

WTM/AB/CFD/CMD-1/17895/2022-23

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**FINAL ORDER**

**Under Sections 11(1), 11(4), 11(4A), 11B (1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.**

Entity No.	Name of the Entity	PAN
1.	Mr. Bhagwan Das Narang	AAEPN3092R
2.	Mrs. Rashmi Aggarwal	ABPPS8037H
3.	Mr. Shankar Aggarwal	ADVPA6970F

**In the matter of Dish TV India Limited**

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

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1. The present proceedings emanate from an interim order cum show cause notice dated **March 7, 2022** (hereinafter referred to as “**SCN**”), passed by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) *inter alia* against the **Noticees** wherein it was *prima facie* found that the Noticees were in violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”). The brief facts of the case, as noted in the SCN, are as follows:

- (i) Dish TV India Limited (hereinafter referred to as “**Company**”/ “**DTL**”), is a company listed since April 18, 2007 on BSE Limited (hereinafter referred to as “**BSE**”) and the National Stock Exchange of India Limited (hereinafter referred

- to as “**NSE**”) (hereinafter, collectively referred to as “**Exchanges**”).
- (ii) Certain entities belonging to the Essel Group (hereinafter referred to as “**Borrowers**”) had availed loans of INR 5,270 Crores between 2015 and 2018 from Yes Bank Limited (hereinafter referred to as “**YBL**”). A total of 47,19,13,990 shares of DTL (amounting to 25.63% of total shareholding of DTL) were pledged in favour of YBL by two promoter entities of DTL, namely, World Crest Advisors LLP (hereinafter referred to as “**WCA LLP**”) and Direct Media Distribution Ventures Private Limited (hereinafter referred to as “**DMDVPL**” and WCA LLP & DMDVPL hereinafter collectively referred to as “**Pledgors**”), as security for the said loans. In this regard, Deeds of Pledge were executed between the Security Trustees of YBL (Catalyst Trusteeship Services Limited and IDBI Trusteeship Services Limited) and the Borrowers.
  - (iii) Between May and July 2020, the borrowers defaulted on the loans, and the Security Trustees invoked the pledge. Subsequently, the Security Trustees took steps to get the pledged shares transferred in their own names or in the name of YBL.
  - (iv) Aggrieved by the above, WCA LLP filed a Commercial Suit No. 29569 of 2021 (hereinafter referred to as “**Suit**”) before the Hon’ble Bombay High Court alleging that YBL’s shareholding in the *Company* is bad in law. WCA LLP *inter-alia* prayed for an *ad-interim* injunction restraining YBL from voting at the AGM of the Company (which was scheduled on December 30, 2021). WCA LLP also prayed for postponement of the AGM and/or stay the effect and implementation of decisions taken in the said AGM.
  - (v) The Hon’ble Bombay High Court, vide an order dated December 23, 2021, rejected the interim reliefs sought by WCA LLP and directed that the *“result/outcome of the AGM to be held on 30th December, 2021, will abide by the decision in the above Interim Application.”*

- (vi) Thereafter, DTL conducted an AGM on December 30, 2021. Mr. Jayant Gupta, Partner of M/s Jayant Gupta & Associates was appointed by the Company as the Scrutinizer (hereinafter referred to as “**Scrutinizer**”) in terms of Rules 20 and 21 of the Companies (Management and Administration) Rules, 2014, to scrutinize the voting and remote e-voting process in a fair and transparent manner.
- (vii) The Company ought to have disclosed the voting results of the AGM in the prescribed format within two working days i.e. on or before January 03, 2022, in terms of provisions of Regulation 44(3) of LODR Regulations, which was not done. However, DTL, vide disclosure dated December 30, 2021, informed the Exchanges that it had requested the Scrutinizer to place all the information relating to e-voting in the AGM along with his Report in a sealed cover and hand the same over to the Company Secretary and Compliance Officer of the Company. It was stated that the same shall be placed before the Hon’ble Bombay High Court for further directions. The Company informed that it had also moved an application to place the voting results in a sealed cover before the Hon’ble Bombay High Court.
- (viii) Thereafter, SEBI received a complaint dated December 31, 2021 from YBL *inter-alia* requesting SEBI to ensure that the *Company*, being a listed entity, forthwith discloses the results of the AGM in terms of the requirement under Regulation 44(3) of the LODR Regulations.
- (ix) After examining the same, SEBI issued an Advisory to the *Company* vide letter dated January 17, 2022 (hereinafter referred to as “**First Advisory**”), advising it to *disclose the voting results/outcome of the AGM held on December 30, 2021, clearly mentioning the directions of the High Court, immediately. The Company was also advised to disseminate First Advisory itself to the stock exchanges.* It was also noted that the Company did not disclose the First

Advisory to the Exchanges, despite being directed to do so.

- (x) DTL replied to the First Advisory, vide letter dated January 18, 2022, stating that the issue of declaration of results of the AGM was *sub-judice* before the Hon'ble Bombay High Court by virtue of IA No. 121 of 2022 filed by the *Company* and IA No. 376 of 2022 filed by YBL, and requested SEBI to suspend the Advisory pending a decision in the aforesaid Interim Applications.
- (xi) Thereafter, SEBI examined the reply of the Company and the Order passed by the Hon'ble Bombay High Court in IA No. 376 of 2022. It was observed that there was no specific restraint imposed by the Hon'ble Bombay High Court on declaring the results of voting of the above noted AGM.
- (xii) Hence, SEBI issued another letter dated February 9, 2022 (hereinafter referred to as "**Final Advisory**"), drawing the attention of the Company to its statutory obligation towards shareholders and other stakeholders and its failure to act in compliance with the provisions of Regulation 44(3) of the LODR Regulations. The Company was once again advised to immediately disclose the voting results of the AGM held on December 30, 2021. Further, the Company was also informed that continuing non-compliance shall result in initiation of appropriate enforcement action against the Company. The Company was also advised to disclose the Final Advisory to the Exchanges for dissemination of the same to investors. The said letter was sent to the Company by way of an email dated February 09, 2022 at 06:57:00 PM in the evening.
- (xiii) Thereafter, the Company submitted a letter dated February 10, 2022 to SEBI, in reply to the Final Advisory. The Company once again stated that the issue of declaration of AGM results was pending with the Hon'ble Bombay High Court. The Company reiterated its request to SEBI, to await the outcome of the proceedings pending before the Bombay High Court. The Company, however, disclosed the Final Advisory to the Stock Exchanges on February 10, 2022 at

9:58:36 PM.

- (xiv) The SCN noted that, vide its order dated December 23, 2021, the Hon'ble Bombay High Court had only directed that the result/outcome of the AGM to be held on December 30, 2021, *will abide by the decision in the above Interim Application*, and rejected any *ad-interim* relief. The Hon'ble Bombay High Court had not issued any directions to prohibit the Company from disclosing the outcome of the AGM. The SCN, *prima facie* found that the Company had delayed the disclosure, knowing fully well that there was no such stay/ direction in operation, which would prohibit the *Company* from disclosing the outcome of the above AGM held on December 30, 2021. The SCN also noted that subsequently, the Hon'ble Bombay High Court clarified the position in its order dated February 17, 2022 in IA No. 376 of 2022, making the following observations:

*"Mr. Khambata finds that the reason for delay in declaring of the results is said to be pendency of Interim Application (L) no. 29574 of 2021 and defendant no. 3 has claimed that the matter is sub-judice. It is clarified that pendency of the above two Interim Applications have no bearing on the requirement reiterated by SEBI..."*

- (xv) The SCN found that the Company did not disclose the results of voting of the AGM held on December 30, 2021 despite issuance of the above clarification by the Hon'ble Bombay High Court and repeated advisories issued by SEBI. The SCN further noted that as on the date of the passing of the SCN, 68 days had passed since the date of AGM.

- (xvi) The SCN *inter alia* alleged that:

- (a) The Board of Directors of the Company was *prima-facie* in violation of the provisions of Regulations 4(2)(f)(ii)(6), 4(2)(f)(ii)(8), 4(2)(f)(iii)(2), 4(2)(f)(iii)(3), 4(2)(f)(iii)(6) read with 17(3) of LODR Regulations. The Board

of Directors of the Company was also *prima-facie* in violation of the Clauses 4.1, 4.4, 5.1, 5.2 and 5.11 of the Code of Conduct for Directors and Senior Management (hereinafter referred to as “Code of Conduct”), as available on the website of the Company, framed pursuant to Regulation 17(5) of the LODR Regulations, read with Regulation 26(3) of the LODR Regulations.

(b) The Independent Directors on the Board of the Company were *prima-facie* in violation of the provisions of Clauses 1 and 2 of Schedule A of the Code of Conduct read with Regulation 26(3) of the LODR Regulations.

(xvii) The SCN, *inter alia* issued following directions to the Company and its directors, including the Noticees herein:

**“ORDER**

47. Considering the facts narrated in the preceding paras and in order to protect the interests of investors and public shareholders of the Company as well as the integrity of the securities market and to uphold the principles of good corporate governance, I, in exercise of powers conferred upon me by virtue of Sections 11(1), 11(4) and 11B(1) of the SEBI Act hereby issue the following directions in the peculiar facts and circumstances of this case:

- i. The Compliance Officer viz. Mr. Ranjit Singh (Entity No. 8) shall immediately, and in any case not later than 24 hours from delivery of this Order, ensure compliance with Regulation 44(3) of the LODR Regulations by disclosing the voting results of the AGM to both the Exchanges in the format prescribed. Further, the Board of Directors of the Company is directed to ensure strict adherence of the aforesaid direction, by the Compliance Officer.
- ii. The Depositories shall immediately, upon receipt of this order, freeze the demat accounts of the Directors and the Compliance Officer of the Company, listed as Entities no. 2 to 8 in the beginning of this order, till

the time the voting results of the AGM held on December 30, 2021 are disclosed on the stock exchanges or till further orders, whichever is earlier.

- iii. The Scrutinizer Mr. Jayant Gupta, Partner of M/s Jayant Gupta & Associates, shall forthwith, and in any case not later than 24 hours from the delivery of this Order, provide a copy of the report on the voting results of the AGM to the Exchanges.
- iv. In case of non-compliance with the directions mentioned at the above para 47(i), the Stock Exchanges shall disseminate the Scrutinizers Report on their platform for the information of the investors.
- v. The stock exchanges shall inform the depositories about disclosure of voting results of AGM as soon as the same are disclosed at the exchange platform.”

- 2. The SCN called upon the Noticees to show cause as to why further appropriate directions under the provisions of Sections 11(1), 11(4) and 11B (1) of SEBI Act, 1992 should not be issued against them and also why appropriate penalty should not be imposed in terms of Section 11B(2) read with 11(4A) of SEBI Act, 1992 read with Sections 15A(b) and 15HB of SEBI Act, 1992 for the aforementioned alleged violations of law committed by them. The Noticees were advised to file their reply/objections within 14 days from the date of the SCN and also to indicate whether they desired to avail an opportunity of personal hearing.
- 3. Aggrieved by the directions issued in the SCN, 3 out of 8 noticees in the SCN i.e. the Company, Jawahar Lal Goel (CMD) and Ranjit Singh (Compliance Officer) filed an appeal bearing no. 115 of 2022 before the Hon’ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as “**Hon’ble SAT**”). Hon’ble SAT vide its order dated March 9, 2022 issued the following directions:-

*“.....In this regard, we do not find any reason to stay the prima facie observations given by the WTM in the impugned order as these are only prima-facie observations and are not findings. We, however, direct the appellants to file an appropriate reply on or*

*before March 20, 2022 to the show cause notice. The WTM will thereafter decide the matter after giving an opportunity of hearing to the appellants within four weeks thereafter. The appeal is disposed of.....”*

4. Thus, Hon'ble SAT directed passing of order in respect of the appellants in Appeal No. 115 of 2022 within 4 weeks of filing of their replies. Thereafter, the Company, its directors and the Compliance Officer filed replies dated March 21, 2022. After filing of the replies as mentioned above, the file was placed before me on March 24, 2022, for granting a date of hearing in the matter. In view of the timeline provided by the Hon'ble SAT for passing of order in the matter (four weeks), a personal hearing was scheduled for March 31, 2022. Vide emails dated March 26, 2022, the Authorized Representatives (ARs) of the Company, its directors and Compliance Officer sought an adjournment and requested that the hearings be held on April 11/ 13, 2022. However, the request was not acceded to in view of the aforementioned timeline given by the Hon'ble SAT and the entities were advised to appear for the hearing on the date communicated to them. On the scheduled date, the Company, its directors (including the Noticees herein) and the Compliance Officer, through their ARs, appeared before me and reiterated their written submissions. On the date of the hearing, the Company, Mr. Jawahar Lal Goel, Mr. Ashok Mathai Kurien, Mr. Anil Kumar Dua and Mr. Ranjit Singh (hereinafter also referred to as “**the Applicants**”), informed that they would be filing application for settlement of the proceedings in terms of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as the “**Settlement Regulations**”).
5. Upon filing of the settlement applications, passing of the final order in respect of the Applicants was kept in abeyance, in terms of Regulation 8 of the Settlement Regulations. As there was a direction dated March 09, 2022 from the Hon'ble SAT, to pass order in respect of appellants in Appeal No. 115 of 2022, within 4 weeks of filing of replies by the appellants (three of the Applicants), SEBI filed MA No. 270 of 2022 in Appeal No. 115 of 2022 seeking modification of the order dated March 09, 2022 passed by Honb'le SAT. Similarly, MA No. 269 of 2022 was also filed by the Company in Appeal No. 115 of 2022. Both these MAs were disposed of by Hon'ble

SAT vide its order dated April 25, 2022 directing as under:

“ .....

1. Two miscellaneous applications have been filed, being Misc. Application No. 269 of 2022 and Misc. Application No. 270 of 2022 by the appellant as well as by the respondent SEBI. By order dated March 9, 2022 we had disposed of the appeal with the following observations:-

*“4. In this regard, we do not find any reason to stay the prima facie observations given by the WTM in the impugned order as these are only prima-facie observations and are not findings. We, however, direct the appellants to file an appropriate reply on or before March 20, 2022 to the show cause notice. The WTM will thereafter decide the matter after giving an opportunity of hearing to the appellants within four weeks thereafter. The appeal is disposed of. The Caveat Application is also disposed of accordingly.”*

2. Pursuant thereto the appellant have filed a settlement application before SEBI which is pending consideration. In the light of the aforesaid, we clarify that in view of the settlement application being filed, the Whole Time Member (WTM) will not pass any order till the disposal of the settlement application. Misc. Applications are disposed of.

.....”

6. Noticee no. 3 herein, filed a MA No. 356 of 2022 in Appeal No. 115 of 2022, seeking modification of aforesaid order dated April 25, 2022 passed in MA No. 269 and 270 of 2022 in Appeal No. 115 of 2022 by Hon'ble SAT, to the effect that the order dated April 25, 2022 passed by Hon'ble SAT would only apply to those persons who have filed settlement applications before SEBI, alongwith MA No. 354 of 2022 – for urgent hearing and MA No. 355 of 2022 – for impleadment. All these MAs were dismissed as not pressed, by Hon'ble SAT vide its order dated June 09, 2022.
7. Thereafter, Noticee no. 3 herein filed an Appeal No. 307 of 2022 impugning the SCN. The said appeal was disposed of by Hon'ble SAT vide its order dated June 24, 2022 with following directions:

“.....9. In view of our earlier order dated March 9, 2022 wherein we had directed the WTM to decide the matter within four weeks and hearing was concluded on March 31, 2022, and the order has still not been passed, we accordingly direct the respondent to pass an appropriate order within three weeks from today in so far as the present appellant is concerned.....”

8. The Appeal No. 115 of 2022 was filed by the Company and its compliance officer and CMD and not by Noticee no. 3. Thus, there was no specific date qua Noticee No. 3 with respect to passing of final order. In view of Regulation 8 of the Settlement Regulations, the proceedings with respect to the Applicants for settlement are to be kept in abeyance.
9. In view of the aforesaid directions issued by Hon'ble SAT vide order dated June 24, 2022, the proceedings initiated vide the SCN against the Noticees herein (who have not filed any settlement application) are being disposed of by the present order. As noted above, the present Noticees, namely, Mr. Bhagwan Das Narang, Dr. Rashmi Aggarwal and Mr. Shankar Aggarwal, the independent directors of the Company, had filed their replies dated March 21, 2022 and also appeared for personal hearing on March 31, 2022. At the time of the personal hearing, the Noticees requested for additional time to file written submissions, which was granted. Thereafter, vide email dated April 4, 2022 the Noticees filed written submissions. The submissions of the Noticees, in brief are as follows:
  - (i) The Noticees are independent directors of the Company, and are persons of repute, with impeccable credentials, integrity, and known for upholding the highest standards of corporate governance.
  - (ii) It is a well-established principle that the liability of Independent Directors is extremely limited. The Noticees relied on judgments like *V. Selvaraj v. Reserve Bank of India*, 2019 SCC OnLine Mad 38930, *S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla and Ors.*, [2005] 8 SCC 89, *Seema Khandelwal, In re*, 2020 SCC OnLine SEBI 55, *Sayanti Sen v. Securities and Exchange Board of India*, 2019 SCC OnLine SAT 132. and Circular dated March 2, 2020 issued by the Ministry of Corporate Affairs of the Government of India in support of their submissions in this regard.

- (iii) The Noticees have stated that SEBI passed an *ex-parte* order in relation to the AGM which was conducted on December 30, 2021, *i.e.*, over two months before the date of SEBI's order. The Noticees have stated that a hearing ought to have been granted under such circumstances. The Ex-Parte Order is contrary to SEBI's own Circular of January 22, 2020 which postulates at least a 10-day notice for freezing the demat accounts of promoters.
- (iv) The allegations of various violations of the LODR Regulations and Code of Conduct are generic in nature. The Independent Directors have no conflict of interest with any action taken by the Company's management, or the Board in its collective wisdom. The Independent Directors have, at all times acted in the interest of the Company and its stakeholders.
- (v) The Independent Directors of the Company cannot be held liable for any alleged misconduct of the Company unless it is through a Board Process with the active consent of the Directors under Section 149(12) of the Companies Act, 2013.
- (vi) A Board Meeting was fixed for February 24, 2022 for consideration and approval of the Un-Audited Financial Results of the Company. The Independent Directors have submitted that before the commencement of the said Board Meeting, they were informed of the Advisories of SEBI. They have submitted that it was the first time they were informed of the SEBI Advisories. They were also informed that the Management has already replied to SEBI vide their letters dated January 18, 2022 and February 10, 2022 and was awaiting a final response. The Management also elaborated that this was done in line with the legal advice received. The Independent Directors advised the Management that any further communication from SEBI be immediately brought to the attention of the Independent Directors and no further reply be sent without their consent. The Board felt that in view of the reply already sent by the Management of the Company in response to the Advisories of SEBI, it would be prudent to await the final decision of SEBI. Further, the Independent Directors, after application of mind, and in discharge of their fiduciary duties, and in view of the explanation given by the Management, felt that since replies to SEBI have already been issued, it would be prudent to await the final response of SEBI. The Independent Directors however asked the Management to examine the Advisories legally and act accordingly.
- (vii) The order of the Hon'ble Bombay High Court dated December 23, 2021 and February 17, 2022 (as corrected on February 21, 2022) were never discussed in the Board.
- (viii) The Independent Directors were never aware of the loan/borrowing taken by the promoter/promoter group and/or the borrowing entities as referred to in the SCN.

- (ix) With respect to the postponement of the AGM on two occasions, it is stated that on the proposal of the Management, the Board took the decision to postpone the AGM. The Independent Directors further state that first extension was in pursuance of a general exemption granted by the RoC. The second extension was agreed to by the Board on the proposal of the Management in light of the ongoing litigation with Yes Bank. In any case, the Companies Act provides for an extension of upto three month and hence there was nothing unlawful in the extensions availed of. It is further stated that there was no intention on the part of Independent Directors either directly or indirectly to deny the opportunity to Yes Bank to participate in the voting process.
- (x) In view of the above, the independent directors have submitted that no further action is merited against them under Sections 11, 15A and 15HB of the SEBI Act, 1992.

**Consideration of submissions and findings:**

10. I have considered the SCN and replies received. The SCN alleges the violation of the following provisions of law by the Noticees:

**Relevant extract of the provisions of LODR Regulations:**

*“4(2)(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:*

*...*

*(ii) Key functions of the board of directors-*

*...*

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

*.....*

*(8) Overseeing the process of disclosure and communications.*

*...*

*(iii) Other responsibilities:*

*...*

*(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.*

*(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due*

*diligence and care, and in the best interest of the listed entity and the shareholders.*

....

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

*“.....17(3). The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.....”*

*“.....26(3) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.....”*

**Relevant extract of Code of Conduct for Directors and Senior Management of DISH TV India Ltd.**

**.....4.1. Duties, Responsibilities and Function of the Directors**

*Every Director shall conduct the affairs of the Company and perform his duties with due care, diligence, dignity, honesty, transparency and integrity and shall conform to the highest moral and ethical standards and at all time and act in good faith and in the best interest of the Company.*

*Besides the duties and functions of the Directors as prescribed under the applicable laws, Articles of Association and the Code, as set out hereinbefore, a Director is also expected to adhere to all the duties prescribed under the Act which inter alia include:*

- *Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, shareholders, community and for the protection of environment.*
- *Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.*
- *Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company...*

**4.4 Duty to review Reports/Compliances**

*The Directors are required to review reports / compliance statements with respect to the affairs of the Company at such intervals as may be prescribed from time to time. The following is an indicative list of such reports / compliance statements. The Directors may add or modify the reports as they deem appropriate to ensure statutory compliance and smooth & transparent operations of the Company.*

- *Statutory Compliance Report*

...

- *Report on compliance of code of corporate governance...*

## **5.1. Regulatory compliance**

*The Directors and Senior Management are required to comply with every applicable law for the time being in force and rules and regulations made there under. They are also expected to encourage and promote statutory compliance in its true letter and spirit. Should they come across or witness any non-compliance, they are expected to notify the same at the earliest to the Chief Executive Officer / Company Secretary.*

## **5.2. Conflicts of Interest:**

*While performing their duties, Directors and Senior Management shall carry out their responsibilities to the exclusion of any personal advantage, benefit or interest. The Directors acknowledge their obligations under the provisions of the Act, Listing Regulations, Disclosure and Investor Protection Guidelines issued by the Securities and Exchange Board of India and shall strictly comply with applicable Indian and foreign laws, regulations and shall not act by themselves or aid or abet any person acting contrary to any such provisions, judgments, orders, judicial, quasi-judicial, administrative or otherwise issued by a competent authority...*

## **5.11. Goodwill and Reputation of the Company**

*The Directors and Senior Management of the company shall contribute towards enhancing the goodwill and reputation of the Company through their deeds and acts and shall not tarnish the image of the Company and bring immediately to the notice of the Company, Director or Committee, any act and deed which is harmful and detrimental to the goodwill and reputation of the Company...*

## **SCHEDULE-A**

### **Additional Duties of Independent Directors pursuant to provisions of Schedule IV of the Companies Act, 2013**

#### **1. GUIDELINES OF PROFESSIONAL CONDUCT:**

*An independent director shall:*

- *uphold ethical standards of integrity and probity;*
- *act objectively and constructively while exercising his duties;*
- *exercise his responsibilities in a bona fide manner in the interest of the company;*

...

- *assist the company in implementing the best corporate governance practices*

## **2. ROLE AND FUNCTIONS:**

*The independent directors shall:*

....

- *safeguard the interests of all stakeholders, particularly the minority shareholders;*
- *balance the conflicting interest of the stakeholders;*

...

- *moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest"*

11. The Noticees have, however, submitted that the various allegations of violations of LODR Regulations and the Code of Conduct are generic in nature and nothing specific has been alleged in the SCN against the Independent Directors.

12. From the SCN and material available on record, I find that in the present case, the AGM of the Company was held on December 30, 2021. Hence, in terms of provisions of Regulation 44(3) of LODR Regulations, the voting results of the AGM were to be disclosed by the Company in the prescribed format within two working days i.e. on or before January 03, 2022. However, no such disclosure to the stock exchanges was made within the time stipulated therefor. YBL filed a complaint dated December 31, 2021 *inter-alia* stating that the Company had not disclosed the voting results of the AGM held on December 30, 2021 citing the order dated December 23, 2021 of the Hon'ble Bombay High Court and requesting SEBI to ensure that the Company, being a listed entity, forthwith discloses the results of the AGM in terms of the requirement under Regulation 44(3) of LODR Regulations. After examining the said complaint, SEBI issued First Advisory on January 17, 2022 to the Company which *inter alia* provided as under:

*".....The High Court, in the aforementioned Order (dated December 23, 2021), has only recorded that the result / outcome of the AGM will "abide by" the decision in the Interim Application. There was no direction whatsoever from the Hon'ble High Court not to publish the voting results or to place them in a sealed*

*cover before the Court. ....*

*The Company is therefore advised to disclose the voting results/outcome of the AGM held on December 30, 2021, clearly mentioning the directions of the High Court, immediately.*

*You are also advised to disseminate this letter to the stock exchanges, who are advised to take note of the contents of this letter.....”*

13. Separately, on the same day vide another letter dated January 17, 2022, SEBI also sought an explanation from the Company for non-compliance with the provisions of Regulation 44(3) of LODR Regulations.

14. In response to the First Advisory, the Company vide its letter dated January 18, 2022, responded *inter alia* stating as under:

*“.....7. It becomes clear therefore that the issue of declaration of the results of the AGM conducted on 30.12.2021 is sub-judice before the Hon’ble High Court of Bombay. It may thus be apposite for your good offices to await the outcome of the proceedings before the Hon’ble High Court of Bombay, suspend the Advisory pending the decision in the Interim Applications by the Hon’ble High Court of Bombay and refrain from taking any precipitative action in this regard. The Company will, of course, abide by any directions/order passed by the Hon’ble High Court and this Hon’ble Authority.....”*

15. Thereafter, SEBI issued Final Advisory on February 09, 2020 which *inter alia* stated as under:

*“.....4. In spite of there being no prohibitory/restraint order from the Court, the Company has failed to disclose the voting results of the AGM held on December 30, 2021, thereby failing to comply with the provisions of regulation 44(3) of the SEBI LODR.*

*5. As this action by the Company ultimately affects the shareholders and the investors due to lack of information in the public domain the Company is once again called upon to disclose the voting results of the AGM held on December 30, 2021, immediately as the disclosure has already been delayed by 37 days.....”*

16. In response to the Final advisory, the Company vide its letter dated February 10, 2022, replied to SEBI *inter alia* stating as under:

“.....5. It can therefore be seen that the Hon’ble High Court has admitted / issued notice on the two Applications, pleadings have been completed by all parties, and the matter has been listed for arguments. Thus, it is a matter of fact that the Hon’ble High Court of Mumbai, which has taken cognizance of the matter, is seized with the very issue of declaration of results of the AGM conducted on 30 December 2021 and will be hearing the arguments of the parties and issue its final decision in relation to declaration of outcome of the AGM held on 30 December 2021.

6. It is again brought to your kind attention that the Hon’ble Bombay High Court had ordered the Company to abide by the decision in the IA No. 29574 of 2021, which I.A. is still pending final adjudication. Clearly there is an order of the Hon’ble Court in relation to the resolutions proposed at the AGM. The true scope of this order is what has constrained the Company to approach the Hon’ble High Court. Therefore, it would be most apposite for your good offices to await the outcome of the proceedings before the Hon’ble High Court of Bombay and refrain from taking any precipitative action in this regard. Any action as proposed by the letter under reply would amount to overreaching the powers of the Hon’ble High Court of Bombay, which is seized of the matter on the exact same point.....”

17. I note that on February 10, 2022, the Company informed the stock exchanges as under:

“.....1. As disclosed through our earlier communications/disclosures dated 24.12.2021 and 30.12.2021 made to the Stock Exchanges, World Crest Advisors LLP had filed a Commercial Suit (L) No. 29569 of 2021 before the Hon’ble High Court of Bombay challenging the ownership of shares of the Company held by Yes Bank Limited. The Company was arrayed as one of the Parties/ Defendants in the matter. On an application filed by World Crest Advisors LLP, by way of an Order dated 23.12.2021, the Hon’ble High Court of Bombay was pleased to direct that the voting results / outcome of the Annual General Meeting (“AGM”) proposed to be held on 30.12.2021 will abide by the decision in the interim application filed by World Crest Advisors LLP. Given the directions contained in the said Order, and the procedural legal uncertainties resulting therefrom, the Company had filed Interim Application No.

121 of 2022 before the Hon'ble Court for leave to file the voting results / outcome of the AGM which has been obtained in a sealed cover. Yes Bank Ltd had also filed an Interim Application No. 376 of 2022 for a direction from the Court for declaration of the results.

2. The Company has on February 9, 2022 received an advisory letter bearing No. SEBI/HO/CFD/CMD1/PW/P/2022/5395/1 in relation to compliance with SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015. A copy of the said Advisory Letter is enclosed.
  3. The Company has responded to SEBI and brought to its attention that the issue of declaration of results of the AGM conducted on 30.12.2021 to be declared by Dish TV India Limited is sub-judice before the Hon'ble High Court of Bombay in the aforementioned two applications. The Hon'ble Court has admitted / issued notice on the two applications filed in the said matter, pleadings have been completed by all parties, and the matter has been listed for arguments. Thus, very issue of declaration of results of the AGM conducted on 30.12.2021 is in fact sub-judice before the Hon'ble High Court, which has taken cognizance of the matter, and will be hearing the arguments of the parties shortly, and issue its decision.....”
18. Paras 12-17 above show that the Company was engaged in the communications with SEBI giving its own justifications for not disclosing the AGM results. I am not going into the merits of the justifications put forth by the Company, as the settlement applications of the Company, compliance officer and non-independent directors are pending and the scope of these proceedings is limited to the allegations in the SCN in relation to the independent directors.
19. The Independent Directors have submitted that Section 149(12) of the Companies Act, 2013 provides that an independent director can only be held liable in respect of such acts of omission or commission by a company which had occurred with: (i) his or her knowledge; (ii) attributable through board processes; and (iii) with his consent or connivance; or (iv) where he had not acted diligently. That Independent Directors of the Company cannot be held liable for any alleged misconduct of the Company unless it is through a Board Process with the active consent of the Directors. The phrase “attributable through Board processes” appearing in this section warrants special attention and must not be considered merely ornamental. In this regard, in the

present case the decision to not disclose the AGM results, was not taken with the knowledge of the Independent Directors attributable through Board processes, or with their consent or connivance and therefore, no liability can be affixed on the Independent Directors. In support of the above submissions, the independent directors have relied on the MCA Circular, "General Circular No.1/2020 F. No. 16/1/2020- Legal" dated March 2, 2020 and the order of the Hon'ble Madras High Court in *V. Selvaraj v. Reserve Bank of India*, 2019 SCC OnLine Mad 38930.

20. The above mentioned MCA Circular dated March 2, 2020 states that:

"Section 149(12) is a *non obstante clause* which provides that the liability of an Independent Director (ID) or a non-executive director (NED) not being promoter or key managerial personnel would be only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. In view of the express provisions of section 149(12), IDs and NEDs (non-promoter and non-KMP), should not be arrayed in any criminal or civil proceedings under the Act, unless the abovementioned criteria is met."

21. In the aforementioned matter case of *V. Selvaraj vs. RBI* (supra) cited by the Noticees, the Hon'ble Madras High Court held as follows:

"Section 149(12) of the Act makes it very clear that an Independent Director shall be held responsible only in respect of such acts of commission or omission by a Company which occurred with his knowledge, consent or connivance, but in the matter on hand, it is apposite to note that no materials have been brought on record to show that the Respondents actively participated in the day-to-day affairs of the Company or in the Board Meeting and the commissions and omissions alleged against the Company had taken place with the knowledge, consent or connivance of the Respondents to satisfy the ingredients of Section 149(12) of the Act."

22. I note that under Regulation (4)(2)(f)(i)(2) of the LODR Regulations, it is provided as under:

*"The board of directors and senior management shall conduct themselves so as to meet*

*the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making."*

23. Regulation (4)(2)(f)(iii)(3) of the LODR Regulations provides as under:

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

24. In terms of Regulation 6 of the LODR Regulations, a listed entity is required to appoint a qualified company secretary as the compliance officer who shall be responsible for-

- (i) Ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.*
- (ii) Co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.*
- (iii) Ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.*
- (iv) Monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.*

25. Thus, matters relating to disclosure are to be overseen, mainly by the company secretary and by whole-time directors. Regulation 17(8) of LODR Regulations, provides as under:

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

26. Regulation 24(2) of LODR Regulations which requires the listed entity to submit, quarterly compliance report on corporate governance, states that the same shall be signed by either compliance officer or CEO. Thus, it can be seen that LODR

Regulations, for practical purposes, impose the burden of compliance of matters relating to filing and disclosure mainly on the compliance officer/ CEO - who are KMPs and/or whole-time directors of the company and involved in the day to day management of the company.

27. I note that Section 149(12) of the Companies Act, 2013 states that:

*“.....Notwithstanding anything contained in this Act,—*

*(xi) an independent director;*

*(xii) a non-executive director not being promoter or key managerial personnel,*

*shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently;.....”*

28. Regulation 25(5) of the LODR Regulations, provides as under:

*“.....(5) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his/her knowledge, attributable through processes of board of directors, and with his/her consent or connivance or where he/she had not acted diligently with respect to the provisions contained in these regulations.....”*

29. Generally, while non-executive directors including the independent directors on the board of a company meet during Board / Audit Committee meetings, they are not part of the day to day management of the company. Having regard to the role of the independent directors which is played by them by attending committee/ board meetings, Section 149(12) of the Companies Act, 2013 and Regulation 25(5) of the LODR Regulations, refer to knowledge acquired through board processes.

30. I note that a meeting of the board of directors was fixed for February 14, 2022 to *inter-alia* consider, approve and take on record the Un-Audited Financial Results of the Company for the third Quarter (Q3) and nine months period ended December 31, 2021, of the Financial Year 2021-22, duly reviewed (Limited Review) by the Statutory

Auditors of the Company. The Independent Directors have stated that they were informed of the SEBI Advisories (dated January 17, 2022 and February 9, 2022) on February 14, 2022, just prior to the commencement of the Board Meeting. That the Company informed them that it had already replied to SEBI and was awaiting a final response and this was done in line with the legal advice received by the Company. That Noticees told the Company that any further communication from SEBI be immediately brought to their attention, no further reply be sent without their consent and to examine the advisories legally and act accordingly. Noticees have stated that it is a matter of fact that Noticees came to know about the two advisories issued by SEBI, just prior to the commencement of the board meeting held on February 14, 2022 and they issued necessary instructions to the Company for further course of action in the matter. Thus, it is not correct to say that knowledge of independent directors must be the one acquired through the board processes. The knowledge of the independent directors could be acquired through any reliable and credible sources including public disclosures available on the website of the stock exchanges where shares of the company are listed, as disclosed by the company, however, the important thing is whether the independent directors acted diligently after acquiring such knowledge either through board process or other reliable and credible sources.

31. I note that SEBI's First Advisory was not disclosed by DTL to the Exchanges. As a result, the fact that SEBI had issued such an advisory was not in the public domain. The material available on record, does not suggest that the Noticees were otherwise aware of the First Advisory issued by SEBI. The Final Advisory was disclosed by DTL to the exchanges, and thereafter, the same was widely reported by various news outlets between February 11-12, 2022, i.e. couple of days before the Board Meeting held on February 14, 2022. On February 14, 2022, before commencement of board meeting, the Company informed the Noticees that it had already replied to SEBI and was awaiting a final response and this was done in line with the legal advice received by the Company. I note that Noticees on February 14, 2022 told the Company that any further communication from SEBI be immediately brought to their attention, no further reply be sent without their consent and to examine the advisories legally and

act accordingly. The SCN and facts and circumstances of the case do not show whether the replies of the Company dated January 18, 2022 and February 10, 2022 to SEBI and disclosure to the stock exchanges on February 10, 2022 was done after deliberation with independent directors and the facts do not indicate any complicity of the Independent Directors with respect to the disclosures under Regulation 44(3) of the LODR Regulations and the Advisories issued by SEBI. Thus, no omission to exercise due diligence can be attributed to the independent directors in the facts and circumstances of the case.

32. Regarding order dated February 17, 2022 of the Hon'ble Bombay High Court, I note that the Independent Directors have stated that they were not aware of the aforesaid order. Unlike the information pertaining to the filing of the Suit by WCA LLP and order dated December 23, 2021 passed therein, the order dated February 17, 2022 was not disclosed by the Company to the Exchanges. I find that the material available on record does not indicate that the Noticees herein were otherwise aware of this order and having regard to discussions recorded in paras 22-29 above, failure to inform the said order to the stock exchanges, is not attributable to these Noticees, in the facts and circumstances of the case.

33. It is also observed that the interim order had directed that the demat accounts of *inter alia* the Noticees herein would be under freeze till voting results of the AGM held on December 30, 2021 were disclosed on the stock exchanges. The Company has disclosed the results of the AGM to the Exchanges on March 08, 2022. Thus, on declaration of voting results on March 8, 2022, the freezing of the demat accounts was to be lifted in terms of the said order.

**Directions:**

34. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4),

11(4A), 11A and 11B(1), 11B(2) hereby dispose of the proceedings initiated by the SCN against the Noticees, namely, Bhagwan Das Narang, Rashmi Aggarwal and Shankar Aggarwal without any further directions.

35. This order comes into force with immediate effect.

36. A copy of this Order shall be served on the Stock Exchanges and Depositories, for necessary action.

**Place: Mumbai**

**Date: July 14, 2022**

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**