BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. AP/AS/2020-21/10029 UNDER SECTION 23-I(2) OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956.

In respect of:

New Delhi Television Limited

(PAN No. –AAACN0865D)

207, Okhla Industrial Estate, Phase III,

New Delhi – 110020.

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1. New Delhi Television Limited (hereinafter referred to as 'Noticee'/ 'NDTV'/ 'Company') is a listed company, whose scrip is listed on Bombay Stock Exchange Limited ('BSE') and National Stock Exchange Limited ('NSE'). Securities and Exchange Board of India ('SEBI') received complaint dated August 26, 2017 from Quantum Securities Pvt. Ltd. relating to the loan agreements signed between the Noticee's promoters namely; Mr. Prannoy Roy (hereinafter referred to as 'Prannoy'), Ms. Radhika Roy (hereinafter referred to as 'Radhika') and RRPR Holding Pvt. Ltd. (hereinafter referred to as 'RRPR') (hereinafter Mr. Prannoy, Ms. Radhika and RRPR together referred as 'Promoters') as one party and Vishvapradhan Commercial Private Limited (hereinafter referred to as 'VCPL') as another party. Accordingly, the SEBI conducted an investigation in connection with the Noticee failure to disclose price sensitive material information, regarding aforesaid loan agreements signed by its promoters, to stock exchanges in a timely manner, to ascertain whether there was any violation of the provisions of the Equity Listing Agreement (hereinafter referred to as 'Listing Agreement') and Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') by the Noticee.

2. The relevant findings and allegations against the Noticee, as observed from the investigation report are as follows:

   2.1 The promoter / directors of the Noticee, namely, Mr. Prannoy and Ms. Radhika are the directors and sole promoters of RRPR.

   2.2 It was observed that the Loan agreements entered by RRPR with VCPL contained certain clauses related to NDTV which, *prima facie*, appear to be material and price sensitive. The aforesaid Loan

agreements allegedly contained various clauses which were binding on the Noticee in such a way that it could adversely affect the interest of its public shareholders.

2.3 The allegations against the Noticee have been made with respect to following two loan agreements:

a. Loan Agreement dated July 21, 2009 entered between the Promoters of the Noticee and VCPL [hereinafter referred to as '**VCPL loan agreement (2009)**'] for lending an amount of Rs. 350 crores (Rupees Three Hundred and Fifty Crores) by VCPL to RRPR.

b. Loan Agreement dated January 25, 2010 entered between the Promoters of the Noticee and VCPL [hereinafter referred to as '**VCPL loan agreement (2010)**'] for lending an amount of Rs. 53.85 crores (Rupees Fifty Three Crores and Eighty Five Lakhs) by VCPL to RRPR.

2.4 The relevant clauses of the aforesaid loan agreements between VCPL and RRPR as observed during investigation are reproduced below

A. Loan Agreement

At the Borrower's request, subject to the terms and conditions set out in this Agreement, the Lender agrees to lend and advance to the Borrower and the Borrower agrees to borrow the sum of Rs.350,00,00,000 (Rupees Three Hundred and Fifty Crore only) (being, the Loan). The Loan shall not carry any interest. Notwithstanding anything contrary in this Agreement, the Loan disbursed shall be repayable on the Maturity Date.

3. AUTHORISED PURPOSE

The Borrower shall utilize the Loan in full for repayment of an existing loan availed by the Borrower from ICICI Bank Limited pursuant to a loan agreement executed between ICICI Bank Limited and the Borrower dated 14th October 2008.

6. WARRANT AND OPTION

*6.1 The Borrower shall issue a convertible warrant (the **"Warrant"**), convertible into Equity Shares aggregating to 99.99% of the fully diluted Share Capital of the Borrower at the time of conversion, to the Lender immediately upon execution of this Agreement. The Warrant shall be subject to the terms and conditions set out in Schedule 1.*

6.2 The Lender shall have the right to purchase from the Promoters all the Equity Shares of the Borrower held by the Promoters at par value.

6.3 The Lender and its Affiliates shall not purchase shares of NDTV which will increase their holding in the aggregate to more than 26 percent of the paid up Equity Share Capital of NDTV without the consent of the other Parties.

9. CONDITIONS PRECEDENT

9.2 The Borrower and the Promoters having undertaken the following actions in a form and substance satisfactory to the Lender:

(c) Completion of the due diligence to the satisfaction of Lender of (i) investment of US$ 85 million by NDTV Four Holdings Limited in NDTV Studios Private Limited (ii) the ability to transfer to NDTV and utilize US $ 85 million either by merger of NDTV Studios Private Limited with NDTV or by any other method to the satisfaction of Lender

(e) Sale of 1,15,63,683 (one crore fifteen lakhs sixty three thousand six hundred & eighty three only equity shares of NDTV from the Promoters to the Borrower such that upon such sale the Borrower holds 1,63,05,404 (one crore sixty three lakhs five thousand four hundred & four only) Equity Shares of NDTV aggregating to 26% of the equity share capital of NDTV (adjusted for Adjustment Events) & such transfer qualifying under Regulation 3(1) of the Securities & Exchange Board of India (SAST) Regulations, 1997 (as amended, varied or supplemented from time to time).

SCHEDULE I
TERMS OF THE WARRANT

(a) At the sole option of the Lender, the Warrant may be converted, into such number of Equity Shares as par aggregating to 99.99% of the fully diluted Equity Share Capital at the time of conversion of the Borrower at any time during the tenure of the Loan or thereafter without requiring any further act or deed on the part of the Lender.

SCHEDULE 2
REPRESENTATIONS AND WARRANTIES
6. Assets

(a) The Borrower does not own or hold any assets other than 47,41,721 (Forty-seven lakhs, forth one thousand seven hundred and twenty-one only) Equity shares of NDTV.

SCHEDULE 3 PRIOR CONSENTS
2. Matters relating to NDTV or NDTV Group which require prior written consent of the Lender

(a) Issue any Equity Securities of NDTV which results in the aggregate valuation of NDTV being less than Rs 1346 crores (valuation at which Lender has put money into the Company);
(b) Merger, amalgamation or consolidation of NDTV with any other entity;
(c) Cause NDTV or any Person in NDTV Group to take any steps towards bankruptcy, insolvency or reorganization, 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.
(d) Buy back of Equity Securities, reduction or alteration of the share capital of NDTV;
(e) Take any action to issue any Equity Securities or enter into any agreement as a result of which the Promoters cease to be in sole control of NDTV or the NDTV Group.

2.5 A brief summary of findings and allegations with respect to VCPL loan agreements is as follows:

a. It was observed that VCPL loan agreement (2009) was entered between VCPL ('lender') and the Promoters, wherein, VCPL extended a loan of Rs.350 crores to the RRPR, subject to terms and conditions as mentioned in the said agreement. The aforementioned loan was taken by the RRPR to repay the previous loan taken by it from ICICI Bank Ltd. ('ICICI') on October 14, 2008. It was observed that the VCPL loan agreement (2009) did not carry any interest rate on the loan while the loan taken by RRPR from ICICI carried an interest rate of 19.00%.

b. As per Clause 6 of the VCPL loan agreements, RRPR was required to issue '*convertible warrants*' to VCPL, which were convertible into equity shares aggregating to 99.99% of share capital of RRPR at the time of conversion. Further, as per the terms of the said agreement, VCPL, at its

sole option, was entitled to convert warrants into equity shares of RRPR at any time during the tenure of the loan.

c. Further, as per Clause 9 of the said agreement, one of the pre condition for the execution of VCPL loan agreement (2009) was that the promoters of RRPR and also of NDTV *viz.* Mr. Prannoy and Ms. Radhika shall transfer 1,15,63,683 shares of NDTV to RRPR so that the total shareholding in NDTV held by RRPR increases from 47,41,721 shares to 1,63,05,404 shares, which were 26% of equity share capital of NDTV at the time of execution of VCPL loan agreement (2009).It was observed that at the time of execution of VCPL loan agreement (2009), RRPR did not own any assets other than 47,41,721 shares of NDTV.

d. There were certain other pre-conditions in the VCPL loan agreements, which appears to be material and price sensitive with respect to the scrip of NDTV, such as the completion of due diligence by VCPL of the investment by the NDTV Four Holdings Limited of US$ 85 million in NDTV Studios Private Limited and the ability to transfer to NDTV and utilize U.S $ 85 million either by merger of NDTV Studios Private Limited with NDTV or by any other method to the satisfaction of VCPL.

e. Further, Schedule 3 of the said agreement makes a mention of matters pertaining to NDTV or NDTV Group for which prior approval of VCPL was required to be taken. Such matters are given in Para 2 of Schedule 3 of the VCPL loan agreements and includes matters such as issue of equity shares of NDTV, which results in aggregate valuation of NDTV being 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.

f. Based on the aforesaid observations, it was alleged that the VCPL loan agreements had certain clauses which imposed certain binding conditions on NDTV and which, *prima facie*, required prior written consent of VCPL for such matter pertaining to NDTV. This, *prima facie*, affected the interest of public shareholders of NDTV. Therefore, the VCPL loan agreements were material and price sensitive in nature and the same ought to have been disclosed to the Company by the Promoters, which in turn should have disclosed the same to the stock exchanges.

2.6 It was observed from the submissions of the Promoters of the Noticee that the VCPL loan agreements and the salient features thereof were disclosed by the Promoters to the Noticee during its Board meeting on August 05, 2015. As the said VCPL Loan agreements were material information which was also price sensitive in nature, the same should have been disclosed by the

Noticee to the stock exchanges immediately on becoming aware of such Loan agreements. However, the Noticee failed to disclose the information pertaining to the said Loan agreements between RPRR and VCPL to the stock exchanges. Therefore, in view of the failure of the Noticee to disclose the aforementioned material and price sensitive information to the stock exchanges on an immediate basis, it was alleged that the Noticee had failed to comply with provision of clause 36 of the Equity Listing Agreement (hereinafter referred to as 'Listing Agreement') read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA').

3. By a *communication-order* dated January 07, 2020, this case which was pending before erstwhile Adjudicating Officers, was transferred to the undersigned with an advice that except for the change of the Adjudicating Officer, the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'*.

4. On receipt of records, it was noted that on being *prima facie* satisfied that there are sufficient grounds to inquire and adjudicate certain alleged violations of the provisions of the Listing Agreement and SCRA, by the Noticee, SEBI, vide a *communication - order* dated March 19, 2018, appointed Shri Suresh B. Menon, Chief General Manager ('then AO'), under section 23I of the SCRA as adjudicating officer under Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCRA Adjudication Rules'), to inquire and adjudge under Section 23E of the SCRA for the alleged violations of various provisions of the Listing Agreement read with Section 21 of the SCRA by the Noticee. The relevant provisions of the Listing Agreement read with Section 21 of the SCRA are as follows:

Equity Listing Agreement

36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/ operations of the company as well as price sensitive information….

SCR Act

Conditions for listing.

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

5. Accordingly, in terms of Rule 4(1) of the SCRA Adjudication Rules read with section 23(1) of the SCRA, the notice to show cause no. SEBI/EAD 1/SBM/23218/2018 dated August 20, 2018 (hereinafter referred as 'SCN') was issued to the Noticee by the then AO, calling upon it to show

cause as to why an inquiry should not be held against it in terms of Rule 4of the SCRA Adjudication Rules and penalty be not imposed under Section 23E of the SCRA for the aforesaid alleged violations of the provisions the Listing Agreement read with section 21 of the SCRA by the Noticee.

6. The SCN was duly served upon the Noticee *vi*/ Speed Post Acknowledgement Due. Vide letter dated September 11, 2018, the Noticee submitted that DMD Advocates will be its authorized representatives in the instant proceedings and also requested for inspection of all the documents/ records, including internal file noting's, relevant to or supporting or adverse to the charges of facts made in the SCN. Vide letter dated October 08, 2018, then AO granted inspection of documents to the Noticee and the authorized representative of the Noticee had undertaken the inspection of the relied upon documents, investigation report and its annexures on October 30, 2018. Thereafter, in terms of Rule 4(3) of the SCRA Adjudication Rules, then AO granted an opportunity of personal hearing to the Noticee on January 10, 2019, however, vide e-mail dated Advocate Pawan Sharma, DMD Advocates submitted that the inspection of the file containing the decision of the competent authority to appoint Adjudicating Officer in the matter and the internal file noting's has not been granted to the Noticees and thus, requested to fix the hearing only after the granting the complete inspection of documents to the Noticee.

7. Subsequently, vide a *communique* dated March 25, 2019, this case was transferred to Shri Santosh Shukla (hereinafter referred to as 'erstwhile AO') upon transfer of then AO with the advice that except for the change of the Adjudicating Officer, the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the *'Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders'*. Thereafter, vide hearing notice dated May 29, 2019, the erstwhile AO in terms of Rule 4(3) of the SCRA Adjudication Rules, granted an opportunity of personal hearing to the Noticee on June 19, 2019. In the aforesaid notice, the erstwhile AO communicated to the Noticee his decision of rejecting the request of inspection of internal file noting's of the Noticee and noted that, since all the relevant material relied upon in the instant proceedings have been provided to the Noticee, the request for further inspection of non-material and non-relevant documents as requested in e mail dated January 08, 2019 has been declined. Accordingly, vide e-mail dated June 04, 2019, Advocate Pawan Sharma, DMD Advocates requested for 4 weeks' time to file the reply to the SCN on behalf of the Noticee and adjourn the hearing, till first week of July, 2019. Considering the same, another opportunity of hearing was granted to the Noticee and same held on July 10, 2019. On scheduled date of hearing, Authorised Representative of the Noticee submitted that the Noticee filed an appeal before the Hon'ble Securities Appellate Tribunal ('SAT') against the order dated June 14, 2019 of the learned Whole Time Member ('WTM') of SEBI in the proceedings against its Promoters. He further submitted that the instant matter is on same identical facts which

are pending adjudication by Hon'ble SAT and therefore, the instant proceedings may be kept on hold till disposal of aforesaid appeal by Hon'ble SAT. He further requested for granting two weeks' time to file reply to the SCN. The erstwhile AO recorded in the hearing minutes of said date that there is no embargo on instant proceedings by Hon'ble SAT and allowed two weeks' additional time to the Noticee for filing reply to the SCN. After several reminders the Noticee finally filed its reply on July 31, 2019.

8. Thereafter, another opportunity of hearing was availed by the Noticee before erstwhile AO on September 11, 2019, wherein authorized representatives of the Noticee reiterated their earlier submission regarding matter pending before Hon'ble SAT and hearing was adjourned accordingly. Further, vide letter dated November 07, 2019, request of the Noticee regarding inspection of internal file noting made earlier and during hearings before erstwhile AO was rejected mentioning the judgements of Hon'ble Supreme Court in the matter of *Kanaiyalal Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497]* and *Chandrima Tewari v. Union of India, Through General Manager, Eastern Railways, (1988) 1 SCR 1102*, wherein it was held that it is not necessary that each and every document must be supplied to the Noticee facing charges. Only material and relevant documents are necessary to be supplied. Since, all relevant material relied upon in the instant proceedings have been provided to the Noticee, the erstwhile AO found the request as not reasonable.

9. Subsequently, since January 07, 2020, the instant proceedings are inquired and adjudged by the undersigned. In accordance with the principle of natural justice and in terms of Rule 4(3) of the SCRA Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on March 20, 2020, which was later adjourned due to ongoing pandemic situation. Meanwhile, the Noticee again reiterated their earlier request of inspection of internal file noting, which was rejected vide e-mail dated March 04, 2020. Thereafter, several opportunity of hearings were granted to the Noticee and finally hearing with respect to the Noticees in the matter got concluded on October 27, 2020. During such hearings the Noticee was represented by Ms. Pereshte D Sethna, Advocate, Mr. Adhiraj Malhotra, Advocate and Mr. Shreyash Taparia, Advocate (hereinafter together referred as 'ARs'). The details of all the hearing before me are tabulated hereunder:

Date of Hearing	Brief Submissions by the ARs	Brief Records of Hearing
20 March, 2020	ARs reiterated their request for re-inspection of all the documents and/ or material collected by the SEBI preceding/ during/ following investigations, including but not limited to internal file noting.	Inspection request rejected referring to earlier communications made in this regard by erstwhile AO. Hearing adjourned due to ongoing pandemic. (E-mail dated March 04, 2020)

	orders/directions and statements recorded. (E-mail dated March 03, 2020)	
11 August, 2020	ARs submitted that the matter not appropriate for virtual hearing, owing to complex legal issues and thus, requested for adjournment of hearing due to lockdown environment in State of Maharashtra until August 31, 2020. (E-mail dated August 10, 2020)	Hearing Adjourned for month of September.
11 September, 2020	ARs submitted that the matter not appropriate for virtual hearing, owing to complex legal issues and thus, requested for adjournment of hearing due to lockdown environment in State of Maharashtra until September 30, 2020. Reiterated request for inspection of records. (E-mail dated September 10, 2020)	Request of inspection of document rejected. There is no restriction on movement as per the Government of Maharashtra order No. DMU/2020/CR. 92/Disst-1 dated August 31, 2020. Therefore, the request of adjournment was not acceded to and hearing was held through webex, although same was also schedule in person. ARs insisted on hearing in person, therefore, considering the request of the ARs and in the interest of natural justice a last opportunity of hearing is given to the Noticee on September 17, 2020 at 3 PM onwards.
17 September, 2020	Hon'ble SAT vide its order dated June 18, 2019, has stayed the effect and operation of the impugned order dated June 24, 2019 passed by WTM in the identical matter under section 11 B of the SEBI Act, till the next date of hearing. The hearing was conducted by Hon'ble SAT later on February 24, 2020 and April 21, 2020 and the stay is continuing. The final order of Hon'ble SAT in the instant matter is awaited. The ARs contested that the ongoing adjudication proceedings are equally covered by the said SAT order and this case is not fit for further proceedings.	In support of continuance of the instant Adjudication proceedings pending Hon'ble SAT appeal, a ruling of Hon'ble SAT in the matter of Reliance Industries Limited dated August 09, 2019 was relied upon and the copy of the said order will be provided to the Noticees through email and the hearing was adjourned. The Noticee was allowed to file their written submission on the limited point related to the ruling of Hon'ble SAT, by September 25, 2020.
23 October, 2020	The ARs made oral submissions at length and requested for the adjournment.	The hearing is adjourned with the consent of the ARs to October 27, 2020

27 October, 2020	The ARs made oral submissions at length and requested that a written submission compiling with contents and submissions of all the previous replies will be filed within 3 weeks.	The request of ARs was considered and time to file written submissions by November 23, 2020 was granted. Hearing Concluded

10. After seeking additional time of one week, the Noticee filed its consolidated written submissions on December 03, 2020 as their wholly submission in these proceedings. The submissions of the Noticee *inter alia* are as under:

a. There is a fatal factual flaw in the SCN, which overlooks the material fact that on 11 June 2015 the National Stock Exchange sought clarification from NDTV with respect to a news article appearing on the Moneylife website on 9 June 2015 titled "Who really Owns NDTV", and in reply, the Noticee informed the NSE on 12 June 2015 that "***We have examined the factual position and would like to inform you that there has been no change (actual or effective) in the control/ownership of NDTV***". The Noticee submitted that it made following disclosure to NSE:

> *"The Promoters, i.e. Dr. Prannoy Roy, Mrs. Radhika Roy and RRPR Private Limited ("RRPR"), continue to hold the majority shareholding of NDTV which amounts to 61.45% of the total shareholding of NDTV. There has been no change in the above shareholding since August 2008. Further, Dr. Prannoy Roy and Mrs. Radhika Roy continue to hold the entire shareholding of RRPR since its incorporation. Further, there has been no change in the exercise of voting rights by the Promoters with respect to their shareholding in NDTV. According to the records of NDTV, the voting rights in connection with the shares have throughout been exercised by the Promoters in the case of Dr. Prannoy Roy, Mrs. Radhika Roy and RRPR. Therefore, NDTV would like to clarify that the allegations raised in the article with respect to a change of control/ownership of NDTV are entirely without any merit. NDTV is mindful of its obligation under Clause 36 of the Listing Agreement and shall promptly intimate you of any event required of in terms of the Listing Agreement."*

b. The above position notified by the Noticee was duly disseminated to the public, and therefore became available to the public shareholders of the Noticee. Copy of the (1) (false) media report which appeared in Moneylife on 9 June 2015; (2) email exchanges between NDTV and the NSE on 11 and 12 June 2015 providing a written clarification; and (3) screenshots of information disseminated by the stock exchange on 12 and 15 June 2015 are provided along with submissions.

c. Upon specific query raised by the NSE on 15 June 2015, as to whether the alleged borrowings from VCPL had any relation to NDTV, owing to a purported legal restriction on capital decisions to be taken by NDTV, it was appropriately clarified that: "*...**NDTV is not under restrictions on any capital decisions to be taken by NDTV, as alleged or otherwise.** NDTV has throughout taken all*

*decisions as deemed fit by the management, the Board of Directors comprising of Independent Directors and the general body of shareholders, as the case may be. As informed earlier, to the knowledge of NDTV, the Promoters have exercised their rights without any limitations. Further, NDTV has never been approached by Vishvapradhan Commercial Pvt. Ltd. ("VCPL") with respect to directing NDTV while it carries on its affairs in a manner as required in law. **NDTV has no commercial dealing or communication with VCPL. VCPL has neither been involved with the process of management of NDTV, nor has it attended or voted at any shareholders' meeting of NDTV**…".*

d. In circumstances where the relevant clarification was already provided by the Noticee to the NSE in June 2015, the position advocated in the SCN, i.e. that the Noticee was bound to immediately intimate the stock exchanges after the board meeting of 5 August 2015 as to an alleged materiality event around the subject loan agreements, is erroneous, and appears founded on a misreading of the law and egregious factual errors, going to the root of maintainability of the SCN.

e. In material part, the minutes of the board meeting of 5 August 2015 had recorded the statement made by Dr. Prannoy Roy to the board of directors, as follows: " *"…It emphasized that **as already informed to the stock exchanges** there has been no change in control over the Company and he along with Mrs. Roy and RRPR continue to be Promoters of the Company".* (bold, underlined emphasis, ours). Despite this, the SCN is premised on alleged failure to report the matter of the subject loan agreements, following discussion at the board meeting of 5 August 2015. The Noticee respectfully submits that the clarification of 12 June 2015 to the stock exchanges constituted adequate compliance, in law, of the requirement to provide a response to the stock exchanges, in the matter of a media report which set out rife baseless falsity.

f. No legal obligation to issue any purported disclosure to the stock exchange arose on or after 5 August 2015, in the absence of any 'materiality' or 'price sensitive' matter. In the circumstances, the SCN is *ex facie* misconceived, and liable to dismissal, *in limine*.

g. The SEBI examined "*Change of control of NDTV*" based on complaints dated 12 November 2013 and 11 July 2014 of Quantum Securities Private Limited, and specifically, the loan of VCPL, to conclude that *"(iii) As per the disclosures made on BSE website, RRPR is disclosed as a promoter of NDTV from September 2008 till date. (iv)Based on the evidence listed above, **there does not appear to have been any change in control over NDTV Ltd.**"* In circumstances where the Promoters' loan agreement with VCPL has already been examined by the SEBI, leading to the conclusion on 21 April 2015, that there is no 'change in control', it is not available for SEBI to subsequently assert 'materiality' or 'price sensitive information' in relation to the 5 August 2015 board meeting, barely four months later at which clarification was issued pertaining the Promoters' loan agreement with VCPL.

h. The SCN is premised on alleged *'disclosure'* at the 5 August 2015 board meeting of the Noticee, of the subject loan agreements by the Promoters. Merely by virtue of the minutes of meeting of 5 August 2015 recording a *'clarification'* by the Promoters, on the subject loans and the surrounding false media report, cannot give rise to any *'disclosure'* obligation on the Noticee.

i. There was no specific regulatory obligation in force, at the material time, i.e. 2009, or 2010 (when the loans were availed by the Promoters), or even in 2015 (when a false news article emerged), for Promoter loans to be *'disclosed'* by the Noticee to the stock exchanges. In fact, promoters of listed companies had no disclosure obligations for disclosure of Promoter loans, and in the circumstances, there was no scope for any such *'disclosure'* by the Noticee of a fact that did not warrant *'disclosure'* by the promoter.

j. Resort cannot be had to Clause 36 of the Listing Agreement for disclosure requirements concerning the Promoter Loan Agreements, since Clause 36 does not operate as a general catch-all clause for any and all matters brought to the board of directors for clarification, which do not constitute a material event, so as to qualify for disclosure. Further, none of the eight facets of Clause 36(7) are capable of being drawn from, to arrive at a parallel that would bring within its snare the Promoters' clarification issued in the August 2015 board meeting. Such clarification by the Promoters did not trigger any materiality or price sensitive information threshold.

k. The SEBI framework contemplates notification of material and/or price sensitive events to the stock exchanges, without imposing disclosure requirements by listed companies around non-events, i.e. to notify something has not occurred, contrary to rumour. The SCN, inconsistent with the SEBI framework, attempts to extend reporting obligations to include non-events – which interpretation, if permitted by the Adjudicating Authority, would risk utter chaos, ushering in a dangerous precedent for listed companies generally.

l. Limited disclosure requirements upon promoters of listed entities became mandatory in August 2019, through a prospectively operating Circular dated 7 August 2019, bearing no. SEBI/HO/CFD/DCR1/CIR/P/2019/9, issued by the SEBI, which without more establishes no disclosure on the part of the Noticee was contemplated on 5 August 2015 when the matter was discussed at the board meeting of the Noticee.

m. The Noticee is neither a party nor privy to the Promoter Loan Agreements, which are loan arrangements executed by the Promoter Group, in private capacity, entirely separate and distinct from the Noticee, with the latter an independent juridical entity, with its own legal rights, duties and

obligations. There is nothing to indicate that the interests of NDTV have been impacted by the Loan Agreements, which deal with shareholders' rights of property.

n. The SCN ignores the nuance of the interplay between shareholder rights and management rights, and the corollary actions, which must be measured in line with the settled law governing shareholders and directors. Reliance is placed on Hon'ble Bombay High Court order in the matter of *Rolta India Ltd. v. Vesuvius Industries Ltd., 2000 (3) Mh. L.J. 708* and Hon'ble Supreme Court order in the matter of *Shrimati Jain v. Delhi Flour Mills Co. Ltd., 1973 SCC OnLine Del 137.*

o. It is trite law, that a director vested with duties liable to be discharged by virtue of his office of a board member, is duty bound to act in conformity with matters in the interests of such company. However, a shareholder may take a decision, in conformity with his right of property. The director of a company, who is also in the capacity of a shareholder, may exercise each of such separate and distinct rights in a manner that will not conflate, with the office of directorship giving rise to fiduciary duties owed to the company, which may be materially distinct from the duties of a shareholder, whose rights are proprietary and independent, as a matter of law. As to discharge of rights in capacity of directors, there is no material on record in the SCN to establish that either Dr. Prannoy Roy or Mrs. Radhika Roy acted, or at all influenced, or procured or caused any director or shareholder to act in manner contrary to the interests of the Company.

p. None of the matters set forth in the Loan Agreements are capable of adversely affecting the interests of NDTV, in circumstances where the structure of the board of directors of NDTV itself, which includes independent directors, without more, precludes the Promoter Group from exercising binding rights on the board of directors.

q. The premise of the SCN is wholly contrary to law, in that it asserts that the Noticee was bound by the Promoter Loan Agreements, overlooking that the Indian Contract Act, 1872, stipulates binding contractual obligations strictly among those who are party to such agreements. No covenant whatsoever, in the Promoter Loan Agreements, was thus or otherwise capable of binding the Noticee; and in the circumstances, the foundation of the SCN is fundamentally flawed.

r. The SEBI order dated 14 June 2019, issued in a prior SEBI show cause notice dated 14 March 2018 directed to the Promoters, concluded that "*...loan agreements with VCPL vested control of NDTV in VCPL...*". That order has been stayed by the Hon'ble Securities Appellate Tribunal ("SAT"), on 18 June 2019, in appeals instituted by the Promoters. Since the conclusions recorded in the SEBI order of 14 June 2019 are not the subject-matter of the present SCN, and matters concerning the SEBI conclusions in an independent show cause notice cannot properly fall for examination in the present

SCN, there is no scope for those proceedings to impact, in any way at all, the present SCN. Further, the SEBI is party to the appeal proceedings in which the issue as to the scope and ambit of the Promoter Loan Agreements is due for adjudication by the Hon'ble SAT, and is thus precluded from returning a finding on the very issue already pending adjudication before the Hon'ble SAT, i.e. the very interpretation of the Promoter Loan Agreements.

s. The true legal scope, ambit and interpretation of the loan agreements dated 21 July 2009 and 25 January 2010 executed by the Noticees with VCPL ("**Subject Loans**") are *sub judice* before the Hon'ble SAT in Appeal Nos.294, 295 & 296 of 2019, filed by the Noticees, arising out of a prior SCN dated 14 March 2018, which had culminated in SEBI order dated 14 June 2019.The SEBI order dated 14 June 2019 inter alia concludes that: *"...loan agreements with VCPL vested control of NDTV to VCPL..."*, but has been stayed by order of the Hon'ble Tribunal on 18 June 2019. The 'stay' order of 18 June 2019 granted by the Hon'ble Tribunal, specifically records: *"...Whether there was a violation of the SEBI laws including the PFUTP regulations are all required to be considered..."*. The ad-interim stay granted by the Hon'ble Tribunal vides order dated 18 June 2019 continues till date, with the next date of hearing scheduled for 13 January 2021.

t. In order for the present SCN to rely on the Promoters' loan agreements to conclude 'materiality' or 'price sensitive information', it is insufficient, in law, to assert that the contents of the board minutes of 5 August 2015 triggered a 'disclosure' obligation. At the minimum it will be imperative for the present adjudication to proceed to examine the Promoters' loan agreements and conclude 'materiality'.

u. The Adjudicating Authority's reliance upon the order of the Hon'ble SAT passed on 9 August 2019 in the matter of *Reliance Industrial Limited v. SEBI [Appeal No.120 of 2017]*, is *ex facie* misconceived, and contrary to law as facts of the instant proceedings are different from the aforesaid case. Further, the Noticee continues to remain deprived of the grant of opportunity to distinguish its case from that of *Reliance Industrial (supra)*, and will suffer grave prejudice if it's *bona fide* submission, that the present proceedings must remain in abeyance until the outcome of the RTI applications.

v. It is insufficient for the SCN to cite section 23E of the SCRA to invoke a broad spectrum of penalties, and it is indeed incumbent for the SCN to put the Noticee into a position that will entitle the Noticee to present its defence. The SCN is bound to contain the precise basis of asserting a violation and the exact nature of the measures/ penalty/action that it proposes to take. The reliance in this regard is placed on the Hon'ble Supreme Court judgment in the matters of *Gorkha Security Services v. Govt of NCT of Delhi & Ors. (2014) 9 SCC 105* and *Royal Twinkle Star Club Private Ltd. v. SEBI 2016 SCC OnLine SAT 16*.

w. The requirements liable to be fulfilled by an SCN emanate from the duty cast upon SEBI to protect not just investors and the securities market, but also to protect companies and promoters alike, in consonance with discharge of duty to ensure the healthy growth of companies associated with the securities market, whereby SEBI must tread carefully acting as a 'watchdog' with fairness, integrity and transparency, rather than mechanically imposing penalties. The reliance in this regard is placed on the Hon'ble Supreme Court judgment in the matters of *SEBI v. Rakhi Trading (P) Ltd. (2018) 13 SCC 753* and *Pinnacle Enterprises Limited v. SEBI 2019 SCC OnLine SAT 134*.

x. The SCN relies on an underlying purported Investigation Report dated 12 February 2018, which bears out a 'change of opinion' by SEBI, without new facts or evidence whatsoever, and which is thus and otherwise wholly impermissible, in law, and which was preceded by a SEBI letter dated 21 April 2015.

y. The Noticee were granted inspection on 30 October 2018, when inspection of the investigation report along with its annexures was provided to the Noticee, without further material, whether internal file noting, orders/directions and/or statements recorded, in contravention of the rights of the Noticee. The deprivation of the Noticee's legal right to grant of full, unfettered and fair right of inspection of the records of files and proceedings is in gross violation of the principles of natural justice. The position adopted by SEBI, in response to the requisition for inspection, has led to a cryptic and erroneous position adopted to the effect that documents relied upon in the SCN alone are to be supplied to meet the ends of justice is contrary to law, particularly in circumstances where it is apparent a **change in opinion** of the SEBI in relation to the loans taken by the Promoter Group has led to the SCN. In this regard, the Noticee has placed reliance on the judgements of Hon'ble Supreme Court in the matters of *M.s. Sunitaben N. Shah v. SEBI 2010 SCC OnLine SAT 243* and *Kashinath Dikshita v. Union of India &Ors. (1986) 3 SCC 229*; and Hon'ble SAT judgment in the matter of *Price Waterhouse v. SEBI (SAT Appeal No.8 of 2011 – 1 June 2011)*.

z. The interpretation underlying the Promoter Loan Agreements constitutes the relevant jurisdictional fact that must exist in order to proceed with the present SCN. The existence of a jurisdictional fact is a mandatory pre-requisite for the exercise of statutory powers; in the absence of a jurisdictional fact, the adjudicatory authority would be committing a *'jurisdictional error'*. In this regard, Noticee has placed reliance upon the Hon'ble Supreme Court judgement in the matter of *Arun Kumar &Ors. v. Union of India &Ors. (2007) 1 SCC 732*.

aa. Since the Learned Adjudicating Authority is subordinate to the appellate authority, and it is the Hon'ble Appellate Tribunal which is in *seisin* of the jurisdictional facts relevant to the present SCN, all questions of interpretation of the Promoter Loan Agreements constituting mixed questions of fact

and law must remain strictly within the purview of the Hon'ble SAT in the pending appeals of the Promoters.

bb. There is no obligation to disclose the Loan Agreements under Schedule III Part B of the LODR Regulations as well. No regulatory obligation existed, at the material time, whereby the promoters were liable to disclose a Non-Disposal Undertaking to the board of directors. The legal standard is that there must be an obligation stipulated.

cc. The Noticee has acted *bona fide*, and based on the representation from the Promoters that there has been no 'change in control' of the Noticee, has no scope to conclude that the loan agreements bear 'price sensitive information' and are consequently or otherwise liable to disclosure. Reliance has been placed upon the Hon'ble Supreme Court judgment in the matter of Sundaram Finance Ltd. v. SEBI *2003 SCC OnLine SAT 3, Piramal Enterprises Limited v. SEBI 2019 SCC OnLine SAT 134 and SEBI v. Cabot International Ltd. 2004 SCC OnLineBom. 180* and Hon'ble SAT judgement in the matter of *Reliance Industries Limited v. SEBI (2004) SAT 68.*

dd. The SCN has not set forth any loss caused to an investor or group of investors, or the repetitive nature of default, or the amount of disproportionate gain or unfair advantage as a result of alleged default. Parameters for exercise of discretion under Section 23J, permit the adjudicating officer empowered to consider circumstances beyond those enumerated there under, in aid of justice. Reliance has been placed on the Hon'ble Supreme Court judgment in the matter of *Siddharth Chaturvedi v. SEBI (2016) 12 SCC 119* and *Adjudicating Officer, SEBI v. Bhavesh Pabari(2019) 5 SCC 90.*

ee. The absence of *mens rea* is also liable to be factored into the exercise of discretion vested under Section 23J of the SCRA. The principle of *mens rea* has full application, where the adjudicatory authority has been conferred with discretionary jurisdiction to levy penalty. By necessary implication, the statutory authority may not levy penalty; if it has the discretion not to levy penalty, with the lack of *mens rea* becoming a relevant factor. Reliance has been placed upon the Hon'ble Supreme Court judgment in the matter of *Hindustan Steel Limited v. State of Orissa (1969) 2 SCC 627; Bhartiya Steel Industries v. Commissioner, Sales Tax, Uttar Pradesh (2008) 11 SCC 617* and *Rakesh Aggarwal v. SEBI 2003 SCC OnLine SAT 38.*

ff. QSPL has a chequered past with the Noticee. During the initial years of its association, it was advising the Noticee, basis certain advisory consultancy arrangements, which eventually resulted in a bitter parting of ways. As a result of this acrimonious situation with QSPL, the Noticee has suffered a multitude of complaints and actions. The *modus operandi* of QSPL has been to file complaints with

various statutory authorities followed by illegal demands for money to withdraw such complaints, which has been rejected by the Noticee.

gg. The said investigation report examined the ICICI loan agreement dated 14 October 2008, wherein it held that "*no violations of SAST Regulations, Listing Agreement and SCRA were observed*". There is no justification for distinguishing promoter loans from ICICI from that of VCPL.

hh. The loan agreements were entered into between the Promoters and VCPL, and although the Noticee is not party thereto, the SCN attempts to make the Noticee vicariously liable for the acts of the Promoters. Reliance has been placed upon the judgment of Hon'ble Supreme Court in the matter of *Sunil Bharti Mittal v. CBI (2015) 4 SCC 609* and *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear (2010) 10 SCC 479*.

ii. The SCN is riddled with procedural infirmities, lacks jurisdiction, and is unsustainable in law, and is liable to be revoked, withdrawn and/or discharged, in *limine*, on grounds set forth above.

11. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticee, documents produced by the Noticee and oral submissions made during the personal hearing before undersigned. In the instant proceedings, I would first deal with several preliminary technical/legal contentions raised by the Noticee as under: -

a. **Inspection of Documents**

i. The Noticee has contended that principle of nature justice has not been followed in the instant proceedings as the Noticee request for inspection of documents and/or material collected by the SEBI preceding the investigations, during the course of investigations and following the investigations, including but not limited to internal file noting, orders/directions and statements recorded, if any, in pursuance of issuance of the SCN, was rejected. The Noticee has placed reliance on the judgements Hon'ble SAT in the matter of *Price Waterhouse v. SEBI [SAT Appeal No.8 of 2011 – 1 June 2011]*, *Mr. Smitaben N. Shah v. SEBI 2010 SCC OnLine SAT 24* and Hon'ble Supreme Court order in the matter of *Kashinath Dikshita v. Union of India &Ors. (1986) 3 SCC 229*, with regard to their aforesaid contention. In this regard, I note that subsequent to issuance of SCN, the Noticee had requested for the inspection of documents and same was availed by its authorized representative on October 30, 2018, wherein, its authorized representative had undertaken the inspection of the relied upon documents, investigation report and its annexures. Further, its request for inspection of internal file noting and non-relied upon documents has been rejected multiple times by the erstwhile AO and the undersigned providing sufficient reason for rejection of such request.

ii. Moreover, in this context, it is a settled position of law that only the relied upon documents has to be provided for inspection to the Noticee and the same position has been upheld by the Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497], Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways. (1988) 1 SCR 1102* and *M/s Haryana Financial Corporation vs. Kailashchand Ahuja* [2008(9) SCC31]and also by the Hon'ble SAT in number of its rulings. In the recent ruling of Hon'ble SAT in the case of *Shruti Vora Vs. Securities and Exchange Board of India*, in Appeal Number 28 of 2020 decided on February 12, 2020 held that *"...The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon..."*.

iii. I also note that in the another proceeding before Ld. WTM, the Promoters of the Noticee had filed an appeal on similar grounds before the Hon'ble Delhi High Court, wherein, the Hon'ble High Court vide its order dated August 29, 2018 *inter alia* held that - *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 has 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.* The said Promoters thereafter, 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 buy the Hon'ble High Court has not been provided. However, such contention of its Promoters was not accepted by the Hon'ble High Court and accordingly the aforesaid application moved by its Promoters including their prayer for stay on the proceedings before Ld. WTM was dismissed. Considering the aforementioned judgments and above fact, I am, of the view that since the copies of the relevant and relied upon material in the instant proceedings against the Noticee was provided to it along with the SCN and same were duly inspected by its authorized representative, no prejudice is caused to the Noticee on this account. Further, the Noticee's reliance in rulings in the matter of *Price Waterhouse v. SEBI [S.T. Appeal No.8 of 2011 – 1 June 2011], Mr. Sailaben N. Shah v. SEBI*

2010 SCC OnLine SAT 24 and *Kashinath Dikshita v. Union of India & Ors. (1986) 3 SCC 229* is out of place and is not tenable. I, therefore, do not find any merit in the contentions of the Noticee.

b. **Continuance of Adjudication Proceedings**

i. The Noticee has vehemently contended that, vide order dated June 18, 2019, the Hon'ble SAT has stayed the "*effect and operation*" of the impugned Ld. WTM order dated June 14, 2019 till the next date of hearing. Therefore, the order dated June 18, 2019 of the Hon'ble SAT is liable to be construed as having the legal effect of barring adjudication by SEBI on matters concerning the Promoter Loan Agreements. At the outset, I am of the view that the instant proceedings are not parallel proceedings, instead these are standalone proceedings and the Noticee herein is not a Noticee in said WTM proceedings. Further, there is no order or directions from Hon'ble SAT on keeping the instant proceedings in abeyance. In addition to above, even if the pending appeal before the Hon'ble SAT and the instant proceedings are based on identical facts, legally there is no bar to proceed with instant proceedings.

ii. In this regard, I further note that, when a person violates the provisions contained in the SEBI Act and the regulations made there under, then SEBI may either initiate adjudication proceedings against that person under Chapter VIA of SEBI Act or issue directions in the interests of investors or securities market as it deems fit under Chapter IV of the SEBI Act or may initiate both the proceedings. I also note that the provisions of Section 11 & 11B of SEBI Act are different and independent of the provisions under Chapter VIA of the SEBI Act. Therefore, it does not preclude the Adjudicating Officer from initiating adjudication proceedings on identical facts, even if an appeal is pending against an order under Section 11B against its Promoters on similar facts before the Hon'ble SAT. In this regard, reliance is placed on Hon'ble SAT order dated August 09, 2019 in the matter of *Reliance Industries Limited vs SEBI*, wherein, in para 3 of the said order, it is held that -"*... In our view simultaneous parallel proceedings can be initiated under Rule 4 of the Rules of 1995 which is distinct and different from the proceedings initiated under Section 11 and 11B of the SEBI Act, 1992. We, therefore, do not propose to stay the proceedings initiated under Rule 4 of the Rules of 1995 pursuant to the notice dated November 21, 2017. We, however, permit the appellants and grant them four weeks' time to file reply to the notice issued by AO. We also direct the AO to consider the preliminary objection while deciding the matter on merits after giving the parties an opportunity of hearing ...*"

iii. Similarly, with regard to pending appeals before Hon'ble SAT in parallel proceedings of SEBI, in its order dated February 28, 2018 in the matter of *Gurmeet Singh vs SEBI*, Hon'ble SAT has held that –

> *"Powers conferred on the WTM of SEBI under Section 11 & 11B of SEBI Act are different from the powers conferred on the Adjudicating Officer of SEBI to impose penalty for the violations enumerated in Chapter VI A of the SEBI Act. Therefore, just that the appeals filed by the appellants against the order passed by the WTM of SEBI were pending before this Tribunal, did not preclude SEBI from initiating penalty proceedings against the appellants."*

iv. In view of above, it can be inferred from the aforementioned Hon'ble SAT rulings that adjudication proceedings can continue pending appeal arising out of 11B order in Hon'ble SAT. With regard to the contention of the Noticee that vide order dated June 18, 2019, the Hon'ble SAT has stayed the effect and operation of the WTM order dated June 14, 2019, I note that, Hon'ble Supreme Court in the matter of *Shree Chamundi Mopeds Ltd. vs Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1* dated April 29, 1992 had held that - *"Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."* On perusal of the aforementioned Hon'ble Supreme Court Order and the interim order passed by the Hon'ble SAT, I am of the opinion that these adjudication proceedings can continue and an order on merits can be passed based on the material available on record, as the Hon'ble SAT in its interim order has only stayed the operation of the impugned order and not quashed the same.

c. **Retrospective Application of SEBI Circular dated August 07, 2019**

I note that, through oral submissions during hearing and written submissions, the learned ARs vehemently submitted that the limited disclosure requirements upon promoters of listed entities became mandatory in August 2019, through a prospectively operating circular dated August 07, 2019. In this regard, I note that nowhere in the SCN there is mention or an attempt to invoke said circular or provision as argued by the ARs on behalf of the Noticee. I further note that, in the instant case issue of Non Disposal Undertakings ('NDU') does not exist in the VCPL Loan Agreements, instead the aforesaid argument flow from NDU facility, which was a part of ICICI Bank Loan Agreement dated October 23, 2008. The said ICICI Bank Loan Agreement is not a part of instant proceedings. Considering the same, I note that any objection in this regard is neither relevant nor applicable in the instant proceedings and thus, such contentions of the Noticee are rejected hereby.

12. After dealing with the above technical /legal contentions of the Noticee, now I proceed to deal the case on merit basis and the issues before me are as under :

a. Whether the Noticee, on becoming aware of the *material* and the *price sensitive* information about the said VCPL Loan Agreements on August 05, 2015, failed to disclose the said information to the stock exchanges i.e. BSE and NSE; and

b. If the answer to above is in affirmative, then whether the Noticee failed to comply with provisions of Clause 36 of the Listing Agreement read with Section 21 of the SCRA.

13. In order to analyse the first issue, I need to examine whether the information regarding impugned loan agreements executed by the Promoters was a '*material*' and '*price sensitive*' information. For analyzing the same, it is essential to examine the implications of various clauses of the said loan agreements, to understand the intent of the Promoters behind consenting to such clauses, which render the agreements loaded against the Noticee and its Promoters and in favour of VCPL. One of the submissions of the Noticee is that the agreements were mere Promoter loan transactions entered between two independent parties. However, upon analysing the clauses and the conditions set out and agreed upon by its Promoters to ascertain as to, whether these clauses were *material* and *price sensitive* in nature. In this regard, I note as follows:

a. Schedule 1(a) of the VCPL Loan Agreement (2009) entitles absolute and sole discretion to the VCPL to Equity Shares aggregating to 99.99% of the fully diluted Equity Share Capital of RRPR 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 acquire/ takeover the entire share capital of RRPR and thereby, to take control over the entire shareholding of RRPR in NDTV to the extent of 26% which was subsequently increased to 30% vide the VCPL Loan Agreement (2010).

b. Clause 11 of the VCPL Loan Agreements provide for appointment of at least one director out of the 3 directors, 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 of the VCPL Loan Agreements provides that the Promoters can enjoy the interest free loan for a period of 10 years in case they comply with the other terms and conditions of the two VCPL loan agreements most of which pertained to the Noticee and acquisition of 30% stake in the Noticee through the binding conditions upon RRPR. As amount taken as loan by the Promoters became payable only if there is a breach of the terms of the Loan Agreements or related agreements by the Promoters.

d. One of the conditions precedents to the execution of agreement was sale of 11,563,683 shares of NDTV by Mr. Prannoy and Ms. Radhika, so that RRPR has 26% shares of the Noticee. Similarly, VCPL Loan Agreement (2010) provides for another sale of 25,08,524 equity shares of NDTV from Mr. Prannoy and Ms. Radhika to RRPR, so that upon such sale, the RRPR holds 1,88,13,928 shares of NDTV, aggregating to 30% of the equity share capital of the Noticee. Therefore, in terms of the two VCPL loan agreements, Mr. Prannoy and Ms. Radhika were mandated to sale their shareholding of NDTV to RRPR, so that VCPL eventually holds control over 30% of shareholding of the Noticee by virtue of ownership of the entire share capital of RRPR. In effect, the two VCPL loan agreements mandated the Promoters to place substantial shareholding i.e. 30% of their shareholding in NDTV at the disposal of VCPL as a consideration of the amount of loan received.

e. As noted above, the clause 6.1 read with Schedule I provide sole discretion to VCPL to convert the warrants entitling it to have 99.99% of equity share capital of RRPR. It clearly indicates the intention of the Promoters to transfer their stake in the Noticee to VCPL through aforementioned VCPL loan agreements. Further, granting right of conversion of warrants into shares of RRPR, at any point of time to VCPL, enables VCPL to indirectly acquire 30% of equity shares of the Noticee and same was not dependent on the repayment of the loan undertaken by the Promoters. VCPL is having independent rights to convert the warrants into shares of RRPR, at any time during the loan agreement or even thereafter.

f. As noted above, VCPL's right to convert the warrants is absolute without being in any way connected to repayment of loan by the Promoters. Thus, in my view, the aforesaid VCPL loan agreements are not a loan transaction. It appears to undersigned as an outright transfer of 30% stake and voting rights in NDTV by the Promoters to VCPL, camouflaged in form of loan agreements, which did not possess the basic attributes and characteristics of a standard secured loan transaction. In my view, the VCPL Loan Agreements (2009) and (2010) executed by the Promoters with a motive to sell their substantial stake in NDTV to VCPL.

g. It is also noted from the VCPL Loan Agreements that the lender has been conferred with the rights to assign the agreements, the loans and the rights therein *qua* RRPR to a third party even during the prevalence of the tenure of the aforesaid loan agreements. However, similar right of assignment is not available to the Promoters. The aforementioned clauses craft a disadvantageous situation to the prejudice of the Promoters. It creates a state, whereby during the period when the loan agreements are in force i.e. the period when the Promoters 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 transferable from lender's side. Moreover, there is also a 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*". In view of the same, it is apparent that the Promoters have gone far beyond the normal commercial realm of a simple loan transaction, only for the reason of transferring their stake in the NDTV to VCPL by camouflaging it in form of said loan agreements. Considering the aforesaid facts and circumstances, the Noticee contention that its Promoters loan agreements were merely loan agreements, is not credible and contrary to the facts and circumstances.

h. As noted above, in terms of clause 6.1 of the VCPL Loan Agreements, it is stipulated that the borrower shall issue convertible warrants, which were convertible into equity shares aggregating to 99.99% of share capital of borrower *viz.* RRPR to the lender *viz.* VCPL immediately upon execution of this agreement. Thus, RRPR was under the 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 never been issued by RRPR. In such circumstances, clause 13 of the said loan agreements, 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 VCPL by demanding the repayment of the loan amount. In the instant matter, even after a lapse of more than ten years of execution of the agreements and despite the said default by the Promoters, pre payment has inexplicably not been triggered, which reinforce a thought, that the so called loan was never planned to be repaid by the Promoters and implies that the amount was received by the Promoters as consideration for sale of their substantive stake in the Noticee to VCPL.

i. In terms of the market price of shares of NDTV prevailing on the day of execution of said VCPL loan agreements, it was noted that transfer of shares of NDTV by Mr. Prannoy to Ms. Radhika as part of the precondition stipulated in the loan agreements was not proportionately correlated with the loan amount as per the prevailing market price of the shares of NDTV during VCPL loan agreements execution. From the information available in public domain the average price of shares of NDTV on BSE, as on the date of the execution of VCPL Loan Agreement (2009) i.e. on July 21, 2009 was Rs. 127.20/- per share and as on the date of VCPL Loan Agreement (2010) i.e. on January 25, 2010 was Rs. 138.70/ per share. In contrast, as noticeable from the said VCPL loan agreements, the valuation of the equity shares of NDTV for the purpose of advancing loan was adopted at Rs. 214.65/- per share for both the loan agreements. Thus, it emerges that the Promoters and VCPL have purposefully overvalued the shares of NDTV for factoring in a premium of Rs. 87.76 per share respectively. This demonstrate that the said loan transaction defies and disregard all prudent commercial norms of lending and apparently, a substantially higher amount was predetermined to be received by the Promoters as a consideration for 30%

shareholding in NDTV, by way of transferring the ownership of RRPR to VCPL, irrespective of the market value of the shares of NDTV at the relevant point of time.

j. In view of above fact, the alleged collateral securities thus offered by the Promoters under the aforesaid loan agreements were inexplicably inadequate in comparison with the amount received as loan. In a standard loan transaction, where shares are offered as collaterals, the lender demands substantial haircuts in collateral value and also insists on pledge invocation in case of adverse movement of share price, in case additional security is not provided by the borrower. However, in the instant case, instead of demanding haircuts in the value of collaterals, the so called loan was generously given by the VCPL to the Promoters with inadequate shareholding in the Company as collaterals and without creating any charge over such securities. In addition to the same, the said VCPL loan agreements did not have any clause to provide for additional securities in case of adverse movement in the price of shares of NDTV or for other exigencies. From the aforesaid facts and circumstances, it is evident that the two ostensible loan agreements with VCPL were prearranged in a deceitful manner with an intention to transfer substantial stakes in NDTV owned by the Promoters at a pre negotiated price as consideration. Further, the said VCPL loan agreements do not carry any element, whatsoever of usual inter corporate loan transaction.

k. I note from the clause 20 of the VCPL loan agreements, that the Promoters were constrained 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 said loan agreements did not give any discretion to the Promoters 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, the Promoters have given up the 30 % of their voting rights in the Noticee, in furtherance of the terms of loan agreements, which were never disclosed to the public as they ought to have been. Therefore, I find no merit in the argument of the Noticee that the impugned loan agreements were executed in exercise of its Promoters private property rights not impinging at all on the interest of NDTV. The aforesaid view is further supported by schedule 3 of the said loan agreement titled "*Prior Consent*", which imposes restriction in the form of obligations on the Promoters to obtain prior consent of VCPL, in case of any proposal for the changes in capital structure, constitution or re-structuring of the Noticee is concerned.

l. It is also noted that the loan agreements did not contain any closure clause providing for termination upon repayment. Clause 7 of the said loan agreements provides for the 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 unexpectedly even after the expiry of the tenure of the loan. Such a clause 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. Thus, the terms and conditions of the loan agreement explicitly indicate that the objective and intent behind the execution of the said loan agreements was nothing but to transfer beneficial interest in the shares of NDTV to VCPL.

m. 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.

n. Alike the VCPL Loan Agreements, the two call option agreements referred in above paras, which were also an integral part of the loan agreement, did not contain any clause providing for termination of these agreements even after repayment of the loan amount. This arrangement of incorporating the call option agreements into the VCPL Loan Agreements indicates that VCPL, apart from ensuring its ownership over RRPR by way of conversion of warrants, has further made alternative arrangements to transfer the NDTV shares to its associate companies at a predetermined price of Rs. 214.65/- per share. Notably, it is observed that when the total loan amount i.e. Rs. 350 crore advanced by VCPL to RRPR, under the VCPL Loan Agreement (2009), is divided by the number of shares constituting 26% shares of NDTV i.e. 1,63,05,404 shares (which was set out to be held by Noticee No. 3 as a pre-condition for Noticees in the agreement) the amount per share advanced as loan comes to Rs. 214.65/- per share. Correspondingly, under the VCPL Loan Agreement (2010), when the loan of Rs. 53.85 crore advanced to Promoters is divided by number of shares i.e. 25,08,524 shares of NDTV, required to be additionally transferred by Mr. Prannoy and Ms. Radhika to RRPR (so as to take RRPR stake in NDTV to 30%), the amount per share advanced as loan, again arrives to a price of Rs. 214.65/- per share. The aforementioned facts and circumstances shows that in the entire loan transactions including the provisions 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 shows that the amount advanced as loan had a direct connection with the cost of the purchase of 30% shares of NDTV to be transferred by the Promoters to VCPL.

o. As noted above, the VCPL loan agreements did not contain any termination clauses on default of repayment. With regard to aforesaid clauses, no justifiable explanation was provided by the

Promoters in another adjudication proceeding on identical facts, as to why the covenant in the said loan agreements were so heavily construed in favour of VCPL, providing extensive right to VCPL to invoke/get the conversion of warrants at any time even during the continuation of the agreement without there being any default by the Promoters.

14. As noted earlier, pursuant to execution of VCPL Loan Agreement (2009), Mr. Prannoy and Ms. Radhika were required to transfer 11,563,683 shares of NDTV to the RRPR. Similarly, in terms of VCPL Loan Agreement (2010), Mr. Prannoy and Ms. Radhika were mandated to transfer an additional number of 25,08,524 shares of NDTV to RRPR. In this regard, the following off market transfers of shares of NDTV that took place among the Promoters, in compliance with the impugned loan agreements has been noted as under:

Table 1: Transfers of shares post VCPL Loan Agreement (2009) 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 2: Transfer of shares after VCPL Loan Agreement (2010) 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	2,311,762	140.00	324,066,680.00

Net transfer of Shares by Mr. Prannoy and Ms. Radhika to RRPR	25,08,524	**Net consideration of transfer of Shares by Mr. Prannoy and Ms. Radhika to RRPR**	129,74,60,960

15. The loan amount of Rs. 350 crore borrowed by the Promoters under the VCPL Loan Agreement (2009) was obtained to repay the earlier loan availed from ICICI Bank. The loan amount of Rs. 53.85 crore borrowed under the VCPL Loan Agreement (2010) by the Promoters was meant for investment purposes. One of the conditions under the VCPL Loan Agreement (2009) was that RRPR must hold 26% shares of NDTV. At the time of execution of the said loan agreement, RRPR was holding only 47,41,721 (7.56%) shares of NDTV. Consequently, as noted from Table 1, to raise shareholding of RRPR in NDTV to 26%, Mr. Prannoy transferred 57,81,842 (9.22%) shares and Ms. Radhika transferred 57,81,842 (9.22%) shares, aggregating to 18.44% shares of NDTV to RRPR at a nominal price of Rs. 4/- per shares. The loan amount of Rs. 350 crores [16,305,405 (26%) * 214.65], so received by the Promoters, was used to repay the loan of ICICI.

16. Similarly, one of the pre condition under the VCPL Loan Agreement (2010) was that RRPR must hold 30% (1,88,13,928) shares of NDTV. At the time of execution of the said loan agreement, RRPR was holding 26% (16,305,405) shares of NDTV. Therefore, to raise the holding of RRPR in NDTV to 30%, Mr. Prannoy and Ms. Radhika were required to transfer further 4% (25,08,524) shares of NDTV to RRPR. As noted from Table 2 above, instead of transferring 25,08,524 shares of NDTV directly to RRPR, through single transaction, Mr. Prannoy and Ms. Radhika sold 48,36,850 number of shares of NDTV to RRPR at a price of Rs. 140/- per share, from their joint demat account. In another transaction, Mr. Prannoy and Ms. Radhika, each purchased 34,78,925 shares of NDTV from RRPR, at a nominal rate of Rs. 4/- per share. Again, through another transaction, Mr. Prannoy and Ms. Radhika, each sold 23,14,762 number of shares of NDTV to RRPR, at the rate of Rs. 140/- per share. Thus, in aggregate, Mr. Prannoy and Ms. Radhika have sold 94,66,374 shares of NDTV to RRPR at a price of Rs. 140/- per share whereas, 69,57,850 shares of NDTV were purchased simultaneously from RRPR at a price of Rs. 4/- only per share. Thus, at the end of the aforesaid series of transactions, Mr. Prannoy and Ms. Radhika have made a net sale of 25,08,524 shares of NDTV to RRPR in compliance with the VCPL Loan Agreement (2010) to ensure that the total shareholding in NDTV by RRPR goes upto 30%. The Table 2, also reflects that Mr. Prannoy and Ms. Radhika have received a net amount of Rs. 1,29,74,60,960/- in exchange of the above stated 25,08,524 shares of NDTV from RRPR. The aforesaid transactions in NDTV shares and the consideration received by Mr. Prannoy and Ms. Radhika clearly suggest that the amount of Rs. 53.85 crore received from VCPL by RRPR under the VCPL Loan Agreement (2010) was actually meant to be paid to the Mr. Prannoy

and Ms. Radhika by RRPR. The aforementioned facts and circumstances demonstrate that these loan agreements were devised only to transfer beneficial interest in 30% shares of NDTV held with RRPR, to VCPL, at the rate of Rs. 214.65/- per share.

17. In view of aforesaid facts and circumstances, I am inclined to have a view that the Promoters of the Noticee through impugned VCPL Loan Agreements have effectively transferred their shareholding of 30% in the Noticee to VCPL. Although the alleged shareholding in NDTV technically remained with 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 RRPR, along with the right of VCPL to purchase the shares of Mr. Prannoy and Ms. Radhika in RRPR, clearly institute that 30% shares of NDTV were put at the absolute disposal of VCPL by virtue of the impugned loan agreements. Moreover, as per covenant the Promoters also agreed that prior written consent of VCPL shall be obtained *inter alia* with respect to issue of any equity shares of the Noticee, if that results in the aggregate valuation of the Noticee falling below Rs. 1346 crores, which confirms that the alleged loan amount was determined on the basis of prevailing market valuation of the Noticee. This fact establishes that the impugned Loan Agreements were *'material'* and *'price sensitive'*, as they effectively involved passing of substantial controlling stake of 30% share capital of the Noticee to VCPL and stipulated several binding conditions upon the Noticee, thereby directly or indirectly affecting the interest of NDTV and its public shareholders.

18. I note that, materiality is an important factor to gaze the importance of the disclosure of impugned loan agreements, which was supposed to be made by the Noticee. In this regard, I am of a view that, since the *'materiality'* has not been defined categorically, it has to be determined on a case to case basis depending upon the various facts specific to the case and circumstances relating to the case. In the order of Ld. WTM in the matter of *IPO of Onelife Capital Advisors Ltd* dated August 30, 2013, it was held that -

> *"The words "material" and "materiality" have not been defined in the ICDR Regulations. However, as understood in the market parlance and also defined in Explanation to regulation 5 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the same context, "material" means anything which is likely to impact an investors' investment decision. In my view, the test to determine whether a fact is 'material' depends upon facts and circumstances of each case"*

19. Further, Hon'ble SAT in its order dated March 13, 2015 in the matter of *DLF Limited v. SEBI (Appeal No. 331 of 2014)* had held that

"The Materiality envisaged in the DIP Guidelines relates to adequacy and not the arithmetic accuracy of material facts necessary for the purpose of formulating a complete opinion by prospective investors to invest or not to invest in the IPO. Disclosure in the larger scheme of DIP Guidelines, which is required to be made in the Offer Documents, is one which, if concealed, would have a devastating effect on the decision making process of the investors, and without which the investors could not have formed a rational and fair business decision of investment in the IPO."

20. In view of aforementioned rulings, I note that the *'materiality'* can be determined either based on quantitative parameters or based on qualitative parameters. The quantitative parameters are linked to the financials of the entity whereas qualitative parameters are to be linked to the likely impact of the nondisclosure on the market, as also the decision making process of the investors. Therefore, I am of the view that, the information about these loans was material and price sensitive and had a perennial to influence the investment decisions of the shareholders and the prospective investors of the Noticee.

21. Coming to the another facet of the aforesaid issue i.e. when the information came into the knowledge of the Noticee. In this regard, I note that the NSE sought clarification from the Noticee on June 11, 2015 with regard to a news article dated June 09, 2015 on Moneylife website, which pointed about the VCPL Loan Agreement (2009) and discussed various clauses of the said loan agreement. The Noticee has issued clarification to NSE on June 12, 2015 regarding factual position of change *(actual or effective)* in the control/ownership of NDTV. On June 15, 2015, NSE again sought clarifications from the Noticee, specifically related to VCPL Loan Agreements and its bearing upon the Noticee. The Noticee vide its email dated June 15, 2015 denied the same by stating that VCPL never approached the Noticee with respect to its affairs, neither involved with the process of management of NDTV, nor attended or voted at any shareholder's meeting of NDTV. I note that, the Noticee in its aforesaid response never denied about not having the information of VCPL Loan Agreements.

22. With regard to above discussion, I have also perused the extract of minutes of board meeting of the Noticee dated August 05, 2015 and same has been produced as under:

"UPDATE ON RUMORS REGARDING CHANGE OF CONTROL

Dr. Prannoy Roy, Executive Co-Chairperson while clarifying on various news items appearing regarding ownership of the Company informed the Board that RRPR Holding Private Limited *(RRPR) a promoter company of which he and Mrs. Radhika Roy are the two shareholders,* ***had taken loan from Vishvapradhan Commercial Private Limited (VCPL) for an amount of Rs 403.85 crores to repay the loan taken by the Promoters (Dr. Prannoy Roy, Mrs. Radhika Roy and RRPR) from ICICI and investment purposes. He further informed the Board on salient features of the loan agreements.*** *He emphasized that as already informed to the stock exchanges there has been no change in control over the Company and he along with Mrs. Roy and RRPR continue to be the Promoters of the Company. (emphasis applied)*

The Board took note of the same."

23. Without prejudice to the findings in para 21, from the perusal of the above board minutes, I observe that the Noticee became aware of the VCPL Loan Agreements and its salient features on August 05, 2015 and therefore, the information regarding the impugned loan agreements was in possession of the Noticee on the said date. Considering the above facts and circumstances, I note that the Noticee has failed to disclose the material and price sensitive information with respect to VCPL Loan Agreements to the stock exchanges, post board meeting dated August 05, 2015. Therefore, the answer to this issue is in affirmative.

Issue of violation of Clause 36 of Listing Agreement read with Section 21 of SCRA

24. I note that the SCN in the instant proceedings has been issued for violation of Clause 36 of Listing Agreement read with Section 21 of SCRA. Section 21 of SCRA mandates a listed company to fulfil the conditions of listing, which at the relevant time were crystallized in form of Listing Agreement executed between such listed company and the stock exchange. Clause 36 of Listing Agreement provides for a company to inform the exchange on immediate basis of all the events, which will have bearing on the performance/operations of the company and as well as price sensitive information. In the instant case, the aforesaid information related to VCPL Loan Agreements was found to have serious bearing on the interest of the Noticee and its public shareholders and same has also been found to be *material* and *price sensitive* in nature. In such a scenario, it is apparent that by not disclosing the information related to impugned loan agreements, the Noticee has violated the provisions specified under the Clause 36 of Listing Agreement read with Section 21 of SCRA.

25. The Noticee has contended that at relevant time i.e. 2009 and 2010, or even in 2015, there was no specific regulatory obligation in force for Promoter loans to be 'disclosed' by the Noticee to the stock exchanges. In this regard, it is noted that the compliance obligations under the Listing Agreement are triggered the moment the information comes into existence. It is immaterial whether the Promoters have specific obligation or not under Listing Agreement or LODR Regulations. The continuous listing requirements laid down in the Listing Agreement, which prescribed that the information must be disclosed to enable the shareholders and the public so as to enable them to take an informed investment or disinvestment decision in the securities of the listed entity and to avoid the establishment of a false market in its securities. In this case, the Noticee became aware of impugned loan agreements on August 05, 2015, which have bearing on the performance/operations of the Noticee as well as it was price sensitive information. Therefore, in my view holding such 'close minded' approach regarding '*disclosure*' requirement/ obligation under the Listing Agreement of such an important event is against the basic principle of making disclosure. The '*disclosure*' requirement need

to be followed in *letter and spirit* under the Listing Agreement, regulations or acts and therefore, I reject such contention of the Noticee.

26. The Noticee has further contended that Clause 36 of the Listing Agreement cannot be resorted for disclosure requirements concerning the Promoter Loan Agreements. Further, none of the eight facets of Clause 36(7) are capable of being drawn in this case. In this regard, I note that the impugned loan agreements are found to be material and price sensitive and the plain reading of Clause 36(7) of the Listing Agreement implies that any other information, which have bearing on the operation/performance of the company as well as a price sensitive information, may include in eight facets of said Clause 36(7). I note that, Clause 36(7) further says that the aforesaid provision is not restricted only to these eight facets and may include other facets also. In this regard, I find that the contention of the Noticee as not tenable.

27. With regard to Noticee contention of insufficiency to cite Section 23E of the SCRA to invoke a broad spectrum of penalties, it becomes necessary to examine whether Section 23E would apply with regard to alleged violation of the provisions of Clause 36 of Equity Listing Agreement read with Section 21 of SCRA. Section 23E applies only when there is failure to comply with listing or delisting conditions. As noted above, the Company has been alleged to be in violation Clause 36 of Listing Agreement, accordingly, the Section 23E can rightly be invoked which provides for imposition of monetary penalty on failure of compliance of listing conditions or breach thereof, by any listed company like the Noticee. Therefore, in my view Clause 36 of Listing Agreement read with Section 21 of SCRA falls within the contours of Section 23E and thus, I reject such contention of the Noticee.

28. The Noticee has contended that the SCN remains lacking as to specific interpretation of the terms and conditions of the Promoter Loan Agreements, including the date on which there was any ostensible '*change of control*', thereby leaving the allegations entirely ambiguous. In this regard, I note that the salient and binding features, apprising board of the Noticee on August 05, 2015, material and price sensitive nature and failure by the Noticee to disclose such material and price sensitive information related to impugned loan agreements has been clearly brought out in the SCN. I also note that the charging provisions for aforementioned violations of Listing Agreement read with SCRA has been mentioned in SCN and I note that there is no ambiguity regarding the same. The relied upon document i.e. Investigation Report dated February 12, 2018 and its annexure, on whose basis charges against the Noticee has been alleged, have been provided to the Noticee along with SCN. Considering the same, I am of a view that the Noticee has wrongly placed reliance on the ruling of Hon'ble Supreme Court in *Gorkha Security Services v. Govt of NCT of Delhi & Ors. (2014) 9 SCC 105; Royal Turnkle Star Club Private Ltd. v. SEBI 2016 SCC OnLine SAT 16*. I have perused the said rulings in support of the Noticee contention and observe that the Hon'ble Supreme Court held that the consequence of

non compliance should be communicated to the Noticee in the show-cause notice, which has been clearly communicated in the SCN to the Noticee and thus the ruling has no application in this case. I therefore do not agree with the contention of the Noticee that the SCN lacks evidentiary basis.

29. The Noticee has submitted that the SCN overlooked the SEBI letter dated April 21, 2015 issued to the complainant QSPL. The Noticee further contended that the investigation report dated February 12, 2018 bears a *'change of opinion'* by SEBI, without new facts or evidence whatsoever, and which is thus and otherwise wholly impermissible, in law. In this regard, I note that investigation in this case has been initiated in September, 2017, which is a subsequent development to examine the impugned loan agreements in details. I further note that an investigation, which is a detailed examination of a particular event have a suppression effect over all *previous* observations which may have been made earlier in this case. Further, the issue of *'change of control'* of the Noticee has already attained finality through Ld. WTM order dated June 26, 2018 in respect of VCPL in the matter of NDTV. While holding so, I am aware of the fact that said order of Ld. WTM is *sub judice* in an appeal before Hon'ble SAT and there is an interim order dated August 13, 2018 by Hon'ble SAT, wherein, it is recorded that no coercive action shall be taken in the matter. In other words, it is a kind of order which has an effect of staying the operation of the aforesaid order of Ld. WTM. By relying on the ruling of Hon'ble Supreme Court in *Shree Chamundi Mopeds Ltd. (supra)* matter, I am of the opinion that Hon'ble SAT in its interim order has only stayed the operation of the impugned order and not quashed the same. I also note that the instant proceedings are not based on *'change of control'* issue, instead it is based on failure by the Noticee in disclosing the material and price sensitive VCPL Loan Agreements, which have bearing upon the interest of the Noticee and its public shareholder. Considering these facts and circumstances, I reject such contention of the Noticee.

30. The Noticee in its submission has contended that it was not a party to the impugned loan agreements and hence there was no requirement for the Noticee to make disclosure of the impugned loan agreements to the stock exchanges. In this regard, though the Noticee was not a party to impugned loan agreements, however, the clauses of loan agreements, which are discussed in length in this order, shows that the impugned loan agreements were formulated by the Noticee's Promoters in a way that, despite the Noticee not being a party to the impugned loan agreements, yet said agreements would include certain crucial, onerous and hostile stipulations pertaining to the Noticee. As already noted in preceding paras, it is observed that the Noticee was aware of such Loan Agreements w.e.f. August 05, 2015, which is the date of the Board Meeting of the Noticee, in which agenda of updating the board of the Noticee regarding 'change of control' issue flowing from VCPL Loan Agreements was put forth by its Promoters. In view of these facts, I reject the contention of the Noticee that they were not aware of the VCPL Loan Agreements.

31. The Noticee has contended that the impugned Loan Agreements were entered into by its Promoters strictly in exercise of proprietary legal rights, within the sole purview of and prerogative of the Promoters, incapable of interference from the Noticee. The SCN fails to appreciate material distinctions between shareholder rights, director responsibilities and the Noticee's obligations within the governing SEBI framework. The discharge of fiduciary responsibilities by the Promoters is incapable of being conflated with rights available for exercise by a shareholder. In this regard, I note that the present SCN has not alleged any fiduciary issue of the Noticee's promoters and has also not challenged any of the shareholders' right as available under the law. The SCN only alleges failure on the part of the Noticee to disclose *material* and *price sensitive* information regarding Loan Agreements.

32. The Noticee has contended that at the time of execution of the respective loan agreements there was no statutory or regulatory duty cast upon promoters of listed entities to disclose loan agreements either to the listed entities or to the stock exchanges. In this regard, I note that the objection of the Noticee is beyond the scope of SCN in the instant proceedings, as the disclosure violation alleged in the SCN are flowing from Clause 36 of the Listing Agreement *qua* Noticee.

33. One of the contention of the Noticee is that it has been made vicariously liable for the act of its Promoters and in this regard it has placed reliance upon the judgment of Hon'ble Supreme Court in the matter of *Sunil Bharti Mittal v. CBI (2015) 4 SCC 609* and *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear (2010) 10 SCC 479*. In this regard, I note that the liability to make disclosure by the Noticee directly flows from Clause 36 of Listing Agreement read with Section 21 of SCRA as discussed in above paras while dealing with the merits of the case. The Noticee is mandated by the statute and the Listing Agreement to make disclosures of the material and price sensitive information to the stock exchanges. Information regarding impugned loan agreements may have flowed through the act of its Promoters, but same information was having bearing on the Noticee's interest and its public shareholders interest, therefore, saying that the Noticee is held vicariously liable for the acts of its Promoters is a flawed argument. I had also perused the aforesaid judgments of Hon'ble Supreme Court, and I am of a view that, in both the judgments principle of vicarious liability has been discussed in terms of criminal law proceedings, however, the instant proceedings are civil in nature and therefore, the aforesaid judgment is of no help to the Noticee and thus, the contention of the Noticee in this regard is not tenable.

34. I note that the aforesaid event of execution of impugned loan agreements by the Promoters of the Noticee cannot be contemplated as '*non event*', as contended by the Noticee in its submission. I further note that, the aforesaid fact regarding impugned loan agreements being a '*material*' and '*price sensitive*' information establishes the jurisdiction in instant proceedings and I am, therefore, of a view that no

'jurisdictional error' has been committed by initiating the instant proceedings based on aforesaid 'jurisdictional fact'. Therefore, the reliance of the Noticee's upon the Hon'ble Supreme Court judgment in the matter of *Arun Kumar & Ors. (Supra)* is out of place.

35. The Noticee has also contended that the said investigation report examined the ICICI loan agreement dated 14 October 2008, wherein it held that "*no violations of SAST Regulations, Listing Agreement and SCRA were observed*". There is no justification for distinguishing promoter loans from ICICI from that of VCPL. In this regard, I note that the ICICI Loan Agreement is not part of these proceedings.

36. The Noticee has contended that the QSPL has a chequered history with it and due to acrimonious relationship the Noticee, it has been subject to multitude of complaints and actions. In this regard, I note that complaint filed by the QSPL against the Noticee is only a basis to initiate the investigation. The findings of the investigation which are based on the relied upon documents and which culminated into the instant proceedings due to the violation of Listing Agreement read with SCRA by the Noticee. In view of same, I reject the contentions of the Noticee with regard to mechanical issuance of SCN in the instant proceedings.

37. In the instant case, the impugned Loan Agreements were containing clauses and conditions that substantially affected the functioning of the Noticee. The said Loan Agreements, in addition to having clauses substantively affecting the interest of the Noticee, also warranted transfer of shares of the Noticee by its Promoters, which they carried out off-market by way of various *inter se* bulk transactions, in compliance with the said loan agreements. Consequently, information about said agreements and the consequent off-market share transfers amongst the Promoters in compliance with the agreements were essentially '*material*' and '*price sensitive*' and it had a potential to influence the decision of investors about trading in the shares of NDTV. Therefore, I am of a view that the Noticee has failed in its statutory obligations to make disclosure w.r.t. VCPL Loan Agreements.

38. In view of above findings, I conclude that the Noticee has violated of the provision of Clause 36 of Equity Listing Agreement read with Section 21 of SCRA. Therefore, I note that the Noticee is liable for penalty under Section 23E of SCRA. These said penalty provisions are mentioned as under:

> ***Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.***
>
> ***23E.*** *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

39. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under Section 23I of the SCRA imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 23J of the SCRA. The factors stipulated in Section 23J of the SCRA, reads as follows:

> ***23 J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely: -*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default.*

40. Having regard to the factors listed in Section 23J of the SCRA and the guiding principles laid down by the Hon'ble Supreme Court in the matter of *SEBI v/s Bhavesh Pabari (CIVIL APPEAL NO(S).11311 OF 2013)*, it is noted from the material available on record, that quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. In the facts and circumstances of this case, I deem it worth relying the observations of Hon'ble SAT, in its order dated June 09, 2014 in the matter of *Ashok Jain v/s SEBI (Appeal No. 79 of 2014)* wherein it was held that "*...disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non disclosure within the time stipulated under these regulations*". It is important to note that the Noticee had information regarding the impugned loan agreements on August 05, 2015, which had significant bearing upon its interest and the interest of its public shareholders. The VCPL loan agreements were inherently *material* and *price sensitive* in nature and therefore they are required to be disclosed to the stock exchanges for dissemination to the public, so that the public shareholders and prospective investors could have taken an informed decision regarding their dealing in shares of the Noticee. Depriving the public shareholders and prospective investors from such a crucial and price sensitive information is not only bad in law but also seriously affects the transparency in securities market. Under these circumstances, the Noticee has failed to act in a fair and transparent manner. Such act by the Noticee is blameworthy and serious in nature considering the degree of responsibility bestowed upon it by the statute and the applicable regulations and by no means can same be construed as a *bona fide* act.

41. As regards the contention and ruling relied upon by the Noticee about *mens rea*, I note that, as the imposition of the penalty under the SEBI Act and regulations is civil in nature and cannot be equated with penal character, *mens rea* is not essential for breaches of provisions of the SEBI Act/ SCRA and

regulations. The said position has been confirmed by the Hon'ble Supreme Court ruling in the matter of *Shriram Mutual Fund & Anr vs SEBI (Case No. 9523-9524 of 2005)* dated May 23, 2006.

42. The Noticee has placed reliance upon the Hon'ble Supreme Court judgment in the matter of *Hindustan Steel Limited v. State of Orissa (1969) 2 SCC 627; Bhanjatiya Steel Industries v. Commissioner, Sales Tax, Uttar Pradesh (2008) 11 SCC 617, Siddharth Chaturvedi v. SEBI (2016) 12 SCC 119* and *Adjudicating Officer* and Hon'ble SAT judgment in the matter of *Rakesh Agarwal v. SEBI 2003 SCC OnLine SAT 38* with regard to penalty. I had perused the aforesaid Supreme Court judgments and same purports a view that penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute. It has been observed that despite being in possession of information related to impugned loan agreements in August, 2015, the Noticee has not showed any intent to sought detailed clarification from its Promoters on the binding clauses which have bearing upon its interest and seriously affects interest of its public shareholder. The Noticee has simply relied upon the claim of its Promoters that the impugned loan agreement is not in the conflict of the interest of the Noticee. Further, the Noticee itself did not felt it apt to disclose the complete picture revolving around impugned loan agreements or even disclose the basic details of such loan agreements to the stock exchanges. Instead, the Noticee held a view that the distorted clarification made by it in June 15, 2015, in itself was sufficient disclosure with regard to such a material and price sensitive information. Such an act of a Noticee does not fall within the ambit of a *bona fide* act. Considering the same, I am of opinion that, in the instant case the failure by the Noticee in making disclosure to the stock exchanges of *material* and *price sensitive* information is neither technical nor venial in nature, instead it is a deliberate defiance on the part of the Noticee and thus, same cannot be construed as a *bona fide* act. Therefore, the aforesaid judgments are of no help to the Noticee. Further, the Hon'ble SAT judgment in the matter of *Rakesh Agarwal (supra)* deals with charge of insider trading and therefore, fact of both the cases are different.

43. I am also of the view that the Noticee's reliance on Hon'ble Supreme Court judgment in the matters of *Sundaram Finance Ltd. v. SEBI 2003 SCC OnLine SAT 3, Pramod Enterprises Limited v. SEBI 2019 SCC OnLine SAT 134* and *SEBI v. Cabot International Ltd. 2004 SCC OnLine Bom. 180* and Hon'ble SAT judgment in the matter of *Reliance Industries Limited v. SEBI (2004) SAT 68*, on the basis of a *bona fide* act resorting to its Promoters representation of '*no change in control*' is a flawed argument. I am of a view that no fairness and transparency has been shown in the instant matter by the Noticee and the act of deliberate defiance on its part in disclosing the impugned loan agreement, clearly shows that, it failed in proving its *bona fide* intent. Further, the aforesaid judgments of Hon'ble Supreme Court and Hon'ble

SAT are based on the basic fact that, if default/ failure are technical and venial breach having *bona fide* intent no penalty should follow. However, in the instant case failure on the part of the Noticee was without *bona fide* intent.

44. It is important to note that the disclosure requirements have their root in the continuous listing requirements laid down in the listing agreement which prescribed that the information must be disclosed at the time of occurrence of the event in order to enable the shareholders and the public to appraise the position of the company, so as to enable them to take an informed investment or disinvestment decision in the securities of the listed entity and to avoid the establishment of a false market in its securities. The timelines for making disclosures of such information is of much significance as the delay or complete failure would defeat the very purpose of the regulatory requirements. While holding so, I have due regard to the preamble of the SEBI Act and the primary functions of the Board as defined under the SEBI Act. The same includes protection of interest of investors in securities and to promote the development of and to regulate the securities market and prohibiting fraudulent and unfair trade practices related to the securities market. I have also perused the Hon'ble Supreme Court judgment in the matter of *SEBI v. Rakhi Trading (P) Ltd. (2018) 13 SCC 753* and Hon'ble SAT judgment in the case of *Pinnacle Enterprises Ltd. (Supra)* on role of SEBI based on fairness, integrity and transparency while imposing penalty.

45. I am of a firm opinion that, any act of concealing the material and price sensitive information from the public shareholders of the Noticee in particular and from the investors in securities market in general, cannot be considered as good for the securities market and for the interest of investors. I also observe that the importance of non-disclosure of such a material event by the Noticee can be gauged from the fact that for similar non-disclosures by the Promoters of the Noticee were found to be in violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') as per Ld. WTM order dated June 14, 2018 and SEBI Adjudicating Officer order dated December 24, 2020. Considering the role and responsibility of the Noticee in these regards and important obligations cast upon it under the Listing Agreements and SCRA, in my view, the default by the Noticee is grave and the seriousness of this matter cannot be ignored. Therefore, no lenient view should be taken in this matter and the case deserves imposition of deterrent monetary penalty to deal with the deliberate defiance, as found in this case.

46. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 23I of the SCRA read with rule 5 of the SCR Adjudication Rules, I hereby impose a penalty of Rs 5,00,00,000/- (Rupees Five Crore only) on the Noticee viz. New Delhi Television

Limited under section 23E of the SCRA. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

47. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order by way online payment on SEBI website at following tabs on SEBI website www.sebi.gov.in – ENFORCEMENT -> Orders >Orders of AO -> Pay Online or by way of using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case you face any difficulties in payment of penalties, you may contact the support at portalhelp@sebi.gov.in .

48. The said confirmation of e payment made in the format as given in table below should be sent to *"The Division Chief, EFD-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai - 400 051"* and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for(like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

49. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

50. In terms of Rule 6 of the SCR Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Amit Pradhan
Adjudicating Officer

Date: December 29, 2020
Place: Mumbai