of funds. Such transactions were deliberately entered into to hide the real picture of the financial position of FHsL (effectually that of consolidated financials of FHL), at the end of each quarter, since transactions squared off within the same quarter do not get reflected in the quarterly financial results. The position of 'Cash and Cash Equivalents' as being shown in the Current Assets of the Balance Sheet of FHsL (effectively of consolidated financials of FHL) as on September 30, 2016 and March 31, 2017, and net profit of FHsL (effectively consolidated financials of FHL) in the Statement of Profit and Loss for the quarter ended June 2016 to June 2017, were misrepresented.

- 17.4. **Non-return of Funds of FHL/FHsL (Para 8.6.3 and 8.6.5)** – Funds aggregating to Rs. 397.12 Crore (excluding interest) have been diverted (in the garb of investment through ICD's) from the listed company i.e. FHL to Erstwhile Promoters controlled entity i.e. RHC Holding, through the wholly owned subsidiary of the FHL i.e. FHsL, during the period from January 2016 to May 2016 and never returned. The funds were allegedly routed through a network of entities, the first leg of which involved the grant of short term loans/ ICD's by FHsL to any of the three entities Best, Fern or Modland.

18. I note that none of the Noticees herein have disputed the impugned transactions which are more specifically mentioned at para 10 of the SCN and reproduced at para 8 of this order. To put them in nutshell and to capture the essence of the findings of the investigation, it may be said that since June 2011, FHL was used as a cash cow by the Erstwhile Promoters to meet the funding requirement of RHC Holdings (para 8.6.1 and para 8.6.2), an entity indirectly owned and directly controlled by the Erstwhile Promoters. The financial reservoirs of FHL were unwound, as and when the

Erstwhile Promoters were in need of money. The funds of the listed entity i.e. FHL were channeled through its wholly owned subsidiary i.e. FHsL through layers of intermediate entities (para 8.6.2), the first layer of which comprised of Best, Fern and Moodland, to reach RHC Holdings. There came a point (between January 2016 to June 2016) when the funds so drawn out of FHsL in the garb of investment through ICDs, never came back. Aggregate amount of Rs. 397.12 Crores (approx.) stood diverted out of the coffers of FHL (para 8.6.3 and para 8.6.5) in the garb of deployment of surplus funds as ICD's. ICD's/loans were given to repay the earlier ICD's/loans (para 8.6.1 and para 8.6.4). Financial statements of FHsL and FHL were misrepresented to show that earlier loans were repaid and fresh loans were given, however, in reality the money given out of the fresh loan was itself used to repay the old loan (para 8.6.4). The shareholders of the listed entity did not even have a whiff about the fraud until February, 2018 when the whistle was blown by a business news portal and the statutory auditor. I note that had the fraud been disclosed in public domain, it would have adversely impacted the price of the scrip of FHL. Thus, I find that because the fraudulent transactions were devised in such a complex manner, investors were induced to remain invested or deal in securities of FHL, under the false market perception which was created by the Noticees. Hence, I find that by engaging in an act/ practice / course of business which operated as a fraud / deceit upon investors dealing in securities of FHL in contravention of the provisions of Regulation 3(d) of PFUTP Regulations, 2003, the Noticees have violated the provision of Section 12A(c) of the SEBI Act, 1992.

19. In addition to the aforesaid violation. I note that, Regulation 4(1), reads as under:

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

Aforesaid Regulation 4(1) to the PFUTP Regulations, 2003 puts complete prohibition on all manipulative, fraudulent or unfair trade practice relating to securities market. What constitutes 'unfair trade practices' and 'manipulative' is not defined in the PFUTP Regulations, 2003. However, it is not difficult to ascertain true meaning of these terms and consequent scope and ambit of Regulation 4(1), by reading the various terms defined in and the objective of, PFUTP Regulations, 2003, as a whole. In this context, Section 11(2)(e) of SEBI Act, 1992 which enumerates prohibiting fraudulent and unfair trade practice relating to securities market, as one of the functions of SEBI, may also be referred to. In discharge of said function SEBI had earlier framed SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995 (since repealed) which were later replaced by PFUTP Regulations, 2003. The Regulation 4(1) *inter alia* seeks to prohibit any act of diversion of assets of a listed company or its concealment or any scheme to manipulate the books of accounts or financial statements of such a company that would directly/ indirectly manipulate the price of securities of that company. What was earlier implicit has now been made explicit by adding 'Explanation' to Regulation 4(1) of PFUTP Regulations, 2003 w.e.f. October 19, 2020. I note that the aforesaid amendment, though introduced on October 19, 2020, does not make any substantive change in the ambit of Regulation 4(1). It merely makes explicit what was implicit. Act of large scale diversion of funds of the listed company or manipulation of financial statements of the company, which leads to or which may lead to impacting the price of the scrip, directly or indirectly, thereby inducing the investors to deal in securities or to remain invested in the securities of that company, are undoubtedly a 'fraudulent and/or unfair trade practice relating to securities market', which are covered by the vigors of Regulation 4(1) since July 17, 2003 itself i.e. the date of coming into force of PFUTP Regulations, 2003. Thus, I note that the 'Explanation' added to Regulation 4(1) merely clarifies that certain acts such as diversion of funds / manipulation of books of accounts, shall always be deemed to have been considered as 'fraudulent and unfair trade practice relating to securities market'. I note that in the instant case, the fraud was never disclosed to the shareholders of FHL, which mislead them to

remain invested in the shares of FHL or deal in the securities of FHL. Thus, the apparent diversion of funds (in the garb of investment through ICDs/ short term loans) and the misrepresentation of financial statement, led to indirect manipulation of the price of shares of FHL and thus, in terms of Regulation 4(1), such an act was fraudulent and an unfair trade practice relating to securities market. Therefore, I find that the Noticees have violated Regulation 4(1) of PFUTP Regulations, 2003.

20. I also note that disclosure of misrepresented financial statements for the quarter ended June 2016 to June 2017, by FHL also amounted to disclosure of false and misleading news about the state of affairs of the company, which led the investors to remain invested in the shares of FHL or deal in securities of FHL. I find that FHL has also violated Regulation 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003.
21. As noted above, none of the Noticees have disputed the findings of the investigation as contained at para 8 above, however, some of the Noticees have raised contentions with regards to their individual involvement in the fraud, which I shall be dealing in the later part of this order.
22. It is pertinent to note that ever since the issuance of the SCN in November 2020, Noticee no. 3 and 5 had sought adjournments which were granted to them, keeping in view the principles of natural justice and equity. The adjournments came to be granted on various grounds (details of which are mentioned in the following table) such as, limited visitation time in jail being available to the lawyers since most time being consumed in parallel criminal proceedings by other agencies, hospitalization of Mr. Shivinder Singh, special provisioning of physical copies of annexures to SCN in Jail - which were otherwise given in CD Form, requisitioning to Jail authorities to provide access to audio-visual teleconference facility for Mr. Singh for attending hearing, additional time for the Advocates to approach the court of Competent jurisdiction to seek relief in the form of enhanced visitation rights with his clients to finalize the reply for the SCN, etc.

Sr. No.	Date of Hearing	Reason for adjournment
1	January 5, 2021	Vide her letter dated December 21, 2020, wife of Noticee no. 3 had sought for adjournment on the ground that Noticee no. 3 was incarcerated and she would require more time to engage a legal representative to defend the case for Noticee no. 3.
2	February 15, 2021	The Advocate representing Noticee no. 3 had expressed his difficulty in coordinating and obtaining instructions from Noticee no. 3, since his client was incarcerated. The Ld. Advocate was called upon to share the details of the prison in which Noticee no. 3 was incarcerated, so that appropriate instructions could be sent to the concerned Jail Superintendent to make Noticee no. 3 available by audio-visual teleconference for the next hearing. The Ld. Advocate was also informed to file the reply on behalf of his client before the next date of hearing.
3	March 19, 2021	The Ld. Adv. representing Noticee no. 3 acknowledged that his client has received in jail, the copy of the SCN in physical form and the supporting Annexure in CD. He expressed the inability of his clients to access the documents in CD, since he did not have access to a computer in jail. The documents were served in CD by SEBI since the data was voluminous. The Ld. Adv. was directed to take the print out of those documents and appropriately serve the same to his clients in Jail. The Ld. Adv. was once again directed to subsequently file the reply on behalf of his client before the next date of hearing.
4	April 23, 2021	The Ld. Adv. representing Noticee no. 3 informed that his client had tested positive for COVID and he was being moved to the hospital from Tihar Jail. The Adv. confirmed that his client has been provided with the physical copies of the documents contained in Annexure to the SCN. Adjournment was granted on medical grounds and the Ld. Adv. was once again directed to file the reply on behalf of Noticee no. 3 and 5 before the next date of hearing.
5	May 14, 2021	The Ld. Adv. representing Noticee no. 3 informed that his client was admitted in Max Hospital and he was recovering from COVID infection. The Adv. expressed his inability to obtain

		instructions from his client and hence, requested for an adjournment.
6	June 4, 2021	The Ld. Adv. apprised that there is no change in the status of his client's health since the last hearing. He furnished a medical note suggesting that doctors at Max Hospital had advised him to undergo surgery to stop his nose bleeding.
7	August 24, 2021	The Ld. Adv. appearing on behalf of Noticee no. 3 pleaded that his client's visitation time in prison was limited and was taken up by his lawyers for the criminal matters. The Ld. Adv. insisted that he be given more time so that he can approach appropriate forum for seeking enhanced visitation rights for his client, so that his client can have more time to discuss with his lawyers and finalize the reply to the present SCN. He was informed that the reply to the SCN ought to have been filed by his client within 21 days from the receipt of the SCN. The Ld. Adv. was also informed that Noticee no. 3 may take up the matter before the concerned authorities, to obtain enhanced visitation timings As a final opportunity the hearing was adjourned to September 22, 2021, before which date Noticee no. 3 and 5 were directed to file their reply.
8	September 22, 2021	Ld. Adv. representing Noticee no. 3 and 5 had informed that, his clients had filed appropriate application before the Additional Sessions Judge, praying for extended visitation rights, however the same came to be dismissed. He submitted that Noticee no. 3 has preferred a Writ Petition before the Hon'ble Delhi High Court, impugning the dismissal order of Ld. Additional Sessions Judge and that the Writ Petition was due to be heard on October 1, 2021. The matter thus came to be adjourned to October 6, 2021.
9	October 6, 2021	The Adv. representing Noticee no. 3 informed that his client had filed Writ Petition before the Hon'ble Delhi High Court seeking urgent directions to Jail Superintendent Tihar Jail, to facilitate legal meetings between Noticee no. 3 and his lawyer. He submitted that jail authorities have stated no objection to the petitioner's prayer for arrangement of meeting with his client at Saket Court Mediation Centre. He further submitted that the

		matter was only pending for final orders of the Hon'ble Delhi High Court on October 11, 2021.
10	November 9, 2021	The Ld. Adv. representing Noticee no. 3 and 5, submitted that, the Hon'ble High Court at Delhi in CRL M.C. 2269/ 2021, vide its order dated October 28, 2021, has directed the Tihar Jail authorities to produce Noticee no. 3 at the Delhi Mediation Centre, Saket Courts, on November 8, 10, 12 and 15, to meet with his lawyers. He stated that these visitation rights with Noticee no. 3 would enable him to finalize the reply <i>inter alia</i> for the extant proceedings. The Ld. Adv. was informed to file the reply on behalf of Noticee no. 3 and 5 within 21 days after the last day of the scheduled meetings with his clients.

23. I note that in the hearing held on November 9, 2021, the Noticee no. 3 and 5 were directed to file their reply within 21 days after the conclusion of the last court approved meeting dated November 15, 2021. It is noted that time of 21 days had expired on December 6, 2021, however, despite availing the opportunity of court approved meetings with his clients on four occasions, Noticee no. 3 and 5 have failed to file a merit based reply to the allegations in the SCN.

24. I note that, Advocate representing Noticee no. 3 and 5 sent letter dated December 14, 2021, in the matter of Religare Enterprises Limited, *inter alia* requesting for another opportunity of inspection of documents in the said matter. This letter did not mention anything about the reply in the present matter. Acceding to their request, an opportunity for inspection of documents was scheduled to be granted to them on December 23, 2021, in the matter of Religare Enterprises Ltd. However, the Advocates failed to avail the opportunity of inspection of documents on the scheduled time and date. Subsequently, vide another letter dated January 28, 2022, the advocate for the said Noticees, writing on behalf of their clients i.e. Noticee no. 3 and 5 for two matters i.e. Fortis Healthcare Ltd. and Religare Enterprises Ltd., requested for another opportunity for inspection of documents, claiming that the earlier opportunity that was granted to them on December 23, 2021 could not be availed. However, I note that the advocates for Noticee no. 3 and 5, were never granted an opportunity of inspection of

documents on December 23, 2021, in the matter of Fortis Healthcare Ltd, since no request was made by them in this regard.

25. With regards to the opportunity for inspection of documents in the matter of Fortis Healthcare Ltd., Noticee no. 3 and 5 were advised by letters dated January 15, 2021 and February 25, 2021 to undertake inspection of documents, at a suitable time and date, however, the said Noticees ignored and failed to take any initiative to avail the opportunity of inspection of documents. Considering the lax attitude of the said Noticees in availing the inspection of documents, again a date was fixed by SEBI i.e. August 2, 2021, wherein the advocates representing these Noticees were called upon to avail the inspection of documents, however, these Noticees failed to avail this opportunity as well. Therefore, in the instant matter, I find that these Noticees have consistently ignored and failed to avail the opportunity for inspection of documents. Further, at the hearing held on November 9, 2021, the said Noticees were specifically directed to file their replies within 21 days after the conclusion of the last court approved meeting dated November 15, 2021 which was agreed to by them also. However, no reply came to be filed by these Noticees by December 6, 2021, which was the last date for filing the reply. Instead a request was moved by the advocates of the said Noticees only on December 14, 2021, seeking for another opportunity of inspection of documents and that too, in the matter of Religare Enterprises Ltd. In the said letter, no inspection was sought for the present matter. However, since, no inspection of documents was availed by the said Noticees in the instant matter, in the interest of justice, vide letter dated January 7, 2022, addressed to the advocates representing Noticee no. 3 and 5, SEBI provided a CD containing the copies of all the documents relied upon by the SCN. The advocates were advised to file the reply on behalf of Noticee no. 3 and 5 within 14 days from the receipt of the said letter. Even after expiry of the stipulated time, no reply came to be filed by these Noticees. Instead, as stated above, vide their letter dated January 28, 2022, the advocates, further requested for extension of time to file the reply to the SCN since according to them, their client could not review the documents provided in CD because the same could not be delivered in jail owing to the restrictions imposed by the Jail authorities due to

ongoing pandemic. I note that it has been over two months since the lifting of COVID related restrictions in Delhi, and yet no merit based reply has been filed by these Noticees in the instant matter.

26. In view of the above, I note that, in order to ensure compliance with the principles of natural justice, the said Noticees were given long rope to take inspection of documents and file reply, however, Noticee no. 3 and 5, neither took inspection of documents, nor filed merit based reply to the SCN. They have failed to file even a 'Without Prejudice' reply to the SCN. In view of such conduct of the said Noticees, which was nothing but a dilatory tactic, it was decided that no further opportunity of inspection of documents and opportunity of personal hearing, may be granted to them and the present matter be proceeded qua these Noticees, on the basis of material available on record.

27. I note that Noticee no. 3 and 5 in their email dated July 31, 2021 have raised a preliminary contention that the SCN issued is defective in as much as in the first instance cause need only be shown as to why an inquiry should not be instituted against the Noticee and no notice for imposing penalty can be issued at this stage. It is the case of the said Noticees that the instant proceedings are not being held in accordance with the process prescribed in Rule 4 of the Rules and the SCRA Rules. According to the said Noticees, the present SCN proceeds with the inquiry by fixing a date of hearing, without forming an opinion under Rule 4(3). It is their case that the proceedings are being held with a prejudiced mindset.

28. Before proceeding to deal with the aforesaid contention of the said Noticees, an extract of Rule 4 of the Rules, which is *pari materia* to the Rule 4 of SCRA Rules, is reproduced hereunder:

Holding of inquiry.

4. (1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15HA and 15HB whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15HA and 15HB the adjudicating officer shall, in the first instance, issue a notice to such person requiring him

to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If, after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872):

Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(5A) The Board may appoint a presenting officer in an inquiry under this rule.

(6) While holding an inquiry under this rule the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

29.I note that Rule 4 contemplates the issuance of notice at two stages, in the first instance, a notice to show cause as to why an inquiry should not be held and at the second stage, after considering the cause shown, a notice to fix a date of hearing if the adjudicating officer thinks it is fit to proceed with the inquiry. It is the precise case of Noticee no. 3 and 5 that the since the present SCN also fixes a date of hearing therefore, the undersigned has proceeded with the inquiry in a prejudicial manner

without forming an opinion under Rule 4(3). I note that the present matter emanates from the proceedings initiated by the ex-parte Interim Order and subsequent Confirmatory Order passed by SEBI in the matter against several entities including Noticee no. 3 and 5 herein. All these orders came to be passed on the basis of FAR and preliminary examination by SEBI into the affairs of FHL and FHsL. Subsequently, a detailed investigation was conducted by SEBI and the present SCN came to be issued. While submitting their objections to the Interim Order, Noticee no. 3 and 5 made their submissions before the erstwhile WTM at the Confirmatory Order stage. Noticee no. 2 also challenged the ex-parte Interim Order and Confirmatory Order by filing an appeal before Hon'ble SAT. However, no interference was made by the Hon'ble SAT in the impugned SEBI order. Thus, I find that apart from the SCN and its Annexures, ample material such as Interim Order, Confirmatory Order, Hon'ble SAT order, etc., was available on record to form an opinion qua the Noticees to continue with the inquiry and fix a date of hearing under Rule 4(3) of the Rules. In this regard, the present case falls on a different pedestal altogether as compared to a case where a fresh show cause notice is issued only after investigation by SEBI and there are no operating interim directions. In the instant case, in the interest of expeditious conduct of the proceedings, since interim directions were operating against some of the Noticees without attaining any finality, the date of hearing was fixed at the time of issuance of the SCN itself. I find that Noticee no. 3 and 5 have failed to show as to what prejudice has been caused to them because of issue of a combined notice under Rule 4(1) and 4(3). I note that the underlying principle behind the process laid down under Rule 4(1) and Rule 4(3) is that no person should be penalized without having been given a fair chance to present his case. In this aspect, I find that Rule 4 of the Rules and SCRA Rules, have been substantively complied with. As discussed at para 22-23, I note that even after 16 months from the issuance of the SCN the said Noticees have failed to file a merit based reply. They have failed to avail the various opportunities for inspection of documents granted to them. I find that the said Noticees have merely excused themselves from filing any reply on the ground that the SCN is defective. They could have filed a 'Without Prejudice' reply. I note that, not only the said Noticees have failed to show the prejudice caused to them, but their conduct

exhibits that they merely want to delay the proceedings without filing any reply on merit and want to use Regulation 4(3) to their advantage to stall these proceedings.

30. Without prejudice to my observations in the preceding paragraph, the following is also noted. The present proceedings have been instituted by SEBI by way of the SCN issued under Sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) of the SEBI Act, 1992 and Section 12A(1) and 12A(2) of SCRA, 1956. I note that Section 11B (2) and 11(4A) of the SEBI Act, 1992 and Section 12A(2) of the SCRA, 1956, were inserted only by way of an amendment to the SEBI Act, 1992, with effect from March 8, 2019. I find that by virtue of these amendments, Board was also empowered to impose penalties for violations stipulated under Chapter VIA of the SEBI Act, 1992. Prior to this SEBI could impose monetary penalties under Chapter VI – A of SEBI Act, 1992, only by appointing an officer under Section 15-I of the SEBI Act, 1992, as the ‘adjudicating officer’. I note that prior to the aforesaid amendment to the SEBI Act, 1992 and SCRA Act, 1956, SEBI was empowered to issue regulatory directions under Sections 11(1), 11(B)(1) and Section 11(4) of the SEBI Act, 1992 and Section 12A(1) of SCRA Act, 1956. However, subsequent to the aforesaid amendment, in appropriate cases, where SEBI (i.e. the Board) was empowered to impose penalty by itself alongwith regulatory directions against the same entities, by a single proceeding. I note that, for adjudication of penalties under Chapter VIA of the SEBI Act, 1992, the Central Government has framed the Rules which has been made applicable to penalties to be imposed by the Board under Section 11(4A) and 11B(2) of SEBI Act, 1992. Thus, while a procedure for conducting adjudication proceedings under Chapter VIA of the SEBI Act, 1992, has been laid down in law, no such prescribed process exists for conduct of proceedings under Sections 11(1), 11B(1) and 11(4) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956. I also note that the purport and reach of any regulatory directions being issued under Sections 11(1), 11B(1) and 11(4) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956, is wide. Considering the dynamic and versatile nature of the securities market, the legislature thought it appropriate, to provide the necessary flexibility to SEBI while conducting proceedings under these provisions, albeit without compromising on the principles of natural justice. In view of the aforesaid discussion,

I note that though the procedure for conduct of 'inquiry' under Chapter VIA of the SEBI Act, 1992, is laid down in the Rules, but the same can be suitably modified in case of combined action (as the present one) which contemplate issuance of regulatory directions under Sections 11(1), 11B(1), 11(4) of the SEBI Act, 1992 and Section 12A(1) of SCRA, 1956 alongwith imposition of penalty under Section 11B(2), 11(4A) of SEBI Act, 1992 and Section 12A(2) of SCRA, 1956 albeit ensuring compliance with principles of natural justice which has been ensured in the present case.

31. Now coming to the specific contentions raised by Noticee no. 6 and 7, I note that the Board of directors of FHL in its meeting dated November 14, 2011 constituted an Executive Committee, which approved the loans / ICDs by FHsL till November 2013. The Executive Committee in its meeting dated September 18, 2013 constituted the Treasury Committee, as a sub-committee of the Executive Committee, among other things, to streamline and facilitate the approval process for investments and borrowings for FHL and its subsidiaries. The Treasury Committee approved the loans/ICD's by FHsL till March 31, 2018. From the material available on record, I note that Noticee no. 6 was member of the Treasury Committee since November 2014 and Noticee no. 7 was associated with the Treasury Committee since September 2015. The following Table shows the details of loans/ICD's approved by Noticee no. 6 and 7, while being part of the Treasury Committee of FHsL:

Date	Borrower	Amount	Details of persons who approved / ratified the transaction
16/09/2015	Best	200 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh
26/11/2015	Best	200 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
01/01/2016	Best	200 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi

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29/01/2016	Best	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
25/05/2016	Best	98 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/07/2016	Best	98 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi-
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Best	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/10/2016	Best	98 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
25/11/2014	Fern	250 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Aditya Vij, Gagandeep Singh Bedi
16/09/2015	Fern	50 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh Bedi
26/11/2015	Fern	100 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
01/01/2016	Fern	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
15/03/2016	Fern	80 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
04/04/2016	Fern	75 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
04/04/2016	Fern	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/07/2016	Fern	175 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Fern	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/10/2016	Fern	175 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
25/11/2014	Modland	250 Crores	Malvinder Mohan Singh, Shivinder Mohan Singh, Aditya Vij, Gagandeep Singh Bedi

04/02/2015	Modland	50 Crores	Malvinder Mohan Singh, Aditya Vij, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
10/02/2016	Modland	125 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi, Bhavdeep Singh
04/04/2016	Modland	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
04/04/2016	Modland	100 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/07/2016	Modland	200 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
	Modland	Extension of the above transaction	Malvinder Mohan Singh, Gagandeep Singh Bedi
01/10/2016	Modland	200 Crores	Malvinder Mohan Singh, Gagandeep Singh Bedi

I find that fresh ICD's/ loans (which does not include instances of rollover/ extension), amounting to 3124 Crores were positively approved by Noticee no. 6 while being part of the Treasury Committee. Similarly, I also find that fresh ICD's/ loans, amounting to 905 Crores (which does not include instances of rollover/ extension) were positively approved by Noticee no. 7 while being part of the Treasury Committee. I note that the Treasury Committee of FHSL used to conduct its business through circulation of email amongst its members. The approvals were sought for every proposal of investment in ICD's through email. The members of the Treasury Committee used to grant their approval simply by writing words and phrases like 'Ok' or 'Ok with me'. Therefore, I agree with the findings of SEBI investigation that there were no deliberations/ discussions on the proposals of investment in the Treasury Committee meetings, let alone any due diligence on the credit profile of the borrowing entities. Noticee no. 6 and 7 have argued that they had relied upon the Desai Haribhakti & Co., Chartered Accountant reports of 2013 and 2016 for understanding the Asset Coverage ratio of the borrowing entities and they found the credit profile of the borrowing entities was satisfactory. I note that if such reports of the Chartered Accountant were indeed relied

by the said Noticees, then they ought to have been reflected in the minutes of the meeting of the Treasury Committee or as annexures to the email seeking approval of ICD's in the Treasury Committee. However, I do not find any such mentions anywhere. Further, I note that the financial parameters such as credit rating, asset coverage ratio, net worth, etc., are dynamic and change with every borrowing and repayment by the borrower. As a prudent lending practice, the credit worthiness of the borrower ought to be assessed for every large disbursement proposal, especially for proposals such as 100 Crores and above, which was the regular disbursement amount in this case. From the minutes of the meeting of the Treasury Committee/ email communications of the Treasury Committee, I do not find any such credit evaluation being done by its members. Therefore, the one time report from Desai Haribhakti & Co., which Noticee no. 6 and 7 claimed to have used to understand the credit profile of the borrowers, was merely an eyewash and Noticee no. 6 and 7 miserably failed to assess the credit worthiness of the borrowers for every ICD's that were approved by them.

32. Noticee no. 6 and 7 have contended that they approved the ICD's in the ordinary course of business. It is the case of the said Noticees that surplus funds of FHL were deployed in lucrative interest earning instruments for short term that would help the listed company earn better returns than overnight funds. However, I note that in almost all the ICD's/loans approved by the Treasury Committee during the tenure of the said Noticees, there were corresponding proposals for raising the equivalent amount of funds through issue of commercial paper by FHL in the money market. This fact, effectively runs contrary to the theory of deployment of 'surplus funds' and shows that Noticee no. 6 and 7 were aware of the fraud of the promoters and their continuous approval with deliberate failure to exercise due diligence shows that they were part of the fraud. The funds were raised by FHL and then lent to FHsL for further onward lending to the three borrower entities i.e. Best, Fern and Modland. I note that almost every proposal for investment in ICD's mentioned the fact that first money would be raised by FHL in the money market through Commercial Paper and then the same will be lent to FHsL for onward deployment with Best, Fern or Modland. And yet Noticee no. 6 and 7 claim that the ICD's were issued in the regular course of

business. Was it the regular course of business for a company involved in the healthcare services segment to earn income from borrowing and lending? Was it not an enough ground for raising suspicion? Thus, the contention by Noticee no. 6 and 7 that they had no occasion to doubt the investment in ICD's of the borrower companies, is not tenable.

33. I note that Noticee no. 7 has contended that after realizing the delay in interest payment of ICD's and noticing the rollover/ extension of ICD's, he decided not to grant any further approval of ICD's since March 2016. From the facts at hand, I find that the actions of Noticee no. 7 were more of an after thought to save himself from the consequences of future regulatory action upon the perpetrators and conspirators of the fraud. I note that though Noticee no. 7 did not positively approve the ICD's since April 2016, however, the email communications show that he did not even reject or raise appropriate concerns/objections to the proposals. In fact, from the perusal of the email communications of the Treasury Committee, Noticee no. 7 is seen to be 'CC' in every loans/ICD's that were being approved by the Treasury Committee through circulation. This only proves the fact that Noticee no. 7 merely 'abstained' from vote since April 2016 and not the fact of 'disapproval' of resolution by him, which amounts to 'participation by omission', when there was a duty to speak of Noticee no. 7, as a member of Treasury Committee. Noticee no. 7 claims that he had distanced himself from the affairs of the Treasury Committee post March 2016. However, from the email communications of the Treasury Committee, I note that Noticee no. 7 was completely aware of the workings of the Treasury Committee, while continuing to receive emails, post March 2016 till June 2017. I note that his claim that he raised appropriate concerns before the Executive Chairman of FHL is also not supported by any cogent evidence. With regards to his claim that he raised appropriate concerns before the Audit Committee, I note that this fact is neither captured in any of the minutes of the meetings of the Audit Committee, nor has he furnished any proof in this regard.

34. As revealed in the SEBI investigation, and as laid out in Para 8.6.4 above, I note that, from the first quarter of FY 2016-17 to the first quarter of FY 2017-18, the ICD's/loans given to Best, Fern and Modland during April/May 2016, aggregating to 473 Crores, were shown as being repaid at the last day of each quarter and fresh loans/ ICD's were being shown as given at the first day of next quarter. However, in reality no loans/'ICD's were being repaid. Funds were flowing from FHsL to show the repayment of old loans. It was nothing but circular rotation of funds. Such transactions were deliberately entered into to hide the real picture of the financial position of FHsL (effectually that of consolidated financials of FHL), at the end of each quarter, since transactions squared off within the same quarter do not get reflected in the quarterly financial results. SEBI investigation has revealed that:
- 34.1. The amount available in the bank accounts of Modland/ Fern/ Best during the last day of each quarter (i.e. from quarter ending June 2016 to quarter ending June 2017) was insignificant compared to the repayment amount that Modland/ Fern/ Best had to make to FHsL at the end of each quarter.
 - 34.2. Before making the repayment of loan / ICD to FHsL during the end of each quarter (i.e. from quarter ending June 2016 to quarter ending June 2017), Best/ Fern / Modland had received funds from either FHsL itself or through other entities (like Saubhagya Buildcon Pvt Ltd, ANR Securities Pvt Ltd, Ranchem Pvt Ltd, RHC Holding & Torus Buildcon Pvt. Ltd.) and repayment to such entities were made by Modland/ Fern/ Bern, as the case may be, on the same day itself through the funds received from FHsL as ICDs.
 - 34.3. Through these transactions, the position of funds lying in the bank account of FHsL during the period between the end of quarter ending June 2016 to quarter ending June 2017, were artificially inflated as FHsL had recorded receipt of funds in the ledger accounts of Best / Fern / Modland on the last day of each quarter whereas FHsL actually didn't receive any funds from Best / Fern / Modland on the last day of the aforementioned quarters.
 - 34.4. These synchronized transactions also aided FHsL in masking the fact that the short term loans / ICDs given to Best / Fern / Modland were not performing. Since

the 3 companies were not able to pay the aforementioned amount of ICDs, these should have been shown as bad debts in the books of accounts of FHsL for the aforementioned 5 quarters. This would have reduced the net profit of FHsL (effectively of FHL) for the 5 quarters. Hence, the profits of FHL were inflated by FHsL for the aforementioned 5 quarters by an amount of Rs. 473 crore.

- 34.5. Through the aforementioned transactions, the position of 'Cash and Cash Equivalents' as being shown in the Current Assets of the Balance Sheet of FHsL and Consolidated Balance Sheet of FHL, at the end of each of the aforementioned 5 quarters had been artificially inflated by Rs. 473 crores.

35. I note that none of the Noticees herein have disputed the aforesaid findings of the investigation. I find that the position of 'Cash and Cash Equivalents' as being shown in the Current Assets of the Balance Sheet of FHsL (effectively of consolidated FHL) as on September 30, 2016 and March 31, 2017, and net profit of FHsL (effectively consolidated FHL) in the Statement of Profit and Loss for the quarter ended June 2016 to June 2017, is misrepresented. I note that these misrepresentations have resulted in the consolidated financial statements of FHL not reflecting a true and fair view of the financial position and financial performance of FHL, thereby failing to comply with the mandate of para 15 of IndAS 1. I note that Noticee no. 6 and 7 have pleaded innocence about these transactions on the pretext that there was no way by which they could have known the wrongdoings in FHsL, since they were the functionaries in the parent FHL. They have sought reliance on the fact that even the Certificate issued by them for the FY 2016-17 under Regulation 17(8) of LODR Regulations, was only in relation to certifying the 'true and fair view' of the financial statements of FHL and not of FHsL. I do not find any merit in this contention. I note that Noticee no. 6 was the Chief Financial Officer of FHL and non-executive director on the board of FHsL. Noticee no. 7 was the Chief Executive Officer of FHL. Both the Noticees were Key Managerial Personnel at FHL. FHsL was the wholly owned subsidiary of FHL. Both the Noticees have presented a Certificate under Regulation 17(8) of LODR Regulations, before the Audit Committee of FHL, in its meeting dated May 29, 2017, certifying the 'true and fair view' of the Consolidated Audited financial results of FHL.

(which also includes the results of FHsL) for the FY ended March 31, 2017. If the said Noticees were unaware of the working of the internal control systems w.r.t financial reporting of the subsidiary or even the affairs of the subsidiary per se, then why would they certify that *“the consolidated financial statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading”* or certify that *“these statements together present a true and fair view of the Company’s affairs and are in compliance with existing accounting standards, applicable laws and regulations”*? I note that the claims of these Noticees are contrary to the facts at hand. If the said Noticees were so disassociated with the working of FHsL then they would not have issued the aforesaid Certificate in the first place. I also note that Noticee no. 6, being the member of the board of directors of FHsL was even responsible for approving the financials results of FHsL for all the five impugned quarters. In view of the above, I find that the involvement of Noticee no. 6 and 7 in the impugned fraud is conspicuous, let alone their claims about being ignorant.

36. I note that by issuing a false and misleading Certificate under Regulation 17(8) of LODR Regulations for the FY 2016-17, I find that Noticee no. 6 and 7, have breached the mandate of proviso to Regulation 33(2)(a) of LODR Regulations, which provides that the Certificate issued by the CEO and CFO 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.”*. Therefore, I find that Noticee no. 6 and 7 have violated the provision of Regulation 33(2)(a) of LODR Regulations.

37. I note that Noticee no. 6 and 7 have contended that since they refused to grant approval to the proposals for investment, in the Treasury Committee meetings, Noticee no. 2 expanded the composition of the Treasury Committee in March 2017. I note that while it may be true that Noticee no. 6 and 7 expressed their disagreement with Noticee no. 2 and 3 in March 2017, but from the evidence available on record it shows that such an act of Noticee no. 6 and 7 was merely an eye-wash and a cover-up, in order save themselves from the future consequences of any possible

investigation. I note that, despite so called 'disagreement' with the investment in ICD's of Best, Fern and Modland, Noticee no. 6 and 7 ultimately certified the consolidated financial statements of FHL for FY 2016-17 to be 'free from omission of any material fact which may make the statements or figures contained therein misleading', which in fact committed a material omission of non-provision for doubtful debts and committed a material misstatement of overstatement of cash balance. I note that these Noticees did not even raise any objections in the Audit Committee meeting or the Board Meeting while the financial results for FY 2016-17 were being approved without making any provision for doubtful debts.

38. Noticee no. 6 and 7 have sought reliance on Annexure 7 of the FAR, which related to the findings of the Luthra & Luthra report. I note that the Interim Order and the Confirmatory Order came to be passed in the extent matter on the basis of the findings of the FAR. Subsequently, a separate detailed investigation was carried out by SEBI and the present SCN has been issued. I note while the SCN has relied upon the investigation by SEBI but, the FAR and its Annexures were provided to the Noticees as an Annexure to the SCN only as a reference and no reliance is placed by the SCN on them. This was similar to the providing of copy of the Interim Order and Confirmatory Order as annexure to the SCN for reference purposes. Notwithstanding the same, even if Noticee no. 6 and 7 wish to rely on the findings of the Luthra & Luthra report which was included as an Annexure 7 to the FAR, it in any case does not help the case of the said Noticees. I note that the Luthra & Luthra report has used the word '*senior management*' and granted the senior management a clean chit by stating that "*.....Based on the above, it cannot be said that the senior management was in collusion with the Promoters to give the ICDs to Borrower Companies, nor is there any evidence that any of them personally gained from the ICD grant / roll-over*" Now, the doubts pertain as to whether the Luthra & Luthra report intended to use the term 'senior management' to refer to the role of CEO and CFO. The facts before me as stated in the previous paragraphs, show that Noticee no. 6 and 7 were actively involved in the fraud in granting the ICD's to Best/ Fern and Modland and misrepresentation of the consolidated financials of FHL. Noticee no. 6 and 7 have

relied on the observation in the Luthra & Luthra report which states that “*the senior management of FHL strongly objected to the decision of roll-over / fresh grant of ICDs wherever possible, however, there objections were overruled and they were instructed to grant the ICDs.*” I note that while this observation may hold good in case of other personnel of senior management but it is not applicable to the said Noticees, as there is no evidence to say that they ‘*strongly objected to the decision of roll-over / fresh grant*’, as they were seen actively approving the grant of ICD’s as members of the Treasury Committee by replying ‘Ok’ or ‘Ok with me’. There is even no evidence to suggest that the said Noticees being ‘*instructed to grant the ICD’s despite their objections*’. Noticee no. 6 and 7 have also relied upon the observations of the Luthra & Luthra report which states that “*.....other personnel in management were forced into undertaking these transactions on assurance of due repayment.*”. I note that this observation runs contrary to the contention of the said Noticees whose case is that they were unaware of the fraud being perpetrated by the Erstwhile Promoters and when they became aware they distanced themselves from the working of the Treasury Committee. Thus, I find that the observations of the Luthra & Luthra report does not advance the case of Noticee no. 6 and 7.

39. I note that Noticee no. 2 was the non-executive director of FHL since August 12, 1999 and executive director of FHL since January 11, 2012 until February 8, 2018. Noticee no. 2 was also the promoter of FHL. He was designated as Executive Chairman of FHL. From the email communications of the members of the Executive Committee and Treasury Committee of FHL, I find that Noticee no. 2 was actively granting approval for the issue/ roll over / renewal of all the ICD’s/ loans to Best/ Fern/ Modland from December 2011 to July 2017. I also note that Noticee no. 2 is the absolute owner and person in control of Noticee no. 4. Noticee no. 4 holds 49.84% shareholding in RHC Holding. SEBI investigation has revealed and the findings of which have not been denied by Noticee no. 2, that the ICD’s/ loans were given by FHL through FHsL to the three borrower companies (i.e. Best, Fern and Modland), which further lent the funds to RHC Holdings through various conduit entities. Thus, I find that FHL was used as a shadow bank by Noticee no. 2 to borrow money as and when it was required

for the benefit of the Erstwhile Promoter controlled entity (i.e. RHC Holding) and the money was returned by it at their own sweet will until 2016. SEBI investigation has also revealed that funds to the tune of Rs. 397.12 Crore (approx.) in aggregate were diverted from FHsL for the benefit of RHC Holding (through Best, Fern and Modland) which never came back to FHsL. I note that Noticee no. 1 (RHC Holding) is a privately held company, which was owned throughout the Investigation Period in equal proportion by Noticee no. 2 and 3 through their companies Noticee no. 4 and 5. Noticee no. 4 and 5 are 99% held by Noticee no. 2 and 3, respectively, who are real brothers. Further, in the Annual Reports of RHC Holding during the Investigation Period, both Noticee no. 2 and 3 were disclosed to be in control over RHC Holding. I also note that Noticee no. 2 and his wife and Noticee no. 3 and his wife, were the only directors on the board of RHC Holdings, throughout the Investigation Period. Thus, I find that effectively Noticee no. 2 is one of the primary beneficiaries of the funds diverted from FHL (through FHsL) and hence, he cannot escape responsibility for the said diversion of funds wherein the origin as well the beneficiary of such funds were companies held majorly and controlled by him alongwith Noticee no. 3.

40. I note that Noticee no. 3 was the Managing Director and Executive Vice Chairman of FHL from November 13, 2003 to December 31, 2015. He was the non-executive director and Vice-Chairman of FHL from January 1, 2016 to February 8, 2018. I also note that Noticee no. 3 was the promoter of FHL. He was the member of the Executive Committee of FHL from July 2013 to November 2013 and member of Treasury Committee from November 2014 to November 2015. I note that Noticee no. 3 was part of FHL's Board meeting held on April 14, 2011, wherein it was decided to grant loans to FHL's subsidiaries, which was followed by FHMNL granting initial ICDs to the three borrower companies. I also note that Noticee no. 3 is the absolute owner and person in control of Noticee no. 5. Noticee no. 5 holds 49.84% shareholding in RHC Holding. SEBI investigation has revealed and the findings of which have not been denied by Noticee no. 3, that the ICD's/ loans were given by FHL through FHsL to the three borrower companies (i.e. Best, Fern and Modland), which further lent the funds to RHC Holdings through various conduit entities. Thus, I find that FHL was used as

a shadow bank by Noticee no. 3 to borrow money as and when it was required for the benefit of the Erstwhile Promoter controlled entity (i.e. RHC Holding) and the money was returned by it at their own sweet will until 2016. As noted above, Noticee no. 1 (RHC) is a privately held company, which was equally co-owned by Noticee no. 2 and 3 through their companies Noticee no. 4 and 5. Noticee no. 5 is 99% held by Noticee no. 3. Further, in the Annual Reports of RHC during the Investigation Period, Noticee no. 3 alongwith Noticee no. 2, were disclosed to be in control over RHC. I also note that Noticee no. 2 and his wife and Noticee no. 3 and his wife, were the only directors on the board of RHC, throughout the Investigation Period. Thus, I find that effectively Noticee no. 3 is also one of the primary beneficiaries of the funds diverted from FHL (through FHSL), hence, he cannot escape responsibility for the said diversion of funds (which was done in the garb of deployment of surplus funds) wherein the origin as well the beneficiary of such funds were companies held majorly and controlled by him alongwith Noticee no. 2.

41. I find that apart from the violations of Section 12A(c) of SEBI Act, 1992 and Regulation 4(1) of PFUTP Regulations, 2003, for their delinquent conduct as the member of the board of director of a listed entity, Noticee no. 2 and 3, are also found to be in breach of Clause 49(I)(D)(1)(a), 49(I)(D)(2)(f) and 49(I)(D)(3)(c), 49(I)(D)(3)(f) of the Erstwhile Listing Agreement {post amendment dated April 17, 2014} and Regulation 4(2)(f)(i)(1), 4(2)(f)(ii)(6), 4(2)(f)(iii)(3) and 4(2)(f)(iii)(6) provisions of LODR Regulations:

Relevant extract of provisions of Erstwhile Listing Agreement:

49. Corporate Governance

- I. The company agrees to comply with the provisions of Clause 49 which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below. In case of any ambiguity, the said provisions shall be interpreted and applied in alignment with the principles.

.....
D. Responsibilities of the Board

1. Disclosure of Information

- a. Members of the Board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.

.....

2. Key functions of the Board

The board should fulfill certain key functions, including:

.....

- f. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

.....

3. Other responsibilities

- c. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

.....

- f. The Board should apply high ethical standards. It should take into account the interests of stakeholders.

.....

Relevant extract of provisions of LODR Regulations:

Regulation 4

Principles Governing Disclosures and Obligations of listed entity

(1).....

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

a.....

f. Responsibilities of the board of directors:

.....

The board of directors of the listed entity shall have the following responsibilities:

i Disclosure of information:

1 Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.
.....

ii Key functions of the board of directors-

1.....

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.

iii Other responsibilities:
.....

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.

42. I note that FHL and FHsL, have contended that they are the victims of the fraud and not the perpetrators of the fraud, thus they ought not to be mechanically penalized for the actions of the Erstwhile Promoters, who have disassociated themselves from the working of the said Noticees and they are no more in control of their affairs. From the submissions of the said Noticees, I find that Noticee no. 8 and 9, have undergone change in control and a change in management. I also note that Noticee no. 8 and 9 have also undertaken several steps to recover the money that were diverted from FHL under the garb of deployment of surplus funds as investment in ICD's, by instituting following action against the Erstwhile Promoters and the entities under their control:

42.1. FHL and FHsL issued two demand notices dated November 10, 2018 and December 15, 2018, respectively, seeking recovery of amounts from the Erstwhile Promoters.

42.2. FHsL filed a civil suit before the Hon'ble High Court of Delhi, against the Erstwhile Promoters and the relevant promoter-controlled entities for recovery of the

siphoned amounts. In the Civil Suit, FHsL has claimed recovery of total principal amount of Rs. 397.12 Crore (INR Three Hundred Ninety-Seven Crores and Twelve Lakhs only), that has been alleged in the SCN to have been diverted from FHsL to the benefit of the Erstwhile Promoters' related entities.

42.3. Further, on November 10, 2020, FHL filed a criminal complaint bearing diary no. D-2929, against, *inter alia*, the Erstwhile Promoters before the Economic Offences Wing of the Delhi Police for certain illegal transactions / dealings by the Erstwhile Promoters and sought registration of an FIR against them. The Complaint also accuses the Erstwhile Promoters of having orchestrated some of the transactions impugned in the SCN.

43. I find that Noticee no. 8 and 9 are corporate entities, distinct from their shareholders and the persons controlling them. It is true that in case of fraud, the corporate veil of a company, can be lifted to find out the real culprits and the beneficiaries of the fraud, which has been done in the present case. However, it does not mean that the corporate entity is absolutely absolved from its liability for the wrong committed. A corporate entity always acts through human beings controlling its affairs. If it is assumed that only natural persons will be liable for the wrongs of the company then it will run counter to the concept of distinct legal personality of a corporate entity, whose one of the important attribute is that it can sue and be sued in its own separate name. The wrong done by the natural person in the name of the corporate entity can only be taken as a mitigating factor for deciding penalty, monetary or otherwise, to be meted out to the corporate entity and not as an absolving factor. In view of the above, I find that no case is made for issuance of regulatory directions under Section 11B(1) of the SEBI Act, 1992 and Section 12A(1) of SCRA Act, 1956, against Noticee no. 8 and 9. However, I note that Noticee no. 8 and 9 have admitted the fact that the financial results of FHsL and consolidated financial results of FHL were indeed misrepresented for the quarter ended June 2016 to June 2017, albeit it is their case that the Erstwhile Promoters are responsible for the same. I note that Regulation 48 of LODR Regulations, specifically imputes the responsibility for compliance with the applicable

accounting standards on the listed entity. I also note that misrepresentation of consolidated financial results of FHL has lead to non-compliance of para 15 of IndAS 1 by FHL which has further lead to violation of Regulation 48 of LODR Regulations. I note that FHL as a listed entity was mandated under Regulation 4(1) of LODR Regulations, to discharge its disclosure obligations under the LODR Regulations, 2015, in accordance with the following principles:

4. Principles Governing Disclosures and Obligations of listed entity:

1. *The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*
 - 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 recognised stock exchange(s) and investors is not misleading.*
 - d. *The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.*
 - e. *The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*
 - f. *Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.*
 - 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.*
 - i. *Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.*
 - 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.*

44. I find that, by misrepresenting the consolidated financial statements of FHL for five consecutive quarters, FHL has also failed to adhere to the principles enshrined in Regulation 4(1) of LODR Regulations, more specifically violating the principles stipulated under Regulations 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(h), 4(1)(i), 4(1)(j) of

LODR Regulations. I also note that by failing to disclose the fraud to the stock exchange, which was a material event, FHL has also violated Regulation 30(1) of LODR Regulations and Clause 49(I)(C)(1)(a) {post amendment dated April 17, 2014} of the Erstwhile Listing Agreement read with Regulation 103 of LODR Regulations.

45. I note that the SCN has alleged violations, relating to financial results by Noticee no. 9, of certain clauses of the erstwhile Listing Agreement and LODR Regulations. However, I find that the alleged misrepresentation of financial results took place for the quarter ended June 2016 to June 2017, by which time, only the provisions of LODR Regulations were applicable to FHL. Thus, no violation of these clauses of the erstwhile Listing Agreement can be made out qua Noticee no. 9, in the present case. Further, I note that the SCN alleged violation of Regulation 23(2) of LODR Regulations, by FHL, which mandates that all related party transactions be approved by the Audit Committee, however, I note that Regulation 23(5)(b) provides an exemption to the stipulation laid down in Regulation 23(2), such that in case of transaction between holding company and its wholly owned subsidiary, provision of sub-regulation (2) of Regulation 23, shall not be applicable. Thus, transactions between FHL and FHSL were exempt from the requirement of approval by the Audit Committee of FHL, thereby no violation of Regulation 23(2) of LODR Regulations is made out by the SCN.

46. SCN further alleges that FHL has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. I note that securities of FHL are listed on BSE and NSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

“.....1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.

2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:—

- i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/ circulars as may be issued by SEBI from time to time.
- ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.
- iii. such other directions, requirements and conditions as may be imposed by SEBI/Exchange from time to time.....”

47. Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the condition is compliance with LODR Regulations. In the present case, FHL is a company whose securities are listed on BSE and NSE. which is a recognised stock exchange. FHL being a company having its securities listed on BSE and NSE was also required to sign the said uniform listing agreement with BSE and NSE and in view of the provisions of Section 21 of SCRA, 1956, FHL was bound to comply with the conditions of the uniform listing agreement, as extracted above. FHL has been found to be in violation of the clauses of the erstwhile Listing Agreement and provisions of the LODR Regulations, as discussed above, therefore, FHL is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

48. I note that Noticee no. 1 to 5 played a key role in the diversion of funds (in the garb of investment through ICD's) from Noticee no. 8/ 9, as the funds from the listed company moved through various conduit entities. The funds were routed in a structured manner to benefit the promoters. In view of the foregoing, it is found that Noticee nos. 1 to 5, 8 and 9, acted in a fraudulent and deceptive manner which led to misuse and/or diversion of funds to the tune of Rs.397.12 crore (approx.), for the ultimate benefit of RHC Holding Private Limited, an entity indirectly owned and directly controlled by the Erstwhile Promoters. Further, it is also alleged that Noticee no. 6 & 7 played a role in the approval of grant of loans/ ICDs to the borrower companies wherein they deliberately failed to carry out adequate due diligence and exercise independent judgement, thereby aiding in misuse and diversion of public shareholders' funds through the borrower companies (Best, Fern and Modland) for the benefit of RHC

Holding and consequently Noticee no. 2 and 3. In view of the above, the Noticee no. 1 to 9 are alleged to have violated the provisions of Section 12A(c) of the SEBI Act, 1992 and Regulations (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

49. From the first quarter of FY 2016-17 to the first quarter of FY 2017-18, the ICD's/loans given to Best, Fern and Modland during April/May 2016, aggregating to 473 Crores, were shown as being repaid at the last day of each quarter and fresh loans/ ICD's were being shown as given at the first day of next quarter. However, in reality no loans/'ICD's were being repaid. Funds were flowing from FHsL to show the repayment of old loans. It was nothing but circular rotation of funds. The position of 'Cash and Cash Equivalents' as being shown in the Current Assets of the Balance Sheet of FHsL (effectively of consolidated FHL) as on September 30, 2016 and March 31, 2017, and net profit of FHsL (effectively consolidated FHL) in the Statement of Profit and Loss for the quarter ended June 2016 to June 2017, was misrepresented. Thus, the consolidated financials of FHL did not give a true and fair view and were thus misleading for the shareholders of the listed company. Therefore, FHL has failed to comply with the mandate of para 15 of IndAS 1 and thereby violated the provision of Regulation 48 of LODR Regulations. FHL has also failed to adhere to the principles enshrined in Regulation 4(1) of LODR Regulations, more specifically violating the principles stipulated under Regulations 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(h), 4(1)(i), 4(1)(j) of LODR Regulations. Further, I find that by issuing a false and misleading Certificate under Regulation 17(8) of LODR Regulations for the FY 2016-17, I find that Noticee no. 6 and 7, have breached provisions of Regulation 33(2)(a) of LODR Regulations.

50. Noticee no 2 and 3 being Chairman and Vice-Chairman of the Board of directors of FHL during the Investigation Period deliberately failed to abide by the principles governing disclosures and obligations in the best interest of listed company and its shareholders including deliberate failure to disclose to the Board of directors regarding their interest in the transactions with borrowers. In view of above, it is found that Noticees no 2 and 3 deliberately failed to discharge their duties in a manner which

was required in the best interest of the listed company and its shareholders. Thus, Noticee no. 2 and 3 have violated the provisions of Clause 49(I)(D)(1)(a), 49(I)(D)(2)(f) and 49(I)(D)(3)(c), 49(I)(D)(3)(f) of the Erstwhile Listing Agreement {post amendment dated April 17, 2014} and Regulation 4(2)(f)(i)(1), 4(2)(f)(ii)(6), 4(2)(f)(iii)(3) and 4(2)(f)(iii)(6) provisions of LODR Regulations.

51. I also note that by failing to disclose the fraud to the stock exchange, which was a material event, FHL has also violated Regulation 30(1) of LODR Regulations and Clause 49(I)(C)(1)(a) {post amendment dated April 17, 2014} of the Erstwhile Listing Agreement read with Regulation 103 of LODR Regulations.

52. I note that role of Noticee no. 1 to 7, in the diversion of funds from FHL and FHSL, wherein they were the person in control of affairs of FHL and also the indirect owner and direct controller of RHC Holdings (the ultimate beneficiary of diversion of funds) was ubiquitous. I note that vide the directions in the Interim Order and Confirmatory Order, Noticee no. 8 and 9 have already been directed to take all necessary steps to recover the amount of Rs. 403 Crore (approx.) alongwith due interest from Noticee no. 1 to 5, Best, Fern and Moodland. I note that Noticee no. 8 and 9 have instituted Civil and Criminal proceedings (more specifically mentioned at para 42, above) against the aforesaid entities. Therefore, I find that steps for recovery of diverted amount, have already been put into motion. I also note that on February 8, 2018, the Erstwhile Promoters, who, by virtue of being the Executive Chairman (Noticee no. 2) and the Non-Executive Vice-Chairman (Noticee no. 3) of FHL, were in control of FHL, resigned from the Board of Directors of FHL with immediate effect. Further, by February 28, 2018, the cumulative shareholding of the Erstwhile Promoters in FHL, held through their shareholding in Fortis Healthcare Holdings Private Limited, had reduced below one percent (1%). Noticee no. 2 and 3 have also been de-classified as 'promoters' of FHL from June 3, 2019. I note that there has been a change in control of Noticee no. 8 and 9 and the new management has initiated steps for recovery of diverted amounts. Though Noticee no. 2 and 3 are now not associated with Noticee no. 8 and 9, however, at the time of impugned transactions they were in-charge of and

were responsible to Noticee no. 9 and RHC Holding for the conduct of the business of Noticee no. 9 (i.e. source of fund) and RHC Holding (i.e. beneficiary of fund). Therefore Noticee no. 2 and 3 were instrumental in the diversion of funds through mechanism of ICDs, therefore, these directors should be debarred from the securities market till the money is recovered. In view of the aforesaid violations committed by the Noticee no. 1 to 7, I find that directions under Sections 11(1), 11(4), and 11B (1) of the SEBI Act, 1992 and Section 12A(1) of SCRA, 1956, needs to be issued.

53. I find that continued and more stringent directions needs to be issued under Sections 11(1), 11(4), and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, against Noticee no. 2 and 3. I note that SCN in the matter, also calls upon the Noticee no. 1 to 9 to explain as to why appropriate penalty be not imposed upon it under Sections 15HA of the SEBI Act, 1992, Noticee no. 2, 3, 6, 7 and 9 under Section 15HB of SEBI Act, 1992, Noticee no. 9 under Section 23E of SCRA, 1956 and Noticee no. 2, 3, 6 and 7 under Section 23H of SCRA, 1956. Extract of these penalty provisions, as existing at the relevant time is as under:

Extract of Section 15HA and 15HB of SEBI Act, 1992:

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.

Extract of Sections 23E and 23H of SCRA, 1956:

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

54. All the Noticees have been called upon as to why penalty under Sections 15HA of the SEBI Act, 1992 should not be imposed on them. As in the present case, violations of Section 12A(c) of SEBI Act, 1992 and provisions of Regulation 3(d) and 4(1) of PFUTP Regulations, 2003 have been made out against all the Noticees, and violation of Regulation 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 have been made out against Noticee no. 9, therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against all the Noticees. Noticee no. 2, 3, 6, 7 and 9 have been called upon as to why penalty under Section 15HB of SEBI Act, 1992 should not be imposed on them. FHL has been found to have violated provisions of Regulation 48, 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(h), 4(1)(i), 4(1)(j) and 30(1) of LODR Regulations, therefore, it is liable for imposition of penalty under Section 15HB of SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, for which no separate penalty has been provided. Since, LODR Regulations, are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HA) does not separately provide for any penalty for violation of LODR Regulations, therefore, for violation of LODR Regulations by Noticee no. 9, as found in this order, penalty under Section 15HB of SEBI Act, 1992 is attracted against it. I also note that Noticee no. 2 and 3 have been found to have violated Regulation 4(2)(f)(i)(1), 4(2)(f)(ii)(6), 4(2)(f)(iii)(3) and 4(2)(f)(iii)(6) of LODR Regulations. I find that for the aforesaid violations, Noticee no. 2 and 3, are liable for

imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, the rules or the regulations made or directions issued by SEBI for which no separate penalty has been provided. Since, LODR Regulations, are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HA) does not separately provide for any penalty for violation of LODR Regulations, therefore, for violation of LODR Regulations by Noticee no. 2 and 3, as found in this order, penalty under Section 15HB of SEBI Act, 1992 is attracted against them. Similarly, for the violation of Regulation 33(2)(a) of the LODR Regulations, I find that Noticee no. 6 and 7 are liable for imposition of penalty under Section 15HB of the SEBI Act, 1992. Noticees no. 9 has been called upon as to why penalty under Sections 23E of SCRA, 1956 should not be imposed upon it. In this regard, I note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that FHL is in violation of listing conditions, however, FHL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. Noticee no. 2, 3, 6 and 7 have been called upon as to why penalty under Section 23H of SCRA, 1956 should not be imposed on them. I note that penalty under Section 23H has been sought to be imposed in view of the violations of the Clauses of the erstwhile equity listing agreement alleged against these Noticees. I note that violations of the provisions of the erstwhile listing agreement was mandatory in view of the provisions of the Sections 21 of SCRA which provided that any person on whose application securities of a company are listed, shall comply with the conditions of listing. In case such person violated any of the clauses of erstwhile equity listing agreement, it resulted into the violation of Section 21 of SCRA, 1956 for which penalty could be imposed under Section 23H of SCRA, 1956. In the present case, I note that the securities of FHL were listed on the application of FHL i.e. Noticee no. 9. Therefore, in terms of Section 21 of SCRA, 1956, Noticee no. 9 was required to comply with provisions of Section 21 of SCRA, 1956. However, I note that in the SCN penalty under Section 23H has not been proposed against Noticee no. 9. The other Noticees i.e. 2, 3, 6 and 7, against

whom penalty under Section 23H has been proposed, can not be visited with the penalty under this provision, because these Noticees can not be held to be in violation of Section 21 of SCRA, 1956 as the securities of FHL were not listed on the application of these Noticees and consequently, penalty under Section 23H of SCRA is not attracted against them.

55. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

“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.”

56. Regarding the factors of Section 15J of SEBI Act, 1992 and *para materia* Section 23J of SCRA, 1956, I note that SCN alleges that Rs. 397.12 Crore of listed company i.e. FHL were diverted (in the garb of investment through ICD's) through various intermediate entities for the ultimate benefit of Noticee no. 1 during January, 2016 to May 2016. I note that vide the directions in the Interim Order and Confirmatory Order, Noticee no. 8 and 9 have already been directed to take all necessary steps to recover the amount of Rs. 403 Crore (approx.) alongwith due interest from Noticee no. 1 to 5, Best, Fern and Moodland. I note that Noticee no. 8 and 9 have instituted Civil and Criminal proceedings (more specifically mentioned at para 42, above) against the

aforesaid entities. Therefore, I find that steps for recovery of diverted amount, have already been put into motion. I also note that on February 8, 2018, the Erstwhile Promoters, who, by virtue of being the Executive Chairman (Noticee no. 2) and the Non-Executive Vice-Chairman (Noticee no. 3) of FHL, were in control of FHL, resigned from the Board of Directors of FHL with immediate effect. Further, by February 28, 2018, the cumulative shareholding of the Erstwhile Promoters in FHL, held through their shareholding in Fortis Healthcare Holdings Private Limited, had reduced below one percent (1%). Noticee no. 2 and 3 have also been de-classified as 'promoters' of FHL from June 3, 2019.

Directions and monetary penalties:

57. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), and 11B(1), 11B(2) of SEBI Act, 1992 and Section 12A(1) and 12A(2) of SCRA, 1956 read with Section 19 and Section 11(2)(j) of SEBI Act, 1992 and Rule 5 of the Rules and Rule 5 of the SCRA Rules, direct as under:

- (i) Noticee no. 8 and 9 shall continue to pursue the measures, which have already been put into motion, to recover the amount of Rs. 397.12 Crores (approx.) alongwith the interest from Noticee no. 1, 2, 3, 4, 5, Best, Fern and Modland. The Audit Committee of FHL is directed to regularly monitor the progress of such measures being taken by FHL and report the same to board of directors of FHL at regular intervals;
- (ii) The Noticee no. 2 and 3, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI of any Market Infrastructure Institution, for a period of three (03) years, from the date of coming into force of this order. The prohibition

imposed herewith in respect of dealing in securities, shall not come in the way of facilitating the compliance of direction given in para 57 (i) above;

- (iii) Noticee no. 2 and 3 shall continue to remain restrained from accessing the securities market and be prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market, for a period of three years, as directed in para 57(ii) above, or till Noticee no. 8 and 9, recover the money, as directed in para 57(i), whichever is later.
- (iv) Noticee no. 1 to 5 shall not dispose of or alienate any of their assets or divert any funds except for facilitating the compliance of direction given to Noticee no. 8 and 9, in para 57 (i) above.
- (v) The Noticee no. 1, 4, 5, 6 and 7, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two (02) years, from the date of coming into force of this order;
- (vi) The Noticee no. 1, 2, 3, 4, 5, 6, 7, 8 and 9, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under penalty which imposed	Penalty Amount (In Rupees)
Noticee no. 1	RHC Holding Private Limited	Section 15HA of the SEBI Act, 1992.	Rs.2,50,00,000/- (Two Crores Fifty Lakh Only)
Noticee no. 2	Mr. Malvinder Mohan Singh	Section 15HB of SEBI Act, 1992 Section 15HA of the SEBI Act, 1992.	Rs.5,00,00,000/- (Rupees Five Crores Only)
Noticee no. 3	Mr. Shivinder Mohan Singh	Section 15HB of SEBI Act, 1992	

		Section 15HA of the SEBI Act, 1992.	Rs.5,00,00,000/- (Rupees Five Crores Only)
Noticee no. 4	Malav Holdings Private Limited	Section 15HA of SEBI Act, 1992	Rs.2,50,00,000/- (Two Crores Fifty Lakh Only)
Noticee no. 5	Shivi Holdings Private Limited	Section 15HA of SEBI Act, 1992	Rs.2,50,00,000/- (Two Crores Fifty Lakh Only)
Noticee no. 6	Mr. Gagandeep Singh Bedi	Section 15HA of SEBI Act, 1992	Rs.2,50,00,000/- (Two Crores Fifty Lakh Only)
		Section 15HB of SEBI Act, 1992	
Noticee no. 7	Mr. Bhavdeep Singh	Section 15HA of SEBI Act, 1992	Rs.2,50,00,000/- (Two Crores Fifty Lakh Only)
		Section 15HB of SEBI Act, 1992	
Noticee no. 8	Fortis Hospitals Limited	Section 15HA of SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty Lakhs Only)
Noticee no. 9	Fortis Healthcare Limited	Section 15HA of SEBI Act, 1992	Rs. 1,00,00,000/- (Rupees One Crore Only)
		Section 15HB of SCRA, 1956	

(vii) The said Noticees shall remit / pay the said amount of penalties within 45 days from the date of coming into force of this order. The said Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD-ID2, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

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

58. The obligation of the Noticees, restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of coming into force of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

59. This Order comes into force with immediate effect.

60. This Order shall be served on all the Noticees, members of the audit committee of FHL, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents of mutual funds to ensure necessary compliance.

Sd/-

Date: April 19, 2022
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA