

# **SKIL Infrastructure Limited**

CIN- L36911MH1983PLC178299

**Company under CIRP, Hon'ble NCLT, Mumbai, Order  
dated 1<sup>st</sup> February 2024**

*Clo. Headway Resolution and Insolvency Services Pvt. Ltd.*  
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December 10<sup>th</sup>, 2024

To, The Manager, Listing Department, National Stock Exchange of India Ltd. Exchange Plaza, Bandra-Kurla Complex, Bandra (East), Mumbai - 400 051 <b>NSE Symbol: SKIL</b>	To, The Manager, Listing Department, BSE Ltd. P J Towers, Dalal Street, Mumbai - 400 001 <b>BSE Scrip Code: 539861</b>
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**Subject: - Disclosure of Adjudication Order No. Order/BM/RK/2024-25/30721-30723  
under Section 15-I of the Securities And Exchange Board Of India Act, 1992 read with Rule  
5 of SEBI (Procedure For Holding Inquiry And Imposing Penalties) Rules, 1995**

**Reg: Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations,  
2015**

Dear Sir/ Madam,

We hereby inform you that the application for the Corporate Insolvency Resolution Process (CIRP) filed by Amluckie Investment Company Limited in the matter of Corporate Debtor i.e. SKIL Infrastructure Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), was admitted by the Hon'ble National Company Law Tribunal, Mumbai Bench vide order dated February 1, 2024 and the undersigned was appointed as the Interim Resolution Professional ("IRP"). Further, vide NCLAT order dated February 12, 2024, formation of COC (Committee of Creditors) was stayed on account of which there is no contribution from the creditors to fund the CIRP process.

Pursuant to the provisions of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 please find enclosed herewith the Adjudication Order No. Order/BM/RK/2024-25/30721-30723 under Section 15-I of the Securities And Exchange Board Of India Act, 1992 read with Rule 5 of SEBI (Procedure For Holding Inquiry And Imposing Penalties) Rules, 1995.

We request you to kindly take the same on your records.

Thanking You,

Yours Sincerely,

**For Skil Infrastructure Limited**

**Purusottam Behera**

Interim Resolution Professional

IBBI Registration No. IBBI/IPA-002/IP-N00940/2019-20/12993

(AFA Valid till 31st December 2025)

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
[ADJUDICATION ORDER NO. Order/BM/RK/2024-25/30721-30723]

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**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995**

In respect of

<b>S.No</b>	<b>Name of Noticees</b>	<b>PAN</b>
1.	Mr. Nikhil Gandhi	AABPG9516A
2.	Mr. Bhavesh Gandhi	AABPG9515D
3.	Mr. Shekhar Gandhi	ADNPG4728P

In the matter of “**SKIL Infrastructure Limited**”

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**BACKGROUND**

1. Securities and Exchange Board of India (**SEBI**) was in receipt of a reference/alert from the Bombay Stock Exchange (“**BSE**”) against SKIL Infrastructure Limited (hereinafter referred to ‘**SKIL**’/ ‘**Company**’), a company listed on the Bombay Stock Exchange (“**BSE**”) and the National Stock Exchange (“**NSE**”), that SKIL had made impairment provisions of investment/financial assets amounting to Rs.1242.02 crores which contributed to the company’s huge loss of Rs.1411 crores for Financial Year (“**FY**”) 2019-20. Pursuant to which, the matter was taken up for detailed investigation to ascertain possible violation of the provisions of the Securities and

Exchange Board of India Act, 1992 (**'SEBI Act'**), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (**PFUTP Regulations**) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (**LODR Regulations**) by the Company and Nikhil Gandhi, Promoter, Chairman & Whole Time Director (hereinafter referred to as **Noticee 2**), Bhavesh Gandhi, [Vice Chairman & Whole Time Director] (hereinafter referred to as **Noticee 3**) and Shekhar Gandhi [Chief Financial Officer] (hereinafter referred to as **Noticee 4**) . The period of investigation was taken from April 01, 2019 to March 31, 2020 i.e. FY2019-20. (hereinafter referred to as "**Investigation Period**" / "**IP**"). However, wherever deemed necessary, references have been made to the events/timeframes outside this period.

2. During the investigation, it was observed that company had allegedly misrepresented/misstated financial statements for FY 2019-20 and disseminated the same which were not reflecting a true and fair view of its financial performance, it made a delayed disclosure of material events w.r.t order of Bombay High Court to the stock exchange and published its financial without consolidation of its two associates companies, Noticee 2 and Noticee 3 had allegedly failed to perform their duties and obligations which resulted in publication of misrepresented/misstated financial statements of the company for FY 2019-20, being chairman and vice chairman, respectively, they were incharge of finance and decision making process. Noticee 3 had also allegedly furnished false certification to the board of directors stating that financial statement presented true and fair view and Noticee 4 allegedly failed to perform his duties and obligations which resulted in publication of misrepresented/misstated financial statements of company for FY 2019-20,

furnished false certification to the board of directors stating that financial statement presented true and fair view and being CFO, he was in charge of finance and decision making process.(hereinafter Noticee 2, 3 and 4 are together referred to as the **Noticees/You**).

3. SEBI had therefore initiated adjudication proceedings against the company including the Noticees to inquire into and adjudge the alleged violations of the provisions of LODR Regulations as tabulated in table 1 below and to impose penalties under Section 15A(b) and 15HB of the SEBI Act upon company and Section 15HB of the SEBI Act upon Noticee 2, 3 and 4:

**Table 1:**

Sr. No.	Alleged Violations by (Noticees/Company)	Regulatory provisions
1.	Company	a. Regulations 4(1), 4(2)(e), 33(1)(a), 33(1)(c), 34(3) and 48 of the LODR Regulations, b. Regulation 4(1) and 30(2) & (3) of the LODR Regulations and c. Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of LODR Regulations.
2.	Noticee 2	Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7) of SEBI (LODR) Regulations and Regulations 4(1) 4(2)e ,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI LODR Regulations r/w Section 27 of SEBI Act.
3.	Noticee 3	Regulations 4(2)(f)(i)(2),4(2)(f)(ii) (2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7), 17(8) of SEBI LODR Regulations and Regulation 4(1), 4(2)e,33(1)(a),33(1)(c),33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, r/w Section 27 of SEBI Act, 1992.

Sr. No.	Alleged Violations by (Noticees/Company)	Regulatory provisions
4.	Noticee 4	Regulation 17(8) of SEBI (LODR) Regulations 2015, Regulations 4(1),4(2)e,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, 2015 r/w Section 27 of SEBI Act, 1992.

**APPOINTMENT OF ADJUDICATING OFFICER**

4. In this regard, SEBI appointed the undersigned as the Adjudicating Officer (“**AO**”) vide order dated December 07, 2023, communicated vide communique dated February 21, 2024 under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) to inquire into and adjudge under Section 15A(b) and 15HB of the SEBI Act, as applicable for the aforesaid violations alleged to have been committed by the Noticees.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A common Show Cause Notice dated February 26, 2024 (hereinafter referred to as **SCN**) was issued to the Noticees including the company in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, under Section 15A(b) and 15HB of the SEBI Act, as applicable be not imposed upon the Noticees.
6. The said SCN was served upon the Noticees via SPAD and also through digitally signed email. The proof of service is on record. The details of mode of delivery of the SCN and the hearing notice are mentioned in the table 2 below:

**Table 2:**

<b>Names of the Noticees</b>	<b>SCN Delivered (Y/N)(MODE)</b>	<b>Reply Received Y/N</b>	<b>Hearing Notice Date</b>	<b>HN Delivered (Mode of Service)</b>	<b>Hearing Date</b>	<b>Hearing Attended(Y/N)</b>
SKIL Infrastructure Limited	Y, Email	Y				N
Nikhil Gandhi	Y, Email	Y	April 24, 2024, May 31, 2024	Email	May 13, 2024, June 07, 2024	Y
Bhavesh Gandhi	Y, Email	Y	April 24, 2024, May 31, 2024	Email	May 13, 2024, June 07, 2024	Y
Shekhar Gandhi	Y, Email	Y	April 24, 2024, May 31, 2024	Email	May 13, 2024, June 07, 2024	Y

7. In response, Noticee 2 and 3 vide their emails dated March 18, 2024 and Noticee 4 vide his email dated March 19, 2024 submitted that the company is under Corporate Insolvency Resolution Process under Bankruptcy Code (IBC), 2016 vide Hon'ble National Company Law Tribunal (NCLT), Mumbai order dated February 01, 2024 and sought extension of time to reply to the SCN. Accordingly, vide email dated March 19, 2024, the said Noticee 2, 3 and 4 were advised to submit reply to the SCN latest by April 02, 2024, which they submitted on the said date.

8. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, the Noticees were provided with an opportunity of personal hearing on April 19, 2024 vide hearing Notice dated April 04, 2024 as detailed in table 1 above. Vide email dated April 17, 2024, Noticee 3 on behalf of himself and Noticee 2 and Noticee 4 sought adjournment of the said hearing. Accordingly, vide email dated April 24, 2024, the said hearing was rescheduled to May 13, 2024. The said hearing was attended to by Noticee 3 on behalf of himself and Noticee 2, and Noticee 4 wherein both of them reiterated the submissions made vide letter dated April 02, 2024. Noticee 3 on behalf of himself and Noticee 2, and 4 sought time to make additional submission in the matter which was granted to them and accordingly, they made additional submission in the matter on May 28, 2024. Subsequent to the additional submission in the matter, the said Noticees again requested to be provided with another opportunity of personal hearing vide their email dated May 28, 2024 which was accordingly granted to them on June 07, 2024 vide email dated May 31, 2024. The said hearing was attended to by Noticee 3, who attended on behalf of himself and other Noticees and reiterated the submissions made vide their reply dated April 02, 2024 and May 28, 2024. Noticee 3 also sought time to make additional submission in the matter, which was accordingly granted. In response, Noticee 3 made submission vide email dated June 14, 2024 enclosing letter dated May 14, 2024 (received by SEBI on June 20, 2024) along with its annexures.
9. The submission made by the Noticees vide their reply dated April 02, 2024, May 14, 2024 and May 28, 2024 are mentioned here under:

1. *The purported "loan" from Reliance Commercial finance Limited (RCFL) was not at all loan as understood in common economic and accounting parlance. It was in fact a structured transaction in compliance with the mechanism devised and implemented by Reliance Anil Dhirubhai Ambani Group (R-ADAG) to suit their convenience to fulfill their obligations under the Purchase Agreement dated March 05, 2015. This agreement was executed with the dominant purpose of acquisition of SKIL Group's equity stake in Pipavav Defence & Offshore Engineering Co. Ltd. "PDOECL" (now known as Reliance Naval & Engineering Ltd).*
2. *The circumstances under which the said structured transactions under the garb of purported "loans" took place and the facts/legal grounds as to how and why the said purported "loans" were not payable are mentioned in explicit detail in their respective Affidavits in reply filed by the company and its subsidiary SKIL Shipyard Holdings Pvt. Ltd before the Hon'ble NCLT against the Section 7 (under the IBC 2016) petitions filed against them by RCFL, towards RCFL claims against the said purported "loans".*
3. *Hon'ble NCLT vide its order dated February 10, 2023 and April 19, 2023 had dismissed those Petitions (in favor of the company and its subsidiary respectively) which clearly validates the legal stand taken by the company and its subsidiary SKIL Shipyard Holdings Pvt. Ltd.*
4. *The amounts paid by R-ADAG as the said structured transactions under the garb of purported "loans" were to be reversed by R-ADAG and the company waited till end of March 2019 with the natural presumption that R-ADAG would reverse the said structured transactions by way of actually reimbursing the said amounts to the company and its subsidiary SKIL Shipyard Holdings Pvt. Ltd. Had this actually happened, the purported "loans" would have ceased to remain outstanding. However, since the said reversal did not occur, the company and SKIL Shipyard Holdings Pvt. Ltd. disputed the said amounts as not a liability and consequently there was no question of booking interest on the said amounts (purported "loans") from FY 2019-20 onwards.*
5. *Since the matter was sub-judice, the said amounts continued to get reflected in the company's balance sheet in and after FY 2019-20 under the Liability side as per the accounting norms, but it did not amount to admission as debt/liability on part of the company. In fact, as mandated, in order to provide a true and fair picture of its financial statements, the company denied acknowledging any liability in respect of said purported "loans" by explicitly making a caveat in its notes to the audited financial statements of FY 2019-20 and each year thereafter wherein the said "loans" are qualified as not being a liability accepted by the company.*
6. *The financial statements are compulsorily to be read in conjunction with the stipulations/caveats placed in the notes to accounts or the statutory audit report including the observations, comments, opinions, qualifications mentioned therein since they are integral part of the audited financial statements. Any stray reference to any amount or entry in isolation is, in fact, totally meaningless and pervert.*



7. *Noticees relied upon judgement of the Hon'ble Supreme Court in the case of Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal and Ors. MANU/SC/0279/2021 wherein it has mentioned that the court held that the liability in the balance sheet does not tantamount to an acknowledgement of debt, if it is caveated by way of notes to the accounts or in the Auditor's report.*
8. *Had the company booked interest on the non-est/disputed "loan", it would have tantamounted to admission of liability on its part and would have vitiated its correct legal stand (which was ultimately validated by Hon'ble NCLT as mentioned in "b" above) that the said "receipt" (purported "loan") was not returnable (not payable).*
9. *RCFL has challenged the order in Reliance Commercial Finance Ltd. Vs SKIL Infrastructure Ltd in the Hon'ble NCLAT. Any adverse order in this regard by SEBI at this juncture on this matter may be unwarrantedly and unjustifiably used by RCFL before the Hon'ble NCLAT against the company and its subsidiary and the same would be a blatant miscarriage of justice. We would also like to inform you that Reliance Commercial Finance Ltd. has not filed appeal in Reliance Commercial Finance Ltd. Vs SKIL Shipyard Holdings Pvt. Ltd. and the time within which an appeal needed to be filed has elapsed.*
10. *With respect to alleged transaction with E Cap Equities Limited (E Cap); an Edelweiss Group entity, Noticees submitted that in FY 2019-20, an Edelweiss Group entity namely Everest Securities & Finance Ltd. (erstwhile Styrax Commodities Ltd.) had its Inter Corporate Deposit (ICD) a/c with the company and another Edelweiss Group entity namely E Cap Equities Ltd. had its Non-Convertible Debentures (NCD) a/c with the company's subsidiary SKIL Shipyard Holdings Pvt. Ltd. (SSHPL).*
11. *That Edelweiss Group (Everest and E Cap) total claim against SKIL Group (company and SSHPL) included consolidated outstanding principal amount of Rs. 115 Crores (Rs. 33 Crores for SKIL a/c and Rs. 82 Crores for SSHPL a/c) and this claim, being under dispute, one time settlement negotiations were going on between Edelweiss Group & SKIL Group during FY 2019-20 to resolve the same.*
12. *SKIL Group had proposed a consolidated one-time full & final settlement (OTS) at Rs. 90 Crores (Settlement Amount) to Edelweiss Group and the same was approved by Edelweiss Group on 08 May, 2020.*
13. *That out of the Settlement Amount: Everest a/c with the company was settled at Rs. 5 crores (against their total claim including principal amount of Rs. 33 crores) and E Cap a/c with SSHPL was settled at Rs. 85 Crores (against their total claim which included principal amount of Rs. 82 crores).*
14. *That on 01 October 2020, the said OTS was formalised by way of: company having paid Rs. 5 Crores to Everest on 01 Oct 2020 and Everest having issued a No Dues Letter dated 01 Oct 2020 to company; A Settlement Agreement dated 01 Oct 2020 between the concerned parties including E Cap & SSHPL.*
15. *Everest No Dues letter clearly mentioned that Rs. 5 Crores shall be adjusted only against the principal amount; entire outstanding is fully settled; and no other amounts are due and payable on this a/c. This crystalized the fact that Everest and obviously Everest had deemed to have waived off its entire*

interest claim or for that matter any further dues to it, by having settled its disputed claim of Rs. 65.37 Crores (which included principal of Rs. 33 Crores also) at Rs. 5 Crores.

16. *Noticee submitted that the Settlement Agreement page no. 9 clause 3.1 demonstrates the Settlement Amount as Rs. 85 Crores and the Schedule 3 of the Settlement Agreement with E Cap which also clearly stipulated that principal amount was Rs. 82.12 Crores which meant that balance Settlement Amount (85 Crores minus 82.12 Crores) of Rs. 2.88 Crores was towards payment of interest. Since the OTS was already approved with waiver of interest in May 2020 and only the formality of documentation, i.e., the execution of the Settlement Agreement was pending, the company did not book the interest.*
17. *The company was legitimately expecting to sign the Settlement Agreement before finalization of its annual accounts for FY 2019-20 which happened in July 2020. However, due to COVID 19 scenario at that time, signing of the Settlement Agreement actually happened on 01 Oct 2020. Since the OTS proposal was already accepted and approved in writing by Edelweiss Group in May 2020, it then became a binding contract between the parties thereto in accordance with the Indian Contracts Act, 1872. Therefore, taking cognizance of this fact and with a view to provide true and fair picture of its financial statements for FY 2019-20, there was no question of the company booking any interest on E Cap account while finalizing its standalone and consolidated annual accounts for FY 2019-20 in July 2020. The documentation/execution of the Settlement Agreement was a mere formality before finalization of the company's annual accounts for the FY 2019-20.*
18. *As regards transaction with IL&FS, Noticee submitted the Loan Agreement dated 28 Sept 2017 which included the Sanction Letter dated 17 Sept 2015 issued by IL&FS. The said Sanction letter clearly stipulates mandatory prepayment by way of sale of shares (pledged with (IL&FS), which despite repeated requests by the company, were not sold by IL&FS for the reasons already explained in our additional sub-mission dated 28 May 2024. This was a violation of the binding contract on part of IL&FS which gave rise to the dispute.*
19. *Since the matter was sub-judice, said borrowing from IL&FS continued to get reflected in the company's balance sheet in and after FY 2019-20 under the Liability side as per the accounting norms, but it did not amount to admission as debt/liability on part of the company since it has been caveated in the company's notes to its audited financial statements of FY 2019-20. In view of above and under the circumstances, the company did not book any interest on the disputed borrowing from IL&FS in FY 2019-20.*
20. *It was an unintentional and inadvertent error with regard to the delay in the filing High Court order in view of the peculiar force majeure situation/circumstances prevailing at that time, i.e., the COVID-19 pandemic and its effect including lockdowns, etc.*
21. *Noticees submitted that the delay in filing of disclosure related to High Court order was related to a secretarial compliance matter and the Noticee 4 was not the Compliance Officer (i.e., the Company Secretary) of the company. As such, since this matter was not under the Noticee 4's functional jurisdiction,*

*the Noticee 4 cannot be held responsible for any alleged secretarial non-compliance and therefore be exonerated from the said allegation.*

22. *That one of his employees came to be in possession of the said High Court order in February 2020 and he could not notify the same immediately to the company's Compliance Officer for carrying out necessary compliance/disclosure with regard to the said High Court order.*
23. *This inadvertent lapse needs to be sympathetically looked into in view of the fact that during that time, COVID-19 pandemic was already taking its physical and mental toll on the people due to the horrific narrative of its mass casualties and effects being circulated in the media/social media.*
24. *Noticee relied upon the directions issued by Honble Supreme Court vide its order namely EXTENSION OF LIMITATION [2021 (11) TMI 387 - SC ORDER], wherein the apex court had issued four directions in its orders from time to time.*
25. *It submitted that the period of delay in the instant case (for whatever situations and reasons of force majeure) has been 16.02.2020 to 21.02.2021 which was well within the period pervasively allowed by the Honorable Supreme Court whose orders are binding throughout the country.*
26. *With respect to alleged violation of non-consolidation of its two associate companies, i.e, Rosoboronservice (India) Ltd. and Urban Infrastructure Holdings Pvt. Ltd. (UIHPL), we reiterate that both these entities being unlisted, are not obligated to finalize and adopt, through Board Meetings, their annual accounts within May 30 of each year, i.e, within 60 days of end of financial year and that they have till September 30 of each year, i.e, within 180 days of end of financial year, to finalise and adopt their annual accounts. However, the company, being a listed entity, is under obligation to finalise and adopt its annual accounts, through its Board Meeting, within May 30 of every year.*
27. *Noticee submitted that due to non-availability of annual accounts of these two associates by 30 May of each year, it was impossible for the company to include the financial statements of these two associates in its audited consolidated financial statements and since the company does not have operational control in/over either of these two associates, it cannot force/compel/mandate them to finalise and adopt their annual accounts by May 30 for including the same in its audited consolidated financial statements as there is no legal obligation on them to do so.*

10. Taking into account the aforesaid facts, the undersigned is of the view that principle of natural justice has been followed in the matter by granting the Noticees ample opportunities for replying to the SCN and of being heard. Therefore, the undersigned deems it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticees.

## **CONSIDERATION OF ISSUES AND FINDINGS**

11. It is observed that adjudication proceedings was initiated in respect of the company, and the Noticees. However, as submitted by the Noticees, the company is currently under Corporate Insolvency Resolution Process (CIRP) w.e.f February 01, 2024 pursuant to an Order of the Hon'ble National Company Law Tribunal ("NCLT"). Further, it is noted that NCLT vide its aforementioned Order had also declared moratorium under Section 14 of IBC in respect of the company. The relevant extracts of the aforementioned order of NCLT is reproduced hereunder:

***"10. It is accordingly hereby ordered as follows:***

- a. The petition bearing C.P.(IB) 834/MB/2020 filed by Amluckie Investment Company Limited seeking initiation of Corporate Insolvency Resolution Process in the matter of Skil Infrastructure Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016, is hereby Admitted.*
  
- b. We are hereby directing the suspended Board of Directors to cooperate with the RP/IRP for smooth functioning of CIRP Procedure, by providing necessary documents/ information as required by the RP/ IRP.*
  
- c. There shall be a moratorium under section 14 of the IBC, 2016, in regard to the following:*
  - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including*

*execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*

*iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;*

*iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor. ....”*

12. In view of the above, the proceedings against SKIL/Company are kept in abeyance.

13. The undersigned has carefully perused the submissions made by the Noticees and documents available on record, and the issues that arise for consideration in the present case are:

**Issue No. I: Whether Noticees are in violation of the provisions of LODR Regulations as mentioned in table 1 above?**

**Issue No. II: If yes, does the violation, on the part of the Noticees would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act as applicable?**

**Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act?**

14. Before the undersigned proceeds further with the matter, it is pertinent to mention the relevant provisions of the LODR Regulations alleged to have been violated by the Noticees. The same are reproduced below:

**SEBI ACT, 1992**

**Contravention by companies**

*27. (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*

*Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.*

*(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.*

**Explanation :** For the purposes of this section,—

**(a)** “company” means any body corporate and includes a firm or other association of individuals; and

**(b)** “director”, in relation to a firm, means a partner in the firm.

**LODR Regulations**

**Principles governing disclosures and obligations**

*4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*

*(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.*

*(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.*

*(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.*

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

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

*(f) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.*

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

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

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

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

*(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.*

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

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

*(ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.*

*(iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.*

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

*(i) Disclosure of information:*

*(2) 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.*

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

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

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

*(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and op*

*(iii) Other responsibilities:*

*(7) The board of directors shall exercise objective independent judgement on corporate affairs*

**Board of Directors.**

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

**Disclosure of events or information.**

**30. (2)** Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

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

**Financial result**

**33. (1)** While preparing financial results, the listed entity shall comply with the following:

**(a)** The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

**(c)** The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India: Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

**(3)** The listed entity shall submit the financial results in the following manner:

**(b)** In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity 201[shall] also submit quarterly/year-todate consolidated financial results 202[.]

**Annual Report**

**34(2)** The annual report shall contain the following:

**(b)** consolidated financial statements audited by its statutory auditors;

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

**Accounting Standards**

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

**Issue No. I: Whether Noticees are in violation of the provisions of SEBI Act & LODR Regulations as mentioned in table 1 above?**

**Alleged Violation 1: Misrepresentation of financial statements by SKIL which were not reflecting a true and fair view of the Financial performance**

15. It was observed from the annual report for the FY 2019-20 of the company that the auditor of the company had given qualified opinion and subsequently, SEBI had sought clarifications w.r.t the said opinion which is mentioned below:



a) *In case of Reliance Commercial Finance Ltd. and Reliance Infrastructure Limited stated below the consolidated financial results, and based on that, the Company, during the year ended 31st March, 2020 has not accounted interest of Rs. 8266.89 lakhs on the loan taken from Reliance Commercial Finance Ltd(RCFL). and Reliance Infrastructure Limited (RIL). Had this been accounted, the Loss and the Liabilities would have increased to the extent of the amount specified above.*

16. With regard to the aforementioned opinion, company submitted that it did not acknowledge or accept the liabilities isolated claimed by RCFL & RIL without compliance of corresponding contractual obligations and therefore, for good commercial reasons and non-compliance of various covenants and related disputes, the question of providing interest did not arise wherein the same was in tandem with legal stand taken by its management.

b) *In case of IL&FS Financial Services Ltd. stated below the consolidated financial results, and based on that, the Company, during the year ended 31st March, 2020 has not accounted Interest of Rs. 10,130.00 lakhs on the loan taken from IL&FS Financial Services Ltd. Had this been accounted, the Loss and the Liabilities would have increased to the extent of the amount specified above.*

17. In this regard, company submitted that its liability was discharged when IL&FS was obligated to liquidate shares pledged as security by it in order to recover its dues and that the matter has been under dispute as per the stand taken by it. It further made a submission that it did not owe any interest to IL&FS and therefore the question of providing any interest did not arise.

c) *The Company, during the year ended 31st March, 2020 has not accounted for an interest of Rs.286.62 lakhs on 14% Non-convertible debentures issued to E Cap Equities Limited. Had this been accounted, the Loss and the Liabilities would have increased to the extent of the amount specified above.*

18. As regard aforesaid observation of the auditor, company submitted it did not book interest on 14% NCD as it was in negotiation with NCD holders for one-time settlement of their outstanding dues and accordingly, in that situation, there was no question of any likelihood of the survival of interest liability.

d) *The Company has not accounted interest of Rs. 744.53 lakhs on Current Borrowings of Rs. 3700 lakhs. Had this been accounted, the Loss and the Liabilities would have increased to the extent of the amount specified above.*

*Current Maturities of Long Term Debt include a loan amounting to Rs. 78.42 lakhs on which interest amounting to Rs. 16.91 lakhs has not been accounted during the year. Had this been accounted, the Loss and the Liabilities would have increased to the extent of the amount specified above.*

19. With regard to the aforesaid observation, company submitted that due to ongoing disputes and negotiations with other lenders, it did not consider commercially prudent to accept their outstanding, including interest as the same would have unnecessarily weakened its strategic position in case of negotiations/any proceedings. Further, as a natural corollary thereto, it did not book interest on loan amount aggregating to Rs 37.78 crores.

20. In view of the above, it was observed that the company was required to make provisions for its liabilities with respect to interest expense and loans liabilities as per the notified and applicable Accounting standards. However, it is alleged to have failed to recognize the interest expenses and loans liabilities in its books of account for the FY 2019-20 to avoid its further losses stating reasons of disputes and others, which is not justifiable.

21. Further, it is alleged that the company in its reply dated March 16, 2023 had accepted the stand taken by it in contrary to accounting standards and had the interest and loans liability been accounted, the loss and the liabilities would have increased to the extent of the amount required to make the provisions for the same.

22. At this juncture, it is pertinent to mention the relevant provisions of applicable Accounting Standards for recognition of interest, financial liability and provisioning which are given below:

- a) Ind AS 32 – ‘Financial Instruments: Presentation’ which inter-alia states that a financial liability is any liability that is:
- (a) a contractual obligation:
  - (i) to deliver cash or another financial asset to another entity

Further, the said Ind AS states that Interest, dividends, losses and gains relating to a financial instrument or a component that is a financial liability shall be recognized as income or expense in profit or loss.

- b) Ind AS-37- “Provisions, Contingent Liabilities and Contingent Assets” which inter-alia states that a provision shall be recognized, if an entity has a present obligation (legal or constructive) as a result of a past event and a reliable estimate can be made of the obligation amount.

23. In view of the above, it was observed that the following interest and loan liabilities were not recognised by the company wherein the accounting treatment of the interest expenses of Rs 194.43 crores was not found to be in accordance with the applicable and notified Accounting Standards.

Name of the party	Interest not recognized (Rs. In crores)
Reliance Commercial Finance Ltd. and Reliance Infrastructure Limited	82.66
IL&FS Financial Services Ltd	101.30

E Cap Equities Limited	2.86
Multiple lenders on current borrowing	7.44
Long Term Debt (multiple entities)	0.17
Total	<b>194.43</b>

24. It is therefore alleged that the company failed to comply with the Regulations 4(1), 4(2)(e), 33(1)(a), 33(1)(c), 34(3) and 48 of the LODR Regulations, wherein it was required to comply with all the applicable and notified Accounting Standards and thereby allegedly misrepresented/misstated financial statements for FY 2019-20 which were not reflecting its true and fair view of the financial performance.

**Interest on loan from RCFL**

25. As regards auditor's qualified opinion in respect of RCFL, the Noticees submitted that purported loan from Reliance Commercial finance Limited (RCFL) was not at all loan as understood in common economic and accounting parlance. It was in fact a structured transaction in compliance with the mechanism devised and implemented by Reliance Anil Dhirubhai Ambani Group (R-ADAG) to suit their convenience to fulfill their obligations under the Purchase Agreement dated March 05, 2015 wherein the said agreement was executed with the dominant purpose of acquisition of SKIL Group's equity stake in Pipavav Defence & Offshore Engineering Co. Ltd. "PDOECL" (now known as Reliance Naval & Engineering Ltd).
26. Noticees further submitted that the circumstances under which the said structured transactions under the garb of purported loans took place and the facts/legal grounds as to how and why the said loans were not payable were mentioned in explicit detail in their respective affidavits in reply filed by the company and its

subsidiary SKIL Shipyard Holdings Pvt. Ltd before the Hon'ble NCLT against the Section 7, IBC petitions filed against them by RCFL, towards RCFL claims against the said purported loan.

27. Noticees submitted that the Hon'ble NCLT vide its order dated February 10, 2023 and April 19, 2023 had dismissed those petitions in favor of the company and its subsidiary respectively. Noticees further added that since the matter was sub-judice, the said amounts continued to get reflected in the company's balance sheet in and after FY 2019-20 under the liability side as per the accounting norms, but it did not amount to admission as debt/liability on part of the company. In fact, in order to provide a true and fair picture of its financial statements, company denied acknowledging any liability in respect of said purported loans by explicitly making a caveat in its notes to the audited financial statements of FY 2019-20 and each year thereafter wherein the said loans are qualified as not being a liability accepted by the company.
28. Lastly, Noticees submitted that if the company had booked interest on the disputed loan, it would have tantamounted to admission of liability on its part and would have vitiated its correct legal stand, which was ultimately validated by the Hon'ble NCLT that the said purported loan was not payable.
29. It is noted from the Annual Report of the company for the financial year 2019-20 and Notes to financial statements company had caveated and mentioned the following:

*“An amount of Rs. 9,802 lakhs shown as received from Reliance Commercial Finance Ltd., a part of ADAG Group Company, promoted, owned and controlled by Shri Anil Dhirubhai Ambani, are not payable till such time a sum of Rs, 50,653.15 lakhs shown as receivable/ recoverable under the head “Other Advances”, from ADAG Group Companies, promoted, owned and controlled by Shri Anil Dhirubhai Ambani are received and obligations in accordance with the Purchase Agreement (PA) dated 4th March, 2015 signed between the Company, SKIL Shipyard Holdings Pvt Ltd. and others with the ADAG Group Companies, promoted, owned and controlled by Shri Anil Dhirubhai Ambani, viz, Reliance Infrastructure Limited and Reliance Defence Systems Pvt, Ltd, are fulfilled by ADAG Group Companies. It is a part of composite transaction emanating from and in connection with the sale of Pipavav Defence project to ADAG Group in accordance with the PA and also based on the circumstances and documents available on record. In view of above, the Company do not acknowledge or accept the liability of Reliance Commercial Finance Ltd.”*

30. From the above, it is noted that the company had mentioned in its Annual report that Rs 9,802 lacs was shown as received from Reliance Commercial Finance Ltd., in its notes on financial statement for the FY ended on March 31, 2020 Noticees have submitted that the purported transaction with RCFL was not a loan rather it was a structured transaction in compliance with the mechanism devised and implemented by R-ADAG to suit their convenience. However, upon perusal of the agreement dated January 30, 2018 executed between SKIL and RCFL, the undersigned notes that there is no mention of any structured transaction as claimed herein above by the Noticees. In this regard, it is pertinent to refer to the “*Borrower’s Request*” under

“Term Loan Facility and its terms“ of Article 2 of the page No 38 of the said agreement, which reads as under:

## **2 Borrower’s Request**

*2.1.1 At the request of the Borrower, the lender agreed to provide the Borrower the Term Loan Facility to the extent of Rs 98,02,00,000/- (Rupees Ninety Eight Crores Two Lacs Only) for the purpose”*

31. The aforesaid statement conspicuously exhibits that it was a loan taken by the company from RCFL at its request and not a structured transaction and hence as per the principles of accounting and prudent practice, the company was under an obligation to make provision for the loan from RCFL. Thus, by not providing for interest on the loan from RCFL, the company has avoided recording of loss to the extent of Rs.8266.89 lakhs and thus, misrepresented its financial statements. Therefore, submission of the Noticees is not tenable

## **NCDs of E Cap**

32. With regard to the opinion of the auditor in respect of the transaction with E Cap Equities Limited, Noticees submitted that E Cap Equities Limited (E Cap), an Edelweiss Group entity, had its Non-Convertible Debentures (NCD) a/c with the company’s subsidiary SKIL Shipyard Holdings Pvt. Ltd. (SSHPL) and another Edelweiss Group entity namely Everest Securities & Finance Ltd. (erstwhile Styrax Commodities Ltd.) had its Inter Corporate Deposit (ICD) a/c with the company. Noticees also submitted that the total claim of Edelweiss Group (Everest and E Cap) against SKIL Group (SKIL and SSHPL) included consolidated outstanding principal

amount of Rs. 115 Crores (Rs. 33 Crores for SKIL a/c and Rs. 82 Crores for SSHPL a/c) and this claim, being under dispute, one-time settlement negotiations were going on between Edelweiss Group & SKIL Group during FY 2019-20 to resolve the same.

33. Noticees submitted that SKIL Group had proposed a consolidated one-time full & final settlement (OTS) at Rs. 90 Crores (Settlement Amount) to Edelweiss Group and the same was approved by Edelweiss Group on May 08, 2020. They further submitted that out of the Settlement Amount, A/c of Everest was settled with the company at Rs 5 crores and A/c of E Cap with SSHPL was settled at Rs. 85 Crores. They also submitted that No Dues letter issued by Everest clearly mentioned that Rs. 5 Crores shall be adjusted only against the principal amount; entire outstanding is fully settled; and no other amounts were due and payable on this a/c. They also submitted that Everest had waived off its entire interest claim or for that matter any further dues to it, by having settled its disputed claim of Rs. 65.37 Crores (which included principal of Rs. 33 Crores also) at Rs. 5 Crores.
34. Noticees also submitted that company was legitimately expecting to sign the Settlement Agreement before finalization of its annual accounts for FY 2019-20 which happened in July 2020. However, due to COVID 19 scenario at that time, signing of the Settlement Agreement actually happened on October 01, 2020. Since the OTS proposal was already accepted and approved in writing by Edelweiss Group in May 2020, it then became a binding contract between the parties thereto in accordance with the Indian Contracts Act, 1872. Therefore, taking cognizance of this fact and with a view to provide true and fair picture of its financial statements for



FY 2019-20, interest on E Cap account was not booked while finalizing its standalone and consolidated annual accounts for FY 2019-20 in July 2020.

35. Noticees lastly submitted that even assuming that the said interest amounting to Rs. 286.62 lakhs was required to be accounted for, the total consolidated loss of the Noticee 1 for the FY 2019-20 would have gone up from Rs. 1,978.04 Crores to Rs. 1,980.90 Crores, i.e, an adverse impact of merely 0.15% of the total consolidated loss which is very miniscule and having no real material impact on the Noticee 1's financial statements of FY 2109-20.
36. With regard to the Noticees' aforementioned submission, it is noted that admittedly, Settlement between the company and E-Cap equities had concluded in the month of October 2020 whereas standalone and consolidated annual accounts of the company were finalized in July 2020. While the discussions were going on, finality of the settlement took place in October 2020 and not in the FY 2019-20, when the interest had already become due. Thus, as per the principle of prudence, the company should have booked the interest which it failed to do for the FY 2019-20 in terms of the accounting standards. The company cannot absolve itself from not following the accounting principles on the ground that proposal of settlement had become binding contract as it was accepted by Eidelweiss.
37. At this juncture, it is pertinent to mention the relevant provisions of applicable Accounting Standards for recognition of interest, financial liability and provisioning which are given below:

Ind AS 32 – ‘Financial Instruments: Presentation’ which inter-alia states that a financial liability is any liability that is:

- (a) a contractual obligation:
  - (i) to deliver cash or another financial asset to another entity

Further, the said Ind AS states that Interest, dividends, losses and gains relating to a financial instrument or a component that is a financial liability shall be recognized as income or expense in profit or loss.

38. From the above, it is noted that the interest being waived off cannot be considered as an established and settled law/rule. The company’s decision of not booking interest on the liability owed to E Cap is not justifiable since, the liability of the company was not extinguished and was in the books by the time when its accounts were finalized.
39. In this regard, it is also noted that Expert Advisory Committee of ICAI, in a similar case earlier opined (which was also accepted by the MCA), that the financial liability can be removed from balance sheet only when the same is extinguished i.e. when the obligation specified in the contract is discharged or cancelled or expires. Therefore, submission of the Noticees is devoid of bereft of merits. Thus, non-recognition of interest in the books resulted in misrepresentation of financials by the company.

**Interest on loan from IL&FS/IFIN**

40. As regards auditor’s opinion in respect of company in case of IL&FS, Noticees submitted that Sanction letter issued by IL&FS clearly stipulated mandatory prepayment by way of sale of shares pledged with (IL&FS), which despite repeated requests by the company, were not sold by IL&FS in order to give effect to window

dressings by sanctioning loans to SKIL group and charging interest on the outstanding, thereby inflating its balance sheet.

41. Noticees further submitted that IFIN started invoking/selling the shares pledged with them in whole/part to recover quarterly interest becoming due from time to time and it did so at a time when the share prices were continuously falling down. IFIN's these acts of unduly withholding the pledged shares despite its clear contractual obligation to sell the same and then invoking/selling the same in an arbitrary and whimsical manner (when the share prices were continuously going down) caused monumental financial loss to the company which amounted to criminal breach of trust and misappropriation. Noticees submitted that in this regard, company had filed an FIR No. 210 of 2023 with Economic Offences Wing, Mumbai Police under Section 120 B, 406, 409 and 420 of IPC and the matter is under investigation.
42. Additionally, Noticees submitted that since the matter was sub-judice, said borrowing from IL&FS continued to get reflected in the company's balance sheet in and after FY 2019-20 under the liability side as per the accounting norms, but it did not amount to admission as debt/liability on part of the company since it has been caveated in the its notes to its audited financial statements of FY 2019-20. In view of above and under the circumstances, the company did not book any interest on the disputed borrowing from IL&FS in FY 2019-20.
43. It is observed from the submission of the Noticees that amount of borrowing from ILFS was shown as a liability in the company's balance sheet as per the accounting norms. Given the above when Noticees followed the accounting norms reflecting

the loan as a liability then going by the same principle they should have provided for the interest in the said loan as per the accounting principles. Caveating does not relieve the company from adhering to the accounting principles and extant LODR Regulations. It is noted that in terms of Regulations 4(1)(a), 4(1)(b), 33(1), 34(3) and 48 of the SEBI (LODR) Regulations, 2015, the company is required to comply with all the notified and applicable Accounting Standards. The interest on loans is a borrowing cost for the company, which is required to be recognized as an expense under AS 1, AS 16 and AS 29 (IND AS 32 and IND AS 109 as per the accounting standards applicable currently) and liability of the company does not wither away by simply caveating. Since dispute was going on, company could have shown the same atleast as a contingent liability. This situation would have represented the true and fair picture of the financials of the company which would have been in line with the principles of accounting.

44. Further, it is noted that accounting is based on concept of conservatism which requires the accounts to be prepared with caution and high degrees of verification. Further, principle of prudence governing the selection and application of accounting policies state that *“In view of the uncertainty attached to future events, profits are not anticipated but recognised only when realised though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.”* Thus, in accounting revenues and assets should be recognized only when they realized and provision is to be made for all known/probable liabilities and losses. Accordingly, the company was under an obligation to book the interest expenses for its liability towards the entry of transaction with IFINL

in its annual accounts. Thus, the submission of the Noticees is not tenable and the violation of misrepresentation of financials against the company stands established as it failed to book the interest expenses w.r.t its transaction with IFIN.

#### **Non- booking of interest on Current Borrowings and Long Term Debts**

45. It has been qualified by the auditors that Company had not booked interest of Rs 744.53 lakhs on current borrowings of Rs 3700 lakhs. Further they also observed that Company did not account for interest expense of Rs 16.91 lacs during the year on long term debt of Rs 78.42 lakhs. With regard to the above observation of the auditors, no submissions have been made by the company and Noticees. Thus, it can be concluded the company misrepresented its financials by not booking the interest w.r.t Current borrowings and long term debts.
46. Accordingly, in view of foregoing, it stands established that the company failed to comply with all the applicable and notified Accounting Standards and thereby misrepresented/misstated financial statements for FY 2019-20 which were not reflecting true and fair view of its financial performance.

#### **Alleged Violation 2 : Delayed disclosure of material events w.r.t order of Bombay High Court to the stock exchange**

47. It was observed that the company did not disclose to the stock exchange regarding the order dated February 18, 2020 passed by the Hon'ble Bombay High Court in the matter of proceedings initiated by IL&FS Financial Services Limited (IFIN) against it and its subsidiaries, for conditional leave to it and its subsidiaries to defend its case

by deposit of Rs 616.75 Crores with the said High Court. However, the company made a delayed disclosure w.r.t said order on February 11, 2021.

48. The aforesaid disclosure of order by the company being a material event in terms of Regulation 30 of the SEBI (LODR) Regulations, 2015 ought to have been disclosed timely by it.
49. Accordingly, in view of the above delayed disclosure w.r.t the order of the Hon'ble High Court by the company, it is alleged that the company has violated the provisions of Regulation 4(1) and 30(2) & (3) of the LODR Regulations.
50. As regards delay in disclosure of material events w.r.t order of Bombay High Court to the stock exchanges by company, Noticees submitted that it was an unintentional and inadvertent error owing to the COVID-19 pandemic. Noticee 2, 3 and 4 further submitted that the said delay was related to a secretarial compliance matter and the Noticee 4 was not the Compliance Officer (i.e, the Company Secretary). As such, since this matter was not under the Noticee 4's functional jurisdiction, Noticee 4 cannot be held responsible for any alleged secretarial non-compliance and therefore be exonerated from the said allegation.
51. In this regard, it is noted from the submission of the Noticees that the company had admittedly made delayed disclosure to the exchange regarding the Bombay High Court order which was a material event in terms of Regulation 30(7) of the LODR Regulations and ought to have been disclosed within the timelines as per Regulation 30(6)(iii) of the LODR which read as mentioned below:

**Disclosure of events or information**

**30(7)** *The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.*

**[(6)** *The listed entity shall first disclose to the stock exchange(s) all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:*

**(iii)** *twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity.*

52. From the above provisions of LODR Regulations, it is observed that the company was duty bound to make the disclosure within 24 hours of the said High Court order to exchanges which it admittedly failed to do within the timeframe mentioned herein above. Further, w.r.t Noticees' reliance on the aforesaid order of the Apex court on period of limitation, it may be noted that the same was not applicable to the filings with the exchanges and neither SEBI nor exchanges granted any relaxation during the COVID w.r.t mandatory filing/disclosure with the exchanges. Thus, submission of the Noticees is bereft of merits. Thus, the company is in non-compliance regarding delayed disclosure of material events w.r.t order of Bombay High Court to exchange. As noted earlier, moratorium has been imposed upon the company in terms of Section 14 of IBC. Hence, the proceedings against the company is kept in abeyance.

**Alleged Violation 3: Publication of financials by company without consolidation of its two associate companies**

53. It was observed that the company in its Annual Reports for FY 2019-20, had shown its associate companies namely Urban Infrastructure Holding Private Limited (UIHPL) and Rosoboron Service (India) Limited (Rosoboron). Further, it was observed from the consolidated audit report of the said Noticee for FY 2019-20 wherein auditor had stated that *“Due to unavailability of financials statements of two associate companies, share of profit/(loss) is not included in this consolidated financial statement”*.
54. It is observed that the provisions of Ind AS 28 and/or 110 inter alia require that a company should prepare the consolidated financial statements wherein it has an investment in an associate company and in terms of Section 129(3) of the Companies Act, 2013, a company having subsidiaries including associate company and joint venture, shall prepare a consolidated financial statements in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.
55. Further, Regulation 33(3)(b) of the LODR Regulations inter alia stipulates that in case the listed entity has subsidiaries, it shall also submit quarterly/year-to date consolidated financial results. Also, Regulation 48 of the SEBI (LODR) Regulations, 2015 states that *“The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.”*



56. It is alleged that the company was holding a substantial stake i.e. 35% and 20% shareholding in its associate companies UIHPL and Rosoboron, respectively, for the FY 2019-20 and was required to consolidate its financials which was not done and thus, it is alleged that the said non-consolidation of financials of UIHPL and Rosoboron led to misrepresentation of the SKIL's net profit/loss for FY 2019-20 which is as follows in table 3:

**Table 3:**

<b>Particulars</b>	<b>FY 2018-19</b>
Total Comprehensive income/(loss) for the year (Without consolidation) <b>(A)</b>	(1926.28)
Total Comprehensive income/(loss) of UIHPL (Associate company of SKIL) <b>(B)</b>	(0.39)
SKIL's share in Net Loss of UIHPL i.e. 35% of Rs. 39.16 Lakh (for its shareholding of 35% in UIHPL) <b>(C)</b>	(0.14)
Total Comprehensive income/(loss) of Rosoboron (Associate company of SKIL) <b>(D)</b>	(8.66)
SKIL's share in Net Profit/(loss) of Rosoboron i.e. 20% of Rs. 8.66 crores (for its shareholding of 20% in Rosoboron) <b>(E)</b>	(1.73)
Total Comprehensive income/(loss) for the year (consolidated with UIHPL and Rosoboron) <b>(A+C+E)</b>	(1928.15)

57. In view of the above, company allegedly failed to consolidate its financials with its associate companies- UIHPL and Rosoboron and shown consolidated net loss as Rs. 1926.28 crores for FY 2019-20, thereby violating the provisions of Regulations 4(1), 33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations by not consolidating financial statements with its associate company- UIHPL and Rosoboron for FY 2019-20.

58. W.r.t alleged violation of publication of financials by company without consolidation of its two associate companies, Noticees submitted that both these associate companies, i.e, Rosoboron and UIHPL being unlisted, are not obligated to finalize

and adopt, through Board Meetings, their annual accounts within 60 days of end of financial year and that they have time till 180 days of end of financial year, to finalise and adopt their annual accounts. However, the company, being a listed entity, is under obligation to finalise and adopt its annual accounts, through its Board Meeting, within May 30 of every year.

59. Noticees submitted that due to non-availability of annual accounts of these two associates by May 30th of every year, it was impossible for the company to include the financial statements of these two associates in its audited consolidated financial statements and since the company does not have operational control in/over either of these two associates, it cannot force/compel/mandate them to finalise and adopt their annual accounts by May 30th for including the same in its audited consolidated financial statements as there was no legal obligation on them to do so.
60. Noticees further submitted that the financial statements of these two associate companies did not have any material impact on the Consolidated Financial Results of the Company wherein, the total adverse impact on loss of the company is of Rs. 1.87 Crores which is merely 0.1% of its total consolidated loss of Rs1,978.04 Crores. Noticees further relied upon paragraph C of page no. 168 the Other Matters of the Consolidated Independent Auditors' Report of Annual Report of the Tata Industries for the financial year 2020-21 wherein Noticees claimed that the said group considered only material entities/associates in the consolidation of financial results.
61. It is noted that in terms of Section 2(6) of the Companies Act, an associate company in relation to another company, means a company in which that other company has

a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company and the term significant influence means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement. Accordingly, the duo i.e. UIHPL and Rosoboron are the associate companies wherein SKIL was having 35% and 20% shareholding respectively.

62. With regard to the consolidation of financial statements of the associate companies, it is pertinent to refer to the Ind AS110, Section 129(3) of the Companies Act, Regulation 48 of LODR Regulations and Clause 2.1 of SEBI Circular CIR/CFD/FAC/62/2016 dated July 05, 2016 on Revised Formats for Financial Results and Implementation of Ind-AS by Listed Entities, which read as mentioned below:

### **Ind AS 110**

*The objective of this Indian Accounting Standard (Ind AS) is to establish principles for the presentation and preparation of consolidated financial statements when an entity controls one or more other entities.*

### **129. Financial statement**

**(3)** *Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):*

### **LODR Regulations**

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

**Relevant provision of SEBI Circular CIR/CFD/FAC/62/2016 dated July 05, 2016**

*2.1 The existing formats prescribed in SEBI Circular dated November 30, 2015 for Unaudited/Audited quarterly financial results i.e. Statement of Profit and Loss and the Unaudited/Audited Half-Yearly Balance Sheet to be submitted by the listed entities, with the stock exchanges, shall continue till the period ending December 31, 2016.*

*For the period ending on or after March 31, 2017, the formats for Unaudited/Audited quarterly financial results i.e. Statement of Profit and Loss and the Unaudited/Audited Half-Yearly Balance Sheet to be submitted by the Listed Entities, with the stock exchanges, shall be as per the formats for Balance Sheet and Statement of Profit and Loss (excluding notes and detailed sub-classification) as prescribed in Schedule III to the Companies Act, 2013. However, Banking Companies and Insurance Companies shall follow the formats as prescribed under the respective Acts/Regulations as specified by their Regulators.*

63. From the above provisions and Clause 2.4 of the said Circular, the undersigned notes that the Clause 2.4 of the said Circular stipulates that format of quarterly financial results ending on or after March 31, 2017 to be as per the formats prescribed in Schedule III of the Companies Act and the Schedule III of the Companies Act stipulates that all subsidiaries, associates and Joint ventures should be covered under Consolidated financial statements. Accordingly, the company was

under the statutory obligation to consolidate its financials by including its associates UIHPL and Rosoboron wherein it was having substantial stake of 35% and 20 % respectively as per the extant provisions mentioned herein above.

64. Further, w.r.t the submissions of the Noticees that the said non-consolidation did not have any material impact on the Consolidated Financial Results of the SKIL and its reliance on para C of page no. 168 the Other Matters of the Consolidated Independent Auditors' Report of Annual Report of the Tata Industries for the financial year 2020-21, it is noted that the said para C reads as mentioned below:

*“(c) The financial statements / financial information of four (4) associates namely, Oriental Seritech Ltd, Oriental Floratech (India) Ltd, ITEL Industries Ltd and Niskalp Infrastructure Services Ltd, valued at Rs. Nil in the consolidated financial statements, have not been considered in the consolidated financial statements. In our opinion and according to the information and explanations given to us by the management, the financial information of these associates is not material to the Group”.*

65. From the above, the undersigned notes that the Noticees have misconstrued the said para and the same is not applicable to the company in the instant case, since in the instant case the associate UIHPL has a material value and the company is a 35% shareholder of UIHPL and 20 % in Rosoboron, whereas in case of TATA Industries, the valuation of the subsidiaries companies was NIL. Thus, submission of the Noticees is not tenable.

66. Further, I note from the material available on record that the company had not even consolidated the financials of its said associates for the FY 2018-19, 2019-20, 2021-22 AND 2022-23. Thus, the submission of the Noticees is devoid of merits.
67. In view of the above, it is observed that the company has not consolidated the financial statement with its associate company- UIHPL and Rosoboron for FY 2019-20 and thus has misrepresented its financial statements.

#### **Roles of Noticee 2, 3 and 4**

68. It has been alleged that the Noticee 2 was one of the signatories of the company's financial statements, for FY 2019-20 and failed to discharge his duty in ensuring that the published financial statements were in accordance with the applicable and notified Accounting Standards and that the financial statements presented a true and fair view of the company's affairs.
69. Further, it was observed that Noticee 3 was the Whole Time Director and Vice-Chairman and Noticee 4 was the Chief Financial Officer (CFO) of the company throughout the IP i.e. he was a KMP of the company by virtue of his designation as the CFO in terms of the Companies Act, 2013. It is also observed that the Noticee 4 was one of the signatories of the financial statements of company along with the Noticee 3 and had signed the certificate under Regulation 17(8) of SEBI (LODR) Regulations, which inter alia states that *"These statements together present a true and fair view of the Company's affairs and are in compliance with existing accounting standards, applicable laws and regulations"*.

70. Accordingly, in view of the aforesaid, it is alleged that the Noticee 2 has violated Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7) of SEBI (LODR) Regulations and Regulations 4(1) 4(2)e ,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI LODR Regulations r/w Section 27 of SEBI Act and Noticee 3 has violated Regulations 4(2)(f)(i)(2),4(2)(f)(ii)(2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7) ,17(8) of LODR Regulations and Regulation 4(1) 4(2)e,33(1)(a),33(1)(c) 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, r/w Section 27 of SEBI Act, 1992 by having allegedly failed to perform their duties and obligations which resulted in misrepresented/misstated financial statements of SKIL for FY 2019-20 and that being chairman and vice chairman , respectively, they were in-charge of finance and decision making process and therefore, responsible for the violation committed by the company.
71. Further, it is alleged that the Noticee 4 has violated Regulation 17(8) of SEBI (LODR) Regulations 2015, Regulations 4(1),4(2)e,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b, 34(3) and 48 of SEBI (LODR) Regulations, 2015 r/w Section 27 of SEBI Act, 1992 by allegedly having failed to perform his duties and obligations which resulted in misrepresented/misstated financial statements of company for FY 2019-20 and that he being in charge of finance and decision making process and therefore, is alleged to have been responsible for the violation committed by the company and also allegedly furnished false certification to the board of directors stating that financial statement presented true and fair view.

72. Noticee 2 submitted that no action could be contemplated against him in view of the fact that he was a non-executive Chairman and Director, not concerned with the day-to-day affairs or management of company. The SCN erroneously considered Noticee 2 as Whole Time Director apart from being a Chairman. However, factually he had been a non-executive director and non-executive Chairman and therefore otherwise also he should not be liable for any allegations as mentioned in the SCN and accordingly, the allegations cannot stand against him.
73. With regard to the submission of the Noticee 2 that he was non-executive Chairman and Director, not concerned with the day-to-day affairs or management of company, it is noted from the material available on record that the said Noticee was signatory to the Annual Report for the FY 2019-20, it is observed that Noticee 2 has been shown under the category of "**Other Executive Director**" under the description "*B. Remuneration to other Directors*" on page 24 of the Annual Report. Further, Noticee 2 has also been shown as "*Promoter, Non-Executive, Non-Independent*" under Category of Directorship with designation of Chairman in Annexure VI to the Director's Report, Report on Corporate Governance at page 34 of the Annual Report, which shows that on the one hand Noticee 2 was an Executive Director when receiving remuneration and on the other hand was a Non-Executive Director which appears to be contradictory. Any in which case Noticee 2 was a signatory to the Annual accounts and thus, is responsible for the authentication of the accounts and cannot be ignorant of the accounting principles to be followed for the financial statements. Therefore, submission of the Noticee 2 in this regard is bereft of merits.



74. Further, I note that Noticee 2 and Noticee 3 being board members of the company had attended two and all the Board meetings respectively, held during the IP. The details of the board meetings attended by the Noticee 2 and 3 are given in table 4 below:

**Table 4:**

Name of the person	2019-20	
	Total No. of Meetings held	
	4	
	Eligible to atten	Attended
Nikhil Gandhi	4	2
Bhavesh Gandhi	4	4

75. It is noted that the Noticee 3 and Noticee 4 being a Vice Chairman, Whole Time director and CFO of the Company respectively were also the signatories of the financial statements of company and had signed the certificate under Regulation 17(8) of SEBI (LODR) Regulations, which inter alia stated that *“These statements together present a true and fair view of the Company’s affairs and are in compliance with existing accounting standards, applicable laws and regulations”*. As already established in the preceding paragraphs that the company had misrepresented its financial statements, therefore, Noticee 3 and 4 were also responsible for the said misrepresentation of financial by the company.

76. It is pertinent to note that company being a legal entity acts through the human mind represented by the Board of Directors who are responsible for all the acts of omission and commission by the Company. The directors are expected to take utmost care in dealing with the affairs of the Company and to ensure that all applicable laws are being complied with. In terms of extant provisions of LODR

Regulations, 2015, the Board of Directors are required to conduct themselves as to meet the expectations of operational transparency to stakeholders, and to ensure the integrity of the listed company's accounting and financial systems, the Board of Directors are also required to monitor the effectiveness of the listed entity's governance practices and make changes as needed and exercise objective independent judgement on corporate affairs. In terms of Regulations 17 (8) of LODR Regulations, 2015, the Chief Executive Officer and the Chief Financial Officer is required to provide compliance certificate to the board of directors as specified in Part B of Schedule II, thereby certifying that the financial statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading. Further, the statements together present a true and fair view of the listed entity's affairs and are in compliance. At this juncture, it is pertinent to refer to Section 27 of the SEBI Act, which reads as mentioned below:

**Section 27 of the SEBI Act, 1992**

*(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*

*Explanation : For the purposes of this section,—*

*(a) —company// means anybody corporate and includes a firm or other association of individuals; and*

*(b) —director//, in relation to a firm, means a partner in the firm.*

77. In this respect, it is noted that the Hon'ble Supreme Court, in the matter of N Narayanan v. Adjudicating Officer, SEBI (Civil Appeals No. 4112-4113 of 2013) has observed as under:

*“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in **Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602** that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”*

78. As it has already been established that there was misrepresentation of financials by the Company and Noticee 2 being signatory of the accounts, Noticee 3 and 4 being Vice Chairman & Whole Time Director and CFO of the company respectively, were thus responsible for such misrepresentation of financials by the company.

79. Thus, from the above, it stands established that the Noticee 2 has violated Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7) of SEBI (LODR) Regulations and Regulations 4(1) 4(2)e ,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI LODR Regulations r/w Section 27 of SEBI Act and Noticee 3 has violated Regulations 4(2)(f)(i)(2),4(2)(f)(ii) (2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7) ,17(8) of LODR Regulations and Regulation 4(1) 4(2)e,33(1)(a),33(1)(c) 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, r/w Section 27 of SEBI Act, 1992 by having failed to perform their duties

and obligations which resulted in publication of misrepresented/misstated financial statements of company for FY 2019-20 and that being chairman and vice chairman , respectively, they were in-charge of finance and decision making process and therefore, responsible for the misrepresentation made in the accounts by company and Noticee 4 has violated Regulation 17(8) of SEBI (LODR) Regulations 2015, Regulations 4(1),4(2)e,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, 2015 r/w Section 27 of SEBI Act, 1992 by having failed to perform his duties and obligations which resulted in publication of misrepresented/misstated financial statements of the company for FY 2019-20 and that he being in charge of finance and decision making process and therefore, had been responsible for the violation committed by the company and also furnished false certification to the board of directors stating that financial statement presented true and fair view.

**Issue No. II: If yes, does the violation, on part of the Noticees would attract monetary penalty under Section 15HB of the SEBI Act?**

80. As it has been established in the paragraphs above that the

- a) Noticee 2 has violated Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7) of SEBI (LODR) Regulations and Regulations 4(1) 4(2)e ,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI LODR Regulations r/w Section 27 of SEBI Act.
- b) Noticee 3 had violated Regulations 4(2)(f)(i)(2),4(2)(f)(ii) (2), 4(2)(f)(ii)(6) 4(2)(f)(ii)(7),4(2)(f)(iii)(7) ,17(8) of LODR Regulations and Regulation 4(1) 4(2)e,33(1)(a),33(1)(c) 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, r/w Section 27 of SEBI Act, 1992.

c) Noticee 4 has violated Regulation 17(8) of SEBI (LODR) Regulations 2015, Regulations 4(1),4(2)e,33(1)(a), 33(1)(c), 33(3)(b), 34(2)(b), 34(3) and 48 of SEBI (LODR) Regulations, 2015 r/w Section 27 of SEBI Act, 1992.

81. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of **Chairman, SEBI vs. Shriram Mutual Fund** {[2006] 5 SCC 361} wherein the Hon'ble Court had observed "*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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*"

82. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court, I am of the view that it is a fit case for penalty under Section 15HB of the SEBI Act, which is reproduced hereunder:

**Penalty for contravention where no separate penalty has been provided.**

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee 2, 3 and 4 taking into consideration the factors stipulated in Section 15J of the SEBI Act?**

83. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules which reads as under:

**SEBI Act, 1992**

**Factors to be taken into account by the adjudicating officer**

*15J While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely*

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*

*(c) the repetitive nature of the default.*

84. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors as a result of their failure. However, the undersigned notes that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Bringing about true and fair picture of the financials is essential whereas misrepresentation of financials in respect of the vital information of any company forfeits the purpose of dissemination of information to the investors and acts detrimental to the interest of the investors thereby hampering their ability to take suitable informed investment

decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is required to oversee/present true and fair picture of financials of a company and is not able to do so and engages in manipulating/misrepresenting (directly or indirectly) financials of a company then such person is depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticees and their failure in fulfilling their responsibility endowed upon them by virtue of them being the members of the board. Hence, the undersigned notes that the Noticees failed to present true and fair picture of financials of the company and thereby have violated the relevant provisions LODR Regulations, as mentioned above.

### **ORDER**

85. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and also taking into account judgment of the Hon'ble **Supreme Court in SEBI vs. Bhavesh Pabari** (2019)5 SCC 90 and in exercise of power conferred upon undersigned under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, the undersigned hereby imposes following penalty under Section 15HB of the SEBI Act on the Noticees for violation of the aforementioned provisions of SEBI Act & LODR Regulations:

<b>Name of the Noticees</b>	<b>Penal provisions</b>	<b>Penalty(Rs)</b>
Mr. Nikhil Gandhi	Section 15HB of the SEBI Act, 1992	Rs 15,00,000/- (Rupees Fifteen Lakhs Only)
Mr. Bhavesh Gandhi		Rs 20,00,000/- (Rupees Twenty Lakhs Only)
Mr. Shekhar Gandhi		Rs 20,00,000/- (Rupees Twenty Lakhs Only)
<b>TOTAL</b>		<b>Rs 55,00,000/- (Rupees Fifty Five Lakhs Only)</b>

86. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link: **ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW**. In case of any difficulties in payment of penalties, Noticees may contact the support at [portalhelp@sebi.gov.in](mailto:portalhelp@sebi.gov.in).

87. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-I DRA -IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-[tad@sebi.gov.in](mailto:tad@sebi.gov.in)



1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for:(like penalties/ disgorgement/recovery/settlement amount and legal charges along with order details)	

88. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

89. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

BARNALI  
MUKHERJEE

Digitally signed by  
BARNALI MUKHERJEE  
Date: 2024.08.29  
17:46:30 +05'30'

**Date: August 29, 2024**

**Place: Mumbai**

**BARNALI MUKHERJEE**

**ADJUDICATING OFFICER**