

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - IN THE MATTER OF NEW DELHI TELEVISION LIMITED (NDTV).

In respect of:

Noticee No.	Noticees /Name of the entities	PAN
1	RRPR Holdings Pvt. Ltd.	AADCR1710Q
2	Mr. Prannoy Roy	AAHPR6037K
3	Ms. Radhika Roy	AAHPR6038G

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received complaints dated August 26, 2017, December 26, 2017 and a representation dated October 24, 2017 from Quantum Securities Pvt. Ltd., a shareholder of New Delhi Television Limited (hereinafter referred to as “**NDTV**”) alleging, *inter alia*, that RRPR Holdings Pvt. Ltd. (hereinafter referred to as “**RRPR/Noticee no. 1**”) which is one of the promoters of NDTV, Dr. Prannoy Roy (hereinafter referred to as “**Noticee no. 2**”) and Ms. Radhika Roy (hereinafter referred to as “**Noticee no. 3**”), who are promoters as well as directors of NDTV, have violated the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the rules and regulations made thereunder by omitting to disclose material information to the shareholders of NDTV about loan agreements entered into by them with Vishvapradhan Commercial Private Limited (hereinafter referred to as “**VCPL**”).
2. Based on the aforesaid complaints, an investigation was conducted by SEBI into the matter. The period of investigation was from October 14, 2008 to November 22, 2017. It was found that NDTV is a company incorporated in the year 1988 whose shares are listed on BSE and NSE. During the investigation period, Noticee no. 1 to 3 (hereinafter

collectively referred to as “**Noticees**”) were the three promoters of NDTV. The aggregate promoters’ shareholding in NDTV was 63.17% at the end of quarter ending on June, 2009. The individual promoter shareholding during the period of investigation was, as under:

S. No	Name of Promoter	QE June 2009	QE Sept 2009	QE Dec 2009	QE March 2010 **
1	Prannoy Roy*	1,97,31,520 (31.46%)	1,39,49,678 (22.24%)	1,39,49,678 (22.24%)	1,02,76,991 (15.94%)
2	Radhika Roy	1,51,41,927 (24.14%)	93,60,086 (14.92%)	93,60,086 (14.92%)	1,05,24,249 (16.33%)
3	RRPR Holding Pvt. Ltd.	47,41,721 (7.56%)	1,63,05,404 (26.00)	1,63,05,404 (26.00)	1,88,13,928 (29.19%)
Total Promoter shareholding		3,96,15,168 (63.17%)	3,96,15,168 (63.16%)	3,96,15,168 (63.16%)	3,96,15,168 (61.46%)

* Includes Joint account holding also.

** Promoter shareholding has not changed since QE March 2010

- Investigation revealed that a corporate rupee term loan facility agreement (hereinafter referred to as “**ICICI Loan Agreement**”) was entered into between Noticee no. 1 and ICICI Bank Limited (hereinafter referred to as “**ICICI**”) on October 14, 2008 and an amended agreement, for pre-payment of the aforementioned loan, was entered into between Noticees and ICICI on August 06, 2009. As per Schedule-III of the said loan agreement dated October 14, 2008, the Noticees had undertaken not to permit any merger, de-merger, consolidation, reorganization, scheme or arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstitution of NDTV without the prior written approval of ICICI. These conditions were binding on the company and required the approval of ICICI before undertaking any corporate restructuring. It was found that the ICICI loan agreement bearing such stipulations on NDTV was not disclosed by the Noticees to the company (NDTV) who in turn, should have disclosed the same to the stock exchanges. Investigation further revealed that while the ICICI loan agreement was neither in public domain nor in the knowledge of the public shareholders of NDTV, during the enforceable tenure of such loan agreement, Noticee no. 2 and 3 had transferred shares of NDTV and had also received shares of NDTV from Noticee no. 1 in off-market, while having knowledge of the above said agreement. Since, the information related to ICICI loan agreement was concealed from the public shareholders of NDTV, the shareholders were not aware of any such agreement entered into by promoter directors of NDTV. In the absence of material information relating to

ICICI loan agreement being available in the public domain, they were not in a position to take any informed decision with respect to dealing in the scrip of NDTV. Hence, by concealing such material information while personally dealing in shares of the company, the Noticees were alleged to have committed fraud on the minority public shareholders of the company.

4. Investigation further found that a loan of Rs. 350 crore was taken by the Noticee no. 1, (whose 100 % share capital are held by Noticee no. 2 & 3 and they are also directors of Noticee no. 1) from VCPL for which a loan agreement (hereinafter referred to as “**VCPL Loan Agreement – 1**”) dated July 21, 2009 was entered into between Noticee no. 1 and VCPL. The said agreement was stated to be executed by Noticee no. 1 to obtain loan from VCPL so as to repay loan taken by Noticee no. 1 from ICICI vide loan agreement dated October 14, 2008, as referred to above. Accordingly, as mentioned earlier, Noticee no. 1 entered into an amended loan agreement on August 06, 2009 with ICICI to pre-pay their loan. It was noted during the investigation that the loan taken by Noticee no. 1 from VCPL did not carry any interest rate while the loan taken from ICICI carried an interest rate of 19.0% p.a. As per Clause 3 of VCPL Loan Agreement-1, Noticee no. 1 (RRPR) was required to issue warrants to VCPL which were convertible into equity shares aggregating to 99.99% of share capital of Noticee no. 1. Further, as per Clause 9 of the said agreement, one of the pre-conditions set out during the execution of VCPL Loan Agreement-1 was that the promoters of Noticee no.1, who are also promoters of NDTV (i.e. Noticee Nos. 2 and 3) shall transfer 1,15,63,683 shares of NDTV to Noticee no. 1 so that the total number of shares of NDTV held by Noticee no. 1 increases from 47,41,721 shares to 1,63,05,404 shares, constituting 26% of equity share capital of NDTV at the time of execution of VCPL Loan Agreement-1. In this regard, investigation further revealed that at the time of execution of VCPL Loan Agreement-1, Noticee no. 1 (RRPR) did not own any assets other than 47,41,721 shares of NDTV which were to be effectively placed under the control of VCPL by issuing convertible warrants to it as part of the consideration for the loan ,and the warrants were convertible into almost entire paid-up equity capital of the Noticee no. 1.
5. There were certain other pre-conditions in the VCPL Loan Agreement-1 viz: completion of due diligence by VCPL for investment of US\$ 85 million by NDTV Four Holdings Limited (a group company of NDTV) in NDTV Studios Private Limited (another group

company of NDTV) and its ability to utilize said US \$ 85 million either by merger of NDTV Studios Private Limited with NDTV or by any other method to the satisfaction of VCPL. What is more noteworthy is the fact that in Schedule 3 of VCPL Loan Agreement-1, it was mandated that certain matters pertaining to NDTV or NDTV Group, viz: any matter pertaining to equity shares of NDTV that reduces the aggregate valuation of NDTV to less than Rs.1346 crores (valuation at which VCPL put money into the company), buyback of equity shares by NDTV, merger, amalgamation or consolidation of NDTV with any other entity etc., required prior approval of VCPL, thereby, potentially affecting the interest of public shareholders of NDTV. Therefore, the VCPL Loan Agreement-1 was alleged to be material and price sensitive in nature which ought to have been disclosed by Noticees to NDTV who in turn should have disclosed the same to the stock exchanges.

6. Investigation also found that the VCPL Loan Agreement-1 was not in public domain and the said information was alleged to have been concealed by Noticees from the public shareholders of NDTV. Moreover, Noticee no. 2 and 3 transferred/received shares of NDTV to/from Noticee no.1 in off-market transactions while having knowledge of the said agreement and its covenants pertaining to NDTV. In the absence of material information relating to VCPL Loan Agreement-1 in public domain, investors were not in a position to take an informed decision with respect to dealing in the scrip of NDTV. Therefore, by concealing such material information from the public shareholders while the promoters themselves continued to deal in shares of the company in off market, Noticees were alleged to have committed fraud on the minority public shareholders of the company.
7. It also came to light that another loan agreement dated January 25, 2010 i.e. **VCPL Loan Agreement-2** was entered into between Noticee no. 1 and VCPL for providing an additional loan of Rs. 53.85 crores by VCPL to Noticee no. 1. The major terms and conditions pertaining to the VCPL Loan Agreement -2 were same as applicable in case VCPL Loan Agreement -1, except for an additional stipulation whereby, the promoters of NDTV permitted VCPL to acquire indirectly 30% shares of NDTV through conversion of warrants into equity shares of Noticee-1 (RRPR). Further, the VCPL Loan Agreement -2 also did not allow any corporate action such as merger, amalgamation, buyback etc. in the scrip of NDTV without the prior written consent of VCPL, as in the case of VCPL Loan Agreement – 1.

8. Like the previous Laon Agreement with VCPL, it was observed that VCPL Loan Agreement-2 was also not disclosed by Noticees to the company till August 05, 2015, i.e. for about five and half years, which implied that the said information was allegedly concealed by the Noticees from the general public. As mentioned above, Noticee no. 2 and 3 continued to transfer/receive shares of NDTV to/from Noticee no. 1 through off-market transactions while having knowledge of the said agreements with all its clauses bearing materially significant implications on NDTV which were not known to the public shareholders of NDTV. In the absence of availability of material information relating to VCPL Loan Agreements 1 and 2 in the public domain, investors were not in a position to take any informed decision while dealing in the scrip of NDTV. Hence, by concealing such material information from the public shareholders during the relevant period when the promoters themselves were dealing in shares of the company, Noticees have allegedly, committed fraud on the minority public shareholders of the company.
9. Keeping in view the aforesaid alleged irregular and fraudulent conduct of the three promoters, show cause notices (hereinafter referred to as “**SCNs**”) dated March 14, 2018 were issued to the three Noticees alleging the violations of the provisions of Section 12A (a), (b), (c) of SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4 (1) of SEBI (Prohibition of Fraudulent Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) by concealing material information relating to ICICI Loan Agreement dated October 14, 2008, VCPL Loan Agreement-1 dated July 21, 2009 and VCPL Loan Agreement-2 dated January 25, 2010 from the knowledge of the public shareholders of NDTV while dealing in shares of the company (NDTV) thereby committing fraud on the minority shareholders of NDTV. Noticee no. 2 and 3 were additionally charged with violation of Clause 49 (1)(D) of Equity Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) for giving false affirmation for the financial years 2009-10 and 2010-11 about compliance with the Code of Conduct which required Board Members and senior management of NDTV to comply with all applicable laws, rules, regulations and engage in and promote honest and ethical conduct free from fraud or deception.
10. In response to the aforesaid SCNs, the Noticees, vide letter dated April 4, 2018, requested for inspection of documents and authorised Shri Pawan Sharma, Advocate to carry out the

inspection. Noticees were given an opportunity for inspection of documents on April 18, 2018. The Noticees filed a common interim reply in the matter on July 11, 2018 stating therein as under:

- a) That the agreements were entered into by the Noticees for taking private loans wherein the Noticees agreed to exercise their shareholding rights in terms of the loan agreements. The shareholders rights are personal property and hence it did not affect NDTV or its operations in any manner.
 - b) That in the Board meeting of NDTV held on August 5, 2015, Noticee-2, in order to allay the allegations made in certain news items about change in control of NDTV, clarified that there has been no change in control. It has been submitted that this shows the intention of the Noticees not to hide any fact in respect of VCPL loan agreements. At the relevant time, there was no requirement to make disclosures in respect of the loan agreements by the Noticees, therefore, there is no question of any concealment.
 - c) That they have made requisite disclosures about the transfer of shares which happened between the Noticees *inter-se*, to the stock exchange under relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the SEBI (Prohibition of Insider Trading) Regulations, 1992.
 - d) That it has been also stated that the Noticees acted in bonafide manner and the opinion of the Noticees that the disclosure is not required was also supported by the legal opinion dated April 18, 2012 given by a reputed law firm of India.
11. It was also stated in the interim reply that Noticees may be provided with copy of complete investigation report and all the documents relating to the investigation so as to enable them to file their reply/explanation. In view of the aforesaid request of the Noticees, another opportunity for inspection of documents was granted to them on July 27, 2018. Subsequently, an opportunity of hearing was granted to the Noticees on August 30, 2018. Shri Pawan Sharma, Advocate appeared on behalf of the Noticees for hearing on August 30, 2018 and stated that RRPR Holdings Pvt. Ltd. i.e. Noticee no. 1 has filed a W.P. (C) No. 9114/2018 before Hon'ble High Court of Delhi wherein the Hon'ble High Court vide

order dated August 29, 2018 has directed that Noticee should be given an opportunity for inspection of documents pertaining to the SCN. Accordingly, on September 12, 2018, the Noticees were given another opportunity to inspect the documents in terms of the aforesaid order of the Hon'ble High Court.

12. Subsequent to the inspection, vide an email dated October 29, 2018 the counsel for the Noticees sought two weeks' time to file a reply. The Noticees then filed a written reply dated November 13, 2018 in response to the SCN. It was stated therein that the aforesaid Writ Petition challenging the present proceeding is pending before Hon'ble Delhi High Court and the Noticees have also filed a Special Leave Petition before Hon'ble Supreme Court against the order dated October 26, 2018 passed by Hon'ble High Court of Delhi, whereby the Hon'ble High Court rejected the application of Noticees seeking stay on the present proceedings. The aforesaid SLP was subsequently dismissed by Hon'ble Supreme Court vide order dated November 22, 2018.
13. The Noticees were subsequently, granted an opportunity of hearing on November 29, 2018 and December 10, 2018. The Noticees later filed certain additional documents vide letter dated December 7, 2018 and also filed written submissions vide letter dated January 25, 2019. The written submissions of the Noticees have been carefully perused and the arguments advanced by them, both oral and written, have also been considered. The main contentions of the Noticees are as under:
 - a) That present proceedings are without jurisdiction as no belief as required to be recorded prior to initiating an investigation under Section 11C of the SEBI Act, 1992, has been shown to Noticees.
 - b) That present proceedings are without jurisdiction as no document recording the reasons for initiating the present proceedings under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, has been shown to Noticees.
 - c) That provisions of Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 are preventive/remedial in nature hence, the said provisions cannot be invoked in the instant case for alleged non-disclosure of certain agreements which were entered into almost a decade ago.

- d) That Noticees have not been given inspection of entire records and file notings, hence, the present proceedings are being conducted in violation of principles of natural justice.
- e) That the loan agreements were entered into by the Noticees purely for taking loans, wherein the Noticees had agreed to exercise their shareholding rights which are their personal property, under the terms of the Loan Agreements signed by them and it did not affect NDTV or its operations in any manner..
- f) That there were at least 6-8 directors on the Board of NDTV at the relevant time out of which 3-4 were Independent Directors. Thus Noticee no. 2 and 3 could not have done/stopped anything at the Board level.
- g) That in their capacity as Directors of NDTV, Noticee no. 2 and 3 were under statutory fiduciary duty towards NDTV which would override their contractual obligations.
- h) That there is no provision in the loan agreements providing that the obligations of the Noticee no. 2 and 3 will operate in derogation of their fiduciary duty. Therefore, even after the loan agreements, Noticee no. 2 and 3 were free to act in the best interest of NDTV under their fiduciary duty even for the matters mentioned in the loan agreements.
- i) That the loan agreements were private agreements in which NDTV was not a party, and hence, there was no requirement for the Noticees to make disclosure of the same to the stock exchanges.
- j) That Clause 49(I)(D) of the Equity Listing Agreement referred to in the SCN came into effect only from the year 2014, therefore, in the year 2009, there was no requirement of making disclosures in respect of the loan agreements made earlier.
- k) That except for bald allegations made in the SCN, there is no material to suggest any adverse impact on the public shareholders, so as to substantiate the fraud,

therefore, no case under PFUTP Regulations has been made out in the SCN.

- l) That the SCN alleges a violation allegedly committed around a decade ago. There has been inordinate delay and laches in initiating proceedings against the Noticees which has rendered the proceedings incapable of being defended, therefore, the proceedings should be interdicted. In this connection the counsel has relied upon several judgments of Hon'ble Supreme Court, Hon'ble High Court of Bombay and Hon'ble Securities Appellate Tribunal. Some of these judgments are State of AP v. N Radhakrishnan (1998) 4 SCC 154; P V Mahadevan v. MD. T N Housing Road (2005) 6 SCC 636; Bhagwandas S Tolani v. B C Agarwal and Ors. 1982 SCC OnLine Bom 453; Cambata Industries Pvt. Ltd. v. Additional Director of Enforcement, Mumbai and Anr. (2010) 2 Mah LJ 628; Subhkam Securities Pvt. Ltd. v. SEBI (SAT Appeal No. 73/2012); HB Stockholdings Ltd. v. SEBI (2013) SAT 44 and Libord Finance Ltd. v. SEBI, etc.
- m) That the Noticee No. 2 & 3 were acting in two capacities, i.e. one as shareholders of NDTV and second as directors of NDTV, therefore their actions must be measured accordingly in line with the laws governing a shareholder's rights and a director's duties. It has been submitted that a director is duty bound to check if the decision /action is in the interest of the company, while a shareholder may take decisions which serve his purpose but are contrary to the interest of the company. A director is legally bound by fiduciary duty owed to the company while the shareholder has no such obligation imposed on him because shareholder's vote is a right of property, and *prima facie* may be exercised by a shareholder as he thinks fit in his own interest. In this connection, reliance has been placed upon the judgment of Hon'ble Supreme Court in *Shrimati Jain vs. Delhi Flour Mills Co. Ltd. & Ors.* (1973 SCC Online Del 137) and the decision of Hon'ble Bombay High Court in *Rolta India Ltd. vs. Venire Industries Ltd.* (2000(3) Mh. L.J.700).
- n) That item 2 of Schedule III read with clause 12 of the VCPL loan agreements, which list out five points, deals with actions which may disrupt and adversely affect the interest of NDTV, because of which the exercise of power by the Noticees as shareholders were subject to the lenders' prior written consent. Each of the five items represents a matter that requires a general meeting where a shareholders'

vote will be in play. All these stipulations bind Noticee Nos. 2 and 3 and not NDTV. The agreement for lender to protect NDTV from the whims and fancies of its promoters can never be said to be adverse to the interest of NDTV.

- o) That the Noticees have been accused of failing to disclose these agreements to NDTV, the company of which they are promoters. All references to provisions relating to disclosures are the provisions of the Listing Agreement, which does not bind the promoters. Therefore, there was no requirement for promoters of NDTV to make disclosure under the Listing Agreement or otherwise, about the Loan Agreements executed by the promoters of NDTV in their personal capacity.
- p) That at the relevant point of time, the only requirement on the company was to have a Code of Conduct and there was no requirement for the Noticees to disclose the alleged fraudulent loan agreements to the Board of the company.
- q) That Regulation 17 read with Part A of Schedule II of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) sets out a list of the minimum information that required to be disclosed to the Board of Directors. This list does not contain the obligation that the promoters must disclose their loan agreements to the Board. Regulation 30 of LODR Regulations deals with what a listed company must disclose to the public. Part A of Schedule III, lists out the matters which regardless of their materiality, must be disclosed. In this Schedule, Item 5 stipulates that shareholder agreements, joint venture agreements and family arrangements, which are not in the normal course of business but are binding, must be disclosed. This requirement came in with effect from September 2, 2015, i.e., date of notification of LODR Regulations. Part B of Schedule III, which requires disclosures based on application of materiality guidelines, deals with disclosure of loan agreement by the company only if they are binding and not in the normal course of business.
- r) That the allegations relating to fraud by 'concealment' is untenable as the meaning of the word implicitly indicate that there should be an affirmative action on the part of the Noticees. In this connection reliance has been placed upon the Judgement of Hon'ble Supreme Court in *K C Builder and Anr. Vs. Assistant*

Commissioner of Income Tax (2004) 2 SCC 731 and Dilip N Shroff Vs. Joint Commissioner of Income Tax (2007) 6 SCC 329 and the Judgement of Hon'ble Allahabad High Court in Mohd. Ibrahim Azimulla Vs. Commissioner of Income Tax, (1981) 131 ITR 680).

- s) That expressions used to identify the fraud implicitly indicate to an affirmative action. Terms such as “concealment”, “device” or “contrivance” have implicit *mens rea*. Existence of victim is implicit in fraud. As the act of concealing necessarily implies that concealment must be from another person, as a corollary to it in the absence of a victim or another person there cannot be any allegation of fraud.
- t) That the act of fraud requires inducement of another person. In the present case, such inducement has neither taken place nor been shown. The inducement has to be of a counter party. In the present case, both the buyer and seller were not aware of the said agreements. They were neutral to this information. Therefore, no one has defrauded anyone or induced anyone.
- u) That wrongful redaction of Second Investigation Report provided to the Noticees was not in accordance with natural justice.
- v) That it has been submitted that the show cause notice must contain the exact nature of the measures that it proposes to take, failing which, the order passed would be violative of the principles of natural justice and shall be rendered infructuous. In this regard reliance has been placed upon the judgment of Hon'ble Supreme Court in *Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors.* (decided on August 4, 2014) and Hon'ble SAT in *Royal Twinkle Star Club Pvt. Ltd. vs. SEBI* (decided on February 3, 2016).

Consideration and findings

14. I have gone through the contents of the SCN, the written replies/explanations received from the Noticee in response to the SCN, documents available on record and the arguments advanced during the personal hearing granted to the Noticees. After going through all the material, as aforesaid, available on record, I find that essentially, following issues arise for determination in the present matter:

- (a) Whether by the aforesaid conduct alleged in the SCN based on the investigation report, Noticees have violated provisions of section 12 A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations ?
 - (b) Whether Noticee no. 2 and 3, being promoters/directors of NDTV have complied with Clause 49(I)(D) of the Listing Agreement readwith Section 21 of SCRA?
 - (c) Whether the conduct of the Noticees call for issue of directions under Sections 11(1), 11(4) and 11B of the SEBI Act?
15. Before advertng to the aforesaid issues, I would like to first deal with certain preliminary technical/legal issues raised by the Noticees, in their submissions. The first such preliminary contention is that the present proceedings are entirely without jurisdiction as the “*reasonable grounds to believe*”, as required to be recorded prior to initiating investigation under Section 11C of the SEBI Act, 1992, has not been demonstrated to the Noticees. In this regard, I find that in terms of Section 11C of the SEBI Act, if the Board has reasonable grounds to believe *inter alia* that transaction in securities are being dealt in a manner detrimental to the investors or the securities market, it may, at any time by order in writing, direct investigation into those transactions. I agree that existence of such reasonable grounds acts as a triggering point for the Board to initiate investigation. However, it is not anywhere mandated in the SEBI Act that existence of reasonable grounds for initiating an investigation must be first demonstrated to the person against whom any action is initiated pursuant to completion of such investigation. Therefore, to argue that a noticee in an enforcement action initiated by SEBI, is lawfully entitled to ask for such grounds or details of recording of such grounds of belief, is not tenable for the reason that investigation is only a fact finding exercise. As held by the Hon’ble SAT in ***Bhorukha Financial Services Ltd. Vs. SEBI (order dated May 10, 2006 in SAT Appeal No. 18 of 2006)***, “*Investigation by itself does not adversely affect any person or intermediary and no civil consequences flow from such an order.*” Investigation report contains the facts which constitute the basis of charges levelled against a person in the show cause notice. Non-furnishing of such facts/findings recorded in the investigation report to the noticee which constitutes the basis of the charge may cause prejudice to such noticee. However, non-furnishing of reasons on the basis of which an investigation was initiated, cannot be said to be prejudicial to the interest of the Noticees. It is to be noted that the SCN has not been issued on the basis of “reason to

believe for conducting investigation” and rather is based on the facts found during the investigation. In this regard, I would like to refer to Section 114 of Indian Evidence Act, 1872 which provides that the court **may presume** (emphasis supplied) the existence of any fact which it thinks likely to have happened, regard being had to the common course of the natural events, human conduct, public and private business, in their relation to the facts of the particular case. Illustration (e) to the said Section 114 provides that the court may presume that judicial and official acts have been regularly performed. As per Section 4 of the said Act the implication of “May presume” is that, whenever it is provided by the Evidence Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it. In the facts and circumstances of the present case, in the absence of anything to the contrary before me, I am constrained to presume that such grounds of reasonable belief to conduct investigation in terms of provisions of Section 11C of the SEBI Act did exist. Therefore, said contention of Noticees and argument that the present proceedings are without jurisdiction is not tenable.

16. Another preliminary contention raised by the Noticees is that the present proceedings are wholly without jurisdiction as no document containing the reasons for initiating the present proceedings under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, has been shown to the Noticees. In my view, Noticees have a very narrow and short sighted interpretation of the provisions of SEBI Act. SEBI Act prescribes different enforcement powers like, issuance of regulatory directions under Sections 11(1), 11(4) and 11B against any person, initiation of disciplinary proceedings under Section 12(3) against registered entities, initiation of adjudication proceedings for imposition of monetary penalty under relevant provisions of Chapter VI A against any person and filing of complaint under Section 26 for prosecution for offences contemplated under Section 24 etc. It is trite law that all these enforcement actions are concurrently available to SEBI under the SEBI Act and SEBI can initiate all or any of the enforcement action in a given case. The aforesaid enforcement powers are not mutually exclusive from each other. The provisions of SEBI Act do not make any mutually exclusive rigid classification specifying as to which enforcement action is to be initiated against a delinquent exactly on which grounds/reasons. It is not open for a noticee against whom a particular enforcement action has been initiated to assert that he should be made aware of the reasons as to why a particular enforcement action has been selected for initiation against him as because, this is neither the requirement of law nor of the principles of natural justice. The course of

action available to a noticee in this regard is to respond with supporting facts/evidences to rebut the charges levelled against him which led to initiation of a particular enforcement action, instead of dissenting to a particular enforcement action and/or supporting another alternative enforcement action which the Noticee thinks should be initiated against him. If the contention raised by the Noticees is accepted, it would allow a Noticee first to sit over the judgment on the Regulator's decision to initiate an appropriate enforcement action and it would continue to raise technical challenges to whichever enforcement action the Regulator would initiate and would not let the enforcement action proceed further on merit, by repeatedly disputing the *bona fide* of every such proposed enforcement action. Thus, it would lead to multiplicity of litigation as noticee will continue to oppose every reason of the Regulator to initiate a proceedings and would continue to press for the enforcement action of its choice. In my view, choosing an appropriate enforcement action under the given facts and circumstances of a case and keeping in view the gravity of the violations committed by the Noticees, is the prerogative of the Regulator and assigned by the legislature to the Regulator. It is for the Noticees to offer their explanation and arguments with supporting evidences to disprove the charges levelled against them through an enforcement proceeding and it is not open to them to dispute the reasons for initiating a particular proceeding. Under the circumstances, said contention of Noticee is devoid of merit and is not tenable.

17. The Noticees have further contended that, provisions of Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 are preventive/remedial in nature hence and as such the said provisions cannot be invoked in the instant case for the alleged non-disclosure of certain agreements which were entered into almost a decade ago. As I have already observed above, initiating a proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the facts and circumstances of a case and just because the alleged violation was committed in a distant past cannot provide a shield against initiation of proceedings under a specific provisions of the Act which is appropriately applicable to the said violation. Moreover, in this case the SCN makes a serious allegation of fraud under the PFUTP Regulations and although the alleged commission of fraud emanates from an agreement executed a decade ago, yet alleged fraudulent act continues even till date, as the said agreements are still in force and are being honoured by the Noticees. Hence, I find no merit in the contentions of the Noticees in this regard.

18. The Noticees have also raised another objection stating that there has been inordinate delay and laches in initiating proceedings against them which has rendered the proceedings incapable of being defended. In this regard, Noticees have also cited various decisions of Hon'ble Supreme Court, High Courts and SAT on the question of delay. At the outset, I note that there is no provision in the SEBI Act which lays down any limitation period for initiating any action under the Act. This argument is misconceived. For ascertaining whether there is any delay in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. Even in the case relied on by Noticees i. e. ***State of AP Vs. N. Radhakrishnan (1998) 4 SCC 154***, regarding delay, Hon'ble Supreme Court has held that *it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case.* In ***P. V. Mahadevan Vs. M.D., T.N. Hosuing Board (2005) 6 SCC 636***, cited by the Noticees, the Hon'ble Supreme Court referring to N. Radhakrishnan's case (*supra*), decided the case in the context of the peculiar facts obtaining in that case and therefore, this case renders no assistance to the Noticees. The aforesaid decision is not in contradiction or oppose to the decision in N. Radhakrishnan's case (*supra*).
19. The orders passed by Hon'ble SAT in ***Subhkam Securities Private Limited Vs. SEBI*** (Appeal no. 73 of 2012 decided on July 25, 2012), ***Libord Finance Ltd. Vs. SEBI***, Appeal no. (165 of 2012 decided on March 31, 2008) and ***HB Stockholdings Ltd. Vs. SEBI*** (Appeal no. 112 of 2013 decided on August 08, 2013), as relied upon by the Noticees, have been perused. It is noted that these decisions also endorses to the legal position regarding the delay, as stated in the paras 16-18 above. In fact, in HB Stock Holding's case (*supra*), the Hon'ble SAT held that delay is not fatal in each and every case. Further, in the case of ***Ravi Mohan & Ors. Vs. SEBI (SAT Appeal No. 97 of 2014 decided on 16.12.2015)***, Hon'ble SAT while referring to its own decision in HB Stock Holdings case (*supra*) and decision of Hon'ble Supreme Court in ***Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.)***, held as under:

“.....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.....”

20. In the present case, it is noted that the first complaint was received by SEBI on August 26, 2017. After conducting the requisite investigation in the matter, the SCNs have been issued to the Noticees on March 14, 2018. Therefore, there is no delay in dealing with the matter as action has been initiated as soon as the complaint was received. Hence, the contention raised by the Noticees, regarding delay lacks merit.
21. Noticees have also contended that instant proceedings are in violation of principle of nature justice since their request for inspection of entire records and file noting has been denied. In this regard, I note that subsequent to issuance of SCN, Noticees were provided with opportunity of personal hearing. Subsequently, Noticees have filed a Writ Petition (civil) No 9114 of 2018 before the Hon'ble High Court of Delhi, praying *inter alia*, direction to SEBI to provide inspection of documents. The Hon'ble High Court has vide order dated 29.08.2018 directed SEBI to provide inspection. The relevant extract of the said order dated 29.08.2018 is as under;

“The SEBI shall ensure the inspection of all materials that have been investigated pertaining to the show cause notice, which is the subject matter of the investigation, is provided. However, if there is any confidential material concerning a third party, which too might be under investigation or other confidential material, which the SEBI feels would be prejudicial, it is open to it to segregate or de-tag such material while complying with the order.”

22. I note that in compliance with the above mentioned order of the Hon'ble High Court,

inspection was granted to the Noticees on September 12, 2018. I further note that the Noticees had further raised the matter of inspection by way of an application before the Hon'ble High Court contending that inspection of all materials as directed by the Hon'ble High Court has not been provided. However, such contention of the Noticees was not accepted by the Hon'ble High Court and accordingly the said application moved by the Noticees including their prayer for stay on the instant proceedings was dismissed. I find that the Noticees have been provided with inspections of all documents collected during the course of investigation and which were pertaining to the SCN issued in the instant proceeding, in due compliance with the order of the Hon'ble High Court. Therefore, the grievance of the Noticees that inspection of documents have been denied is unfounded and devoid of any merit. .

23. Another preliminary contention raised by Noticees is that the show cause notice must contain the exact nature of the measures/actions that the Regulator proposes to take, failing which, the order passed would be violative of the principles of natural justice and would be rendered invalid. In this regard reliance has been placed upon the judgment of Hon'ble Supreme Court in ***Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors. (2014) 9 SCC 105*** and the order passed by Hon'ble SAT in ***Royal Twinkle Star Club Pvt. Ltd. vs. SEBI (SAT Appeal No. 436 of 2015 decided on February 3, 2016)***. On a perusal of the said judgment of the Hon'ble Apex Court, I find that the same is factually distinguishable and not applicable to the present proceedings. This is for the reasons that in Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental rights of equality of opportunity in the matter of public contract of such person. Further, in Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract. On the other hand, the present SCN has been issued for breach of provisions of law. In Gorkha Security case, blacklisting was imposed by way of penalty, whereas in the instant proceedings, the purpose of issuing directions, if found necessary, would be preventive and remedial in nature. In Gorkha Security Case, blacklisting of the contractor was provided in the governing contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market. Keeping in view the above points that clearly

distinguishes the facts and circumstances of Gorkha Security case from the facts of the present proceedings, reliance placed by Noticees on Gorkha Security matter is misplaced. In this regard, it is further noted that the measures prescribed in sub-section (2) of section 11 read with 11(4) and 11B of SEBI Act, 1992 are merely illustrative that may be taken by the Board in furtherance of its duties to attain the object of the statute, without affecting the generality of provisions of sub-section (1). The Board has such powers and is duty bound to take measures in any manner as it may deem fit to prohibit, unearth and deal with fraudulent and manipulative acts in securities markets to protect the interests of investors. The SCN issued to the Noticees have spelt the provisions under which the desired preventive/remedial measures, if found necessary, would be issued. The SCN also clearly indicates the specific nature of violations that have been alleged against the respective Noticees in terms of different provisions of SEBI Act, PFUTP Regulations, Listing Agreement and SCRA which if eventually found to be breached, would require issuance of suitable directions under specific provisions as mentioned under the SCN. Thus, it is manifest that the specific allegations were unambiguously conveyed to the Noticees and they were given opportunities for tendering their responses thereto. It is, therefore, incumbent on the part of the Noticees to explain their position with support of relevant evidence in response to various allegations made against them in the SCN. Only after examining and considering the explanation offered by the Noticees to the allegations levelled under the SCN, it would be imperative for the competent authority to determine as to if and what direction is required to be issued against the Noticees, depending on the gravity of violation committed by the Noticees. It is to be noted here that the provision of Sections 11, 11B of the SEBI Act, 1992 vest in the quasi-judicial authority plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be anticipated before-hand without considering the explanations of the Noticees. Therefore, it is incorrect to contend that the SCN should specify the exact nature of direction that may be issued to the Noticees without taking into the consideration the explanation and evidence that may be produced by the Noticees to prove their innocence. This would be wholly premature, presumptive and conjectural in nature. I have also perused the order passed by the Hon'ble SAT in Royal Twinkle case (*supra*) and I find that Hon'ble Tribunal in the said case has examined the Gorkha Security case extensively. However, the ultimate decision arrived at is not based on the understanding of Hon'ble Tribunal of the Gorkha Security case, as it emerged from the said examination. On the contrary, it has been specifically recorded in the order that "*However, applicability of the judgment*

of Hon'ble Supreme Court in the case of Gorkha to the facts of present case need not be gone into.....". Thus, the observation regarding Gorkha Security matter in the order passed by Hon'ble Tribunal in Royal Twinkle matter is only obiter dicta. In any circumstance, Gorkha Security case is factually distinguishable as observed above. Accordingly, the said contention raised by the Noticees is untenable both on facts and on law.

24. Before examining the issues as framed for determination at para 14 above, it is necessary to refer to the relevant provisions of law which the Noticees are alleged to have violated as per the SCN served on them. They are reproduced hereunder:

Provisions of SEBI Act:

"Section 12A - Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (d);*
- (e);*
- (f)"*

Provisions of PFUTP Regulations:

"Definitions

2. (1) In these regulations, unless the context otherwise requires,—

(a).....

(b) dealing in securities" includes 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 person as principal, agent or intermediary referred to in section 12 of the Act.

(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;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government;

(b) the economic situation of the country;

(c) trends in the securities market;

(d) any other matter of a like nature.

whether such comments are made in public or in private;

.....

.....

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

(a) buy, sell or otherwise deal in the securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in

contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

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

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

(2)”

Provisions of Listing Agreement:

“Clause 49 – Corporate Governance

The company agrees to comply with the following provisions:

I. Board of Directors

(A) Composition of Board.....

(B) Non executive directors’ compensation and disclosures.....

(C) Other provisions as to Board and Committees.....

(D) Code of Conduct

- (i) The Board shall lay down a Code of Conduct for all Board members and senior management of the company. The Code of Conduct shall be posted on the website of the company.*
- (ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration*

to this effect signed by the CEO.

Explanation: *For this purpose, the term “senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors.. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.”*

25. In the present case, it is an admitted position that the Noticee No. 1 (RRPR) had entered into a loan agreement with ICICI on October 14, 2008, whereby ICICI agreed to lend a rupee term loan not exceeding Rs. 375 crore. Some of the notable features of the ICICI loan agreement are as under:
- a. The interest rate for the said loan, as on the date of the agreement, was 19 % per annum which was subsequently reduced to 9.65% per annum from August 06, 2009 with retrospective effect from October 14, 2008.
 - b. The Noticee no. 1 was obliged to repay the loan amount in full to ICICI at the end of 3 years from the date of disbursement of the first tranche.
 - c. The loan could be pre-paid either in full or in part without any penal interest.
 - d. Noticee no. 1 was liable to procure and deliver to ICICI, irrevocable and unconditional guarantees from Noticee no. 2 and Noticee no. 3 for the due repayment of the loan. Further, Noticee no. 1 was liable to ensure that Noticee no. 2 and 3 observe all the covenants, terms, conditions, restrictions and prohibitions.
 - e. Notably, the facility of loan so granted by ICICI was subject the compliance with the special conditions set out in Schedule III of the agreement, including *inter alia* the following:
 - i. Noticees shall not permit any merger, de-merger, consolidation, reorganisation, scheme or arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstruction of NDTV without the prior written approval of ICICI.

- ii. Noticee no. 1 was liable to ensure that in the event of any restructuring of NDTV, at least 63% of the shares of each of the resultant entities shall be placed under the Non Disposal Arrangement or under some similar arrangement by the Noticees and/or such other shareholders.
- 26. On August 06, 2009, Noticees again entered into an agreement with ICICI for pre-payment of the loan availed by them under the ICICI Loan Agreement. Under the said pre-payment agreement, Noticees agreed and undertook to prepay the balance outstanding loan amount along with interest, on or prior to August 06, 2009. The Noticees, further undertook to pay to ICICI, a sum of Rs. 10 crore, within 5 days of the market capitalisation of NDTV crossing Rs. 2000 crore and a further Rs. 5 crore within 5 days of market capitalisation of NDTV crossing Rs. 2500 crore. However, at the option of the Noticees, such payments could have been made either by cash or in kind in the form of shares of NDTV for equivalent value.
- 27. From a read-through of the ICICI Loan Agreement, one would get a clear impression that the prime consideration for ICICI to extend the loan to the Noticee no. 1 (RRPR) was on the strength of the fact that the Noticees are the promoters and majority shareholders of NDTV. Through this agreement, ICICI has sought to secure the repayment of the loan amount by imposing certain conditions on the Noticees. However, it can not be denied that these conditions materially and significantly impacted the business interest of NDTV, a listed company, although NDTV was not a party to the said loan agreement. It is true that the said agreement was a loan agreement between the parties and the conditions stipulated therein were contingent only on default in repayment of the loan amount. Yet, it is also a fact that at the time of availing of the loan from ICICI, the Noticees, who had controlling interest in NDTV, undertook and gave guarantee to comply with the said conditions imposed on them by ICICI, which had significant implications on the interest of NDTV and was therefore, a material and price sensitive information. Had this information been disclosed to the public, they would have undoubtedly influenced the investment decisions of the shareholders and prospective investors of NDTV.
- 28. Moving on to the VCPL Loan Agreement – 1, it is necessary here to examine the salient features of this agreement, which are as under:

- a. The loan amount availed by the Noticees was Rs. 350 crore. Loan amount was meant to be utilised in full, only for their repayment of the loan earlier availed by the Noticee no. 1 from ICICI, vide loan agreement dated October 14, 2008.
- b. This loan did not carry any interest. The loan is repayable to VCPL on a distant maturity date i.e. the date falling at the end of 10 years from the draw-down date (the date on which loan is disbursed).
- c. The Noticee no. 1 (RRPR), was required to issue warrants convertible into the equity shares aggregating to 99.99% of the fully diluted Equity Share Capital of the Noticee no. 1, immediately upon the execution of the agreement. These warrants could be converted any time during the tenure of the loan or thereafter, without requiring any further act or deed on the part of VCPL.
- d. VCPL got a right to purchase from Noticee no. 2 and 3 all the shares of Noticee no. 1 held by them at par value.
- e. Noticee no. 2 and 3 were to sale/transfer shares of NDTV to Noticee no. 1 so that the shareholding of the Noticee no. 1 in NDTV reaches to 26%
- f. In terms of Clause 12 of the agreement, the Noticees were required to seek prior written consent of VCPL for all the matters specified under Schedule 3 to the agreement. The matters specified in Schedule 3, especially those matters pertaining to NDTV, which required prior written consent of VCPL are as under:
 - i. Issue any equity securities of NDTV which results in the aggregate valuation of NDTV being less than Rs. 1346 crore;
 - ii. Merger, amalgamation or consolidation of NDTV with any other entity;
 - iii. Cause NDTV or any person in NDTV Group to take any steps towards bankruptcy, insolvency or reorganisation, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with

respect to it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or all or any substantial part of its property;

iv. Buy-back of equity securities, reduction or alteration of the share capital of NDTV;

v. Take any action to issue any equity securities or enter into any agreement as a result of which the Noticees ceases to be in the sole control of NDTV or the NDTV Group.

g. Noticee no. 2 and 3 together with their affiliates were obliged to exercise their voting rights attached to the equity shares held by them in the Noticee no. 1 to give full and complete effect to the provisions of the Transaction Documents including but not limited to give effect to the provisions contained in Schedule 3 read with Clause 12.

h. Similarly, Noticees together with affiliates were obliged to exercise their voting rights attached to the equity shares held by them in NDTV and NDTV Group to give full and complete effect to the provisions of the Transaction Documents including but not limited to give effect to the provisions contained in Schedule 3 read with Clause 12.

i. The Noticee no. 2 and 3 together with their affiliates were obliged to amend the Charter Documents of the Noticee no. 1 to give full effect to the provisions of the transaction documents. For this purpose transaction documents of the loan Agreement meant (i) the Loan Agreement (ii) the Call Option agreements and (iii) all other documents and agreements relating to the above and or designated as such by the lender in relation to the Loan, as such documents may be amended or supplemented from time to time.

29. In this connection, it is also noted that the two call options agreements, as mentioned above, which have been described as integral part of VCPL Loan Agreement – 1, were entered into between the Noticees and Subhgami Trading Private Limited (for short

“**STPL**”) and Shyam Equities Private Limited (for short “**SEPL**”) respectively on July 21, 2009. STPL and SEPL were associates of VCPL's shareholders at the relevant time. The call option agreements with STPL, gave STPL the right to purchase from Noticee no. 1 (RRPR), equity shares of NDTV, representing up to 14.99% of the equity share capital of NDTV. Similarly, call option agreements with SEPL, gave SEPL the right to purchase from Noticee no. 1 (RRPR), equity shares of NDTV, representing up to 11.01% of the equity share capital of NDTV. Both the call option agreements provided for a fixed price of Rs. 214.65 per share at which STPL and SEPL would exercise their right anytime to purchase the NDTV shares.

30. VCPL Loan Agreement – 2 dated January 25, 2010 was entered into between VCPL and the Noticees for giving an additional loan of Rs. 53.85 crore to Noticee no. 1. It is noted that the terms and conditions of the VCPL Loan Agreement -2 were almost same as those of VCPL Loan Agreement – 1. Some of the additional terms and condition of VCPL Loan Agreement-2 are as under :
 - a. Loan amount was meant to be utilised in full, only for investment purpose.
 - b. Noticee no. 2 and 3 were to sale 25,08,524 shares of NDTV to Noticee no. 1 so that upon such sale the borrower holds 1,88,13,928 equity shares of NDTV aggregating to 30% of the equity share capital of NDTV.
31. Like VCPL Loan Agreement – 1, VCPL Loan Agreement - 2 was also a loan agreement between VCPL and the three Noticees. However, it did not provide for any rate of interest payable on the amount agreed to be advanced as loan. Further, there was no loan default clause in the agreement. The loan has been made payable on the date of maturity which was falling 10 years after the disbursement of the loan. The said loan agreement also incorporated various conditionalities pertaining to NDTV, as mentioned in para 28(f) above which required prior approval of VCPL.
32. In order to ascertain as to if and how, the above narrated acts of the Noticees and the terms and conditions of the loan agreements have resulted into violation of the provisions of SEBI Act and PFUTP Regulations, 2003, it is necessary to have due regard to certain fundamental principles which ought to be borne in mind while dealing with or applying the said legal provisions. In this regard, reference may be made to the case of **SEBI**

Kishore Vs. R Ajmera, 5 (2016) 6 SCC 368, wherein Hon’ble Supreme Court have laid down the guiding principle for understanding and interpreting the provisions of SEBI Act and the regulations made thereunder in the following words:

“.....21. *The SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/ Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.....*”

The aforesaid guiding principle has been endorsed in the subsequent judgments of the Hon’ble Supreme Court in in the case of ***SEBI Vs. Kanaiyalal Baldev Bhai Patel (2018) 13 SCC 753*** and ***SEBI Vs. Rakhi Trading Private Ltd. (2018) 13 SCC 753***.

33. Further, in the case of ***N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152***, with respect to the objective of SEBI Act and specifically the provisions of Section 12A and Regulations 3 and 4 of PFUTP Regulations, Hon’ble Supreme Court have observed as under:

“.....35. *Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve ‘market integrity’ and to prevent ‘Market abuse’. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. ‘Market abuse’ impairs economic growth and erodes investor’s confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises,*

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

Again, the aforesaid observations on the objective of the SEBI Act and the PFUTP Regulations, 2003 have been reiterated in the subsequent judgments of the Hon’ble Supreme Court in Kanaivalal case (*supra*) and Rakhi Trading case (*supra*).

34. Having due regard to the law enunciated by the Hon’ble Supreme Court in the aforesaid cases, in the present case, I proceed to examine whether the agreements executed by Noticees, more particularly the two VCPL Loan Agreements are mere loan agreement *simpliciter* or whether under the garb of the these agreements the acts of the Noticees amount to commission of fraud upon the shareholders of NDTV. For this purpose, it is essential to examine the implications of various clauses of the said agreements to ascertain the real intent of the Noticees behind consenting to such clauses, which render the agreements, *prima facie*, loaded against the Noticees and in favour of the Lenders. One submission of the Noticees is that the agreements were mere loan transaction entered into between two independent parties. However, upon a deeper scrutiny of the clauses and the conditions set out and agreed upon by the Noticees, so as to ascertain as to whether they were incorporated mainly for availing the facility of loan or contained clauses which are detrimental to the interest of shareholders of NDTV that can be labelled as material and price sensitive, my observations are as under:

- a) Schedule I(a) of the VCPL Loan Agreement - 1 entitles absolute and sole discretion to the VCPL to Equity Shares aggregating to 99.99% of the fully diluted Equity Share Capital of RRPR (Noticee no.1) by converting the warrants, at any time either during the tenure of the loan or even thereafter. Thus, it is left to the absolute discretion of VCPL to decide when to take the entire share capital of Noticee no. 1 and thereby to take control over the entire shareholding of Noticee no. 1 in NDTV to the extent of 26% which was subsequently increased to 30% vide the VCPL Loan Agreement – 2.

- b) Clause 11 of the VCPL Loan Agreements provide for appointment of at least one director (out of 3) nominated by VCPL on the Board of RRPR, whose presence was mandatory to constitute the quorum for any meeting of the Board.
- c) Clause 13 provides that in case of any breach of the terms of the Loan Agreements or related agreements by the Noticees, the same would result in the loan amount becoming payable immediately, which means, the Noticees can enjoy the loan interest free for 10 years, if they comply with the other terms and conditions of the two loan agreements most of which pertained to NDTV and acquisition of 30% stake in NDTV through the medium of Noticee no. 1.
- d) One of the conditions precedent to the execution of agreement was sale of 11,563,683 shares of NDTV by Noticee no. 2 and 3 so that Noticee no. 1 held 26% shares of NDTV. Similarly, VCPL Loan Agreement-2 provides for another sale of 25,08,524 equity shares of NDTV from Noticee no. 2 and 3 to Noticee no. 1 so that upon such sale, the Noticee no. 1 holds 1,88,13,928 shares of NDTV aggregating to 30% of the equity share capital of NDTV. Thus, under the two loan agreements, Noticee no. 2 and 3 were mandated to sale their shareholding of NDTV to Noticee no. 1 so that VCPL ultimately holds control over 30% shareholding in NDTV by virtue of ownership of the entire share capital of Noticee no. 1. In effect, the two loan agreements mandated the Noticees to place 30% of their share-holding in NDTV at the disposal of VCPL as a consideration of the amount of loan received.
- e) As stated above, the clause 6.1 read with Schedule I provides sole discretion to VCPL to convert the warrants entitling it to have 99.99 % of equity share capital of Noticee no. 1. It shows the intention of Noticees to transfer their stake in NDTV to VCPL. Further, conversion of warrants into shares of Noticee no. 1, at any point of time by VCPL thereby enabling it to acquire indirectly 30% of NDTV's equity, was not dependent on the repayment of the loan by the Noticees. VCPL is having independent power to convert the warrants into shares of Noticee no. 1 at any time during the loan agreement **or even thereafter** (emphasis supplied).

- f) As stated above, VCPL's right to convert the warrants is absolute without being in any way connected to repayment of loan by the Noticees. Thus, it is not a loan transaction *simpliciter*. It appears an outright transfer of 30% stake and voting rights in NDTV by the Noticees masquerading as a loan agreement which did not even possess the basic attributes of a normal secured loan transaction. In my view, the VCPL Loan Agreements -1 and 2 are sham loan transactions executed by the Noticees only with a motive to sell their substantial stake in NDTV.
- g) Another peculiar feature noted from the VCPL Loan Agreements is that the lender has been conferred with the rights to assign the agreement, the loan and the rights therein *qua* Noticee no. 1 to third party even during the currency of the tenure of the aforesaid loan agreements. However, similar right of assignment is not available to Noticees. It creates a disadvantageous situation to the prejudice of the borrowers. It creates a situation whereby during the period when the loan agreements are in force i.e. the period when the Noticees are under the obligation to repay the loan after a period of 10 years, the lender can freely assign all its rights in the said loan agreements to any other party thereby rendering the loan agreement freely transferrable from lender's side. Additionally, there is one more unique provision observed in the loan agreement at clause 19 which states that "*over the next 3 to 5 years, the Borrower and the Lender will look for a 'stable' and 'reliable' buyer of RRPR, who will maintain the brand and the credibility of NDTV*". From the same, it is clearly discernable that the Noticees have gone far beyond the normal commercial ambits of a simple loan transaction, only for the reason of transferring their stake in the NDTV to VCPL by using the medium of loan agreements. In the light of the above, the Noticees' contention that the VCPL agreements were pure loan agreements, is unconvincing and contrary to the facts.
- h) As mentioned above, in terms of clause 6.1 of the VCPL Loan Agreements, it is stipulated that the borrower shall issue convertible warrants, convertible into equity shares aggregating to 99.99% share capital of borrower (RRPR) to the lender (VCPL) ***immediately upon execution of this agreement (emphasis supplied)***. Thus, RRPR was under obligation to issue convertible warrants to VCPL immediately after executing the loan agreement dated July 21, 2009. However, records available indicate that these warrants have not been issued by the Noticee no. 1. In such a situation, clause 13 of the agreement which stipulates the consequences of the default by way of

breach of terms and conditions of the agreements by the promoters or borrowers ought to have been enforced by the lender (VCPL) by demanding the repayment of the loan amount. However, even after a lapse of more than nine years of execution of the agreement and despite the said default by the Noticees, pre-payment has inexplicably not been triggered, which further strengthens my belief that the so called loan was never intended to be repaid and implies that the amount was received by the Noticees as consideration for sale of their substantive stake in NDTV to VCPL.

- i) Considering the market price of shares of NDTV as it prevailed on the day of execution of Loan Agreements, it was observed that transfer of shares of NDTV by Noticee no. 2 and Noticee no. 3 to Noticee no. 1 as part of the precondition stipulated in the loan agreements was not proportionately correlated with the loan amount as per then prevailing market price of the shares of NDTV. It is observed from the information available in public domain that average price of shares of NDTV on BSE, as on the date of the execution of VCPL Loan Agreement – 1 i.e. on July 21, 2009 was Rs. 127.20/- per share and as on the date of VCPL Loan Agreement – 2 i.e. on January 25, 2010 was Rs. 138.70/- per share. In contrast, as discernable from the loan agreements, the valuation of the equity shares of NDTV for the purpose of advancing loan has been adopted at Rs. 214.65/- per share for both the loan agreements. Thus, it appears that Noticees and the lender i.e. VCPL have deliberately overvalued the shares of NDTV for factoring in a premium of Rs. 87-76 per share respectively. It also exhibits that the said loan transaction defies and ignores all prudent commercial norms of lending and apparently, a substantially higher amount was predetermined to be received by the Noticees as a consideration for 30% shares of NDTV, by way of transferring the ownership of Noticee no. 1 to VCPL irrespective of the market value of the shares of NDTV at the relevant point of time. The alleged collateral securities thus offered by the Noticees under the aforesaid loan agreements were disproportionately inadequate *vis a vis* the amount received as loan. In a general loan transaction where shares are offered as collaterals, the lender demands substantial haircuts in collateral value and also insist on pledge invocation in case of adverse movement of share price if additional security is not provided. However, in this case, instead of demanding haircuts in the value of collaterals, the so called loan was generously given by the lender to the Noticees with inadequate number of shares as collaterals and without even creating any charge over such shares. Further, the two

loan agreements did not contain any clause to provide for additional securities in case of adverse movement in the price of shares of NDTV or other exigencies. The aforesaid observations lead to a compelling conclusion that the two ostensible loan agreements with VCPL were arranged in a deceitful manner only with a view to transfer substantial stakes in NDTV owned by the Noticees for a pre-negotiated amount as consideration and these agreements do not carry any element whatsoever of regular inter corporate loan transaction.

- j) Clause 20 of the loan agreement constrains the Noticees to exercise voting rights attached to their equity shares in NDTV as may be necessary to give full and complete effect to the provisions of the loan agreements including but not limited to give effect to the provisions contained in Schedule 3 read with Clause 12 thereof. Thus, the loan agreements did not give any discretion to the Noticees to independently exercise their voting rights in NDTV as they would have otherwise exercised as promoter-shareholders, prior to the execution of loan agreement. Evidently, Noticees have given up the 30 % of their voting rights in furtherance of the terms of loan agreements, which were never disclosed to the public as they ought to have been. Hence there is no merit in the averment of the Noticees that the loan agreements were executed in exercise of their private property rights not impinging at all on the interest of NDTV. This is further supported by schedule 3 of the loan agreement titled “Prior Consents”, which imposes restriction in the form of obligations on Noticees to obtain prior consent of the Lender, in case of any proposal for the changes in capital structure, constitution or re-structuring of NDTV is concerned.
- k) It is also noted that the loan agreements did not contain any closure clause providing for termination upon repayment. Clause 7 of the loan agreement provides for payment upon maturity, which is 10 years after the drawdown of the release of the payment. In contrast to the aforesaid liberal and lenient stipulation regarding repayment of loan that too, without any interest thereon, Schedule I(a) of the loan agreements provided that the terms of the agreement can be invoked not only during the tenure of the loan but surprisingly **even after the expiry of the tenure of the loan** (emphasis supplied). Such a stipulation defies all commercial prudence and rationale since the terms of the agreements can only be invoked during the tenure of loan and on the occurrence a default and cannot ordinarily under any circumstances be invoked after the tenure of

the loan. The provision of such covenants further manifest the clandestine intents of Noticees of effecting transfer of substantial stake in NDTV to the Lender under the garb of a loan agreement. Thus, the terms and conditions of the loan agreement unambiguously indicate that the objective and intent behind the execution of loan agreement was nothing but to transfer beneficial interest in the shares of NDTV.

- l) The deploying of the words “*balance is outstanding*” in clause 7 of the VCPL Loan Agreement is intriguing and lacks any rationale, given the fact that there was no contractual obligation fastened upon the borrower to make any repayment at all, during the tenure of the loan agreement and the entire loan amount would always stand as outstanding at any point of time during the life of the agreement. Therefore, the question of having any ‘*balance is outstanding*’ during the tenure of the agreement does not arise. Such an infirmity would not find place in a genuine loan agreement.
- m) Similar to the VCPL Loan Agreements, the two call option agreements referred to above which were also treated as integral part of the loan agreement do not contain any clause providing for termination of these agreements even after repayment of the loan amount. The aforesaid arrangement of incorporating the call option agreements into the VCPL Loan Agreements shows that VCPL, apart from ensuring its ownership over Noticee no. 1 by way of conversion of warrants to be issued by the Noticee no. 1, has further made alternative arrangements to transfer the NDTV shares to its group companies at a predetermined price at the rate of Rs. 214.65/- per share. Interestingly, it is observed that when the total loan amount i.e. Rs. 350 crore advanced by VCPL to Noticee no. 1, under the VCPL Loan Agreement – 1, is divided by the number of shares constituting 26% shares of NDTV i.e. 1,63, 05,404 (which was set out to be held by RRPR as a pre-condition for Noticees in the agreement) the amount per share advanced as loan comes to Rs. 214.65/- per share. Similarly, under the VCPL Loan Agreement - 2, when the loan of Rs. 53.85 crore advanced to Noticees is divided by number of shares (2508524) required to be additionally transferred by Noticee no. 2 and 3 to Noticee no. 1 (so as to take RRPR’s stake in NDTV to 30%), the amount per share advanced as loan, again comes to Rs. 214.65/- per share. It shows that in the entire loan transaction including the provision for call option, a conscious effort has been made to determine the valuation of NDTV shares at the rate of Rs. 214.65/- per share and the same has been linked to the quantum of the loan advanced. It again

reinforces the point, made out earlier, that the VCPL Loan Agreements were only for namesake loan agreements, while in substance the amount advanced as loan had a direct nexus with the cost of the purchase of 30% shares of NDTV to be transferred by the Noticees.

- n) The loan agreements also do not contain any termination on default of repayment. No explanation has been forwarded as to why the covenant was so heavily construed in favour of VCPL providing unbridled power to them to invoke/get the conversion of warrants at any time even during the subsistence of the agreement without there being any default.
- o) There is yet another irrefutable ground to observe that the ostensible loan agreements entered into by the Noticees with VCPL were not loan agreements per se, but were transactions for transferring beneficial interest in 26% shares of NDTV to VCPL under VCPL Loan Agreement – 1 and another 4% shares under VCPL Loan Agreement – 2, cumulatively amounting to 30% shares of NDTV. As discussed at para 34(d) earlier, pursuant to execution of VCPL Loan Agreement -1, Noticee no. 2 and 3 were required to transfer 11,563,683 shares of NDTV to RRPR (Noticee no. 1). Similarly, in terms of VCPL Loan Agreement - -2, Noticee no. 2 and 3 were mandated to transfer an additional number of 25,08,524 shares of NDTV to Noticee no. 1. In this regard, it is necessary to look at the off market transfers of shares of NDTV that took place *inter se* amongst Noticee no. 2, Noticee no. 3 and Noticee no. 1, in compliance with the loan agreements. These share transactions are presented as under:

Table I: Transfers of shares after VCPL Loan Agreement – 1 dated July 21, 2009:

Date	Description	No. of Shares	Cost Per Share (INR)	Total consideration (INR)
03-Aug-09	RRPR purchased NDTV shares from Mr. Prannoy Roy	5,781,842	4.00	23,127,368.00
03-Aug-09	RRPR purchased NDTV shares from Ms. Radhika Roy	5,781,841	4.00	23,127,364.00
Total		11,563,683		4,62,54,732/-

Table II: Transfer of shares after VCPL Loan Agreement – 2 dated January 25, 2010:

Date	Particulars	No. of Shares	Cost Per Share (INR)	Total consideration (INR)
08-Mar-10	RRPR purchase NDTV shares from Mr. Prannoy Roy & Ms. Radhika Roy (Jointly)	4,836,850	140.00	677,159,000.00
08-Mar-10	RRPR sold shares of NDTV to Mr. Prannoy Roy	3,478,925	4.00	13,915,700.00
08-Mar-10	RRPR purchased shares of NDTV from Mr. Prannoy Roy	2,314,762	140.00	324,066,680.00
09-Mar-10	RRPR sold shares of NDTV to Ms. Radhika Roy	3,478,925	4.00	13,915,700.00
09-Mar-10	RRPR purchase shares of NDTV from Ms. Radhika Roy	2,314,762	140.00	324,066,680.00
Net transfer of Shares by Noticee no. 2 and Noticee no. 3 to Noticee no. 1 :		25,08,524	Total amount received by Noticee no. 2 and Noticee no. 3 :	129,74,60,960

As stated in the beginning of this order, loan amount of Rs. 350 crore obtained under the VCPL Loan Agreement – 1 was taken to repay the loan earlier availed by the Noticees from ICICI , while Loan amount of Rs. 53.85 crore availed under the VCPL Loan Agreement – 2 was meant for investment purposes. One of the conditions under the VCPL Loan Agreement – 1 was that Noticee no. 1 must hold 26% shares of NDTV. At the time of execution of the said loan agreement, Noticee no. 1 was holding only 47,41,721 (7.56%) shares of NDTV. Consequently, as can be noted from Table I above, to raise shareholding of Noticee no. 1 in NDTV to 26%, Noticee no. 2 transferred 57,81,842 (9.22%) shares and Noticee no. 3 transferred 57,81,842 (9.22%) shares, aggregating to 18.44% shares of NDTV to Noticee no.1 at a nominal price of Rs. 4/- per shares. The loan amount of Rs. 350 crore [16,305,405 (26%) * 214.65], so received by the Noticees, was used to repay the loan of ICICI.

One of the pre-condition under the VCPL Loan Agreement – 2 was that Noticee no. 1 must hold 30% (1,88,13,928) shares of NDTV. At that time, Noticee no. 1 was holding only 26% (16,305,405) shares of NDTV. Therefore, to raise the holding of Noticee no. 1 in NDTV to 30%, Noticee no. 2 and 3 were required to transfer further 4% (25,08,524) shares of NDTV to Noticee no. 1. However, as can be noted from

Table II above that instead of transferring 25,08,524 shares of NDTV straight way to Noticee no. 1, in one transaction, Noticee no. 2 and 3 sold 48,36,850 number of shares of NDTV to Noticee no. 1 at a price of Rs. 140/- per share, from their joint demat account. In another transaction, Noticee no. 2 and Noticee No.3, each purchased 34,78,925 shares of NDTV from Noticee no. 1, at a nominal rate of Rs. 4/- per share. Again, through another transaction, Noticee no. 2 and Noticee no. 3 each sold 23,14,762 number of shares of NDTV to Notice no. 1, at the rate of Rs. 140/- per share. Thus, in aggregate, Noticee no. 2 and Noticee no. 3 have sold 94,66,374 shares of NDTV to Noticee no.1 at a price of Rs. 140/- per share whereas, 69,57,850 shares of NDTV were purchased simultaneously from Noticee no. 1 at a price of Rs. 4/- only per share. Thus, at the end of the aforesaid series of transactions, presented in Table no. II above, Noticee no. 2 and Noticee no. 3 have made a net sale of 25,08,524 shares of NDTV to Noticee no. 1 in compliance with the VCPL Loan Agreement – 2 so as to ensure that the total holding of NDTV shares by Noticee no. 1 goes upto 30%. The Table no. II also shows that Noticee no. 2 and Noticee no. 3 have received a net amount of Rs. 129,74,60,960/- in exchange of the above stated 25,08,524 shares of NDTV from Noticee no.1. The aforesaid transactions in NDTV shares and the consideration received by Noticee no. 2 and Noticee no. 3 clearly suggest that the amount of Rs. 53.85 crore received from VCPL by Noticee no. 1 under the VCPL Loan Agreement - 2 was actually meant to be paid to the Noticee no. 2 and Noticee no. 3 by Noticee no. 1. It is also observed from the records that Noticee no. 2 and Noticee no. 3 were having debit balances of Rs. 2.9 crore (approx.) and Rs. 70.9 crore (approx.), respectively, in the books of Noticee no. 1 and after necessary adjustments of the debit balances pursuant to the conclusion of afore-stated transactions involving transfers of NDTV shares, Noticee no. 2 and Noticee no. 3 have received the net sales consideration from Noticee no. 1 from the loan that was received by Noticee no. 1 from VCPL. The foregoing discussions strongly reiterate the observations made earlier that these loan agreements were devised only to transfer beneficial interest in 30% shares of NDTV held with Noticee no. 1, to VCPL, at the rate of Rs. 214.65/- per share.

35. On the strength of my observations about the loan agreements that I have articulated above, I can unhesitatingly sum up that in the garb of VCPL Loan Agreements-1 and VCPL Loan Agreements – 2, the three Noticees effectively transferred their 30% shares

of NDTV to VCPL. Though the said shares of NDTV nominally remained with Noticee no. 1 (RRPR), the existence of warrants with VCPL, convertible at any time during the tenure of the loan or thereafter without requiring any further act or deed on the part of the VCPL, into 99.99% equity shares of Noticee no. 1, (along with the right of VCPL to purchase the shares of Noticee no. 2 and 3 in Noticee no. 1), clearly establishes that 30% shares of NDTV were put at the absolute disposal of VCPL by virtue of the said loan agreements. Moreover, Noticees also agreed that prior written consent of VCPL shall be obtained *inter alia* with respect to issue of any equity shares of NDTV which could result in the aggregate valuation of NDTV falling below Rs. 1346 crores which supports my earlier observation that the ostensible loan amount was determined on the basis of prevailing market valuation of NDTV. This further strengthens my view that the VCPL Loan Agreements were very material and price sensitive information as they effectively involved passing of controlling stake of 30% share capital of NDTV and stipulated various conditions binding the promoters of NDTV (i.e. the three Noticees) with respect to their dealing in the shares of NDTV, capital restructuring of NDTV etc. The minority shareholder of NDTV and general investors of securities market were entitled to know such crucial transactions carried out by the promoters which involved transferring the rights over a substantial stake by the promoters to a third party. However, Noticees apparently did not want the general investors to know about the transfer of their 30% shares of NDTV and other associated rights to VCPL. These transactions were deliberately structured by the Noticees as loan transactions so as to conceal the said sale of 30% stake in NDTV. Accordingly, the transaction was devised in a way to avoid the said information getting known to the investors, and to ensure that investors continue to trade in the shares of NDTV unaware of these material and price sensitive developments. Further, as mentioned earlier *inter se* transaction of shares of NDTV between the Noticees were taking place in off market in furtherance of the VCPL Loan Agreements, behind the back of the shareholders of NDTV.

36. Section 12A of the SEBI Act *inter alia* mandates that no person shall directly or indirectly 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. Similar prohibition is contained in Regulation 3(b) of the PFUTP Regulations. Besides, Regulation 3(a) of the PFUTP Regulations also prohibits buying selling or dealing in securities in a fraudulent manner. Regulation 4(1) of the PFUTP Regulations, as quoted above, provides

that no person shall indulge in a fraudulent or an unfair trade practice in securities.

37. The definition of fraud, as given in Regulation 2(1)(c) of PFUTP Regulations and quoted earlier in the order, provides that “*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. The definition also specifies 9 instances of fraud. In the case of **Kanaiyalal case (supra)**, two Hon’ble Judges of Hon’ble Supreme Court, in their separate but concurring judgments, dealt with the definition of “fraud” as given under Regulation 2(1) (c) of PFUTP Regulations, 2003 and held as under:

Per Hon’ble Justice N. V. Ramanna - “.....26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.

27. On a comparative analysis of the definition of “fraud” as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of “fraud” under the FUTP regulation, 1995 adopts the definition of “fraud” from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of “fraud” as present under the Indian Contract Act. It includes many situations which may not be a “fraud” under the Contract Act or the 1995 regulation, but nevertheless amounts to a “fraud” under the 2003 regulation.

28. 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 the term “fraud”

Per Hon'ble Justice Ranjan Gogoi – “.....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 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”.....”

Hon'ble Court further observed that in an 'inducement' required for constituting fraud, it is not necessary that such in inducement should have an element of dishonesty or bad faith while offering the inducement.

38. In the present case, the ICICI Loan Agreement and two VCPL Loan Agreements were containing clauses and conditions that substantially affected the functioning of NDTV. The VCPL Loan Agreements, in addition to having clauses substantively affecting the interest of NDTV, also warranted transfer of shares of NDTV by the Noticees, which they carried out off market by way of various *inter se* bulk transactions, in compliance with the loan agreements. Consequently, information about these agreements and the consequent off-market share transfers amongst the Noticees that were going to take place in compliance with the agreements, were essentially material and price sensitive and it would have influenced the decision of investors about trading in the shares of NDTV, had these information were not concealed from the shareholders of NDTV and public at large. Non-availability of information about these agreements with investors unjustifiably deprived them of informed participation while dealing with the shares of NDTV.

39. The contention raised by Noticees that these agreements were merely agreements for taking loans wherein the Noticees agreed to exercise their shareholding rights which are their “personal property”, and hence, it did not affect NDTV or its operations in any manner, is entirely misplaced and erroneous. The Noticees’ contention is that in the Board of NDTV, consisting of 6-8 Directors with 3-4 Independent Directors, Noticee no. 2 and 3 could not have done/stopped anything at Board level. This contention is not tenable in view of the fact that Noticee no. 2 is not only the director of NDTV but is the Chairman of Board of the Company. Secondly, Noticee no. 2 and 3 were not only the Chairman and Managing Director, respectively, but along with Noticee no. 1, which is a private limited company of Noticee no. 2 and 3, were also the promoters and majority shareholders, holding majority voting rights in NDTV. Therefore, it is inconceivable that Noticee no. 2 and 3 were incapable of ensuring compliance with the conditions to which they had agreed under the loan agreements with respect to the affairs of NDTV. As discussed earlier, neither the ICICI Loan Agreement nor the VCPL Loan Agreements were having the attributes of plain vanilla secured inter corporate loan agreement. Instead, the promoters of NDTV made the agreements extremely biased in favour of the VCPL (and also in favour of ICICI)by agreeing to a host of conditions pertaining to the capital structuring of NDTV, which were unwarranted and had no bearing whatsoever with the loan. Thus, by agreeing to transfer a substantial controlling stake in NDTV to the VCPL behind the back of the shareholders of NDTV, Noticees - promoters cannot claim that the loan agreement merely involved their personal property and did not involve the interest of NDTV in any manner whatsoever.
40. Noticees have further argued that Noticee no. 2 and 3 could not have acted in terms of the loan agreements in view of their statutory fiduciary duty towards NDTV. In this regard, first of all no such compelling legal provisions on the statutory fiduciary duty of Directors have been brought to my notice. Secondly, the fact that the two VCPL loan agreements are still in force and have not been repudiated by VCPL till date, shows that Noticee no. 2 and 3 have already placed their contractual obligations with VCPL above their fiduciary obligations as Directors of NDTV. Noticees have cited the decision of the Hon’ble Bombay High Court in the case of Rolta (*supra*) to contend that even if the agreements entered in to by the Noticee no. 2 and 3 contained provisions prejudicial to the NDTV or its investors, yet such agreement is unenforceable if it is in violation of statutory fiduciary

duty of Noticee no. 2 and 3 as Directors of NDTV. In my view, the question of enforceability of an agreement by the Courts would arise only in case of breach of agreement by any of the parties. However, if the parties to an agreement decide to honour the undertakings and covenants provided for in such agreement out of their own volition, such agreements can always be performed by the parties, provided agreement is not prohibited by law. In the present case, the VCPL loan Agreements, even though are prejudicial to the interest of NDTV and are creating conflict for Noticee No.2 and Noticee No.3 in discharge of their fiduciary duties on the Board of NDTV, these agreements have been dutifully complied by the Noticees, till date. Therefore, the contention of Noticees based on the said judgment is not tenable. Noticees have also contended that there is no provision in the loan agreements providing that the obligations of the Noticee no. 2 and 3 will operate in derogation of their fiduciary duty as director. This contention is belied by the terms of the loans agreements themselves as extracted & discussed at length above wherein, decision on vital matters pertaining to NDTV have been made subject to prior written consent of VCPL/ ICICI. All these loan agreements make it clear that the Chairman and Managing Director of NDTV (i.e. Noticee no. 2 and 3), who happen to be the promoters with majority stake in NDTV have put themselves under contractual obligation to take prior consent of VCPL/ICICI in execution of key decisions pertaining to the company i.e. NDTV. Thus all such decisions have become contingent on the affirmative consent of the lenders i.e. ICICI/VCPL and in a given case, consent could have been or may be refused by the ICICI/VCPL, therefore, imperilling the functioning of the listed company (NDTV). It certainly amounts to acting in derogation of the fiduciary duty, by the Noticee no. 2 and 3. The contention of the Noticees exhibits internal inconsistency and contradiction in their arguments. On the one hand, it is contended that Noticees have not acted against their statutory fiduciary duty, while on the other hand, it is contended that the agreements are private in nature and they have all the right at their disposal to enter into such agreements. The Noticees being fully aware and conscious about their pivotal role and positions in NDTV, still agreed/consented and executed agreements containing clauses which have adversarial effect on the shareholders of NDTV. It restricts NDTV from raising fresh capital, making any restructuring, going for a merger, etc., without the prior written consent of ICICI/VCPL.

41. Another contention which has been vociferously raised by the Noticees is that NDTV was not a party and hence there was no requirement for the Noticees to make disclosure of the

agreements to the stock exchange. It is true that NDTV was not a party to these loan agreements. However, contents and clauses of loan agreements clearly expose that the scheme was devised by the Noticees in such a way that though NDTV would not be a party to the said loan agreements, yet the loan agreements would contain certain crucial, onerous and antagonistic stipulations pertaining to NDTV including its capital restructuring which were agreed to be undertaken by the Noticee no. 2 and 3, only with the prior consent of ICICI/VCPL. This was made possible due to the fact that Noticees were the promoters and majority shareholders of NDTV and Noticee no. 2 and 3 were also the Chairman and Managing Director, respectively, of NDTV. The dominant positions enjoyed by the Noticee no. 2 and 3 enabled them to make promises to ICICI/VCPL thereby significantly impacting the interests of NDTV. The Noticees' position in NDTV coupled with Noticee no. 2 and 3's position in the Noticee no. 1 enabled them to effectively enter into the loan agreements as a group acting in concert and also to conceal them from the knowledge of shareholders. In other words, the loan agreements were structured in a manner that clauses on various matters pertaining to NDTV, which were material and price sensitive information, were concealed from the minority shareholders, thereby inducing the investors to trade in the shares of NDTV in ignorance about such shift in de-facto control over NDTV and deprived them of informed participation in the securities market. Clearly, such an arrangement and scheme deployed by the Noticees to transfer their substantial stake in NDTV was fraudulent, surreptitious and was in violation of Section 12A (a) to (b) of SEBI Act read with the Regulation 3(a) to (d) of the PFUTP Regulations.

42. The Noticees have also contended that a Director is legally bound by fiduciary duty owed to the Company, while a shareholder has no such obligation imposed on him because shareholder's vote is a right to property, and *prima facie* may be exercised by a shareholder as he thinks fit in his own interest. There is no quarrel to the above proposition that a shareholder is free to exercise his voting rights in the manner he wishes to. However, it is to be understood that the case against the Noticees is not that they could not have entered into such loan agreements or exercised their voting rights the way they desired to, but the case against the Noticees is that they have entered into certain transactions with a third party whereby they have agreed to comply with certain conditions which bind NDTV and the interest of its shareholders too. In other words, by entering into such transaction, Noticees have brought their personal interest in conflict with the interest of NDTV. The

extant Code of Conduct of NDTV which was binding on the Noticee no. 2 and 3 in order to deal with such situation of conflict of interest of Board Members and senior management, provides that any such transaction creating conflict of interest must be disclosed. However, for reasons best known to Noticees and oblivious of the interest of investors of NDTV, Noticee no. 2 and 3 avoided disclosure of the above discussed conditions built into the loan agreements which was required to be made under the Code of Conduct of NDTV. Therefore, the above stated contentions of the Noticees are untenable. The contentions of Noticees further fails to impress due to the fact that despite being aware of the lawful position, the Noticees consented for such clauses, knowing well that their fiduciary responsibilities would not permit them to act against the interest of the company and its shareholders. The arguments advanced by Noticees are *ex facie* bereft of credibility when benchmarked on the facts of the matters. No explanation has been offered for consenting to such clauses in the loan agreements which bind the Noticees from exercising their fiduciary duties towards the shareholders of NDTV, without the prior written consent of a third party. No plausible submissions have been made to satisfy me as to how Noticee no. 2 & 3, who are wearing the two hats, one as shareholder and another as Chairman and Managing Director in NDTV, respectively, would do justice with the shareholders of NDTV when confronted with their own interest arising out of the above mentioned loan agreements.

43. As stated earlier, the amount received from the VCPL Loan Agreement-2 was meant for investment purpose only. However, neither the agreement has specified nor the Noticees have submitted any details about the investment for which a second loan had to be availed. Further, it is beyond one's comprehension as to why the VCPL agreed to provide interest free loan amounting to Rs. 403.85 crore to Noticees for investment, without having proper security, more particularly when the shares of NDTV transferred by the Noticee no. 2 and 3 to Noticee no. 1 were not commensurate with amount lent to Noticees, as explained earlier in this order. By all commercial prudence, VCPL loan agreements are grossly abnormal transactions, wherein the lender of more than Rs 400.00 crore has decided to sacrifice interest on its principal amount for as many as 10 years.
44. Regulation 4(1) of the PFUTP Regulations, 2003, as quoted above, provides that no person shall indulge in a fraudulent or an unfair trade practice in securities. The prohibition contained is without prejudice to the prohibition contained in Regulation 3 of the PFUTP

Regulations which broadly prohibits fraudulent dealing in securities.

45. In the case of ***Kanaiyalal Case (Supra)***, two Hon’ble Judges of Hon’ble Supreme Court, dealt with the expression “unfair trade practice” as used in Regulation 4(1) of the said Regulations in the following words:

Per Hon’ble Justice N. V. Ramanna – “.....29. Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the ‘unfair trade practice’ may not be possible to be culled out from the aforesaid definitions. Broadly 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. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of ‘unfairness’ appears to be broader than and includes the concept of ‘deception’ or ‘fraud’.....”

Per Hon’ble Justice Ranjan Gogoi – “.....12. Coupled with the above, is the fact, the said conduct can also be construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities. However the said question, as suggested by my learned Brother, Ramana, J. is being kept open for a decision in a more appropriate occasion as the resolution required presently can be made irrespective of a decision on the said question.....”

46. In Kanaiyalal Baldev case (*supra*), Hon’ble Supreme Court further observed that scope and ambit of expression “unfair trade practice” has been left open. In the case of Rakhi Trading case (*supra*), Hon’ble Supreme Court while taking note of the observations made by it in Kanaiyalal case (*supra*) regarding “unfair trade practice”, held as under:

“.....35. Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which

does not conform to the fair and transparent principles of trades in the stock market.....”

47. In the present case, from the facts narrated above, it can be said that the conduct of the Noticees fails to conform to the fair and transparent principles of trades in the securities market. The way loan agreements have been used to deceitfully transfers shares of NDTV upto 30% of NDTV to VCPL without the knowledge of NDTV Board or its shareholders, it can be held that the acts of the Noticees are also in stark violation of Regulation 4(1) of PFUTP Regulations, being unfair trade practices.
48. SCN has also alleged the violation of Clause 49(I)(D) of the Listing Agreement. A perusal of the aforesaid Clause 49(I)(D), as quoted earlier at para 24 above, shows that it requires the Board of every listed company to lay down a Code of Conduct for compliance by all the Board Members and senior management of the company. Further, all the Board Members and senior management of the company are required to affirm compliance with the Code on an annual basis. I find that NDTV had its Code of Conduct in place during the relevant period, the relevant extract of the said Code of Conduct is as under:

“Applicability

This Code of Conduct applies to the following (hereinafter referred to as “officers”)

- *All the members of the Board of NDTV and its subsidiaries*
- *Chief Finance Officer and Company Secretary*
- *Members of Senior Management*

Compliance With Laws, Rules and Regulations

Ethical business conduct is critical to our business. Officers are expected to comply with all applicable laws, rules and regulations including all laws prohibiting insider trading, engage in and promote honest and ethical conduct and abide by the policies and procedures that govern the conduct of the Company’s business. Officer’s responsibilities include helping to create and maintain culture of high ethical standards and commitment to compliance.

Prevent Conflicts of Interest

Officers should not make any investment, accept any position or benefits, participate in any transaction or business arrangement or otherwise act in a manner that creates or appears to create a conflict of interest unless they makes full disclosure of all facts and circumstances. A “conflict of interest” arises when you take actions or have interests that conflict in any way with the interests of the Company.

.....”

49. As per the said Code of Conduct of NDTV, the Board members and senior management of NDTV were expected to comply with all applicable laws, rules and regulations and engage in and promote honest and ethical conduct which is free from fraud or deception. Further, in terms of the said Code of Conduct of NDTV, Board members and senior management of the NDTV were also required to make full disclosure of all facts and circumstances before making any investment, accepting any position or benefits, participating in any transaction or business arrangement which might create or appear to create a conflict of interest. In view of the observations and findings recorded in the foregoing paragraphs establishing the fact that the Noticee no. 2 and 3 have indulged in a fraudulent and unfair trade practice, it can be deduced that Noticee no. 2 and 3 have failed to comply with all applicable laws and have also engaged in a conduct which is not honest and ethical and not free from fraud or deception, as required under the Code of Conduct of the NDTV. Similarly, Noticee no. 2 and 3 have entered into the afore-discussed loan agreements which created conflict of their personal interest with the interest of the NDTV, without making disclosure as required by their own Code of Conduct. Therefore, the conduct of Noticee no. 2 and 3 was not in compliance with the Code of Conduct of NDTV and consequently, the affirmation given by Noticee no. 2 and 3 to NDTV, as required in terms of Clause 49(I)(D) (ii) of the Listing Agreement were blatantly incorrect. As a result of this, declaration in the Annual Report of NDTV to this effect, signed by the CEO of the company for the financial years 2009-10 and 2010-11 is held to be false and it amounted to suppression of facts from the shareholders of NDTV.
50. Noticees have contended that Clause 49(I)(D) of the Equity Listing Agreement came into effect only from the year 2014, therefore, in the year 2009, there was no requirement of making disclosures in respect of the loan agreements made earlier to that year. It is noted that Clause 49 of the Listing Agreement was first introduced through Circular dated February 21, 2000 and was thereafter amended from time to time. Vide Circular dated

October 29, 2004, Clause 49 was introduced which read as follows:

“Clause 49 – Corporate Governance

The company agrees to comply with the following provisions:

I. Board of Directors

(A) Composition of Board.....

(B) Non executive directors’ compensation and disclosures.....

(C) Other provisions as to Board and Committees.....

(D) Code of Conduct

- (i) The Board shall lay down a Code of Conduct for all Board members and senior management of the company. The Code of Conduct shall be posted on the website of the company.*
- (ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.*

Explanation: *For this purpose, the term “senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors.. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.”*

Therefore, the contention of the Noticees that Clause 49(I)(D) of Equity Listing Agreement came into effect only from the year 2014, is factually not correct.

51. Noticees have also contended that at the relevant point of time the only requirement on the company was to have a Code of Conduct and there was no requirement for the Noticees to disclose the alleged fraudulent loan agreements to the Board of the Company. As can be noted from the above quoted provisions of Code of Conduct framed by NDTV

itself, Board Members and senior management of the NDTV were required to make full disclosure of all facts and circumstances before making any investment, accepting any position or benefits, participating in any transaction or business arrangement or otherwise acting in a manner that creates or appears to create a conflict of interest. In the present case, Noticee no. 2 and 3 were the Chairman and Managing Directors of NDTV, respectively. They entered into ICICI and VCPL loan agreements along with Noticee no. 1. These loan agreements contained demanding provisions requiring prior written consent of the lender to be obtained by the Noticees before taking a number of important actions pertaining to NDTV. Therefore, entering into these loan agreements undoubtedly created a situation of conflict of interest for the Noticee no.1 and Noticee no. 2. The fact that there existed a conflict of interest has also been implicitly admitted by the Noticees in their reply, where it has been submitted that a director is duty bound to check if the decisions/action is in the interest of the company, while a shareholder may take decision which serves his purpose but could be contrary to the interest of the company. Thus, in terms of Code of Conduct of NDTV, full facts and circumstances pertaining to these loan agreements were required to be disclosed to the NDTV by the Noticee no. 2 and 3, and in turn, the company was required to disclose it to the stock exchanges. There cannot be two views about this. Hence, contention to the contrary by the Noticees is liable to be rejected.

52. The Noticees have contended that they have been erroneously accused of having failed to disclose the loan agreements to NDTV, the company of which they are promoters. According to them all references to provisions relating to disclosures are flowing from the provisions of the Listing Agreement, which did not bind the promoters but the company. Therefore, there was no requirement for promoters of NDTV to make disclosure under the Listing Agreement or even otherwise, about the loan agreements executed by the promoters of NDTV in their personal capacity. I have already dealt with the requirement of disclosure on the part of the Directors of the Board of NDTV in terms of the Code of Conduct framed by NDTV in compliance with Clause 49 of Listing Agreement, in the earlier paragraphs 48-51 of this order. I have already observed that the obligation of the Noticee no. 2 and Noticee no. 3 to disclose about the contents of the VCPL Loan Agreements to the Company (NDTV) was mandated to them as Directors of NDTV under the company's Code of Conduct itself which have postulated *inter alia*, that the directors have to disclose any transaction involving their conflict of interest to the company.

53. To sum up, the Noticees entered into three loan agreements, one with ICICI and two with VCPL. These loan agreements contained material and price sensitive information, in as much as action/decision on many important matters pertaining to NDTV were made subject to prior written consent of the ostensible lender and without the knowledge of the minority shareholders of NDTV. Further, under the VCPL agreements and the two call option agreements executed as supplementary to the said loan agreements, beneficial interest in 30% shares of NDTV was effectively vested in VCPL. All these information were profoundly material and price sensitive information which would have influenced the investment decision of the investors in the shares of NDTV, had they been made aware of these information at that time. Terms of the loan agreements were devised to affect the interest of shareholders of NDTV. Although various clauses in the loan agreements deceitfully created a binding obligations on NDTV, Noticees have consented to such clauses behind the back of the shareholders of NDTV to further their own private interests. Having held the dominant position and being majority shareholders of NDTV, Noticees have manifestly assured VCPL to ensure swift compliance of such clauses of the loan agreements pertaining to NDTV, thereby taking all other shareholders for granted and also compromising the interest of shareholders of NDTV. In order to conceal the said information from the investors so that the investors continue to trade in the shares of NDTV blissfully ignorant of the fact that the promoters of the company have already vested their voting rights to the extent of 30% in favour of a third external party, Noticee no. 2 and 3 have chosen to act in flagrant breach of Code of Conduct of NDTV. If the said information regarding loan agreements had been disclosed by the Noticee no. 2 and 3 to the Board of Directors of NDTV, then the company was bound to intimate the same to the stock exchanges which in turn, would have disseminated such information on their websites for information of general public. The loan agreements were unmistakably structured as a scheme to defraud the investors by camouflaging the information about the adversarial terms and conditions impinging upon the interest of NDTV's shareholders, thereby inducing innocent investors to continue to trade in the shares of NDTV oblivious to such adversarial developments in the shareholding of NDTV.
54. Before parting, I would like to highlight the point that in the instant case, Noticee no. 2 and 3 are the original promoters and majority shareholders of NDTV. The disclosures made by the NDTV in the public domain, including the prospectus issued for the Initial

Public Offer of NDTV, suggest that the Noticee no. 2 and 3 have been the face of the company and the prime movers of all its activities. Moreover, as the Chairman and the Managing Director, respectively, Noticee no. 2 and 3 were also actively running the day to day management of NDTV. Under the circumstances, the Noticee no. 2 and 3 had this avowed duty to act in a fair and transparent manner to protect the interest of their minority shareholders and not to indulge in any fraudulent activity or any activity detrimental to the interest of the shareholders of NDTV. However, contrary to the same, in the present case, the Noticees i.e. the promoters and Directors of NDTV have been found to have indulged in fraudulent acts wherein they have bartered away the interests of NDTV by making them subject to prior written consent of ICICI/VCPL without disclosing the same to the company (NDTV). Noticee no. 2 and 3 have also opted to violate the Code of Conduct of NDTV which they were supposed to abide by, being the Chairman and Managing Director of the company. Noticee No. 2 and Noticee No. 3 have consciously taken such a position under the loan agreements which was directly inconsistent with their role as Chairman and Managing Director. Any fraudulent act directly designed to defraud such investors cannot be treated as good for the securities market and for the interest of investors. Such acts, if not dealt with adequately and sternly, will send a wrong signal to the violators having same or similar propensity and will not be good for the securities market. In view of the aforesaid findings, I find that the Noticee No.1, Noticee No.2 and Noticee No.3 are grossly in violation of the provisions of Section 12A (a), (b), (c) of SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4 (1) PFUTP Regulations. Further, as pointed out above, Noticee no. 2 and 3 are also in violation of Clause 49 (1)(D) of Equity Listing Agreement read with Section 21 of SCRA.

Directions:

55. In view of the foregoing, I, in order to protect the interest of the investors in the securities market, in exercise of the powers conferred upon me under Sections 11B, 11(4) read with Section 19 of the SEBI Act, 1992 hereby direct the Noticees as follows;
- (i) Noticee no. 1, 2 and 3 are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two (2) years. It is also clarified that during the said period of restraint/prohibition, the existing holding, including units of mutual

funds, of the Noticees shall remain frozen;

- (ii) Noticee no. 2 and 3 are restrained from holding or occupying position as Director or any Key Managerial personnel in NDTV for a period of two (2) years; and
- (iii) Noticee no. 2 and 3 are restrained from holding or occupying position as Director or any Key Managerial personnel in any other listed company for a period of one (1) year.

56. The above directions shall come into force with immediate effect.

57. A copy of this order shall also be sent to Stock Exchanges, Depositories and Registrar and Share Transfer Agents of all Mutual Funds for ensuring compliance with the above directions.

-Sd-

Date: June 14, 2019
Place: Mumbai

S. K. MOHANTY
WHOLE TIME MEMBER