

SOM DISTILLERIES AND BREWERIES LIMITED

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CIN : L74899DL1993PLC052787

(BSE : 507514, NSE : SDBL)



SDBL/BSE/NSE/2023

01.12.2023

To

The Manager, Listing Department, NATIONAL STOCK EXCHANGE OF INDIA LIMITED 'Exchange Plaza' C-1, Block G, Bandra-Kurla Complex, Bandra (E), Mumbai-400 051. cmlist@nse.co.in Security ID: SDBL	Dy. General Manager, Department of Corporate Services, BSE LIMITED, First Floor, P.J. Towers, Dalal Street, Fort, Mumbai – 400001. corp.compliance@bseindia.com Security ID: 507514
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SUB: - INTIMATION OF UNDER REGULATION 30 OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Dear Sir/ Madam,

We hereby inform you that, On November 30, 2023, the Securities and Exchange Board of India (SEBI) issued an order in relation to a matter concerning our company and the same is attached with this letter. Additionally, the aforementioned information will also be made available on the Company's website at www.somindia.com.

Details pursuant to SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015

Sr. No.	Particulars	Applicability/Details
1	the details of any change in the status and / or any development in relation to such proceedings	Order is passed on November 30, 2023 under SEBI Act, 1992.
2	in the event of settlement of the proceedings, details of such settlement including - terms of the settlement, compensation/penalty paid (if any) and impact of such settlement on the financial position of the listed entity.	Please refer to the enclosed order
3	in the case of litigation against key management personnel or its promoter or ultimate person in control, regularly provide details of any change in the status and / or any development in relation to such proceedings	Please refer to the enclosed order

Please acknowledge receipt of the aforementioned information and take note of this for your records.

Thanking you,

For Som Distilleries and Breweries Limited

Nakul Kam Sethi
Director
DIN: 06512548

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/SV/GD/2023-24/29837)**

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

In the matter of:

**Som Distilleries & Breweries Ltd
(PAN: AABCS3374B)**

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as 'SEBI') had received a SCORE Complaint bearing reference number SEBIE/MH23/0001119/1 against Som Distilleries & Breweries Ltd ("Company/Noticee"). The said complaint was regarding announcement for issue of convertible warrants to the Promoters/Promoter's Group of the Company and then later cancellation of EGM called for approval of such proposal.
2. Upon receipt of SCORES complaint, SEBI conducted an examination to ascertain possible violations of SEBI (LODR) Regulations, 2015 (hereinafter referred to as "LODR Regulations"), due to inadequate / non-disclosures by the Company regarding proposal of fund raising. The examination has been carried out for a period from December 09, 2022 to February 02, 2023 (hereinafter referred to as "examination period") due to inadequate disclosure regarding fund raising plans of the Company.
3. Based on the findings of examination, SEBI initiated adjudication proceedings against the Noticee for violations of the following provisions:



- a. Regulation 4(1) (c), (d), (e), (f) of Chapter II of LODR; and Regulation 30(2), Reg 30(7) read with Reg 30(6) and Clause 4 (d) of para A of Part A of Schedule III of LODR

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI vide order dated August 11, 2023 appointed the undersigned as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**'), and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules, 1995**') read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 15A(b) of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref. SEBI/EAD-8/SKV/GD/36380/2023 dated September 04, 2023 (hereafter referred to as "**SCN**") was issued to the Noticee in terms of the provisions of Rule 4 of the SEBI Adjudication Rules vide speed post and email dated September 04, 2023. I note that SCN was successfully delivered through speed post and email.
6. The allegations levelled against the Noticee in the SCN are reproduced as follows:
- a. *The company has vide corporate announcement dated December 09, 2022 informed stock exchange the outcome of Board Meeting held on December 09, 2022. (corporate announcements are placed as **Annexure-B**).*
- b. *The Board of Directors in its meeting considered and approved inter-alia the following:*
- *For the expansion plan (capex) of approximately Rs. 100 crores for setting up new facilities at Bhopal and Hasan Plant, Board approved the raising of capital through:*
 - i. *Issue of convertible equity warrants to the promoters/promoter's group on preferential basis by issuing up to 65,00,000 warrants convertible in*

one or more tranches to equity shares of ₹5/- each of the Company at a price of ₹142/- (including premium of ₹137/-) for each Warrant subject to necessary shareholders/regulatory approvals, as applicable;

ii. Rights Issue aggregating upto Rs. 49 crores.

- Holding of Extra-Ordinary General Meeting (EGM) of the shareholders on January 07, 2023
- c. The company has vide corporate announcement dated December 15, 2022 issued notice dated 15-Dec-22 for EGM of the Members to be held on January 07, 2023 for consideration and approval of:
- Issue of convertible equity warrants to promoters / promoters group on preferential basis
 - Appointment of Mr. Rajesh Kumar (DIN: 08732528) as an Independent Director
- d. The company has vide announcement dated January 02, 2023 submitted that Company had 'cancelled' the scheduled EGM owing to unforeseen/unavoidable circumstances. Relevant text of the announcement is as follows:
- "This is to inform that the Board with requisite majority has passed the resolution by circulation today i.e. January 2, 2023 have concluded that in view of unforeseen/unavoidable circumstances, the EGM scheduled to be held on Saturday, January 7, 2023 shall stand cancelled."
- e. On January 27, 2023, company uploaded Audio recording of the Earnings Conference Call held on Friday, 27th January, 2023 with regard to the unaudited financial results for Q3 FY2023. The transcript of the same was uploaded on February 02, 2023. As per the said transcript, during the introductory message to investors, Mr. Nakul Sethi, Director – Finance and Strategy said that the due to the lesser needs of funds towards CAPEX the preferential issue has been deferred.
- f. In accordance with regulation 30 of LODR regulations, company is mandated to make disclosure updating material developments on a regular basis, till such time the event is resolved/closed. Further, as per para A of Part A of Schedule III of LODR Regulations, the fund raising plan is a material event and any outcome i.e. whether approved or closed is required to be disclosed within 30 minutes of the closure of the meeting. However, it was observed that the Noticee has not provided any specific reasons for such cancellation of meeting. Further Noticee has also not provided any reasons about the validity

of proposed resolutions i.e. issue of warrants to promoters and appointment of the independent director.

g. Vide email dated February 21, 2023, company was asked to provide an explanation as regards cancellations of EGM. In reply the company has vide email dated March 06, 2023 (placed as Annexure-C) submitted as follows:

- "The Company is in full compliance with Regulation 30(2), 30(7) read with Regulation 30 (6) of SEBI (LODR) Regulations, 2015. The communication on the cancellation of the EGM was communicated to the shareholders vide a notification to the stock exchanges on 2nd January 2023 and the same was published in the newspapers on 3rd January 2023. (a copy of both the documents are attached). On January 2, 2023, the board resolved to cancel the proposed EGM due to unforeseen / unavoidable circumstances and accordingly, the matters of EGM i.e. preferential issue of warrants and appointment of independent director were cancelled.*
- Further, the development on the preferential issue of warrants was communicated to shareholders through earnings call on January 27, 2023, the transcript of which was uploaded on the website of the stock exchanges and the company. The text is reproduced from the investor call which is as follows:*
- "There was a lesser need of funds towards CAPEX in the company, and as such, the preferential issue was deferred. Instead, it was decided that we continue with the right issue to give the existing minority investors the opportunity to be a part of the growth story of the company. The promoters are also willing to take up any unsubscribed portion of the right issue.*
- This step will also lead to lesser dilution of equity, which was a cause of concern for some investors. Post expansion, if there is a need for further capital, then needs are evaluated. And if needed, we do another preferential issue."*
- From the above it is clear that the company has taken due care of interest all the stakeholders in fair and transparent manner and in future the company will take care of the same."*

h. It was thus observed that company has not adequately and timely disclosed the decision of Board regarding deferment of preferential allotment of share warrants to Promoters / Promoter's Group.



7. Vide email dated September 21, 2023, Noticee requested for extension of time for submission of reply to the SCN. Acceding to the request and in line with principles of natural justice, Noticee was granted time till September 29, 2023. Vide email dated October 09, 2023 Noticee has submitted its reply to the SCN. Vide email dated October 09, 2023, Noticee was initially provided hearing opportunity on October 19, 2023. However, vide email dated October 18, 2023, the Authorized Representative viz. Crawford Bayley & Co. (hereinafter referred to as 'AR') of Noticee requested for postponement of hearing citing health issues. Acceding to the request and in the interest of natural justice, hearing was rescheduled to October 23, 2023. On the scheduled date of hearing, the AR appeared on behalf of Noticee and reiterated the submissions made vide reply dated October 09, 2023. AR requested time until October 25, 2023 to file additional submissions including for providing copy of the resolution passed by circulation. Subsequently vide email dated October 25, 2023, AR for the Noticee has submitted its post hearing submissions.
8. The key submissions made by Noticee vide email dated October 09, 2023 is reproduced hereunder.
- a. *At the outset, we deny every allegation and contention levelled against our client in the Notice. We now proceed to submit our reply to the Notice as under:*
 - b. *The Board of Directors of the Company with requisite majority passed the resolution by circulation on January 2, 2023, concluded that in view of unforeseen / unavoidable circumstances, the EGM scheduled to be held on Saturday, January 7, 2023, shall stand cancelled.*
 - c. *The Company immediately on January 2, 2023, intimated without any delay or lapse of time to the Stock Exchange and also disseminated the same information on its websites in accordance with Regulation 30 of SEBI ICDR Regulations.*
 - d. *We therefore submit that the Company has provided adequate and timely information to recognised stock exchange(s) and investors. The company has neither misrepresented nor provided misleading information to the Stock Exchange or the investors. The Company has infact ensured that disseminations made under provisions of SEBI LODR Regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language. None of the principles mentioned in Regulation 4(1) of the SEBI LODR Regulations are violated.*
 - e. *In light of the above we state that the Company has not violated the provisions of Regulation 4(1)(c)(d) (e) and (f) of the SEBI LODR Regulations and therefore no*

penalty should be imposed on our Clients under Section 15A(b) of the SEBI Act.

- f. The Board of Directors of the Company considered and approved raising funds through the issue of Convertible Equity Warrants to the Promoters/Promoter Group on preferential basis in its meeting dated December 9, 2022. The outcome of the said meeting was disclosed to the Exchange(s) within 30 minutes of the closure of the meeting. Thereby complying with the provisions of Clause 4(d) of Para A of Part A of Schedule III of SEBI LODR Regulations.*
 - g. In compliance with Regulations 30(2)(7) and (6) immediately without delay intimated the cancellation of the meeting of the EGM proposed for approval of the shareholders for the issue of convertible equity warrants to the promoters.*
 - h. In accordance with provisions of Regulation 30(7) the Company immediately upon the Board of Directors passing the resolution by circulation with respect to the cancellation of the EGM, informed the same to the Stock Exchanges and also disseminated on the website of the Company.*
 - i. The Company has therefore at all times ensured that all material developments were updated and informed and disclosed to the Stock Exchange on a regular basis and in a timely manner.*
 - j. In light of the above we state that the Company has not violated the provisions of Regulation 30(2), 30(7) read with 30(6) and Clause 4(d) of para A of Part A of Schedule III of SEBI LODR Regulations and therefore no penalty should be imposed on our Clients under Section 15A(b) of the SEBI Act.*
 - k. There is no failure on part of the Company to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or failure to file return or furnish the same within time specified therefor in the regulations or has furnished or filed false, incorrect or incomplete information, return, report, books or other documents, and therefore we state and submit that our Client is not liable to any penalty under provisions of Section 15 A(b) of the SEBI Act.*
 - l. In light of the above, we state that no inquiry be held and no penalty be imposed against our Client as proposed in the Notice under reference. We crave leave to add alter and amend our reply, if required.*
9. The key submissions made by Noticee vide email dated October 26, 2023, is reproduced hereunder.
- a. The Board of Director on January 2, 2023, resolved by circulation that the EGM for approval of the shareholders for the issue of convertible equity warrants to the promoters is required to be cancelled due to unforeseen and unavoidable reasons. The Company immediately on the circular resolution being approved by the Board of Directors informed the Stock Exchange and investor the decision to cancel the proposed EGM.*
 - b. In the Board Meeting held on December 9, 2022 it was resolved that the Company*

would raise capital through a combination of a rights issue as well as a preferential issue of warrants to promoters to part finance the expansion plans of the Company and its wholly owned subsidiary.

- c. However it was later felt that there is a lesser need of funds due to strong accruals at that point in time due to which it was proposed to cancel the preferential issue of warrants to the Promoters. Hence the resolution was passed for the cancellation of EGM for approval of 65 lakh warrants to the promoters. Instead, it was decided that the Company will continue with the right issue to give the existing minority investors the opportunity to be a part of the growth story of the Company.
- d. It is therefore submitted that the Company has the best interests of the investors in mind and further the decision of the Company to defer/cancel the proposal of issue of warrants to the promoters has not caused any adverse effect on the investors or movement in price of the shares of the Company.
- e. The Company could not have informed the decision of cancellation of EGM any sooner than the January 2, 2023 when the Board of Director by circular resolution approved the cancellation of the proposed EGM for the reasons as mentioned above.
- f. Therefore, we submit and reiterate that the disseminations made under provisions of SEBI LODR Regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
- g. Regulation 4 (f) provides that the Channels for disseminating information shall provide for equal, timely and cost-efficient access to relevant information by investors. The Company disseminated the information by informing the Stock Exchange immediately after the Board of Director by way of circular resolution approved the cancellation of the EGM and also uploaded the same in its website.
- h. It is therefore humbly stated that none of the principles mentioned in Regulation 4(1) of the SEBI LODR Regulations are violated.
- i. In light of the above we state that the Company has not violated the provisions of Regulation 4(1)(c)(d) (e) and (f) of the SEBI LODR Regulations and therefore no penalty should be imposed on our Clients under Section 15A(b) of the SEBI Act.
- j. The Board of Directors of the Company considered and approved raising funds through the issue of Convertible Equity Warrants to the Promoters/Promoter Group on preferential basis in its meeting dated December 9, 2022. The outcome of the said meeting was disclosed to the Exchange(s) within 30 minutes of the closure of the meeting. Thereby complying with the provisions of Clause 4(d) of Para A of Part A of Schedule III of SEBI LODR Regulations.
- k. In compliance with Regulations 30(2), (7) and (6) immediately without delay intimated the cancellation of the meeting of the EGM proposed for approval of the shareholders for the issue of convertible equity warrants to the promoters.
- l. In accordance with provisions of Regulation 30(7) the Company immediately upon the Board of Directors passing the resolution by circulation with respect to the

cancellation of the EGM, informed the same to the Stock Exchanges and also disseminated on the website of the Company. The Company could not have intimated the decision with respect to the cancellation of the EGM any sooner than it did after the Board by passing a circular resolution approved the decision of cancellation after assessing the needs of the Company for additional funds. Further the decision to cancel the issue of warrants to promoters was keeping the best interests of the investors in mind and no loss has been caused to the investors by such decision of the Company.

- m. The Company has therefore at all times ensured that all material developments were updated and informed and disclosed to the Stock Exchange on a regular basis and in a timely manner.*
- n. In light of the above we state that the Company has not violated the provisions of Regulation 30(2), 30(7) read with 30(6) and Clause 4(d) of para A of Part A of Schedule III of SEBI LODR Regulations and therefore no penalty should be imposed on our Clients under Section 15A(b) of the SEBI Act.*
- o. There is no failure on part of the Company to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or failure to file return or furnish the same within time specified therefor in the regulations or has furnished or filed false, incorrect or incomplete information, return, report, books or other documents, and therefore we state and submit that our Client is not liable to any penalty under provisions of Section 15 A(b) of the SEBI Act.*
- p. The Company in its earnings conference call on January 27, 2023 with regards to the financial results for the third Quarter of financial year 2023 addressed the concerns of the investors on cancellation of the EGM for issue of convertible warrants to the promoters and stated that there was a lesser needs of funds towards CAPEX in the Company, and as such, the preferential issue was deferred. Instead, it was decided that we continue with the right issue to give the existing minority investors the opportunity to be a part of the growth story of the Company. The promoters are also willing to take up any unsubscribed portion of the right issue. This step will also lead to lesser dilution of equity, which was a cause of concern for some investors. Post expansion, if there is a need for further capital, then needs are evaluated. And if needed, we shall do another preferential issue.*
- q. Therefore, the Company has been transparent in its conduct and has followed the principles of best corporate governance by providing adequate, timely, accurate, explicit information to the investors and the Stock Exchange with respect to the cancellation of the EGM to approve the proposal of the issue of convertible warrants to the promoters.*
- r. It is once again submitted that the decision to cancel the EGM has neither caused any adverse effect to the shareholders nor caused any adverse movement in the stock price of the Company.*

CONSIDERATION OF ISSUES AND FINDINGS

10. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:

- I. **Whether Noticee has violated provisions of Regulation 4(1) (c), (d), (e) and (f) of Chapter II of LODR regulations and Regulation 30(2),30(7) read with Regulation 30(6) and Clause 4 (d) of para A of Part A of Schedule III of LODR regulations?**
- II. **Do the violations, if any, attract monetary penalty under section 15A(b) of the SEBI Act, 1992?**
- III. **If the answer to Issue No. I & II is in affirmative, then what should be the quantum of monetary penalty?**

11. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are provided hereunder:

SEBI 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:*

(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.*

"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.*

...

(6) *The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty-four hours from the occurrence of event or information:*

Provided that in case the disclosure is made after twenty-four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein.

(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*

...

[emphasis added]

Schedule III of SEBI LODR Regulations

"Para A of Part A - Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

...

4. *Outcome of Meetings of the board of directors: The listed entity shall disclose to the Exchange(s), within 30 minutes of the closure of the meeting, held to consider the following:*

...

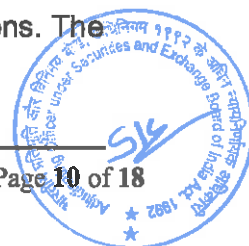
d) the decision with respect to fund raising proposed to be undertaken

...

[emphasis added]

Issue I: Whether Noticee has violated provisions of Regulation 4(1) (c), (d), (e) and (f) of Chapter II of LODR regulations and Regulation 30(2),30(7) read with Regulation 30(6) and Clause 4 (d) of para A of Part A of Schedule III of LODR regulations?

12. It was alleged that Noticee has not adequately and timely disclosed the decision of Board regarding deferment of preferential allotment of share warrants to Promoters / Promoter's Group in accordance with regulation 30 of LODR regulations. The



issue that falls for consideration therefore is whether the disclosures made to stock exchange was complete, correct, timely and fair in all respect.

13. I note that Noticee had vide corporate announcement dated December 15, 2022 disclosed regarding issue of Extra-Ordinary General Meeting (hereinafter referred as "EGM") notice dated 15-Dec-22 to members for the EGM to be held on January 07, 2023 for consideration and approval of (a) Issue of convertible equity warrants to promoters / promoters group on preferential basis; (b) Appointment of Mr. Rajesh Kumar (DIN: 08732528) as an Independent Director.

14. The Noticee has vide announcement dated January 02, 2023 disclosed that Company had 'cancelled' the scheduled EGM owing to unforeseen/unavoidable circumstances. Relevant text of the announcement is as follows:

"This is to inform that the Board with requisite majority has passed the resolution by circulation today i.e. January 2, 2023 have concluded that in view of unforeseen/unavoidable circumstances, the EGM scheduled to be held on Saturday, January 7, 2023 shall stand cancelled."

15. Noticee in its reply has *interalia* submitted that it has complied with the provisions of Regulation 4(1)(c)(d) (e) and (f), Regulation 30(2), 30(7) read with 30(6) and Clause 4(d) of para A of Part A of Schedule III of SEBI LODR Regulations

16. Noticee in its reply has contended that the Company immediately on January 2, 2023, intimated about cancellation of EGM without any delay or lapse of time to the Stock Exchange and also disseminated the same information on its websites in accordance with Regulation 30 of SEBI LODR. Noticee further submitted that the Company could not have informed the Stock Exchanges or investors any sooner than January 2, 2023, when the Board of Directors resolved to cancel the EGM.

17. I note that as per regulation 30(2), 30(7) read with regulation 30(6) & clause 4(d) of Para A of Part A of schedule III of LODR regulation, the decision with respect to fund raising proposed to be undertaken is deemed to be material event regarding

which disclosures need to be made updating developments on a regular basis till such time the event is resolved/closed. Also the disclosure of the outcome needs to be made within 30 minutes of the closure of the meeting.

18. In the instant case the resolution for cancellation of EGM was approved by the board through resolution by circulation. It is noted that the cancellation of the EGM wherein a significant resolution relating to "fund raising by Issue of convertible equity warrants to promoters / promoters group on preferential basis was proposed makes it more obligatory on part of the Noticee to disclose all material information in a correct and complete manner to the stock exchange.

19. I note that announcement dated January 02, 2023 made to stock exchanges was inadequate and ineffective. The fundamental premise of a disclosure is to make available information to shareholders in order to make a well informed decision. The aforesaid corporate announcement made to stock exchanges was without any detailed reasoning as regards to the circumstances leading to cancellation of EGM. All it said was that due to unforeseen/unavoidable circumstances EGM is being cancelled. I also note that there was no specific clarification made regarding the views/decision regarding the fund raising proposal and with regard to appointment of independent director which were inter-alia going to be taken up in the EGM.

20. However, it is noted from the replies given by the Noticee mentioned on the pre-pages that the Board approved the decision of cancellation after assessing the needs of the Company for additional funds. It was felt that there is a lesser need of funds due to strong accruals at that point in time due to which it was proposed to cancel the preferential issue of warrants to the Promoters. Hence the resolution was passed for the cancellation of EGM for approval of 65 lakh warrants to the promoters. Instead, it was decided that the Company will continue with the right issue to give the existing minority investors the opportunity to be a part of the growth story of the Company.

21. It is noted from the material before me that the above was not mentioned by the Noticee in their disclosure dated January 3, 2023 made to the public through the Stock Exchange. It was only much later that too in its earnings conference call on January 27, 2023 with regards to the financial results for the third Quarter of financial year 2023, that during the introductory message to investors, Mr. Nakul Sethi, Director – Finance and Strategy addressed the concerns of the investors on cancellation of the EGM. The audio recording of the call was uploaded on the exchange on January 27, 2023 and the transcript of the same was uploaded on February 02, 2023 as per which during the introductory message to investors, Mr. Nakul Sethi, said that there was a lesser needs of funds towards CAPEX in the Company, and as such, the preferential issue was deferred. Instead, it was decided that we continue with the right issue to give the existing minority investors the opportunity to be a part of the growth story of the Company. The promoters are also willing to take up any unsubscribed portion of the right issue. This step will also lead to lesser dilution of equity, which was a cause of concern for some investors. Post expansion, if there is a need for further capital, then needs are evaluated. And if needed, we shall do another preferential issue.
22. It is also pertinent to note that Noticee has not provided any reasons about the validity of proposed resolutions i.e. issue of warrants to promoters and appointment of the independent director. The prospects of the said resolutions remain pending with the Noticee.
23. In light of the observations noted in the prior paragraphs it is seen that the Noticee has not adhered to the principles governing disclosures and obligations as laid down in Regulation 4 (1) (c), (d), (e) and (f) of Chapter II of SEBI LODR Regulations mentioned in detail in Para 11 and not disclosed information which is required as per Regulation 30 (2), 30 (7) read Regulation 30 (6) and Clause 4 (d) of Para A of Schedule III of SEBI LODR Regulations mentioned in Para 11 and Para 17.
24. At this juncture, I would like to rely on Hon'ble SAT ruling in Appeal No. 583 of 2019 dated July 8, 2020 in the matter of ICICI Bank Limited vs. SEBI had held that "The



purpose and spirit of disclosure in a disclosure-based regulatory regime is simple and clear; disclose all material and price sensitive events/information and disclose even when one is in doubt. It does not have to be tested with finer legal examination, hairsplitting arguments or semantics”.

25. Further, Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014) order dated August 11, 2014), has also held that *“Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same”.*

26. Similarly, in Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”*

27. Further, in *Mr. Ankur Chaturvedi vs SEBI* (Appeal no. 434 of 2014) decided on August 04, 2015, the Hon'ble SAT has held that *“As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty....”*

28. In line with the observations made by Hon'ble SAT in above orders, I note that it is essential to maintain transparency regarding the company's functioning and to provide adequate and correct information. Further correct and timely disclosures play an essential role in the proper functioning of the securities market and failure



to do so results in depriving the investors from taking well informed investment decision.

29. In view of the reasons recorded hereinabove, I hold that the Noticee has violated Regulation 4(1) (c), (d), (e) and (f) of Chapter II of LODR regulations and Regulation 30(2),30(7) read with Regulation 30(6) and Clause 4 (d) of para A of Part A of Schedule III of LODR regulations.

Issue II. Does the violations, if any, attract monetary penalty under section 15 A(b) of the SEBI Act, 1992

30. In light of findings and observations made against the Noticee brought out in the foregoing paragraphs, I hold that Noticee have violated applicable SEBI Regulations and Circulars. The above violation makes the Noticee liable for monetary penalty under the provisions of Section 15 A(b) of the SEBI Act. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)* which *inter-alia* has 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...*". The relevant provisions of section 15A(b) of the SEBI Act are as under:

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder:

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty which shall not be less than one lakh rupees but which



may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Issue III. If the answer to Issue No. I & II is in affirmative, then what should be the quantum of monetary penalty?

31. While determining the quantum of penalty under the provisions of Section 15A(b) of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act, which reads as under:

SEBI Act, 1992

Factors to be taken into account while adjudging quantum of penalty

15J While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.

¹¹¹[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

32. In the present matter, I note from the material available on record, it is difficult to quantify the disproportionate gains made by the Noticee. Further I note that, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee in the instant matter. As regards repetitive nature of default, I note that no past action has been taken by SEBI against the Noticee. However, I am of the view that the Noticee being a listed Company is expected to carry out its conduct with proper skill, care and diligence and make material disclosures on time as per the relevant regulations. Disclosure and transparency are the bedrock of good corporate governance and information made out of disclosures are critical for

investment decisions of the investors. Thus, I feel appropriate to levy a penalty, which is commensurate with the nature of violation and which acts as a deterrent to the Noticee.

ORDER

33. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose following penalties on the Noticee:

Violative Provisions	Penalty Provisions	Amount of penalty (in ₹)
Regulation 4(1) (c), (d), (e), (f) of Chapter II of LODR; and Regulation 30(2), Reg 30(7) read with Reg 30(6) and Clause 4 (d) of para A of Part A of Schedule III of LODR	15A(b) of the SEBI Act, 1992	5,00,000

I am of the view that the aforesaid penalty is commensurate with the violation/allegations levelled against the Noticee.

34. The Noticee 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 on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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



36. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

SHASHI KUMAR VALASKUMAR Digitally signed by SHASHI KUMAR VALASKUMAR
Date: 2023.11.30 20:38:56 +05'30'

Shashi

Place: Mumbai

Date: November 30, 2023

SHASHI KUMAR VALSAKUMAR
ADJUDICATING OFFICER

