QJA/SS/CFID/CFID-CORD/32404/2026-27

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with Section 15A(a), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992.

In respect of:

Noticee. No.	**Name of Noticee**	**PAN**
1.	Mr. Kishore Biyani	AACPB0199B
2.	Mr. Rakesh Biyani	AAEPB3651L
3.	Mr. C.P. Toshniwal	ABZPT0231G
4.	Mr. Virendra Samani	APTPS2785J
5.	Ms. Gagan Singh	AATPS7285C
6.	Mr. Ravindra Dhariwal	ADPPD1049Q
7.	Ms. Sridevi Badiga	ADYPB3954F
8.	Mr. Ashok Trivedi	AAAPT1961H
9.	Mr. Ravi Ajwani	AHQPA2729P
10.	Mr. Lokesh Khandelia	AUJPK6697E
11.	Mr. Raghav Kalyani	CTRPK2274C

The abovementioned persons are hereinafter individually referred to by their respective names or Noticee number and collectively as "the Noticees'.

In the matter of Future Retail Limited

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Prefatory/ Background:

1. Pantaloon Retail (India) Limited was listed on BSE Limited ('BSE') and National Stock Exchange of India Limited ('NSE') on September 11, 2000 and on April 05, 2013 its name was changed to Future Retail Limited.

2. During the year 2016, pursuant to a Composite Scheme of Arrangement approved by the Hon'ble High Court of Bombay vide order dated March 04, 2016: -

    (a) Future Retail Limited demerged its "Retail Business Undertaking" and merged into "Bharti Retail Limited";

    (b) its name was changed from Future Retail Limited to "Future Enterprises Limited" (FEL); and

    (c) the name of Bharti Retail Limited was changed to "Future Retail Limited"(FRL).

3. Consequently, the FRL obtained fresh certificate of incorporation from Registrar of Companies and its equity shares got listed on BSE and NSE on August 29, 2016.

4. The case in hand is about transactions and possible securities law enforcement related to this avatar of FRL in its repackaged version.

The Dramatis Personae.

5. First, to introduce the *dramatis personae,* eschewing honorifics by naming them, for ease of reference. They had the following roles in FRL during relevant times:

i. **Noticee No. 1 -** Chairman and the Managing Director from April 30, 2016 to March 05, 2020 and Executive Chairman from March 05, 2020.

ii. **Noticee No. 2** - Joint Managing Director from April 30, 2016 to March 05, 2020 and Managing Director from March 05, 2020 to May 01, 2022.

iii. **Noticee No. 3** - Chief Financial Officer ('CFO') with effect from May 02, 2016 and was a Key Managerial Personnel ('KMP') for Financial Years (FY) 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

iv. **Noticee No. 4** - Deputy Company Secretary and compliance officer of FRL with effect from May 02, 2016 and was KMP for FYs 2016-17 to 2020-21.

v. **Noticees No. 5, 6 and 7** -were members of the Audit Committee.

vi. **Noticee No. 8** - partner of statutory auditor during FYs 2016-17 to 2021-22.

vii. **Noticees No. 9, 10 and 11** - statutory auditor.

FRL in slump.

6. Second, the status of the FRL. Hon'ble National Company Law Tribunal (Adjudicating Authority/NCLT) vide an order dated July 20, 2022 admitted FRL into Corporate Insolvency Resolution Process ('CIRP') and appointed a Resolution Professional ('RP') under the Insolvency and Bankruptcy Code, 2016 (IBC). The FRL is still lingering on in liquidation process before Hon'ble NCLT.

Scope of the proceedings.

7. Third, the scope of the instant proceedings. The internecine disputes and issues between FRL and its creditors/stakeholders and concern regarding preferential, undervalued, fraudulent or extortionate credit (PUFE) transactions (commonly addressed as "avoidance transactions") if any, under the IBC or any other conduct of Noticees are *in seisin* before the Hon'ble NCLT or other authorities do not concern the present proceedings. This Order is not to be treated as findings on any issues pending before any court/ tribunal/ authority.

8. Although, the Forensic Audit Report (FAR) has gone into many aspects, the instant proceedings are limited for determination of defaults, if any, by above named Noticees in compliance of securities laws and whether such defaults, if established, impinge upon the interests of investors in securities of FRL or integrity of the securities markets. The findings in this order are limited in that respect only.

9. The allegations in the Show Cause Notice (SCN) (from para 5 to 10 in total 68 pages) are on FRL which is not a Noticee in these proceedings. The SCN is silent with regard to reason for not making FRL a Noticee in the matter. FRL was admitted into CIRP on July 20, 2022 and moratorium under section 14 of IBC was available to it from the date of admission till the liquidation order was passed by Hon'ble NCLT on July 29, 2024. The SCN in the instant proceedings was issued on July 18, 2024 when moratorium was in operation till July July 29, 2024. Perhaps, it is for this reason that FRL is not a Noticee in the SCN.

Investigation.

10. On June 03, 2022, Securities and Exchange Board of India (SEBI) started investigation to ascertain whether the books of accounts of FRL were manipulated or whether there was wrongful diversion/siphoning of its funds by promoters /directors/key managerial persons for the FYs 2019-20, 2021-22. The scope of investigation was, *inter alia*, to ascertain the possible violations of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations), Securities and Exchange Board of India Act, 1992 (SEBI Act).

11. On August 03, 2022, SEBI appointed M/s Chokshi & Chokshi LLP, Chartered Accountants (Forensic Auditor) for assisting the Investigating Authority (IA) appointed by SEBI in the matter. The term of reference to Forensic Auditor was:

    (a) to conduct Forensic Audit of FRL and audit of Future Consumer Limited (FCL), Future Supply Chain Solutions Limited (FSCSL) and FEL with respect to Related Party Transactions (RPTs) with FRL during the FY 2019-20, 2020-21 and 2021-22;

    (b) verification of the consolidated financial statements of FRL with a special focus on debt raised and its utilization, capital expenditure advance, security deposit increase, lease takeover by Reliance Group and increase in advance to supplier during the review period; and

(c) to conduct the audit of FCL, FSCSL and FEL with respect to RPT with FRL during the review period.[1]

12. Forensic Auditor submitted a FAR dated March 22, 2024 to SEBI. Upon completion of investigation, an Investigation Report (IR) dated March 28, 2024 was submitted by the IA to SEBI. The IR *prima facie* observed certain misleading disclosure/ non-disclosure with respect to:

    (a) Related Party Transactions

    (b) Debt/ liability of FRL,

    (c) The events around the Scheme of Arrangement with Reliance Group.

13. Based on the FAR and IR, a *prima facie* opinion was formed that there were possible violations of the provisions of SEBI Act and Regulations made thereunder and, thus, it was decided to proceed for the alleged violations PFUTP Regulations and LODR Regulations, against:

    (a) Noticee No. 1 and 2 under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with Sections 15A(a), 15HA and 15HB of the SEBI Act;

    (b) Noticee No. 3 under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with Sections 15HA and 15HB of SEBI Act;

    (c) Noticee No. 4, 5, 6 and 7 under Section 11B (2) of SEBI Act 1992 read with section 15HB of SEBI Act; and

[1] *[Note:- documents outside the audit period could also be reviewed whenever deemed necessary.]*

(d) Noticee No. 8, 9, 10 and 11 under Section 11B (2) of SEBI Act read with Section 15A(a) of SEBI Act.

Show Cause Notice, Inspection of documents and reply to the Show Cause Notice:

14. Pursuant to above, SEBI assigned this case to a Quasi-Judicial Authority (QJA) on May 14, 2024. A common SCN dated July 18, 2024 was issued to the Noticees. Consequently, Noticees inspected the documents which are relevant and relied upon by SEBI as follows:

Table No.1 – Dates of Inspection of Documents

Noticee No.	Date of inspection
1	August 23, 2024
2	August 23, 2024
3	August 23, 2024
4	August 23, 2024
5	August 20, 2024
6	August 20, 2024
7	August 23, 2024
8	August 26, 2024
9	August 26, 2024
10	August 26, 2024
11	August 26, 2024

Inquiry, cross examination, hearing and disposal of settlement.

15. Before receiving replies to the SCN, the then QJA proceeded with the matter by providing an opportunity of personal hearing to the Noticees on October 01-03, 2024. In response thereto, Noticees No. 1, 2, 3 and 4 requested for the cross examination of the author of the FAR. This request was acceded by the then QJA and, pending receipt of replies and opportunity of cross- examination, the hearing in the matter was adjourned to October 07, 2024.

16. In the meantime, the matter was assigned to me pursuant to transfer of the erstwhile Quasi-Judicial Authority on December 02, 2024. On receipt of records, it was noted that Noticees No. 1, 2, 3 and 4 have also filed settlement applications in terms of the SEBI (Settlement Proceedings) Regulations, 2018 ('Settlement Regulations') proposing settlement of the proceedings. In terms of Regulation 8(1) of the Settlement Regulations that provides for the continuance of the proceedings save that the passing of the order till the settlement application is disposed of, the proceedings were continued from the cross examination stage as already allowed.

17. On receipt of records, Noticees were insisted to file replies to the SCN and the cross examination of the author of the FAR was conducted on February 21, 2025, July 02, 2025 and August 14, 2025 by Ms. Shruti Rajan, Mr. Vivek Shah, Ms. Rebecca Cardoso, Mr. Akshar Bhardwaj, Mr. Paras Taneja and Mr. Sanjay Rathi, advocates and the Authorised Representatives (ARs) of Noticees No. 1, 2, 3 and 4 wherein the author of the FAR answered 92 questions. In the meantime, Noticees had filed their replies to the SCN as advised to them.

18. The settlement applications filed by Noticees No. 1,2, 3 and 4 came to be rejected by the panel of Whole Time Members (WTM) of SEBI and the same was informed to these Noticees vide letter dated January 01, 2026. Accordingly, on February 13, 2026, the pleadings in the matter were concluded after opportunities of inspection of documents, cross- examination and inquiry and opportunities of personal hearing/ filing additional submissions to the Noticees as given in the following table:

Table No.2 – Dates of Hearings/ additional submissions

Sr. No.	Noticee	Date of Reply/additional submissions	Date of hearing	Represented by
1.	Noticee No.1	October 27, 2025, November 15, 2025 and February 13, 2026	October 29, 2025 and February 02, 2026	Ms. Shruti Rajan, Advocate, Mr. Sanjay Tripathi, Mr. Vivek Shah, Mr. Paras Taneja, Mr. Taposh Das and Mr. Anugraha Jaising
2.	Noticee No.2	October 27, 2025, November 15, 2025 and February 13, 2026		
3.	Noticee No.3	October 27, 2025, November 15, 2025 and February 13, 2026		
4.	Noticee No.4	October 27, 2025, November 15, 2025 and February 13, 2026		
5.	Noticee No.5	October 22, 2024 and November 5, 2025	October 29, 2025	Mr. Dikshat Mehra
6.	Noticee No.6	October 22, 2024 and November 5, 2025		
7.	Noticee No.7	October 22, 2024 and November 5, 2025		
8.	Noticee No.8	January 17, 2025	October 29, 2025	Advocate Robin Shah
9.	Noticee No.9	January 17, 2025		
10.	Noticee No.10	January 17, 2025		
11.	Noticee No.11	January 17, 2025		

Consideration of the issues and findings.

19. I have considered the SCN, oral and written submissions of the Noticees and documents relied upon in the SCN and in the responses of the Noticees. I deem it appropriate to deal with allegations and replies, issue wise.

A. *Consideration of technical objections and findings.*

20. Noticee No. 1 has raised a technical objection that SEBI is barred from proceeding against him as an interim moratorium under Section 96 of the IBC is in place protecting him from any legal action. As per the said Noticee: -

(i) An application under Section 95 of IBC was filed by Jammu and Kashmir Bank Limited, a financial creditor of the Noticee, before the Hon'ble NCLT, Mumbai Bench, vide C.P. (IB)-959(MB)/C-III/2023. In terms of Section 96 of the IBC, pursuant to the filing of the said insolvency application, an interim moratorium automatically commenced in relation to all debts of the Noticee No. 1, thereby staying all existing legal proceedings and restraining initiation of any new proceedings in respect of such debts. The said matter was heard by the Hon'ble NCLT, Mumbai, which, vide its order dated July 31, 2025, has also appointed a RP in the matter.

(ii) The principle of harmonious construction calls for consistent legal protection for both individual and corporate debtors. Section 14 ensures a moratorium for corporate debtors, it stands to reason that similar protections should be extended to individuals under Sections 95 to 101 of the IBC. Allowing SEBI to take action against an individual debtor during this moratorium would undermine the overarching objectives of IBC. The Noticee No.1 has placed reliance on the following observations of Hon'ble Supreme Court in ***State Bank of India v. V. Ramakrishnan***[2]:

[2] *(2018) 17 SCC 394*

"26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor *is stayed. The difference in language between Sections 14 and 101 is for a reason."*

(iii) As per decision of Hon'ble Securities Appellate Tribunal in ***Dewan*** Housing ***Finance Limited v. SEBI***[3] the moratorium imposed on a company under Section 14 of IBC will also extend to proceedings initiated by SEBI:

"12. In our view, the provision is clear and explicit and needs no further elaboration. Pursuant to a moratorium declared under section 14 the institution of suits or proceedings against the corporate debtor is prohibited or continuation of a suit or proceedings. Further, execution of any judgement or order in any court of law, tribunal, arbitration panel or other authority is also prohibited.

[3] *Order dated October 09, 2020, in Appeal No. 206 of 2020*

13. Thus, where a moratorium has been declared under section 14 of IBC, the authority which in the instant case is SEBI/AO will have no jurisdiction to institute any proceedings. Where a proceeding has already been instituted and during the pendency of the proceedings a moratorium order is passed under section 14 then the authority is prohibited from continuing with the proceedings. This is clear from a bare reading of the provisions of section 14(1) of the IBC."

(emphasis supplied)

(iv) Proceedings under IBC take precedence over the actions of any other authority in situations where there is a conflict. This principle has been explicitly affirmed by the Hon'ble Finance Minister, who clarified the legislative intent behind the IBC. During a Rajya Sabha debate on July 29, 2019, regarding the amendment of the IBC, the finance minister stated that the IBC has an overriding effect over all other laws, including SEBI. This clarification reinforces the primacy of the IBC's provisions and ensures that, in the event of any inconsistency, the IBC shall prevail.

(v) The precedence of the IBC has been consistently upheld in various judicial pronouncements, including in ***Ms. Anju Agarwal v. Bombay Stock Exchange***[4], where the National Company Law Appellate Tribunal ("NCLAT") held that SEBI's regulatory actions are suspended during the moratorium under Section 14 of the IBC.

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4 2019 SCC OnLine NCLAT 789

(vi) The non-obstante clause in Section 238 of the IBC ensures that the provisions of the IBC take precedence over any other laws, including the SEBI Act, if there is an inconsistency. When a court adjudicates on two special statutes which contain non obstante clauses, the later statute prevails. This is line with the principle that at the time of the enactment of the later statute, the legislature is presumed to have knowledge of the earlier legislation. Noticee No. 1 has placed reliance on the observations of Hon'ble SC in ***Sharat Babu Digumarti v. Govt. (NCT of Delhi)***[5] to hold that where there are two special statutes which contain non obstante clauses, the later statute must prevail. Thus, the proceedings under the SEBI Act should be suspended during an interim moratorium under Section 96 of IBC.

(vii) The initiation of proceedings by SEBI during moratorium creates a significant dilemma for the Noticee. Since a moratorium halts all proceedings against the assets of the debtor, the ability to pay any penalties is severely restricted. It is unreasonable to expect Noticee No.1 to fulfil financial obligations when their assets are effectively frozen, illustrating that SEBI's actions would be impractical and unjust. In light of Section 14 of the IBC, it is evident that once a CIRP is initiated, no legal proceedings can be initiated or continued against the corporate debtor. This moratorium includes actions to recover penalties or attach assets as per Section 28A of the SEBI Act. SEBI's attempt to proceed with penalty enforcement during the moratorium period undermines the core object of IBC. SEBI is barred from proceeding against the Noticee under the

5 (2017) 2 SCC 18

current moratorium, and such proceedings must be halted to preserve the sanctity of the insolvency resolution process.

21. I note that an insolvency application under Section 95 of IBC has been filed to initiate Insolvency Resolution Process against Noticee No. 1, being the personal guarantor of Future Lifestyle Fashion Limited (Corporate Debtor/CD) wherein, vide order dated July 31, 2025 passed by Hon'ble NCLT, a RP has been appointed and an interim moratorium under Section 96 of the IBC has commenced which will cease to have effect on the date of admission of the insolvency application. The relevant provisions of said Section 96 of the IBC provides as under:

> ***"96. Interim- moratorium. –***
> *(1) When an application is filed under section 94 or section 95 –*
> *(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and*
>
> *(b) during the interim-moratorium period –*
>
> *(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and*
>
> *(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.*"

22. On bare perusal of above provisions of Section 96 of the IBC, it is clearly evident that during the interim-moratorium period only *"any legal action or proceeding **pending** in respect of **any debt** shall be deemed to have been stayed"*. It is settled position that the purpose of a moratorium provided under Section 96 of the IBC is to safeguard the ***debts*** of the Personal Guarantor as against the purpose of a moratorium provided to corporate debtor under Section 14 Part II of the IBC. While the purpose of moratorium

under Section 14 is to attract potential acquirers who can revive the corporate debtor. On the other hand, the purpose of moratorium provided to individuals under Part III is to aid the repayment or resolution of debt. In my view, parallel drawn by Noticee No.1 with moratorium under Section 14 is totally misplaced and protection of Section 238 is also not available for the same reasons.

23. In this regard, it is pertinent to mention that in the matter of ***Jagdish Prasad Saboo v. IDBI Bank Ltd.***[6]**,** it was held that the insolvency resolution process initiated under Chapter III, Part III of the IBC is aimed at repayment of debt of the creditors or recovery of the unliquidated amount by restructuring of debt or the affairs of the debtors. A careful reading of Section 96 would indicate that the interim moratorium which commences on the date of the application is '*debt centric'*. It will apply in relation to ***all the debts*** and the legal action or proceedings ***pending*** in respect of the ***debt*** which shall deemed to have been stayed. The creditors of the debtor are prohibited from initiating any legal action or proceedings in respect of the ***debt***.

24. Part-III of IBC will not *ipso facto* extinguish default, already committed by the debtor or the fines and penalty subsequently imposed for any wrong doings. The moratorium under IBC is not *aimed at letting wrong doer to get away*, as has been held by the Apex Court in the case of ***Manish Kumar vs. Union of India***. In ***Adarsh Jhunjhunwala v. State Bank of India & Anr.***[7]**,** the Calcutta High Court noted that if wilful defaulter proceedings, criminal proceedings, or quasi-criminal proceedings are stayed during an interim moratorium under Section 96, the same would defeat the

[6] *R/LPA No. 841 of 2023 in R/Special Civil Application No. 19261 of 2022 with Civil Application No. 01 of 2023 decided by HC of Gujrat on 06.11.2023*
[7] *2021 SCC OnLine Cal 3351*

object and purpose of the IBC. The Court further stated that allowing interim moratorium under IBC to stall wilful defaulter proceedings would have the effect of promoting impropriety and illegality, by '*permitting a wrong doer to commit further wrongs*'.

25. In ***G. Bala Reddy v. Securities and Exchange Board of India***[8], the Hon'ble Telangana High Court has held that the interim moratorium order issued in favour of the Appellant therein had no application to the penalty sought to be recovered under the impugned certificate issued by the recovery officer of SEBI in furtherance to the order of adjudicating officer of SEBI. It was also held that the penalty imposed and sought to be recovered from the appellant fell within the meaning of '*fine'* which is excluded under clause (a) of sub section (1) of section 79 of the IBC. The judgement of the Hon'ble NCLAT in ***Ashok Mahindru and Ors. v. Vivek Parti***[9] is also a relevant ruling wherein it was observed as under: -

> *"9. When we read Section 96(1)(b) with the definition of 'debt' in Section 3(11), what is contemplated to be stayed is the proceeding relating to debt, which means a liability or obligation in respect of a claim which is due from any person. Interim moratorium shall be for such proceedings which relate to a liability or obligation due i.e. due on date when interim moratorium has been declared. Section 96(1)(b) cannot be read to mean that any future liability or obligation is contemplated to be stayed."*

[8] *2024 (3) TMI 1183*
[9] *2022 SCC OnLine NCLAT 460*

26. I note that the reliance by Noticee No.1 on ***V. Ramakrishnan (supra)*** is misplaced as the Hon'ble SC in that case recognised that the provisions of Section 14 cannot apply to a personal guarantor and that when an application is filed under Chapter III of the IBC (Section 94 to Section 120), an interim-moratorium or a moratorium is applicable in respect of any ***debt*** due. For the same reasons the observations of Hon'ble SAT in ***Dewan Housing Finance Limited*** are also not applicable as the same are with respect to moratorium under Section 14.

27. It is worth mentioning that this controversy has finally been set at rest by Hon'ble SC in in the landmark case of ***Dilip B. Jiwrajka Vs. Union of India & Ors.***[10] wherein it settled all controversies in respect of liabilities of the personal guarantors and the impact of moratorium under IBC in case of insolvency process initiated by or against the personal guarantors. In this case, the Apex Court has held that the impact of the interim moratorium under section 96 is that a legal action or proceeding ***pending*** in respect of any ***debt*** is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. The crucial words which are used both in both the clauses i.e., clause (b)(i) and clause (b)(ii) of section 96(1) are "*in respect of any debt*". These words indicate that the interim moratorium which is intended to operate by the legislature is primarily in respect of a ***debt*** as opposed to a debtor. Clause (b) of sub-section (1) indicates that the purpose of the interim moratorium is to restrain the initiation or the continuation of legal action or proceedings against the ***debt***. I, therefore, find that Noticee No.1 is relying on a misconceived interpretation of law.

[10] *Writ Petition (Civil) No 1281 of 2021 and others (Neutral Citation No. 2023 INSC 1018) SC on 09.11.2023*

28. In this case, even if application of Noticee No.1 was admitted, another moratorium would commence for a period of 180 days from the date of admission or the date on which the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier. The aforesaid order of the Hon'ble High Court of Telangana was challenged before the Division Bench of the said High Court. It was held by the Division Bench that from a conjoint reading of Section 95, 96, 100 and 101 of IBC, once an application is admitted under Section 100, a moratorium shall commence in relation to all debts and shall cease to have effect at the end of the period of 180 days. As far as the appellant before the Division Bench of the Hon'ble Telangana High Court was concerned, it was held that as moratorium had ceased to be in operation, the appeal failed and the decision of the Single Judge was not interfered with. The decision assumes relevance in this case also. The Noticee would not be entitled to any benefit under Section 100 of the IBC also. I, therefore, find that the interim moratorium under Section 96 of IBC does not apply to the initiation, commencement, continuance and disposal of the instant proceedings before SEBI and imposition of penalties under the SEBI Act much less to the action taken or penalties accruing in future after filing of application under Section 94 or 95 of IBC, as the case may be. I, therefore, reject this technical contention of Noticee No.1.

29. In the present case, there is no conflict of the provisions of SEBI Act and the IBC, accordingly, I find that the submissions of the Noticee with regard to overriding effect of Section 238 of IBC is misplaced.

Reliance on third party investigation with vivid and admitted limitations.

30. Noticees No. 1, 2 and 3 have contended that SEBI's conclusions are based solely on FAR and there was no effort on the part of SEBI to independently verify the details or take into account the full context. As per them: -

(a) The FAR, itself acknowledged the limitations due to incomplete data enlisted at sub-paragraph D of paragraph II of the FAR. Yet, SEBI chose to base its allegations on these incomplete findings without seeking a thorough and impartial review of all relevant information.

(b) SEBI ought to carry out a diligent and independent investigation before taking any punitive action. Reliance solely on third-party reports without conducting an independent investigation undermines the integrity of the process.

(c) The findings and conclusions drawn by the auditor must be treated with caution and viewed critically in light of the admitted lack of awareness and material limitations in the scope of the work of the Forensic Auditor, as revealed during cross examinations in following answers recorded in notes of cross- examination.

> *"**Question:** Are you aware that the company made a public disclosure on August 5th, 2022 regarding initiation of a forensic audit by SEBI?*
> ***Answer:** Not as per my knowledge.*
>
> ***Question:** Were you or were you not aware that the company had received a letter from SEBI in August 2022 highlighting certain prima facie observations in relation to the companies' financial information?*
> ***Answer:** Not as per my knowledge.*

Question: *The merged retail operations of FRL began under the previous management with effect from May 1st, 2016. Are you aware that the current management assumed control of FRL operations from this effective date of May 1st, 2016?*

Answer: *Not as per our scope.*

Question: *As a part of your data analysis for the purposes of this report. Did you receive any statements recorded by KMPs or directors of these companies before SEBI?*

Answer: *No. Even not as per scope."*

(d) It is also admitted by the Forensic Auditor during cross- examination that the statement of CFO of FRL was not considered. This undermines the credibility of the findings of the Forensic Auditor as the transaction involved complex financial and valuation assessments that required clarity from Company officers. The relevant extract from the transcript of notes of cross examination held on July 02, 2025, is as follows:

*"**Question:** Have you considered the statement given by CFO of Future Retail Limited, in relation to the two-valuation report that were procured Grant Thornton and Moore Singhi?*

Answer: *No, we did not access to the statement of the CFO of FRL."*

(e) Noticees rely upon ***Petrofils Cooperative Ltd. v Collector of Central Excise***[11], wherein it was observed by Customs, Excise and Gold Tribunal, Delhi took note of the order of ***Indian Plastics Ltd. and Ors. v. Collector of Central Excise***[12] that when a SCN is issued merely on the basis of an audit

11 Order No. E/381/91-D in E/Appeal No. 1386/86-D, decided on September 6, 1991.
12 1988 (35) E.L.T. 434

objection without any independent investigation, the same is liable to be quashed. SEBI's failure to undertake an independent investigation is not only legally flawed but also demonstrates a fundamental disregard for the rights of the Noticee. Hence, the issuance of the SCN and the ongoing proceedings should be declared unsustainable and liable to be quashed.

31. It is settled position that any evidence is admissible so long as it is not irrelevant, and immaterial. An administrative authority's approach to evidence faces issues not only to the question of admissibility but more on its discretion to determine what kind of evidence may support its findings. Considering the complexities and specialised nature of activities the administrative authorities are confronted with; the judiciary has, time and again, permitted reliance on expert opinion in exercising regulatory powers. Reliance on expert opinion, thus, bears evidentiary value. In this case, the forensic audit of the financial statements of FRL was for assistance to SEBI's investigation which resulted in initiation of instant proceedings. The scope of expert opinion of author of FAR is not that of a detective. A closer examination on opinions based on limited facts and information (as admitted in this case) was necessary rather than digging the inferences with approach of inner Sherlock Holmes. SEBI has adopted the FAR dated March 22, 2024 and has *prima facie* accepted the observation therein and adopted it as assisting evidence in support of charges based on its own investigation. I find no infirmity in the sense it is being contended by these Noticees and they have undertaken detailed cross -examination of the author of the FAR for testing the creditworthiness and the veracity of the findings in the FAR. Thus, the principles of natural justice are duly complied with.

Limitations and Qualification of FAR.

32. As regards, limitations and qualifications in the FAR as evidence, it has to be tested in accordance with law. It is true that during cross –examination as also stated at many places in FAR, the auditor was having limitations with regard to access of relevant information. The FAR uses selected samples and procedures, as explicitly acknowledged by the auditor in the FAR wherein the auditor has recognized that their findings may be limited, noting the inherent risks of undetected misstatements due to the nature of the audit, which was based on data provided to them. During cross-examination the author of the FAR admitted this limitation. The FAR, thus, may not be conclusive evidence but it does not lose its evidentiary value as assistance of allegations and can be tested based on the material brought on record by the Noticees.

33. Further, in this case, certain facets of the observations and allegations in the SCN are beyond the FAR. IA has also gathered the documents/ information relevant to the investigation from various other sources such as MCA records, Income Tax Department and the RP of FRL. Many such statements/ documents have not been provided to Forensic Auditor (as admitted by during cross-examination) for the purpose of preparation of FAR. However, these documents form part of the IR and are relied upon in support of allegations in the SCN. Accordingly, I do not find any merit to the contention that there is lack of independent investigation on behalf of SEBI and there is non-application of mind in issuing the present SCN.

B. *Consideration of matter on merits and findings.*

34. Having dealt with the technical objections raised by the Noticees as above, I now proceed to deal with the merits of the case *qua* the Noticees. The SCN, primarily charges the Noticees No.1 to 4 for acts of FRL. It is settled position that directors are generally not personally liable for company's acts due to the corporate veil, but face personal civil and criminal liability for fraud, negligence, and breach of fiduciary duties. The directors or officers of the company are individually responsible when specific obligations are imposed on them by law. The alleged personal liability is also triggered by personal involvement, mismanagement, or failing to act in good faith or in breach of fiduciary duties such as a using their position for personal gain or to defraud investors or for fraudulent purposes, etc.

35. It is pertinent to mention that Section 27 of the SEBI Act provides for a similar legal defence for individual culpability of the directors/officers who were not in know of or were diligent in trying to prevent the company's non-compliance. If the contravention has been committed by a company and it is proved that the contravention had 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 contravention and shall be liable to be proceeded against and punished accordingly.

36. In this case, charge of contravention of specific provisions by Noticees are listed in Para 11 of the SCN though charge against FRL are listed separately in other paras of SCN differently. It is settled position that charge against Noticees should be clear and

unambiguous. Accordingly, I proceed to deal with charges specifically levelled against the Noticees as given in para 11 of the SCN and listed in the following table:

Table No.3 – Charges against respective Noticees

Sl. No.	Noticees/Para in SCN	Alleged Contraventions	Penalty provisions invoked
1.	Noticees No. 1 and 2/ Para 11.4.14/ 11.4.15	i. Regulation 4(1) (a), (b), (c), (d), (e), (g), (h), (i), (j), 4(2)(e)(i), 23(2), 23(4), 30 (4) (i) (b) and 30 (12) read with Clause 5 of Para B of Part A of Schedule III, Regulation 34(3) read with Clause 1 & 2 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Ind-AS 24[13] and Section 27 of SEBI Act; ii. SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 read with Section 27 of SEBI Act;	Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with Sections 15A(a), 15HA and 15HB of the SEBI Act.

[13] *Accounting Standard*

		iii. Regulation 4(2)(f)(ii)(2), (6), (7),(8),(2)(f)(iii)(1),(3),(6),(12), (14) and 17(8) of the LODR Regulations; and iv. Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.	
	Noticee No.2/ Para 11.4.17	Clause 1, 4(e) and (f) and (9) of Para A of Part C of Schedule II read with Regulation 18(3) of the LODR Regulations.	
2.	Noticee No.3/ Para 11.5.16	i. Regulation 4(1) (a), (b), (c), (d), (e), (g), (h), (i), (j), 4(2)(e)(i), 23(2), 23(4), 30 (4) (i) (b) and 30 (12) of the LODR Regulations read with Clause 5 of Para B of Part A of Schedule III, Regulation 34(3) read with Clause 1 & 2 of Part A of Schedule V & Regulation 48 of LODR Regulations read with	Sections 11(1), 11(4), 11(4A), 11B (1) and 11B(2) read with Sections 15HA and 15HB of SEBI Act.

		Ind-AS 24, read with Section 27 of SEBI Act. ii. Non-compliance with SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015, read with Section 27 of SEBI Act. iii. Regulation 17(8) read with Part B of Schedule II of LODR) Regulations. iv. Section 12A(a),(b),(c) of SEBI Act and Regulation 3(b),(c),(d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations	
4.	Noticee No.4 / Para 11.6.7	Regulation 4 (1) (c), (d), (e), (g) and (h) of the LODR Regulations, Regulation 30 (4) (i) (b) and 30 (12) of the LODR Regulations, Clause 5 of Para B of Part A of Schedule III of the LODR Regulations read with Section 27 of SEBI Act, 1992 and SEBI Circular No. CIR/CFD/CMD/4/2015, dated September 09, 2015 read with	Section 11B (2) of SEBI Act read with Section 15HB of SEBI Act.

		Regulation 6(2)(a) and (c) of the LODR Regulations.	
5.	Noticee No.5, 6and 7/ Para 11.7.6	Clause A (1), (4) (f) of Part C of Schedule II read with Regulation 18(3) of LODR Regulations.	
6.	Noticee No.8/ Para 11.8.6	Section 11 (2) (ia) and 11 C (2) and (3) of SEBI Act.	Section 11B (2) of SEBI Act read with Section 15A(a) of SEBI Act.
7.	Noticee No.9,10,11/ Para 11.9.5	Section 11 (2) (ia) and 11 C (2) and (3) of SEBI Act.	

Text of provisions alleged to have been violated.

37. The provisions of SEBI Act and Regulations made thereunder alleged to have been violated by the Noticees are reproduced as following:

LODR Regulations

Regulation 4: Principles governing disclosures and obligations

(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 recognized stock exchange(s) and investors is not misleading.

(d)The listed entity shall provide adequate and timely information to recognized stock exchange(s) and investors.

(e)The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

……..

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

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

(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

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

(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.

……

(e) ***Disclosure and transparency:*** *The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:*

(i)Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.

……..

*(f)****Responsibilities of the board of directors:*** *The board of directors of the listed entity shall have the following responsibilities:*

(i)……

(ii) Key functions of the board of directors

(1)……..

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

……

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

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

(8) Overseeing the process of disclosure and communications.

(iii) Other responsibilities:

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

(2)……..

(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.

(13) ……..

(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors

Regulation 6: Compliance Officer and his Obligations

(2) The compliance officer of the listed entity shall be responsible for-

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

……

(c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.

Regulation 17: Board of Directors.

(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

Regulation 18: Audit Committee.

(3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II

Regulation 23: Related party transactions.

(2) All related party transactions shall require prior approval of the audit committee.

……

(4) All material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:

Regulation 30: Disclosure of events or information.

(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

(4) (i)The listed entity shall consider the following criteria for determination of materiality of events/ information:

……..

(b)the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

……

(12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.

Regulation 34: Annual Report.

(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

Regulation 48: Accounting Standards.

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

Schedule V: Annual Report

A. Related Party Disclosure:

1. The listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures"

2. The disclosure requirements shall be as follows:

Sr. No.	*In the accounts of*	*Disclosures of amounts at the year end and the maximum amount of loans/ advances/ Investments outstanding during the year.*
1.	*Holding Company*	*Loans and advances in the nature of loans to subsidiaries by name and amount.*

		Loans and advances in the nature of loans to associates by name and amount. *Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.*
2.	*Subsidiary*	*Same disclosures as applicable to the parent company in the accounts of subsidiary company.*
3.	*Holding Company*	*Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.*

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of Companies Act, 2013."

Para 18 of the Ind AS 24 (Related Party Disclosures)

"*If an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transaction and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements"*

SEBI Act:

"12A. No person shall directly or indirectly—

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

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock

exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations:

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

No person shall directly or indirectly –

(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 manipulative, fraudulent or an unfair trade practice in securities markets.

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

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

(f) knowingly 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;

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

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

Context of provisions alleged to have been violated.

38. I note that Regulation 4 of the LODR Regulations provides for guiding principles and obligations as alleged in this case are created under Regulations 23, 30, 34 and 48. As per Regulation 4(1) (a), the information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure. Regulation 4(1) (b) also requires same principles to be followed and states that in preparation of financial statements the listed entity shall implement prescribed accounting standards 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. Regulation 48 of the LODR Regulations provide that the listed entity shall comply with all the applicable and notified Accounting Standards from time to time. Clause 1 of Part A of Schedule V of the LODR mandates that the Annual Report

of the listed entity shall make disclosures in compliance with the Accounting Standard on "*Related Party Disclosures*".

39. All these provisions emphasise on preparation and disclosures of required information in compliance with prescribed accounting standards. To this extent, all these provisions overlap. Ind AS 24 has been adopted by incorporation and does not cast independent charge of violation of securities laws. In my view, Regulations 23, 30, 34 and 48 provide for specific rule -based specifications and Regulation 4 provides the general principles embodied in them. Further, no additional requirements can be created by show cause notice or otherwise unless there is finding of any ambiguity or incongruity in specific Regulation and Regulation 4 as provided under Regulation 4(3).

40. Para 18 of the Ind AS 24 deals with disclosures regarding RPTs. According to this standard, for RPTs during the periods covered by the financial statements, the entity should disclose therein –

    (a) the nature of the RPT and

    (b) information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the *financial statements*.

41. Para 19 of the Ind AS 24 requires that disclosures required in Para 18 shall be made separately for *Other Related Parties* of the entity. These disclosures at the minimum shall include *inter alia* the amount of the transactions. As per Para 18 and 19 of Ind AS 24, the disclosures about RPT has to be made in the *financial statement* of the

company. The expression *'financial statement'* has not been defined under the LODR Regulations and definition of this expression as per Section 2(40) of the Companies Act, 2013 (Companies Act) applies in this situation. As per Section 2(40) of the Companies Act, *"financial statement"* in relation to a company, includes; -

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

42. In the above definition of the expression *"financial statement",* Annual Report of the company is not specifically included. Regulation 34(3) of the LODR Regulations provides that the Annual Report of the listed entity (FRL) shall contain disclosures specified in Schedule V and Regulation 48 mandates the listed entity to comply with all applicable and notified accounting standards. While Regulation 34(3) of the LODR Regulations provides for obligations to make the disclosures as per Ind AS 24 (Para 18 and 19 as alleged) in the Annual Report (Schedule V of the LODR Regulations) of the company, the Ind AS require disclosures in the *financial statement* which does not specifically include an Annual Report. Be that as it may, since Regulation 34(3) read with Regulation 48 of the LODR Regulations and Para 1 of Part A of Schedule V of

the LODR Regulations obligate RPT disclosures in Annual Report in accordance with applicable accounting standards, the listed entities are required to make RPT disclosures as per Ind AS 24 in their Annual Reports also.

43. The penalty provisions, though bunched together without specifying the provision for a specific contravention are reproduced as under: -

"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.*

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely: —

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities

market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(e) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

Power to issue directions and levy penalty.

11B. *(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary, —*

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions, —

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation. —For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made

profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

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 or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents he shall be liable to a penalty 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.*

44. While Section 11 deals with the functions and duties of the Board, Section 11(4) and 11B provide for the powers of the Board to issue directions. These Sections are, in a sense, a functional tool in the hands of the Board and one of the measures available to the SEBI to enforce its prime duty under Section 11 by issuing directions under these Sections 11(4) and 11B (1) and/or also imposing monetary penalty under Section 11B (2) and 11(4A). I note that the power under Section 11B (2) is *pari materia* the power under Section 11(4A). In fact, the power under the both the Sections are nothing but a replica of each other in two different sections. This power is not intended for inflicting same monetary penalty twice under the charging sections referred in Section 11(4A) and replicated under Section 11B (2) of the SEBI Act.

45. In this case, penalty under Section 15HB of the SEBI Act has also been contemplated. It is to be noted that Section 15HB provides a residue power i.e. power to impose penalty for failure of compliance with SEBI Act, rules and regulations made thereunder or ***directions*** issued by the Board for which no separate penalty has been provided. Section 15A(a) of the SEBI Act provides for a penalty- if any person, who

is required under the SEBI Act or any rules or regulations made thereunder, furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents. Thus, if any default listed in cumulative findings of IR and narrations in SCN is found to attract invoked Sections 15A(a) or 15HA, as the case may be, this Section 15HB shall not apply. If it does not, then Section 15HB may apply. The SCN is unclear about contravention of any specific rules, regulation or directions within scope of Section 15HB where no penalty is provided.

46. Power to issue directions are covered under Section 11B (1) and Section 11(4) of the SEBI Act. It was earlier settled that administrative circulars issued under Section 11(1) of the SEBI Act and Rules framed by Central Government and regulations framed by SEBI, are not appealable orders and fall outside the appellate jurisdiction[14]. Subsequently, SEBI treated administrative circulars as direction of the Board within scope of Section 15HB when it came to be introduced in the year 2002 and Hon'ble SAT settled this position upholding SEBI's decision.

47. In this case, since alleged defaults are specifically covered in Section 23A of the SCRA or as per SEBI under Section 15 A of the SEBI Act in this case, basis of invoking Section 15HB is unclear.

Consideration of merits of allegations.

48. Keeping above analysis in mind, I proceed to examine the merits of the case. The allegations against FRL for which Noticees No. 1 to 4 have been charged in the SCN

[14] *Supreme Court Judgement dated March 07, 2017- in Civil Appeal No. 186/2007- SEBI Vs. NSDL.*

are categorized into the following four categories in the SCN with first part being further subdivided into three parts as following:

(a) **Part A:** Misleading Disclosure/ Non-Disclosure of RPTs sub categorized as:

Part A(a): Misleading disclosures and misrepresentation with respect to purchase of In-Store Infrastructure Assets.

Part A(b): Under-reporting/non-reporting of RPT with respect to increase in security deposits.

Part A(c): Failure to take shareholder approval of material RPT.

(b) **Part B:** Understatement of debt/ liability of FRL.

(c) **Part C:** Non-disclosure/ wrong disclosure/selective and misleading disclosure of the events encompassing around the scheme of arrangement with Reliance Group.

(d) **Part D:** Diversion of funds of FRL to promoter entity (Future Corporate Resources Pvt. Ltd.) to increase their shareholding in listed company (FRL).

49. With regard to the alleged violations in *[Part A(a) –Para 5.32.a, A(b)- para 5.66.b and Part B- Para 6.36.ii-, Part C – Para 7.19.a and Part D- Para8.12.b],* FRL has also been charged for violation of provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act and Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2) (r) of the PFUTP Regulations. Noticees No. 1 and 2 have been charged on account of their role as directors in terms of Section 27 of the SEBI Act. Thus, their liability is in the nature of vicarious liability *vis-a- vis* liability of FRL. However, SCN does not charge them for contravention of provisions of Regulation 4(2)(r) of the PFUTP Regulations whereas Noticee No.3 who is not a director of FRL but its 'officer' covered within the ambit of

Section 27 of the SEBI Act, has been charged with violation of same provisions as the FRL. Further, the SCN alleges violation of Section 12A(a), (b), (c) of SEBI Act and Regulation 3(b), (c), (d), 4(1), 4(2)(f), (k), (r) of PFUTP Regulations by FRL in parts A(a), A(b), B and D of the SCN and violation of Section 12A(a), (b), (c) of SEBI Act and Regulation 3(b), (c), (d), 4(2)(f), (k), (r) of PFUTP Regulations by FRL in part C. However, there is no rationale for the exclusion of Regulation 4(1) in part C, which provides that "*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets*.

50. Considering this anomaly in the SCN and as required by law, I am bound to consider only the violation which are specifically charged with against Noticees No. 1 2 and 3 in para 11 of the SCN. Further, since both categories of violations are narrated in the SCN on the basis of same facts, in order to avoid repletion, I deem it appropriate to start with dealing with basis of allegations and first set of violations and then to collectively deal with the allegation of provisions of SEBI Act and PFUTP Regulations collectively thereafter.

Part A: Misleading Disclosure/ Non-Disclosure of Related Party Transactions

Part A(a) - 'Misleading disclosures and misrepresentation with respect to purchase of In-Store Infrastructure Assets'

51. It is admitted position that: -

(a) FRL and FEL were '*Related Parties'* and the impugned transaction amongst them was a RPT.

(b) Pursuant to eight Slump Sale Agreements dated June 16, 2020 entered into between FRL and FEL, FRL acquired '*in-store infrastructure'* assets from

FEL for payment of Rs. 3,619.67 Crore to FEL and transfer of liability of Rs. 59.05 Crore to FRL by FEL.

(c) In order to fund the said transaction, FRL borrowed USD 500 million through issuance of 5.6% Senior Secured Notes 2025("Singapore Bonds") in FY 2019-20 listed on Singapore Exchange (SGX).

(d) On January 22, 2020, FRL received Rs. 3,559.70 crores (USD 500 million) pursuant to issuance of Singapore Bonds.

(e) On January 28, 2020, FRL, paid Rs. 3,559.70 Crore in the bank account of FEL with Central Bank of India, in order to pay advance to FEL towards purchase of *in-store infrastructure* assets.

52. It has been alleged that incomplete disclosure on exchange, partial information given to audit committee and shareholders, discrepancy in number of stores, desktop valuation carried out, non-adherence to terms of No objection Certificate (NoC) of Central Bank of India by FEL, mis-match of actual utilization as against the utilization certificate received, the transaction of purchase of *in-store infrastructure* assets by FRL from FEL in FY 2019-20, was in the nature of a scheme, devise or artifice through which FRL deliberately concealed the fact that it would use 50% of the proceeds received through issuance of Singapore Bonds for repayment of its debt in the guise of purchase of *in-store infrastructure* assets from FEL, which acted as a fraud on the investors of FRL. It has been further alleged that the misrepresentations in financial statements for FY 2016-17 to FY 2020-21, diversion of funds, non-disclosure of RPTs, and non- disclosure and selective/misleading disclosure of

material events could not occur without knowledge or approval of Noticees No.1 and 2 who being Chairman and Managing Director, headed the corporate hierarchy of FRL and were at the helm of its affairs and Noticee No.3 aided and abetted them in the scheme.

Submissions of the Noticees.

53. Relying on the written replies of the Noticees No. 1, 2 and 3, Ms. Shruti Rajan, Advocate strongly denied the observation /allegations and pithily argued that the observations and the allegations in this of the SCN are conclusions based on an incomplete and selective review of the financial transactions between FRL and its related entities, with no effort to independently verify the details or take into account the full context. According to her, despite accepting submissions of FRL and Noticee No. 1 adverse observations and allegations have been levelled against Noticees No. 1, 2 and 3 without any analysis and without assigning any reasons. She submits that the purchase of *in-store infrastructure* assets (as per Slump Sale Agreement) by FRL from FEL was pursuant to a strategic shift from an asset-light model to an asset-owned model, impact on lease accounting necessitated by the implications of Ind-AS 116, which altered lease accounting standards.

54. Ld. Advocate of Noticees No. 1 to 4 referred to and relied upon the minutes of the Audit Committee meeting held on October 12, 2019, minutes of the FRL's board meeting held on the same date, minutes of its shareholders' decision in Extraordinary General Meeting (EGM) held on November 08, 2019, minutes of the Audit Committee meeting held on January 27, 2020 and valiantly submitted that FRL has, at all times, conducted the slump sale transaction in accordance with the due procedure established under law. She emphasized that the shareholders resolution dated November 08, 2019,

gave complete authority to the Board (including committees of the Board) of FRL for settling and finalising all issues that may arise in this regard, including without limitation, negotiation, finalising, executing and registering necessary agreements, undertakings, memorandum, deeds, indemnity, documents and such other papers or writings as may be deemed necessary or expedient in its own discretion and in the best interest of FRL without further referring to its members. It has been further submitted that, admittedly, FRL had duly complied with applicable requirements as following: -

Approvals of Audit Committee, board of directors and shareholders.

(a) On October 12,2019, the audit committee of FRL approved *the proposed acquisition of the retail infra assets, leased out by FEL to the Company in one or more tranches though direct purchase or acquisition through* ***slump sale or any other mode of acquisition to the tune of INR 4,000 crore (expected fair value of asset sot be acquired) based of fair valuation of the assets as determined by an independent valuation expert near to the time of actual acquisition transaction(s).***

(b) On the same day i.e. October 12,2019, the board of directors of FRL approved the said transaction and, on the same day, the disclosure was made to the stock exchange with respect to the outcome of the board meeting.

(c) Both, the audit committee and board of directors also noted that the impugned transaction would breach the 10% threshold [Regulation 2(1)(zb) of the LODR Regulations] and would need shareholders' approval.

(d) On October 15, 2019, disclosure was made to the stock exchange, with respect to the upcoming EGM to be held on November 8, 2019.

(e) On November 08, 2019, in the EFM of FRL, its shareholders approved the impugned RPT and allowed the Board of Directors of the Company including the Audit Committee for entering into the additional Material RPTs to be entered into by the Company on an arms' length basis, based on the valuation report to be obtained from independent reputed valuation expert and further confirmed by an independent merchant banker's fairness opinion for each of such transaction(s) and further approved by the Audit Committee of the Company based on the fairness opinion for the relevant transaction(s).

(f) On January 27, 2020, the Audit Committee approved and adopted the valuation report issued by valuation expert having international repute and fairness opinion on the said valuation report issued by category I Merchant Banker as per the mandate given by the Committee in respect of acquisition of *in-store retail infrastructure* assets of FEL.

Disclosure regarding issuance of Singapore bonds:

(g) On January 04, 2020, FRL disclosed to the stock exchanges about decision of its board of directors to fund the impugned RPT through the USD denominated borrowings and accordingly, approved raising of long term funds through the offer, issue and of allotment of senior, secured USD-denominated notes for an aggregate amount not exceeding USD 500 Million (United States Dollars Five Hundred Million only) to be issued in one or more tranche(s), to one or more eligible lenders/investors to meet the capital expenditure for the acquisition of

certain in-store infrastructure retail assets, in one or more tranches or instalments in whole or in parts, by way of direct purchase and/or through slump sale or any other mode, method or combination thereof.

(h) On January 6, 2020 FRL disclosed to the stock exchanges the above decision regarding contemplation of such USD denominated bonds to be listed on the Singapore stock exchanges

(i) On January 15, 2020, FRL informed the stock exchanges the terms and conditions for issuance of said USD denominated bonds/notes as under: -

Table No. 4 – Details of bonds/ notes

Particulars	**Terms**
Type of instrument	US$ 500 million 5.60 % Senior Secured Notes due 2025
Rating	Standard & Poor's (S&P Global) – BB – (EXP) Fitch – BB (EXP)
Listing	The notes will be listed on the Singapore Exchange Securities Trading Limited (SGX-ST)
Size of the issue	US$ 500 million
Tenure of the instrument – date of allotment and date of maturity	Settlement date – January 22, 2020 Maturity date – January 22, 2025
Coupon/ interest offered, schedule of payment of coupon/ interest and principal	The Notes will bear interest of 5.60% per annum payable semi-annually in arrears. Interest payment dates are January 22, and July 22 of each year, commencing on July 22, 2020.
Charge or security, if any over the assets	Secured by a first ranking *pari passu* floating charge over the present and future tangible movable fixed assets of the Company. Security will be created within 150 days from the settlement date.

Special rights or interest or privileges attach to the instrument and changes thereof	Not Applicable
Delay in payment of interest for principal amount for a period of more than three months from the due date or default in payment of interest or principal.	Default in payment of (a) principal of (or premium if any) the Notes when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise; or (b) interest on any Note when the same becomes due and payable and the continuance of any such default for a period of 30 days is an Event of Default
Details of any letter or comments regarding payment or non-payment of interest, principal on due dates, or any matter concerning the security and/ or the assets along with its comments thereon, if any	Not Applicable
Details of redemption of preference shares indicating the manner of redemption (whether out of profits or out of fresh issue) and debentures	Not Applicable

(j) On January 22, 2020, FRL disclosed to the stock exchanges the allotment of USD 500 million Singapore bonds and its intent to list them on *Singapore Exchange Securities Trading Limited.*

(k) On January 23, 2020, FRL disclosed to the stock exchanges that US$ 500 million 5.60% Senior Secured Notes are listed on Singapore Stock Exchanges effective January 23, 2020.

(l) Disclosure made in the notes (note number 51) to the financial statements of the Company for the FY 2019-20.

(m) Three are no requirements of disclosures of valuation report, review of transactions by Audit Committee, assumed liabilities, slump sale agreements in Annual Report, etc. as alleged. FRL had complied with all applicable requirements.

(n) There was no material RPTs to be disclosed in respect of receipt of funds by FRL from FEL which were repayment of advances given by FEL or repayment of securities deposit owed by FEL to FRL.

(o) Syntex Trading & Agency Pvt. Ltd. (Syntex) had earlier paid advance to FEL for purchase of assets. Since FRL directly purchased assets from FEL, Syntex asked FEL to repay its advance to Basuti on its behalf. Thereafter, Syntex asked Basuti to pay FRL on its behalf to procure assets.

Consideration and findings on Part A(a):

55. The fault has been found in the SCN based on several facets/aspects which are dealt hereinafter considering the responses of the Noticees No. 1 to 3.

In-store infrastructure assets being acquired were already in possession of FRL:

56. The first aspect is that the *in-store infrastructure* assets which were being acquired by FRL, were already in possession of FRL on lease basis. In this regard, it is admitted position in the SCN as well as in replies of the Noticees that the rationale for the transaction was introduction of Ind-AS-116 according to which, the FRL had to give

same treatment in its books of accounts to *in-store infrastructure* assets taken on operating lease and finance lease. Thus, the in-store assets taken from FEL were to be recognized by FRL as *"right to use the lease assets"* on assets side and liability in nature of the *"obligation on account of the lease payments"*. FRL also had to account for depreciation and interest in place of the lease rent paid to FEL.

57. It is pertinent to mention that with effect from April 01,2019 Ind AS 116 replaced the accounting disclosures guidance with regard to "*leases*". It brought a significant change compared to Ind AS 17, under which lessees were required to make a distinction between a *'finance lease'* (on balance sheet) and an *'operating lease'* (off balance sheet). Ind AS 116 defines a lease as a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration. Under Ind AS 116 lessees have to recognise a lease liability reflecting future lease payments and a *'right-of-use asset'* (RoU assets) for almost all lease contracts. In the statement of profit and loss lessees will have to present interest expense on the lease liability and depreciation on the right of-use asset. In the cash flow statement, cash payments for the principal portion of the lease liability and its related interest are classified within financing activities. In the income statement, lessees recognise depreciation of the RoU asset and interest on the lease liability, instead of a single *"rent expense";* this lowers EBITDA but increases finance-cost-like interest. It is also a commonly known fact now that sectors like retail, logistics, aviation, shipping, telecom and real-estate had very large additions of RoU assets and lease liabilities, materially changing their balance-sheet profiles after Ind AS 116 was rolled on.

58. Under this arrangement the lessee in finance lease structure can pay the consideration for purchase of the leased assets after a fixed time but legal ownership remains with lessor. As per accepted accounting practices, the accounting by lessors will not significantly change as under Ind AS 17, the lessor will continue to classify leases as either finance or operating, depending on whether substantially all of the risks and rewards incidental to ownership of the underlying asset have been transferred. For a finance lease the lessor recognises a receivable, and for an operating lease the lessor continues to recognise the underlying asset. The ownership remains with lessor until the asset is purchased by the lessee. This aspect anyways does not require a perspicacious analysis and frowning upon this arrangement is not correct. Moreover, such transaction was also permitted by the Central Bank of India, the lead banker having charge on the assets of FEL *albeit* subject to a condition. Therefore, such basis is unfounded to draw a conclusion as done in IR/SCN.

The transactions not reviewed by audit committee in each of its meetings.

59. The second aspect of the allegation is that, in none of the meetings of the audit committee, the transaction of purchase of *in-store infrastructure* asset by FRL was reviewed by the Audit Committee except in the meeting dated January 27, 2020. Noticees No. 1, 2, and 3 have denied this allegation and relying upon minutes of meetings of Audit Committee held on October 12, 2019 and January 27, 2020 asserted that the transaction in question was reviewed in Audit Committee meeting held on January 27, 2020 as per Regulation 23 of the LODR Regulations.

60. I note that there is no dispute that FRL and FEL are *related parties* with each other and purchase of *in-store infrastructure* assets through the eight slump sale agreements

between FRL and FEL was RPT under the provisions of LODR Regulations. Regulation 23 of the LODR Regulations provides for the requirements to be fulfilled with respect to approval of RPT. Sub-regulation (1) of Regulation 23 (as applicable in this case) provided that the listed entity shall formulate a policy on *materiality* of RPT and on dealing with RPT and a transaction with a related party is considered *material* if the transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

61. Sub-regulation (2) of Regulation 23 provides that 'all' RPTs shall require prior approval of the Audit Committee and under sub-regulation (3) Audit Committee may grant omnibus approval for RPT proposed to be entered into by the listed entity. Such omnibus approval shall be subject, *inter alia*, to the condition that the Audit Committee shall review, at least on a quarterly basis, the details of RPT entered into by the listed entity pursuant to each of the omnibus approvals given. Sub-regulation (4) provides that all '*material'* RPT shall require approval of the shareholders through resolution.

62. In this case, admittedly, on October 12, 2019, the Audit Committee of FRL granted omnibus approval for acquisition of fixed assets upto the value of Rs. 4,000 crores in one or more tranches at valuation based on independent valuation report backed by fairness opinion. Thereafter, the Audit Committee had met eight times on November 14, 2019, November 25, 2019, January 27, 2020, February 13, 2020, March 23, 2020, April 05, 2020, May 18, 2020 and May 27, 2020. It is noted that Audit Committee

meeting on October 12,2019 was within quarter October 01,2019 to December 31, 2019. Within this quarter one meeting of the Audit Committee was held on November 25, 2019. Thereafter, in the very first meeting of next quarter (i.e. January 01, 2020 to March 31, 2020) the RPT in question was admittedly reviewed by the Audit Committee of the FRL and in the next second quarter i.e. April 01, 2020- July 31, 2020 the transaction in question itself was executed on June 16,2020 and nothing remained for review by the Audit Committee.

63. I find that SCN proceeds on the premise that RPT transactions undertaken pursuant to omnibus approval of the Audit Committee should have been reviewed in each meeting of the Audit Committee whereas Regulation 23(3) does not mandate review of RPTs in each meeting of Audit Committee nor does the policy of FRL require this to be done. Since the RPT in this case was admittedly reviewed in meeting of the Audit Committee of FRL held on January 27, 2020 i.e. the first meeting of the next quarter after the omnibus approval was given in last quarter on October 12, 2019, I don't find fault with regard to review of this RPT by the Audit Committee of FRL and question of non-compliance of provisions of Regulation 23 of the LODR Regulations in this regard by FRL and turn by Noticees No. 1 to 3 as alleged does not arise at all.

Non-disclosure of slump sale agreements in the Annual Report.

64. The third basis is non-*disclosure of execution of* eight slump sale agreements in June 2020, in the Annual Report of FRL in FY 2020-21. The SCN in para 5.30(iv) alleges that no disclosure was made by FRL in its Annual Report for the FY 2020-21 with respect to execution of eight slump sale agreements. In this respect, Noticees No. 1, 2

and 3 have stated that the slump sale agreements did not impact or had the potential to impact, either directly or indirectly its management or control.

65. As mentioned in previous paras, FRL has made appropriate disclosures before the stock exchanges with respect to the raising of monies and the purchase of in-store infrastructure assets before the stock exchanges as mandated under the LODR Regulations. Nothing has been mentioned with respect to the specific provisions of Regulations mandating such disclosure in the Annual Report of the listed entity. Be that as it may, Regulation 34(3) of the LODR Regulations provides that the Annual Report of a listed entity shall contain disclosures specified in Companies Act along with other requirements as specified in Schedule V of LODR Regulations. The LODR Regulations, as it was applicable then did not oblige in any way the disclosure of agreements in the nature of slump sale agreements. It is only by the SEBI(Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 which came into effect from July 15, 2023, that Clause G has been inserted to Schedule V of the LODR Regulations obliging upon a listed entity to disclose the '*Information disclosed under clause 5A of paragraph A of part A of Schedule III' of the LODR Regulations'*. Clause 5 of Para A of Part A of Schedule III, *inter alia*, now mandates disclosure of Agreements which impact the management and control of the listed entity which are binding and not in normal course of business. Therefore, this, allegation *qua* FRL is not established.

Non-disclosure of the 'Assumed Liabilities.'

66. The fourth basis that FRL failed to disclose the '*Assumed Liabilities'* is also not supported by any legal backing as there exists no legal requirement mandating to

disclose a detailed break-up of the consideration value in a slump sale. I find that LODR Regulations do not impose obligation to disclose transaction details at the level of granularity alleged by SEBI. I find there to be no requirement to disclose such assumed liabilities as per the LODR Regulations. Thus, the allegations in this respect also does not survive.

The total consideration for in-store infrastructure assets was merely Rs. 0.99 Crore

67. The fifth limb of the allegation is that as per the Slump Sale Agreements, the total purchase consideration to be paid by FRL to FEL for *in-store infrastructure* assets was merely Rs. 0.99 Crore. The Noticees have contended that the SCN in many places agrees that total amount of consideration for *in-store infrastructure* assets payable by FRL to FEL was Rs. 3619.67 crore and have provided break-up of the same. I note that it is admitted position that total consideration for purchases of *in-store infrastructure* assets by FRL from FEL was Rs. 3619.67 and not merely 0.99 crore as alleged. It is also an admitted position that on January 28,2020 FRL paid Rs. 3,559.68 as advance for purchase of *in-store infrastructure* assets. This payment was admittedly disclosed by FRL in its Annual Report. I note that the consideration amount mentioned in the Slump Sale Agreements was after adjusting Rs. 3,559.68 crore paid by FRL to FEL on January 28, 2020. This fact has also been acknowledged in Para 5.1 of the SCN itself wherein it is noted that in the notes to accounts for FY 2019-20, it has been mentioned that '*Capital work in progress includes amount paid of Rs. 3,559.68 crore towards acquisition of in-store infrastructure*'. Thus, this basis also does not survive in view of the admitted position in the SCN itself.

68. Considering above discussed basis, I hasten to add that with regard to levelling charge it is settled position of law that grave suspicion is sufficient. If the material discloses a grave suspicion against the Noticees that has not been properly explained, the charge can be leveled. The test is whether a *prima facie* case is made out. However, the charge cannot be leveled based on impression or anxiety.

Mismatch in number of stores considered for valuation.

69. The sixth limb of the allegation (in Para 5.14 of the SCN) is that though the valuation was carried out by GT for 370 stores and MS for 471 stores but actual in-store assets purchased by FRL from FEL is 572 stores. In this regard, Noticees No. 1, 2 and 3 have submitted that the GT carried out valuation of 370 stores whereas for subsequent valuation by MS, the number of stores was 378. GT gave the valuation of Rs. 4114 Crores whereas MS gave valuation of Rs. 3951 Crores. The figure of 471 stores for variation in the number of stores between the valuation report of GT and MS is due to double counting of 93 stores. The total number of stores for which assets were acquired by FRL under the slump sale transaction were 266, explicitly mentioned in the respective agreements.

70. It is noted that in the list of assets mentioned in the MS report there appear to be a separate valuation of assets of certain stores. The valuation of the second entry is much lower than the valuation of the stores in the first entry as follows:

Store Name	Air Conditioner	Computers	Electrical Installation	Furniture & Fixture	Leasehold Improvement	Office & Equipment	Plant & Equipments
BB- BENGALURU-SOUL SPACE AREA	2,12,69,129	11,12,362	2,35,07,823	6,14,59,047	2,36,74,693	7,27,575	29,75,648
BB- DEOGHAR- SUBHASH ROAD	1,51,15,441	5,04,148	1,14,30,358	3,01,61,213	2,01,72,330	1,19,135	4,41,044
BB- KEONJHAR- KTM MALL	1,31,20,493	13,65,431	1,22,56,182	3,04,84,156	1,53,71,528	6,20,900	11,93,481
BB-AGARTALA-RUPESHI CINEMA	1,59,68,053	11,86,404	1,18,08,543	3,23,42,424	1,64,69,188	1,47,877	4,78,139
BB-AHMEDABAD-ACROPOLIC MALL	2,72,46,278	7,44,237	2,15,95,477	5,73,06,294	2,29,36,376	2,64,800	42,74,833
BB-AHMEDABAD-AGORA MALL	1,35,35,313	2,42,884	88,39,765	2,68,72,794	82,95,677	60,993	8,80,930
BB-AHMEDABAD-ALPHA ONE	4,61,30,256	5,14,047	6,30,57,123	16,94,85,917	6,57,87,385	11,01,492	5,48,525
BB-AHMEDABAD-HIMALAYA MALL	1,90,67,706	4,93,659	1,41,85,124	2,86,97,121	2,27,04,715	4,05,361	6,88,254
BB-AHMEDABAD-KANKARIA	3,24,73,329	4,45,679	1,60,48,943	3,78,38,336	2,50,48,370	1,21,279	8,74,288
BB-AHMEDNAGAR-MANMAD HIGHWAY	1,48,21,788	27,43,858	1,00,76,981	2,81,72,819	1,77,93,153	4,53,294	5,44,169
BB-AJMER-OASIS MALL-PANCHSHEEL	1,05,65,514	5,29,233	55,44,332	1,85,49,943	1,11,78,297	1,56,837	6,70,826
BB-ALLAHABAD-CIVIL LINE	1,65,71,795	20,51,153	1,69,72,349	3,89,04,957	2,66,94,351	4,28,272	21,24,036
BB-AMBALA-RAI MARKET-MINERVA C	1,23,91,518	11,23,931	77,95,549	2,22,04,724	1,68,52,329	1,50,687	5,82,805
BB-AMBALA-RAI MARKET-MINERVA COMPLEX		25,811		72,273	4,881		
BB-AMRITSAR-TRILIUM MALL	2,29,99,836	8,61,340	2,07,65,183	5,28,05,140	2,56,04,332	3,85,341	12,48,282
BB-ASANSOL-GALAXY MALL-BURNPUR	1,17,46,249	20,41,560	87,99,944	2,36,18,232	1,47,07,484	5,27,847	4,89,085
BB-ASANSOL-GALAXY MALL-BURNPUR ROAD		31,374	12,645	65,078		22,794	3,24,252
BB-ASANSOL-SENTRUM MALL	58,38,584	6,11,799	94,90,512	2,30,96,941	71,31,890	3,78,611	16,83,548
BB-AURANGABAD-PROZONE MALL	3,43,95,108	13,12,373	3,36,82,695	8,16,24,031	3,34,04,790	12,63,082	31,58,672
BB-BADDI-HOMELAND CITY MALL	1,28,35,003	5,36,794	98,69,876	2,25,43,886	1,49,82,578	34,106	5,10,897
BB-BARASAT-SUN CITY MALL	1,31,39,298	6,73,962	1,30,40,534	3,33,48,185	1,69,31,821	2,19,652	16,39,235
BB-BAREILLY-PHOENIX MARKET CIT	1,86,36,248	4,40,431	1,10,17,129	3,03,59,242	1,98,26,766	92,552	9,61,287
BB-BAREILLY-PHOENIX MARKET CITY		42,678	1,94,259	9,82,928	2,63,529	85,593	22,245

71. For example, in the above table, "BB-AMBALA-RAI MARKET-MINERVA C" and "BB-AMBALA-RAI MARKET-MINERVA COMPLEX", "BB-ASANSOL-GALAXY MALL-BURNPUR ROAD and "BB-BAREILLY-PHOENIX MARKET CITY" and "BB-BAREILLY-PHOENIX MARKET CITY" are double entries. However, such double counting of stores did not substantially affect the valuation as the value of these stores and the assets of these stores were not counted twice by MS, as reflected in the above table. I find merit in submission that the slight difference in variation of number of stores could be due to difference in asset base, time difference due to charging of depreciation and change of number of stores, closure of stores and opening of new stores and the method of valuation.

72. I note that Para 5 of the Slump Sale Agreements titled "ASSETS" deal with the transfer of stores / assets as listed in Schedule I of thereof to FRL. Para 7 of Schedule V of the Slump Sale agreements provides for transfer of *All Insurance Policies relating to Acquired Business and/ or Assets of Acquired Business by the Seller to the Purchaser along with the rights, benefits and obligations therein.*

73. In view of the aforesaid and also as submitted by the Noticees No. 1, 2 and 3, the number of stores mentioned in Schedule V of the slump sale agreements are not relevant for the purpose of the determination of value of the stores being sold from FEL to FRL. Similarly, the number of stores mentioned in the two audit reports (GT mentioned 370 stores while MS mentioned 471 stores) are also not relevant for the purpose of sale of stores in view of the slump sale agreement itself specifying the details of stores and their assets being transferred. However, there is ambiguity as the total number of stores as per Schedule I of the Slump Sale Agreements (266 stores) are significantly lesser and contradicted by the number of stores as per FRL response to SEBI dated July 18, 2022 (572 stores). Be that as it may, this fact is not the foundational fact for the allegations.

Noncompliance of NoC issued by Central Bank of India

74. The seventh basis is that vide NoC dated November 26, 2019, Central Bank of India granted permission to FEL to sell the impugned assets subject to the condition that the sale consideration net of taxes had to be utilized for repayment/ reduction of debt. However, SCN is silent as to the consequence of non - compliance of NoC by FEL and connects this basis with issue of disclosures of RPT i.e. the funds received by FRL from FEL. The condition between Central Bank of India and FEL and its consequences are matters to be seen elsewhere between them and SCN does not deal with the same. Hence, this basis for allegation against FRL and in turn against Noticees No. 1 to 3 does not hold good.

Non- Disclosure of RPT (transaction between FRL and FEL) by FRL.

75. The last basis is that M/s Gupta Lodha & Co. (CA firm) wherein Mr. Ashish Lodha is a partner, certified that FEL utilised the advance of Rs. 3,559.70 crores received from FRL as following: -

Table No. 5 – Details of bonds/ notes

Sr. No.	**Particulars (Utilisation of funds)**	**Amount (in Rs. crore)**
1.	Non-Convertible Debentures	1,167.00
2.	Term Loans	676.00
3.	Short Term Loans	235.00
4.	Commercial Papers	130.00
5.	Working Capital Loans including Peak Limit	355.00
6.	Net Working Capital, Vendors' payments, Ongoing Capital Expenditure, Other deposits etc,	997.00
Total		3560.00

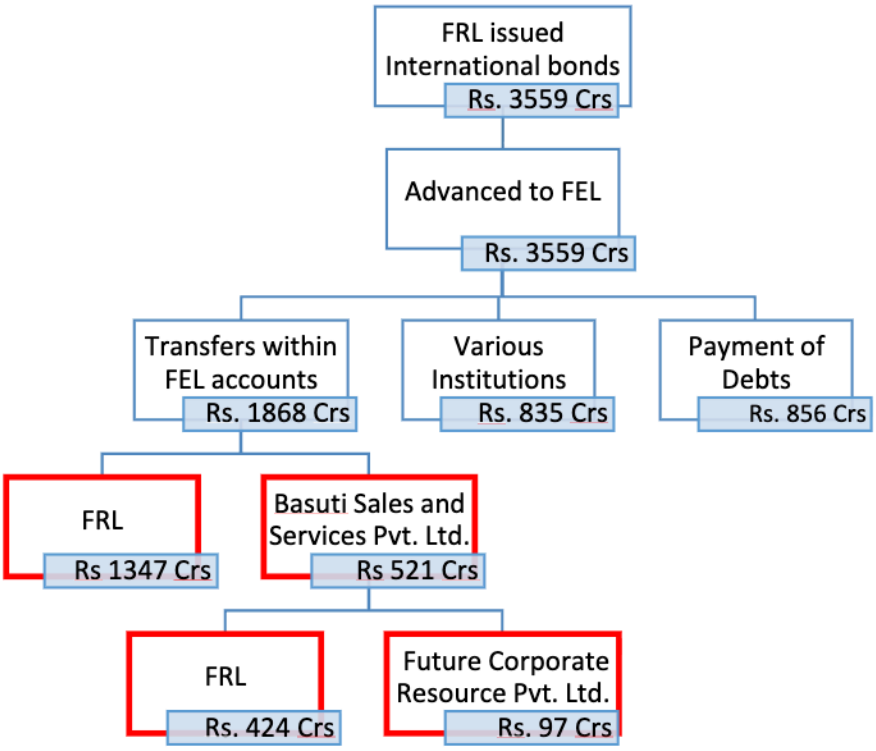
76. Ashish Lodha, confirmed that he had issued the certificate for Rs 750 towards fees for the same. Further, in order to provide the said certificate, he was given online access to the desktop in FEL and was shown the key documents including ledgers reflecting the utilisation of funds, pdf copies of the bank statements, sample RTGS instructions, sample vendor invoices, excel working for the certifications. Asish Lodha has also stated that he received an email containing the certificate to be certified by him. Then on call, one Rohit had told him that the certificate was attached in email for certifying.

77. The IR and SCN both are silent as to who was Rohit? and whether a pre-written certificate was issued by the CA firm at the behest of FRL or the Noticees? No question has been asked as to how the CA firm certified on a pre- written certificate and charged only Rs. 750/- as its fees? In fact, the SCN does accept the veracity of this certificate and alleges only that it was issued without due diligence, like

verification of bank account statement, third party confirmation etc., by the CA firm. According to the Noticees, the certificate was issued by the CA firm during the peak COVID-19 period, when severe restrictions on movement were in place. Consequently, physical verification of documents was neither feasible for the CA Firm. In these exceptional circumstances, the CA Firm undertook online verification of records, which it considered satisfactory and sufficient for the purpose of certification. Moreover, the certificate was issued only after FRL had transferred the advance purchase consideration of INR 3,559 crore to FEL, certifying utilisation of those funds by FEL towards repayment of its debt. I find that the SCN is completely vague as regards fault on the part of the Noticees in such certification and does not make the CA firm or FEL a party in these proceedings. There is not even a whisper in the SCN if such certificate was managed one by FRL or it was a false certificate so as to conceal anything material with respect to purchase of agreed number of *in- store infrastructure* assets from FEL.

78. In view of the observations in the IR and allegations in the SCN, the determination in these circumstances is limited to ascertain as to whether FRL and in turn the Noticees No.1 to 3 failed in their disclosure obligations as alleged in the SCN. As regards FRL, it has been submitted by Noticees No. 1 to 3 that it had independently utilised the proceeds from the USD 500 million Singapore bonds strictly for the purposes stated in the offer document and in accordance with the objects of the bond issue. According to them, those disclosures expressly set out the intended purpose for the utilisation of funds raised through the issuance of bonds.

79. Indubitably, FRL paid total advance of Rs. 3559.70 Crores out of the proceeds of the Singapore bonds to FEL. It is also noted in the IR that the FRL purchased and was already in possession of all *in-store retail infrastructure* assets described in 8 Slump Sale Agreements. Thereafter, Rs. 1,347 Crore was directly received by FRL from FEL and Rs. 521 Crore was received by it through Basuti. Thus, Rs. 1,770 Crore (around 50% of the total advance of Rs. 3559.7 Crore) was utilized by FRL towards repayment of its own debt. A pictorial representation of the above fund movement is as follows:



Note: *Indicates movement of funds not as per NoC issued by Central Bank of India*

80. This was in variance to the disclosure dated January 15, 2020 made by FRL to the exchanges that the proceeds will be utilized to meet the capital expenditure for the acquisition of *in-store retail infrastructure* assets. The Noticees have failed to explain as to how said Rs. 1770 crores were received back by FRL from FEL for the said disclosed purposes. According to Noticees No. 1, 2 and 3 the amount of Rs. 1,347

Crore received by FRL from FEL was return of advance payments to FRL as FRL frequently made advance payments to FEL for sourcing merchandise and lease-related obligations which were subsequently adjusted or returned in the ordinary course of business.

81. From the records, it is noted that security deposit of Rs. 75 Crore made by FEL to FRL was disclosed by FRL in RPT disclosures in FY 2016-17 and the same was repaid during FY 2017-18. However, there was no disclosure of any advance given/ repaid in Annual Reports of FRL during FYs 2015-16 to 2020-21 i.e. when any advance was given or returned as claimed. Further, the transactions disclosed between FRL and FEL during FY 2018-19 and 2019-20 were only with respect to purchase of goods and services by FRL from FEL and not *vice versa*. Thus, FRL had to make payment to FEL for discharging its obligation for purchase of goods and no consideration was expected to be received from FEL in these financial years. Further, there are no disclosures of transaction of loan given/ taken, inter-corporate deposit given/ received between FRL and FEL, by either of the entities in FYs 2018-19, 2019-20 and 2020-21. Neither of the auditors have highlighted any such transaction as contended. These Noticees have not substantiated their claims by any documentary evidence such as the bank transactions or minutes of the meetings of the board of directors of FRL or the Audit Committee.

82. Admittedly, FRL and FEL are enterprises over which KMPs were able to exercise '*significant influence'* for the FYs 2018-19 and 2019-20 and for FY 2020-21 they disclosed each other under category *"Other Related Parties"*.

83. In this case, FRL /Noticees No.1 to 3 did not make any such disclosures about the amount of Rs. 1,347 Crores returned back by FEL to it being advance earlier paid by FRL to FEL. Therefore, I do not find merit in this claim of Noticees No.1 to 3 and hold that the allegation that the receipt of Rs. 1,347 Crore directly by FRL from FEL and Rs. 521 Crore through Basuti was not disclosed in RPT of FRL in Annual Report for FY 2019-20 is established. Further, these RPTs were never placed before the Audit Committee of FRL nor approved by it. I, therefore, find that FRL violated the provisions of Regulation 23(2) and 30(4) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations. FRL also failed to adhere to the principles enumerated in Regulation 4(1) (c), (g), (h), (i) and (j) of the LODR Regulations. Accordingly, Noticees No. 1, 2 and 3 are liable for these violations.

Misleading disclosures to holders of Singapore Bonds.

84. It has also been alleged that FRL has misled its bondholders by making incorrect and misleading disclosure and concealing the actual purpose with respect to utilization of funds. This allegation is the basis of Noticees No. 1, 2 and 3 have denied the allegation that FRL misled its bondholders by making incorrect and misleading disclosures and concealing the actual purpose with respect to utilization of funds.

85. I find that there is no allegation as to any misleading disclosures made to bondholders at the time of subscription. SEBI regulates private placement of bonds, in India particularly when they are listed or intended to be listed on a recognised stock exchange/s in India, through disclosure requirements, electronic book mechanisms, credit ratings, disclosure documents and specific listing on Indian Stock Exchanges. Further, the secured bond holders have subscribed on terms of coupon rate, security

and have right of redemption and stand higher in order of priority in case of insolvency of FRL. They are one of the stakeholders but neither do they enjoy rights nor are they exposed to the same risk as that of a shareholder- investor in FRL. Moreover, if any avoidance transactions, including allegation of carrying out business with intent to defraud creditors (including the bond holders) of FRL is observed by RP after filing of commencement of CIRP under Section 66 of the IBC, it is jurisdiction of NCLT to determine the truth on an application filed by the RP/ liquidator. Section 66 of the IBC does not provide for any look-back period as far as fraudulent transactions are concerned[15]. Fraudulent transactions under Section 66 have adverse and prejudicial impact on the ongoing financial position of the corporate debtor, which has slipped into CIRP/liquidation, and therefore, the concept of any look-back period or claw-back period is not be applicable. It is so because a transaction, done with a deliberate, culpable design, cannot be permitted to be washed of merely because the liquidation proceedings are delayed. Hence, the RP/liquidator in this case was allowed to retrieve/ repossess, without any limitation of time, and correct all the wrongdoings (if any) of any relevant point in time. In terms of Section 238 of IBC, it prevails over other Acts in these circumstances. In view of the fact that the FRL is undergoing liquidation process before NCLT, bondholders have remedy, if any, in that process.

86. Admittedly, the FRL paid Rs. 3559.70 Crores to FEL in advance towards purchase of *in-store infrastructure* assets from FEL and that the said *in-store infrastructure* assets were already in possession of FRL. The subsequent receipt of Rs. 1770 crores by FRL from FEL or default in making RPT disclosures with regard to same would also not

[15] *National Company Law Appellate Tribunal, Chennai ("**NCLAT**"), in the matter of **Mr. Thomas George v. K. Easwara Pillai and Others [Company Appeal (At)(Ch) (Insolvency) No. 293 of 2021],** order dated January 20, 2023.*

impact investment decision of bond holders as there is no additional risk caused to them if FRL retained the assets and also received back a part of consideration.

87. The SCN has not made out any allegation that any investor, Indian or foreign, traded or was induced to trade in those Singapore bonds on account of this non- disclosure by FRL. This transaction, in fact, could be a matter of concern for investors in FEL who invest in its shares based on information disclosures which is neither examined nor alleged. The allegation is merely absence of approval of Audit Committee and non- disclosure of RPT wherein *in- store infrastructure* assets have been acquired by FRL from FEL from the proceeds of Singapore bonds and money has also been received by FRL from FEL in a '*transaction'* which is RPT.

Consideration and findings regarding Part A(b) –

88. The allegation in this part is regarding:

(a) Non-disclosure of related party status of the seven entities for the FY 2019-20, namely Nishta, Acute, Ojas, Unique, Precision, Taquito and R.K.P; and

(b) Under-reporting/ non-reporting of RPT with respect to increase in security deposits during FY 2019-20 pertaining to 10 entities (aforesaid seven entities and FICL, FMNL and FCRPL).

89. The relevant observations of IR in support of this allegation are summarized as following: -

(a) The amount disclosed by FRL in its Annual Report under the head *"Security Deposit paid"* had increased from Rs. 1,935.45 Crore as on March 31, 2019 to Rs. 4,242.36 Crore as on March 31, 2021.

(c) The entities who had received funds from FRL had received them as advance payment/loan and not as a securities deposit as admitted by Noticee No. 3 in his statement before SEBI during investigation.

(d) Major portion of total such payment of funds was with related parties of FRL. The amounts payable to FRL from the respective 10 entities was as following:

Table No. 5 – Amount Payable to FRL

(Rs. in Crores)

Sr. No	**Name of Entity**	**As on 31.03.2020**	**As on 31.03.2021**
1	Acute Retail Infra Private Limited	330.13	333.39
2	R.K.P. Business Concepts Private Ltd	319.42	319.43
3	Future Corporate Resources Pvt. Ltd	317.84	..
4	Precision Realty Developers Pvt. Ltd	274.62	274.62
5	Ojas Tradelease and Mall Management Pvt. Ltd	257.37	235.36
6	Nishta Mall Management Company Pvt. Ltd.	253.79	254.44
7	Unique Malls Pvt. Ltd.	-(*)	226.01
8	Taquito Lease Operators Private Ltd	54.87	61.63
9	Future Ideas Company Ltd.	116.45	107.57
10	Future Market Network Limited	129.01	101.75
	Total	**2,053.5**	**1,914.2**
	% of Total Security Deposits paid by FRL	**53.45%**	**53.71%**

(e) Out of 10 entities, only three entities [viz. Future Ideas Company Limited (FICL), Future Market Networks Limited (FMNL) and Future Corporate Resources Pvt. Ltd (FCRPL)] were disclosed as related parties of FRL in its Annual Report for FYs 2016-17 to 2020-21. Four entities viz. Nishta, Acute, Ojas and Unique, were

disclosed as related parties in Audit Committee Meetings while taking omnibus approval in FYs 2019-20 and 2020-21, however, they were not disclosed as related parties in the related party list of FRL in terms of Para 14 of Ind AS 24 in FYs 2019-20 and 2020-21. However, 7 such entities were not disclosed by FRL as its related party in its Annual Report for FY 2019-2020. These entities are in substance related parties of FRL whose Board of Directors, managing director or manager were accustomed to act in accordance with the advice, directions or instructions of a director or manager of FRL.

(f) From the Ministry of Corporate Affairs ('MCA') database, it was observed that all these entities (except Acute, Unique and FMNL) booked revenue till FY 2020-21 i.e. till FRL was continuing its operations. From, FY 2021-22, most of the said entities had not filed their financials or those who have filed had nil/negligible revenue. Thus, majority of the revenue from operations of these companies (except FMNL) was linked to the operations of FRL. The directors of these entities at the time of investigation have stated to have no information with respect to business transaction of these companies. Based on these factors, SCN alleges that these six entities and FRL were related parties in Para 9 (b)(vii) of Ind AS 24.

(g) The non-disclosure of seven entities are related parties and their respective transactions as RPTs in the financial statement had led to the financial statements of FRL, not presenting true and fair view of its affairs and thus, not being in compliance with accounting standard Ind AS 24 under LODR Regulations.

(h) The amount expected to be received by FRL from FCRPL as on March 31, 2020, was Rs. 86.39 Crore. However, as per the disclosure made by FRL in its Annual

Report for FY 2019-20, the actual amount to be received by FRL from FCRPL was Rs. 317.85 Crore.

(i) FCRPL was the only entity disclosed in the category "*Entity able to exercise significant influence*" by FRL in its Annual Reports. Further, only purchase and sale of goods and services between FCRPL and FRL were disclosed as RPTs, and no transactions were disclosed in form of advance or security deposit made by FRL to FCRPL during FYs 2016-17 to 2020-21. Thus, the disclosures made in the Annual Report of FRL were incorrect/false and misleading.

(j) The transactions of FRL with these 10 entities, in substance were RPTs and accordingly, the security deposits/advances given by FRL to these entities required prior approval from the Audit Committee in terms of Regulation 23 of LODR Regulations and also disclosure in the financial statement but FRL neither took approval from its Audit Committee nor disclosed these transactions as RPTs.

Consideration of replies and findings on Part A(b).

90. As per the SCN the details of security deposit with respect to the 8 entities, viz. Allfab, NDIL, Bansi, Anant, Nice, FBL, Syntex and RTVPL, and for FCRPL for the FY 2020-21 and Unique for FY 2019-20 could not be verified in IR/FAR due to non-receipt of information. I, accordingly, proceed as per information brought on record. It is admitted position (Para 5.54 of the SCN) that three entities *viz*. FICL, FMNL and FCRPL were disclosed as related parties of FRL in its Annual Report for FYs 2016-17 to 2020-21. The SCN (in Para 5.65.6), however, alleges that disclosure of FMNL, FICL and FCRPL as "Other Related parties" in FY 2020-21, by FRL, was not in

compliance with Para 19 of Ind AS 24. It is pertinent to note that category "*Other related Party"* is also a subset of *Related Party* and transaction with *Other related parties* also attract same requirements and applicable accounting standards. In this case, the crux of the allegation, is, thus, as to whether: -

(a) seven entities (*viz*. Nishta, Acute, Ojas, Unique, Precision, Taquito and R.K.P) are *'related parties'* of FRL to be disclosed in Annual Report of FRL for FY 2020-21; and

(b) whether for the security deposits/ advances given by FRL to the 10 entities (aforesaid seven entities and FICL, FMNL and FCRPL) were RPTs requiring approval from the Audit Committee and the amounts outstanding to these Major Parties were to be disclosed in the Annual Report of FRL for the FY 2020-21.

91. According to the Noticees No. 1, 2 and 3 (also as per submissions of Noticees No. 3, 4, 6 and 8 during investigation) the reason for increase of security deposit was purchase of new store premises and store infrastructure from other store owners during the relevant period. From the working paper/audit file of the statutory auditor, SEBI itself noted that the total amounts mentioned in that worksheet as security deposit were broadly tallying with the amount disclosed in the Annual Report for FY 2019-20, thus, enhancing its credibility/accuracy.

92. Noticees No. 1, 2 and 3 have contended that: -

(a) All the *unrelated parties* have become subsidiaries of FEL pursuant to conditional acquisition of shares under scheme of arrangement dated August 29, 2020. Also,

since this scheme was not implemented all such shares were transferred back to the original shareholders in April 2023 snapping the limited *related party* connection totally. As per them, due to the conditional nature of the share acquisitions and the subsequent re-transfer upon non-implementation of the scheme the impugned transactions do not constitute RPTs.

(b) These parties continued to be operating independently and were not under the control of FEL, except for the purposes of giving consent with respect to the Scheme of Arrangement entered into with various Future Group Companies. Further, the majority of security deposit transactions with these entities occurred prior to these entities becoming conditional related parties, thus, not required to be reported as RPTs. Also, all these transactions were recorded in the financial statements. The assertion in FAR that certain entities should be classified as *related parties* under the Companies Act and Ind AS 24 is based on an overly broad interpretation of the accounting standards.

(c) In reality, these entities functioned as independent vendors and service providers without any controlling influence either from FRL or Directors/Promoters of FRL, thereby not meeting the criteria to be classified as related parties under the applicable regulations. FRL had made disclosure of the Scheme and in that all such parties have been incorporated and identified as related parties since for this limited purpose only they have agreed to become step down wholly owned subsidiary companies of FEL.

(d) All the transactions were duly recorded and transparently disclosed in FRL's financial statements, demonstrating full compliance with regulatory requirements.

Further, the increase in security deposits/ loans/ advances given to these entities were in the normal course of business and as such did not warrant disclosure.

(e) Relying upon SEBI order No. WTM/KV/CFID/CFID-TPD/31671/2025-26 dated September 18, 2025, it has been contended by Noticees No.1,2 and 3 that in order to make such allegations that FRL and other entities are related parties, there must be existence of control/significant influence in decision making of one entity by another. Relying upon order dated January 16, 2026 of Hon'ble SAT, in the matter of ***Bombay Dyeing and Manufacturing Company Ltd. & Anr. v. SEBI***[16] that in order to justify piercing the corporate veil, following conditions must be established:

i. Control of the company by the alleged wrongdoer; and

ii. Use or misuse of the company as a device or façade to conceal wrongdoing.

93. In order to deal with rival stands in this regard it is germane to examine the scope of the concept *"related party"* and *"related party transactions"* under the LODR Regulations. As per Regulation 2(1) (zb) of the LODR Regulations (as applicable to the transactions in this case) *"related party"* means "*a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:*

Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party."

[16] *Appeal No. 838 of 2022*

94. Sub-section (76) of Section 2 of the Companies Act provides the definition of *related party* as following: -

"related party", with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venture of the company.

Explanation. —For the purpose of this clause, "the investing company or the venture of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate;

(ix) such other person as may be prescribed;"

95. Ind AS 24 provides the accounting standards for '*Related Party Disclosures*'. This Standard requires disclosure of related party relationships, transactions and

outstanding balances, including commitments, or significant influence over, an investee presented in accordance with Ind AS 110 according to which an investor controls an investee when it has the power to direct relevant activities, exposure to variable returns, and the ability to use its power to affect its returns.

96. Para 9 of Ind AS 24, defines "*related party*" as a person or entity that is related to the entity that is preparing its financial statements (reporting entity). In terms of Para 9(b)(vii) of Ind AS 24, an entity is related to a reporting entity if a person having control or joint control of the reporting entity has significant influence over the entity. This relation is also defined in terms of control or significant influence or group entity or joint venture or associate or being a KMP of the reporting entity or of a parent of the reporting entity. As per Para 11 of Ind AS 24 '*providers of finance'* are not treated as *related parties* by virtue of their normal dealings with an entity even though they may affect the freedom of action of any entity or participate in its decision making process. This principle finds place in Ind AS 18 also.

97. **Significant influence** is the power to participate in the financial and operating policy decisions of the investee but is not control or joint control of those policies**.** An investor can have power over an investee even if other entities have existing rights that give them the current ability to participate in the direction of the relevant activities, for example when another entity has significant influence. However, an investor that holds only protective rights does not have power over an investee and consequently does not control the investee. As per, Ind AS 28, significant influence exists where an entity holds, directly or indirectly (e.g. through subsidiaries), 20% or more of the voting power of the investee, it is presumed that the entity has significant

influence, unless it can be clearly demonstrated that this is not the case. Conversely, if the entity holds, directly or indirectly (e.g. through subsidiaries), less than 20 per cent of the voting power of the investee, it is presumed that the entity does not have significant influence, unless such influence can be clearly demonstrated. A substantial or majority ownership by another investor does not necessarily preclude an entity from having significant influence. The control/ joint control / significant influence etc. are fact specific and cannot confined in a *strait- jacket* formula.

98. I note that after examining provisions of LODR Regulations, as applicable in this case also, definition of *'related party'* in Section 2(76) of the Companies Act, 1956 and Ind AS 24, SEBI in Para 44 of its order No. WTM/KV/CFID/CFID-TPD/31671/2025-26 dated September 18, 2025, held as under: -

> *" .. as per the plain reading of the Listing Agreement or the LODR Regulations,* ***if the Noticee no. 3 is to be the related party of the Noticee no. 1 or the Noticee no. 2, there should be control/significant influence in decision making, of one entity by another. Or it should be part of same group or a joint venture.*** *This is not alleged in the SCN. In fact, it is not an allegation in the SCN that the Noticee no. 3 is the related party of the Noticee no. 1 or the Noticee no. 2. Thus, it is held that the Noticee no. 3 is not a related party of the Noticee no. 1 or the Noticee no. 2."*

99. Considering the basis of making these 6 entities as *'related party'* of FRL in SCN and going by the above stand of SEBI in similar facts, if Nishta, Acute, Ojas, Unique, Precision, Taquito and R.K.P are to be treated as the related party of the FRL, there should be control/significant influence in decision making, of one entity by another or

they should be part of same group or a joint venture. In this case, four entities, namely, Nishta, Acute, Ojas and Unique were disclosed as *related parties* when Audit Committee of FRL granted omnibus approval for maximum amounts of one crore or more than one crore for FY 2019-20 for them, except Nishta for which initial maximum amount was 5 Lakhs but this was subsequently increased by the Audit Committee to 6 Crores for FY 2020-2021. The SCN in Para 5.43/5.44 shows connection between FRL and 7 entities, *viz*; Nishta, Acute, Ojas, Unique, Precision, Taquito and R.K.P. The six entities Nishta, Acute, Ojas and Unique, Precision and Taquito were acquired by Futurebazaar India Limited, a 100% subsidiary of FEL on August 29, 2020, i.e. these entities were made *"step down subsidiaries"* of FEL, which was disclosed as *related party* of FRL in FY 2020-21. It is a matter of record that these entities have booked revenue till FY 2020-21 and have not filed their financials or have stated to have nil/ negligible revenue from FY 2021-22. It is also not denied by the Noticees that the majority of revenue from operations of these companies (except FMNL) was linked to the operations of FRL.

100. The directors of these entities had admitted (Ref: Annexure 18 of the SCN) during investigation that:

(a) They were not aware of any security deposit received from FRL. They were name lenders. They were employees of Future Group and were reporting to Noticees No. 1/ people who were reporting to Noticees No. 1 and were well aware that Noticee No. 1 and his family were at the helm of affairs of these entities.

(b) They were not involved in the day to day operations of the concerned company and received a sitting fees for being director.

(c) They used to provide their signatures as per the directions of Future Group employees/ KMPs and did not attend nor convened any meeting of these entities.

101. It is further noted that these directors were not having any managerial experience or exposure in the concerned entity and were namesake directors. For example;

(a) Mr. Bhavesh Savdas Wadhel, Ex-Director of Acute was a driver of the Future Group and was made a namesake director in-lieu of payment of Rs. 15000 per quarter. He was introduced by Sharad Rustagi. He had no responsibility and had never handled any work of Acute. He did not attend any meeting for this company and did not know other directors of Acute.

(b) Similarly, Mr. Rajesh Jagannath Sali, Ex-Director of Unique was self-employed and doing computer repair works. He was also introduced by Sharad Rustagi. Apart from Unique he was also made director by Mr. Sharad in two more companies – Ramuka Textiles and Vishnu Velan. He was only a namesake director in these two companies. He never attended any meetings for Unique. He used to receive balance sheet, director acceptance, etc papers of Unique for signing at home and signed them without understanding. The other director in the two companies in Unique Mall and Nufuture Digital was Mr. Satish Chandra More, who is a music

composer and was also made director by Sharad Rustagi. He had no role in these companies except signing few papers.

(c) Sharad Rustagi, Ex-director of Ojas was associated with Future Group through his audit services. He became director by his own wish in 4 companies – FLFL Brands Ltd., Ojas Tradelease, Nufuture Digital and Galaxy Cloud Kitchen. He was non-executive/Independent director. Noticee No.1 and his family was handling and managing operations of these companies. These companies are future group companies. There were many such companies being managed by these people. Similar statements have been given by the other directors of these seven entities as well. The statement given by them on oath have not been denied/ disputed by the Noticees.

102. I, therefore, find that it was Noticee No. 1 who was taking decisions in FRL as well as was person calling the shots for these seven entities. As such, there existed control/ significant influence of FRL in decision making (through Noticee No. 1 as its Chairman and Director) of these seven entities. The submissions regarding the entities being independent and conditional *related parties* are in stark contrast to the above finding that these entities were accustomed to act under the significant influence of Noticee No. 1 even before the scheme of arrangement approved on August 29, 2020. I note that father of Noticee No. 1 was the director of R.K.P for the FYs 2019-20 and 2020-21. Accordingly, I hold that R.K.P was a *related party* of FRL in terms of Para 9(b)(viii) of Ind AS 24 for the FYs 2019-20 and 2020-21.

103. I, therefore, find that the above said 10 entities (viz. FICL, FMNL, FCRPL, Acute, R.K.P, Precision, Ojas, Nishta, Unique and Taquito) were *related parties* with FRL for the FY 2020-21. Para 14 of Ind AS 24 provides that a *related party* relationship between two entities should be disclosed even if there are no transactions between the parties if there is existence of control relationship between parties. Accordingly, FRL was required to disclose all these 10 entities as its related party in its Annual Report of FY 2020-21. However, it had disclosed only 3 entities viz. FICL, FMNL, FCRPL FCRPL) as such. Thus, it violated Regulation 34(3) read with Clause 1 of Part A of Schedule V read with Regulation 48 and Ind AS 24 Para 14.

Related Party Transactions.

104. The Noticees have relied upon '*substance over form'* principle with regard to the impugned securities deposits between FRL and aforesaid 10 entities. Hence, this principle also requires close examination.

105. Regulation 2(1) (zc) of the LODR Regulations (as applicable then) defines *related party transaction* as a transfer of *resources, services or obligations* between a listed entity and a *related party*, regardless of whether a price is charged and a "*transaction*" with a related party shall be construed to include a single transaction or a group of transactions in a contract. Para 10.2 of Ind AS 18 defines *"related party transactions"* as transfer of *resources or obligations* between related parties, regardless of whether or not a price is charged. A similar definition is in Ind AS 24 (Clause 9). While LODR Regulations, as it existed then, refers to related party transaction between a *"listed company"* and its '*related party'*, Ind AS 24 refers to RPT between any company and its '*related party'*.

106. ***'Substance over form'*** is an accounting principle in Para 10 of the Ind AS 24, which mandates accurate financial reporting by an entity, irrespective of the legal form of the transaction rather based on underlying economic substance of a transactions. In the aforesaid Order No. WTM/KV/CFID/CFID-TPD/31671/2025-26 dated September 18, 2025, SEBI held that concerned party in the transaction in question were not *'related party"*. Then, the order went to examine whether the transaction between a party with *unrelated party* which benefits related party of the first entity is covered within the definition of *"related party transactions?*" Or whether indirect transactions between two related parties through an unrelated party can be considered as "*related party transactions*?"

107. It was concluded in Para 47 of the said order that *it can be seen that on plain reading of the provisions, for the time under discussion, only transactions between related parties are sought to be covered within the definition of the term "related party transactions"*. SEBI held that whether *'substance over form'* doctrine can be invoked would depend whether the transaction is genuine or avoidant. In that case, it was found that there was no doubt that Noticee had given reasons for undertaking the commercial transactions, loan along with interest had been paid back before the start of the investigation and there was no allegation in the SCN about siphoning off money from the company or to cause loss to shareholders. Thus, Noticees had made out a good case for not invoking *'substance over form*' doctrine. The order dated September 18, 2025, concluded that even if the principle of *'substance over form'* was invoked there was no violation of LODR Regulations as the Regulations as existed then did not intend to cover transactions between unrelated parties.

108. In contrast, in the instant case, it is established that the funds (resources) were transferred by FRL to its 10 related parties for FY 2020-21. On perusal of the Annual Report of FRL for FY 2020-21, it is noted that there were no disclosures of RPTs in the nature of payment of security deposit. Relevant portion of the Annual Report of FRL for FY 2020-21 in this respect are reproduced as following:

Related party transactions as per the notes forming part of the financial statements in the Annual Report of FRL for FY 2020-21

2. Transaction with Related Parties

Sale of Goods and Services to Subsidiary Companies ₹ 0.19 Crore (2020 ₹ 4.36 Crore) , Joint Ventures ₹ Nil Crore (2020 ₹ 4.85 Crore) ,Other Related Parties ₹ 252.53 Crore (2020 ₹ 254.19 Crore). Purchase of Goods and Services from Subsidiary Companies ₹ 1.75 Crore (2020 ₹ 0.00 Crore) ,Other Related Parties ₹ 1,515.40 Crore (2020 ₹ 7,272.38 Crore), Sale of Fixed Assets to Other Related Parties ₹ Nil (2020 ₹ 17.48 Crore). KMP/Relatives ₹ 0.02 Crore (2020 ₹ 0.02 Crore). Equity Share Warrant Money ₹ 1.50 Crore (2020 ₹ 746.10 Crore) Managerial Remuneration to KMP ₹ 8.47 Crore (2020 ₹ 10.77 Crore). Sitting Fees to KMP ₹ 0.92 Crore (2020 ₹ 2.65 Crore). Investment in Subsidiaries ₹ Nil (2020 ₹ 15.00 Crore). Receivable (Net) from Subsidiaries ₹ 8.82 Crore (2020 ₹ 7.42 Crore), from Joint Ventures ₹ 3.48 Crore (2020 ₹ 4.61 Crore) , from Other Related Parties ₹ Nil (2020 ₹ 3199.29 Crore). Payable (Net) to Other Related Paries ₹ 1514.26 Crore (2020 ₹ 990.28) , KMP/Relatives ₹ 0.03 Crore (2020 ₹ Nil)

3. Significant Related Party Transactions

A Sale of Goods and Services includes FEL ₹ 208.52 Crore (2020 ₹ Nil) TNSIPL ₹ 0.10 Crores (2020 :₹ 1.70 Crore),TRPL ₹ 0.10 Crore (2020 :₹ 0.67 Crore), FRLLC ₹ Nil (2020 : ₹4.94 Crore), FLFL ₹ 28.17 Crore (2020 : ₹ 125.83 Crore) FCRPL ₹ 0.29 Crore (2020:₹ 2.64 crore), FMIL ₹ 3.44 Crore (2020 : ₹41.26 Crore).

B Purchases of Goods and Services includes FEL ₹ 681.92 Crore (2020: ₹ 3472.03 Crore), FSCSL ₹ 217.38 Crore (2020 : ₹ 604.37 Crore), FCL ₹ 382.81 Crore (2020: ₹ 2589.16 Crore) FCRPL ₹ 2.92 Crore (2020: ₹ 68.41 Crores).

C. Investment includes F7ICL ₹ Nil (2020 : ₹ 15.00 Crore)

D Managerial Remuneration includes Mr. Kishore Biyani ₹ 2.17 Crore (2020 : ₹ 3.86 Crore), Mr. Rakesh Biyani ₹ 3.75 Crore (2020 : ₹ 3.94 Crore). Key Managerial Personnel Remuneration includes Mr. C. P. Toshniwal ₹ 2.26 Crore (2020 : ₹ 2.53 Crore), Mr. Virendra Samani ₹ 0.28 Crore (2020 : ₹ 0.45 Crore)

109. It is noted that while FRL disclosed 3 entities as its *related party*, it did not disclose other 7 related parties in the Annual Report for FY 2020-21. Further, it disclosed its RPTs (security deposit) with FEL in the Annual Reports for FYs 2017-18 and 2018-19, it did not disclose the RPTs with 10 related parties in its Annual Report for relevant

FY 2020-21. Also, no approval of Audit Committee was taken by FRL for any of these RPTs as required under Regulation 23(2) of the LODR Regulations.

Ordinary Course of business.

110. The Noticees No. 1 to 3 have claimed that '*the payment of leases and security deposits'* was in ordinary course of business of FRL and, thus, there was no requirement for obtaining specific approvals from the Audit Committee. It is noted that the third proviso to Section 188(1) of Companies Act provides that a company shall not require the approval of the board of directors or the shareholders for entering into a transaction with a related party provided that the same is in the *ordinary course of business* and on arm's length basis. The phrase *"ordinary course of business"* has not been defined under the Companies Act and no specific criteria have been provided as to how a transaction in the *"ordinary course of business"* would be decided. Courts have analogized the term to a course of dealing. Course of dealing is *"a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.*[17]*"* The essential element in this regard is sequential transactional relationship. In the instant case, the existence of course of dealings of FRL with the 10 related parties are not established by the Noticees in support of their claim. Be whatever it may, the LODR Regulations are silent about this exception under the third proviso of Section 188 of the Companies Act. Scheme of Regulation 23 of LODR Regulations contemplates '*materiality'* test only for additional compliance obligations under Regulation 23(3) rather than carving out exceptions for RPTs approval/disclosures. Regulation 23(2) instead requires approval

[17] *https://www.lawschool.cornell.edu/*

of '*all'* RPTs by the Audit Committee. As regards disclosures of RPTs, Regulation 30 requires disclosures of events or information based materiality. Regulation 34(3) then provides disclosure specified in Companies Act along with other requirements as specified in Schedule V of these regulations. Regulation 48 obligates all listed entities to comply with all the applicable Accounting Standards. As discussed hereinabove, Ind AS 24 provides the accounting standards for '*Related Party Disclosures*'. None of these requirements create any exception regarding transactions *in ordinary course of business*. Thus, the approval of all RPTs by Audit Committee as per Regulation 23(2) and disclosure of all related parties and RPTs in Annual Report is obligatory for all listed entities under Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 read with Ind AS 24.

111. Another contention is that the security deposit was also required to be given for stores in pipeline for next 1-2 year as per the planning of the business. I note that with regard to nature of transaction with said 10 related parties, Noticees No. 1 to 3 have been taking shifting stands. On the one hand they have contended that SEBI has ignored the statement of Noticee No. 3 given on oath on July 05, 2022, that the reason for increase in security deposits is due to purchase of new premises and in store infrastructure assets from other store owners and the same being in normal course of business, on the other hand they claim it to be security deposit. In this respect, in a later statement of Noticee No. 3 given to SEBI on oath on November 30, 2023, the said Noticee had stated that out of the 10 entities, 7 received funds (except FICL, FMNL and FCRPL) from FRL as advance payment/ loan for payment of debts and not as a deposit and also the approval of Audit Committee was not sought for these transactions. This is also corroborated from the response of auditors that the entities

had received funds from FRL as advance payment/ loan and not as a deposit. It is pertinent to mention that a RPTs may be with respect to purchase or sale of goods or availing or rendering of services or may be with respect to financial transactions such as granting of loan or providing of security or subscribing to securities in the capital of the *related party.* Thus, loan or security deposits, whatsoever between FRL and said 10 *related parties* attracted compliance obligations under the LODR Regulations.

112. As per Noticee No. 3, the transactions were undertaken before February 2020 and, thus, did not require disclosure in the Annual Report of FRL for FY 2020-21 as six of these entities (namely, Acute, Precision, Ojas, Nishtha, Unique and Taquito) became subsidiaries of FEL only on August 29, 2020. Further, for the FY 2019-20, no transactions were undertaken by Nishta, Acute, Ojas and Unique with FRL so as to disclose them. It is noted that, there is nothing on record with respect to the date of these advances/ loans to the aforesaid six entities. This lack of information is due to the alleged non-furnishing of information by Noticees No. 8, 9, 10 and 11. Be that as it may, it is not in dispute that the total security deposits given by FRL had increased significantly in the FY 2019-20 from Rs. 1,935.45 Crore on March 31, 2019 to Rs. 4,390.38 Crore as on March 31, 2020, i.e. an increase of Rs. 2454.93 Crores and decreased by Rs. 148.02 Crores to Rs. 4242.36 Crores as on March 31, 2021. It is also noted that for the FY ending on March 31, 2021 an amount of Rs. 1,704.88 was payable to FRL from Acute, R.K.P, Precision, Ojas, Nishta, Unique and Taquito which was given by FRL to these entities in the form of advances payment/ form to meet the debt obligation of these entities. However, no transactions have been disclosed in the nature of advance payment/ loan or in the nature of security deposit with respect to these entities. In this respect, it is noted that FRL had, in its Annual

Reports for the FYs 2016-17 and 2017-18, made disclosure of security deposit paid to FEL, thus, FRL has in past made disclosure of transactions in the nature of payment of security deposits. Having made such disclosures earlier, Noticees No. 1 to 3 cannot feign ignorance of this obligation on one or the other pretext as sought to be made.

113. In view of the above, I find that FRL failed to make disclosures of 7 *related parties* and the RPTs with *10 related parties* in its Annual Report for the FY 2020-21 as required under Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Ind AS 24. They also failed to seek the approval of Audit Committee of FRL for these RPTs in violation of Regulation 23(2) of the LODR Regulations. They also failed to adhere to the principles governing disclosures and obligations under Regulation 4(1)(a), (b), (c), (g), (h), (i), (j) and 4(2)(e)(i) of the LODR Regulations. Thus, Noticees No. 1 to 3 are liable for this violation by FRL.

Part A(c)-Failure to take shareholder approval of Material Related Party Transaction'

114. The allegations in this Part is that FRL under-reported its RPT and materially misrepresented its financial statement for FY 2019-20, did not take approval from its Audit Committee and shareholders for the said RPT and violated the provisions of Regulation 4(1)(a), (b), (c), (h), (i), 4(2)(e)(i), 23(2), (4), 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of LODR Regulations read with Ind AS 24. The basis of this allegation is that for the FY 2019-20, the Audit Committee of FRL had granted omnibus approval to FRL to the extent of Rs. 300 Crore towards a transaction which makes it obliged to make payment to FCRPL. However, the total amount received by FCRPL from FRL was Rs. 3148.58 Crores. This amount was

more than 10% of the consolidated turnover of FRL for the FY 2018-19 and triggered the compliance obligation regarding the approval of the Audit Committee and the shareholders as required under Regulation 23(2) and (4) read with Regulation 48 of the LODR Regulations and disclosure in the Annual Report for the FY 2019-20 of FRL in terms of Regulation 34(3) of the said Regulations.

115. With respect to this allegation, there is no dispute with respect to the above basis and facts. However, according to Noticees No. 1, 2 and 3, there was no wilful or deliberate suppression of material facts or an attempt to circumvent applicable disclosure norms. The impugned transaction did not personally benefit or enrich the Noticees, nor has SEBI established any nexus between the alleged non-compliance and any *mala fide* intention. SEBI has failed to consider the operational disruptions caused by the COVID-19 pandemic, which significantly impacted the company's ability to consolidate and report transactions in real-time. As per these Noticees, all transactions were accounted for in accordance with Ind AS requirements. The nature of FRL's business operations involved dealings with vendors, suppliers, and commercial partners, which may not always fall under the definition of related parties. Also, no adverse observations have been made by the statutory auditor or the secretarial auditor of the Company with respect to the said transactions. SEBI has not identified the transactions where disclosure was deliberately omitted or materially misrepresented. They have also contended that it was it was the responsibility of Noticee No. 4 and the Audit Committee to ensure adequate disclosures and approvals were in place. Noticees No. 5, 6 and 7, have submitted that during the Audit Committee meeting of FRL on September 04, 2020, there was a detailed discussion with respect to RPT, nature of expense and various expenses in relation for identified related party

transactions. The Audit Committee also discussed if the procedure in relation to taking its approval, approval of board and approval of shareholder was being followed to which it was informed that the Company had obtained the approval. Forensic Auditor has not established a defined pattern of concealment or non-disclosure, further weakening the basis of this allegation.

116. The submissions of Noticees No. 1, 2 and 3 with respect to lack of *mens rea* do not merit consideration as *mens rea* is not relevant for this violation. Noticees No. 1, 2 and 3 were the executive Chairman, Managing Director and CFO, respectively of FRL for the FY 2019-20 and it was incumbent upon them to adhere to the provisions of the LODR Regulations and relevant accounting standards. The contention that the due to operational disruptions caused by COVID-19 pandemic affected the ability to consolidate and report transactions in real-time is misconceived. It is admitted fact that Audit Committee of FRL held meeting/s on October 12, 2019, January 27, 2020 and March 23, 2020 and its EGM was also held on November 08, 2019 during FY 2019-20. Further, FRL had been making other disclosures as mandated by law during this FY. There was sufficient opportunity and ability for it to comply with above requirements of LODR Regulations.

117. On the one hand, Noticees have claimed disability as reason for non- compliance on the other hand they have informed the Audit Committee during its meeting held on September 04, 2020, that for transactions exceeding the threshold, FRL had obtained the approval of the Board and the shareholders. The aforesaid meeting of the Audit Committee was also attended by Noticee No. 2 as its member. Noticees No. 1 and 3 were present by invitation and Noticee No. 4 also attended the said meeting. It was

upon Noticees No. 1, 2 and 3, being at the helm of affairs of FRL to adhere to the provisions of the LODR Regulations and the applicable accounting standards and to inform the Audit Committee and shareholders of the details of transactions between FRL and FCRPL and to seek their approval which was not done. I, therefore, do not agree with submissions that Noticees No. 1, 2 and 3

118. I, therefore, find that FRL violated the provisions of Regulation 23(2), (4), 34(3) read with Clause 1 of Part A of Schedule V, Regulation 48 of LODR Regulations and Ind AS 24. FRL also failed to adhere to the principles governing disclosures and obligations as per Regulation 4(1)(a), (b), (c), (h), (i) and 4(2)(e)(i) of the LODR Regulations. Accordingly, Noticees No. 1, 2 and 3 are liable for these violations.

Part B - '*Understatement of Debt/ Liability by FRL*'

119. It has been alleged that: -

(a) During the CIRP of FRL (as on March 15, 2023), claims of around Rs. 30,861.40 Crore were filed and claims of Rs. 27,415.34 Crore were admitted as liability of FRL. This was substantially higher than the total liabilities of Rs. 17,686.16 Crore as disclosed in the Annual Report of FRL for the FY 2020-21.

(b) Certain entities *viz*. "Axis Trustee Services Limited", "APAC Financial Services Limited" and "Avendus Finance Private Limited" who had raised claims amounting to around Rs. 1,333.81 crores were in the list of "*Unsecured financial creditors (other than financial creditors belonging to any class of creditors)*" in the claims sheet (as available on the IBBI website) but were not reflected in the list of bankers in the financial statements of FRL.

(c) The Banks and Financial Institutions had claimed around Rs. 2,488.44 Crore (principal outstanding of Rs. 1,935.25 Crore + interest including penal interest of Rs. 553.17 Crore) from FRL against liabilities of 16 Private Limited Companies ("Borrower Entities/Companies")[18] who had raised funds between FYs 2013-14 to 2020-21. On the date of acceptance of claim by RP, four Borrower Entities had already amalgamated with other 12 Borrower Entities as follows:

i. White Circle Mercantile Pvt. Ltd. merged with Syntex with effect from April 01, 2017.

ii. RJ Texcot Pvt. Ltd. amalgamated with Syntex by NCLT Order dated August 02, 2018.

iii. Bhavna Assets Operators Pvt. Ltd. amalgamated with Syntex by NCLT Order dated August 30, 2018.

iv. Dheera Retail Infra Pvt. Ltd. amalgamated with Acute.

(d) The 12 Borrower Entities (after amalgamation) viz. RTVPL, FICL, NDIL, Iskrupa, Syntex, Unique, Chirag, Nishta, Bansi, Ojas, Acute and Taquito were connected to FRL, as the directors of these Borrower Entities were either employees of Future Group or accustomed to act in accordance with the advice, directions or instructions of a director or manager of Future Group. The directors of these Borrower Entities were unaware of funds raised by the Borrower Entities, played no role in fund raising, none of them handled the day

[18] *These Borrower Entities were (i) RTVPL, (ii) FICL, (iii) NDIL, (iv) Bhavna Assets Operators Pvt. Ltd., (v) Iskrupa Mall Management Co Pvt. Ltd ("Iskrupa"), (vi) RJ Texcot Pvt, Ltd., (vii) Syntex, (viii) Unique, (ix) Chirag, (x) Nishta, (xi) Bansi, (xii) Ojas, (xiii) Acute, (xiv) White Circle Mercantile Pvt. Ltd., (xv) Taquito and (xvi) Dheera Retail Infra Pvt. Ltd.*

to day affairs of the company or purchased any assets for the company or attended any board meeting, the directors of these borrower entities never approached the lenders and the entire process of the aforesaid fund raising in these borrower entities was handled by officials of Future Group.

(e) The Borrower Entities had raised around Rs. 3,970.88 Crore[19] during FYs 2013-14 to 2019-20 from bank and financial institutions. Of the above around Rs. 1,671 Crore were raised in the form of term loan and Rs. 2,305 Crore were raised by way of issue of Non-Convertible Debenture (NCD). 63.05% of the funds raised by these borrower entities were transferred by them to FRL immediately or within few days of receipt of the funds from the banks/financial institutions, either directly and/or through multiple layers for repayment of debt of these companies. The funds received were used by FRL to meet its funding requirement or debt obligation. There was no disclosure of the receipt of funds in the RPT in the Annual report of FRL for FYs 2016-17 to 2020-21 as well as the Audit Committee meetings of FRL during FYs 2018-19 to 2020-21. FRL had neither disclosed nor taken prior approval of the Audit Committee for the transaction of receipt of funds from these Seven borrower entities in terms of Regulation 23(2) of LODR Regulations. Thus, there were incomplete disclosures made in Annual Report vis-à-vis transactions executed between *related parties* and thereby under-reporting its debt and misleading disclosures made by FRL of its RPTs in its Annual Reports for FYs 2016-17 to 2020-21.

[19] The amount claimed against this borrowing is Rs. 2,488.44 Crore (towards principal outstanding of Rs. 1935.27 Crore and interest including penal interest of Rs. 553.17 Crore)

(f) Out of Rs. 3,970.88 Crore, Rs. 1,888.50 Crore (47.56%) was disbursed after May 02, 2016 i.e. the date after Noticees No. 1 and 2 became directors of FRL and Noticee No. 3 became CFO of FRL. The repayment of the borrowing was also being done by FRL and/or FEL, in the form of payment of lease rentals and/or purchase consideration.

(g) The underlying substance of the relationship (i.e. transfer of funds by Borrower Entities to FRL) was that they were loan transactions between the Borrower Entities and FRL, the Borrower Entities were accustomed to act in accordance with the advice, directions or instructions of a director or manager or KMP of FRL. The substance of the relationship of FRL with these Borrower Entities was that of a *"related party"* and hence, all the transactions with these Borrower Entities were RPT, however, FRL had neither taken approval from its Audit Committee nor disclosed these transactions as RPTs in its Annual Reports hereby mis-representing its financial statements. Thus, through these Borrower Entities FRL had raised off-balance sheet finance/loan.

(h) The *modus operandi* used by FRL was to raise loans by way of 'term loan" or through the "issuance of NCDs" the Borrower Entities in the guise of asset purchase and lease to FRL and/or for repayment of own debts and/or for general corporate purposes. For these transactions, FRL entered into tripartite agreements with the lending institution, gave absolute, unconditional and irrevocable guarantee for payment of lease rentals/service charges and promoters of FRL have given personal guarantee. During the period FYs 2015-16 to 2019-20, the funds raised indirectly by FRL using the aforesaid borrowing

structure was on an average 53.56% of the total borrowing disclosed in the Annual Reports in these FYs. This was in the nature of a scheme, devise or artifice using which FRL deliberately concealed the fact that it was raising debt leading to suppress/under report the debt/borrowing position in its financial statements leading to under-reporting /suppression of debt/borrowing.

(i) The principal outstanding amount claimed as on July 2022 in CIRP process, for the Borrower Entities was Rs. 1,935.25 Crore. FRL had not paid any amount (lease rental) for these borrowings post January 2020 to March 2020. Thus, the principal outstanding amount was the same as on March 31, 2020 and March 31, 2021. The amount of total borrowings of FRL as on March 31, 2020 and March 31, 2021 were under-reported/suppressed by FRL by approx. 1,935.25 Crore i.e. almost 22.85% and 17.87% of the total borrowing reported in each FY, respectively.

(j) On the aforesaid basis, the SCN alleges that FRL has violated Regulation 4(1)(a), (b), (c), (g), (h), (j), 4(2)(e)(i), 23(2), 34(3) read with Clause 1 & 2 of Part A of Schedule V & Regulation 48 of SEBI(LODR) Regulations 2015 read with Ind-AS 24 and Section 12A(a), (b), (c) of SEBI Act 1992 and Regulation 3(b), (c), (d), 4(1), 4(2)(f), (k), (r) of PFUTP Regulations.

120. The Noticees No. 1, 2 and 3 have vehemently denied the above allegations and have submitted as follows:

(a) The Borrower Entities were not *related party* of FRL. They were primarily business-supporting entities from whom FRL either acquired in-store retail

infrastructure assets, leased retail premises, or availed operational services. The inter se fund transfers between such entities and FRL were undertaken purely in furtherance of legitimate commercial transactions or business arrangements. These transactions being conducted in the ordinary course of business and with non-related parties, there was no requirement of prior approval of the Audit Committee under the applicable provisions of the Companies Act, 2013 and LODR Regulations.

(b) SCN is full of unclear facts and ambiguity with regard to superfluous narration Para 6.13 of the SCN itself states that "*out of Rs. 3,970.88 crores, Rs. 1,888.50 crores (47.56%) was disbursed after 2nd May 2016 which is the date after Mr. Kishore Biyani and Mr. Rakesh Biyani became directors of FRL and Mr. Chandra Prakash Toshniwal became Chief Financial Officer (hereinafter referred to as "CFO") of FRL.*" shows that Rs. 2,082.38 crore has been borrowed by the entities referred in SCN prior to the date of May 02, 2016, when the FRL was under control of its erstwhile promoters prior to the completion of the Scheme of Arrangement between Future Retail Limited (now known as Future Enterprises Limited) and Bharti Retail Limited (now known as Future Retail Limited). Accordingly, if SEBI is claiming that these borrowing entities were related to earlier Bharti Retail Limited, then they are not related to Noticees No. 1 and 2 and were engaged prior to Noticee No. 3 becoming CFO of the said company or if the said borrowing entities are related to Noticees No. 1 and 2 then there could not be a related party transaction between these entities and the Bharti Retail Limited, which was not under their control prior to May 02, 2016. Further in said Para 6.13, it has been admitted by SEBI itself that out of the total borrowings of Rs. 3,970.88 crore, Rs.

786.79 crore was for the benefit of other Future Group Companies and Rs. 680.57 crore aggregating to Rs. 1,467.36 crore which has not come to FRL in any manner. This reduces the total alleged amount from Rs. 3,970.88 crore to Rs. 2,503.52 crore. Further as explained above out of this amount of Rs. 2,082.38 crore was borrowed by these entities prior to FRL coming under the control of the present management and hence cannot be connected to FRL in any manner.

(c) Further, the Borrower Entities were separate legal juristic persons having commercial transactions with FRL and the respective borrowing of such entities would be disclosed in their respective Annual Reports and not for FRL as FRL does not have any obligation to repay such borrowing. FRL's only obligation for such Borrowing Entities was to honour the commercial transaction entered into with such respective Borrowing Entities. Even assuming, without admitting, that such entities were to be treated as related parties, the transactions being in the ordinary course of business and at arm's length would not attract the requirement of separate approval or disclosure under the said provisions.

(d) All the 15 Borrower Entities (as mentioned in Table 17 of the SCN) are independent legal entities that raised loans from various lending institutions for the specific purpose of acquiring *in-store infrastructure* assets. It is important to note that the loans were raised by the respective entities in their own name and for their own business purposes. Accordingly, such borrowings are not, and cannot be, treated as borrowings of FRL. The question of FRL underreporting its debt does not arise in this context.

(e) The Noticee has placed reliance on the observations of Hon'ble Supreme Court in ***Cox & Kings Ltd. v. SAP India (P) Ltd***[20] to state that the mere fact that the two companies have common shareholders or a common board of directors will not constitute a sufficient ground to conclude that they are a single economic entity. They have placed reliance on SEBI's ***Final Order in the matter of Hindenburg Allegations against Adani Group with respect to transactions with Adicorp Enterprises Private Limited***[21] wherein SEBI examined the circumstances in which the doctrine of "*substance over form*" may be invoked and, relying upon the decision of the Hon'ble Supreme Court in ***Vodafone International Holdings B.V. v. Union of India***[22] ("Vodafone"), observed that the *"substance over form"* approach can be applied only where, on the basis of the facts and circumstances surrounding the transaction, the impugned transaction is a sham, fraud or tax avoidant. It was further noted that where a transaction is legitimate and genuine, the correct approach is to "*look at*" the transaction and not to "*look through*" it, and accordingly such genuine transactions cannot be disregarded merely by invoking the doctrine of *substance over form*. It is respectfully submitted that the basis of SEBI's allegations in Part B were *inter alia* premised on observations including shared addresses, common email domains, overlapping directors, or common IP infrastructure between FRL and the borrower entities are, at best, indicia of commercial proximity or group association. However, as clarified in the Adani Order, the doctrine of *"substance over form"* cannot be invoked merely on the basis of such surface-level interconnections. The determinative test is whether

[20] *(2024) 4 SCC 1*
[21] *WTM/KV/CFID/CFID-TPD/31671/2025-26*
[22] *(2012) 6 SCC 613*

the structure was deployed as a sham, facade or device to conceal the true nature of the transaction. They have also relied upon the order passed by Hon'ble SAT in ***Bombay Dyeing and Manufacturing Company Ltd. & Anr. v. SEBI***[23], wherein the Hon'ble SAT has clarified that lifting of the corporate veil is permissible only upon satisfaction of a strict legal threshold. Relying upon the judgment of the Hon'ble Supreme Court in ***Balwant Rai Saluja v. Air India Ltd.***[24], Hon'ble SAT reiterated that in order to justify piercing the corporate veil, the following conditions must be established:

(i) Control of the company by the alleged wrongdoer; and

(ii) Use or misuse of the company as a device or facade to conceal wrongdoing.

(f) The borrowings availed by Borrowing Entities have been duly recorded in their respective financial statements and security interests have been registered with the Registrar of Companies ("ROC") in accordance with Chapter VI of the Companies Act. There is no shareholding, board-level control, or management control exercised by either FRL or any of its board members / promoters of FRL over these entities that would bring them within the scope of *"related parties"* under Section 2(76) of the Companies Act or the LODR Regulations. The Borrower Entities were considered as related parties only in FY 2020–21, when certain supporting entities became conditional step-down subsidiaries of FEL pursuant to the proposed Scheme of Arrangement. Prior to August 29, 2020, however, these entities were entirely distinct and separate legal entities, having no ownership or

[23] Order dated January 16, 2026, in Appeal No. 838 of 2022
[24] *(2014) 9 SCC 407*

control linkage with FRL. Accordingly, during the relevant period of the alleged transactions, the Borrower Entities did not qualify as related parties of FRL. Indirect promoter association does not warrant consolidation of their debt into FRL's financial statements, as per extant applicable law.

(g) SEBI's claim that FRL guaranteed the debts of 15 Borrower Entities is factually incorrect. The financing structures used by these entities were independent. SEBI has not provided any documentary evidence proving that FRL issued financial guarantees on behalf of these entities. The assumption that these liabilities should have been consolidated is inconsistent with standard Ind-AS accounting principles and lacks a clear legal basis. Moreover, SEBI has clearly disregarded the fact that the guarantees issued by FRL for certain entities were with respect to lease rental payments and the language of the same were interpreted as corporate guarantee while acceptance of the claims by the RP.

(h) FRL, at the relevant time, was pursuing an aggressive expansion strategy with legitimate expectations of improved cash flows from its ongoing business operations. However, these business plans were severely impacted due to the unprecedented nationwide lockdowns and restrictions imposed during the COVID-19 pandemic, which disrupted the Company's revenue streams and business continuity.

(i) FRL entered into lease agreements with Borrower Entities for the lease of in store infrastructure assets, and duly paid lease rentals under such contracts. FRL's obligation was limited to the lease rentals and not to the financing arrangements of the lessor entities. The future lease rental obligations were properly disclosed

in FRL's audited financial statements for FY 2019–20 under "*Non-Current Liabilities"* in sub-head of *"Lease Liability"* in respect of the lease liability due for period of more than a year and under *"Current Liabilities"* in sub-head of *"Other Financial Liabilities"* for lease liabilities due in the coming year in Balance Sheet as at March 31, 2020 at page 102 as well as under schedule 18 and 23 at page no. 121 of the Annual Report for FY 2019-20, in accordance with the applicable accounting standards.

(j) The tripartite agreements entered into among FRL (as lessee), the lessor entities, and their respective lenders were commercial arrangements intended to ensure that lease rental payments were deposited directly into escrow or designated accounts for the benefit of the lessors' lenders. These agreements were executed solely to facilitate debt servicing by the lessors and do not confer any control or financial obligation upon FRL beyond its existing rental lease commitments. It is further submitted that these guarantee arrangements were made with the assumption that, FRL has in any case completed its performance obligations of its lease-related payment obligations in the ordinary course of business to such borrowing entities. Such tripartite arrangements are commonly executed in the ordinary course of business, particularly where service providers or landlords obtain financing against the future lease rental payments. The same was also confirmed by Noticee No. 3 in his statement to SEBI as follows:

> *"10. I am showing you Master Lease Agreement dated March 27, 2018 and Tripartite agreement dated March 27, 2018 signed by you with Rivaaz Trade Venture Private Limited (RVTPL) whereby RVTPL is leasing in-store infrastructure assets of 30 stores to FRL for 5 years FRL is going to quarterly lease rental to RVTPL. Kindly explain the nature of this transaction? Where is this transaction reflected in the annual report of FRL for FY 2017-18, 2018-19*

and so on? Why was the said transaction where the entire obligation of RVTPL was guaranteed by FRL not disclosed to the Board of Directors?

***Reply:** This is lease agreement for in-store infrastructure taken from RVTPL with lease obligation to be paid periodically as per the agreement by FRL.*

The tripartite agreement is also FRL's lease obligation confirmed to Axis Trustee for the lease agreement.

These transactions were reflected in the annual report of FRL in the notes to accounts under the following head "Leases" and Sub Head "Operating Lease".

FRL obligation under lease agreement is guarantee of its own obligation that is why it does not require to disclose to be disclosed to the board of directors."

(k) The confirmation of lease payment redirection by FRL to a lender-nominated account does not, in any manner, constitute a new liability, nor does it alter the fundamental nature of the underlying lease agreement.

(l) The basis of SEBI's allegation of the Borrower Entities being '*connected'* as they share addresses or email domains with other Future Group companies is not uncommon in group or affiliated business environments, particularly where companies operate out of shared commercial spaces or utilize common administrative services. Such logistical commonalities do not translate into financial liability or legal consolidation under the Companies Act or LODR Regulations.

(m) In Para 11.4.7 of the SCN, it is alleged that the Noticee's denial of knowledge regarding certain Borrower Entities is contradicted by statements recorded on oath concerning his involvement in approving transactions with such entities. Mere awareness of the existence of an entity cannot be equated with detailed knowledge of all its financial dealings. The records of the committee meetings relied upon by SEBI, at best, reflect the Noticee's approval of FRL's participation in certain

agreements at a policy or strategic level, and not of the underlying financial arrangements or specific borrowings undertaken by those entities.

(n) The Noticee's statements, clarifying his limited knowledge of specific borrowings, cannot be construed as a deliberate attempt to mislead, particularly in light of the complex web of transactions and entities involved.

(o) The SCN shows that his actions, such as approving tripartite agreements and guarantees, were standard practice for lease transactions and did not constitute misstatement. Noticee's decisions were aimed at securing favourable lease terms and ensuring business continuity, aligning with his fiduciary duties as a Managing Director.

(p) Without clear evidence of wrongdoing done by the Noticees, these allegations cannot sustain regulatory action. The forensic audit does not conclude that FRL or the Noticees engaged in deceptive accounting practices in this respect. FRL was following asset light model of operations and hence was relying on lease of assets instead of owning the same. With introduction of Ind AS 116 the purpose of the asset light model was defeated and hence in order to ensure that maximum assets are taken on ownership basis and reflected as owned assets, FRL proceeded with fund raising through issue of the USD denominated Bonds, which were used for purchase of the major part of leased assets from FEL.

(q) FRL ensured comprehensive adherence with Ind AS and LODR Regulations. SEBI's claim of understated liabilities is based on assumptions rather than factual findings. FRL's lease-related obligations were fully transparent and accurately

disclosed in financial statements as per the applicable accounting standards. SEBI's allegations fail to demonstrate that any specific liability of FRL was intentionally omitted. FRL has been disclosing the lease rental expenses incurred in its Profit and Loss Account and further the *"Lease Liability"* and *"Right to Use Assets"* were also being properly disclosed under the Liabilities and Assets categories of the Balance Sheet to give holistic picture of the lease transactions entered into by the Company.

(r) The transactions relied upon in the SCN were commercial arrangements that SEBI has sought to interpret as manipulative, without establishing any intent to defraud. Further, the SCN itself acknowledges that FRL's financial performance and ability to meet its obligations were significantly affected by external factors, including the COVID-19 pandemic and the arbitration dispute with Amazon. These contextual circumstances are critical to understanding the sequence of events and cannot be disregarded in assessing the Noticee's conduct. Noticee relied upon the observations of Hon'ble Bombay High Court in ***Kisan Sahakari Chini Mills Ltd v. Richardson and Cruddas Ltd.***[25] to state that a finding as to *fraud* cannot be based on suspicion and conjecture and has to have material and evidence in support of it.

(s) FRL was transparent in its operations and policies as well. It can be seen from disclosure made in the explanatory statement for agenda item no. 1 recommended by FRL to Shareholders for approval as part of its notice to convene EGM to be held on November 08, 2019, wherein it has clearly disclosed the working model

[25] *(1999) 96 Comp Cas 776*

being followed by the Company prior to introduction of Ind AS 116 related to Leases, with effect from April 01, 2019.

(t) Note No. 49 to the standalone financial statement for the FY 2019-20, FRL has made proper and exhaustive disclosure of the impact of change in accounting policy with regards to adoption of Ind AS 116 *"Leases"* for accounting of all lease contracts existing on April 01, 2019.

(u) Noticee No.3's CFO certifications for FYs 2016-17 to 2020-21 were issued *bona fide*, based on information prepared by the finance team, verified by statutory auditors, and approved by the Audit Committee and the board of directors of FRL. The certifications reflected the collective board responsibility and not any unilateral determination by the Noticee. SEBI has not demonstrated that any fact material to those certifications was concealed from him or that he had any reason to doubt the auditors' verifications.

(v) Each set of financial statements during the relevant financial years was prepared by FRL's finance and accounts team, reviewed by the Statutory Auditors, vetted by the Audit Committee (comprising majority independent directors) and approved by the board in duly convened meetings. The Noticee No. 3 discharged his professional duty to ensure procedural compliance and placed the final audited financials before the Committee and the Board. SEBI has not produced any contemporaneous record showing that any material information was withheld from the Board or auditors by the Noticee No. 3, or that he acted beyond his defined functional remit. the allegation that the CFO certification was false or misleading is speculative, unsupported by documentary proof, and contrary to the

principle that certifications under Regulation 17(8) read with Part B of Schedule II of LODR Regulations are collective and system-based representations rather than individual attestations of each accounting entry.

(w) The Noticee's actions were in furtherance of FRL's legitimate business objectives during a period of significant external adversity, including the COVID-19 pandemic and ongoing litigation. In view of the foregoing, the allegations are misplaced and unsustainable, and the Noticee respectfully prays that the same be dropped in their entirety.

121. I note that in this Part of SCN (Paras 6.1 to 6.3), it has been alleged that as against total filed claim of around Rs. 30,861.40 Crore and admitted claims of Rs. 27,415.34 Crore as on March 15, 2023, FRL disclosed its total liabilities of Rs. 17,686.16 Crore in its Annual Report of FRL for the FY 2020-21. It is unclear how the submitted and admitted claims during CIRP of FRL as on March 15, 2023 could be disclosed in the Annual Report for FY 2020-21. It is a matter of common knowledge that in a CIRP, unpaid claims as on insolvency commencement date (i.e. date of admission of application of CIRP) can be filed by any creditor (financial or operational creditor) including suppliers of goods and services, Central Government/ State Government and Authorities governing tax, custom, cess, provident fund penalties, charges, etc; workmen dues and employees claims, etc. even the disputed claims.

122. It is also pertinent to state that in the CIRP, the role of a RP involves collation of claims and he has no adjudicatory powers. He performs administrative duties under Section 18 of the IBC. The admission of a claim by RP is merely an administrative task performed

as part of his statutory duties.[26] Admission of claim by RP only means induction/entry of a claim. An admission of a claim by RP is akin to mere recital/reference of debt.[27] The IR and SCN both are silent as to whether all these liabilities which are part of submitted claims/ admitted claims were existing liability of FRL during FY 2020-21.

123. Further, the allegation in Para 6.4 of the SCN that '*Certain entities viz. "Axis Trustee Services Limited", "APAC Financial Services Limited" and "Avendus Finance Private Limited" who had raised claims amounting to around Rs. 1,333.81 crores were in the list of "Unsecured financial creditors (other than financial creditors belonging to any class of creditors)" in the claims sheet (as available on the IBBI website) but were not reflected in the list of bankers in the financial statements of FRL',* is misplaced. Under IBC the financial creditors are not only the banks. Under Section 5(7) of IBC *'financial creditor'* is *'any person'* to whom a *'financial debt'* is owed and includes a person to whom such debt has been legally assigned or transferred to. As per forms specified by IBBI, the details of other financial creditors refer to any other financial creditor who is not necessarily a bank.

124. Noticees No. 1, 2 and 3 have contended that the allegations in SCN are misplaced as prior to May 02, 2016, FRL (as Bharti Retail Limited) was under different management. Thus, if these Borrowing Entities were related to earlier Bharti Retail Limited, then they are not related to FRL and if they are related to FRL then there could not be a RPT between these entities and Bharti Retail Limited. Therefore, Noticees No. 1, 2 and 3 can be held responsible for acts of FRL committed after May 02, 2016. It is noted that, on

[26] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. (2020) and Prabhakaran & Ors. v. M. Azhagiri Pillai (2006)*

[27] *Shankar Khandelwal erstwhile director of Shrinathji Business Ventures Pvt. Limited Vs. NCLAT decided on April 29, 2026*.

May 02, 2016, that Noticees No. 1 and 2 became the directors and Noticee No. 3 became the CFO of FRL. The SCN (Para 6.9) clubs the amounts raised by the Borrower Entities to be around during FYs 2013-14 to 2019-20 to be Rs. 3,970.88 Crores. It further states (footnote 9) that the amount claimed against the said borrowing was Rs. 2,488.44 Crore (towards principal outstanding of Rs.1935.27 Crore and interest including penal interest of Rs. 553.17 Crore). Despite such clubbing of the amounts raised by these Borrower Entities, the SCN (Para 6.13) admits that out of Rs. 3,970.88 Crore, only Rs. 1,888.50 Crores were borrowed after May 02, 2016.

125. Having noted above ostensible ramifications, I now proceed to deal with merits of this allegation. I note that Noticees No. 1, 2 and 3 came in charge of affairs of FRL as noted above May 02, 2016. Noticees No. 1, 2 and 3 have claimed that the Borrower Entities were not *related parties* of FRL. I find that FICL was disclosed as a *related party* of FRL in its Annual Report and also before its Audit Committee for FYs 2016-17 to 2020-21. Bansi was disclosed as a *related party* before the Audit Committee of FRL for FYs 2016-17 to 2020-21 and in the Annual Report of FRL for the FYs 2016-17 to 2018-19. Further, in determination of the allegations in Part A(b) of the SCN, it has been found above that Unique, Nishta, Ojas, Acute and Taquito were *related parties* of FRL during FYs 2016-17 to 2020-21, as FRL had significant influence over these entities through Noticee No. 1. Thus, it is established that these seven Borrower Entities were *related parties* of FRL for FYs 2016-17 to 2020-21.

126. For the remaining 5 Borrower Entities, the IR and the SCN relies upon connection by way of various facts such as being connected to the promoters of FRL, employees of FRL/ FMNL and/or KMPs of FRL/ FMNL being directors of these entities, common

address and emails, common IP address for filing ITR, etc. Noticees No. 1, 2 and 3 have denied these entities to be *related parties* of FRL and have contended that shared addresses or email domains are common in group or affiliated business environments as companies operate out of shared commercial spaces or utilize common administrative services. Such logistical commonalities do not translate into financial liability or legal consolidation under the Companies Act or LODR Regulations. They have relied on the observations of Hon'ble SC in ***Cox & Kings Ltd. (supra)*** and on SEBI WTM Order WTM/KV/CFID/CFID-TPD/31671/2025-26 to state that the doctrine of "*substance over form*" cannot be invoked merely on the basis of surface-level interconnections of shared addresses, common email domains, overlapping directors, or common IP infrastructure between FRL and the Borrower Entities. The determinative test is whether the structure was deployed as a sham, facade or device to conceal the true nature of the transaction. They have also relied upon the observations of Hon'ble SAT in ***Bombay Dyeing and Manufacturing Company Ltd. Case (Supra)*** wherein, Hon'ble SAT reiterated that to justify piercing the corporate veil, there must either be control/ influence of the company by the alleged wrongdoer; and/ or use or misuse of the company as a device or facade to conceal wrongdoing.

127. In this respect, I note that apart from connection between these Borrower Entities and FRL, the SCN also observes influence of FRL through Noticee No. 1 in these Borrower Entities. Following facts and circumstances are undisputed and show such significant influence and demonstrate how substance over form principle applies in this case: -

(a) For fund raising the Noticee No. 1 and 2 and other persons related to/connected with them had approached the lenders for the loan transactions on behalf of

Borrower Entities and all the correspondences of the lenders were with them as following:

Table No. 6 – Details of correspondences with the lenders

Sr. No.	Borrower Entity	Lending Institution	Persons interacting with lender
1.	RTVPL	Franklin Templeton Mutual Fund	Noticees No. 1 and 2, Mr. Vijay Biyani, Mr. Sanjay Jain, Mr. Akhilesh Kalra and Mr. Bhavesh Shah
2.	NDIL	Franklin Templeton Mutual Fund	Noticees No. 1 and 2, Mr. Vijay Biyani, Mr. Sanjay Jain, Mr. Akhilesh Kalra and Mr. Bhavesh Shah
3.	Iskrupa	Central Bank	Noticee No.1, Mr. Vijay Biyani, Mr. Sunil Biyani and Mr. Vishal Doshi
4.	Syntex	Central Bank	Noticee No.1, Mr. Vijay Biyani, Mr. Sunil Biyani and Mr. Vishal Doshi
		Bank of Baroda	Mr. Akhilesh Kalra, Mr. Rajesh Kalyani,, Mr. Kishan Biyani and Mr. Hirendra Saini
5.	Chirag	IndusInd Bank	Mr. Sanjay Jain, Mr. Akhilesh Kalra, Nr. Bhavesh Shah and Mr. Siddharth Chaudhary

(b) Noticees No. 1 and 2 authorised Mr. Akhilesh Kalra, Mr. Prem Prakash Sharma, etc for entering into various transactions on behalf of FRL. These persons also signed some of the borrowing related documents on behalf of the Borrowing Entities.

(c) The persons who were directors of these Borrower Entities at the time of borrowing, admitted during Investigation that they were employees or contract staff or friends of employees of Future Group. They were unaware of the funds raised by the Borrower Entities and played no role in fund raising or day to day affairs nor attended any board meetings. Their statements are summarised as follows:-

i. Mr. Rajesh Kalyani, Ex-director of NDIL, Iskrupa, FMNL, FCRPL and Bansi in his statement to SEBI dated October 05, 2023, reported to Noticee No. 3 for administrative work and to have become director of these companies on the instructions of Noticees No. 1 and 3. He was a namesake director and had no day to day role. Post FY 2015-16 he was paid remuneration in the form of sitting fees of Rs. 10000 per quarter per company. All the directors in the aforementioned 5 companies were employees of Future Group and there were no formal meetings in these companies.

ii. Mr. Vivek Biyani, Ex-Director of Acute, Bansi, FCRPL, Nishta, NDIL, Ojas and Unique in his statement to SEBI dated October 26, 2023, admitted to have reported to Noticee No. 1 and that Noticee No. 1 was the head of the overall operations of the Future Group and that he had no role in these companies nor was he the authorised signatory and there were no official meetings and only the minutes of the meetings were used to be circulated.

iii. Mr. Vinod Yadav, Ex-Director of Syntex, Acute and Chirag in his statement dated December 29, 2023, admitted that he had no role and responsibility in

the said companies and was a dummy director and was not aware of basic details like the registered office or the number of employees.

iv. Mr. Vijai Singh Dugar, Ex-Director of Syntex, Chirag and Unique in his statement dated January 02, 2024, admitted that all the three companies mentioned above, he received no board agendas, no board minutes, never convened any board meeting, never received any financials not signed any papers.

v. Ms. Nidhi Bajaj, Ex-Director of RTVPL in her statement dated November 10, 2023, admitted to have been appointed as a director by Mr. Rajesh Kalyani. She never attended the board meetings of the Company and was a namesake director. There were no board meetings in the company and she only signed papers she received. She was not aware of the business of RTVPL, the transactions the company was in, never handled any work of the company or the day to day operations of the company.

128. The concept of substance over form and significant influence flow from Indian Accounting Standards (Ind AS). Ind AS 24 says that two entities are not *related parties* simply because they have a common director or KMP (which includes independent directors). Substance over form is key; if the common director (including an independent director) is able to affect the policies of both companies in their mutual dealings. In such a situation, a relationship within scope of LODR Regulation does exist. In this case, I find that there existed control/ significant influence of FRL (through Noticee No. 1 and 2) in decision making of these five Borrower Entities. These 5 Borrower Entities were accustomed to act on the directions of and its management reported to Noticees No. 1

and 2 with respect to their affairs. In light of extensive history demonstrating interrelationship among the parties and the directors of these Borrower Entities acting under the pervasive influence of individuals (i.e. Noticees No. 1 and 2), having deeply entangled interrelationships, and such significant influence of FRL through Noticees No. 1 and 2, I conclude that these five Borrower Entities, viz. RTVPL, NDIL, Iskrupa, Syntex and Chirag were '*related parties'* with FRL.

129. While FICL (in the Annual Reports of FRL for FYs 2016-17 to 2020-21) and Bansi (in the Annual Reports of FRL for FYs 2016-17 to 2018-19) were disclosed as *related party* of FRL, no disclosure of the *related party* relationship of the remaining 10 entities (*viz*; RTVPL, NDIL, Iskrupa, Syntex, Unique, Chirag, Nishta, Ojas, Acute and Taquito) was made by FRL in its Annual Reports of any of these FYs. I, therefore, find that FRL failed to disclose these 10 Borrower Entities as *related parties* in its Annual Reports for FYs 2016-17 to 2020-21 and Bansi as *related party* in its Annual Report for FY 2020-21 and thus, it violated the provisions of Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Para 9 of Ind AS 24.

130. It is admitted fact that FRL was engaged in a retail business and nature of its business necessitates arrangements in form of lease and advances. It is also a reality that retail business like the present one was hit the most during COVID – pandemic. It not only affected the retailer it adversely impacted the customer segment of such retail businesses. However, no allowance could be given from the disclosure requirements for ever. The term '*ordinary course of business'* is mentioned in the Companies Act but not been defined. In respect of RPTs, the Companies Act uses the term '*ordinary course of business'* in Sections 185, 188 and 189. As per Section 185(1) a company is

prohibited from advancing any loan, guarantee or security to any director of a company, or of a company which is its holding company or any partner or relative of any such director or to any firm in which any such director or relative is a partner. There is an exemption, for a company which in the *ordinary course of its business* provides loans or gives guarantees or securities for the due repayment of any loan, however this is subjected to the condition that a special resolution is passed by the company in general meeting wherein the notice for the general meeting shall disclose the full particulars of the loans/ guarantee given/ security provided and the purpose for which it is to be utilised and that the loans are utilised by the borrowing company for its principal activities. Section 188(1) provides that a company shall not require the approval of the board of directors for entering into a transaction or arrangement with a related party provided that such transaction is in the *ordinary course of business* and on an arm's length basis. Section 189(1) mandates companies to maintain particulars of all contracts or arrangements entered into by interested directors or with related parties, this is not applicable to contract or arrangement by a banking company for the collection of bills in the *ordinary course of its business.*

131. The provisions of Companies Act are applicable to both listed as well as unlisted companies, wherein certain provisions are applicable to both whereas certain provisions are applicable to listed companies only. LODR Regulations provides for special and additional provisions applicable to listed companies. The disclosure requirements with regard to RPT are stringent with respect to listed companies so as to ensure fair dissemination of information and to assist investors in making adequate investment decisions. The provisions of Regulation 23 of the LODR Regulations does not provide

for any exemption from approval or disclosure requirement of RPTs on the basis of the transactions being in the *ordinary course of business* or *on an arm's length basis*.

132. Noticees No. 1, 2 and 3 have also claimed that FRL was transparent in its operations and policies as disclosures were made in the explanatory statement for agenda Item No. 1 recommended by FRL to Shareholders for approval as part of its notice to convene Extra Ordinary General Meeting to be held on November 08, 2019, wherein it was the working model followed by FRL prior to introduction of Ind AS 116 was disclosed. In Note No. 49 to the standalone financial statement for the FY 2019-20, FRL made proper and exhaustive disclosure of the impact of change in accounting policy with regards to adoption of Ind AS 116. Future lease rental obligations were properly disclosed in FRL's audited financial statements for FY 2019–20 under "*Non-Current Liabilities*" in sub-head of *"Lease Liability"* in respect of the lease liability due for period of more than a year and under *"Current Liabilities"* in sub-head of "Other Financial Liabilities" for lease liabilities due in the coming year in Balance Sheet as at March 31, 2020 in the Annual Report for FY 2019-20. In terms of sub clause (v) of Section 2(40) of the Companies Act, any explanatory note annexed to, or forming part of, any document referred to in the balance sheet, profit and loss account, income and expenditure account, cash flow statement, statement of changes in equity is a financial statement in relation to a company. In view of the aforesaid Note No. 49, it cannot be said that FRL deliberately suppressed these liabilities as a devise to defraud investors in securities of FRL at the relevant time. The SCN does not make good the allegation that FRL indulged in fraudulent device to defraud investors in its securities. The charge lacks desired level of preponderance of probability the IR does not bring about any material suggesting even probability of inducement of investors in securities of FRL.

133. However, these disclosures do not show any disclosures of *related parties* and RPTs as alleged. In my view a guarantee given for lease rentals to a *related party* is a RPT under LODR Regulations as it constitutes a transfer of obligations or resources between a listed entity and a *related party*, irrespective of whether a price or commission is charged. Such guarantees are covered in the definition of "*transactions*" under Regulation 2(zc) of LODR Regulations (as it existed at relevant time). As such, it required prior approval from the Audit Committee, and approval by shareholders by a special resolution, if material. I don't agree that the SCN has made allegation based on assumption that guarantee in this case was a corporate guarantee. While the liabilities arising from corporate guarantees become a *'financial debt'* within the definition under Section 5(8) of IBC and lenders enforcing such guarantees are entitled to be treated as financial creditors[28], the guarantee given in this case will certainly fall within liability arising out of such leases and would fall in the definition of *transaction* under Regulation 2(zc) of LODR Regulations which is not limited to corporate guarantees.

134. Regulation 23(2) of the LODR Regulations as applicable at the relevant period provided that all RPTs shall require approval of the Audit Committee unless omnibus approval has been obtained under Regulation 23(3), Regulation 32(3) provided that Annual Report of a listed entity shall contain disclosures specified in both the Companies Act as well as the Schedule V of the Regulations. Part A of Para 1 of Schedule V provided for disclosures in compliance with the accounting standard on related party disclosures. Para 18 of Ind AS 24 dealing with '*Related Party Disclosures'* provides that if an entity

[28] *State Bank of India v. Doha Bank CIVIL APPEAL No. 8527 OF 2022 decided on April 28, 2026*

has had RPTs during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about the transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements and shall at the minimum, *inter alia*, include the amount of the transactions and the amount of the outstanding balances, including commitments*, necessary for users to understand the potential effect of the relationship on the financial statements*.

135. Since the substance of the relationship of FRL with the Borrowing Entities is that of a *related party*, all the transactions of FRL with such entities are RPTs, including receipt of funds by FRL from these Borrowing Entities and the payment of lease rentals. These transactions required the prior approval of the Audit Committee of FRL as per Section 23(2) of the LODR Regulations and also needed to be disclosed in the Annual Reports of their respective financial years in terms of Regulation 34(3) read with Clause 1 of Part A of Schedule V read with Regulation 48 of the LODR Regulations read with Para 18 of the LODR Regulations. However, it failed to do so. I, therefore, find that FRL violated the provisions of Regulation 23(2) and 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Para 9 and 18 of the Ind AS 24. FRL also failed to adhere to the principles governing disclosures and obligations as per Regulation 4(1)(a), (b), (c), (g), (h), (j) and 4(2)(e)(i) of the LODR Regulations.

136. There is no dispute that the Borrowing Entities raised around Rs. 3,970.88 Crore during FYs 2013-14 to 2019-20 from bank and financial institutions as Term Loans and NCDs. Out of which Rs. 2,503.52 Crore was transferred by the Borrowing Entities to FRL,

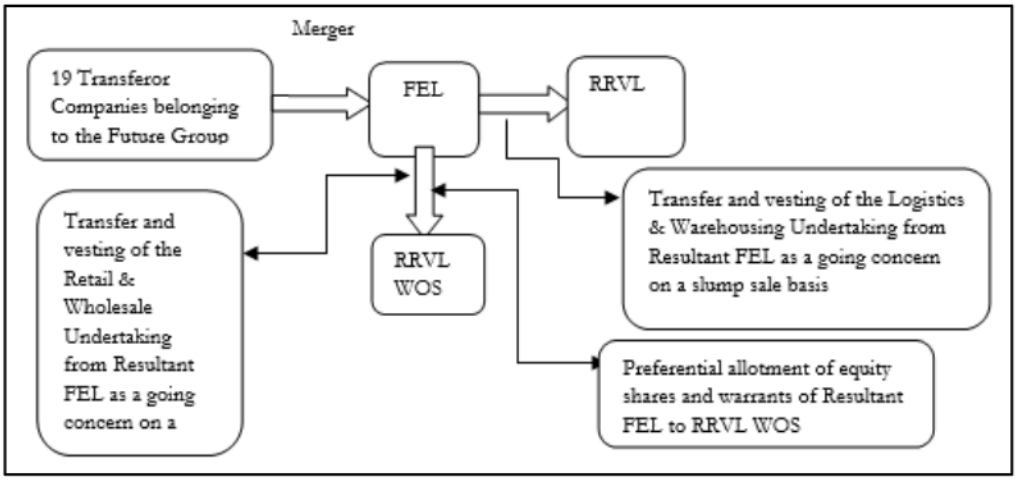
immediately or within few days of receipt of the funds, in the cash credit account of FRL. It is also admitted fact that out of the said total amount 1,888.50 Crore was disbursed after May 02, 2016 when Noticees No. 1, 2 and 3 came in charge of affairs of FRL. Noticees No. 1, 2 and 3, have submitted that Rs. 2,503.52 Crore was transferred by the Borrower Entities to FRL in total from FYs 2014-15 to 2019-20 and that amount too cannot be considered to be under- reported by FRL. Be that as it may, the FRL neither took approval of its Audit Committee nor did it disclose any of these RPTs undertaken after May 02, 2016 which it should have done.

137. I note that the SCN acknowledges that "*the year-on-year outstanding amount of these borrowings are not available and hence cannot be ascertained"* (Para 6.32 –foot note no. 10). Since the year wise outstanding borrowings of FRL with respect to these Borrowing Entities are not available it is not possible to determine the under- reporting of debts for respective FYs or the extent of under reporting of debt by FRL by non-disclosure of RPTs with these Borrowing Entities. It is pertinent to mention that for alleging underreporting to the extent of this extent as fraudulent scheme to defraud investors in securities of FRL, the charge must be made based on higher degree of probability and not based on ambiguity. The transactions in question have been happening in erstwhile FRL since FY 2013-14 and major portion of funds disbursed and transferred to erstwhile FRL ongoing much before the Noticees No. 1, 2 and 3 took charge. They cannot be held liable for any scheme devised by them in this regard and they deserve benefit of doubt with regard to such charge of devising a fraudulent scheme within the scope of securities laws in view of these facts and circumstances.

Part C. Non-disclosure/ wrong disclosure/ selective and misleading disclosure of the events encompassing around the Scheme of Arrangement with Reliance Group

138. The allegation in this part of the SCN is based on the following observations *qua* FRL:

(a) The board of directors of FRL at its meeting held on August 29, 2020, *inter-alia*, considered and approved the Composite Scheme of Arrangement involving merger of 19 Transferor Companies belonging to the Future Group (including FRL) with FEL ("Transferee Company"), the transfer and vesting of the logistics and warehousing undertaking from resultant FEL as a going concern on a slump sale basis to Reliance Retail Ventures Limited ("RRVL"), transfer and vesting of the Retail & Wholesale Undertaking from Resultant FEL as a going concern on a slump sale basis to Reliance Retail and Fashion Lifestyle Limited, a wholly owned subsidiary of RRVL ("RRVL WOS") and preferential allotment of equity shares and warrants of resultant FEL to RRVL WOS ("The Composite Scheme of Arrangement"/ Scheme"), pursuant to Sections 230 to 232 and other relevant provisions of the Companies Act.



(b) FRL, vide disclosure dated February 26, 2022, *inter-alia*, disclosed that *"Termination notices have been received for significant number of stores due to huge outstanding, and we would no longer have access to such store premises."*

(c) Further, FRL vide disclosure dated March 09, 2022, *inter alia,* had disclosed that – *"The Company has received certain termination notice(s) in respect of sub-leased properties from Reliance entities as intimated in the above referred communication and further notices have been received dated 7th March, 2022 and 8th March 2022 on same subject matter. So far notices have been received in respect of 342 large format stores [such as Big Bazaar, Fashion @ Big Bazaar (fbb)] and 493 small format stores (such as easyday and Heritage stores) of the Company. These stores has been historically contributing approx.55% to 65% of retail revenue operations of the Company. As of now these stores are not operational for stock and inventory reconciliation. The Company is in continuous discussion with Reliance Group to maintain status quo and for safeguarding the interest of various stakeholders."*

(d) Thereafter, based on a clarification sought by BSE on news item appearing in the Media, FRL issued a clarification on March 16, 2022 wherein it had *inter-alia* mentioned that:

"FRL strained cash flow, had led to build of unpaid dues to vendors and lessors. Post announcement of Scheme, FRL, was unable to raise any additional capital and thus continued to remain in default on of various commitments. Many Lessors issued termination notices as well as filed suits for recovery and eviction from the properties. To ensure continuity of stores for the benefit of all

stakeholders, Reliance Group reached out to these Lessors and signed a fresh Lease deed in respect of such properties & sub-leased on a Leave & License basis to FRL. Unfortunately, due to impact of Covid-19 Wave 2 in April to August 2021 and Wave 3 from December 2021 to February 2022, FRL's strained cash flow, lead to further default in payment of lease payment commitments. Since the last week of February 2022, Reliance Group has unilaterally terminated the leases and forcefully taken over control of hundreds of Future Retail's stores, which has been intimated to stock exchanges vide its intimation dated 26th February, 2022 and 09th March, 2022. Such termination of leases and takeover of stores by Reliance Group has come as a surprise to FRL and its Board since throughout the entire period, the Future Group and Reliance Group have been collaborating to ensure full continuity of businesses…. FRL's Board has taken strong objection to of such action by Reliance Group and has put Reliance Group to notice to reconsider all other actions initiated over the last few days. FRL's Board has also notified Reliance Group that assets such as store fixtures, store infrastructure, merchandise, inventory, etc. belonging to FRL and lying inside these stores are hypothecated as security in favour of the FRL lenders. The Board has called upon Reliance Group to ensure that the possession of the secured assets is not transferred and retained unharmed for the benefit of the Lenders."

(e) In disclosure dated February 26, 2022, there was no information with respect to the details of landlords, number of stores for which termination notices have been received, date on which termination notices were received, cumulative

outstanding amount due to the concerned lessor and the impact of closure of the stores on FRL's revenue / financials with regard to the said disclosure.

(f) In the disclosure dated March 09, 2022, there was no information on the details of transactions with Reliance entities, status of other stores not taken over by Reliance Industries Group and whether they were operational or not, breakup of total outstanding amount and the same pertains to which period.

(g) In the clarificatory disclosure of March 16, 2022, there was no information on the reason why prior disclosure of defaults of lease rentals and/or legal proceedings for eviction was not made to public, why prior disclosure of surrender of 835 stores was not made earlier and when there was change in arrangement / contents of lease agreement, whether prior approval was given by FRL as well as the reason as to why FRL did not approach the Court for such *suo-moto* termination of lease agreement by the lessors.

(h) There was no prior disclosure to public about Reliance Group unilaterally terminating the leases and taking over control of hundreds of FRL's stores;

(i) There was a contradictory statement dated July 29, 2021 made in the Annual Report for the FY 2020-21 (at page 126 of Notes forming part of the financial statements and also at page 169 of Notes forming part of the consolidated financial statements) where it was mentioned that – *"The Company does not face a significant liquidity risk with regards to its lease Liabilities as the current assets are sufficient to meet obligations to lease liabilities as and when they fall due."*. The said statement was duly signed by Noticees No. 1, 2, 3, 4 and 8.

(j) In the disclosure dated March 09, 2022, FRL *inter alia* mentioned that the Company is in *"continuous discussion with Reliance Group"* to maintain *status quo* and for safeguarding the interest of various stakeholders. However, 7 days later, in the disclosure dated March 16, 2022, FRL *inter alia* stated that *"Reliance Group has unilaterally terminated the leases and forcefully taken over control"* of hundreds of Future Retail's stores. The Company had not disclosed in its disclosures dated February 26, 2022 and March 09, 2022, that control of stores has been taken by Reliance Group including hiring of FRL employees working in the 835 stores. These facts came into picture only when BSE had sought clarification. In view of above, the disclosure dated February 02, 2022 and March 09, 2022, gave misleading and false information to the stakeholders regarding the status of the retail stores.

(k) Further, the price of shares of FRL was observed to have reduced from Rs. 45.80/- share to Rs. 38.70/- share from February 25, 2022 to March 17, 2022 i.e. a fall of 15.50%. Further, it was also observed that subsequent to the corporate announcement of March 16, 2022 itself, the price fell by 8.40 % on March 17, 2022. Therefore, these corporate announcements had significant impact on the price of FRL.

(l) FRL in its letter to SEBI dated April 19, 2022, had provided details of License termination, receipt of termination notice from Reliance Projects & Property Management Services Ltd. (RPPMSL) and letter denying access to the store premises. From the response of FRL it was observed that termination of leases commenced from November 2020 onwards. Lease agreement of 321 big format

stores were terminated between November 2020 and March 2021, lease agreement of 21 big format stores and 493 small format stores were terminated between April 2021 and February 2022. Subsequently in February / March 2022, RPPSML terminated the license agreement and denied access resulting in discontinuation of stores and contribution of revenue of these 835 stores amounts to 75% of FRL's retail revenue operations.

(m) The termination of the leases commenced from November 2020 and on November 13, 2020, during the meeting of the board of directors of FRL discussion had taken place regarding these terminations and that a tri-partite agreement would be entered between FRL, landlords and Reliance Group wherein the understanding would be recorded and signed by all the counter parties.

(n) FRL had not filed any disclosure in November 2020 intimating about the outcome of the board meeting in this context i.e. termination notices being received by FRL from landlords, the landlords entering into lease agreements with RPPMSL and RPPMSL entered into sub-leasing / sub-licensing arrangement with FRL for continuation of operation of the stores of FRL and that a tri-partite agreement would be entered between FRL, landlords and Reliance Group thereby granting RPPMSL the ultimate indirect control over FRL by becoming the sole lessor of the properties and making the event a material one. This premediated arrangement to enter into an agreement was binding in nature on all the parties concerned and was not in the normal course of business. The fact that the price fell by 8.40% on March 17, 2022 evidences that the information when disclosed to the market had significant market reaction.

(o) In September 2021, FRL made a contradictory and misleading statement in the Annual Report for the FY 2020-21 wherein it was mentioned that – *"The Company does not face a significant liquidity risk with regards to its lease Liabilities as the current assets are sufficient to meet obligations to lease liabilities as and when they fall due."*. Thus, on the one hand, FRL had claimed that its current assets are sufficient to meet obligations to lease liabilities as and when they fall due and on the other hand, in the minutes of the November 13, 2020 board meeting, it was recorded that FRL was entering into an agreement with landlords and RPPMSL considering the present financial crunch faced by the company which shows contradictory and misleading statements. In the subsequent board meeting held on November 01, 2021, post the disclosure of Annual Report in September 2021, the following was observed:

".... In various / majority of cases, termination or warning letter was issued by Landlord for non-payment of rent / charges on timely basis. Post termination by landlord, the fresh lease / license agreement was executed between Landlord and Reliance Group entity. Subsequently, the sub-lease / license arrangement was entered into between Reliance Group entity and FRL, wherein the rent would be paid by FRL to Reliance Group entity.

Board Members raised several queries in relation to exercising all possible options of retaining the premises, finding of best possible option and last option of accepting the termination from Landlord. It was replied by Mr. Nishant supported by Mr. C P Toshniwal that the Company was not in position or having ability to pay rent. Subsequently, the Company was not able to raise funds to meet the regular payment to landlord and was not having any other option but to accept the termination notice(s) issued by respective Landlords. Further, Landlord has no restriction to give the property on License / Lease basis to Reliance Entity...

Mr. Rakesh Biyani further discussed about conditions of the Company where it was not in position to pay rent/charges for using premises on lease/license basis…. If no action would have been taken, then the arrangement would have been terminated and store would have been lost."

(p) The records of the board meeting held on November 01, 2021, which was attended by all the KMPs of FRL, indicate that the company was not in position of payment of rent/charges for the lease and license of premises and hence, the agreements were entered into with Reliance Group to maintain continuity. However, on perusal of above paragraphs it is observed that FRL had not paid the amount owed to Reliance Group.

(q) The disclosures made by FRL pertaining to the events that occurred between November 2020 and March 2022 i.e. termination of original lease due to financial crunch, sub-lease to Reliance, non-payment of rentals to Reliance and subsequent termination of lease by Reliance, did not reflect the true state of affairs of the Company and were not consistent with the facts of each event. These disclosures indicate that FRL had made false, misleading and selective disclosure of the events. These alleged false, misleading and selective /inaccurate disclosure has also acted as a fraud or deceit upon the investors while taking their investment decisions during November 2020 to March 2022 and this can be clearly observed from the price fall subsequent to actual disclosure of events on February 26, 2022, March 09, 2022 and March 16, 2022.

139. On the basis of aforesaid observations, the SCN alleges that:

(a) FRL made false, misleading and selective disclosure of the events encompassing around the scheme of arrangement with Reliance Group on February 26, 2022, March 09, 2022 and March 16, 2022. It had not filed any disclosure in November 2020 intimating about the outcome of the board meeting held on November 13, 2020 in the context of termination notices being received by FRL from landlords, the landlords entering into lease agreements with RPPMSL and RPPMSL. The minimum information as mentioned in Para 5 of Part A of SEBI Circular on continuous disclosure requirements dated September 09, 2015 was not disclosed by FRL subsequent to the meeting held on November 13, 2020. FRL made a contradictory and misleading statement in its Annual Report for the FY 2020-21.

(b) FRL made false, misleading and selective disclosure of the events. These false, misleading and selective /inaccurate disclosure has also acted as a fraud or deceit upon the investors while taking their investment decisions during November 2020 to March 2022.

(c) By the said non-disclosure, FRL violated Section 12A (a), (b), (c) of SEBI Act and Regulation 3 (b), (c), (d), 4(2) (f), (k), (r) of PFUTP Regulations, Regulation 4 (1) (c), (d), (e), (g) and (h) of the LODR Regulations and Regulation 30 (4) (i) (b) and 30 (12) of the LODR Regulations read with Clause 5 of Para B of Part A of Schedule III of the LODR Regulations and non-compliance with SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015.

140. Noticees No. 1, 2 and 3 have denied that aforesaid allegation and have submitted that:-

(a) There cannot be any contradiction with respect to FY 2020-21 Annual Report about the liquidity risk as the same is required to be given basis the current assets

as disclosed as on the Balance Sheet date and were more than the current liability as disclosed as on the Balance Sheet date i.e. March 31, 2021. The devastating event took place almost after a period of 1 year on February 26, 2022 and the major part of the outstanding lease rental was for the FY 2021-22.

(b) The share price -fall on March 17, 2022, was impacted by a combination of factors and should not be seen as a direct consequence of the issues alleged in SCN. The disclosure of March 09, 2022 was more exhaustive about the information disclosed and the March 16, 2022, disclosure was more clarificatory in nature rather than giving any new information. FRL has also made disclosure on March 15, 2022 about the petition filed by Amazon.com NV Investment Holdings LLC (Amazon). Further, FRL after defaulting on its OTR commitments filed a writ petition before the Hon'ble SC seeking extension of the review period and made disclosure in respect of the same on February 01, 2022. All these events were contributing to the price fluctuations which were not considered.

(c) Both the disclosures dated February 26, 2022, and March 09, 2022, state that FRL had received termination notices for a substantial number of its stores, including those sub leased from Reliance. The March 09, 2022, disclosure further provided precise details on the number and types of affected stores and their revenue impact on overall financials of FRL. SEBI's claim that these disclosures were misleading due to the omission of an explicit statement that Reliance had "taken over" 835 stores mischaracterize the situation. The disclosures sufficiently conveyed the termination of lease arrangements and the implications for FRL.

(d) Additionally, the March 16, 2022, clarification was issued to provide further context on operational challenges and was not the first disclosure on the matter; previous disclosures had already kept shareholders informed of these developments. It may be noted that "takeover of stores" was media coined word, whereas the actual position was that FRL was operating stores, whose lease rights were owned by Reliance entity and they had terminated the said sub-lease arrangements with FRL and the same has been appropriately disclosed.

(e) Noticee No. 4 has submitted that: -

i. He was not involved in the operations, financial management and/or strategic decisions in respect of schemes and amalgamations entered in to by the Company. It was never for him to determine and/or deliberate on material decisions such as who constitutes a *"related party"* and what constitutes a RPT.

ii. He relied on representations and inputs from internal teams such as legal, finance, operations, and management while facilitating disclosures. He fulfilled his responsibility by disclosing all material developments that were brought to his attention or duly approved by competent authorities within FRL. He does not originate disclosures nor assess their materiality in isolation and that responsibility lies with the senior management and board committees (such as the Audit Committee), from whom he receives instructions and inputs. he has acted in good faith, in accordance with internal protocols and external regulatory frameworks, and did not act with disregard for stakeholder interest.

141. It is noted that with regard to alleged non- disclosures, the charge about non- compliance of Regulation 4 (1) (c), (d), (e), (g) and (h) of the LODR Regulations and Regulation 30 (4) (i) (b) and 30 (12) of the LODR Regulations read with Clause 5 of Para B of Part A of Schedule III of the LODR Regulations and non-compliance with SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 has been levelled against FRL and in turn on Noticees No. 1, 2, 3 and 4.

142. It is pertinent to mention again that Regulation 30(12) provides that an event or information which has not been indicated in Part A or B of Schedule III, but which may have material impact on it, the listed entity will make adequate disclosure in that regard. This provision is a residuary provision in that if events are not listed in Part A or B of Schedule III but are *material* then this Regulation is attracted. In terms of Regulation 30 (4)(i)(b) of the LODR Regulations, for determination of *materiality* of events/information for disclosure, the listed entity is required to *consider* that the omission of an event or information is likely to result in significant market reaction if the said omission came to light at alter date. The SCN on the one hand treats impugned events to be covered in Part A or B of Schedule III, still, on the other hand charges the Noticees with contravention of this Regulation 30(12) also. A case may fall either in category of information/events in Part A or B of Schedule III or in residuary provision of Regulation 30(12) but cannot fall in both categories.

143. As per Clause 5 of Para B of Part A of Schedule III of the LODR Regulations, the Agreements *viz*; shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/ treaty (ies)/ contract(s) with media companies) which are binding and not

in normal course of business, revision(s) or amendment(s) and termination(s) thereof. It is noted that Clause 5 of Para B of Part A of Schedule III does not apply to the tripartite lease agreement with Reliance and owners of stores in this case as it was neither of the kinds as mentioned in this Clause 5.

144. It is noted that the SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 runs into 16 pages and has laid down several requirements in context of compliance obligations relating to continuous disclosures under Regulation 30 of the LODR Regulations. However, it is inferred that the following requirement of the circular dated September 09, 2015 could apply in this case if the case is made out on reasonable basis:-

> "*….B. Details which a listed entity need to disclose for events on which the listed entity may apply materiality in terms of Para B of Part A of Schedule III of Listing Regulations*
>
> *…….*
>
> *5. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof: Only important terms and conditions which may be as under needs to be disclosed:*
>
> *a) name(s) of parties with whom the agreement is entered;*
>
> *b) purpose of entering into the agreement;*
>
> *c) size of agreement;*
>
> *d) shareholding, if any, in the entity with whom the agreement is executed;*
>
> *e) significant terms of the agreement (in brief) special rights like right to appoint directors, first right to share subscription in case of issuance of shares, right to restrict any change in capital structure etc.;*
>
> *f) whether, the said parties are related to promoter/promoter group/ group companies in any manner. If yes, nature of relationship;*
>
> *g) whether the transaction would fall within related party transactions? If yes, whether the same is done at "arms length";*
>
> *h) in case of issuance of shares to the parties, details of issue price, class of shares issued;*

i) in case of loan agreements, details of lender, nature of the loan, total amount of loan granted, total amount outstanding, date of execution of the loan agreement/sanction letter, details of the security provided to the lenders for such loan;

j) any other disclosures related to such agreements, viz., details of nominee on the board of directors of the listed entity, potential conflict of interest arising out of such agreements, etc;

k) in case of termination or amendment of agreement, listed entity shall disclose additional details to the stock exchange(s):

i. name of parties to the agreement;

ii. nature of the agreement;

iii. date of execution of the agreement;

iv. details of amendment and impact thereof or reasons of termination and impact thereof."

145. It is also noted that in terms of above Para B of the circular dated September 09, 2015, the listed entity FRL had discretion to apply *materiality* in terms of Para B of Part A of Schedule III of the LODR Regulations with respect to Agreements which are binding and not in normal course of business. Clause 5 of Para B of Part A of Schedule III of the LODR Regulations also requires only this kind of Agreements for disclosures. Since FRL engaged in retail business of apparels; obtaining lease of stores, opening lease of stores, terminating leased out stores, closing stores was its standard business activities and according to Noticees it was not considered as *material*. Hence, the details about such agreements entered into *in ordinary course of business* was not disclosed as allowed by said circular. This practice was necessitated in *ordinary course of business* for all such agreements and no such disclosure had been made in earlier instances also.

146. In order to ascertain veracity of such submissions further, during the hearing on February 02, 2026, Ld. AR was asked to demonstrate past instances of such change in ownership and non-disclosure of the same. In response, these Noticees vide their additional

submissions dated February 13, 2026, demonstrated that "*In respect of Shop Unit No. E-1/AF, Lower Ground Floor, Omaxe City Centre, Sohna Road, Gurugram, originally leased to FRL (erstwhile known as Bharati Retail Limited) under Lease Deed dated March 30, 2011, the identity of the lessor changed upon the demise of the erstwhile owner, Mr. Purshottam Mahbubani. Pursuant thereto, an attornment was issued (vide letter dated January 07, 2019) confirming Ms. Jyoti Purshottam Mahbubani as the successor lessor under the existing lease arrangement.*" This event was in ordinary course of business and was not considered material for disclosures.

147. The SCN also adds it as a basis of this allegation that FRL had not filed any disclosure in November 2020 intimating about the outcome of the board meeting of FRL held on November 13, 2020 in the context of termination notices being received by FRL from landlords, the landlords entering into lease agreements with RPPMSL and RPPMSL entering into sub-leasing/ sub-licensing arrangement with FRL for continuation of operation of the stores of FRL and that a tri-partite agreement would be entered between FRL, landlords and Reliance Group thereby granting RPPMSL the ultimate indirect control over FRL by becoming the sole lessor of the properties. As per the SCN, there was no disclosure of the outcome of the board meeting held on November 13, 2020 with respect to the aforesaid in violation of the Para 5 of Part A of SEBI Circular on continuous disclosure requirements dated September 09, 2015. Noticees No. 1, 2 and 3 have denied this requirement of minimum disclosure and have stated that there was no requirement as the developments were in the ordinary course of business and treated non material in terms of para 5 of part B of the aforesaid SEBI Circular. It is noted that Para 5 of Part A of the aforesaid SEBI Circular dated September 09, 2015, provide as follows:-

"*A. Details which a listed entity needs to disclose for the events that are deemed to be material as specified in Para A of Part A of Schedule III of Listing Regulations*

…….

5. Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof:

5.1. name(s) of parties with whom the agreement is entered;
5.2. purpose of entering into the agreement;
5.3. shareholding, if any, in the entity with whom the agreement is executed;
5.4. significant terms of the agreement (in brief) special rights like right to appoint directors, first right to share subscription in case of issuance of shares, right to restrict any change in capital structure etc.;
5.5. whether, the said parties are related to promoter/promoter group/ group companies in any manner. If yes, nature of relationship;
5.6. whether the transaction would fall within related party transactions? If yes, whether the same is done at "arms length";
5.7. in case of issuance of shares to the parties, details of issue price, class of shares issued;
5.8. any other disclosures related to such agreements, viz., details of nominee on the board of directors of the listed entity, potential conflict of interest arising out of such agreements, etc;
5.9. in case of termination or amendment of agreement, listed entity shall disclose additional details to the stock exchange(s):
a) name of parties to the agreement;
b) nature of the agreement;
c) date of execution of the agreement;
d) details of amendment and impact thereof or reasons of termination and impact thereof.

148. From the above requirement of above Para 5 of circular dated September 09, 2015, it is noted that the details of events falling in the said para have to be necessarily disclosed without applying any materiality test. On bare perusal of above Clause 5 it is noted that

the tripartite agreement as in the instant case does not fall in the categories of Agreements enumerated specifically therein. Be that as it may, I also examine whether the termination of the original lease and entering into tripartite agreement were material event necessitating disclosures under Regulation 30 (4) (ib) of the LODR Regulations. Admittedly, in the meeting of the board of directors of FRL held on November 13, 2020, there were discussions regarding these terminations and it was agreed that a tri-partite agreement would be entered between FRL, landlords and Reliance Group wherein the understanding would be recorded and signed by all the counter parties as follows:

> *"The Board recalled the discussion held that day prior to the Audit Committee Meeting wherein following major queries were discussed and noted by the Board Members.*
>
> *Transaction with existing landlords who have rented its premises on lease / license / revenue sharing basis for any formats / business of the Company. It was discussed that as of that time wherever the Company was facing financial or other commitment issue (to make timely payment of rent, CAM and other charges), the transaction has been undertaken in such a way that the Company would be terminating the agreement directly with the lessor / licensor / owner of premises and the same would be taken on lease / license basis by Reliance Group / Acquirer. In turn, Reliance Group would be entering into sub-leasing / sub-licensing arrangement with Future Group for continuation of operation of the said store. The said arrangement would be helpful to make payment of the amount due to the landlord and interest and other charges, if any and way of new lease / license to be executed with Reliance, the property could be secured till scheme transaction would materialise. It was also informed that to ensure the said arrangement, there would be tri-partite agreement between the Company, landlord and Reliance Group wherein the understanding would be recorded and signed by all the counter parties.*
>
> *The Board members raised their apprehension (in case of scheme transaction did not materialise) for the transaction undertaken in the above manner and suggested that possible option / reversal option should also be considered with Reliance group and the landlords in order to protect the interest of the company*

as it is one of the most critical matter to secure low rental and good location of properties while also considering the present financial crunch faced by the company. The Board made a note of the same…."

149. It is admitted fact that after termination of the lease agreements with FRL, during the period November 2020 to February 2022, the landlords entered into lease agreements with RPPMSL, a wholly owned subsidiary of Reliance Industries Limited. RPPMSL allowed FRL to continue its operation on license basis/ permission to operate from all the store premises (for which leases were terminated with FRL) since the scheme was pending approval from statutory authorities. In the months of February 2022 and March 2022, RPPMSL terminated the license arrangements with FRL and served termination letters. RPPMSL also denied access to FRL to these store premises resulting in discontinuation of operations of these stores.

150. According to the Noticees, the business of FRL continued without any interruption until the last week of February 2022, when RPPMSL terminated its arrangement with FRL and its retail operations were affected, and appropriate disclosures were made in compliance with LODR Regulations. The disclosure with respect to termination of lease arrangement of the Company with RPPMSL has been disclosed on March 09, 2022. The material impact on FRL's business only arose in February 2022, at which time FRL made the requisite disclosures in full compliance with SEBI regulations. The disclosure made by FRL on March 09, 2022, provided information about the termination notices received from Reliance entities, the number and types of stores affected (342 large format and 493 small format), and the significant impact on FRL's retail revenue operations (55-65%). This aligns with Clause (e) of Para 5 of Part A of the SEBI Circular, which mandates disclosure of the names of parties, nature of agreement, date

of execution, and details of termination's impact. While the SCN in Para 7.3 alleges missing information like details of transactions with Reliance, the status of other stores, and outstanding amounts, it has not brought out as to which specific provisions of LODR Regulations mandate these disclosures. The Circular's Clause (e) provides an inclusive list, and FRL has met those requirements.

151. With respect to the Regulation 30(4)(i)(b), the SCN alleges significant market reaction basis the aforesaid disclosure dated March 16, 2022 impacted the fall in price of the share of FRL by 8.40%. It is admitted position that during the FY 2020-21 disclosures in the Annual Report about the liquidity risk was made basis the current assets as disclosed as on the Balance Sheet date and were more than the current liability as disclosed as on the Balance Sheet date i.e. March 31, 2021. On perusal of the Annual Report for FY 2020-21, it is noted that the value of total assets mentioned therein (Rs. 18,885.31 Crore) are significantly higher than the total current liabilities (Rs. 12,326.05 Crore), giving adequate buffer in liquidity to FRL. Therefore, there was no liquidity crisis as in the said FY 2020-21. Thus, the disclosures in the Annual Report cannot be said to be contradictory.

152. Further, despite the tripartite agreement in FY 2020-21, FRL continued operation of the stores till February 2022, accordingly, this allegation also is not established *qua* FRL. FRL had already disclosed on March 22, 2020, that due to the COVID-19 outbreak and the directions of local and state governments, most of the stores of the Company are closed except selling only essential commodities and grocery items and due to the uncertainty created by COVID-19, the business of the Company was adversely affected by the '*temporarily shut down of stores, de-growth of revenue, sizable drops in footfalls*

and selective spending on essential only by the Customers'. FRL has also made disclosures with respect to its scheme of arrangement with Reliance Group on August 29, 2020, November 21, 2020, April 01, 2021, October 01, 2021, February 26, 2022, February 28, 2022, March 09, 2022, March 16, 2022, March 19, 2022, April 20, 2022, April 21, 2022, April 22, 2022 and April 23, 2022. Thus, it is inferred based on reasonable and legitimate expectoration that it was on a future date i.e. on February 26, 2022 that the material event took place when the major part of the outstanding lease rental was for the FY 2021-22. I find that the event which led to the disclosure made by FRL on March 16, 2022 is not the same as the discussion in the board meeting held on November 13, 2020 as per the then arrangement Reliance Group would enter into lease agreement with the landlords instead of FRL for the property and the operation of said properties would remain unchanged. The event under Regulation 30(4)(i)(b) did not exist when board of FRL took decision on November 13, 2020 as it was not material being in ordinary course of business and when the *material* event (lease termination in view of the default of the lease rentals) occurred during February 2022 / March 2022 the disclosures as required in terms of Regulation 30(4)(i)(b) were made by FRL. This disclosure was made as required by law and cannot be alleged to have been made as part of a device of omission of information to invite significant market reaction as contemplated in the SCN. The disclosure was not necessarily made as cause and effect for alleged omission of November 2020. It is also noted that in the disclosure dated March 15, 2022, FRL informed its receipt of communication from Amazon informing that it had filed an enforcement petition under Section 17(2) of Arbitration and Conciliation Act, 1996 before Hon'ble High Court of Delhi in relation to the order

passed by Tribunal appointed by Singapore International Arbitration Centre on October 21, 2021, with respect to the Arbitration proceedings.

153. In view of the above, in my view, there is no violation of Regulation 30(4) (i) (b) by FRL. Even if I were to exaine applicability of Regulation 30(12) of LODR Regulations as alleged de hors allegation of Regulation 30(4) (i)(b) read with Para A or B of Part A of Schedule III, Noticees have demonstrated that FRL made appropriate disclosures with respect to the impact of COVID-19 on its business operations and also with respect to the scheme of arrangement with Reliance Group.

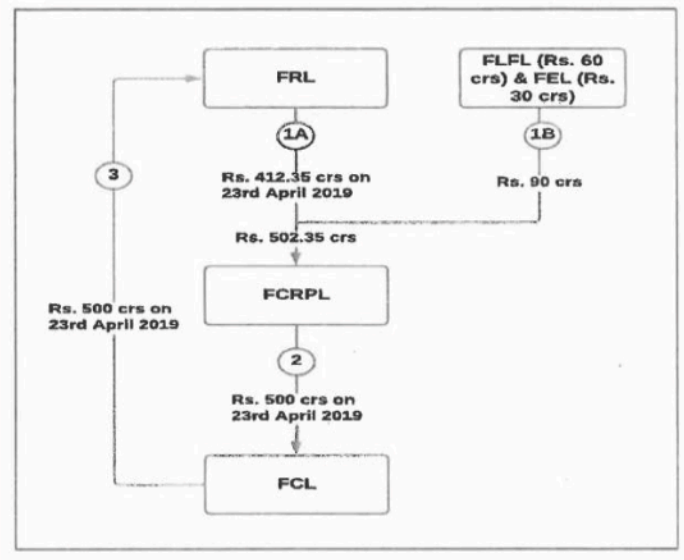
Part D. Diversion of Funds of FRL by promoters to increase their shareholding in FRL

154. The allegation in this part of the SCN is based on the following observations *qua* FRL:

a. Pursuant to the approval by the board of directors of FRL on February 04, 2019, and special resolution passed by its shareholders in EGM dated March 05, 2019, FRL allotted 3,96,03,960 equity warrants to Future Coupons Private Limited ("FCPL") on April 23, 2019, on upfront payment of Rs. 499.99 Crore (payment of 25% of total subscription money). On April 23, 2019 following fund transactions happened between FRL and its *related parties*:-

- Rs. 412.35 Crore was transferred from FRL to FCRPL in multiple tranches.
- Rs. 60 Crore and Rs. 30 Crore were transferred from two other listed companies of FLFL & FEL respectively to FCRPL.
- Rs. 500 Crore was subsequently transferred by FCRPL to FCPL. Within a few minutes of receipt of funds, FCPL transferred Rs. 500 Crore to FRL.

b. Pictorial description of the impugned transaction as contained in the SCN is as follows:



c. No approvals were taken for fund transfers amounting to Rs. 412.35 Crore on April 23, 2019, from FRL to its *related party* FCRPL and also no disclosure was made regarding the fund transfer- RPT.

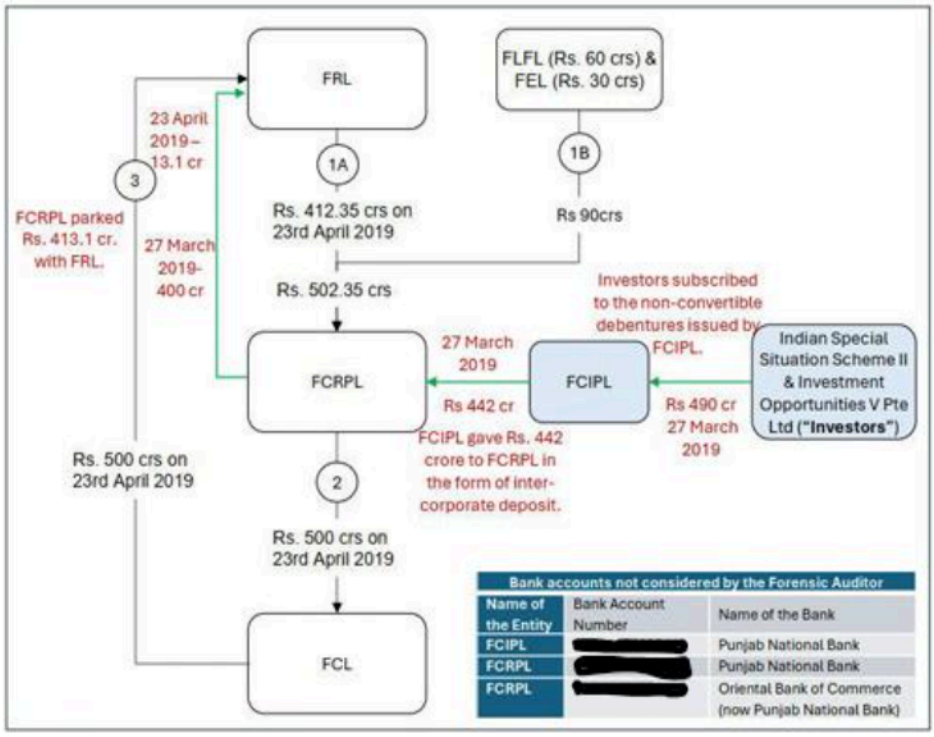
d. The payment of subscription money by FCRPL of equity warrants of Rs. 500 Crore was indirectly funded by FRL to the extent of Rs. 412.35 Crore in violation of Section 67(2) of Companies Act and the provisions of LODR Regulations. The non-disclosure of the transaction was in violation of Ind AS 24 and non-approval of this transaction by Audit Committee was in violation of Regulation 23(2) of LODR Regulations. The non-disclosure of the said transaction also led to misrepresentation of the financial statements of FRL.

e. FRL diverted Rs. 412.35 Crore to FCRPL, who further transferred the funds to FCPL. FCPL used the same proceeds to pay its contribution for the subscription money (25% of the total issue size) of Equity Warrants being issued by FRL. The funds of the listed entity were diverted from FRL for own benefit by the promoters and invested back into FRL as own promoter contribution by promoter company. Non-disclosure of the said

transaction of transfer of funds by FRL to FCRPL led to knowingly publishing misrepresented financial statements and under-reported RPTs. This act of diversion of funds from FRL for benefit of the promoter company, FCPL, is in nature of manipulative, fraudulent and unfair trade practice in securities market in terms of PFUTP Regulation. On the basis of aforesaid the SCN alleges that FRL violated Regulation 4(1) (a), (b), (c), (g), (h), (i), (j), 4(2) (e) (i), 23(2), 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of LODR Regulations read with Ind AS 24 and Section 12A(a), (b), (c) of SEBI Act and Regulation 3(b), (c), (d), 4(1), 4(2)(f), (k), (r) of PFUTP Regulations.

155. Noticees No. 1, 2 and 3 have vehemently denied the aforesaid observations and allegations and have submitted as follows:

(a)Future Capital Investment Private Limited ("FCIPL"), a promoter entity of FRL, raised Rs. 490 Crore through issuance of NCDs to India Special Situation Scheme II and Investment Opportunities V Pte Ltd on March 27, 2019. On the same day, FCIPL transferred Rs. 442 Crore to FCRPL in the form of inter-corporate deposits. In the next leg of the transaction, FCRPL parked Rs. 412.35 Crore with FRL into two tranches (Tranche 1 – March 27, 2019 – Rs. 400 Crore and Tranche 2 – April 23, 2019 – Rs. 13.1 Crore). On April 23, 2019, FRL gave the money back to FCRPL. As a part of the transaction on April 23, 2019, FCRPL gave Rs. 500 Crore to its subsidiary FCL. Noticees have provided a pictorial representation of the transaction as follows (bank account numbers are masked in this Order in the interest of privacy):



(b) Since the timelines with respect to borrowing (FCIPL gave Rs. 442 Crore to FCRPL in terms of inter-corporate deposits) and investment (FCL subscribed equity warrants issued by FRL amounting Rs. 500 Crore) differs, amount borrowed by FCRPL in terms of inter-corporate deposits was normally parked with FRL for utilising for investment after receipt of necessary regulatory approvals.

(c)The movement of funds was not an act of diversion but a temporary placement while formalities were being completed for a preferential issue, which had been duly approved by FRL's shareholders on March 05, 2019. The funds were earmarked for FCL's warrant subscription and were subsequently recalled from FRL in April 2019 for that specific purpose and transferred back to FCRPL which has been presumed to be indirect funding by SEBI.

(d) The SCN selectively focuses on transactions between of a singular day without considering the larger context in which the transaction took place. The advances exchanged between FRL and FCRPL followed routine commercial arrangements, where FCRPL frequently refunded advances to FRL for cash flow management, and FRL, in turn, replenished these advances as necessary. The SCN's reliance on the FAR to support its allegations is misplaced, as the FAR itself acknowledges limitations due to incomplete data.

(e) On December 13, 2023, SEBI questioned the Noticee about the alleged diversion of funds. In response, the Noticees No. 1 and 2 categorically clarified that there must have been prior transactions between FCRPL or other entities before the dates mentioned in the SCN. SEBI failed to consider the information and explanations duly provided by the Noticees No. 1 and 2 during his personal appearance and did not undertake any independent verification of the relevant bank statements, nor did SEBI instruct Forensic Auditor to do so. FAR relied upon by SEBI was based on partial banking data, based on which SEBI has proceeded to base conclusions on these incomplete findings. SEBI did not engage in an independent investigation or verify the entire banking statements of FRL to gain a complete understanding of the transactions involved. This failure to undertake a thorough review led to the selective and misinformed framing of the diversion allegation.

156. I have perused the bank statements submitted by the Noticees in support of their submissions. It is a matter of record that Forensic Auditor had not examined those bank statements for March 2019 for ascertaining the fund movement of the impugned transactions. The author of FAR unequivocally admitted that she had not examined fund

transactions of March 2019. The extract of relevant Q&As during the cross examination are as follows:

*"**Q-69:** In relation to Future Coupons Ltd. and the issue on compliance with Section 67(2) of the Companies Act, 2013. For what period did you analyze the bank statement of the Company?*

***A-69:** With reference to page 56 para 2 of our analysis we have mentioned that bank statement was analysed to examine the source of funds received from Future Corporate Resources Pvt. Ltd. and FCL pertaining to the same period of the transaction i.e April 2019.*

***Q-70:** Would there be any reason to not consider the transactions in the last 10 days of March 2019?*

***A-70:** The transaction was dated 23rd April 2019 wherein the fund movements were recorded on the same date. Hence there was no reason for us examining transactions of March 2019.*

***Q-71:** Which are the entities whose bank statements were analysed for the purposes of this transaction?*

***A-71:** FCL, FCRPL, FLFL, FEL and FRL.*

***Q-72:** Since March 2019 came well within the scope of the audit period that was covered in your terms of reference, why were bank statements of this period not looked at in the context of this transaction?*

***A-72:** As mentioned in answer to Q-69 and Q-70 the transaction took place on 23rd April 2019 and on examining the bank statement for the same period the entire fund movement could be established at our end hence there was no reason for us to examine bank statements for March 2019 for the purpose of examining the fund movement for the above transaction."*

157. Thus, the trustworthiness and veracity of claims of the Noticees cannot be doubted. The author of FAR has admitted that she had not examined complete financial transactions

in the FAR. From the bank statement of FCIPL and extracts of bank statement of FCRPL relied upon by the said Noticees, I note that FCIPL (promoter entity of FRL) raised Rs. 490 Crore through issuance of NCDs on March 27, 2019 and on the same day transferred Rs. 442 Crore to FCRPL. Subsequently, FCRPL on March 27, 2019 transferred Rs. 400 Crore to FRL in 5 separate transactions and on April 23, 2019 transferred Rs. 13.10 Crore to FRL by way of a single transaction. Out of this combined amount of Rs. 413.10 crores transferred by FCRPL to FRL, Rs. 412.35 Crore was transferred back by FRL to FCRPL on April 23, 2019 and subsequently an amount of Rs. 500 Crore subsequently transferred by FCRPL to FCPL. It is this amount that was transferred by FCPL to FRL and not the subscription money.

158. In view of the aforesaid transfer of Rs. 413.10 Crore from FCRPL to FRL, the allegations of transfer of Rs. 412.335 Crore from FRL to FCRPL and the subsequent transfer to FCPL and the utilization of the same by FCPL to pay its contribution for the subscription money (25% of the total issue size) of equity warrants being issued by FRL and the funds of FRL being diverted from FRL for the benefit of the promoters does not survive. Thus, there is no violation of Section 67(2) of the Companies Act as alleged in the SCN.

159. In terms of Schedule V of the LODR Regulations read with Regulation 34(3) of the said Regulations, there shall be disclosures of loans and advances in the nature of loans to related parties by name and amount in the annual report of the listed company. For the FY 2018-19, FRL disclosed FCRPL as a related party '*able to Exercise Significant Influence'* upon FRL and thus in terms of the LODR Regulations, FRL was bound to disclose the receipt of advance of Rs. 400 Crores from FCRPL on March 27, 2019 in its

Annual Report for the FY 2018-19. Similarly, FRL was also bound to disclose the transfer of Rs. 13.1 Crores on April 23, 2019, from FCRPL to FRL and the transfer of Rs. 412.35 Crore by FRL to FCRPL on April 23, 2019, in its Annual Report for the FY 2019-20. In terms of Regulation 23(2) of the LODR Regulations, the approval of the Audit Committee was required for the aforesaid transactions or omnibus approval sought in terms of Regulation 23(3). Para 18 of the Ind AS 24 obliges a listed entity to disclose its RPTs including information about transaction and outstanding balances including the amount therein. Para 19(b) of the Ind AS 24 mandates that disclosures required in Para 18 shall be made separately for entities having significant influence over the entity. Clause 1 of Part A of Schedule V of the LODR Regulations mandates that the Annual Report of the listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures".

160. No such disclosure was made by FRL and the only significant RPT disclosed by FRL *qua* FCRPL is the sale of goods and services of Rs. 0.71 Crore as mentioned in the statement of cash flow for the year ended March 31, 2019, there is no mention of any outstanding balance as on March 31, 2019 in respect of transactions with *related parties*. Similarly, there is no mention of any RPTs with FCRPL in the Annual Report for the FY 2019-20, nor was approval of Audit Committee of FRL was sought for these transactions. In view of the same, I find that FRL violated Regulation 23(2), Regulation 34(3) of the LODR Regulations read with Clause 1 of Part A of Schedule V of the LODR Regulations and para 19 of Ind AS 24. FRL also failed to adhere to the principles governing disclosures and obligations as per Regulation 4(1)(a), (b), (c), (g), (h), (i), (j) and 4(2)(e)(i) of the LODR Regulations.

Allegation of Violations of SEBI Act and PFUTP Regulations.

161. As mentioned in early part of this order the SCN also makes allegations of contravention of provisions of SEBI Act and PFUTP Regulations. For the sake of easy reference, the allegations in this regard are mentioned in brief herein again: -

Charge –

Noticees No. 1 and 2 – contravened provisions of Section 12A(a),(b),(c) of SEBI Act and Regulation 3(b),(c),(d), 4(1), 4(2)(f) and (k) of PFUTP Regulations.

Noticee No. 3 –abetted Noticees No. 1 and 2 and contravened the provisions of Section 12A(a), (b), (c) of SEBI Act and Regulation 3(b),(c),(d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations

Basis-

(a) Part A(a) -Through incomplete disclosure on exchange platform, partial information given to Audit Committee and shareholders, discrepancy in number of stores, desktop valuation carried out, non-adherence to terms of NOC of Central Bank by FEL, mis-match of actual utilization as against the utilization certificate received, the transaction of purchase of in-store assets by FRL from FEL in FY 2019-20, FRL deliberately concealed that it would use 50% of the proceeds received through issuance of Singapore bonds for repayment of its debt in the guise of purchase of in-store infra assets from FEL.

(b) Part A(b): The entire transaction of giving security deposits/ advances by FRL to the 10 related parties was in the nature of a scheme, devise or artifice through which FRL deliberately concealed its RPTs, under reporting its RPTs.

(c) Part B: The entire transaction of raising loan by Borrower Entities and immediately transferring the funds to FRL was in the nature of a scheme, devise or artifice using which FRL deliberately concealed the fact that it was raising debt leading to suppression/ under reporting the debt/ borrowing position in its financial statements.

(d) Part C: The disclosures made by FRL pertaining to the events that occurred between November 2020 and March 2022 did not reflect the true state of affairs of FRL and were not consistent with the facts of each event and acted as a fraud or deceit upon the investors while taking their investment decisions during November 2020 to March 2022.

(e) Part D: Diversion of funds from FRL for benefit of FCPL, is in nature of manipulative, fraudulent and unfair trade practice in securities market in terms of PFUTP Regulation.

162. Noticees No. 1, 2 and 3 have vehemently denied these allegations and have submitted as follows:

(a) SCN fails to establish any intent, act, practice, material misrepresentation, or act designed to defraud investors or inducement. The mere existence of certain transactions, in the ordinary course of business and in compliance with corporate governance norms, does not meet the legal threshold for *fraud* under Regulation 2(1)(c) of PFUTP Regulations as there is no element of *"dealing in securities"* coupled with *inducement* of investors to buy, sell, or retain

securities. There is no deliberate act of deception intending to manipulate the securities market or defraud investors.

(b) The assertion that the Noticee's actions caused share price fluctuations is speculative and unsupported by evidence. Price movement as relied upon in the SCN is not based on any examination as to how the annual disclosures could impact the price during a previous period in the same FY. The SCN has not given any data or analysis of trading or investment based on disclosures made by FRL and how the alleged non- disclosures had potential to impact the trading in shares of FRL.

(c) Hon'ble SC in ***SEBI v. Kanaiyalal Baldevbhai Patel***[29] and the Hon'ble SAT in ***Price Waterhouse v. SEBI***[30] have clarified that the PFUTP Regulations apply only where there is "*dealing in securities"* coupled with inducement. No such dealing or inducement has been attributed to the Noticee.

(d) Hon'ble SAT in ***Reliance Industries Ltd. v. SEBI***[31], clarified that one of the essential elements of *fraud* is *inducement*, meaning that a party must have misled or influenced investors to deal in securities. A charge of *fraud* can only be established when there is such inducement.

(e) There is no '*dolus malus*' i.e. an element of some motive or ill-conceived idea or design. Noticees placed reliance on the observations of Hon'ble SAT in the case of ***DLF Ltd. & Ors. v. SEBI***[32] to submit that for an act to be termed as

[29] *(2017) 15 SCC 753*
[30] *SAT order dated 09.09.2019 in Appeal No. 6 of 2018*
[31] *2020 SCC OnLine SAT 532*
[32] *SAT Order dated March 13, 2015, in Appeal No. 331 of 2014*

'*fraud'* within the meaning of PFUTP Regulation should have an element of some motive or ill-conceived idea or design. Such an element is completely lacking in the present case.

(f) Noticees place reliance in SEBI order in ***DB Realty Limited***[33] to submit that *fraud* under Regulation 2(1)(c) of the PFUTP Regulations requires a direct act of misrepresentation, omission, or misleading practice aimed at inducing investors. Similarly, there is no evidence in this case that investors suffered losses due to the alleged violations, nor that the Noticee gained any unfair advantage.

163. As can be noted from the above terms of reference of the Forensic Auditor, scope of audit was limited to conduct Forensic Audit of FRL and audit of FCL), FSCSL and FEL with respect to RPTs with FRL during the FYs 2019-20, 2020-21 and 2021-22; verification of the consolidated financial statements of FRL with a special focus on debt raised and its utilization, capital expenditure advance, security deposit increase, lease takeover by Reliance Group and increase in advance to supplier during the review period. Such scope was not to examine and find out the violations of PFUTP Regulations and accordingly, the findings of the FAR are confined only to lack of disclosures or deficient disclosures in the Annual Report/s of FRL and other named companies and consequential violations of the provisions of the LODR Regulations. It is observed that, shortly after FAR was submitted, the IA drew the IR after examining and incorporating the findings of FAR as part of IR, and consequently, the same was reproduced in the SCN also. It is only based on narrations in IR the SCN, additionally, includes allegation

[33] *QJA/GR/CFID/CFID/31185/2024-25*

of violation of provisions of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f), 4(2) (k) and (r) of PFUTP Regulations.

164. Under Section 12A of the SEBI Act and Regulation 3 of the PFUTP Regulations the expression *"any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations,"* has to be understood in the sense of a term having legal signification (as opposed to its ordinary English or non-legal technical sense). From the provisions in Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations it is clear that prohibition contained therein are wide enough to include all kinds of market misconduct and abuse where a person, who deals in securities, takes advantage of the impact of his action or creates anticipated impact on the market or a situation wherein innocent investors are induced to deal in securities.

165. When seen in context of prohibitions under Section 12A and Regulations 3 and 4 read with definition of the term '*fraud'* under Regulation 2(c), it is deducible that they depend upon *'dealing in securities'* or employing any device, scheme or artifice to defraud *'in connection with dealing in or issue of securities'* or engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person *'in connection with any dealing in or issue of securities.'* Regulation 4 (1), prohibits indulgence in *"fraudulent and unfair **trade** practices"* in securities. The words '*fraud*' and *'fraudulent'* have been defined under Regulation 2(1)(c) of the PFUTP Regulations as follows: -

> ***Definition of 'fraud" – Regulation 2(1)(c).***
>
> *(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether*

or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behaviour by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;"

166. The definition of '*fraud'* under Clause (c) of Regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of term '*fraud'* and all elements of first part are to be seen in them too as common thread.

167. In my view, the words *"in connection with dealing in securities"* in Regulation 3 of the PFUTP Regulations do not signify that the person employing the *device* and engaging in act, practice, etc. should actually buy or sell securities. In this regard, it is relevant to

refer to the following observation of Hon'ble SAT in the matter of ***V. Natarajan vs. SEBI***[34]: -

> *"... ... These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on an exchange. They also prohibit persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true..."*

168. Prevention of *market abuse* and preservation of *market integrity* is the hallmark of securities law. Section 12A read with Regulations 3 and 4 of the PFUTP Regulations essentially intended to preserve *"market integrity"* and to prevent *"market abuse"*[35]. In this regard, it is relevant to rely upon following observations of the Hon'ble SC in the matter of ***N. Narayanan v. SEBI***[36]:

> *"33..... The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors' protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. "Market abuse" impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect*

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[34] *Appeal No. 104 of 2011, decided on June 29, 2011*

[35] *N. Narayanan v. SEBI Judgment dated 26.04.2013-. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality".*

[36] ibid

or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality". The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rise of the scrip of the company. ***Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse."***

169. Section 12A (a), (b) and (c) of the SEBI Act 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. Further, the principles and ingredients of Regulation 2(c) run through as common thread in all prohibitions under Section 12A and Regulation 3. Hon'ble SC in ***SEBI V. Shri Kanaiyalal Baldevbhai Patel.***[37] gave a liberal interpretation to the definition of '*fraud'* under Regulation 2(c) of PFUTP Regulations. Hon'ble SC, held the definition of "*fraud*" expands beyond what can normally be understood to be a '*fraudulent'* act. The emphasis is on act of inducement. It further held that for scrutinizing the cases under the PFUTP Regulations, mere inference, rather than proof, that **the person induced would not have acted in the manner that he did but for the inducement is sufficient.** No element of dishonesty or bad faith in the making of the inducement would be required. It observed as follows:

'*5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce*

[37] *Civil Appeal No. 2595 of 2013 ; (2017) 15 SCC 1 judgement dated September 20, 2017*

another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities.

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

170. Regulation 4(1) deals with fraudulent and unfair trade practices relating to securities markets. This Regulation is without prejudice to Regulation 3. Meaning thereby that an act may not fall under Regulation 4 yet it may fall under Regulation 3. Regulation 4(2) provides a deeming fiction which is rebuttable. According to this Regulation, 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 listed acts. Thus, the common thread through these provisions is that the ingredients of fraud/ manipulation/ unfair trade practices must be satisfied. Subsequently, with effect from October 19, 2020, the scope of Regulation 4(1) was clarified by adding an Explanation according to which indulging in diversion, misutilisation or siphoning off of assets or earnings of a listed company ***that would directly or indirectly manipulate the price of securities of that company*** would fall within the scope of Regulation 4(1). Thus, 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 resulted into manipulation of the price of securities of that company.

171. While Explanation to Regulation 4(1) requires possible direct or indirect impact of price of securities of the concerned company due to fund diversion, etc., Regulation 4(2)(e) operates in different field *viz*; the price manipulation by dealing in securities as actual *cause and effect*. In this case, in the SCN, there is not even a whisper in the SCN about manipulating the reference price or bench mark price of securities of FRL as required under Regulation 4(2)(e). The present case is not a case of disseminating information or advice through any media, whether physical or digital as required under Regulation 4(2)(k). Further, in this case, there is no fact brought out in SCN to allege knowingly planting false or misleading '*news'* which may induce sale or purchase of securities as required under Regulation 4(2) (r) of the PFUTP Regulations. Regulation 4(2)(f) also envisages element of *"dealing in securities."*

172. Hon'ble SC in ***Kanaiyalal Baldevbhai Patel (supra)*** also observed that: *"It should be noted that the provisions of regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation like the one under consideration."*

173. SEBI amended Regulation 2(1) (b) of the PFUTP Regulations w.e.f. February 01, 2019, to redefine the expression *'dealing in securities'* as under:

> *"(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise*

transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;

(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and

(iii) any act of providing assistance to carry out the aforementioned acts."

174. Thus, any act which is '*knowingly'* and clandestinely designed by the company and its directors so as to benefit the promoters/directors ***and designed to*** induce /influence the investment decision of the investors and assistance to carry out such act would be part of the expression "*in connection with dealing in securities"* and would fall within the scope of prohibitions under Section 12A of the SEBI Act and Regulation 3 and 4 of the PFUTP Regulations.

175. Unfair trade practice has not been defined under the PFUTP Regulations. A clear cut generalized definition of the '*unfair trade practice'* may not be possible to be culled out from the aforesaid definitions. Broadly, a trade practice is *unfair* if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is *unfair* is to be determined by all the facts and circumstances surrounding the transaction. Moreover, the concept of '*unfairness'* is broader than and includes the concept of '*deception'* or '*fraud'*. The fund diversion clandestinely or using misrepresentation of fact or concealing any material information would impact and influence the investment decision of shareholders of the concerned company and would indirectly impact the price of the shares of the company and therefore, will certainly be a manipulative, fraudulent or an unfair trade practice in securities markets and fall within

wide scope of Regulation 4(1) of the PFUTP Regulations. The "*fraud on the market theory,"* as endorsed in ***SEBI v. Rakhi Trading Pvt. Ltd***.[38] and ***N. Narayanan (Supra)***, establish that fund diversions are presumed to influence investor behaviour, thereby constituting unfair trade practices. The presumption, however, is rebuttable

176. In the instant case, the SCN (in Para 10.1 to 10.5) alleges inducement by way of publication of false and misleading statements in Annual Reports during FYs 2016-17 to 2020-21. Apart from the price analysis with respect to allegations in Part C of the SCN there is no other price or volume analysis. I note that such narration is merely recital without any sound basis. 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 FAR except for the price chart of the scrip of the FRL. While the SCN charges Noticees No. 1, 2 and 3 with violation of Section 12A(a), (b) and (c) of the SEBI Act, and Regulations 3(b), (c) and (d) of the PFUTP Regulations, which can be in relation to dealing in securities. However, no examination of trading, *viz*: volume of shares traded, price impact, etc. influenced by disclosures/non- disclosures, have been provided. Nor is there any analysis as to how each of the facts found in FAR against FRL had impacted or influenced any persons' investment decision at the relevant time. It is also pertinent to mention that proximity between time of publication and time of investment decision of investors is crucial for making such allegation. It is for this reason that Explanation to Regulation 4(1) declares manipulation in books of account or financial statement of the company that would manipulate the price of securities of that company. Further, Regulation 4(2(f) is in

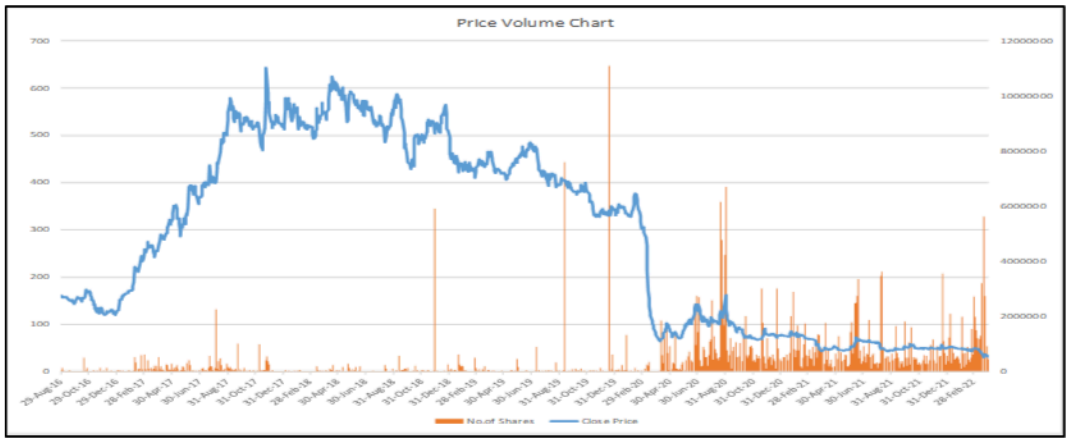
[38] *(2018) 13 SCC 753)*

relation to *'financial results'*, '*financial statements'*, etc. Ind AS 24 also deals with disclosures/publication in *'financial statements'*.

177. As noted above Annual Report is not included in the definition of 'financial statements'. Again, in corporate parlance, Annual Report is not a books of account of the company. There is no examination in the IR or SCN about any trading or dealing in shares of FRL based on disclosures in concerned Annual Report in this case. The IR is completely silent as to how the Noticees designed or orchestrated a device to influence decision of investors in securities of FRL or the disclosures induced other persons to deal in securities of FRL by not disclosing certain related parties and its RPTs in its Annual Reports and by its failure in seeking approval of the Audit Committee or shareholders for the RPTs.

178. The SCN uses words like '*FRL misled its bondholders*', '*knowingly publishing misrepresented financial statements'*, etc, imputing active concealment of information. I have already held that none of the acts, anyway, impacted the decision of bondholder of Singapore Bonds or they intended to defraud them by harming their interest by alleged disclosures. The SCN fails to analyze the impact of such alleged conduct. The conduct of Noticees No. 1, 2 and 3 with respect to active concealment of information, misrepresentation, misleading disclosures or the wrongful gain or avoidance of loss and the fact of knowing all the aforesaid has not been brought out anywhere though recitals have been made. In the SCN, there are no trading or order data or details of any purchase, sale or price impact analysis that would impact the decision of investors.

179. The SCN has merely attempted to place a price movement charge for the period FYs 2016-17 to 2020-21. The said chart is as following: -



180. The SCN, nowhere, brings out impact on price due to non- disclosures or incomplete disclosures. As per SCN (para 10.1) there was publication of untrue and misleading financial results during FYs 2016-17 to 2020-21 which led to significant impact on the scrip price. However, in para 10.3, the SCN states that FRL presented less leveraged balance sheet and under reported its RPTs during FYs 2016-17 to 2019-20 only. Be that as it may, it is noted that, although the SCN mentions financial statements, it is the non-disclosure of related parties and RPTs in the Annual Report for the FYs 2016-17 to FY 2020-2021. The disclosures in the Annual Report are not continuous disclosures, it is published once after the conclusion of each financial year. FRL disclosed its Annual Report for the FYs 2016-17 and 2020-21 as follows:

Annual Report for FY	**Date on which disclosed on exchange**
2016-17	August 31, 2017
2017-18	August 31, 2018
2018-19	July 05, 2019
2019-20	December 05, 2020
2020-21	September 04, 2021

181. If these Annual Reports having the non-disclosure of the related party status and the RPTs as determined above and had significantly impacted the price of the scrip of FRL the same could be reflected in the price when disclosures are made / corrected. From the data available on the NSE website it is noted Annual Report wise as follows:

(a) **Annual Report for FY 2016-17:** After the disclosure of the Annual Report for FY 2016-17, on the stock exchanges after-market hours on August 31, 2017 (Monday), there was increase of 2.9% (closing price increased from Rs. 535.15 to Rs. 550.75) in the price of scrip of FRL on September 01, 2017, however, the volume decreased significantly from 20,57,771 to 9,02,575. This show that disclosure in this Annual Report (even if favorable information was disclosed as alleged) did not influence trading volume and trading activity by investors. Such huge fall in trading volume clearly shows that FRL did not induce investors to invest in or divest in its scrip by publishing this Annual Report. The day wise trading data during the relevant period is reproduced as follows:

Date	**Open**	**Close**	**Volume**
August 30, 2017	507	510.10	16,62,562
August 31, 2017	511.00	535.15	20,57,771
September 01, 2017	539.85	550.75	9,02,575
September 04, 2017	550.00	572.10	17,80,934

(b) **Annual Report for FY 2017-18:** The Annual Report for FY 2017-18 was disclosed during market hours at 12:23:06 on August 31, 2018 (Friday), the opening price of the scrip was Rs. 543.6 and the closing price on the same date was Rs. 556.8, i.e. an increase of 2.42%. The volume increased significantly from 2,01,710 on August 30,

2018 to 5,94,098 on August 31, 2018. Thus, the disclosure of the Annual Report for FY 2017-18 positively influenced trading volume and trading activity by investors in the scrip of FRL. The day wise trading data during the relevant period is as follows:

Date	Open	Close	Volume
August 30, 2018	558.00	543.60	2,01,710
August 31, 2018	543.60	556.80	5,94,098
September 03, 2018	557.00	574.85	16,89,139
September 04, 2018	578.75	566.95	5,58,244

(c) **Annual Report for FY 2018-19:** On July 05, 2019 (Friday), the price of scrip of FRL decreased from Rs. 471.40 as on July 04, 2019 to Rs. 464.90 as on July 08, 2019, i.e. a decrease of 1.37%, however the volume significantly increased from 76,393 on July 04, 2019 to 4,39,950 as on July 08, 2019. This shows that the disclosure of the Annual Report decreased the interest in the scrip of FRL, as evidenced by the fall in the price of scrip an increase in its volume. The day wise trading data during the relevant period is as follows:

Date	Open	Close	Volume
July 04, 2019	471.15	471.40	76,393
July 05, 2019	473.20	469.00	67,009
July 08, 2019	467.85	464.90	4,39,950
July 09, 2019	461.00	478.45	4,18,977

(d) **Annual Report for FY 2019-20:** The Annual Report was disclosed on December 05, 2020 (Saturday), the close price of scrip of FRL remained unchanged at Rs. 76.90 on both December 04, 2020 and December 07, 2020, there was a slight increase in volume

from 18,27,23,837.50 on December 04, 2020 to 18,59,68,153 on December 07, 2020. Thus there was no impact of the disclosure of the Annual Report on the price and trading activity of scrip of FRL. The day wise trading data during the relevant period is as follows:

Date	**Open**	**Close**	**Volume**
December 04, 2020	77.90	76.90	23,75,432
December 07, 2020	77.00	76.90	24,15,558
December 08, 2020	77.70	76.90	23,69,140
December 09, 2020	77.00	80.70	28,11,589

(e) **Annual Report for FY 2020-21:** After the disclosure of this Annual Report, on the stock exchanges on September 04, 2021 (Saturday), there was a small increase in the close price from Rs. 45.10 on September 03, 2021 to Rs. 46.25 on September 06, 2021, i.e. increase of 1.37%, however, the volume of the scrip increased significantly from 9,47,199 on September 03, 2021 to 17,81,912 on September 06, 2021. Thus, the disclosure of the Annual Report positively influenced the price and trading activity in the scrip of FRL. The day wise trading data during the relevant period is as follows:

Date	**Open**	**Close**	**Volume**
September 03, 2021	45.30	45.10	9,47,199
September 06, 2021	46.00	46.25	17,81,912
September 07, 2021	46.50	45.75	8,28,964
September 08, 2021	45.85	45.95	8,67,917

182. From the above analysis of price and volume of the scrip, it cannot be concluded that there was any significant influence of the disclosure of the Annual Reports due to the variation in outcome of the price and volume of the scrip of FRL.

183. As per judgement of Hon'ble Supreme Court in ***Shri Kanaiyalal Baldevbhai Patel (supra)***, the definition of *'fraud'*, is an inclusive, broad and expansive definition and contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has *the effect of inducing* another person *to deal in securities*. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "*induce*". Further, for scrutinizing the cases mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient.

184. In this case, price manipulation is not established. Further, there is no material or analysis suggesting inducement of other in trading in shares of FRL on account of Annual Reports of FRL. Hon'ble SAT in ***Reliance Industries Ltd Case(Supra)*** held that - *"....motive is not a consideration for establishing a fraud. In fact, the essential ingredient for establishing fraud is "inducing others to trade". A fraud can be established only when inducement is established;"*.

185. In similar case of ***Jaisukh Dealers Limited,*** vide Order No. WTM/AB/IVD-ID19/12937/2021-22 dated August 06, 2021, speaking through its WTM, SEBI found that the company misrepresented its financial statements and violated Para 15 of Ind AS 1 and Para 16 of Ind AS 1 and thereby violated provisions of Regulation 33(1)(c) and

Regulation 48 of LODR Regulations. The company also violated LODR Regulations on other failures apart from above finding of misrepresentation in its financial statement. Also, the company did not cooperate with forensic auditor. However, in similar circumstances, in the said order SEBI held that, since the essential ingredients of *"dealing in securities", "inducement";* "*to induce others to deal in securities*", price manipulation, trading by others, etc. are absent in the SCN, the allegations of violation of Section 12A(a), (b) and (c) of the SEBI Act and provisions of PFUTP Regulations is not tenable. WTM gave liberty to SEBI to issue fresh SCN to pursue violations of PFUTP Regulations by bringing out specific case/ingredients under PFUTP Regulations, which SEBI did not pursue further. WTM also held that: -" *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.*"

186. In the above case the WTM, SEBI imposed only monetary penalty for non-compliance of disclosure obligations under LODR Regulations.

187. In case of ***Taneja Aerospace and Aviation Limited***[39]. The Adjudicating Officer, SEBI exonerated the Noticees from violation of SEBI Act read with PFUTP Regulations and held them liable for violation of disclosures under Clause 36 of Listing Agreement which was relating price sensitive disclosures.

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39 ADJUDICATION ORDER NO. EAD-8/ Order/KS/AA/2018-19/2172-2175 dated February 21,2019

188. I further note that in case of ***DB Realty (supra)***, it could not be established that any alleged non-disclosures artificially influenced stock price movements. Additionally, it was acknowledged that for fraud allegations to hold, there must be a demonstrable impact on investors or the market, which was absent in that case. In this case also, SEBI dropped the charge of violation of SEBI Act read with PFUTP Regulations and imposed monetary penalty on account of non-compliance of disclosure requirements as per Accounting Standards.

189. In case of ***Reliance Industries Limited & Ors***[40]**.** i.e. a case involving violation of Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of UPSI read with Regulation 8(1) of PIT Regulation and Regulation 30(11) of LODR Regulations, the Adjudicating Officer imposed a penalty of Rs.30,00,000/- (to be paid jointly and severally by three persons i.e. the company and its two compliance officers) under Section 15HB of the SEBI Act. Hon'ble SAT upheld this order and Hon'ble SC dismissed the appeal filed by those persons. It was held that huge cross-border investment (valued at Rs. 43,734 Crore) in a material subsidiary of a listed company is a *'material information'*. However, a material information under the LODR Regulations does not *ipso facto* become Unpublished Price Sensitive Information (UPSI) under the PIT Regulations. There is an intricate interplay between the PIT Regulations dealing with insider trading and the LODR Regulations requiring continuous disclosure of event and information, that are specified or treated as material thereunder. However, all material information under LODR Regulations may not be price sensitive for the purpose of PIT Regulations. Conversely, merely because material

40 CIVIL APPEAL NO. 9511 OF 2025 order dated December 02,2025

information is required to be disclosed to the stock exchanges, it cannot be held to be UPSI. What is *'price sensitive'* is essentially '*material'*, but the converse is not true. While LODR Regulations require continuous disclosure of material events or reports, the PIT Regulations have gone a step ahead to cover even information and events that may not be over materiality threshold under the LODR regulations, but have material price sensitively potential. Report of the High-Level Committee to review the SEBI (Prohibition of Insider Trading) Regulations, 1992 (TK Vishwanathan committee), also mentions that '*no piece of information should mandatorily be regarded as price sensitive.'* Civil Appeal filed against this order of Hon'ble SAT was dismissed by Hon'be SC.

190. With same logic, all RPTs whether material or otherwise cannot be *ipso facto* fraudulent. RPTs are common in business, often legitimate, and used for efficient operations. However, they carry higher risks for fraud, such as siphoning funds, manipulating earnings, or hiding liabilities. No all these RPT related disclosures can be fraud relating securities of FRL or in connection with dealing in its securities. The foundational facts required under Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations must be established based on higher degree of probability in such cases. It is a settled position that for establishing a charge of having been indulged in fraudulent, manipulative and unfair trade practices, the finding must be sustained by a higher degree of preponderance of probability than that required in any other civil default. There must be convincing preponderance of probability to support such an allegation.

191. There exist no set criteria to determine whether an act involves fraudulent, manipulative and unfair trade practice and the same has to be determined on the basis of an overall

consideration of the facts and circumstances. Hon'ble SAT held that that regulatory authorities are required to substantiate allegations of fraud with concrete findings of fact, supported by unequivocal documentary evidence[41]. Regulatory authorities cannot shift the burden onto the accused to refute claims that lack proper substantiation[42]. In ***Ess Ess Intermediaries v. SEBI***[43], Hon'be SAT held that allegations of fraud or misconduct must be grounded in "**clear and unambiguous evidence."** There must be convincing preponderance of probability to support the allegation of fraudulent practices. This onus is on SEBI.

192. Merely, probabilising or endeavouring to prove the fraud or mere suspicion of intention of making undue profit or avoidance of loss is not sufficient to make good the charge of fraudulent plan or device or artifice in connection with issue, purchase or sale of or dealing in securities as required in Section 12A and Regulation 3 of the PFUTP Regulations. The charges of fraud are serious in nature and cannot be based on mere surmises, conjectures, Hon'ble SAT in ***KSL & Industries Ltd. vs. Chairman, SEBI***[44], held that "*A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained…… allegation of fraud cannot survive on mere conjectures and surmises.*" It is also settled position that a view founded on what is claimed to be the spirit of the law is always attractive, for it has a powerful appeal to sentiment and emotion; but the deciding authority has to gather the spirit of the law from the language unless it suffers from ambiguity. What one may believe or think to be the spirit of the law cannot prevail if the

[41] *Hon'ble SAT in Chandrasen Ganpatrao Bhise v. SEBI*
[42] *Hon'ble Supreme Court in Balram Garg v. SEBI*42, *In DLF Ltd. (supra), Hon'ble SAT emphasized the need for conclusions supported by evidence.*
[43] *2013 SCC OnLine SAT 24*
[44] *SAT Order dated September 30, 2003 in Appeal No. 9/2003*

language of the law does not support that view, especially when penal provisions are invoked. In this case, such charge in the IR and SCN is based on these approaches and it cannot sustain on the desired level of probability.

193. In this case, no fund diversion against the interest of investors or active concealment, misrepresentation, or misleading disclosure to draw inference of inducement of investors could be established by IR/SCN. Accordingly, the only aspect that remains as per SCN is whether Noticees No. 1 and 2 devised a fraudulent scheme with aid and abetment by Noticee No.3 to manipulate the price of the shares of FRL as alleged in the SCN.

194. It is noted that the IR takes into account that though FRL omitted several disclosures as found hereinabove, it had made the following disclosures with respect to its RPTs:

(a) Disclosures dated October 12, 2019 and October 15, 2019 with respect to the outcome of the board meeting approving slump sale transaction for purchase of in-store infrastructure assets by FRL from FEL, the press release with respect to the acquisition of retail infrastructure assets and disclosure with respect to the extra ordinary general meeting proposed to be held on November 08, 2019 to approve the slump sale transaction. Disclosure made on November 05, 2019 with respect to the indicative valuation report issued by GT.

(b) Disclosures dated October 12, 2019, January 04, 2020, January 06, 2020, January 15, 2020, January 22, 2020 and January 23, 2020, with respect to the raising of funds through issuance of USD denominated notes for an aggregate amount not exceeding USD 500 million as follows:

Table No. 6 – Disclosures with respect to the raising of funds through issuance of USD denominated notes

Sr. No.	Date of Disclosure	Disclosure made
1.	October 12, 2019	Stock exchange disclosure with respect to board of directors' decision to raise funds through issuance of USD denominated bonds amounting USD 500 million.
2.	January 01, 2020	Intimation for Board Meeting scheduled on January 04, 2020 for fund raising.
3.	January 04, 2020	Disclosure regarding the outcome of meeting of board of directors of FRL held on January 04, 2020 approving issuance of USD denominated Notes for an aggregate amount not exceeding USD 500 Million.
4.	January 06, 2020	Disclosure intimating credit rating details in relation to the proposed fund raising.
5.	January 15, 2020	Disclosure providing the details with respect to giving details relating to USD denominated bonds.
6.	January 22, 2020	Disclosure regarding allotment of bonds.
7.	January 23, 2020	Regarding listing on Singapore Stock exchange and offering circular in relation to the issuance of bonds.

(c) FRL made the following disclosures with respect to the scheme of arrangement with Reliance Group and termination of leases and store takeover:

Table No. – 7 – Disclosures with respect to the scheme of Arrangement with Reliance Group

Sr. No.	Date of Disclosure	Disclosure made
1.	August 29, 2020	Public announcement of the proposed scheme of arrangement between FRL and Reliance Group
2.	November 21, 2020	Intimation about approval of CCI for transaction contemplated in the Scheme of Arrangement

3.	April 01, 2021	Disclosure regarding the extension of the long stop date for the scheme from March 31, 2021 to September 30, 2021.
4.	October 01, 2021	Disclosure regarding the extension of the long stop date for the scheme from September 30, 2021 to March 31, 2022.
5.	February 26, 2022	Disclosure regarding the extension of the long stop date for the scheme to September 30,2022.
6.	February 26, 2022	Disclosure regarding receipt of termination notices for sub-leased premises including by Reliance Group
6.	February 28, 2022	Intimation about NCLT approving conduct of meetings of shareholders and creditors
7.	March 09, 2022	Disclosure of receipt of additional lease termination notices from Reliance entities covering 342 large format stores and 493 small format stores, contributing 55%-65% of FRL's retail revenues.
8.	March 16, 2022	Disclosure describing FRL's expectations under the Scheme and the company's position vis-à-vis the unilateral actions by Reliance Group.
9.	March 16, 2022	Clarificatory disclosure detailing the background of store terminations, operational challenges, COVID-19 impact, Scheme of Arrangement with Reliance and objections raised by FRL's board of directors.
10.	March 19, 2022	Intimation for convening meeting of equity shareholders on April 20, 2022 and of creditors on April 21, 2022.
11.	April 20, 2022	Intimation of proceedings of meeting of shareholders held on April 20, 2022.
12.	April 21, 2022	Intimation of proceedings of meeting of creditors held on April 21, 2022.
13.	April 22, 2022	Submission of report for meetings of equity shareholders and creditors.
14.	April 23, 2022	Intimation that the scheme cannot be implemented

(d) FRL made two disclosures on March 22, 2020 and March 16, 2022 regarding the adverse effect of COVID-19 on the business operations of FRL and detailing the substantial erosion of sales, net worth, defaults and financial distress on account of the pandemic.

(e) In addition to the above disclosures made before the stock exchanges, FRL disclosed the following in its financial statements:

(i) Disclosure in the notes forming part of the financial statements (notes 49 and 51) for FY 2019-20, disclosing the impact of the change in accounting policy and adoption of Ind AS 116 "*Leases*" information with respect to the increase in the amount in the capital work in '*Capital Work in Progress*' disclosing that '*Capital work in progress includes amount paid of ₹3,559.68 crore towards acquisition of in-store infrastructure. The same has been acquired in June 2020'.*

(ii) Disclosure of the consolidated increase in security deposits from Rs. 1,935.45 Crore as on March 31, 2019 to Rs. 4,242.36 Crore as on March 31, 2021 in the Annual Reports of FRL in FYs 2019-20 and 2020-21.

(iii) The future lease rental obligations of FRL were disclosed in FRL's Annual Report for FY 2019–20 as follows:

NOTES FORMING PART OF THE FINANCIAL STATEMENTS

(₹ in crore)

		As at March 31, 2020	As at March 31, 2019
17	**Non-Current Financial Liabilities - Borrowings**		
	Secured (Refer Note No. 48)		
	Loan from Banks	394.95	375.31
	Bonds	3,769.30	-
	Non-Convertible Debentures	198.50	-
		4,362.75	375.31
18	**Non-Current Financial Liabilities - Others**		
	Lease Liabilities	1,711.29	-
		1,711.29	-
19	**Non-Current Liabilities - Provisions**		
	Provision for Employee Benefits	72.66	57.76
		72.66	57.76
20	**Other Non-Current Liabilities**		
	Lease Equalisation Account	-	136.99
		-	136.99
21	**Current Financial Liabilities - Borrowings**		
	Secured (Refer Note No. 48)		
	Loan from Bank	1,079.73	50.00
	Working Capital Loans and Others	3,320.19	2,128.67
		4,399.92	2,178.67
22	**Trade Payables**		
	Due to Micro and Small Enterprises	51.63	19.31
	Due to Others	5,439.01	3,570.38
		5,490.64	3,589.69
23	**Current-Other Financial Liabilities**		
	Current Maturities of Long-Term Borrowings	126.76	103.06
	Interest Accrued But Not Due on Borrowings	61.04	-
	Security Deposits	6.44	11.82
	Lease Liability	511.48	-
	Others	0.11	6.52
		705.83	121.40

195. As mentioned in earlier part of this Order, the explanatory notes 49 and 51 are financial statements in terms of sub Clause (v) of Section 2(40) of Companies Act. Thus, the required disclsoures were made in financial statements which have more sanctity for impacting investment decisions by public investors. IR does not bring out any analysis or observation as to whether the above disclosures referred above were also factors for price impact of scrip of FRL during the relevant period for which the price chart has been provided in the SCN. It is also noted that FRL was engaged mainly in retailing of fashion, household and consumer products which works on thin margins and profits are derived from a large volume of sales, its business model was dependent on in-store footfalls across large-format and mall-based locations, which were closed for an extended time leading during COVID-19 leading to total halting of retail operations of FRL. One may not forget the catastrophic impact of COVID-19 which worsened such

business as that of FRL during March 22, 2020 and March 16, 2022. It hit hard the gig economy and also badly impacted the price of shares of FRL as its stock witnessed gradual but sudden fall during COVID–19 pandemic. Thus, the price fall cannot be solely attributed to subsequent disclosures made by FRL.

196. In view of the above disclosures made by FRL, it cannot be said conclusively that there was deliberate attempt to conceal information and to present misleading and false financial statements in the Annual Report of FRL for the FYs 2016-17 to 2021-22. Hon'ble SC in case of ***N. Narayanan case (supra)*** involving similar allegations of publication of misleading financial results of the company applied the principle of "*acta exteriora indicant interiora secreta*" (external actions reveal inner secrets) to hold that the act of pledging of shares by the Noticees therein at artificially inflated prices, based on inflated financial results and raising loan indicated that the Noticees therein had deliberately and with full knowledge committed the illegality therein. In the present case, no such external actions of FRL/ Noticees herein are brought on record so as to evidence the deliberate knowledge of such misrepresentation.

197. In the present case, with respect to the alleged violations of fraud as mentioned above, it is noted that the fund raising, business operations and transactions with 16 Borrower Entities were happening prior to May 02, 2016, the allegations in Part C are not established, there is no diversion of funds, the element of active concealment is also not established. Considering all the aforesaid, it cannot be concluded that fraud relating to its securities or securities market has been committed by FRL.

198. In this case, 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 FAR has impacted or induced the persons dealing in securities of FRL.

199. In view of the above, I find that while Regulations 4(2)(e), (k) and (r) would not apply to the facts of this case, the charge of violation of provisions of Section 12A(a), (b) and (c) of the SEBI Act and Regulation 3(b), (c), (d), 4(1) 4(2)(f) of the PFUTP Regulations are not made out with respect to the allegations in Part A(a), A(b), B, C of the SCN.

Violations established qua FRL.

200. From the determination of the allegations *qua* FRL in the SCN, it is noted that following is established:

(a) Part A(a):

(i) Failed to seek approval of the Audit Committee of FRL for the receipt of Rs. 1,347 Crore from FEL and Rs. 521 Crore from Basuti and violated Regulation 23(2) of the LODR Regulations.

(ii) Failed to seek approval of the shareholders of FRL for above RPT and violated Regulation 23(4) of the LODR Regulations.

(iii) Failed to disclose the above RPT in the Annual Report of FRL for the FY 2019-20 and violated Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations and Para 19 of Ind AS 24.

(b) Part A(b):

(i) Failed to disclose related parties viz. Acute, R.K.P, Precision, Ojas, Nishta, Unique and Taquito, and its RPTs with these related parties in its Annual Reports for FYs 2019-20 and 2020-21 and violated Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Para 9 of Ind AS 24.

(ii) Failed to seek approval of its Audit Committee and also its shareholders for these RPTs and violated Regulation 23(2) and 23(4) of the LODR Regulations.

(c) Part A(c): Failed to disclose its RPTs with FCRPL for FY 2019-20 violated Regulation 23(2), (4), 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of LODR Regulations and Para 18 of Ind AS 24.

(d) Part B:

(i) Failed to disclose RTVPL, NDIL, Iskrupa, Syntex, Unique, Chirag, Nishta, Ojas, Acute and Taquito as related parties in the Annual Reports for FYs 2016-17 to 2020-21 and Bansi as related party in the Annual Report for FY 2020-21 and violated Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Para 9 of Ind AS 24.

(ii) Failed to take approval of its Audit Committee for the RPTs with the Borrower Entities and violated Regulation 23(2) of LODR Regulations.

(iii) Failed to disclose its RPTs with Borrower Entities and violated Regulation 34(3) read with Clause 1 of Part A of Schedule V read with Regulation 48 of the LODR Regulations read with Para 18 of Ind AS 24.

(e) Part D: FRL failed to disclose the (i) receipt of Rs. 400 Crore from FCRPL on March 27, 2019 in its Annual Report for the FY 2018-19, (ii) the receipt of Rs. 13.1 Crore from FCRPL on April 23, 2019 and (iii) the transfer of Rs. 412.35 Crore from FRL to FCRPL on April 23, 2019 and violated Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Para 18 of Ind AS 24.

Liability of Noticees.

Noticees No. 1,2 and 3

201. Since certain violations including violations in Part C, diversion of funds in Part D, fraud etc. are not established *qua* FRL, the role of the Noticees and the allegations *qua* them with respect to those unproven violations are omitted. The SCN attempts to fix vicarious liability on Noticees No. 1 and 2 as directors of FRL and on Noticee No. 3 as CFO (KMP) of FRL for the acts of FRL as found hereinabove by virtue of the provision of Section 27 of the SEBI Act. Noticees No. 1 and 2 have also been independently charged as CFO of FRL during relevant period. Independent allegations have been levelled against Noticee No.1, 2 and 3. Noticee No. 2 has also been charged independently as a member of the Audit Committee of FRL. Noticee No. 4 has been independently charged for his functions as compliance officer of FRL during the relevant period. Noticees No. 5, 6 and 7 are independently charged as members of Audit Committee of FRL during

the relevant periods. Independent allegations have been levied against the auditor of FRL (Noticee No. 8) and the auditors of related parties (Noticees No. 9, 10 and 11).

202. Noticees No. 1, 2 and 3 who were the directors/CFO of FRL at the relevant time, are liable for the violations alleged to be committed by FRL as found above. Thus, as per the SCN the allegations which are established against FRL, are automatically, imputed on the two directors of FRL. In the previous paras, it has been found that with regard to related party disclosures and disclosures of RPTs, FRL has violated provisions of:-

(i) Regulation 4(1)(a), (b), (c), (g), (h), (i), (j), 4(2)(e)(i) of the LODR Regulations – Four Counts

(ii) Regulation 4(1) (c), (g), (h), (i) and (j) of the LODR Regulations – One Count

(iii) Regulation 23(2) of the LODR Regulations- Four Counts.

(iv) Regulation 23(4) of the LODR Regulations- Three Counts

(v) Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations read with Para 9 of Ind AS 24.- Two Counts

(vi) Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of LODR Regulations and Para 18 of Ind AS 24. – Three Counts

(vii) Regulation 34(3) read with Clause 1 of Part A of Schedule V and Regulation 48 of the LODR Regulations and Para 19 of Ind AS 24 – One Count

203. Therefore, in the context of Noticee No. 1, 2 and 3, it has to be determined whether these Noticees are liable for those violations for which FRL has been found to be in violation, either by virtue of Section 27 of the SEBI Act or otherwise. Section 27 provides as under:-

> *"Section 27: Offences by companies*
>
> *Prior to 08-03-2019:*
>
> *(1) Where an offence under this Act 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.*
>
> *w.e.f. 08-03-2019:*
>
> *(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*
>
> *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 contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.*

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly".

204. Regarding applicability of the Section 27 of the SEBI Act, I note that during the period (i.e. FYs 2016-17 to 2017-18), Section 27 provided for the vicarious liability of certain persons who were in charge of and were 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. However, by virtue of said Section 27, they are liable for acts of FRL post March 08, 2019. They are also responsible independently for the violations alleged against them for acts of FRL without any reference to vicarious liability under Section 27 of the SEBI Act.

205. Indubitably, Noticee No. 1 was the Chairman and the Managing Director of FRL (April 30, 2016 to March 05, 2020) and thereafter became the Executive Chairman of FRL (March 05, 2020). Noticee No. 2 was the Joint Managing Director of FRL (April 30, 2016 to March 05, 2020) and thereafter became the Managing Director (March 05, 2020 to May 01, 2022). Both the Noticees were KMP of FRL with effect from May 02, 2016. Noticee No. 2 was also the member of the Audit Committee of FRL from April 30, 2016 to May 01, 2022. Noticee No. 1 had issued the CEO/CFO Certificate of FRL for FYs

2016-17 to 2019-20 and Noticee No. 2 issued CFO/CFO Certificate for FY 2020-21. Noticees No. 1 and 2 had given personal guarantees/undertaking to Borrower Entities, approved the transaction of FRL entering into tripartite agreement for fund raising and also MLA/MSA with the Borrower Entities.

206. Noticee No. 3 was the CFO of FRL from May 02, 2016 and was its KMP. He was one of the signatories to the financial statements of FRL and had signed its CEO/CFO certification from FYs 2016-17 to 2020-21. He made contradictory and misleading submissions with respect to the Rs. 1,347 Crore transferred by FEL to FRL and also with respect to the details of the entities to whom the security deposits were given by FRL. He signed the MLA entered into between RTVPL and FRL dated March 28, 2018, and was director in four of the Borrower Entities. He was involved in the fund raising process. By not disclosing true and fair view of the transaction with Borrower Entities in the financial statements of FRL, he failed in discharging his obligations.

207. I have considered the responses of Noticees No. 1,2 and 3 in the above regard. All three have made evasive submission shifting their responsibility on Audit Committee, statutory auditors, operational departments of FRL. In my view, being in such managerial position in FRL it is their fiduciary duty towards FRL and its stakeholders to comply with statutory obligations. The transactions with *related party* have to be seen with utmost care and caution. I deem appropriate to refer to teaching of Bhagavadgita which says: ***सम्भावितस्य चाकीर्ति र्मरणादतिरिच्यते*** (2:34)=. "और लोग तुम्हारी बहुत समय तक रहने वाली अपकीर्ति का भी वर्णन करेंगे (निंदा), ***और सम्माननीय व्यक्ति के लिए अपकीर्ति .."है। (दुखदायी) मृत्यु से भी बढ़कर (अपमान)*** Reputation damage (अकीर्ति) for reputed people (सम्भावितस्य) is worse than death. The more reputed one is, the more is the risk to her reputational capital. Therefore, all insiders and directors

must take calculated and conservative views, when it comes to timely disclosure of RPT information.

208. It is noted that these Noticees were the KMPs of FRL since May 2016. They were at the helm of affairs of FRL and were deeply involved in its operational aspects including in the transactions mentioned in the SCN. Noticee No. 1 despite exercising significant influence through the Borrower Entities and other related parties did not inform the board or the Audit Committee with respect to the related parties and the RPTs. Noticees No. 1, 2 and 3, despite being aware of the receipt of funds from declared related parties failed to seek approval of the Audit Committee or the shareholders as applicable to those transactions. It was upon these Noticees to review the disclosures in Annual Reports of FRL and make necessary corrections if found deficient. This duty of due diligence fastened upon the KMPs of a company cannot be delegated to the internal departments of the company, the Audit Committee or on the statutory auditors. The submissions of having acted on the advice of the internal departments, Audit Committee, statutory auditors or being unaware are, therefore, rejected. These Noticees had knowledge of the relation with the undisclosed related parties and the RPTs of FRL and are liable for the violations of FRL as described above in terms of Section 27 of the SEBI Act. In this regard, it pertinent to mention it is not permissible to assign the obligation in complying with a statutory obligation to someone else not having responsibility for the same. Considering aforesaid, I find that these Noticees are liable for above determined violations of FRL. The SCN makes allegation that Noticees No. 1 and 2 '*abused their position'* with regard to non-compliances of FRL. I note that the SCN has made this ambitious narration based on misconception. Be that as it may, they enjoined premier positions in FRL and cannot plead ignorance about repeated defaults regarding *related*

party disclsoures and RPT approval/disclosures. Apart from his duties as KMP/ MD, Noticee No. 2, as a member of Audit Committee and being privy to all RPTs it was his legitimate duty to inform the Audit Committee rather than expect other members to guess. He cannot escape liability on account of such evasive submissions without any substance and proof.

209. These Noticees can also be held independently liable for the violations alleged against them without any reference to vicarious liability under Section 27 of the SEBI Act. I note that Regulations 4(2)(f)(ii) (2) (6)(7) and (8), 4(2)(f)(iii) (1) (3), (6), (12) and 14 and 17(8) of LODR Regulations, the violations of which have been alleged against Noticee No. 1 and 2 create specific and direct liability of the directors and the CEO. Clause 4(2)(f)(ii) deals with key functions of the board of directors and Clause 4(2)(f)(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 this case, the board of directors of FRL is not a Noticee and specific liability under Regulation 4(2)(f)(ii) and (iii) of the LODR Regulations has been fastened only on Noticees No. 1 and 2. By not conforming to the above obligations of FRL. These two Noticees, being part of board of directors of FRL during relevant times, are also responsible to comply with principles enunciated in clauses of Regulations 4(2)(f)(ii) and (iii) of the LODR Regulations as alleged in the SCN. In respect of violations of FRL as found above, these Noticees have defaulted in their compliance obligations under listed (in SCN) Clauses of 4(2)(f)(ii) and (iii) of the LODR Regulations. They also failed to ensure that CEO/CFO Certification of FRL accurately

reflected the actual financial position of FRL and violated Regulation 17(8) of LODR Regulations. Regulation 17(8) creates liability of the CEO/CFO for compliance certificate to be given to board of directors. Noticee No. 1 had issued the CEO/CFO Certificate of FRL for FYs 2016-17 to 2019-20 and Noticee No. 2 issued CFO/CFO Certificate for FY 2020-21. Noticee No. 3 signed CEO/CFO certificate of FRL for FYs 2016-17 to 2020-21, *inter alia*, stating that "*these statements do not contain any materially untrue statement or omit any material fact of contain statements that might be misleading*". Obligation of CEO/CFO under Regulation 17(8) is to give a certificate to the board of directors in the format specified in Part B of Schedule II. Said format requires several declarations from CEO/CFO, *inter alia*, about true statements in financial statements and cash flow statement of the company. This certificate is given along with financial statements/ cash flow statement which do not include an Annual Report. In the instant case, admittedly, the certificate was given by these Noticees which IR deems to have untrue declaration in the context of Annual Reports of FRL. Since SCN is limited to disclosures Annual Reports of FRL, and nowhere relies upon any financial statement of FRL, I give benefit of doubt to these Noticees with regard to charge of violation of Regulation 17(8) of LODR Regulations.

210. Another independent charge against Noticees No. 1 and 2 is that their submissions given on oath during the Investigation are false and misleading and in violation of Section 11C (5) of SEBI Act. They have contended that the allegation is wholly untenable. According to them, the statements, clarifying their limited knowledge of specific borrowings, cannot be construed as a deliberate attempt to mislead, particularly in light of the complex web of transactions and entities involved. I note that the Noticees were asked during investigations to verify the related party entities from a list containing names of

several companies. It is pertinent to mention that at that time the Noticees were suspended and ousted directors of FRL due to admission of its CIRP. It is possible that they may not recollect all names during statement recording. Investigation has already gathered the names of all related parties as alleged in the SCN. Missing of one or two names cannot be treated as deliberate attempt to lie and mislead. In my view, Noticees No. 1 and 2 deserve benefit of doubt on this charge.

Noticee No.4

211. Noticee No. 4 was appointed as Deputy Company Secretary and Compliance Officer of FRL with effect from May 02, 2016, and was its KMP by virtue of his designation. There was dereliction of duty/responsibility on behalf of Noticee No. 4 for not complying with the requirements of LODR Regulations. In view of above findings, the charge against Noticee No. 4 remains with regard to violation of Regulation 4 (1) (c), (d), (e), (g) and (h) of the LODR Regulations, read with Section 27 of SEBI Act, and Regulation 6(2)(a) and (c) of the LODR Regulations.

212. He has submitted that he was the compliance officer with FRL until April 30, 2022. The allegations levelled in the SCN against him, in his capacity as Compliance Officer and Company Secretary, are without identifying any lack of responsibility or lapse in performance of his duties as specified under LODR and other regulations and laws. He did not have direct access to the information or commercial operations to ascertain if any specific transaction or action or inaction is in violation of any applicable laws or regulations. As per the Materiality Policy of FRL, he was only responsible for analyzing the materiality aspect for transactions brought before him, which did not include deliberation, decision-making and involvement in the issues arising out of the SCN.

Noticee No. 4 was not involved in the operations, financial management and/or strategic decisions in respect of schemes and amalgamations entered in to by the Company. It was never for Noticee No. 4 to determine and/or deliberate on material decisions such as who constitutes a *"related party"* and what constitutes a RPT. The Notice is bereft of any detail, specificity and findings qua any wrongdoing by Noticee No.4. The Notice fails to set out any specific instance and/or finding where Noticee No. 4 has failed to ensure the disclosure of an event as required in terms of the LODR Regulations.

213. It is noted that the obligation under Regulation 4(1) of LODR Regulations is on the listed entity and not directly on compliance officer. The charge has been fastened on Noticee No. 4 by virtue of section 27(2) of the SEBI Act. Said Section 27(2) provides that to make any director, manager, secretary or other officer of the company liable it is to be proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of such person. Thus, in order to make compliance office vicariously liable for acts of company, it must be established that the act was with his consent, connivance or negligence. This element is completely missing in the SCN. Hence, the charge of vicarious liability for obligation of FRL under Regulation 4 (1) (c), (d), (e), (g) and (h) of the LODR Regulations, read with Section 27 of SEBI Act, cannot sustain.

214. As per Regulation 6(2)(a) of the LODR Regulations, the compliance officer is responsible *'to ensure'* conformity with the regulatory provisions applicable to the listed entity in letter and spirit. However, this obligation must be construed in the context of the Compliance Officer's functional role as a facilitator and coordinator, and not as the ultimate decision-making authority within the company as he is much lower in hierarchy

in a company and is not involved in the day-to-day operations. Regulation 6(2)(c) of the LODR Regulations does not impose an obligation on the Compliance Officer to independently verify financial figures, audit reports, or valuations, particularly when these are compiled and signed off by the company's statutory auditors, CFO, or external experts.

215. In this regard, the scheme of Regulation 6 of the LODR Regulations, have to understood with reference to obligations KMPs under Regulation 5 *viz*; KMP, directors, promoters or any other person dealing with the listed entity. Admittedly, Noticee Nos. 1, 2 and 3 were involved in the day-to-day management of FRL. It was, thus, primarily they were responsible for compliances by FRL. Regulation 6 additionally casts secondary responsibility on the Company Secretary/Compliance Officer to ensure conformity.

216. It is also pertinent to note that a Compliance Officer, works under the overall directions of the management of the Company and the responsibility to disclose, arises only after a determination has been made by the company that a particular event would require disclosure. The onus of determining whether particular information is to be disclosed falls on the company and its directors and not on the Compliance Officer. Once an information is determined to be disclosed, the Compliance Officer is tasked with the responsibility to ensure that the information is promptly disclosed. Hon'ble SAT in ***M/s. New Delhi Television Limited v. SEBI***[45] has observed that '*the Compliance Officer is only an employee of the Company and works on the dictates and directions of the management of the Company'*.

[45] *2019 SCC OnLine SAT 140*

217. It is pertinent to mention that in context of penalising Compliance Officer/ Company Secretary for allegation of knowingly and recklessly signing the public announcement in the matter of ***Deccan Chronicle Holdings Ltd.*** (***V. Shankar v. SEBI***[46]), Hon'ble SAT, vide its order dated November 01, 2022 set aside the order dated March 22,2022 passed by SEBI imposing a penalty of Rs. 10 lakhs on the Company Secretary and held that primary and fiduciary obligations in signing and approving the balance sheet and profit and loss account is of the Board of Directors and Company Secretary has no role to disapprove except that he has to comply with decisions and sign alongwith the two directors. In appeal filed by SEBI against said order by Hon'ble SAT, Hon'ble SC vide its order dated February 08, 2023 remanded back the matter vide to Hon'ble SAT on technical ground. Hon'ble SAT after reconsideration of the matter passed its order dated May 05, 2025. It noted that SEBI itself held that the *".. Company and its Directors have eloquently concealed the revenue liabilities from the investors..."* and that law fasten the duty on the Company Secretary to authenticate on behalf of the board of directors but in next breath SEBI said that the Company Secretary was not merely required to attest but *".. ought to have verified ....."* In the facts and circumstances of that case, Hon'ble SAT held that according to SEBI order, the Company Secretary was required to sit in appeal over decision of directors of the Company and this allegation does not sustain. It held that it is not the duty of the Company Secretary or the Compliance Officer to read, understood and re-audit the certified accounts as approved by the board of directors.

218. It had been a settled legal position that it is not upon the Compliance Officer to determine the veracity of the disclosures made by the company. In this respect, Hon'ble SAT in

[46] *(2023) 7 SCC 356*

the case of ***V. Shankar (supra)*** has observed that *'the adjudicating authority has found fault with the appellant on an incorrect presumption that the appellant ought to have verified whether the audited accounts had contained all the assets and liabilities. If this reasoning is to be accepted, the appellant ought to have read, understood, re-audited the certified accounts of the Company already approved by the Board of Directors. That is not the duty of either the Company Secretary or the Compliance Officer.'* and that the assumption of Company Secretary/ Compliance Officer ought to have re-examined the veracity of the certified accounts is without any legal foundation and unsustainable in law. Hon'ble SAT in ***Prakash C. Kanugo & Anr. v. SEBI***[47], in a case of false disclosures by the management has observed that the Compliance Officer cannot be penalised for such false disclosures.

219. In another but similar case of ***SecureKloud Technologies Limited***, based on deficient disclosures related to RPT and non -compliance of Regulation 23 (2) of the LODR Regulations in context of Annual Report for FY 2018-19, SEBI initiated only Adjudication Proceedings. It was found that: -

(a) The company had entered into certain RPTs without taking prior approval of the Audit Committee.

(b) Two Independent Directors continued to remain as Independent Directors inspite of appointment of their relatives in the Company/ overseas subsidiary company which was violative of the LODR regulations.

[47] 2023 SCC OnLine SAT 1838

(c) Forensic audit was initiated against the company which was a material event under Regulation 30 of the LODR Regulations requiring disclosure which the Company and Company Secretary failed to do so.

220. The Adjudicating Officer, vide order dated September 14, 2014, imposed penalty upon the company and its two of the independent directors and also upon the company secretary under section 23E of the SCRA and Section 15HB of the SEBI Act as follows: -

SN.	LODR regulation	Basis	Entity	Penalty (Rs.)
1	23 (2)	Related party transactions entered without prior approval of audit committee	Company	25,00,000
2.	16 (1)(b)(vi) and 4(2)(f)	Independence of independent director	Independent Director -1	10,00,000
		Independence of independent director	Independent Director -1	10,00.000
3.	30	Non-disclosure of the forensic audit initiated against the Company which is a material event	Company Secretary	4,00,000

221. In Appeal filed against order of Adjudicating Officer, Hon'ble SAT upholding (order dated June 12, 2023) the impugned order reduced the penalty imposed upon the parties. Hon'ble SAT held that while the company and its functionaries had committed violations, the nature of these were not so severe as to warrant the high penalties imposed by the Adjudication Officer. Hon'ble SAT reduced the penalties on various counts, i.e. in respect of RPTs reducing the penalty for the company from Rs. 25 lakhs to Rs. 10 lakhs and lowering the penalty for the two Independent Directors from Rs. 10 lakhs to Rs. 5 lakhs each and cutting down the penalty for the company secretary from Rs 4 lakhs to Rs. 1 lakh. Thus, penalty on

company secretary in this case was allowed in contrast with other cases as referred above. Further penalty under Section 23 E of the SCRA for violation of LODR Regulations was upheld.

222. In strict legal sense Noticee would have violated the language of the provisions of Regulation 6(2) (a) and (c) when the FRL committed defaults. However, should he be penalised for not being able to ensure conformity or correct procedures in the facts of the case is still a moot question to answer. In the instant case, Noticee No. 4 had a limited role in ensuring compliance with various provisions of the Companies Act, LODR Regulations and other applicable regulations with respect to the Company. Violation of Regulation 30 (4)(i)(b) and Regulation 30(12), Clause 5 of Para B Part A of Schedule III and SEBI circular dated September 09, 2015 are not established *qua* FRL. Violation of provisions of Regulation 4 (1) (c), (d), (e), (g) and (h) of the LODR Regulations, read with Section 27 of SEBI Act also cannot sustain *qua* the Noticee No. 4 since essential elements of Section 27 of SEBI Act are not even alleged. Hence, Noticee No. 4 cannot be held liable for violation of these provisions. There is no material on record in the SCN to suggest that the Compliance Officer misrepresented facts and/or knowingly made misleading disclosures. There is no allegation that Noticee No. 4 circumvented the applicable law or caused delay while making disclosures nor is there anything that Noticee No. 4 made any disclosures different from what was decided to be disclosed by the management. In strict legal sense Noticee could be said to have violated the provisions of Regulation 6(2) (a) and (c) when FRL did not comply with LODR Regulations as found in this case, his role does come out to be acting in defiance of this regulation in the facts and circumstances of this case, when all decisions were taken by person of the status like Noticee No. 1, 2 and 3. In my view facts of this case are closer

to the facts of the case in the matter of ***Prakash C. Kanugo*** Hence **,** I take a lenient view qua Noticee No. 4.

Noticees No. 2, 5, 6 and 7

223. Noticees No. 2, 5, 6 and 7 were the members of the Audit Committee of FRL and had attended almost all the meetings of the Audit Committee held during the relevant time. SCN alleges that Noticee No. 2 failed to discharge his role as member of Audit Committee of FRL as he failed to disclose complete facts to the Committee and also failed to ensure that the financial statement of FRL were correct, sufficient and credible, particularly with respect to RPTs and violated Clause 1, 4 (e) and (f), (8) and (9) of Para A of Part C of Schedule II read with Regulation 18(3) of LODR Regulations. Further, since the Audit Committee of FRL failed to ensure that the financial statement of FRL was correct, sufficient and credible Noticees No 5, 6 and 7 violated Clause A (1), (4) (f) of Part C of Schedule II read with Regulation 18(3) of LODR Regulations. They failed to perform their role of oversight of the listed entity's financial reporting process and review with management, proper approval, review and disclosures of RPTs, before submission of the Annual Report and auditor's report thereon to the board for approval.

224. According to Noticees 5, 6 and 7, they had at all relevant times of the Audit Committee meetings raised their concerns and exercised due diligence with respect to whatever was being tabled before the Audit Committee. However, the management of FRL never shared any satisfactory response to the queries or information sought by the Non-Executive Independent Directors to information sought or selectively shared the information. Audit Committee took the following steps to ensure accurate discharge of its responsibilities:

(a) The Audit Committee in its meeting dated October 12, 2019, pointed that in view of the proposed acquisition of the retail infra-assets, leased out by the FEL to FRL would be exceeding 10% of the consolidated turnover of FRL in the previous FY and that the transaction would need to be approved by the shareholders of FRL.

(b) In the Meeting held on January 27, 2020, the Audit Committee had informed that the acquisition transition would need to be approved based on the valuation report and backed by the fairness opinion.

(c) On November 13, 2020, the Audit Committee reviewed the RPTs entered by FRL during the quarter ended September 30, 2020 and also raised query in relation to the transaction with FEL to which the Audit Committee was informed that no new fresh order was placed, and it was only for old stock lying/order already placed. The Committee expressed that the transactions with FEL should be reviewed on strict basis and further transactions should not be done without specific approval of the Audit Committee.

(d) With respect to Part A(c) of the SCN, in the Audit Committee meeting on September 04, 2020, there was a detailed discussion with respect to RPTs, nature of expense and various expenses in relation for identified RPTs. They were informed that FRL had obtained approval where the transactions with related parties of capital nature were exceeding the threshold.

(e) With respect to Part B of the SCN, in its meeting held on March 23, 2020, the Audit Committee observed that there was increase in the debt of the FRL

from Feb 2020 to March 23, 2020, and the same was significantly higher than what was tabled in meeting on January 04, 2020. They expressed grave concern regarding the deteriorating financial position, in spite of various equity and debt fund mobilisations concluded in December '19 and March '20 quarter, and a detailed explanation of all significant transactions undertaken by the Company was sought by the Audit Committee. They had asked the management to review the reason for increase in debt had decided to get it checked by an outside (third party) expert/agency (other than statutory auditors) in connection with the above. It was decided by the Committee that the scope of work for outside third-party experts/ agencies would be decided in consultation with Audit Committee.

(f) With respect to Part C of the SCN, the board of directors of FRL in its meeting on November 13, 2020, had discussed in detail the transactions with existing landlords who had rented their premises on lease/license/ revenue sharing for any formats/ business of the Company, particularly the cases where the landlords had given notice of termination of the lease on account of non-payment. It was discussed that as of that time when the Company was facing financial or other commitment issues (payment of rent, CAM and other charges), the transaction with the landlords has been modified and revised in such a way that the Company would be terminating the agreement with the lessor/ licensor/ owner of premises, and, the same would be taken on lease/ license basis by Reliance Group/acquirer, thus enabling continuation of the business, avoiding closure of the Stores, and avoiding

considerable loss of business.as the Company was no position to pay the outstanding due to the Landlords.

(g) The Board members raised their apprehension that in case if scheme transaction did not materialise for the transaction undertaken in the above manner therefore the Board suggested that possible option/ reversal option should be considered with Reliance Group and landlords in order to protect the interest of the Company as it's one of the most critical matters to secure low rental and good location of the properties while also considering the present financial crunch faced by the Company.

(h) In the Audit Committee meeting on November 01, 2021, Noticee No. 6 along with Noticee No. 7 requested the management of FRL to have proper documentation for every single lease/license transaction in order to justify that the action was taken in good faith and to prove that the Company had no other option other than to adopt and follow the action which were taken in the best interest of the Company and its stakeholders. The board of directors of FRL had confirmed that all actions were taken in good faith in order to protect the store leases/ license as well as well as store operations. In the same board meeting it was also discussed that any future actions in relations to store movement should be discussed and narrated for the approval of board of directors / Audit Committee of FRL.

(i) The transactions forming Part A(b)and D of the SCN were never brought up to the Audit Committee or the board of directors of FRL.

225. It is noted that the fund transfers in Part A(a), A(b) and part D of the SCN were never discussed/ tabled before the Audit Committee also on the Audit Committee meeting on September 04, 2020, it was informed by the management of FRL that all necessary approvals were being sought wherever applicable. Noticee No. 5 had submitted during investigation on March 12, 2024 that he used to rely on the information presented in the Audit Committee meetings, the RPTs were presented by Noticee No. 3 and 4 and the Audit Committee used to confirm with Noticee No. 3 and the statutory auditors that the transactions were at arm's length. It was the responsibility of the management of FRL as per law to identity and confirm if the entity is a related party. Noticee No. 6 had submitted on June 27, 2022 and March 12, 2024 that in every Audit Committee meeting there was a discussion on RPT, with the strategy being to reduce RPTs as it was making the business very complex and had also asked for a special audit for RPTs in 2020-21. For RPTs, proposal was made by Noticees No. 2 and 3. Each RPT was confirmed by the management and the statutory auditor of FRL that if was at Arm's Length, in the ordinary course of Business and within approved limits. There was concern regarding the deteriorating debt position and financial stress. The increase in security deposit was not discussed in the Audit Committee meeting or board meeting. With respect to the discrepancy in the number of stores, the discussion was to purchase *in store infra*-assets for all the stores owned by FEL and leased to FRL. So, the Audit Committee did not get into the number of stores in its approval for RPT. The Audit Committee used to rely on the management of FRL for RPTs, did not get into each and every transaction, placed reliance on the omnibus approval given and also on the statutory auditors. The amount of Rs. 1,347 Crore transferred back by FEL to FRL, was also not disclosed as RPT before the Audit Committee.

226. An Independent Director has an insight into the affairs of the Company through board processes and if is nothing bought on record, they cannot be held liable. Not all directors of a company may be dealt with in the same manner as degrees of responsibility and involvement differ between a whole-time director and a non-executive director. Section 27(2) of the SEBI Act also provides that to make any director, manager, secretary or other officer of the company liable it is to be proved that the offence/ contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of such person. In the present circumstances, the knowledge or consent of Noticees No. 5, 6 and 7 in the violations established *qua* FRL have not been brought out. Regulation 18(3) of LODR Regulations provides that the role of Audit Committee and the information to be reviewed by it shall be as specified in Part C of Schedule II. Clause A(1) of Part C of Schedule II provides that the Audit Committee shall have oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible; Clause A(4)(f) provides that the Audit Committee should review the annual financial statements and auditor's report before submission to board for approval with particular reference to the disclosure of RPTs. There is no allegation that the Audit Committee of FRL failed to review the transactions presented before them, or ignored the disclosures with respect to RPTs. On the contrary from the submissions of the Noticees No. 5, 6 and 7 and also as the minutes of the Audit Committee, it is noted that Noticees No. 5, 6 and 7 raised pertinent issues upon review of the financial statements and advised the management of FRL against indulging in RPTs. Noticee No. 2 assured them that everything was per law. In ***Svam Software Ltd & Ors***[48]***,*** Hon'ble SAT

[48] Order dated October 13, 2022 by Hon'ble SAT in Appeal No. 801 of 2021

observed that in case of violation of the provisions of the LODR Regulation by the company, the penalty cannot be extended to directors unless there is something to indicate that the directors were involved in the involved in the misrepresentation of the financials of the company in its Annual Reports and that in the absence of such finding the imposition of penalties on directors is unjust and unfair.

227. In view of all the above, I find that the violations of Clause A (1), (4) (f) of Part C of Schedule II read with Regulation 18(3) of LODR Regulations are not established against Noticees No. 5, 6 and 7.

228. However, Noticee No.2 cannot feign ignorance being KMP/MD of FRL and having knowledge of all its acts. He neither informed Audit Committee of the same nor did he seek its approval for the RPTs of FRL. As, determined above, FRL consistently failed to disclose accurately the related parties and RPTs in its Annual Reports. I, therefore, find that Noticee No. 2 violated the provisions of Clause A (1), (4) (e) and (f) of Part C of Schedule II read with Regulation 18(3) of LODR Regulations in addition to the violations established *qua* him in earlier part of the order.

Noticees No. 8, 9, 10 and 11

229. Noticee No. 8 was the partner of the statutory auditor of FRL (NGS) during FYs 2016-17 to 2021-22. Noticees No. 9, 10 and 11 were the statutory auditors of the related parties of FRL.

230. During investigation, Noticee No. 8 in his response to SEBI summon dated November 01, 2022, failed to provide essential information and documents. NGS submitted the entire working papers for FYs 2019-20, 2020-21 and 2021-22, but, in these working papers, crucial evidences like audit plan, ledgers, balance sheet traced with trial balance, etc, were missing. During investigation, SEBI gathered audit working papers of NGS pertaining to FYs 2016-17 to 2020-21, which had audit plan, management representation, engagement letter, trial balance mapped with disclosed financial statements, etc. These working papers were much more comprehensive and detailed, in contrast to the audit working papers/files submitted by NGS to SEBI. Noticee No. 8 on November 09, 2023, recognized and identified these documents to be their audit papers and submitted that they may have been left at some laptop at client place, committed to retrieve these working papers and provide to SEBI. However, subsequently, he submitted to have already provided the available working papers and the entire data with them. NGS failed to submit the break-up of the Related Party Balances for FY 2019-20. NGS withheld information and made false and misleading submissions that it had no information other than already submitted working papers. However, on repeated enquiry, additional documents which were not part of entire audit file already submitted were being provided by NGS. Thus, SCN allges that Noticeee No.8 hampered investigation by not providing requisitioned information.

231. Noticee No. 9 failed to submit his response to SEBI summons despite seeking time. Noticees No. 10 and 11 failed to submit their response pertaining to the security deposit paid by FRL to the entities audited by them. By non-submission of response to SEBI summons, Noticees No. 9, 10 and 11 hampered SEBI investigation due to which the security deposit/advance by FRL to 5 entities, namely, R.K.P. Business Concepts Private

Limited, Precision Realty Developers Pvt. Ltd., Anant Merchants and Traders Pvt. Ltd., Nice Texcot Trading & Agency Pvt. Ltd. and Allfab Syntects & Commission Agency Private Ltd. amounting to Rs. 1,134.32 Crore as on March 31, 2020 and Rs. 1,467.20 Crore as on March 31, 2021 could not be verified. Thus, these Noticees No. 9, 10 and 11 hampered SEBI investigation.

232. In view of the above it has been alleged that Noticees No. 8, 9, 10 and 11 violated provisions of Section 11 (2) (ia) and 11 C (2) and (3) of SEBI Act. Said provisions read as following: -

"*Section 11: Functions of Board*

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

(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;"

Section 11C: Investigation

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case

may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation."

233. Noticees No. 8, 9, 10 and 11 have submitted that they have furnished all the information available with them and could have never provided information they did not have or information which was lost due to unavoidable circumstances. There is no evidence in the SCN that hints at, any act or omission which would lead to the conclusion of any wrongdoing on the part of Noticees. It merely states that Noticees did not provide information without stating as to how the same hampered investigation. SEBI has conducted a comprehensive investigation with an IR containing 125 pages and 39 Annexures running into hundreds of pages and on basis of the IR, SCN has been issued to the Noticees. No harm or prejudice has been caused to SEBI on subject matter in so far as the Noticees are concerned. SEBI has proceeded against them only on the basis of conjecture and surmises that information allegedly not provided was critical for the investigation.

234. It is noted that, the SCN imputes that Noticee No. 8 withheld information as on repeated enquiry it provided additional documents not provided earlier. Further, despite

committing to retrieve certain working papers, it didn't provide them. With respect to Noticees No. 9, 10 and 11, it is not the case that they did not respond to SEBI summons, but that they failed to provide the data/ information with respect to Security Deposit. From the records, it is noted that Noticee No. 8 had appeared before the IA on June 28, 2022 and November 9, 2023 and recorded his statement and furnished the following information to SEBI vide letters/ emails/ responses dated July 11, 2022, October 4, 2022, November 07, 2022, November 25, 2022, February 6, 2023, November 17, 2023 (attached to the email dated November 23, 2023) and March 1, 2024:

(i) Trial balance for the Financial Year 2019 provided in the Excel Sheet. Audit files (physical as well as soft copies) for the Financial Years 2019-2020, 2020-2021 and 2021-2022.

(ii) FRL Certificates for the FYs 2018-2019, 2019-2020 and 2020-2021. FRL's Audit Engagement Letters for the FY 2018-2019, 2019-2020 and 2020-2021. FRL's Management Representation Letters for the FY 2018-2019 and 2019-2020.

(iii) NGS Peer Review Certificate dated March 10, 2021. RPTs for the FY 2019-2020 and 2020-2021 and Quarterly Financial Statements for June 2021, September 2021 and December 2021.

(iv) Agreements between Reliance Properties and FRL on February 22, 2022 and February 23, 2022. FRL's Termination Agreements with M/s Ampa Housing Development Private Limited (dated February 26, 2021) and M/s Ram Vallabh

Chouhan HUF (March 2, 2021). Sub Lease Deed dated March 3, 2021 and March 26, 2021, between Reliance Properties and FRL.

(v) Notes forming part of financial statements showing Unsecured Short-Term Loans from Bank, Composite Scheme of Arrangement, Business Combination etc. and Business Valuation Report of Hypercity Retail (India) Limited etc.

235. Similarly, Noticees No. 9, 10 and 11, in response to SEBI summons have provided the following information:

(i) Documents showing proofs of appointment as a Statutory Auditor of Allfab, Suhani Trading, Iskrupa Mall and Rivaaz Trades.

(ii) Unattested Share Pledge Agreements with RatanIndia Finance Pvt. Ltd. Unattested Deed of Hypothecation by Suhani Trading and Investment Consultants Pvt. Ltd. with JM Financial Products Limited.

(iii) Term Sheet of RTVPL dated March 7, 2018 and September 26, 2018.

(iv) Letter of Axis Bank dated October 19, 2015 and September 30, 2015.

(v) Central Bank of India letter dated September 19, 2015 to Iskrupa Mall Management Company Pvt. Ltd.

(vi) The payments received by Noticee No. 9 from Future Group companies and the information pertaining to audit of the Future Group Companies i.e. period of association, period of statutory audit, details of audit fees of Brattle Foods

Private Limited, Hare Krishna Operating Lease Private Limited, RTVPL, Syntex.

(vii) In this respect, it is noted that there is nothing on record evidencing that they had ownership or access to the information that was not received from them. There is also no wrongdoing alleged *qua* these Noticees. The allegation of hampering SEBI investigation as stated in the SCN does not in any way evidence that the same prevented SEBI from framing charges *qua* FRL, but that certain alleged RPTs could not be identified. It is also noted that the SCN does not contain specific instances of non-furnishing of information by the Noticees and proceeds on the presumption that these Noticees had ownership/ access to the data. No analysis has been made with respect to the statement of Noticee No. 8 of having viewed certain data online with limited scope of saving it.

236. The conduct of Noticee No. 8 providing further data on repeated inquiry cannot be said to evidence any non-compliance from furnishing data or proof of withholding information. Similarly, there is nothing to evidence that Noticees No. 9, 10 and 11 had access to the data/ information with respect to security deposit. It is not the There is no allegation either that these Noticees contravened any of the statutory duties applicable *qua* them. It is not the case that they made any financial or commercial gains or resulted in any harm or loss caused to the securities market. It is also a part of record (Para 11.8.3 of the SCN) that during the course of investigation, SEBI gathered audit working papers of NGS pertaining to 5 FYs (FYs 2016-17 to 2020-21), which were much more comprehensive and detailed, in contrast to the Audit working papers/ filed submitted by

NGS to SEBI. Thus, it is unclear how the conduct of Noticee No. 8 hampered investigation and violated Section 11(2) (ia) and 11C(2) and 11C(3) when much more comprehensive and detailed information has been gathered by SEBI during investigation. IR clearly acknowledges that due to ongoing CIRP of FRL, it was finding it difficult to compile information pertaining to accounts and financial data due to non-availability of ERP in view of non-payment of AMC charges, non-availability of employees, etc. It is for this reason that Forensic Auditor was appointed.

237. It is noted that Hon'ble SAT in the matter of ***Ashwin Bhandari v SEBI***[49], observed that – "*... It is apparent that the information sought from the appellant was not a vital information, because the investigation continued without the information called for and it is not the case of SEBI that failure on part of the appellant to furnish the information has hampered the investigation....*". Thus without adequate cause being made out against these Noticees, the charge of hampering SEBI investigation cannot be fastened *qua* them. The same position has been expressed by Adjudicating Officer of SEBI vide order dated February 21,2019 in the matter of Taneja Aerospace and Aviation Limited relying on the said order of Hon'ble SAT. SEBI has accepted this position as neither appeal against order of Hon'ble SAT was filed nor order of the Adjudicating Officer was reconsidered under Section 15I(3) of the SEBI Act.

238. In view of all the above, I find that these Noticees had cooperated with SEBI investigation, responded to SEBI summons and provided the information available with them. Thus, the allegations *qua* these Noticees No. 8, 9, 10 and 11 violating Section 11(2)(ia) and 11C(2) of the SEBI Act of hampering investigation are not established.

[49] Appeal No. 61 of 2018, decided on March 21, 2018

Peroration

239. As can be noted from the above terms of reference of Forensic Auditor, scope of audit was limited to conduct Forensic Audit of FRL and audit of FCL), FSCSL and FEL with respect to RPTs with FRL during the FYs 2019-20, 2020-21 and 2021-22; verification of the consolidated financial statements of FRL with a special focus on debt raised and its utilization, capital expenditure advance, security deposit increase, lease takeover by Reliance Group and increase in advance to supplier during the review period. Such scope was not to examine and find out the violations of PFUTP Regulations and accordingly, the findings of the FAR are confined only to misrepresentation in the Annual Reports of FRL and other named companies and consequential violations of LODR Regulations. It is observed that shortly after FAR was submitted the IA drew the IR after examining and incorporating the findings of FAR as part of IR and additionally included the allegation of violation of provisions of Section 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f), 4(2) (k) and (r) of the PFUTP Regulations for the same findings except for including price chart of shares of FRL and drawing inferences of fund diversion and inducing investors by making misleading disclosures in Annual Reports of FRL.

240. In the case of large corporates, undermining the regulatory principles governing the market would be like cutting the branch on which they are perched. When it comes to dealing in the securities market, it is also important to distinguish between different types / categories of participants such as promoters, speculators, hedgers, arbitragers traders, hedge funds, long terms investors, etc. and so on. In the facts and circumstances of this case, I don't find any plausible reason that management of FRL would resort to

such practice to drown themselves for harming their own investments without any design to manipulate the price or commit fraudulent dealing by inducing others to deal in shares of FRL by non- disclosures of related parties/RPTs.

241. Having been granted exemplary powers and functions, the duty is also cast on SEBI under Section 11 of the SEBI Act to take measures *inter alia* to promote the development of the securities market. The duty under Section 11 read with Section 11B creates greater and strenuous responsibility to strike a balance between regulatory overreach and possible mischief containment taking into account its paramount duty of market development based on sound principles of corporate governance and integrity. Therefore, while taking penal action within the contours of guidance provided in Section 11 and 11B i.e. *"the interest of investors or 'orderly' development of securities market'* and inclusive factors under Section 15J of the SEBI Act, it is for SEBI to employ its discretion to innovate enforcement through the empirical process and evolve new ways of placing checks on new methods and devices. It is for this reason robust investigative powers have been conferred upon the IA under Section 11C of the SEBI Act.

242. By practice, the observance of the Rule of law in our Society is a fragile promise and law is generally enforced depending on choice available due to discretionary alternatives leading to *"uncertainty about what the essence of the rule of law actually is",* as aptly remarked by Thomas Carothers[50]. Where multiple choices are available it becomes a matter of discretion and consistency may not be possible as strait jacket rule.

[50] *An American lawyer and international relations scholar.*

243. The LODR Regulations have been notified under Section 30 of the SEBI Act and Section 31 of the SCRA both. Most of its requirements specify listing conditions which SEBI can specify under its plenary power under Section 11A (2) of the SEBI Act. Other continuous disclosures requirements (subject matters in erstwhile Listing Agreement) for listed companies under Section 21 of the SCRA are specified in LODR Regulations under general Regulation making power under Section 31 of the SCRA. Regulation 97 of the LODR Regulations mandates the stock exchange/s to monitor compliance by the listed entity with provisions of the said regulations. They are further mandated to monitor adequacy/ accuracy of the disclosures made by listed entity with respect to provisions of the LODR Regulations. Said Regulation 97 necessitates the stock exchange/s to put in place appropriate framework including adequate manpower and such infrastructure as may be required to comply with the provisions of the said Regulation 97. Regulation 98 of the LODR Regulations provides for action in case of default in compliance of LODR Regulations by respective stock exchange/s in addition to liability for action in terms of the securities laws. In this case, the main allegation is non-compliance of related party and RPT disclosures and conclusion drawn on conjectures that the FRL committed fraud during FYs 2016-17 to 2019-20. However, there is no material brought on record about monitoring and enforcement of the impugned disclosures by the stock exchange/s during the said period and even the disclosures made during these years are treated as fraudulent after 8 years. After all, the Regulatory mechanism has posed confidence on first level Regulators i.e. the stock exchange/s.

244. Section 15HA of the SEBI Act provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. The range of monetary penalty

prescribed in said Section 15HA is minimum five lakh rupees upto to twenty-five crore rupees or three times the amount of profits made out of fraudulent practices, whichever is higher. Section 15H of the SEBI Act provides for monetary penalty in the range of one lakh rupees to one crore rupees. As determined above, the allegations of fraudulent and unfair trade practice qua FRL are not established, as such monetary penalty under Section 15HA is not applicable

Consistency a choice or binding rule.

245. Having found the violation of provisions relating to RPT disclosures under LODR Regulations, it now boils down as to what action is commensurate with default/s as found in the case. In this regard the findings would have to be based on consistency and proportionality. As regards proportionality, it is noted that multiple action viz; directions under Section 11, 11B and also monetary penalty for noncompliance of LODR Regulations, there seems no consistency prevailing. For example: -

(a) ***Taneja Aerospace and Aviation Limited-*** In context of non-disclosure of price sensitive information SEBI initiated only Adjudication Proceedings.

(b) In ***SecureKloud Technologies Limited***, based on deficient disclosures related to RPT and non -compliance of Regulation 23 (2) of the LODR Regulations in context of Annual Report for FY 2018-19, SEBI initiated Section 11/11B and also adjudication under Section 11B (2) read with Section 15HB of the SEBI Act;

(c) In ***Svam Software Ltd.*** directions under Section 11/11B and also adjudication under Section 11B (2) read with Section 15HB of the SEBI Act and Section 23H of the SCRA.

(d) ***Reliance Industries***- only adjudication under Section 15HB for non- compliance of Regulation 30(11) of LODR Regulations.

(e) **Linde India Ltd.** Directions under Section 11/11B for violation of Regulation 23(4) of LODR Regulations.

(f) **DB Reality -** SEBI initiated Section 11/11B and Adjudication proceedings under Sections 11(4A) and 11B(2) of the SEBI Act read with Section 23H of SCRA and Section 15HB of the SEBI Act for violation of LODR Regulations.

246. Noticees No. 1,2 and 3 have contended that a penalty need not be imposed in every case if a default were to be established and the enforcement authority is required to assess the relevant circumstances in order to determine whether the imposition of penalty is justified in a particular case. where there is only a technical default, no penalty at all ought to be imposed. They have placed reliance in the matter of ***State Bank of India v. SEBI***[51] where the Hon'ble SAT has observed that technical violations need not always result in a monetary penalty.

247. It is pertinent to mention that despite there being allegations in the nature of diversion of funds, there is no proposal for disgorgement of the said amounts or to bring the alleged diverted fund back to FRL. Moreover this default has not been established, rather Noticees have demonstrated that there was no fund diversion as alleged. There is no element of wrongful gain made or loss avoided by the Noticees No. 1, 2 and 3. The allegations of fraud and unfair trade practice are not established. The allegations of

[51] Appeal No 304 of 2020 dated January 07, 2021.

having indulged in fraud or unfair trade practices are not established. The violations established are with respect to omission to disclose certain related parties and RPTs in the Annual Report or seeking approval of Audit Committee or shareholders as applicable. This case is not a case of complete defiance but a case of partial disclosures. In my view, in this respect, the case is closer to the case of ***Svam Software Ltd***. wherein Hon'ble SAT found that: -

"22. In the absence of any finding of any fraudulent activities or misappropriation of funds or diversion of funds, we are of the opinion that direction of debarment and the penalty given for violation of the LODR Regulations appears to be harsh and excessive. We also find that directions of debarment and imposition of penalties have also been imposed upon the appellants.

23. In the instant case, we find that the violation of the LODR Regulations gave no disproportionate gain to anyone nor created any unfair advantage to the appellant nor any specific loss was caused to any investors and, therefore, in our opinion the direction of debarment and penalty imposed for violation of the LODR Regulations appears to be harsh and excessive."

248. Considering the above, and taking account of the consistency in similar cases, I am of the considered view that the present case does not warrant directions under Section 11(4) and Section 11B (1) of the SEBI Act.

249. For enforcing LODR Regulations under securities laws by way of monetary penalty, SEBI invokes, alternatively, Section 15A and /or Section 15HB of the SEBI Act; and also Sections 23A and/or 23H or Section 23E of the SCRA. While invoking provisions

of Section 15A of the SEBI Act for violation of LODR Regulations, SEBI also exercises choice between provisions of Section 15A(a) and Section 15A(b). Such orders have found acceptance. Sometimes, even Section 15HB has been invoked and the orders have been upheld. Some of the orders passed under different provisions using alternative choices are given as example: -

Table No. – 8 – Details of SEBI Orders

Sr. No	Order details	Allegation	Provisions of LODR Regulations violated	Penalty provision/ Penalty
1.	ORDER NO. Order/SV/DP/2024-25/30287 dated April 25, 2024 Asian Hotels Ltd.	Incorrect and delayed disclosure depriving the investors from taking well informed investment decision.	Regulation 30(7) read with Regulation 4(1)(d), (e) and (h) of LODR Regulations; Regulation 30 (6) read with Schedule III – Part A: Para A clause 9 (iv) of LODR Regulations; and Regulation 30(7) read with Regulation 4(1) (e) and (h) the LODR Regulations.	Section 15A(b) of the SEBI Act Rs. 6 Lakhs

2.	AO order dated 30.06.2022 SAT order dated May 02, 2025 SC order dated December 02, 2025*** Reliance Industries Limited	the information relating to significant investment of 9.9% equity shares by the Facebook group in the Jio Telecom, even before completion of final valuation, was treated as a '*materially price sensitive Information'* within the ambit of PIT Regulations and Regulation 30 of LODR Regulation both. This was well proved by the fact that there was 15% rise in market price of RIL scrip, when the said information got disclosed in international print media even though due diligence was not completed and valuation was not agreed to by both sides.	Principle No. 4 under Schedule A Regulation 8(1) to SEBI (PIT) Regulations, 2015 Regulation 30(11) of LODR Regulations.	Section 15HB of the SEBI Act Rs. 30 Lakhs
3.	WTM/KV/CFID/CFID-	Misrepresenting financial statements and publishing the	Regulations 4(1)(a), (b),(c),(d), (e), (g), (h), (i), (j),	Section 15HB of

	CORD/31338/2024-25 March 28, 2025 Onelife Capital Advisors Limited	misrepresented financial results in contravention of Accounting Standards, Failed to take Audit Committee/ Shareholder approval.	4(2)(e)(i), 23(2), 23(4), 23(9), 33(1)(c), 34(3) read with Part A of Schedule V and 48 of the LODR Regulations	the SEBI Act Rs. 3 Lakhs – Rs. 10 Lakhs
4.	WTM/AN/CFID/CFID/31392/2025-26 May 02, 2025 Seya Industries Ltd.	Diversion of funds and non-disclosure of RPTs in the Annual Report.	Regulations 4(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), 4(2)(e)(i), 23(2), 23(4), 23(9), 30(2), 30(3), 33(1)(c),34(3) read with Part A of Schedule V,34(3)read with clause (2)(b)and(3)(c) of part C of Schedule V and 48 of LODR Regulations and Regulations 17(8) read with Part B of Schedule II and 33(2)(a) of LODR Regulations	Section 15A(a), 15A(b) and 15HB of the SEBI Act Rs. 10 Lakhs – Rs. 1 Crore
5.	WTM/AN/CFID/CFID/31591/2025-26 August 12, 2025	i. Violation of RPT norms. ii. Violation of Ind AS 18 and 23.	Clause 49(I)(D)(1)(a), 49(VII)(D) of the Listing	Section 15HB of the SEBI Act and

	Dewan Housing Finance Corporation Limited	iii. Siphoning off funds.	Agreement, Regulation 4(1)(a), (b), (c), (g), (h), (j), 4(2)(f)(i)(1), (2), 4(2)(f)(ii)(6), (7), (12), 4(2)(f)(iii)(1)(3), (6), (12) 23(2), 26(5) 33(1)(a), (c) and 48 of the LODR Regulations.	Section 23H of SCRA Rs. 1 Crore
6.	QJA/MN/CFID/ CFID-SEC1/31626/2025-26 August 29, 2025 Golden Tobacco Limited	Misrepresentation of financials and diversion of funds.	Section 15HA and 15HB of the SEBI Act;	Regulations 4(1)(a),(b),(c),(e),(g),(h), 4(2)(f)(ii)(6)(7)(8), 4(2)(f)(iii)(3)(6)(12), Regulation 33(2)(a), Regulation 48 of the LODR Regulations

				Rs. 10 Lakhs-30 Lakhs
7.	WTM/KV/CFID/ CFID-CORD/ 31688/2025-26 September 24, 2025 Seacoast Shipping Services	i. Publication of misrepresented financial statements for FYs 2020-21, 2021-22, 2022-23. ii. Misrepresented RPTs. iii. Submitted incomplete Annual Reports to BSE. iv. False and misleading disclosures.	Regulation 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(e), 4(1)(g), 4(1)(h), 4(1)(j), 4(2)(e)(i), 32, 33(1)(a), 33(1)(c),33(3)(d), 34(2)(a) and 48 read with Schedule V of the LODR Regulations	Section 15HB of the SEBI Act Rs. 3 Lakh – Rs. 20 Lakhs
8.	WTM/AN/CFID/ CFID_4/31705/ 2025-26 October 06, 2025 Brightcom Group Ltd.	Non compliance with accounting standards	Regulation 16(1)(b), 18(3), Part C of Schedule II of LODR Regulations Clause 49 III D of Listing Regulations	Section 15A(b)and 15HB of the SEBI Act Rs. 5 Lakh – Rs. 30 Lakh
9.	QJA/MN/CFID/ CFID-SEC6/32159/2025-26	Falsification of books of accounts, dissemination of misleading information etc	Regulation 4(1)(c), (d), (e), (g), (h), (i), 4(2)(f)(ii)(8), 6(2)(a), (b), read	Section 15A(a), 15A(b), and 15HB

	February 27, 2026 Mediaone Global Entertainment Ltd.		with Clause 6 of Para B in Schedule III read with Regulation 17(8) and 30 of LODR Regulations	of the SEBI Act Rs. 5 Lakhs – 26 Lakhs
10.	ADJUDICATION ORDER NO: ORDER/PM/RR/2020-21/7744 May 26, 2020 National Highway Authority of India	Submission of half yearly unaudited financial results with the exchanges within stipulated time	Regulation 52(1) of LODR Regulations	Section 15A(b) Rs. 7 Lakhs

*** *It is pertinent to mention that Regulation 30 of LODR Regulation is crucial regulation for disclosure of material events/information timely and continuously. In that case, the information relating to significant investment of 9.9% equity shares by the Facebook group in the Jio Telecom, even before completion of final valuation, was treated as a 'materially price sensitive Information' within the ambit of PIT Regulations and Regulation 30 of LODR Regulation both. This was well proved by the fact that there was 15% rise in market price of RIL scrip, when the said information got disclosed in international print media even though due diligence was not completed and valuation was not agreed to by both sides. The Adjudicating Officer found the Noticees guilty of violation of Principle 4 under Schedule A – Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of*

UPSI r/w Regulation 8(1) of PIT) Regulation and Regulation 30(11) of LODR Regulations. The Adjudicating Officer imposed a penalty of Rs.30,00,000/- (to be paid jointly and severally by three persons i.e. the company and its two compliance officers) under Section 15HB of the SEBI Act. In Appeal No. 603 of 2022 filed by above three persons, Hon'ble SAT upheld above order of the Adjudicating Officer and found that Under the LODR Regulations, undisputedly, huge cross- border investment (valued at Rs. 43734 Cr.) in a material subsidiary of a listed company is a 'material information'. However, a material information under the LODR does not ipso facto become UPSI under the PIT regulations. There is an intricate interplay between the PIT Regulations dealing with insider trading and the LODR Regulations requiring continuous disclosure of event and information, that are specified or treated as material thereunder. However, all material information under LODR Regulations may not be price sensitive for the purpose of PIT regulations. Conversely, merely because material information is required to be disclosed to the stock exchanges, it cannot be held to be UPSI. What is 'price sensitive' is essentially 'material', but the converse is not true. While LODR Regulations require continuous disclosure of material events or reports, the PIT regulations have gone a step ahead to cover even information and events that may not be over materiality threshold under the LODR Regulations, but have material price sensitively potential. In CIVIL APPEAL NO. 9511 OF 2025 filed by above three persons against above order of Hon'ble SAT, Hon'ble SC dismissed the appeal with observation that no case to interfere with the impugned order was made out, especially in light of the admitted factual scenario. It found that the issue raised in appeal was substantially a question of fact, giving rise to no substantial question of law that may warrant consideration by the Hon'ble SC.

In the present case certain information particularly tripartite agreement is treated as material information and price impact has been attempted to be shown without demonstrating.

250. Section 15A(a) of the SEBI Act, makes every person, who is obligated to furnish any **document, return or report to SEBI** but fails to furnish the same or **furnishes false, incorrect or incomplete information, return, report, books or other documents**, liable to monetary penalty ranging from one lakh rupees for each day during which such failure continues upto one crore rupees. Section 23A(a) of the SCRA specifically provides for penalty if any person, who is required under the SCRA or SCRR to furnish any information, document, books, returns or report to the recognised stock exchange or to the Board, fails to furnish the same within the time specified therefor in the **listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder**, **or who furnishes false, incorrect or incomplete information, document, books, return or report.** This Section also seemingly covers those provisions of LODR Regulations regarding listing conditions where timelines for furnishing information, document, books, returns or report to the recognised stock exchange or to the board are stipulated or where or false, incorrect or incomplete information, document, books, return or report are furnished/filed. If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, penalty under Section 23E of the SCRA is attracted. Section 23H of the SCRA is a residual provision and it provides for penalty for failure to comply with any provision of SCRA, SCRR or articles or byelaws or the regulations of the recognised

stock exchange or directions issued by the SEBI for which no separate penalty has been provided. Seemingly, this section does not include Regulations made by SEBI under SEBI Act or SCRA.

251. Hon'ble SAT, in ***Suzlon Energy Limited & Anr. v. SEBI***[52] held that SEBI Committed a manifest error in invoking Section 23E of the SCRA for violation of disclosure requirements under listing agreement. It, further, held that where there is no separate provision for imposition of penalty for violation of PIT Regulations, which has been made under the SEBI Act, Section 15HB of the SEBI Act was rightly invoked. According to Hon'ble SAT correct approach was to invoke Section 23 A (a) of SCRA. SEBI has preferred appeal against this order of Hon'ble SAT. Subsequently, in ***Reliance Industries Case (Supra),*** Hon'ble SAT upheld SEBI's order passed under Section 15HB for violation of Regulation 30(11) of the LODR Regulations.

252. Be that as it may, as in many cases, such orders under Section 15A /15HB of the SEBI or under Section 23E/23H of the SCRA have been passed and have found acceptance, I proceed to examine the quantum of penalty under Section 15A(a) as contemplated in the SCN as would be commensurate with the violations as found in the case. I also deem it appropriate to mention that the default would fall under Section 15A(a) as second part of said Section is open with regard to timeline of disclosures and authority to whom the disclosures are to be made and that LODR Regulations have also been made under Section 30 of the SEBI Act.

[52] *Order dated May 03,2021 in Appeal No. 201 of 2018*

253. I have considered the factors enumerated in Section 15J of the SEBI Act which provides for guiding factors as follows:

> "***15J. Factors to be taken into account while adjudging quantum of penalty.***
> *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."*

254. There is no disproportionate gain or unfair advantage highlighted in SCN and IR nor does IR/SC bring about any amount of loss caused to an investor or group of investors. However, FRL had repeatedly defaulted in disclosing the related party status and RPTs and in seeking the approval of the Audit Committee and the Shareholders. Noticees No. 1 and 2 are vicariously liable for this default and Noticee No. 3 is liable for abetting the occurrence of default. Despite such persistent defaults, Noticee No. 1 and 2 have been placating the concerns of the Audit Committee informing that everything was in order in FRL. Considering the aforesaid and peculiar facts and circumstances of this case, I find that the facts of the case are near to the facts of the case in the matter of SEBI order No. WTM/KV/CFID/ CFID-CORD/ 31688/2025-26 (dated September 24, 2025). I deem this case fit for imposition of monetary penalty on the Noticees No. 1, 2 and 3 on similar lines in order to meet the ends of justice.

Order

255. Considering the above facts and magnitude of the contravention in this case, I, in exercise of the powers conferred upon me under Sections 11(4A)/11B(2) of the SEBI Act, read with Section 19 of the SEBI Act and Section 15I read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules,1995, hereby impose monetary penalty under Section 15A(a) of the SEBI Act on the following Noticees for the violations of the provisions of the LODR Regulations as found in this order:

Table No. - 9

Noticee No.	**Name of Noticee**	**PAN**	**Amount(Rs.)**
1.	Mr. Kishore Biyani	AACPB0199B	Rs. 20 Lakhs
2.	Mr. Rakesh Biyani	AAEPB3651L	Rs. 20 Lakhs
3.	Mr. C.P. Toshniwal	ABZPT0231G	Rs. 10 Lakhs

256. Noticee Nos. 1, 2 and 3 shall remit/ pay the amounts of penalties mentioned against their names in the table above, within 45 days of receipt of this Order through online payment facility available on the website of SEBI i.e. SEBI i.e www.sebi.gov.in on the following path, by clicking on the payment link www.sebi.gov.in/ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, the Noticee(s) may contact the support of portalhelp@sebi.gov.in.

257. Noticee Nos. 1, 2 and 3 shall forward the details of online payment made in compliance with the directions contained in this Order to the "*The Division Chief, CFID, Securities and Exchange Board of India, SEBI Bhavan – II, Plot No. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051"* and also to email id: tad@sebi.gov.in in the format as given in the following table:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	

Transaction No.	
Payment is made for: Penalty or Disgorgement	

258. This Order shall come into force with immediate effect.

259. This order shall be served on all the Noticees herein and a copy shall be provided to SEBI in terms Rule 6 of the Adjudication Rules.

SANTOSHKUMAR SHUKLA
Digitally signed by SANTOSHKUMAR SHUKLA
Date: 2026.05.12 13:56:09 +05'30'

Date: May 12, 2026
Place: Mumbai

Santosh Shukla
Quasi-Judicial Authority
Securities and Exchange Board of India