BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AO/PJ/JAK/1 of 2015]

SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 3 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

in respect of

M/s. New Delhi Television Limited (PAN No.AAACN0865D)

In the matter of

M/s. **New Delhi Television Limited**

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1. M/s. New Delhi Television Limited(hereinafter referred to as the Noticee / the company / NDTV) is a company incorporated under the Companies Act. The present case is with regard to the matter relating to tax demand of Rs. 450.00 Crores raised by the Income Tax Department vide its Assessment Order dated February 21, 2014 issued by Assessing Officer for the Assessment Year 2009-10(Financial Year 2008-09). The above information was not disclosed by the Noticee immediately to the Stock Exchanges i.e. to Bombay Stock Exchange(BSE) and National Stock Exchange(NSE). It was submitted by the Noticee to NSE vide its letter dated May 26, 2014 and to BSE vide its letter dated May 29, 2014(this too was not voluntary, but in response to the clarifications sought by the stock exchanges). In view of the above, it is alleged that the Noticee being a listed company had failed to comply with Clause 36 of the Listing Agreement.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide order dated December 09, 2014 under Section 23-I of the Securities Contracts (Regulation) Act, 1956(hereinafter known as SCRA) read with rule 3 of Securities Contracts (Regulation) (Procedure for holding

inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCR Adjudication Rules') to inquire into and adjudge under Section 23A and 23E of the S CRA for the alleged violation of Clause 36 of the Listing Agreement.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as "**SCN**") Ref. No. EAD/PJ/JAK/OW/4640/2015 dated February 12, 2015 was issued to the Noticee under Rule 4(1) of SCR Adjudication Rules communicating the alleged violation of Clause 36 of the Listing Agreement. The Noticee was called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 23A and 23E of the SCRA for the alleged violation. A corrigendum to the SCN dated February 12, 2015 had been issued on March 17, 2015 quoting the exact sections under which the noticee is charged which was erroneously missed in the SCN.

4. The Noticee replied to the SCN vide its letter dated March 04, 2015. The main points of the reply is as below:

   The Company denies that it has violated any reporting requirements under Clause 36 of the Listing Agreement. The Company was under the bona fide understanding that the same need not be reported / informed to the Exchanges under clause 36 of the Listing Agreement. The Company had submitted that the said Tax Demand has resulted due to an erroneous view taken by the Assessing officer. Hence, the alleged Tax Demand was untenable in law. Further, submitted that on receipt of the alleged Tax Demand, the Company consulted the counsel Mr. C. S. Aggarwal, who during discussions opined that the alleged Tax Demand was based on mere non application of mind and bore no merit in law. The Company's senior tax advisors, vide their letter dated May 6, 2014, provided a written opinion on the matter.

The view taken by the Company after consulting legal / tax advisors was also borne out by the Independent Auditors of the Company, who while finalising the accounts for the financial year 2013-14, were made fully aware of the alleged Tax Demand.

The Auditors, while finalising the accounts, based on their independent analysis and also taking into account the opinion of the tax advisors concluded that the alleged demand was neither a contingent liability in the books of the Company nor did they consider it necessary to qualify the report in this regard.

The Company approached the Income Tax Appellate Tribunal(ITAT) challenging the demand raised by the Assessing Officer, vide an appeal being ITA No. 1212/DEL/2014. ITAT, vide its orders dated March 26, 2014 and April 21, 2014, had granted an interim stay on payment of a sum of Rs. 5 Crores, which is approximately 1.2% of the alleged Tax Demand. The challenge of the said claim made by the Noticee is pending final determination before the ITAT and is currently sub-judice.

5. In its reply, the noticee had sought hearing in the matter. In the interest of natural justice and in terms of rule 4(3) of the SCR Adjudication Rules, the Noticee was granted an opportunity of hearing on March 17, 2015 vide notice dated March 11, 2015. Accordingly, Mr. K.V.L. Narayan Rao, Executive Vice-Chairperson, NDTV, Mr. Ajay Mankotia, President – Corporate Planning and Operations, NDTV, Mr. Navneet Raghuvanshi, Company Secretary and Compliance Officer, NDTV, Mr. Sumit Kochar, Assistant Manager-Legal & Secretarial, NDTV, Mr. Vijayendra Pratap Singh, Partner, Amarchand Mangaldas, Advocates and Solicitors, Mr. Animesh Bisht, Amarchand Mangaldas, Advocates and Solicitors, Mr. Aditya Jalan, Amarchand Mangaldas, Advocates and Solicitors, appeared for the hearing on behalf of the Noticee as Authorized Representatives (hereinafter referred to as the '**ARs**) and reiterated the submissions stated in their reply letter dated March 04, 2015. A copy of the said corrigendum dated March 17, 2015 was provided to the ARs of Noticee during the course of the hearing i.e. on March 17, 2015. It was requested by ARs to grant an

opportunity to Noticee to further respond to the SCN in light of the corrigendum. The opportunity as requested was granted to the Noticee on March 17, 2015.

6. During the course of hearing, Noticee was requested to provide certain documents in relation to the submissions being made. These included:
    a. Clarifications sent to the Exchanges in May 2014;
    b. Guidance Note issued by the Exchanges on Clause 36 of the Listing Agreement;
    c. Details of other ITAT stay Orders 6 months prior and after March 26, 2014 where the Tax Demand was over Rs. 50 Crores, to the extent availab**le;**
    d. Letter from the Auditor to the Tax Advisor dated April 24, 2014;
    e. The details of the decision making process followed at Noticee w.r.t. disclosure of the Tax demand in view of clause 36 of the listing agreement along with the supporting documents.

7. The Noticee was directed to provide the above by April 10, 2015.

8. The Noticee vide its letter dated April 10, 2015 filed its reply and requested for a further hearing in the matter. An opportunity of hearing was granted to the Noticee on April 30, 2015 to which the Noticee requested for a convenient date between May 11, 2015 to May 15, 2015. Accordingly, the hearing was granted to them on May 15, 2015 vide notice dated April 28, 2015. The main points of the reply is as below:

    They submitted the guidance note issued by BSE and mentioned that the guidance note specifically and consistently qualifies, at the start of the relevant paragraphs itself, that the disclosure requirements is restricted to those litigation/disputes which will have a material impact on the company.

    *The noticee submitted that in a b*onafide and reasonable basis the Noticee took the view that no disclosure of the Tax Demand was required as the same was not material.

Subsequent events/findings, as brought out by the Noticee, also confirm the view taken by the company. These include reporting of the auditors, disclosures made in the Financial Statements/Annual Report and to the Stock Exchange when directed, *no adverse impact on the price of shares even after the information was made available on the SEs, no loss to shareholders/investors - no complaints/grievance from investors and stay granted by the Hon'ble Delhi High Court.*

The Noticee has relied upon the following caselaws;

The case of DLF Limited v. SEBI (Appeal No. 331 of 2014) (SAT) Order dated 13.03.2015 is also referred and informed as below.

"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."

In the matter of IPO of Onelife Capital Advisors Ltd – Order of the Hon'ble Whole Time Member of SEBI dated August 30, 2013.

"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"

In light of the above it was submitted that the test of materiality is forward looking and is to be determined by taking into account the possible impact that the information/event under consideration may have on the investor's investment decisions. As stated subsequently herein, even post the disclosure of the Tax Demand by NDTV there was no impact on the price of the scrip of NDTV which further confirmed that such information did not appear to have any effect on the decision making process of the investors.

Further submissions in relation to imposition of penalty

Reliance is also placed in certain decisions of the Hon'ble Supreme Court ***Hindustan Steel Ltd. v. State of Orissa*** *[(1969) 2 SCC 627] wherein the principals for imposition of penalties has been clearly and unambiguously spelt out.*

In ***Hindustan Steel Ltd. v. State of Orissa*** *[(1969) 2 SCC 627] the Hon'ble Supreme Court has stated as follows:*

"Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when 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. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

The Noticee submitted *documents/ Information sought by the Adjudicating Officer at the hearing on March 17, 2015.*

9. As sought by the noticee, personal hearing was granted on May 15, 2015. The noticee was also advised to submit its reply to the clarifications sought during the hearing dated March 17, 2015 by May 05, 2015, for the information which is not provided vide letter dated April 10, 2015. The following were sought from them:

10. The authorization letter from the company in relation to the officers attending the hearing, clarifications sent to the exchanges in May 2014, details of ITAT stay orders, the details of the decision making process at NDTV. Any other information which is not provided in this regard.

11. Reply(e-mail) received on May 12, 2014. The main points of the reply is as below:

It was submitted that the details of ITAT stay orders are not available in the public domain. However, submitted the copy of the Orders passed by ITAT in two matters, wherein the companies were required to deposit 11.1% and 27.7% of the total tax demand respectively as against a mere 1.1% required to be deposited by the Company.

It was submitted that all the matters which have a bearing under Clause 36 of the Listing Agreement are discussed by the respective Head of the Departments with management team of the Company, which depending upon the facts and circumstances takes legal/professional opinion and then decide on the future course of action.

12. In the hearing it was submitted that the stay orders on the tax demands were proprietary information and not available in public domain. Accordingly, the Noticee has explored the option of obtaining orders by way of an RTI. However, it has been unable to do so. Particulars of certain cases of demands over Rs. 50 Cr and the amounts on which the same have been stayed by the ITAT, Delhi, have come to the notice of the noticee and requested

that to give an opportunity to file the same. The request made by the noticee was granted. Thereafter, it was brought out that as the stay on the tax demand could not be further extended by the ITAT due to statutory limitations, the noticee approached the Hon'ble Delhi High Court for extension of the stay. Upon the noticee filing a writ petition before the Hon'ble Delhi High Court, the Hon'ble Court was pleased to extend the stay of the demand. The Hon'ble Court granted the stay on the same terms as the ITAT and sought no further deposit or security for the same.

13. The noticee had submitted that no complaints had been made by shareholders in relation to non-disclosure of tax demand (except the complaint by Quantum Securities Private Limited). The noticee was advised to provide the details on the SCORES system in this regard. The noticee advised to file its supplementary submissions and provide additional information, if any, by May 22, 2015 (1:00 p.m.).

14. The noticee replied vide its letter dated May 22, 2015(e-mail received). The main points of the reply is as below:

The noticee submitted certain stay orders of the Hon'ble ITAT, Delhi Bench. The Noticee submitted *that they are unable to get any further information on the said orders.*

15. *With regard to details of any pending SCORES complaints against the Company, the Noticee annexed and marked the image copies of the web page of SCORES. The Noticee has* submitted *that all complaints against the Noticee have been resolved and currently no pending complaints remain against it.*

CONSIDERATION OF ISSUES

16. I have carefully considered the allegations, written submissions of the Noticee, hearings in the matter and other evidences/ documents available on record. It is observed that the

allegation against the Noticee is that it has failed to comply with the provisions of clause 36 of the Listing Agreement.

17. The issues that, therefore, arise for consideration in the present case are:

17.1. Whether the Noticee has violated the provisions of clause 36 of the Listing Agreement?

17.2. Does the violation, if any, attract monetary penalty under Section 23A and 23E of SCRA?

17.3. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?

FINDINGS

18. Before moving forward, it is pertinent to refer to the provisions of the Clause 36 of the Listing Agreement which is reproduced hereunder: -

Apart from complying with all specific requirements, the Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to stock exchange(s) on request such information concerning the Issuer as the stock exchange(s) may reasonably require. The material events may be events such as:

a. Change in the general character or nature of business.

b. Disruption of operations due to natural calamity

c. Commencement of Commercial Production/Commercial Operations

d. Developments with respect to pricing/realisation arising out of change in the regulatory framework

e. Litigation /dispute with a material impact

The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or ***the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials***

f. Revision in Ratings

g. Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to;

- Issue of any class of securities.
- Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off of setting divisions of the company, etc.
- Change in market lot of the company's shares, sub-division of equity shares of the company.
- Voluntary delisting by the company from the stock exchange(s).
- Forfeiture of shares.
- Any action which will result in alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.
- Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad.
- Cancellation of dividend/rights/bonus, etc.

The above information should be made public immediately.

The issue for consideration is whether the Noticee has failed to comply with the provisions of Clause 36 of the Listing Agreement i.e. by not promptly disclosing the receipt of the Tax Demand to the Stock Exchanges . It is alleged that the Noticee has received a tax demand of Rs. 450.00 Crores raised vide the Assessment Order dated February 21, 2014 issued by Assessing Officer for the Assessment Year 2009-10(Financial Year 2008-09). The above information was not disclosed by the Noticee immediately to the Stock Exchanges i.e. Bombay Stock Exchange(BSE) and National Stock Exchange(NSE). In view of the above, it is alleged that that the Noticee being a listed company had failed to comply with Clause 36 of the Listing Agreement.

19. One of the main contentions of the Noticee is that the Listing Agreement Framework envisages an application of mind by management of the Company which would come to a subjective assessment of the outcome and impact of the litigation/dispute and take a decision to disclose the same only if such litigation/dispute is reasonably expected to have an material impact on the performance and operations of the company. While making the disclosure, the management of the company has to ensure that it does not create a false market in its securities. It is submitted that the guidance note of the BSE specifically and consistently qualifies, at the start of the relevant paragraphs itself, that the disclosure requirement is restricted to those litigation/disputes which will have a material impact on the company. It is submitted by the Noticee that this clarification by the exchanges is in keeping with and consistent with the scheme and spirit of the Listing Agreement as explained above. Noticee has stated that the terms of Clause 36 are clear that the management of the Company takes three calls, firstly, on likely outcome of the matter, secondly, on its financial impact and finally on the fact as to whether the same would cause a material impact on the operations and financials of the company. This conclusively establishes that the disclosure requirement is subjective/qualitative and is neither based on mere existence of the litigation nor is it a quantitative/value based disclosure. This is also corroborated by a reference the heading, which talks of disclosure being contingent on the

litigation, dispute, regulatory action having a material impact and not merely on the basis of the existence of such a litigation. Accordingly, in light of the above it becomes abundantly clear that the disclosure requirements for litigation/disputes as intended under the Listing Agreement are limited to litigation/disputes which can be reasonably expected to have a material impact.

20. Before going to examine the case, it may be noted 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. This has been held in the matter of IPO of Onelife Capital Advisors Ltd – Order of the Hon'ble Whole Time Member of SEBI dated August 30, 2013.

"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"

21. 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 non-disclosure on the market as also the decision making process of the investors.

22. Clause 36 of the Listing Agreement clearly sets out the objectives of the clause:
    a. *to enable the shareholders and the public to appraise the position of the Company and*
    b. *to avoid the establishment of a false market in its securities.*

The guidance Note of BSE as well states that *the Listed entity may consider the impact of such disclosure on legal/court proceedings while making the disclosures and make the disclosure accordingly.*

Para 6 of Guidance Note to Clause 36 of the Listing agreement of BSE is reproduced below:

6. Disclosure relating to Litigation/dispute/regulatory action with a material impact:

The Listed entity shall keep the Exchange informed of any litigation/dispute developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party ***or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials****. The Listed entity may consider the impact of such disclosure on legal/court proceedings while making the disclosures and make the disclosure accordingly. If, Listed Entity is of the opinion that making any such disclosure is not in the interest of the Listed Entity, disclosure may be limited to the extent of stating the occurrence of the event.*

The Listed Entity shall keep the Exchanges informed of cessation/conclusion/settlement of the above said litigation/dispute along with the concluding order or concluding settlement information.

I note that from bare and combined perusal of aforesaid Clause 36 of the Listing Agreement and Para 6 of Guidance Note , it is very much clear that in case of litigation / dispute with a material impact, the disclosure is warranted on a prompt and immediate basis which may also include not only the details of the event but also the impact of the event as envisaged by the management of the company. The said disclosure is aimed at enabling the shareholders and the public to appraise the position of the company.

Therefore, the reliance placed by the Noticee only on part of the Clause 36 of the Listing Agreement and the Para 6 of the BSE Guidance Note cannot be ignored over the other parts of the same Clause/Para. Rather, the same needs to be read into true spirit of the said provisions as per the Objectives of the Clause set out clearly in the Clause itself.

Taking into account the principle of harmonious interpretation, it is required that the legislation should be read as whole and needs to be considered to find out the true / most immediate objective behind its enactment. In this context, it is pertinent to note the following.

Reserve Bank of India Vs. Peerless General Finance & Investment Co. Ltd. - AIR 1987 SC 1023 & 1987 (1) SCC 424:- *Interpretation must depend on the text and the context. They are*

the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

Kesho Ram & Co. & Ors. Etc vs Union Of India & Ors 1989 SCR (2)1005, 1989 SCC (3) 151:- *It is a settled rule of harmonious construction of statutes that a construction which would advance the object and purpose of the legislation should be followed and a construction which would result in reducing a provision of the Act to a dead letter or to defeat the object' and purpose of the statute should be avoided without doing any violence to the language.*

Union of India Vs. Filip Tiago De Gama of Vadem Vasco- 1990 AIR 981 or 1990 (1) SCC 277 *:-The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation . If there is obvious anomaly in the application of law, the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature.*

23. The Noticee submitted that immediately upon receipt of the Assessment Order, it approached its legal and tax advisor, who is the tax counsel specialising in tax litigation. It immediately obtained oral advice from its advisor, according to whom, the demand in the assessment order was high pitched and based on an erroneous view taken by the Income Tax Department. The tax advisor further advised that the Noticee should immediately file an

appeal against the alleged demand before the ITAT, in which, there would be a high probability of the alleged demand being dismissed.

24. It was also submitted that, the Company immediately acted upon the advice obtained by it and filed an appeal before the ITAT on March 4, 2014. The tax advisor, who gave the advice to the Company was himself involved in settling the appeal and argued the Company's case before the ITAT. This clearly shows that the professional advisor not only advised the Company but also acted for the Company in furtherance of such advice. The Hon'ble ITAT, vide its orders dated March 26, 2014 and April 21, 2014, granted an interim stay on recovery of the alleged demand on payment of a sum of Rs. 5 Crores, which is 1.2% (approximate) of the alleged Tax Demand. The Noticee has claimed that, therefore, the advice in fact translated into reality in as much as a stay was granted by the ITAT on recovery of the Tax Demand. The details of other ITAT Orders provided by the Noticee are not sufficient enough to draw any meaningful inference.

25. Additionally, based on the oral advice of reputed senior counsels, and the proposed appeal President-Corporate Planning and Operations and Executive Vice-Chairperson of the Company discussed the matter with the management team of the Company to consider whether any disclosure was required to be made for the alleged Tax Demand. The Company, based on the advice of a reputed senior tax counsel came to an informed and diligent view that disclosure of the Assessment Order was not warranted, as it would not have a material impact on the Noticee. The alleged Tax Demand's disclosure in isolation would in fact give an incorrect and incomplete picture to the investors and mislead the investors thereby creating a false market for the scrip. Such a disclosure would also therefore be against the spirit of the Listing Agreement as it would lead to an incomplete representation of the matter to the shareholders as it would be a disclosure of litigation without a material impact.

26. It is pertinent to mention here that the guidance note of BSE on clause 36 of the listing agreement states as to who in a listed entity has the Authority for making disclosures. The same is as below :

Para A

Every Listed Entity shall have a policy determining the authority within the entity that is entitled to take a view on the materiality of an event that qualifies for disclosure under Clause 36 to decide the appropriate time at which such disclosure is to be filed with Exchange and details that may be filed in the best interest of present and potential investors. The authority could be Board of Directors or CEO or an operating committee of Senior Level Executives or Key Managerial Personnel (as defined under Companies Act, 2013) etc., as decided by the management of the Listed Entity. It may be noted that the onus of ensuring that the information disclosed to the Exchange is duly authorized to be disclosed as such, lies with the listed entity only and the Exchange shall assume that any disclosure received has been duly authorized.

During the course of the first hearing the details of the decision making process by the noticee w.r.t. the said disclosure was sought with supporting evidence. The Company stated that in addition to what is stated already, all the matters which have a bearing under Clause 36 of the Listing Agreement are discussed by the respective Head of the Departments with management team of the Company, which depending upon the facts and circumstances takes legal/professional opinion and then decide on the future course of action.

Thus it is noted that at the time when the disclosure obligation arose, i.e. immediately upon the receipt of the Assessment Order, in terms of the Clause 36 of the Listing Agreement, the Noticee did not furnish sufficient evidence that the opinion of the tax adviser existed at the time when the disclosure obligation arose. It also did not furnish the record of discussions / decisions by the relevant authority within the Company, as regards the materiality.

The disputed amount of Rs.450 crores in the tax demand is noted to be significant when compared with Rs.349.77 crores of revenue of Noticee for the year ended March 31, 2014 as also the networth of Rs. 365 Crores. as on March 31, 2014 . The company has consistently posted a net loss for the past five years. The net loss in FY 2014 amounts to Rs.53.56crores.

In view above, Noticee should have made voluntary disclosures to stock exchanges on an immediate and prompt basis. Although it is the prerogative of companies to decide on materiality, in this case, the amount is material particularly considering the financials of the Company and information ought to have been disclosed. It is noted that the amount involved in the income tax demand was larger than the revenue of the company and significantly larger than its net profit i.e. net loss in the recent financial year as also greater than its net worth.

*The Noticee has stated that t*he view taken by the Company after consulting legal/ tax advisors was also accepted by the Independent Auditors of the Company. The Auditors needed to take a position on whether or not the tax demand needed to be considered as a contingent liability in terns of AS29, which is mandatory. Paragraph 27 of the Accounting Standards 29 states:

> "*A contingent liability is disclosed, as required by paragraph 68, unless the possibility of an outflow of resources embodying economic benefits is remote.*"

The Auditors, while finalising the accounts, based on their independent analysis and also taking into account the opinion of the tax advisors concluded that the alleged demand was neither a contingent liability in the books of the Company nor did they consider it necessary to qualify the report in this regard. Hence, the view of the auditors was also to treat the said demand as remote and not a material liability which either required to be included as a contingent liability or required any qualification in the report.

However, the auditors opinion was not available at the time when the disclosure obligation arose i.e. immediately after the receipt of the Assessment order. It is also to be noted that the amount of the Tax Demand was significant compared to the financials of the Company. Further, it was an Assessment Order issued by the relevant Statutory Authority after the Noticee provided all the documents and confirmations required by the Assessing Officer and therefore probability of the decision going against the Noticee cannot be entirely ruled out.

27. Noticee has further stated that the acts of the Company were at all times bonafide and there was no concealment of information by the Company. It is stated that the information in relation to the Tax Demand was disclosed in the Annual Report and the Financial Statements of the Company. However, I find that the same was made available much after the time when the disclosure obligation arose i.e. immediately after the receipt of the Assessment Order.

28. Noticee has further stated that the Company promptly disclosed the same to the Stock Exchanges upon request though it continued to maintain that in light of the above the same was not material information and as such did not merit a disclosure. On a careful reading of Clause 36, I find that the involuntary disclosure, which was much later, that too, at the instance of stock exchanges, is in compliance of only the "additional" obligation cast by the Clause 36 and cannot be in lieu of the obligation of voluntary disclosure on a prompt and immediate basis.

29. *Noticee has stated that on May 29, 2014 the information/update provided by the Company was made available* on the stock exchanges as well. The price movement of the shares of the Company thereafter was brought to the notice. Noticee submitted that the fact that the disclosure of the information had no material impact on the price of shares of the Company upon disclosure is irrefutable evidence of the fact and confirmation of the company's view that the said information was neither price sensitive nor material on the basis of which/or which could have impacted the decision of the investors/potential investors to buy/sell the shares of the Company. Hence it is submitted that this information was not material as it

did not contribute in any way to the investors' decision invest or exit the Company. In this regard, it may be noted that the information disclosed on May 29, 2014, not only contained the details of the Tax Demand and the advice of the tax advisor, but also of the fact that stay has been granted for the operation of the Order which was a subsequent development not existing at the time when the disclosure obligation arose. Hence no inference can be drawn that this information was not material as it did not contribute in any way to the investors' decision invest or exit the Company.

30. *I have noted that the investors have not raised any kind of grievance regarding any alleged wrong or i*nadequate disclosure except for one complainant who has had past professional association with the company.

31. I refer to the decision of the Hon'ble Securities Appellate Tribumal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014) has observed that: "Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."

32. I also note that in Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI,the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014 had observed that:

"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of par*t*ies nor gains accrued from such delay."

In view of the same, the argument put forth by the Noticee that no gain or advantage, leave alone disproportionate gain or unfair advantage had accrued to the company or no loss to the shareholders/investors is not relevant for the given case.

33. The Noticee has stated that the ITAT had granted a stay on recovery of the tax demand on payment of Rs. 5 Crores only. Due to the statutory limitation on the power of the ITAT to grant stay only for a period of one year, i.e., till 25th March, 2015 the Company approached the Hon'ble Delhi High Court seeking further stay on the alleged Tax Demand which has been granted. This was required as department had sought adjournments in the matter due to which the hearing could not be completed in due time and for no fault of the Company. Accordingly, the Company filed a Writ Petition before the Hon'ble High Court of Delhi on March 21, 2015 for extension of stay, being WP(C) 2992 of 2015. The above mentioned writ petition came up for hearing on March 24, 2015. The Hon'ble Court was pleased to continue the stay of recovery operating in favour of the Company, on the same terms, till the final disposal of the appeal by the ITAT. The Hon'ble Court further directed the ITAT to dispose of the appeal filed by the Company expeditiously. The Hon'ble High Court disposed off the Writ Petition in the above terms. According to the Noticee, this further shows that even the Hon'ble Delhi High Court prima-facie agreed with the case of the Company in granting a stay on the alleged Tax Demand.

34. It is noted that the company has filed an appeal before ITAT. It is pertinent to note that the operation of the Order has been stayed by the Hon'ble High Court. The Order has not been set aside. This is a subsequent development not existing at the time when the disclosure obligation arose. In terms of para 7(ii) of the guidance note of BSE, disclosure has been prescribed periodically till the litigation is concluded or dispute is resolved. The subsequent developments cannot be viewed to be having any bearing on the disclosure obligation as and when it arose.

35. I also note that reference has been made to various case laws which are being dealt with in the succeeding paragraphs. the decisions of the Hon'ble Supreme Court of India in ***Eastern Coalfields Ltd. vs. Sanjay Transport Agency and Anr***. [(2009) 7 SCC 345, ***N.C.Dhoundial v. Union of India & Ors***., (2004) 2 SCC 579], ***Uttam Das Chela Sunder Das vs. Shriromani Gurdwara Parbhandak Committee, Amritsar***, (1996) 5 SCC 71) have been quoted to infer that sub clause 5 of clause 36 mus*t be interpreted giving effect to the qualification of mat*eriality. I have relied upon the same.

As regards *decision of the decision of the Hon'ble Securities and Appellate Tribunal in Sundaram Finance Ltd. vs SEBI [(2003) 3 Comp LJ 145 (SAT)]*where it was held that *if the Appellants had gone by the advice given by the expert Lead Manager, they can not be blamed entirely." as also the other case laws pertaining to the acts of company based on the advice given by the expert and the case laws pertaining to 'reasonable cause'* it may be noted that the noticee has failed to furnish the evidence that the legal advice was existing at the time when the disclosure obligation arose. Further, the SAT decision does not absolve the Company entirely.

As regards DLF Limited v. SEBI (Appeal No. 331 of 2014) (SAT) Order dated 13.03.2015:

"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."

In the matter of IPO of Onelife Capital Advisors Ltd – Order of the Hon'ble Whole Time Member of SEBI dated August 30, 2013

"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".

36. I have relied upon the said case laws. However, as brought out earlier, it may be noted that the information disclosed on May 29, 2014, not only contained the details of the Tax Demand and the advice of the tax advisor, but also of the fact that stay has been granted for the operation of the Order which was a subsequent development not existing at the time of requisite disclosure obligation. Hence no inference can be drawn that this information was not material as it did not contribute in any way to the investors' decision invest or exit the Company.
37. As regards the case of Hindustan Steel vs State of Orissa as cited by the Noticee, reliance is also placed in certain decisions of the Hon'ble Supreme Court **Hindustan Steel Ltd. v. State of Orissa** [(1969) 2 SCC 627] wherein the principals for imposition of penalties has been clearly and unambiguously spelt out.

    In **Hindustan Steel Ltd. v. State of Orissa** [(1969) 2 SCC 627] the Hon'ble Supreme Court has stated as follows:

    "Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when 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. Those in charge of the affairs of the Company in failing to register the

Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

In light of the express provisions of section 23 J of the SCRA as well as the express findings of the Hon'ble Supreme Court as cited above it is submitted by the Noticee that in the present case even if the Company is found to be in a violation of the disclosure obligations under the Listing Agreement, the same does not warrant an imposition of penalty. The same is in light of the circumstances as stated above which clearly demonstrate that the Company acted in a bonafide manner and the breach if any was at best a technical or venial breach borne out of a genuine belief that the Company was acting in compliance of the requirements of Clause 36.

As brought out earlier, the noticee has failed to furnish the evidence in support of the existence of legal advice at the time when the disclosure obligation arose as also the decision making regarding the materiality of the information which would have formed the basis of the honest and genuine belief of the company that it was acting in compliance of clause 36.

Further, The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant .....

In light of the aforesaid observations, I find that the noticee was under obligation to disclose the information pertaining to the tax demand of Rs. 450.00 Crores raised vide the Assessment Order dated February 21, 2014 issued by Assessing Officer for the Assessment Year 2009-10(Financial Year 2008-09). The above information was to be

disclosed by the noticee immediately to the Stock Exchanges i.e. Bombay Stock Exchange(BSE) and National Stock Exchange(NSE).

In light of the aforesaid observations, facts and records of the case, I find that the aforesaid failure of the noticee is in violation of clause 36 of the listing agreement.

38. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 23A and 23E of SCRA, which reads as under:

23A. Penalty for failure to furnish information, return, etc.-Any person, who is required under this Act or any rules made there under,-
(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

2**3E. Penalty for failure to comply with provisions of listing conditions or delisting conditions or grounds.**—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. While determining the quantum of monetary penalty under Section 23A and 23E of S CRA, I have considered the factors stipulated in Section 23-J of SEBI Act, which reads as under:

"23-J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 23-J, 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. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 23-J of SEBI Act and stated as above. The main objective of clause 36 of the listing agreement is disclosure of material information as and when it occurs along with the assessment of impact as envisaged in the Guidance Note of BSE to the Clause 36. The said clause seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions Thus, the cornerstone of the clause is investor protection.

It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. It is noted that the price of the scrip was not impacted when the disclosure was made belatedly and also that the said disclosure was made after subsequent developments such as stay granted by the ITAT. I also note that there is no complaint regarding the wrong or inadequate

disclosure except as brought out above. I also note that the violation by the Noticee is a stand-alone violation and is not repetitive.

As a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with the letter, spirit, intention and purpose so that the investors could take a decision whether to buy, sell, or hold the Noticee's securities. Non-compliance/ delayed compliance with disclosure requirements by a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

41. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 23 I of the SCRA and Rule 5 of the SCR Adjudication Rules, I hereby impose a penalty of Rs. 25,00,000/-(Rupees Twenty Five Lacs only) upon the Noticee for violation of Section 23 A and Rs. 1,75,00,000/-(Rupees One Crore Seventy Five Lacs only) for the violation of Section 23 E of the SCRA. Therefore, a total penalty of Rs. 2,00,00,000/- (Rupees Two Crores Only) is imposed upon the Noticee M/s. New Delhi Television Limited which will be commensurate with the violations committed by the Noticee.

42. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Jayanta Jash, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

43. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 04, 2015 **Prasad Jagadale**

Place: Mumbai **Adjudicating Officer**