WTM/AB/IVD-ID19/12937/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11A, 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.	M/s. Jaisukh Dealers Limited	AABCJ7808H
2.	Mr. Prakash Kumar Jajodia	ACOPJ3493L
3.	Kishan Kumar Jajodia	ACUPJ9687L
4.	Mr. Somnath Gupta	ADZPG2735J
5.	Mr. Soumen Sen Gupta	APCPG9767K
6.	Ms. Balushri Gupta	BONPG4905C
7.	Mr. Tanumay Laha	AIVPL5095K
8.	M/s Amita Associates Chartered Accountants	AEXPP8031P
9.	M/s Bajoria Mayank & Associates Chartered Accountants	AALFB7156R

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

In the *matter of* Jaisukh Dealers Limited

1. The present order deals with three show cause notices (hereinafter collectively referred to as '**SCNs**') issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), the details of which are as follows:

   (i) Show Cause Notices No. SEBI/HO/IVD/ID19/OW/P/2020/0000013593/1-7 dated August 21, 2020 issued to Noticee no. 1 to 7 (hereinafter referred to as "**SCN**");

   (ii) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/0000013593/8 dated August 21, 2020 issued to Noticee no. 8 (hereinafter referred to as "**SCN-II**"); and

   (iii) Show Cause Notice No. SEBI/HO/IVD/ID19/OW/P/2020/0000013593/9 dated August 21, 2020 (hereinafter referred to as "**SCN-III**").

2. SCN calls upon Noticee no. 1 to 7 to show cause as to why suitable directions should not be issued and/or penalty not be imposed, as deemed fit under Sections 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Sections 15A(a),15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Section 12A(1) & 12A(2) read with Sections 23E and 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA, 1956**") against them for violations of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1), 4(2) (f) & (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulation, 2003**"), Regulations 4(1)(a), (b), (c), (e), (g), (h) & (i), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3), (6) & (12), 33(2)(a) read with 33(5) and 48 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**"), and Section 21 of SCRA, 1956. Additionally, Noticee no. 1 i.e. Jaisukh Dealers Limited (hereinafter also referred to as "**JDL**" / "**the Company**") has also been alleged to have violated Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulation 6(1) of LODR Regulations.

3. SCN-II and SCN-III, call upon Noticee no. 8 and 9, respectively, to show cause as to why suitable directions, as deemed fit under Sections 11, 11B and 11D of SEBI Act, 1992, should not be issued against them for violation of Section 12A (a) (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulation, 2003, as statutory auditors of Noticee no. 1.

4. The brief facts of the case, the brief findings of the investigation and the allegations levelled against the Noticees, as mentioned in the SCNs are as follows:

4.1. SEBI passed an interim order on October 11, 2017, *inter-alia*, directing the promoters and the directors (Noticee no. 2 to 7) of JDL to only buy the securities of JDL and shares held by them in the Company and shall not be allowed to be transferred for sale by depositories. Further, vide the said interim order, the stock exchange was directed to appoint an independent forensic auditor to, inter-alia, further verify:

a) Misrepresentation including of financials and/or business of JDL, if any;
b) Misuse of the funds/books of accounts of JDL, if any.

4.2. The forensic audit report was submitted to SEBI by the stock exchange on August 30, 2019 and the findings of the forensic audit report from the period April 01, 2015 till December 31, 2017 were examined by SEBI in the investigation.

4.3. The investigation by SEBI, *inter-alia*, revealed the following:

I. <u>Misrepresentation including of financials and misuse of funds/ books of accounts:</u>

4.3.1. Execution of transactions not backed by valid supporting documents:

4.3.1.1. On review of advances it was noted that loan agreements were made on plain paper. Further, there was no collateral or security taken before extending such loans. In 1 instance, ledger abstract of the party was provided instead of agreement copy.

4.3.1.2. Supporting documents were not provided for refund of advances (in cash) which were extended to subsidiaries for incorporation expenses.

4.3.1.3. Interest was not charged on advances given for purchase of shares. The parties had taken the advance for a period of 3-4 months and then refunded the amount without any penalty/interest for non-delivery of any goods/services/shares.

4.3.1.4. The Company did not provide sales agreement, share certificates, share transfer forms, and valuation reports / CA certificates pertaining to disposal of shares/investments. Copy of invoice did not contain basic details such as TIN and PAN of customer and Company. Shares were sold at the same price at which they were originally purchased to unknown parties in cash.

4.3.1.5. Cheque issued by JDL amounting to Rs. 16.10 lacs was returned and cancelled thereafter. However, cancelation entry of Rs. 16.10 lacs dated 30 June 2015 could not be identified in the bank book of JDL. This indicates that fund was received from party without business rationalization and the ledger balance of entity viz. Rupali Creation is overstated in the books of accounts. Further, Rs. 0.53 lacs was paid in cash as excess rent which was returned later to JDL in cash.

4.3.1.6. Sale of mobile and mobile accessories amounting to Rs. 1.26 lacs was made in cash and it was noted that party name was not mentioned on the invoices provided by the Company. Further, it was noted that JDL has made cash sales even though it does not have any retail outlet.

4.3.1.7. The management of JDL failed to provide the agreement for payments towards purchase of plant/machinery and proof of delivery of goods in the factory. Further, serial number of asset purchased was not mentioned in the copy of invoice.

4.3.1.8. On review of margin money paid to brokers and received from stock brokers it was noted that the Company did not provide its ledger account with the stock broker / demat account statement. Instead, it provided balance confirmation from the other parties whose authenticity is questionable. Moreover, it was also noted that Concord Vinimay Private Limited (stock broker), is a related party of JDL (on the basis of common director - Kishan Kumar Jajodia and Prakash Kumar Jajodia) and it shares the common registered address with JDL – "Centre Point, 21, Hemanta Basu sarani, 2nd Floor, Room No. 230, Kolkata, west Bengal".

4.3.1.9. From the above analysis, it seems that JDL was primarily operating in the business of investments activities, which comprised 94.36% of the source of funds and 92.05% of the end use of funds. In contravention to the above facts, JDL has shown in its annual return (Form MGT-9) filed with ROC that their principal business activity is sale of garments (Kurtis).

4.3.1.10. Further on review of 19 samples of receivables amounting to Rs. 430.72 lacs and 22 samples of payables amounting to Rs. 790.40 lacs, the following was noted:

A) Company failed to provide the agreements for sale of shares and share transfer form pertaining to sale of investments. The copy of invoice was not acknowledged by the buyer and did not contain basic details such as invoice number, tax number, and bank details of the customer. Moreover, these transactions were undertaken with entities whose directors were those individuals whose names were

disclosed as dummy directors by Mr. Prakash Kumar Jajodia, in his statement given to the Income Tax department during the search and seizure.

B) Further the Company did not provide agreements, order copy, and proof delivery (lorry receipts and octroi receipts) pertaining to sale of garments and mobile accessories. The copy of invoice was not acknowledged by the buyer.

C) Also the company did not provide share certificate, transfer form and agreement for purchase of investments. Moreover, the invoice did not contain basic mandatory details such as TIN, PAN, and CIN of the vendor. For purchase of material (including plastic granules and cables), the management failed to provide agreements for purchase and proof of receipts of material

d) Debtor balance amounting to Rs. 148.74 lacs, (76.38% of the sample) and creditor balance amounting to Rs. 111.94 lacs, (100% of the creditor balance outstanding as on 31 December 2017) could not be validated.

E) The debtors and creditors could not be identified at their addresses. (Refer page 25 and 28 of FAR).

f) These instances of agreement copy not provided, no responses from debtors and creditors for their balance confirmation combined with nonexistence of debtors and creditors at their addresses corroborate that these were mere book entries and raises suspicion over the business transactions as well as the amount of receivables and payables mentioned in the financials of the company.

4.3.1.11. All the above facts raise questions about the operations of the Company as well as the revenue from operations mentioned in the financial statements. Since majority of the source and end use of funds consists of transactions related to principal business activity of the Company and

doubt over these transactions raise suspicion over the business sustainability of the Company.

4.3.2. Non availability of supporting documents and inadequate supporting documents for the expenses such as professional fees, electricity expenses, salary and rent booked in JDL's books of account.

4.3.2.1. The company did not provide any supporting documents or inadequate supporting documents were provided with respect to following expenses:

Sr. No.	Nature of expense	Inadequate/No supporting documents
1.	Telephone expenses, motor car expenses and salary expenses	No supporting documents provided
2.	Electricity expenses	Invoices were not provided. Instead, acknowledgment by Anita Jajodia and Sabita Jajodia (relative of director) was provided which was on a plain paper.
3.	Professional fees / purchase of garments	Agreements were not provided for professional charges and garments purchase. Further agreement of rent was made on plain paper.
4.	Rent	Rent was paid to wives of JDL's Director named Anita and Sabita Jajodia, the provided rent agreement was made plain paper, instead of any stamp paper.

4.3.3. JDL did not incur any expenses towards water, staff welfare, and transportation which is highly unusual during the conduct of business.

4.3.3.1. On the review of operational expenses of JDL, it was noted that JDL did not incur any expenses towards water, staff welfare, and transportation which creates suspicion on the regular operations and existence of JDL's office.

4.3.4. Violation of AS 13 due to non provision against permanent diminution in the value of its investments.

4.3.4.1. JDL had invested in the shares of Econo Trade (India) Limited valued at Rs. 214.02 lacs, whereas, as on 31 March 2017 the market value of this

investment was Rs. 33.77 lacs. However, JDL did not make any provision against permanent diminution in the value of its investments, due to which value of investments in listed shares were overstated by Rs. 180.25 lacs. Thus the entity has violated Accounting Standard 13-Accounting for investments and also it has led to misrepresentation of books of the Company.

4.3.5. Wrong classification of investments as inventories leading to violation of AS 2.

4.3.5.1. The Company showed inventory of shares of Rs. 233 lacs as on 31 March 2017 which constituted 107,550 shares of Econo Trade (India) Limited for Rs. 214 lacs. Further, in its notes to accounts, it is mentioned that the inventories were valued at lower of cost and net realizable value.

4.3.5.2. On review of the books of account for FY 2015-16, FY 2016-17 and from April 2017 to 31 December 2017, the forensic auditor noted that, these shares were purchased before 1 April 2015 and were not sold as on 31 December 2017.

4.3.5.3. As per para 3.1 of accounting standard 2 'Valuation of inventories', "*Inventories are assets:*

a) held for sale in the ordinary course of business;
b) in the process of production for such sale; or
c) in the form of materials or supplies to be consumed in the production process or in the rendering of services."

4.3.5.4. Therefore, it should be classified under purchases made for investment purposes whereas in the financials and books of account, JDL has

classified as inventories. This shows that JDL made wrong classification in its Books of Account.

4.3.5.5. Also as per para 32 of AS 13 Accounting for investments "*Investments classified as long term investments should be carried in the financial statements at cost. However, provision for diminution shall be made to recognise a decline, other than temporary, in the value of the investments, such reduction being determined and made for each investment individually.*"

4.3.5.6. Hence, JDL has wrongly classified its investment as inventory and overstated its assets (investment) by Rs. 180 lacs.

4.3.6. Receivables from related parties were mere book entries.

4.3.6.1. The Company had trade receivables of Rs. 318 lacs as on 31st March 2017 out of which Rs. 288 lacs was outstanding for more than six months. The Company replied that these transactions were of sale of shares to related party however it did not provide supporting documents like contract copy/agreement/ share certificate/share transfer form with respect to the sale of shares made to related parties.

4.3.6.2. Further these trade receivables from related parties belong to FY 2014-15 (25 September 2014), which were outstanding for more than 3 years.

4.3.6.3. Therefore, based on the above facts, these transactions with related parties were mere book entries due to which debtors of the Company were overstated by Rs. 160 lacs. Thus the entity has misrepresented its books of accounts.

4.3.6.4. Further it was also noted that JDL has sold shares to its related parties, details of which are as mentioned below:

Sn	Date	Party name	No. Of shares	Sale price per share	Amt (in lacs)	Name of investment
1	05-10-2015	JDL Hosieries Limited	4,14,000		41.40	Anurodh Infrastructure Limited
2	18-03-2016	JDL Real Estates Limited	9200	499.78	45.98	Fastner Machinery Dealers Private Limited
3	25-09-2014	JDL Gem & Jewelleries Limited	3,74,800	10	37.48	370000 shares of Shreyans Embroidery Machine Private Limited 4800 shares of Anurodh Infrastructure Limited
4	25-09-2014	JDL Consultants Limited	4,14,800	10	41.48	410000 shares of Wonderland Papers suppliers Private Limited 4800 shares of Anurodh Infrastructure Limited

4.3.6.5. However, JDL failed to provide the sales agreements, share transfer forms, special board resolution and “minutes of the audit committee review” pertaining to these transactions. The copy of invoices provided for these transactions were not acknowledged by the buyers.

4.3.6.6. Further, these shares were sold to subsidiaries at the price at which it was originally purchased by JDL. Moreover, these subsidiaries are being sold off by JDL to another party. Had the company sold the shares to third party and not subsidiary it would have been at market value. Thus it is a case of misutilization of shareholders’ funds and Company has not acted in the interest of shareholders.

4.3.7. No supporting evidence for investments in unlisted entity leading to diversion of funds.

4.3.7.1. JDL failed to provide share purchase agreement, share certificate copy, and valuation report for investments in unlisted entity. Further the

shareholder list (MGT-7) filed by the investee entities did not contain name of JDL.

4.3.7.2. On site visit at the registered office of "Fastner Machine Dealer Private Limited" and "Anurodh Infrastructure Limited" there was no sign of business operation of these entities at said address and the same was located in a residential area and no nameplate was found outside the house. Also a letter box in the name of "Koushik Roy" was affixed.

4.3.8. Non filing of form MGT 14 by the Company.

4.3.8.1. As per section 138 read with rule 13 of the Companies (Accounts) Rules, 2014, a listed entity has to fill MGT-14 at the time of appointment of Internal Auditor. However, JDL has not filed MGT-14 with respect to the appointment of an internal auditor for FY 2016-17.

4.3.9. Non submission of affidavit by Prakash Kumar Jajodia.

4.3.9.1. Mr. Prakash Kumar Jajodia was asked to submit fresh affidavit in interim order and he has failed to do the same.

4.3.10. On site visit to registered office of the Company it was noted that:

i. There was no nameplate in JDL's name outside the premises
ii. There were two rooms: one for the Directors and another for the office staff
iii. Two-three staff was working in the premises.
iv. In front of the office door, nameplates pertaining to four different entities, Concord Vinimay Private Limited, Rivergrove Merchandise Private Limited, Anumati Stock Broking Private Limited, and Quest Financials Services Limited were identified.

Thus it raises concerns over the operational efficiency of the Company.

4.3.11. Also it was noted that major part of receipt and payments was on account of sale and purchase of shares and entire above mentioned receipts were transferred to another party within 1-2 days and funds were transferred to entities whose directors were declared as dummy directors by Mr. Prakash Kumar Jajodia, in his statement given to the Income Tax Department. The statement also mentioned that Mr. Prakash Kumar Jajodia used to get help from these dummy directors in providing accommodation entries in the market. The above facts indicate that these were accommodation entries provided by JDL. Also, the fact that the Company failed to provide adequate supporting documents with respect to the bank transactions raises concern over the genuinity of these transactions.

4.3.12. Further it was noted that JDL has made investments in new 14 subsidiaries during FY 2015-16 and sold off entire 18 subsidiaries in FY 2016-17 (including 14 acquired in FY 2015-16 and 4 purchased before April 2015). However, the Company did not provide sale agreements, valuation reports and board resolution. Additionally, it should be noted that directors of buyers, Rajal Lefin & Commercial Private Limited (Director- Sudip Laha) and Ashirwad Suppliers Private Limited (Director Soumen Sen Gupta and Ashotosh Dey) were those individuals whose names were disclosed as dummy directors providing accommodation entry, as per the statement given to the Income Tax Department by Prakash Kumar Jajodia. Therefore, based on above facts and in the absence of sufficient underlying documents, it creates a suspicion on the sale of subsidiaries by JDL.

II. <u>Non-furnishing of information to the forensic auditor:</u>

4.3.13. The Company has not furnished the information sought by the forensic auditor in various instances viz. share transfer form, valuation reports, invoices, agreement for sale of shares, share transfer forms, adequate documents in supporting of banking transactions.

III. Other Violations of LODR Regulations.

4.3.14. The Company secretary Ms. Nisha Jain resigned from the office of the Company w.e.f. 30.06.2016. Thereafter the Company has not appointed any company secretary. Hence the Company has violated regulation 6(1) of LODR Regulations.

5. I note that Noticee no.1 has filed its reply dated January 21, 2021 to the SCN. Noticee no.2 has filed his reply dated January 21, 2021 to the SCN. Noticee no.3 has filed his reply dated January 21, 2021 to the SCN. Noticee no.4 has filed his reply dated September 21, 2020 to the SCN. Noticee no.5 has filed his reply dated September 21, 2020 to the SCN. Noticee no. 6 and 7 have not filed any reply to the SCN. I note that Noticee no. 7 was successfully served with the SCN via Speed Post as well as by Email. I also note that Noticee no. 6 was successfully served with the SCN via Speed Post.

6. All the Noticees were granted an opportunity for personal hearing on January 7, 2021. On the said date hearing was held for Noticee no. 4, 5, 8 and 9. Noticee no. 1, 2 and 3 had sought for an adjournment. Noticee no. 6 and 7 failed to appear for the personal hearing, nor any adjournment request was received from them. The hearing for Noticee no. 1, 2 and 3 was held on January 22, 2021.

7. Noticee no. 4 and 5, vide their separate replies dated September 21, 2020 have raised the following key contentions to the allegations in the SCN:

7.1. Besides quoting certain sections and regulations, the SCN has not placed on record any act or omission of any violation by us. It's a bald SCN inviting attention to several sections and regulations but has failed to charge us on any violation. We state that in the absence of a single averment against me specifying that I was in violation of any particular provision, the nature of violation and the

consequences of such violation, the SCN ought to be withdrawn against us since no cause of action has been levelled against us.

7.2. Only the directors who are concerned with the day to day management of the company that should ordinarily be held liable for company's offences and no liability should be cast on the NEID. We say that as NEID, the directors who are there on the board by virtue of their special skill, expertise, profession or knowledge, would be virtually be outside the net of liability, for the company's offences, except where of course, it is established that the director concerned was in charge of and responsible to the company for the conduct of its business, which is a question of evidence and depends on the facts and circumstances of each case.

8. Noticee no. 4 and 5, vide their separate replies dated September 21, 2020 have raised the following key contentions to the allegations in the SCN:

8.1. SEBI makes blanket statement without providing any reasons or factual data for coming to the conclusion as is set out in paragraph 3 of the SCN and how the same are applicable to Noticee no. 2 and 3, as the directors of the Company. The so called irregularities alleged in the SCN do not point to the facts or evidence on the basis of which such draconian conclusions were drawn by SEBI. It is respectfully submitted that in the absence of a specific charge being spell out with respect to the alleged non-compliance of the securities laws against Noticee no. 2 and 3, the SCN stands to be vitiated and is liable to be set aside.

8.2. The SCN levels a serious charge of fraud on the basis of mere suspicion, in complete ignorance of the time-tested judicial precedents, including rulings of the Hon'ble SAT which cautions against suspicion, conjecture and surmise being passed off as proof, especially where fraud is alleged.

8.3. It appears that SEBI has a grievance that Noticee no. 1 did not furnish information / supporting documents, as sought by the forensic auditor. However, SCN does not mention what information or documents was not provided by Noticee no. 2 and 3, to the forensic auditor. A broad statement without any basis renders this allegation ex-facie illegal and in gross violation of principles of natural justice.

8.4. The SCN issued against Noticee no. 2 and 3 is pre-mature given that allegations against the Company have not been established so far. It is settled principle of law that prior to invoking the principle of vicarious liability against a director / officer of a company, the alleged violation of law by the company have to be established in the first place.

Consideration of submissions and findings:

9. I have considered the allegations in the SCNs, replies received, and submissions made by the Noticees during the personal hearing granted to them. The SCNs alleges the violation of the following provisions of law by the Noticees.

Relevant extract of the provisions of SEBI Act, 1992:

"**Functions of Board.**

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measurements referred to therein may provide for-

…….

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

……..

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

12A. No person shall directly or indirectly-

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

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

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

……..

Offences by companies.

27. (1) Where an offence has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,- (a) "company" means any body corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm……."

Relevant extract of provisions of SCRA, 1956:

"Conditions for listing.

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

Relevant extract of the provisions of PFUTP Regulations, 2003:

"**3. Prohibition of certain dealings in securities**

No person shall directly or indirectly—

(a) ……..;

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

……..

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

……..

(e) any act or omission amounting to manipulation of the price of a security;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

…..

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

……."

Relevant extract of the provisions of LODR Regulations:

"**Principles governing disclosures and obligations.**

4. (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) ….....

(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) ……..

(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.

(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.

……

(f) Responsibilities of the board of directors:

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

…….

(ii) Key functions of the board of directors-

……

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

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

…

(iii) Other responsibilities:

….

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

……

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

…..

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

…..

Compliance Officer and his Obligations.

6. (1) A listed entity shall appoint a qualified company secretary as the compliance officer.

…….

Financial results.

33.(1) While preparing financial results, the listed entity shall comply with the following:

……..

(d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

…….

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a) The quarterly financial results submitted shall be approved by the board of directors: Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading

(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(4) …….

(5) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as "half yearly/half year" and the requirement of submitting 'year-to-date' financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.

Accounting Standards.

48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time……."

10. Before proceeding on the merit of the matter, it will be relevant to discuss the background of the present proceedings. SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as **"MCA"**) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs. In respect of listed shell companies including JDL, vide its letter dated August 7, 2017, SEBI advised the stock exchanges to place trading restrictions on promoters/directors so that they do not exit these listed companies. SEBI vide the said letter dated August 7, 2017 also advised the stock exchanges to place the scrip of such companies in the trade-to-trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of

200% deposit on the trade value, so as to alert them on trading in the scrip. Thereafter, BSE vide notice dated August 7, 2017, issued to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies, as identified by MCA and communicated by SEBI, with effect from August 8, 2017. On August 09, 2017, SEBI further advised the Stock Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

11. Vide its letter dated September 7, 2017, JDL made a representation to SEBI, *inter alia*, submitting as under:

(a) "That the foundation of the company is based on the fundamentals of good business and ethical practices and the company does not fall into any criteria of being a shell company.
(b) That the company is dealing in manufacturing and trading of ready-made garments.
(c) That the company has been generating adequate turnover and has shown consistent increase in the revenue generation in past few financial years. Whereas the turnover in financial year 2016-17 was not upto the expectation of the management, the Company is making all due efforts in strengthening its position in current business.
(d) That the company has filed Auditor Certificate along with all the requisite data/details/documents with BSE Ltd. by its letter dated 17/08/2017."

12. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, JDL also filed an appeal No. 237 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**"). Hon'ble SAT vide order dated September 17, 2017 directed the following:

> "2. As the appellant has already made a representation to BSE against the said ex-parte order dated 7th August, 2017, with a copy to SEBI, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filedbefore SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.
>
> 3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit."

13. Pursuant to above mentioned order passed by Hon'ble SAT, SEBI had called for various information/ explanation from JDL and after granting an opportunity of personal hearing to JDL, an interim order dated October 11, 2017 (hereinafter referred to as '**the interim order'**) came to be passed by Whole Time Member, SEBI, directing the following:

> "24……
> i. The trading in securities of JDL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
> ii. Stock Exchange shall appoint an independent forensic auditor, inter alia, to verify:
> a. Misrepresentation including of financials and/or business of JDL, if any;
> b. Misuse of the funds/books of accounts of JDL, if any.
> iii. The promoters and directors in JDL are permitted only to buy the securities of JDL. The shares held by the promoters and directors in JDL shall not be allowed to be transferred for sale by the depositories.
> iv. The other actions envisaged in SEBI's letter dated August 7, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against JDL."

The interim order also clarified that:

> "26. The 'directors' for the purpose of directions above shall mean and include:
>
> a. the persons who are acting as directors on the date of this order, or
> b. the persons who were acting as directors of this company as on August 07, 2017, who cease to be director by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017."

14. I note that in terms of the interim order, JDL was provided time of 30 days to file its reply/ objections to the interim order, if any, failing which, preliminary findings of the interim order and ad-interim directions contained therein were stipulated to stand confirmed against JDL automatically, without any further orders. Since no reply/ objections were filed by JDL, the ad-interim directions contained in the interim order, automatically stood confirmed against JDL. BSE had appointed BDO India LLP. as the Forensic Auditor and the Forensic Audit Report (hereinafter also referred to as "**FAR**") was submitted to BSE by BDO India LLP on August 30, 2019. Thereafter, based on the Forensic Audit Report which was forwarded by BSE to SEBI, SEBI carried out an investigation in the matter. Based on the findings of investigation, the

matter was placed before me on June 9, 2020 for approval of issuance of show cause notice and then was again placed before me on November 18, 2020 for granting a date for opportunity of hearing to the Noticees and passing a final order in the matter.

15. I shall now proceed to examine the allegations in the SCN and the contentions raised by the Noticees thereon. I note that allegations made in the SCN can be categorized as under:

    A. Violations of provisions of LODR Regulations due to misrepresentation including of financials and misuse of funds/books of accounts;
    B. Other violation of provisions of LODR Regulations;
    C. Violation of provision of Section 15A(a) of SEBI Act, 1992;
    D. Violation of provisions of PFUTP Regulations, 2003.

    In the following paras, all these have been dealt with my findings thereon.

A. Violations of provisions of LODR Regulations due to misrepresentation including of financials and misuse of funds/books of accounts:

16. **Re:** Receipts against refund of loans/ advances.

16.1. The SCN alleges that on review of advances by JDL, it was noted that loan agreements were made on plain paper. Further, there was no collateral or security taken before extending such loans. In 1 instance, ledger abstract of the party was provided instead of agreement copy.

16.1.1. I note that Noticee no. 1 has not raised any specific contention with regard to the aforesaid allegation.

16.1.2. I agree with the findings of the FAR that in 10 out of 16 instances loan agreement were executed on plain paper. The purported loan agreement were for the value

of Rs. 8 Lacs, 30 Lacs, 25 Lacs, 25 Lacs, 30 Lacs and 25 Lacs. I note that none of these agreements were duly stamped. This raises doubts about the genuineness of the execution of the said agreement on the date of the transaction and gives rise to an inference that these agreements are an after thought. I also note that in one instance the forensic auditor was not provided with any agreement copy but only a ledger abstract of the party in the books of accounts of JDL was provided. No copy of the agreement has been provided by JDL in the present proceedings as well. Therefore, I find that observations made in FAR, regarding these loan agreements are correct.

16.2. The SCN alleges that supporting documents were not provided for refund of advances (in cash) which were extended to subsidiaries for incorporation expenses.

16.2.1. Noticee no. 1 has contended that the Company has documented the refund of advances through the vouchers.

16.2.2. I note that no supporting documents have been provided by JDL either to the forensic auditor or in the present proceedings to substantiate the refund of such advances by the subsidiary companies. I note that even though JDL contends that the refund was documented through vouchers but no such copy of vouchers were annexed with its reply. Therefore, I agree with the findings in the FAR that the impugned transaction appears to be a mere book entry.

16.3. The SCN alleges that Interest was not charged from parties on advances given for purchase of shares. The parties had taken the advance for a period of 3-4 months and then refunded the amount without any penalty/interest for non-delivery of any goods/services/shares.

16.3.1. JDL has contended that there is no requirement under law to charge interest for giving advances for purchase of shares. In any event, the amount was paid as

advance against purchase of shares and therefore, the question of charging interest does not arise.

16.3.2. I agree with the contentions of JDL and note that the decision to charge interest/ penalty on the advances returned unconsumed, is purely a matter of commercial understanding between parties. It is not correct to say merely because advance was repaid for failure to deliver the goods intended to be purchased, interest/ penalty ought to have been charged by JDL.

17. **Re:** Receipts against disposal of shares/ investments.

17.1. The SCN alleges that JDL did not provide sales agreement, share certificates, share transfer forms, and valuation reports / CA certificates pertaining to disposal of shares/ investments. Copy of invoice did not contain basic details such as TIN and PAN of customer and Company. Shares were sold at the same price at which they were originally purchased to unknown parties in cash.

17.2. Noticee no. 1 has contended that the invoices issued contained the registered address as well as the CIN of the Company and in any event service registration is not required for sale of shares.

17.3. I agree with the findings of the FAR which states that in 16 out of the 17 transactions (amounting to 1.50 Crores approx.), the forensic auditor did not receive supporting documents in the form of copy of sales agreement, share certificates, share transfer forms, and valuation reports / CA certificates. I note that none of these documents are submitted by JDL in the present proceedings as well. From the copy of the invoice that has been furnished by JDL to the forensic auditor for these transactions of sale of shares, I note that the invoices are extremely sketchy and bereft of basic details like mode of transfer (physical / demat), Share Certificate No., the unique distinctive no. of the shares being sold, Share transfer form no., date of delivery of

shares to the buyer, mode of payment (cash/ bank transfer), if bank transfer then transaction reference no. or cheque no., etc. Thus, I find that the copy of the invoices cannot be relied upon. Therefore, in the absence of any other supporting documents in support of the claim that the receipts of funds relate to disposal of impugned shares/ investments, I find that the impugned transactions are mere transfer of funds without any legitimate business purpose.

18. **Re:** Receipts against margin money from stock brokers.

18.1. The SCN alleges that with respect to the margin money paid to brokers and received from stock brokers it was noted that the Company did not provide its ledger account with the stock broker / demat account statement. Instead, it provided balance confirmation from the other parties whose authenticity is questionable.

18.2. In this regard, Noticee no. 1 has contended that the margin money was immediately refunded and there were no dealings with the said broker.

18.3. I note that the contention of JDL that the margin money was immediately refunded and there was no dealing with the said broker, is being taken for the first time in these proceedings. It was not stated before the forensic auditor. Be that as it may, I note that the claim of JDL that the margin money was immediately refunded by the boroker, is factually incorrect. I note that out of the 3 instances of purported transfer of margin money by the broker to JDL, on two of the occasions the money was returned only after about eight months and two months and only on one occasion, it was returned after about 20 days. I note that while replying to the present proceedings as well, JDL has not furnished its ledger account with the stock broker / Demat account statement. I agree with the findings of the FAR that JDL has arranged the balance confirmation from the other parties whose authenticity is questionable In view of the above, I find that the transfer of funds between Concord

Vinimay Private Limited and JDL, amounting to Rs. 3 Lacs, Rs. 15 Lacs and Rs. 10 Lacs, was mere circular rotation of funds without any underlying business rationale.

19. **Re:** Unexplained receipts.

19.1. The SCN alleges that Cheque issued by JDL amounting to Rs. 16.10 lacs was returned and cancelled thereafter. However, cancelation entry of Rs. 16.10 lacs dated 30 June, 2015 could not be identified in the bank book of JDL. This indicates that fund was received from party without business rationalization and the ledger balance of entity viz. Rupali Creation is overstated in the books of accounts. Further, Rs. 0.53 lacs was paid in cash as excess rent which was returned later to JDL in cash.

19.2. With regards to the return of cheque, JDL has contended that the cheque was issued to Rupali Creation in March 2015 and thus, entry was made by Noticee no. 1 in its books. However, the cheque was returned on account of the cheque having expired and the JDL made reverse entry in its books in the subsequent financial year. I note that no contention has been raised by Noticee no. 1 with regard to the receipt of Rs. 0.53 lacs in cash as return of rent.

19.3. I note that JDL has furnished alongwith its reply, copy of the ledger of Rupali Creation in the books of JDL. The said ledger account shows the reverse entry dated 30 June, 2015 of Rs. 16.10 lacs. Thus, the said allegation in the SCN does not stand proved. However, I find that JDL has failed to furnish any proof to show that the receipt of Rs. 0.53 lacs in cash was towards the return of rent. Thus, the receipt of Rs. 0.53 Lacs in cash appears to be a mere book entry.

20. **Re:** Receipts against sale of mobile and mobile accessories in cash.

20.1. The SCN alleges sale of mobile and mobile accessories amounting to Rs. 1.26 lacs was made in cash and it was noted that party name was not mentioned on the

invoices provided by the Company. Further, it was noted that JDL has made cash sales even though it does not have any retail outlet.

20.2. JDL has contended that there is no legal requirement to not take cash payment or enter the name of the buyer. In so far as the requirement of retail outlet is concerned, the sale of mobile and mobile accessories was made from the office of the Company, as advertised in the pamphlet.

20.3. I do not find any merit in the aforesaid allegation of the SCN. I agree with the contention of Noticee no. 1 that there is no mandate of law to incorporate the name of the buyer on the invoice especially for retail sales of small items made in cash. The sale of items from the office of JDL is also a possibility for which retail outlet may not be required. In view of the above, I note that no adverse inference can be drawn from this allegation in the SCN.

21. **Re:** Payments towards purchase of Plant/ Machinery:

21.1. The SCN alleges that the management of JDL failed to provide the agreement for payments towards purchase of plant/machinery and proof of delivery of goods in the factory of JDL. Further, serial number of asset purchased was not mentioned in the copy of invoice.

21.2. Noticee no. 1 has submitted that it is incorrect to state that there are no agreements towards purchase of plant / machinery and proof of delivery of goods in the factory. It is respectfully submitted that for the purchase of plant/ machinery, invoices were generated and payment was made. Thus, there is no requirement to enter into an agreement. In any ways there is no legal requirement to enter into formal agreements. Issuance of invoices and subsequent payment is enough to demonstrate conclusion of an agreement.

21.3. I agree with the contention of JDL that the purchase of plant and machinery, need not necessarily be preceded by a formal legal agreement. However, I note that the FAR has made this observation only when JDL had failed to provide any other documentary evidence with respect to the proof for purchase of plant and machinery in two instances, except copy of invoice and such copy of invoice did not even bear serial no. of the asset purchased. Thus, I find that the observations of the FAR are correct when it states that in two instances they could not verify the physical existence of asset and match it from fixed asset register

22. **Re:** Assessment of genuineness of debtors/receivables and creditors/payables along with reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors).

22.1. On review of 19 samples of receivables amounting to Rs. 430.72 lacs and 22 samples of payables amounting to Rs. 790.40 lacs, by the forensic auditor, the following is alleged by the SCN:

22.1.1. In all 14 transactions pertaining to sale of investments, the management of JDL failed to provide the agreements for sale of shares and share transfer form. The forensic auditor were provided with the copy of invoice which was not acknowledged by the buyer. Further, the invoice did not contain basic details such as invoice number, tax number, and bank details of the customer. Moreover, it should be noted that all these transactions were undertaken with entities whose directors were those individuals whose names were disclosed as dummy directors by Mr. Prakash Kumar Jajodia, in his statement given to the income tax department during the search and seizure.

22.1.2. In 5 transactions pertaining to sale of garments and mobile accessories, the management did not provide us the agreements, order copy, and proof delivery (lorry receipts and octroi receipts). We were provided with the copy of invoice for these transactions, which were not acknowledged by the buyers.

22.1.3. On review of debtor balance amounting to INR 318.66 lacs outstanding as on 31 December 2017, balance amounting to INR 194.72 lacs were outstanding from 4 parties. The forensic auditor was unable to validate debtor balance amounting to INR 148.74 lacs, which was 76.38% of the sample of debtor balance confirmation amounting to INR 194.72 lacs as on 31 December, 2017.

22.1.4. The forensic auditor conducted site visits for two debtors, out of three from whom balance confirmations were not received up till 14 February, 2018.

22.1.5. Basis site visit on 14 February, 2018, the forensic auditor could not identify any sign of business operation of in entity's name. During discreet enquiries with the staff and security guard working in those buildings, the forensic auditor was informed that there were no offices in the name of "Barbirik Vanijya Private Limited" and "Kamalkant Vinimay Private Limited".

22.1.6. In 10 transaction pertaining to purchase of investments (shares) from a private company, the management of JDL did not provide the share certificate, transfer form and agreement for purchase. Instead, they only provided the copy of invoice for purchase of these shares. Moreover, the invoice did not contain basic mandatory details such as TIN, PAN, and CIN of the vendor.

22.1.7. In 5 transactions pertaining to purchase of material (including plastic granules and cables), the management of JDL failed to provide agreements for purchase and proof of receipts of material. The forensic auditor were only provided with the copy of invoice for the said purchases.

22.1.8. The forensic auditor was unable to validate the creditor balance amounting to INR 111.94 lacs, which contain 100% of the creditor balance outstanding as on 31 December, 2017.

22.1.9. Basis site visit on 14 February, 2018, the forensic auditor identified that the address of the party was located in the commercial area. However, the forensic auditor could not identify any sign of business operation in the name of Sidhsilver Commercial Private Limited. During discreet enquiry from nearby people, the FAR noted that there is no company in name of said entity.

22.1.10. Additionally, the registered office address of the creditor, Gruff Sales Private limited and Sidhsilver Commercial Private Limited was the same, which was "9, Armenian Street, 1st Floor, Kolkata – 700 001, West Bengal". Also, this is the registered address of "Barbirik Vanijya Private Limited" – the debtor of JDL.

22.2. With regards to the data analysed by the forensic auditor, in respect of receivables and payables, Noticee no. 1 has submitted that there is no legal requirement for the invoice to have details as alleged. Further, the statement taken from Mr. Prakash Kumar Jajodia from the Income Tax Dept. is denied in toto. The Company states that the statement of Mr. Prakash Jajodia was recorded under duress and coercion.

22.3. With regards to the analysis of Trade Payables/ Creditors and Trade Receivables/ Debtors, by the FAR, I note the following:

22.3.1. For the 14 transactions with respect to the sale of investments, the FAR has sought partial reliance on the fact that all these transactions were undertaken with entities whose directors were those individuals whose names were disclosed as dummy directors by Mr. Prakash Kumar Jajodia, in his statement given to the income tax department during the search and seizure. I note that JDL has disputed the admissibility of these statements in the present proceedings. I find that, even without going into the merit of the admissibility of those statements, I note that the FAR and the SCN have brought out ample evidence against Noticee no. 1, over and above those statement recordings, to independently establish these observations in FAR.

22.3.2. I agree with the findings of the FAR which states that in 14 transactions, the forensic auditor did not receive supporting documents in the form of sales agreement, share certificates, share transfer forms. I note that none of these documents have been submitted by JDL in the present proceedings as well. From the copy of the invoices that has been furnished by JDL to the forensic auditor for these transactions of sale of shares, I note that the invoices are extremely sketchy and bereft of basic details like mode of transfer (physical /demat), Share Certificate No., the unique distinctive no. of the shares being sold, Share transfer form no., date of delivery of shares to the buyer, mode of payment (cash/ bank transfer/ credit), due date of payment, etc. Thus, I find that the copy of the invoices cannot be relied upon. Therefore, I find that observations made in FAR, in this regard, are correct.

22.3.3. I note that the forensic auditor was unable to validate debtor balance amounting to INR 148.74 lacs, which was 76.38% of the sample of debtor balance confirmation amounting to INR 194.72 lacs as on December 31, 2017. More specifically, the forensic auditor was unable to obtain confirmation from Ashirwad Suppliers Private Limited, Barbrik Vanijya Private Limited and Kamalkant Vinimay Private Limited. I note that JDL has also not provided any confirmation of balances from these debtors, while replying to the present SCN. I also note that out of the three debtors, two debtors namely, Barbirik Vanijya Private Limited and Kamalkant Vinimay Private Limited, were not even traceable by the forensic auditor during site visit, at the office address provided in invoice/ MCA database. Additionally the FAR also observes that on public domain search for the address “56, Metclaf Street, 3rd Floor, R. No-3C, Kolkata –700 013, West Bengal”, it was noted that this address was a common address for JDL’s two debtors, Barbirik Vanijya Private Limited (address as per invoice/customer master data) and Kamalkant Vinimay Private Limited (address as per vendor master and MCA). Therefore, I find that the debtor balance

amounting to INR 148.74 lacs, as shown in the financial statements of JDL are misrepresented. By the aforesaid misrepresentation in the financial statement of the Company, JDL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

22.3.4. I agree with the findings of the FAR with regard to the 10 transaction pertaining to purchase of investments (shares) by JDL from a private company, wherein the forensic auditor did not receive supporting documents in the form of share purchase agreement, share certificates, share transfer forms. I note that none of these documents are presented by JDL in the present proceedings as well. From the copy of the invoices that has been furnished by JDL to the forensic auditor for these transactions of purchase of shares, I note that the invoices are extremely sketchy and bereft of basic details like mode of transfer (physical /demat), Share Certificate No., the unique distinctive no. of the shares being purchased, Share transfer form no., date of delivery of shares to JDL, mode of payment (cash/ bank transfer/ credit), due date of payment, etc. Thus, I find that the copy of the invoices cannot be relied upon. Therefore, I find that observations made in FAR, in this regard, are correct.

22.3.5. I note that the forensic auditor was unable to validate creditor balance amounting to INR 111.94 lacs, which is 100% of the creditors balance outstanding as on December 31, 2017. More specifically, the forensic auditor was unable to obtain confirmation from Gruff Sales Private Limited and Sidhsilver Commercial Private Limited. I note that JDL has also not provided any confirmation of balances from these creditors, while replying to the present SCN. I also note that Sidhsilver Commercial Private Limited was not even traceable by the forensic auditor during site visit, at the office address provided in MCA database. I also note that the registered office address of both the creditors of JDL i.e. Gruff Sales Private limited and Sidhsilver Commercial

Private Limited was the same which was "9, Armenian Street, 1st Floor, Kolkata – 700 001, West Bengal". Therefore, I find that the creditor balance amounting to INR 111.94 lacs, as shown in the financial statements of JDL as on December 31, 2017 are misrepresented. By the aforesaid misrepresentation in the financial statement of the Company, JDL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

23. **Re:** JDL did not incur any expenses towards water, staff welfare, and transportation which is highly unusual during the conduct of business.

23.1. The SCN has alleged that upon the review of operational expenses of JDL, it was noted that JDL did not incur any expenses towards water, staff welfare, and transportation which creates suspicion on the regular operations and existence of JDL's office.

23.2. In this regard JDL has submitted that the Company has incurred transportation expenses which is shown under the head of travelling and conveyance. The Company has not incurred any water expenses as it is free of cost.

23.3. By levelling such an allegation, I note that, the SCN has failed to make out a case as to how not incurring certain expenses like water, staff welfare and transportation, leads to misrepresentation in the books of accounts or violation of LODR Regulations. Thus, I do not find any merit in the aforesaid allegation of the SCN.

24. **Re:** Violation of AS 13 due to non provision against permanent diminution in the value of its investments and wrong classification of investments as inventories leading to violation of AS 2.

24.1. The SCN alleges that the purchase of shares of Econo Trade (India) Limited by JDL should be classified under purchases made for investment purposes whereas in the

financials and books of account, JDL has classified as inventories. This shows that JDL made wrong classification in its Books of Account. The SCN has also alleged that JDL had invested in the shares of Econo Trade (India) Limited valued at Rs. 214.02 lacs, whereas, as on 31 March, 2017 the market value of this investment was Rs. 33.77 lacs. However, JDL did not make any provision against permanent diminution in the value of its investments, due to which value of investments in listed shares were overstated by Rs. 180.25 lacs. Thus, SCN alleges that JDL has violated Accounting Standard 13 pertaining to accounting for investments and also it has led to misrepresentation of books of the Company.

24.2. Noticee no. 1 has contended that AS 2 states that AS 13 is not applicable to share, debenture and other financial instrument held as stock-in-trade. Thus, according to Noticee no. 1, there is no violation of AS-13 and accordingly, there is no misrepresentation of books by the Company.

24.3. On this subject matter, I note that JDL has changed its submission while replying to the present SCN vis-a-vis its submissions made before the forensic auditor. The FAR notes that JDL had submitted that the shares of Econo Trade (India) Limited were bought as long term investment, whereas while replying to the present SCN, JDL has submitted that the shares of Econo Trade (India) Limited were stock-in-trade. I note that regardless of whether the shares of Econo Trade (India) Limited were classified by JDL as ‘stock-in-trade’ or as ‘investment’, the value at which they were disclosed in the Balance Sheet of JDL as on March 31, 2017, was overstated by INR 180 lacs.

24.4. I note that if JDL intended to classify its shares of Econo Trade (India) Limited as ‘inventory’, accordingly, in its notes to accounts, it mentioned that the inventories were valued at lower of cost and net realizable value. I note that, as per BSE website, the closing price of shares of Econo Trade (India) Limited as on March 30, 2017 was INR 31.40/ share. Therefore, the net realisable value for the quantity held

by JDL came out to be INR 33.77 lacs. Thus, I find that the value of inventory was overstated by INR 180 lacs and observations in FAR that the Company misrepresented the value of its inventory of shares in the financials, are correct.

24.5. From the observations in the FAR, I note that the purchase of shares of Econo Trade (India) Limited by JDL was 'investment' and not 'stock-in-trade' and thus, I find that the said transaction was wrongly classified by JDL in its Balance Sheet as on March 31, 2017. In this regard the following observation of the forensic auditor at Page 12 of FAR is worth noting:

> "On review of the books of account for FY 2015-16, FY 2016-17 and from April 2017 to 31 December 2017, we noted that, these shares were purchased before 1 April 2015 and were not sold as on 31 December 2017. Therefore, it should be classified under purchases made for investment purposes whereas in the financials and books of account, JDL has classified as inventories. This shows that JDL made wrong classification in its Books of Account."

24.6. I note that, as per Accounting Standard 13 (AS-13), if there is permanent diminution in value of investments then investments should be revalued to show at the actual realisable value in the books of accounts. In this case, the value of investments had declined by an amount of INR 180 lacs which was in the nature of permanent diminution. Despite of this, JDL did not make any provision against the same.

24.7. Therefore, based on above facts and analysis, I find that observations made in the FAR that JDL has wrongly classified its investment as inventory and overstated its assets by INR 180 lacs and thus, the financials of JDL were misrepresented to the extent, are correct. By the aforesaid misrepresentation in the financial statement of the Company, JDL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

25. **Re**: Receivables from related parties were mere book entries.

25.1. The SCN makes the following allegation.

25.1.1. The Company had trade receivables of Rs. 318 lacs as on 31st March 2017 out of which Rs. 288 lacs was outstanding for more than six months. The Company replied that these transactions were of sale of shares to related party. However, it did not provide supporting documents like contract copy/agreement/ share certificate/share transfer form with respect to the sale of shares made to related parties.

25.1.2. Further these trade receivables from related parties belong to FY 2014-15 (25 September 2014), which were outstanding for more than 3 years.

25.1.3. Therefore, based on the above facts, these transactions with related parties were mere book entries due to which debtors of the company were overstated by Rs. 160 lacs. Thus, the entity has misrepresented its books of accounts.

25.1.4. Further, it was also noted that JDL has sold shares to its related parties, details of which are as mentioned below:

Sn	Date	Party name	No. Of shares	Sale price per share	Amt (in lacs)	Name of investment
1	05-10-2015	JDL Hosieries Limited	4,14,000		41.40	Anurodh Infrastructure Limited
2	18-03-2016	JDL Real Estates Limited	9200	499.78	45.98	Fastner Machinery Dealers Private Limited
3	25-09-2014	JDL Gem & Jewelleries Limited	3,74,800	10	37.48	370000 shares of Shreyans Embroidery Machine Private Limited 4800 shares of Anurodh Infrastructure Limited
4	25-09-2014	JDL Consultants Limited	4,14,800	10	41.48	410000 shares of Wonderland Papers suppliers Private Limited 4800 shares of Anurodh Infrastructure Limited

25.1.5. However, JDL failed to provide the sales agreements, share transfer forms, special board resolution and “minutes of the audit committee review” pertaining to these transactions. The copy of invoices provided for these transactions were not acknowledged by the buyers.

25.2. In this regard, Noticee no. 1 has contended that the Company has taken the account confirmation from all the parties relating to their outstanding during the period when the books were investigated. Thus, there is no question of it being book entries.

25.3. I agree with the findings of the FAR that except for the copy of invoices of sale of shares to related parties, Noticee no. 1 has failed to provide any other supporting documents in the form of copy of share purchase agreement, share certificates, share transfer forms, etc., to establish the sale of shares to related parties. I note that none of these documents are presented by JDL in the present proceedings as well. From the copy of the invoices that has been furnished by JDL to the forensic auditor for these transactions of sale of shares, I note that the invoices are extremely sketchy and bereft of basic details like mode of transfer (physical /demat), Share Certificate No., the unique distinctive no. of the shares being sold, Share transfer form no., date of delivery of shares to the related party, mode of payment (cash/ bank transfer/ credit), due date of payment, acknowledgement by buyer etc. Thus, I find that the copy of the invoices cannot be relied upon. Therefore, in the absence of any other supporting documents the claim that the trade receivables relate to sale of shares to related parties, stands unproved and the genuineness of the balance of trade receivables of JDL is doubtful. Therefore, I find that observations made in the FAR that trade receivables to the extent of INR 160 lacs were merely a book entry, due to which assets (Debtors) of JDL were overstated by INR 160 lacs, are correct. By the aforesaid misrepresentation in the financial statement of the Company, JDL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

26. **Re:** Non availability of supporting documents and inadequate supporting documents for the expenses such as professional fees, electricity expenses, salary and rent booked in JDL's books of account.

26.1. The SCN alleges that the Company did not provide any supporting documents or inadequate supporting documents were provided with respect to following expenses:

Sr. No.	Nature of expense	Inadequate/No supporting documents
1.	Telephone expenses, motor car expenses and salary expenses	No supporting documents provided
2.	Electricity expenses	Invoices were not provided. Instead, acknowledgment by Anita Jajodia and Sabita Jajodia (relative of director) was provided which was on a plain paper.
3.	Professional fees / purchase of garments	Agreements were not provided for professional charges and garments purchase. Further agreement of rent was made on plain paper.
4.	Rent	Rent was paid to wives of JDL's Director named Anita and Sabita Jajodia, the provided rent agreement was made plain paper, instead of any stamp paper.

26.2. Noticee no. 1 has submitted that the said allegation is entirely baseless. SEBI has not looked at the issue holistically and taken things out of context. In any event SEBI has failed to detail out how the said documents are illegal.

26.3. In this regard, I find that paragraph 4.3.5 of the FAR is worth noting:

> "During review of supporting documents of 30 sample expenses, we noted that, in 4 instances, supporting documents were not provided and in 8 instances inadequate supporting documents were provided, despite of emails follow up made vide email dated 17 January 2018, 02 February 2018 and 09 February 2018. The details of which are as mentioned below:
>
> i. **Supporting documents not provided**
> In 4 instances, with respect to telephone expenses, motor car expenses and salary expenses, no supporting documents were provided by the management.
> ii. **Inadequate supporting documents**
> In 8 instances, adequate supporting documents were not provided by the management of JDL, such as:

i. For electricity expenses: Invoices were not provided. Instead, acknowledgment by Anita Jajodia and Sabita Jajodia (relative of director) was provided which was on a plain paper.
ii. For professional fees / purchase of garments: Agreements were not provided for professional charges and garments purchase. Further agreement of rent was made on plain paper
iii. For salary: In 2 instances appointment letters of the employees were not provided.
iv. For Rent: Rent was paid to wives of JDL's Director named Anita and Sabita Jajodia, the provided rent agreement was made plain paper, instead of any stamp paper."

26.4. From the above observations of the FAR, I note that in 4 instances, with respect to telephone expenses, motor car expenses and salary expenses JDL had failed to provide the supporting documents and in 8 instances relating to electricity expenses professional fees, salary, rent, JDL had failed to provide adequate satisfactory supporting document to establish its genuineness. I note that the due to lack/ inadequacy of the supporting documents for such transactions, the genuineness of expenses booked by JDL is not proved. Therefore, I find that the respective expenses shown by JDL in its financial statements were thus misrepresented. By the aforesaid misrepresentation in the financial statement of the Company, JDL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

27. **Re:** No supporting evidence for investments in unlisted entity leading to diversion of funds.

27.1. The SCN alleges that JDL failed to provide share purchase agreement, share certificate copy, and valuation report for investments in unlisted entity. Further the shareholder list (MGT-7) filed by the investee entities did not contain name of JDL. Further, SCN states that on site visit at the registered office of "Fastner Machine Dealer Private Limited" and "Anurodh Infrastructure Limited" there was no sign of business operation of these entities at said address and the same was located in a residential area and no nameplate was found outside the house. Also a letter box in the name of "Koushik Roy" was affixed.

27.2. JDL has submitted that the shares were in physical form. Therefore, the Company has not lodged the shares for the transfer. Thus, the shareholder list filed by the investee entities did not contain the name of the entities.

27.3. From the FAR, I note that JDL has failed to provide the forensic auditor with the valuation report in respect of investment made in Fastner Machinery Dealers Private Limited and Impex Services Limited. I note that the same has also not been provided in the present proceedings before me. Further, from the FAR, I also find that the investment made by JDL in three entities viz. Anurodh Infrastructure Limited, Fastner Machinery Dealers Private Limited and Jaguar Infra Developers Limited, which accounts for 62% of investment made by JDL in unquoted share as on March 31, 2017, the name of JDL was not appearing in the shareholder list (MGT-7) filed by the investee entities with MCA. In this regard, JDL has contended that the Company has not lodged the shares for transfer, hence, no name was reflected in the list of shareholders of investee companies. However, I note that if JDL had held shares in the investee companies without lodging the shares for transfer then the Statutory Auditor as part of the mandate under AS 1 to disclose all significant changes in accounting policies, ought to have mentioned it in the Statutory Audit Report of FY 2016-17. I find no such remark by the statutory auditor. Furthermore, I note that Section 187(1) of the Companies Act, 2013 mandates that all investments made or held by a company must be made and held by it in its own name. I do not find merit in the contention raised by JDL that the shares were not lodged for transfer. Why would JDL hold investments in other name while being in violation of Section 187(1) of the Companies Act, 2013? Thus, I find that the present contention of JDL is merely an after thought to escape from the consequences of these proceedings and the observations made in FAR, in this regard, are correct.

27.4. From the FAR, I also find that the site visit to the registered office address of “Fastner Machine Dealer Private Limited” and “Anurodh Infrastructure Limited” on 14 February, 2018 by the forensic auditor, had revealed that there were no sign of business operation of these entities at the said address and the same was located

in a residential area and also no nameplate was found outside the house. I note that, while replying to the present SCN, JDL has not specifically disputed this finding of the FAR. Thus, on the basis of the observations in the FAR, it appears that JDL had invested in companies which had no genuine business operations and were mere paper companies.

27.5. From the FAR, I also note that, the forensic auditor while reviewing the total of 6 transactions amounting to INR 732.86 lacs pertaining to investments in the shares of unlisted entities had made adverse observations for inadequacy in the supporting documents provided by JDL as it failed to provide the forensic auditor with the share purchase agreement, share certificate copy, and share transfer forms with respect to the investments made by JDL in six unlisted companies namely, Anurodh Infrastructure Limited, Fastner Machinery Dealers Private Limited, Primary Iron Traders Private Limited, Jaguar Infra Developers Private Limited, Original Fashion Traders Private Limited and Impex Services Limited. I note that JDL has not provided any of these documents while replying to the present SCN as well. Therefore, I find the non-current investments (unquoted) in shares of companies other than subsidiaries, as shown by JDL in the Financial Statements of 2016-17, does not stand proved and thus the financials of JDL are misrepresented to that extent, as observed in FAR. By the aforesaid misrepresentation in the financial statement of the Company, JDL has failed to comply with the mandate contained in para 15 of IndAS 1 and para 16 of AS 1 and thereby violated provisions of Reg. 33(1)(c) and Reg. 48 of LODR Regulations.

B. Other Violations of provisions of LODR Regulations.

28. **Re:** Failure to appoint company secretary.

28.1. The SCN has alleged that the company secretary Ms. Nisha Jain resigned from the office of the Company w.e.f. 30.06.2016. Thereafter the Company has not appointed

any company secretary. Hence the SCN alleges that Company has violated Regulation 6(1) of LODR Regulations, 2015.

28.2. I note that JDL has not specifically presented any contention to the aforesaid allegation. From the Annual Report of JDL for FY 2016-17, FY 2017-18 and 2018-19, I find that the Secretarial Audit Report has raised adverse remark about the continuing non- compliance by JDL for its failure to appoint a qualified Company Secretary as the Compliance Officer of the Company. Therefore, I find that JDL has violated Reg. 6(1) of LODR Regulations, 2015.

29. **Re:** Non filing of form MGT-14 by the Company.

29.1. The SCN has alleged that JDL has not filed MGT-14 on MCA-21 Portal with respect to the appointment of an internal auditor for FY 2016-17.

29.2. I note that JDL has not disputed this allegation of the SCN. I also note that in accordance with Section 138 of Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, a listed entity has to fill MGT-14 at the time of appointment of Internal Auditor. I note that JDL has not submitted any proof of filling of the said e-form even after the issuance of the SCN. Thus, I find that by not filling the said e-form on MCA-21 Portal, JDL has violated the provisions of Section 138 of Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, and thereby also violated Reg. 4(1)(g) of LODR Regulations.

C. Violation of provision of Section 11(2)(i) and 112(ia) of SEBI Act, 1992:

30. **Re:** Non-furnishing of information to the forensic auditor.

30.1. The SCN alleges that the Company has not furnished the information sought by the forensic auditor in various instances viz. share transfer form, valuation reports, invoices, agreement for sale of shares, share transfer forms, adequate documents

in supporting of banking transactions. The SCN has also alleged that Noticee no.2 was asked to submit fresh affidavit in interim order and he has failed to do the same.

30.2. I note that during the personal hearing at the interim order stage, JDL was asked to provide a fresh affidavit from Noticee no. 2 with respect to his letter dated October 30, 2014 to the Deputy Director of Income Tax pertaining to disclosure of his income of Rs.1 crores through accommodation entries. I note that JDL has submitted before the then WTM, SEBI, Noticee no. 2's past Affidavit dated February 02, 2015 which pertains to the transaction relating to some other company. However, the present SCN alleges that Noticee no. 2 has failed to provide fresh affidavit as directed in the interim order. It is noted that no fresh affidavit was furnished by JDL to the forensic auditor. With regards, to the aforesaid allegation, I find that no case is made out by the SCN against Noticee no. 2 since at no point in time Noticee no. 2 was called upon to furnish the fresh affidavit. I note that during the hearing at the interim order stage, it was Noticee no. 1 which was called upon to furnish the fresh affidavit from Noticee no. 2. Thus, the said allegation does not sustain qua Noticee no. 2.

30.3. With regards, to non-furnishing of information to the forensic auditor, I note that In the following instances the forensic auditor was not provided with the adequate/ relevant information:

30.3.1. In all 14 transactions pertaining to sale of investments, JDL failed to provide the agreements for sale of shares and share transfer form.

30.3.2. In 3 instances, no supporting documents have been provided by JDL to the forensic auditor to substantiate the claim that refund of advances were received in cash which were extended to subsidiaries for incorporation expenses.

30.3.3. In 16 out of the 17 transactions pertaining to disposal of shares/ investments, the forensic auditor did not receive supporting documents in the form of sales

agreement, share certificates, share transfer forms, and valuation reports / CA certificates.

30.3.4. In 10 transactions pertaining to purchase of investments (shares) from a private company, JDL did not provide the copy of share certificate, transfer forms and Share Purchase Agreement to the forensic auditor.

30.3.5. The Company had trade receivables of Rs. 318 lacs as on 31st March 2017 out of which Rs. 288 lacs was outstanding for more than six months. During the forensic audit the Company submitted that these transactions were of sale of shares to related party however despite repeated reminders by the forensic auditor, it did not provide supporting documents like contract copy/ share purchase agreement, copy of share certificate, copy of share transfer forms, board resolution and minutes of the “audit committee review meetings” with respect to the sale of shares made to related parties.

30.3.6. During review of supporting documents of 30 sample expenses, the FAR noted that, in 4 instances, supporting documents were not provided and in 8 instances inadequate supporting documents were provided, despite of emails follow-up made by the forensic auditor vide email dated 17 January 2018, 02 February 2018 and 09 February 2018.

30.3.7. JDL has failed to provide the forensic auditor with the valuation report in respect of investment made in Fastner Machinery Dealers Private Limited and Impex Services Limited.

30.3.8. JDL has failed to provide the forensic auditor with the share purchase agreement, share certificate copy, and share transfer forms with respect to the investments made by JDL in six unlisted companies namely, Anurodh Infrastructure Limited, Fastner Machinery Dealers Private Limited, Primary Iron

Traders Private Limited, Jaguar Infra Developers Private Limited, Original Fashion Traders Private Limited and Impex Services Limited.

30.4. I note that, for all the instances of non-furnishing of information as enumerated in the preceding paragraph, JDL has also not furnished any documents in the present proceedings.

30.5. BSE was directed to appoint a forensic auditor for carrying out forensic audit of JDL vide SEBI interim order dated October 11, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. Being a listed entity, non-cooperation with such an audit is serious. I also note that Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 has been invoked against the Noticee no. 1. On a reading of these Sections, I observe that Section 11(1) of the SEBI Act, 1992 lays down the functions of SEBI, and in carrying out the said functions, SEBI is empowered, under Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992, to call for records from intermediaries and other entities. In the facts and circumstances of the present case, a forensic auditor appointed through an order of SEBI who seeks information from an entity must be treated with the same seriousness as if the information is being sought by SEBI. In view of the non-furnishing of the information sought by the forensic auditor, I find that JDL has violated Sections 11(2)(i) and (ia) of SEBI Act, 1992

D. Violations of PFUTP Regulations, 2003:

31. I note that the scope of work, as was assigned to the forensic auditor by BSE, as stated in the FAR, was as follows:

> "The scope of Forensic Audit shall include examining the following: -
> 1. Possible misrepresentation including its financials and / or businesses and / or violation of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as "LODR Regulations") and/or
> 2. Possible misusing of Books of Account/funds of the Company including facilitation of accommodation entries and/ or entering into transaction to the detriment of minority shareholders and controlling shareholders and key management person (KMP)

For the aforesaid reasons, the audit inter alia should cover the following:

a. Suspicious transactions/items as provided in the SEBI / Exchange Orders passed on the Company
b. To examine the Books of Accounts and backup records of the company for the period of two years including the year of transactions referred in SEBI / Exchange Order to:
   I. Cash flow analysis to trace source of funds and end use of funds on sample basis (as per Annual Report for last 2 years)
   II. Assess genuineness of the debtors/ receivables and creditors / payables,
   III. Reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors)
   IV. Analysis of Related party transactions
   V. High value bank transactions to ascertain their relevance to the business of the company and to identify the potential round-tripping of funds or accommodation transactions
   VI. Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors / suppliers / customers
   VII. Investments made by the company in subsidiary companies along with the relevant fund flows, if any
   VIII. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds
   IX. Assessment of utilization of funds lying as share premium, if any, in terms of provisions of Companies Act
   X. Comment on the shareholding pattern
   XI. Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds)
c. Verification / discussions:
   I. Independent and /or physical verification of the underlying transactions
   II. Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the company
   III. Discussions with key stakeholders like Promoters/ Senior Management Team / Departmental heads, vendors, customers, company auditors, entities/persons involved in day to day affairs of the company, etc.
   IV. Business history, directorship searches and litigations
   V. Assessment of size and scope of business
   VI. Site visit as may be applicable for verifying existence of the company functional/ registered office, assets, place of execution of services, etc. In case of doubt, site visit to be carried out at plants / factories."

32. I note that conclusion of the forensic audit, as mentioned in the FAR is as under:

"……

A. Possible misrepresentation of financial statements and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirement) Regulation 2015 as evident from the following observations:

A. The management of JDL failed to provide the adequate supporting documents for below mentioned instances. In the absence of adequate supporting documents, it creates suspicion on the genuineness of below mentioned transactions / explanation and considering the facts of non-availability of documents, there could be possible

misrepresentation in the financials and business of JDL. The details of instances are hereunder:

- Recording of receivables and payables without adequate supporting documents. Further few parties (Receivable / Payables) were not found at the addresses provided by JDL.
- JDL has made a sale of shares to related parties, however management failed to provide the adequate supporting documents against those transactions. Further, fund are still receivables from these parties.
- JDL have not created provision against the permanent diminution in value of investment as required under Accounting Standard 13 due to which investment was overstated in their Financial Statements.
- JDL have made investment in private company shares. However, we did not find JDL name in the shareholder list (MGT-7) filled by investee entities
- No attendance register, salary slips were provided to verify the salary and staff expense
- Inadequate supporting provided to validate the expenses incurred by JDL.

B. Possible violation of SEBI LODR 2015 and other applicable law and regulation

- The management of JDL failed to appoint any Company Secretary since 30 June 2016 as per Regulation 6(1)
- In line with section 138 read with rule 13 of the Companies (Accounts) Rules, 2014. A listed entity has to fill MGT-14 at the time of appointment of Internal Auditor. However, JDL has not filed MGT-14 with respect to the appointment of an internal auditor for FY 2016-17 as per Regulation 34(3).
- The management of JDL failed to provide us with the policy pertaining to its framework for insider trading / abusive self-dealing as per Regulation 4(2)(c)(iv).
- The name of the Compliance Officer has not been updated in the whistle blower policy as disseminate on JDL website (http://www.jaisukh.com/) on 15 February 2018 as per Regulation 46(2)(e).
- JDL did not provide supporting documents for review of corporate strategies, major plan of actions, risk policies, annual budgets and business plans, performance objective; monitoring of implementation and corporate performance; overseeing major capital expenditure, acquisition and divestments. Therefore, it seems that such key functions of board of directors were not performed as per Regulation 4(2)(f)(ii)(1).
- The management of JDL failed to provide the policy on preservation of documents as per Regulation 9.

B. Possible misuse of books of accounts / funds of the company including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP) as evident from the following findings:

1. As per Annual Report principle business, of the company is trading in garments, however more than 50% of fund flow were from sale and purchase of private entity shares.
   Sale and purchase of private entity shares were made without any margin / Low margin.
2. Loan/advance given to different parties, without charging any interest or less charging rate of interest and without agreeing terms of repayment etc.
3. On review of high value bank transaction, it indicates that, JDL have possibly used their bank account for round tripping of fund without any adequate supporting documents."

33. As can be noted from the above terms of reference of the auditor, scope of audit was to examine possible violations of LODR Regulations and not violations of PFUTP Regulations, 2003 and accordingly, the findings of the FAR are confined only to misrepresentation in the books of accounts of JDL and consequential and other violations of LODR Regulations. It is observed that the Investigating Authority, after examining the Forensic Audit Report, incorporated the findings of Forensic Audit Report as part of investigation report, and consequently, the same was reproduced in the SCN. However, the SCN additionally states, "……*8.From the above, it was observed that the company (noticee no. 1) and its directors and the Chief Financial Officer (noticee no. 2 to 7) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the company and had the potential to mislead the investors……."* Consequently, the SCN, *inter alia,* additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the Forensic Audit Report. It is observed that these Noticees have been charged with the violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) of PFUTP Regulations, 2003 which can be in relation to dealing in securities. However, no details of trading viz: volume of shares traded, price impact, % increase or decrease in price, etc. have been provided. Nor is there any analysis as to how each of the finding of Forensic Audit Report has impacted the persons dealing in securities.

34. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 deals with fraud related to securities market and the provisions of Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003 are also related to securities market

fraud/manipulation/ unfair trade practices. Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or price impact analysis that would impact the investors.

35. It is further observed that Regulation 4(1) of PFUTP Regulations, 2003, at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. The common thread through these provisions is that the ingredients of fraud/ manipulation/ unfair trade practices must be satisfied. In this regard, I note that the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 clarifies as follows:

> "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."

Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market should have directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price shares of JDL. I note that Forensic Audit Report does not allege any diversion/ mis-utilisation of funds which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without

there being any direct or indirect manipulation of the price of the securities of the Company. I note that there is no bar on taking action by SEBI on the basis of a Forensic Audit Report, invoking provisions of PFUTP Regulations, 2003 and other similar provision of SEBI Act, 1992 related to fraud, if, after examination of the matter, including the Forensic Audit Report, SEBI finds that there was impact on the securities market or the price of the scrip, which are ingredients to prove violations of PFUTP Regulations, 2003. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753, makes it clear that 'inducement' is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose 'to induce others to deal in securities'. The allegations made in the SCN does not bring out findings or any facts relating to impact on trading in securities or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc.

36. Therefore, I find that violations of PFUTP Regulations, 2003, as alleged in the SCN, are very general and vague in nature without making out any specific case containing necessary ingredients required to constitute these violations. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, I find that the allegations of violation of Section 12A(a), (b & (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable against the said Noticees. However, SEBI is at liberty to issue fresh SCN to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/ingredients under PFUTP Regulations, 2003.

37. I note that Noticee no. 8 and 9, being the statutory auditors of JDL during the period under Forensic Audit i.e. April 1, 2015 to December 31, 2017, have also been issued separate show cause notices i.e. SCN-II and SCN-II, respectively, alleging that the statutory auditors have been negligent in performance of their duties and have not

been diligent in issuance of unqualified audit opinion for JDL for the FY 2015-16, 2016-17 and 2017-18 (upto December 31, 2017), thereby violating provisions of Section 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992 and Regulation 3(b), 3(c) and 3(d), Regulation 4(1), 4(2)(a), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003. In this regard, before dealing with the liability of the statutory auditors, it would be appropriate to refer to the judgment of Hon'ble Bombay High Court in Writ Petition No. 5249 of 2010 (filed by Price Waterhouse, Bangalore) and Writ Petition No. 5256 of 2010 (filed by 10 CA firms alongwith their partners), dated August 13, 2010, wherein Hon'ble Bombay High Court held as under:

> "25. …. In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market. So far as the role of Auditors is concerned, it is a very important role under the Companies Act. As posited in Section 227 of the Companies Act, every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the Company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the Company such information and explanations as the auditor may think necessary for the performance of his duties. The auditors in the Company are functioning as statutory auditors. They have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company.
>
> …….
>
> With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. Normally, an investor invests his money by considering the financial health of the Company and in order to find out the same, one will naturally bank upon the accounts and balance-sheets of the Company. If it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts, in our view, there is no reason as to why to protect the interests of investors and regulate the securities market, such a person cannot be prevented from dealing with the auditing of such a public listed Company. In

> our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market. ….."

38. From the above-mentioned judgment of Hon'ble Bombay High Court, it is observed that for SEBI to exercise jurisdiction over an auditor, it has to be shown that the case pertains to an auditor who in connivance and in collusion with the officers or directors of a company has concocted false accounts. I note that in the present matter SCN-II and SCN-III, as issued to Noticee no. 8 and 9, respectively, only allege that the statutory auditors were not diligent enough in the issuance of an unqualified audit opinion for the financial statements of JDL. The SCN-II and SCN-III do not allege that the statutory auditors were in connivance with the promoters/ directors / management of JDL to fudge the financial statements of JDL. Moreover, as discussed in previous paras, I note that the charges of violation of provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, pertaining to fraud, have not been made out even against the Noticee no. 1 to 7 and SEBI has been given liberty to issue fresh SCN to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/ingredients under PFUTP Regulations, 2003. Therefore, in view of the judgment of the Hon'ble Bombay High Court in PWC matter (*supra*) and other facts and circumstances of the case, violations, as alleged in the SCN-II and SCN-III against Noticee no. 8 and Noticee no. 9, are not made out.

39. SCN, also alleges that JDL has violated Regulation 4(1)(a), (b), (c), (e) & (g), 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii) (3), (6) & (12) of the LODR Regulations. In this regard, I note that Regulation 4 of LODR Regulations, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provides that 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 ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(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.

40. As discussed above, JDL has been found to be in violation of Regulations 6(1), 33(1)(c) and 48 of the LODR Regulations, therefore, JDL was not in compliance of the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, JDL is in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations.

41. Regarding the violations of Regulations 4(2) (f) (ii) (6) & (7) and 4(2)(f)(iii) (1), (3), (6) & (12) of the LODR Regulations by JDL, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board of directors of listed entities. Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is of the board of directors of the listed

entity. Therefore, I find that JDL cannot be said to be in violations of Regulation 4(2)(f)(ii) (6) & (7) and 4(2)(f)(iii) (1), (3), (6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

42. SCN further alleges that JDL 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 JDL are listed on BSE. 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....."

43. 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, JDL is a company whose securities are listed on BSE Ltd. which is a recognised stock exchange. JDL being a company having its securities listed on BSE was also required to sign the said uniform listing agreement with BSE and in view of the provisions of Section 21 of SCRA, 1956,

JDL was bound to comply with the conditions of the uniform listing agreement, as extracted above. JDL has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, JDL is in violation of the condition of the listing agreement and hence, is also in the violation of Section 21 of SCRA, 1956.

44. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 7, who were the directors/CFO of JDL at the relevant time, are liable for the violations alleged to be committed by JDL viz: Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, 4(1) (a), (b), (c), (e) & (g), Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(1), (3), (6) & (12), 6(1), 33(2)(a), 46(1) and 48 of LODR Regulations and Section 21 of SCRA, 1956. Thus, SCN imputes all the allegations which are levelled against JDL, automatically, on the directors of JDL. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors *qua* these violations may also be examined by SEBI. In the previous paras, it has been found that JDL was in violation Regulations 6(1), 33(1)(c) and 48 of the LODR Regulations and Section 21 of SCRA, 1956. Therefore, in the context of Noticee no. 2 to Noticee no. 7, it has to be determined whether these Noticees are liable for those violations for which JDL has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during the relevant period (i.e. Financial Years 2015-16 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27

with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word "offence" with the word "contravention" in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by JDL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature. Now, the question remains whether these Noticees can be held independently liable for the violations alleged against them without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii) (3), (6) & (12) and 33(2)(a) of LODR Regulations, the violations of which have been alleged against Noticee no. 2 to 7, create specific and direct liability of the board of directors and the CEO/CFO. As discussed above, Clause (ii) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Thus, board of directors is responsible for complying with these principles. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations or otherwise, is fastened on the board of directors of the listed entity. In the previous paras, it has been found that JDL was in violation of Regulations 6(1), 33(1)(c) and 48 of the LODR Regulations and Section 21 of SCRA, 1956. In view of these violations found to have been committed by JDL, the principles contained in Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(3), (6) & (12) are also violated for which Noticee no. 2, 3, 4, 5 and 6, being part of the board of directors of JDL are liable. Further, Regulation 33(2)(a) creates primary liability of the CEO/CFO for certification of financial statements and also creates primary liability of the board of directors, for approval of financial results. Therefore, Noticee no. 2 to 7 are liable for violation of Regulation 33(2)(a) of LODR Regulations, also.

45. I note that Noticee no. 2 to 6 were the directors of the Company, during the period of violations alleged in the SCN, i.e. April 01, 2015 to December 31, 2017. I note that

Noticee no. 3 was the managing director of the Company, Noticee no. 2 was non-executive director and Noticee no. 4, 5 and 6 were the independent directors. Noticee no. 2, 4 and 5 have contended that they were non-executive/ independent directors of the Company and did not have any day to day control over the affairs of the Company, therefore, they can not be held liable for the violations alleged in the SCN. In this regard, I note that Regulation 4(2)(f) refers to board of directors of company, it does not make any distinction between independent director or other directors. I further note that during the financial years 2015-16 to 2017-18, the details of audit committee members of JDL, number of audit committee meetings held and the meeting attended by the concerned directors, are as under:

Financial Year FY 2015-16

Name of the Director	**Designation**	**Number of Meetings held during the year**
Mr. Somnath Gupta (Noticee no. 4)	Chairman	5
Mr. Prakash Kumar Jajodia (Noticee no. 2)	Member	5
Mr. Soumen Sen Gupta (Noticee no. 5)	Member	5
Mrs. Balushri Gupta (Noticee no. 6)	Member	5

Financial Year FY 2016-17

Name of the Members	**Designation Category**	**Number of Meetings held during the year**	**Number of Meetings attended during the year**

Mr. Somnath Gupta (Noticee no. 4)	Chairman	4	4
Mr. Prakash Kumar Jajodia (Noticee no. 2)	Member	4	4
Mr. Soumen Sen Gupta (Noticee no. 5)	Member	4	4
Mrs. Balushri Gupta (Noticee no. 6)	Member	4	4

Financial Year FY 2017-18

Name of the Members	**Designation**	**Number of Meetings held during the year**	**Number of Meetings attended during the year**
Mr. Somnath Gupta (Noticee no. 4)	Chairman	4	4
Mr. Prakash Kumar Jajodia (Noticee no. 2)	Member	4	4
Mr. Soumen Sen Gupta (Noticee no. 5)	Member	4	4
Mrs. Balushri Gupta (Noticee no. 6)	Member	4	4

46. Regarding the liability of the independent directors for the acts of commission and omission of a company reference may be made to Regulation 25(5) of the LODR Regulations which provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations. As

discussed in previous paragraphs, the Company has been found to be in violation of Regulations 6(1), 33(1)(c) and 48 of LODR Regulations. In respect of the aforesaid violations by the Company, I note that Noticee no. 2, 4, 5 and 6 have already been found to have violated Regulation 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(3), (6) & (12)of LODR Regulations. I note that Noticee nos. 2, 4, 5 and 6, being the independent Directors/ non-executive directors of JDL and being part of the audit committee of JDL reviewed the financial statements of JDL, and approved the financials of JDL as part of the board of directors of JDL. Failure to raise any concern regarding the financials of JDL, as member of the audit committee as well as the board of directors of JDL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations. Therefore, the contention raised by Noticee no. 2, 4 and 5 is not tenable.

47. In view of the aforesaid violations committed by JDL and its directors/ CFO, I find that directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued.

48. SCN in the matter, also calls upon the Noticee no. 1 to 7 to explain as to why appropriate penalty be not imposed upon them under Sections 15(A)(a), 15HA and 15HB of SEBI Act, 1992 and Section 23E and 23H of SCRA, 1956, for the violations alleged in the SCN.. 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 failure to furnish information, return, etc

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same 63[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to 64[a penalty 65[which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

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.

49. From the analysis of the aforesaid penalty provisions, I find that penalty under Section 15HB of the SEBI Act, 1992, is attracted and not the penalties under Section 15HA of SEBI Act, 1992 and Sections 23E of the SEBI Act, 1992. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 have not been made out, therefore,

penalty under Section 15HA of SEBI Act, 1992 is not attracted against the Noticees. I also not 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 JDL is in violation of listing conditions, however, JDL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. I find that penalty under Section 23H of SCRA, 1956 is also not attracted in the case of Noticee no. 2 to 7, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided. As the Noticee no. 2 to 7, being directors of JDL, have been found to be in violation of LODR Regulations, which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the "regulation" of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI directions alleged against these Noticees, therefore, Section 23H is not attracted in the case of Noticee no. 2 to 7. However, as far as Noticee no. 1 is concerned, as stated in the earlier paragraphs, JDL has been found to have violated provision of Section 21 of SCRA Act, 1956, therefore, provisions of Section 23H is attracted qua Noticee no. 1.

50. I find that for the violation of LODR Regulations, JDL is 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 JDL, as found in this order, penalty under Section 15HB is attracted against JDL. Similarly, Noticee no. 2 to 7 who are the directors/

CFO of JDL are liable for imposition of penalty, for the violations of LODR Regulations which are found to be committed by them, under Section 15HB of the SEBI Act, 1992.

51. 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."

52. I find that material available on record does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that the material available on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by the Noticees. However, I note that the violations have occurred over a period of three financial years. I also note that Noticee no. 2 was the non-excutive director of JDL and Noticee no. 4, 5 and 6 were the independent directors of JDL.

Directions and monetary penalties:

53. 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), 11A and 11B(1), 11B(2) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956

read with Section 19 and Section 11(2)(j) of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties)Rules, 1995, direct as under:

(i) The Noticee no. 1, 3 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 one (1) year, from the date of coming into force of this order;

(ii) The Noticee no. 2, 4, 5 and 6, 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 six (6) months, from the date of coming into force of this order;

(iii) The Noticee no. 1 to 6, are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	**Name of Noticees**	**Provisions under which penalty imposed**	**Penalty Amount (In Rupees)**
Noticee no. 1	M/s. Jaisukh Dealers Limited	Section 15A(a) of SEBI Act, 1992.	Rs. 10 Lakh (Ten Lakh)
		Section 15HB of SEBI Act, 1992 and Section 23H of the SCRA Act, 1956.	Rs. 30 Lakh (Thirty Lakh)
Noticee no. 2	Mr. Prakash Kumar Jajodia	Section 15HB of SEBI Act, 1992	Rs. 3 Lakh (Three Lakh)
Noticee no. 3	Kishan Kumar Jajodia	Section 15HB of SEBI Act, 1992	15 Lakh (Fifteen Lakh)

Noticee no. 4	Mr. Somnath Gupta	Section 15HB of SEBI Act, 1992	Rs. 3 Lakh (Three Lakh)
Noticee no. 5	Mr. Soumen Sen Gupta	Section 15HB of SEBI Act, 1992	Rs. 3 Lakh (Three Lakh)
Noticee no. 6	Ms. Balushri Gupta	Section 15HB of SEBI Act, 1992	Rs. 3 Lakh (Three Lakh)
Noticee no. 7	Mr. Tanumay Laha	Section 15HB of SEBI Act, 1992	6 Lakh (Six Lakh)

(iv) The Noticees shall remit / pay the said amount of penalties within 45 days from the date of receipt of this order. The 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, CFID-2, 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	
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)	

(v) Proceedings against Noticee no. 8 and 9 are disposed off without any directions.

54. 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 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.

55. This Order comes into force with immediate effect.

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

57. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs, Reserve Bank of India and Institute of Chartered Accountants of India along with a copy of the Forensic Audit Report for their information.

Sd/-

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: August 06, 2021
Place: Mumbai