

June 8, 2024

To
The Dept. of Corporate Services,
BSE Limited,
Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai — 400001

Subject: Intimation under Regulation 30 of SEBI (Listing Obligations & Disclosure Requirements) Regulations 2015 – SEBI Adjudication Order

Security Code: 500267

Dear Sir/Ma'am,

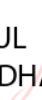
The Securities Exchange Board of India ("SEBI") has issued an Adjudication Order dated June 7, 2024 under Section 15-I of the SEBI Act, 1992 read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

We enclose herewith the disclosure pursuant to Regulation 30 and Schedule III of the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 read with SEBI Circular No. SEBI/HO/CFD/CFD-PoD-1/CIR/2023/123 dated July 13, 2023 (**Annexure A**).

Copy of the Order is enclosed (**Annexure B**).

Kindly take the same on your records.
Yours faithfully

For Majestic Auto Limited

PARUL  Digitally signed
by PARUL
CHADHA
Date: 2024.06.08
14:26:13 +05'30'

Parul Chadha
Company Secretary & Compliance Officer

Encl.: SEBI Adjudication Order No. Order/AN/PR/2024-24/30413

MAJESTIC AUTO LIMITED
CIN L35911DL1973PLC353132

Corporate Office: A-110, Ground Floor, Sector 4, Noida 201301 (U.P.)
Registered Office-10, Southern Avenue, First Floor, Maharani Bagh, New Delhi-110065
Tel.: 0120-4348907, Email: info@majesticauto.in, www.majesticauto.in

Annexure A

Disclosure pursuant to Regulation 30 and Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with SEBI Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated July 13, 2023.

(a) Name of the Authority:	The Securities and Exchange Board of India ("SEBI")
(b) Nature and details of the action(s) taken, initiated or order(s) passed:	SEBI has issued an Adjudication Order dated June 7, 2024 under Section 15-I of the SEBI Act, 1992, read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 against the Noticee viz. the Company imposing penalty of Rs.7 lakh for violation of provisions of Regulation 23(2) and 23(4) read with 23(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
(c) Details of violation(s) / contravention(s) committed or alleged to be committed:	
(d) Date of receipt of direction or order, including any ad-interim or interim orders , or any other communication from the authority:	June 7, 2024, through e-mail from SEBI.
(e) Impact on financial, operational or other activities of the listed entity, quantifiable in monetary terms to the extent possible:	As mentioned at serial no. (b) above. However, the Company is contemplating its legal options.

MAJESTIC AUTO LIMITED

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Tel.:0120-4348907, Email:info@majesticauto.in,www.majesticauto.in

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AN/PR/2024-25/30413]**

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

In respect of:

Majestic Auto Limited

PAN: AABCM2162M

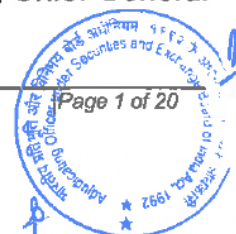
In the matter of Majestic Auto Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as 'SEBI') conducted an examination in respect of Majestic Auto Limited (hereinafter also referred to as 'Noticee' / 'Company' / 'MAL'). Pursuant to the examination, SEBI inter alia observed and alleged violations of provisions of Regulation 23(2) and Regulation 23(4) read with Regulation 23(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter also referred to as, 'LODR Regulations'). In view thereof, SEBI initiated adjudication proceedings in respect of the Noticee for the aforesaid alleged violations.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Whereas, the Competent Authority was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 23 I of the Securities Contracts (Regulation) Act, 1956 and Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, the Competent Authority appointed Ms. Maninder Cheema, Chief General



Manager, SEBI as Adjudicating Officer to inquire into and adjudicate the aforesaid alleged violations by the Noticee. Pursuant to the transfer of Ms. Maninder Cheema, Chief General Manager, Dr. Anitha Anoop, Chief General Manager, SEBI was appointed as the Adjudicating Officer ('erstwhile AO') vide Communique dated June 07, 2022. Thereafter, pursuant to the transfer of Dr. Anitha Anoop, undersigned was appointed as the Adjudicating Officer vide Communique dated September 05, 2022 read with Communique dated March 05, 2024 to enquire into and adjudge under Section 15HB of SEBI Act, 1992 for the alleged violations by the Noticee, as stated.

C. SHOW CAUSE NOTICE, REPLY and HEARING

3. A Show Cause Notice bearing No.EAD5/AA/HP/31248/2022 dated July 29, 2022 ('SCN', in short) was issued to the Noticee by erstwhile AO in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 to show cause as to why inquiry should not be held and penalty should not be imposed under Section 23E of Securities Contracts (Regulation) Act, 1956, for the aforesaid alleged violations. Thereafter, a supplementary Show Cause Notice bearing No. SEBI/HO/EAD/EAD5/P/OW/2024/ 13539 /1 dated April 05, 2024 ('SSCN', in short) was issued to the Noticee wherein inter alia Section 23E of Securities Contracts (Regulation) Act, 1956, being the charging provision, was substituted with Section 15HB of the SEBI Act, 1992 for the aforesaid alleged violations (for brevity, SCN and SSCN conjointly also referred to as SCNs, unless the context specifies or requires otherwise).
4. The allegations in respect of the Noticee inter alia brought out in the SCNs are as under:

...

3. SEBI received a complaint (copy placed at Annexure 2) from 3 Independent Directors of MAL i.e., Mr. Vikas Nanda, Mr. Sham Lal Mohan and Mr. Naveen Jain (three existing IDs), inter-alia alleging that the conditions for omnibus approval given by the Audit Committee for Related Party Transactions (RPTs) were not being fulfilled. Details are as under:
...
11. In view of the comments of the Audit Committee in its meeting dated February 08, 2021 with regard to recovery of security deposits, details of these deposits and approvals taken for the same, were sought from the Company. The Company vide its reply dated April 27, 2021, May 05, 2021 and August 02, 2021 (copy placed at Annexure 5) inter-alia provided the following response:



12. The Company has stated that the deposits discussed in the meeting of the Audit Committee meeting held on February 8, 2021 pertained to security deposit given to Indraprastha Gas Limited (IGL). IGL is not a related party but a public sector company. The Company further informed that it has been actively pursuing recovery with IGL and it was expected that the refund would take place upon completion of the contract in 2022.
13. Security deposits have also been placed with the following related parties - OK Hosiery and ETPL. The amount of outstanding deposits placed by the Company with these entities as on March 31, 2021 are as follows:

S. No.	Name of entity	Amount of deposit	Interest rate	Date of deposit
1	OK Hosiery	10.80 lakhs	Rent free	September 12, 2018
2	ETPL	15.38 crores	10.25%	in phases from April 09, 2018

14. The Company has informed that the deposit of Rs.10.80 lakhs (placed with OK Hosiery) was in relation to opening a branch office of the Company in the premises of OK Hosiery. Further, necessary approvals of the Audit Committee for setting up the branch, including executing instruments / documents had been obtained in its meeting dated February 07, 2018 (copy placed at Annexure 6).
15. Further, the Company informed that the transactions with Emirates Technologies Pvt. Ltd. were in terms of the Maintenance and Services Agreement dated August 31, 2018. Considering that deposits with ETPL were made in phases, a granular break-up of these transactions were sought from the Company. Based on its reply, a summary of the deposits placed with ETPL in FY 2018 - 19, 2019 - 20 and FY 2020 - 21 is given below (detailed break-up enclosed at Annexure 7):

FY	Deposits placed with ETPL during the year (In Rs. crore)	Interest paid to MAL on deposit (In Rs. crore)	Deposit refunded to MAL during the year (In Rs. crore)	Materiality threshold (based on consolidated turnover of previous year) (In Rs. crore)	Whether the materiality threshold was breached
2018-19	44.67	1.09	26.05	6.5	Yes
2019-20	10.43	1.49	18.19	12.7	No
2020-21	4.88	1.43	4.38	7.9	No

16. From the above table, it is observed that the amount of deposits placed with ETPL had breached the materiality threshold in FY 2018-19; thus, requiring shareholder approval in terms of LODR Regulations. Therefore, comments of the Company were sought on whether shareholder approval was taken for these transactions, to which the Company gave the following response:
- No prior shareholder approval was taken for these transactions, since the Company was not informed by CFO or Compliance Officer of any such requirement at any stage and non-compliance, if any, is inadvertent.
 - However, the balance sheet of the Company which included the said transactions was subsequently placed for approval of shareholders in the AGM held on September 28, 2019.
17. With regard to obtaining prior approval of the Audit Committee for the security deposits with ETPL, the Company has stated the following:
- Prior approval of the Audit Committee was not taken for the transactions undertaken in FY 2018-19 and 2019-20 on the understanding that these transactions were akin to inter-corporate deposits under Section 186 of the 2013 Act. However, the transactions were reviewed and ratified by the Audit Committee and no objection was ever raised in relation to these transactions.
 - The financial statements of Emirates (which is effectively wholly controlled by the Company) are consolidated with the Company and consequently, these transactions have been disclosed in the financial statements of the Company which have been duly approved by the shareholders. Indeed, it is for this reason that transactions between a listed company and a wholly owned subsidiary are exempt from Regulation 23 of the LODR Regulations including the requirement of prior approval of the Audit Committee.
 - For FY 2020-21, the transactions with ETPL were subject to prior omnibus approval of the Audit Committee. The omnibus approval was taken in the meeting of the Audit Committee dated June 29, 2020 and was applicable for the entire financial year.
18. Regulation 23(2) LODR Regulations requires prior approval of the Audit Committee for RPTs. The Company has stated that ETPL is effectively wholly controlled by the Company and transactions between a listed company and a wholly owned subsidiary are exempt from requirement of prior approval of the Audit Committee (as per Regulation 23(5) (b) of the LODR Regulations). However, as prescribed under LODR Regulations the exemption is only for transactions between a wholly owned subsidiary and the listed entity but ETPL is only 80% owned by the Company with the other 20% being held by Ok Hosiery (an entity owned and controlled by the promoter). Therefore, prior approval for the transactions with ETPL was warranted in this case.
19. With regard to the deposits placed with ETPL in FY 2018-19 and FY 2019-20, the Company has accepted that no prior approval of the Audit Committee was taken. In this regard, the Company stated that these RPTs were ratified by the AC and no concern was raised on these deposits by the AC. However, LODR Regulations specifically mention that approval should be taken prior to the transaction.
20. With respect to transactions undertaken in FY 2020-21, the Company has stated that omnibus approval of the Audit Committee was obtained in its meeting held on June 29, 2020 for transactions with ETPL undertaken for the entire year. While it may be accepted that the approval has been taken for the transactions undertaken after the date of approval of

the Audit Committee, the approval cannot be applied retrospectively to deposits placed with ETPL in April - May 2020. Deposits were placed 5 times with ETPL in the months of April - May 2020, amounting to Rs. 4.85 crores. Therefore, it is alleged that the Company is in violation of Regulation 23 (2) of LODR Regulations.

21. It is observed that the deposits placed with ETPL during FY 2018-19 exceeded the materiality threshold of 10% of consolidated turnover of previous year. The Company stated that the balance sheet of the Company included the said transactions was subsequently approved by shareholders in the AGM held on September 28, 2019. However, approval should have been taken through a separate resolution with related parties being able to cast only negative votes on the same.
22. Since, the Company failed to obtain approval of the shareholders for the transactions, it is alleged that the Company is in violation of Regulation 23(4) read with 23(1) of LODR Regulations.

3. This Supplementary Show Cause Notice bearing ref. No. SEBI/HO/EAD/EAD5/P/OW/2024/ 13539 /1 dated April 05, 2024 (hereinafter also referred to as 'SSCN') is being issued in conjunction with and continuation to the SCN dated July 29, 2022 and has to be read with SCN dated July 29, 2022. Please take note that reference to the phrase '...Section 23E of the Securities Contracts (Regulation) Act, 1956...' in the SCN be read as '...Section 15HB of the SEBI Act, 1992...'. Accordingly, inter alia, paragraphs 1, 24 and 25 of the SCN shall stand modified and be read as stated hereunder:

Paragraph 1 of the SCN be read as under:

'...

1. Securities and Exchange Board of India (hereinafter referred to as, 'SEBI') has initiated adjudication proceedings under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter also referred to as 'SEBI Act, 1992') read with clause 2 of the listing agreement in respect of **Majestic Auto Limited** (hereinafter referred to as, 'Noticee/MAL/Company/You') for alleged violation of provisions of Regulation 23(2) and Regulation 23(4) read with Regulation 23(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as, 'LODR Regulations').

'...'

Paragraph 24 and 25 of the SCN be read as under:

'...

24. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15HB of the SEBI Act, 1992 read with Clause 2 of the Listing Agreement. The text of Section 15HB of the SEBI Act, 1992 inter alia reads as under:
25. You are hereby called upon to show cause as to why an inquiry should not be held against you in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with Section 15-I of SEBI Act, 1992 and why penalty be not imposed under section 15HB of the SEBI Act, 1992 read with Clause 2 of the Listing Agreement for the aforesaid alleged violations.

5. Vide email and letter dated August 16, 2022, inter alia the Noticee submitted its preliminary reply to the SCN and also sought inspection of documents. Thereafter, Noticee vide its letter dated September 15, 2022, inter alia informed about its desire to file settlement application in the matter. In this regard, vide email dated October 16, 2022, the concerned division of SEBI informed that the division was in receipt of settlement application filed by the Noticee to settle the adjudication proceedings initiated vide SCN dated July 29, 2022. Vide email dated March 15, 2023, the concerned division of SEBI informed that the settlement application was rejected and that the applicant viz., the Noticee had been informed about the rejection of settlement application, vide SEBI's email dated March 15, 2023.

6. A SSCN dated April 05, 2024 was issued to the Noticee whereby inter alia the Noticee was also afforded opportunity of inspection of documents. The Noticee availed the opportunity of inspection of relevant documents as relied upon inter alia including annexure to the SCN and copy of relevant Examination Report of SEBI in the matter, copy of RPT disclosures in annual reports for FY 2018-19 and FY 2019-20, and copy of BSE's email dated August 30, 2021 enclosing Listing Agreement dated August 04, 2016 entered into between Majestic Auto Limited and BSE, on the scheduled date i.e. on April 23, 2024 through its Authorised representatives viz., Advocate Prakash Shah i/b Prakash Shah & Associates (authorisation email dated April 17, 2024).
7. Having regard to Principles of Natural Justice, vide Hearing Notice dated April 24, 2024, the Noticee was provided with an opportunity of personal hearing on May 16, 2024 which was subsequently rescheduled, vide email dated May 12, 2024, to May 21, 2024 due to administrative reasons. Vide email and letter dated May 07, 2023, the Noticee submitted its written submissions as reply to the SCNs whereby inter alia the Noticee also sought copy of the Complaint in the matter. In this regard, vide email dated May 15, 2024, the Noticee was provided with the complete copy of complaint along with its background note and annexures, as sought. Vide email dated May 17, 2024, the Noticee requested to reschedule the time of hearing and the hearing was accordingly rescheduled. The Noticee availed the opportunity of hearing on the scheduled date i.e. on May 21, 2024 through its Authorised representatives ('ARs') viz., Dr. Keyur Shah and Mr. Meit Shah i/b Prakash Shah & Associates (authorisation letter dated May 13, 2024). During the hearing, inter alia the ARs relied upon and reiterated the submissions made by Noticee vide its letters dated August 16, 2022 and May 07, 2024. The ARs inter alia also sought time till May 24, 2024 to make additional submissions, accordingly the same was allowed. The Noticee through its ARs made additional submissions vide letter dated May 22, 2024.

8. The key submissions made by Noticee vide letter dated August 16, 2022; May 07, 2024 and May 22, 2024 as reply/additional submissions to the SCN, are as under:

Submissions dated August 16, 2022:

...

4. on plain reading of said Show Cause Notice dated 29.07.2022; we understand that the allegations are based on complaint filed by 3 independent directors of our company viz. Mr. Vikas Nanda, Mr. Sham Lal Mohan and Mr. Naveen Jain. In this regard, we submit with humility that said charges alleged qua us are based on conjectures...we have complied with all the applicable provisions w.r.t Related Party Transactions with OK Hosiery Mills Private Ltd and Emirates Technologies Pvt Ltd. Besides on consideration of our facts and circumstances, no penalty u/s 23E of SCRA be imposed on us as the said section is not applicable to MAL and only applicable to companies engaged in the activities mentioned therein.

...

6. Further, the subject matter of the present SCN is completely different from the nature of complaint filed by the said former independent directors. Hence, we request your kind selves to kindly provide us the relevant complaint copy filed by the said independent directors which is the subject matter of the present SCN.

...

Submissions dated May 07, 2024:

...

5. At the outset and without prejudice to anything stated hereinafter, we deny all the allegations and findings made against us in the said SCN and SSCN except to the extent specifically admitted by us. Nothing contained in the said SCN and SSCN may be deemed to be admitted by us by reason of non-traverse or otherwise, save and except what is expressly admitted herein. We deny all the statements, submissions, contentions, allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below.

6. **Brief profile of the Company**

Since the year 2015, our Company has transitioned into 'Real estate and Facility Management Services' and acquired ETPL also known as 'Knowledge Boulevard' located at Plot No. A-8A, Sector - 62, Noida with built up area of approx. 8,00,000/-square feet and 11 floors.

Our Company also has a wholly owned subsidiary named Majestic IT Services Limited which is into Real Estate & Facility Management business.

Our Company is a widely held public company and its shares are listed with the BSE Ltd.

7. **Preliminary Submissions on Issuance of SSCN**

- (i) SCN sought to establish the liability of the Company under section 23E of SCRA. Section 23E of SCRA is reproduced herein below for the sake of convenience:-

"23E. Penalty for failure to comply with of listing conditions or delisting conditions or grounds.—If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees."

- (ii) A plain reading of Section 23E of SCRA makes it amply clear that the said provision applies only to a "company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund". However, our Company does not manage a collective investment scheme, mutual fund, real estate investment trust, infrastructure trust or alternate investment fund.

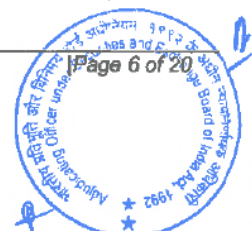
- (iii) In view thereof, Section 23E does not apply to our Company and the present SCN is misconceived.

- (iv) However, after the said ground was taken by our Company in our preliminary reply dated 16.08.2022, the captioned SSCN has been issued.

- (v) It is submitted that the captioned SSCN has only been issued in order to fill the jurisdictional error pointed out by us in the SCN dated 29.07.2022. Further, Rule 4 SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, or any other provision under the said rules does not provide for issuance of any supplementary show cause notice and therefore, the present SSCN is not maintainable and is liable to be dismissed on this ground alone.

8. **Submissions on the subject matter of the SCN**

- (i) On plain reading of the said SCN dated 29.07.2022, it is evident that the allegations against us are based on a complaint filed by 3 independent directors of MAL viz. Mr. Vikas Nanda, Mr. Sham Lal Mohan and Mr. Naveen Jain. The said complaint is enclosed with the SCN dated 29.07.2022 as Annexure 2.



- (ii) However, the subject matter of the present SCN is completely different from the complaint filed by the said former independent directors. The complaint filed is based on certain breach of corporate governance standards in the management of our Company. Majority, the complaint is based on non-approval by the said independent Directors amongst others w.r.t. proposal to commence dealings in securities including equities, derivatives, debt & other products without any attendant limitations, conditions and other checks and balances. Further, the said independent directors have also raised questions on recruiting 3 new independent directors on board without routing it through duly appointed Nomination and Recruitment Committee and without abiding by the laid down process. However, the present SCN is in respect of alleged non-compliances while entering into certain RPTs with ETPL.
- (iii) Without prejudice to the above, while the present SCN is based on the complaint filed by 3 former independent directors of MAL, even the said complaint is incomplete and does not include the "background note and the Annexures" mentioned therein.
- (iv) MAL has asked for a copy of the "purported" complaint from SEBI on multiple occasions vide email dated 21.04.2021, reply dated 27.04.2024 and 03.05.2021 to the queries raised by SEBI and in the preliminary response dated 16.08.2022 to the SCN, however, the same is yet to be supplied. The non-supply of the copy of the complaint is in violation of the principles of natural justice. A copy of letters/ emails seeking copy of the "purported" are annexed hereto as Annexure 2 (Colly)
- Without prejudice to what is stated aforesaid, on the subject matter of the SCN, we would like to submit as under.
9. There is an allegation in the SCN that we are in violation of Regulation 23(2) of LODR Regulations while entering into RPTs with ETPL. It is alleged that we were required to get prior approval of the Audit Committee for the RPTs with ETPL as the same was not covered under the exemption granted under Regulation 23(5) of the LODR Regulations. In this regard, we submit as under:
- (i) Submission on violation of Regulation 23(2) of LODR Regulation by our Company.
- (a) At the outset, we submit that ETPL is effectively a wholly owned subsidiary of our Company as 80% of the shareholding of ETPL is controlled by us and 20% being held by OK Hosiery Mills Pvt Ltd ("OK Hosiery") which is an entity owned and controlled by the promoter of our Company. Hence, it can be said that ETPL is a substantially owned subsidiary of our Company.
- (b) ETPL being subsidiary of our Company, their financial statements are consolidated with our Company.
- (c) The said transactions with ETPL were disclosed in the financial statements of the Company which were duly approved by the shareholders of the Company.
- (d) The transactions with ETPL were carried out in the ordinary course of business on "Arms Length" basis.
- (e) Further, it is pertinent to note that no disproportionate gain or any loss has accrued to the investors of either our Company or ETPL.
- (ii) Submissions on allegation of no approval of the Audit Committee taken for deposits placed with ETPL in Financial Year 2018-2019 and 2019-2020
- (a) It is respectfully submitted that ETPL was acquired by our Company in September 2015. As stated aforesaid, our Company owns approximately 80% of the share capital of ETPL and remaining 20% is owned by OK Hosiery, an entity owned and controlled by the promoters of our Company. It is pertinent to note that the acquisition of ETPL was ratified by the Board in the meeting held on 12.11.2015.
- (b) It is submitted that no omnibus or prior approvals were taken from the Audit Committee for the placement of the deposits on the bona-fide understanding that this was akin to an inter-corporate deposit under Section 186 of the Companies Act, 2013. Since the deposit placed with ETPL was merely akin to an inter-corporate deposit governed by Section 186 of the Companies Act, 2013, the Company was not advised that this would be a related party transaction that would require prior approval of the Audit Committee. In fact, one of the independent director viz. Mr. Vikas Nanda who was on the Board of the Company and the Audit Committee was also on the Board of ETPL and therefore, these transactions were known to all parties concerned.
- (c) However, by way of good order, the transactions with ETPL including the security deposit on 09.04.2018, was placed before the Audit Committee which was duly approved by the Audit Committee on 10.06.2018 and no objections were raised by the Audit Committee. In fact, the transactions with ETPL were reviewed every quarter and ratified by the Audit Committee.
- (d) Of its own accord and as a measure of good governance, the executive management of the Company decided to have all transactions with ETPL subject to prior omnibus approval of the Audit Committee with effect from FY 2020-2021.
- (e) Indeed, the financial statements of ETPL (which is effectively wholly controlled by the Company) are consolidated with the Company and consequently, these transactions have been disclosed in the financial statements of the Company which have been duly approved by the shareholders. It is for this reason that transactions between a listed company and a wholly owned subsidiary are exempt from Regulation 23 of the LODR Regulations including the requirement of prior approval of the Audit Committee.
- (iii) Submissions on allegation that omnibus approval of Audit Committee on 29.06.2020 cannot be applied retrospectively in respect of deposits placed in April-May 2020.
- (a) It is submitted that all the RPTs for April-June 2020 quarter were audited and the internal audit report was shared with all the members of the Audit Committee.
- (b) It may be noted that SEBI vide Circular dated 19.03.2020 bearing reference no. SEBI/HO/CFD/ CMD1/CIR/P/2020/38 had exempted the Audit Committee of a listed entity from observing the maximum time gap of 120 days (provided under Regulation 18(2) of LODR Regulations) for meetings proposed to be held on 01.12.2019 to 30.06.2020. The said Circular was issued by SEBI in view of the difficulties faced by the listed entities during COVID-19 pandemic.
- (c) It is pertinent to mention that the alleged transactions i.e. deposits placed with ETPL by our Company in April- May 2020 amounting to Rs. 4.85 crores relate to the period which is covered in the aforesaid SEBI circular dated 19.03.2020. Therefore, there is no violation of any Regulation of LODR Regulations.
- (iv) Submissions on allegations that deposits placed with ETPL during Financial Year 2018-2019 exceeded 10% of consolidated turnover of previous year and Company failed to obtain approval of the shareholders for the said transaction.
- (a) On 14.08.2015, the Board and Audit Committee of our Company authorized CMD u/s 179 and Section 186 of the Companies Act, 2013 to extend loans on behalf of the Company to any body-corporate, subject to prescribed thresholds.
- (b) No omnibus or prior approval was taken from Audit Committee for placement of deposit on 09.04.2018 on a bona fide understanding that this was akin to an inter-corporate deposit u/s 186 of the Companies Act, 2013.
- (c) The Balance Sheet for Financial Year 2018-2019, which included the said transaction, was subsequently placed for approval of the shareholders in the Annual General Meeting held on 28.09.2019 and was duly approved. In the Annual Report of our Company for the Financial Year 2018-2019, specific disclosure has been made under separate head- 'Transactions with related parties carried out in the ordinary course of business'. It is disclosed that Security deposit given to Subsidiary Company is Rs. 4467.36 Lakhs. Net Security Deposit is Rs. 1971.00 Lakhs is also disclosed under the head 'Closing balance with related parties in the ordinary course of business'. This is separate disclosure and there was no clubbing of the transaction as the entire transaction of security deposit of related party is with ETPL. It may be noted that ETPL is subsidiary of our Company. A copy of Relevant Pages of Annual Report for the Financial Year 2018-2019 is hereto enclosed and marked as **Annexure - 1**
10. **Submissions on the amendment to the SCN**
- (i) It is submitted that amendment to the SCN and issuance of SSCN is beyond the scope of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and the said Rules do not permit issuance of any supplementary show cause notice. Therefore, the issuance of the present SSCN is without any authority and amounts to wrongful exercise of jurisdiction by SEBI and an abuse of the process of law.

- (f) It is submitted that the original proceedings against us were initiated inter alia under Section 23E of the SCRA by issuing SCN dated 29.07.2022. However, without establishing any violation under the SCN dated 29.07.2022, the present SSCN has been issued under Section 15HB of the SEBI Act, 1992.
- (iii) The amendment seeks to alter the very basis of the SCN dated 29.07.2022 issued against us. It is submitted that the present SSCN goes to the root of the matter and is liable to be dismissed on this ground also.
11. We strongly and vehemently deny alleged violation of Regulation 23(2) and Regulation 23(4) r.w. Regulation 23(1) of LODR Regulations.
12. We once again submit that without a copy of the Complaint, our Company is being dragged into fishing and roving enquiry. However, the present response is provided with all requisite particulars, which will make it clear that the purported complaint is a fraudulent one.

Submissions dated May 22, 2024:

4. At the outset, we state that SEBI vide email dated 15.05.2024 provided us the copy of complaint along with the Background Note and the Annexures mentioned therein which is referred in the SCN. In this regard, we submit that the subject matter of the present SCN is completely different from the complaint filed by the said former Independent Directors of our Company viz. Mr. Vikas Nanda, Mr. Sham Lal Mohan and Mr. Naveen Jain. The complaint filed is based on certain breach of corporate governance standards in the management of our Company. Majority, the complaint is based on non-approval by the said Independent Directors amongst others w.r.t. proposal to commence dealings in securities including equities, derivatives, debt & other products without any attendant limitations, conditions and other checks and balances. All the email and minutes referred in the said complaint are w.r.t. the aforesaid matter. Further, the said Independent Directors have also raised questions on recruiting 3 new Independent Directors on board without routing it through duly appointed Nomination and Recruitment Committee and without abiding by the laid down process. However, the present SCN is issued in respect of alleged non-compliances while entering into certain RPTs with ETPL. Therefore, no adverse inferences w.r.t. the said complaint be drawn against us.
5. In addition to the aforesaid, we would like to submit as under:
- (i) ETPL is effectively wholly owned subsidiary of our Company (80% of the shareholding of ETPL is controlled by us and 20% being held by OK Hosiery Mills Pvt Ltd ("OK Hosiery") which is an entity owned and controlled by the promoter of our Company).
- (ii) All the transactions with ETPL were carried out in the ordinary course of business on "Arms Length" basis.
- (iii) One of the Independent Director viz. Mr. Vikas Nanda who was on the board of the Company and Audit Committee was also on the board of ETPL and therefore, these transactions were known to all parties concerned.
- (iv) Transactions with ETPL were reviewed every quarter and ratified by the Audit Committee.
- (v) Of its own accord and as a measure of good governance, the executive management of the Company decided to have all transactions with ETPL subject to prior omnibus approval of the Audit Committee with effect from FY 2020-2021.
6. In view of our aforesaid submissions and submissions made by our letters dated 16.08.2022 and 07.05.2024, we strongly and vehemently deny alleged violation of Regulation 23(2) and Regulation 23(4) r.w. Regulation 23(1) of LODR Regulations.
7. Without prejudice to what is stated aforesaid, we submit that in few instances, SEBI has with a warning let off certain companies for their alleged disclosure violation under LODR Regulations. In this regard, we herein below, list few instances wherein SEBI has with a warning let off certain companies for their alleged disclosure violation:

Sr. No	Company Name	Date of SEBI's Warning letter	Date of Company's letter	Annexure No.
1.	Tata Consultancy Services Limited	28.05.2020	29.05.2020	1
2.	Indiabulls Housing Finance Limited	22.02.2022	06.05.2022	2
3.	Aurobindo Pharma Limited	24.06.2022	27.06.2022	3
4.	Good Value Irrigation Limited	20.03.2023	22.03.2023	4
5.	Infosys Limited (Only disclosure filed by Company by letter dated 09.08.2023 is available on Stock Exchange website)	03.08.2023	09.08.2023	5
6.	Vedanta Limited (Only disclosure filed by Company by letter dated 07.03.2024 is available on Stock Exchange website)	29.02.2024	07.03.2024	6
7.	Piramal Enterprises Limited (Only disclosure filed by Company by letter dated 03.04.2024 is available on Stock Exchange website)	02.04.2024	03.04.2024	7

D. CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticee had violated the provisions of Regulation 23 (2) of LODR Regulations and Regulation 23(4) read with Regulation 23(1) of LODR Regulations, 2015, as alleged?

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

10. Before going into the merits of the case, it would be pertinent to firstly deal with the technical contentions raised by the Noticee as part of its replies dated August 16, 2022; May 07, 2024 and May 22, 2024. It is noted that, broadly speaking, the technical contentions by the Noticee raised in the aforesaid replies are contextually similar save for being differently worded and accordingly, for brevity, are being dealt together , as hereunder:

10.1. The Noticee, as part of its submissions, had inter alia also contended that '*... It is submitted that the captioned SSCN has only been issued in order to fill the jurisdictional error pointed out by us in the SCN dated 29.07.2022. Further, Rule 4 SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, or any other provision under the said rules does not provide for issuance of any supplementary show cause notice and therefore, the present SSCN is not maintainable and is liable to be dismissed on this ground alone....The amendment seeks to alter the very basis of the SCN dated 29.07.2022 issued against us...*'

In this regard, firstly I note that there is no prohibition regarding issuance of Supplementary Show Cause Notice, in terms of Rule 4 SEBI

(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, as issued in the instant matter.

Further, as regards the contention of the Noticee that amendment seeks to alter basis of SCN, it is pertinent to note that the nature of violations and the provisions alleged to have been violated remains the same i.e. alleged violation of Regulation 23 (2) of LODR Regulations and 23(4) read with 23(1) of LODR Regulations, 2015. I note that the action approved in respect of the Noticee was revised by the Competent Authority wherein only the charging provision was amended and changed to Section 15HB of SEBI Act, 1992. Accordingly, SSCN dated April 05, 2024 was issued to the Noticee.

I also note that, in this regard, the Noticee has not demonstrated as to how prejudice, if any, was caused to the Noticee.

I note that pursuant to issuance of SSCN to the Noticee, the Noticee was provided with an opportunity to make its further submissions. The Noticee thereafter submitted its reply dated May 07, 2024. Thereafter, the Noticee was also provided with an opportunity of hearing which was availed by the Noticee on the scheduled date and wherein the Noticee inter alia also sought time to make further additional submission. The same was allowed and Noticee submitted its additional submissions dated May 22, 2024. In view thereof, I note that the principles of natural justice have been adhered to. Therefore, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

- 10.2. The Noticee, as part of its submissions, had inter alia also contended that '*...The non-supply of the copy of the complaint is in violation of the principles of natural justice...*'

In this regard, I note from material available on record that the copy of complaint available on record was provided to the Noticee as part of Annexures to the SCN and the same was also provided during the Inspection of documents availed by the Noticee on April 23, 2024 inter

alia along with other Annexures to the SCN and relevant examination report in the matter. Further, as requested by the Noticee, complete copy of background note and annexures to the compliant, as available on record, was also provided to the Noticee vide email dated May 15, 2024. Therefore, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

- 10.3. The Noticee, as part of its submissions, had inter alia also contended that '*...SEBI has with a warning let off certain companies for their alleged disclosure violation under LODR Regulations. In this regard, Noticee cited certain instances as examples...*'

In this regard, I note that the Noticee had placed reliance on examples wherein SEBI had issued Advisory letters to the respective entities mentioned therein, however, the Noticee has neither demonstrated as to how these examples are applicable in the instant matter nor have the Noticee demonstrated as to what are the relied upon findings which have bearing on the alleged violation in respect of the Noticee. I am of the view that facts and circumstances of each matter may be unique in nature and are accordingly dealt with and decided. Accordingly, any generic parallel drawn would be devoid of merit.

Further, in this regard I note that the examples cited by the Noticee and present matter are distinguishable based on the facts and circumstances as applicable viz., in the cited matters, advisory letters were issued by SEBI and Adjudication Proceedings were not approved for the alleged violations therein, however, in the instant matter Adjudication Proceedings were approved pursuant to examination by SEBI; further, broadly speaking, the cited examples pertain to disclosure violations inter alia under Regulation 30 of LODR Regulations whereas alleged violations in the instant proceedings pertain to violation of Regulation 23(2), 23(4) read with 23(1) of LODR Regulations wherein the Noticee is alleged to have not obtained Audit Committee approval and

shareholders' approval with respect to RPTs. Therefore, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

11. I now proceed to deal with the matter on merits as regards alleged violation in respect of the Noticee, as stated.

Issue No. I: Whether the Noticee had violated the provisions of Regulation 23 (2) of LODR Regulations and Regulation 23(4) read with Regulation 23(1) of LODR Regulations, 2015, as alleged?

12. It was inter alia alleged that the Noticee had failed to take prior approval of the Audit Committee for transaction with related party viz., Emirates Technologies Pvt. Ltd ('ETPL', for brevity) and that the Noticee had failed to take shareholder approval for material Related Party Transactions ('RPTs', for brevity). Accordingly, it was alleged that the Noticee had violated provisions of Regulation 23(2) of LODR Regulations and Regulation 23(4) read with 23(1) of LODR Regulations.
13. Here it would be, firstly, pertinent to draw reference to the text of the relevant provisions of the LODR Regulation alleged to have been violated, which inter alia reads as under :

' ...

Related party transactions.

23.(1) *The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:*

Explanation. - A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(2) *All related party transactions shall require prior approval of the audit committee.*

(4) *All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not:*

' ...

From the plain reading of the provisions in this regard, as brought out above, I note that in terms of Regulation 23(2) of LODR Regulations, the Noticee was inter alia required to obtain prior approval of the audit committee for all related party transactions; and in terms of Regulation 23(2) of LODR Regulations the Noticee was inter alia required to obtain approval of shareholders through resolution for all material related party transactions. In this regard, I note that in terms of Regulation 23 (1) of LODR Regulations, a transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeded ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

14. In this regard, I note from material available on record that ETPL was a related party to the Noticee being a subsidiary of the Noticee wherein Noticee held 80% of shareholding and remaining 20% was held by OK Hosiery Mills Private Limited. I note that the Noticee had neither denied nor disputed the same. In this regard, I note from material available on record that the Noticee had placed Security deposits inter alia with ETPL. The amount of outstanding deposits placed by Noticee with ETPL as on March 31, 2021 were as follows:

Name of entity	Amount of deposit	Interest rate	Date of deposit
ETPL	15.38 crores	10.25%	In phases from April 09, 2018

Further, I note from material available on record that considering that deposits with ETPL were made in phases, SEBI had sought a granular break-up of these transactions from the Noticee. From material available on record, I note the following summary of the deposits placed with ETPL in FY 2018 - 19, 2019 - 20 and FY 2020 - 21:

FY	Deposits placed with ETPL during the year (In Rs. crore)	Interest paid to MAL on deposit (In Rs. crore)	Deposit refunded to MAL during the year (In Rs. crore)	Materiality threshold (based on consolidated turnover of previous year) (In Rs. crore)	Whether the materiality threshold was breached
2018-19	44.67	1.09	26.05	6.5	Yes
2019-20	10.43	1.49	18.19	12.7	No
2020-21	4.88	1.43	4.38	7.9	No

In this regard, it is noted from material available on record that the amount of deposits placed with ETPL by the Noticee had breached the materiality threshold in FY 2018-19 as also brought out in the table above, thus, requiring shareholder approval in terms of provisions of Regulation 23(4) of LODR Regulations. Further, it is noted that ETPL, being a related party, prior approval for the transactions with ETPL was warranted in terms of Regulation 23(2) of LODR Regulations for the FY 2018-19; 2019-20 and for transactions undertaken during April- May 2020 with ETPL. It is noted that Noticee had placed deposits with ETPL five times in the months of April-May 2020 amounting to Rs. 4.85 Crores.

15. With respect to alleged violation of Regulation 23(2) of LODR Regulations, the Noticee, as part of its submissions, had inter alia contended that *'...ETPL is effectively a wholly owned subsidiary of our Company as 80% of the shareholding of ETPL is controlled by us and 20% being held by OK Hosiery Mills Pvt Ltd ("OK Hosiery") which is an entity owned and controlled by the promoter of our Company.....said transactions with ETPL were disclosed in the financial statements of the Company which were duly approved by the shareholders of the Company...transactions with ETPL were carried out in the ordinary course of business on "Arms Length" basis...'*

In this regard, as regards the contention of the Noticee that ETPL was effectively a wholly owned subsidiary of the Noticee, it is pertinent to refer to the Regulation 23(5) of LODR Regulations which inter alia reads as under:

Related party transactions.

...

(5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:

(a)...

(b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval

...

(Emphasis supplied)

From the plain reading of the provisions in this regard, as brought out above, I note that in terms of Regulation 23(5) of LODR Regulations, exemptions with respect to Regulation 23(2), 23(3) and 23(4) of LODR Regulations have been provided inter alia with respect to transactions entered into between a holding

company and its Wholly Owned Subsidiary. In this regard, I note that apart from making mere statements, the Noticee did not demonstrate with relevant details and documents that ETPL was a wholly owned subsidiary of the Noticee or that any exemption was available with respect to transaction between Noticee and ETPL considering that the Noticee only held 80% of the shareholding in ETPL and the remaining 20% in ETPL was held by OK Hosiery. In this regard, I note that the submission of the Noticee itself mentions that OK Hosiery was owned and controlled by the promoters of the Noticee, and the Noticee has not demonstrated with relevant details and documents that the Noticee also held shareholding in OK Hosiery. Therefore, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

Further, as regards the contention of the Noticee that transactions with ETPL was disclosed in the financial statement approved by shareholders and that the transactions were on arm's length basis, I note that the same is out of context in so far as the allegation was inter alia with respect to failure to obtain prior approval from the Audit Committee in terms of Regulation 23(2) of LODR Regulations and not about disclosure in the financial statements approved by shareholders or carrying out the transaction at arm's length basis. Therefore, I am of the view that the contention of the Noticee in this regard are devoid of merit and hence not acceptable.

16. The Noticee, as part of its submissions, had inter alia also contended that '*...no omnibus or prior approvals were taken from the Audit Committee for the placement of the deposits on the bona-fide understanding that this was akin to an inter-corporate deposit under Section 186 of the Companies Act, 2013...*'

In this regard, firstly, I note that the submissions of the Noticee are in the nature of admission in so far as the Noticee had submitted that '*...no omnibus or prior approvals were taken from the Audit Committee for the placement of the deposits..*'

Further as regards the submissions of the Noticee that no prior approvals of Audit Committee were taken on bona-fide understanding that the transactions were akin to inter-corporate deposit under Section 186 of the Companies Act, 2013,

without going into the question of whether the said transactions were inter-corporate deposits under Section 186 of the Companies Act, I note that it is a cardinal principle of law that, 'Ignorantia juris non excusat'. In other words, ignorance of the law cannot be an excuse. Further, I note that the Noticee had not demonstrated with relevant details and documents that any exemption was available to the Noticee with respect to inter-corporate deposits in terms of compliance with Regulation 23(2) and Regulation 23(4) of LODR Regulations. In any case, I note that the contentions of the Noticee in this regard are out of context in so far as the alleged violation in the instant proceedings are with respect to RPTs, as stated in the foregoing. Therefore, in my view, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

17. The Noticee, as part of its submissions, had inter alia also contended that '*...the executive management of the Company decided to have all transactions with ETPL subject to prior omnibus approval of the Audit Committee with effect from FY 2020-2021...*'

In this regard, I note that the submissions of the Noticee are out of context in so far as the alleged violations pertain to period prior to which the Noticee is contending to have taken omnibus approval of the Audit Committee viz., 2018-19; 2019-2020 and April-May 2020. Therefore, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

18. The Noticee, as part of its submissions, had inter alia also contended that '*...SEBI vide Circular dated 19.03.2020 bearing reference no. SEBI/HO/CFD/CMD1/CIR/P/2020/38 had exempted the Audit Committee of a listed entity from observing the maximum time gap of 120 days (provided under Regulation 18(2) of LODR Regulations) for meetings proposed to be held on 01.12.2019 to 30.06.2020. The said Circular was issued by SEBI in view of the difficulties faced by the listed entities during COVID-19 pandemic....alleged transactions i.e. deposits placed with ETPL by our Company in April- May 2020 amounting to Rs. 4.85 crores relate to the period which is covered in the aforesaid SEBI circular dated 19.03.2020. Therefore, there is no violation of any Regulation of LODR Regulations.*

In this regard, I note that while the alleged violations inter alia pertains to failure to obtain prior approval for RPTs with ETPL during FY 2018-19; 2019-2020 and for April-May 2020, the Noticee had contented only with respect to RPTs with ETPL during April May 2020.

In this regard, I note that the contentions of the Noticee are out of context in so far as the abovementioned circular has inter alia provided exemption with respect to Regulation 18(2)(a) and not with respect to compliance of Regulation 23 of LODR Regulation. Further, I note that the submissions of the Noticee are contradictory in nature in so far as at one instance the Noticee had taken resort to the abovementioned circular seeking exemption from holding Audit Committee meetings while on another instance the Noticee itself in its reply to SEBI dated August 02, 2021 had mentioned about Audit Committee meetings held on February 07, 2020 and June 26, 2020. This apart, I note that during Covid period, it was not unusual for businesses to hold meetings through virtual mode / video conferencing, and in this regard, I note from the copy of minutes of Noticee's Audit Committee meeting dated June 26, 2020 that the same was also held through video conferencing. Therefore, I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

19. With respect to alleged violation of Regulation 23(4) of LODR Regulations, the Noticee, as part of its submissions, had inter alia also contented that '*...The Balance Sheet for Financial Year 2018-2019, which included the said transaction, was subsequently placed for approval of the shareholders in the Annual General Meeting held on 28.09.2019 and was duly approved...*'

In this regard, firstly, I note that the Noticee had neither denied nor disputed that the said transaction with ETPL during FY 2018-19 was material related party transaction. I further note that the contentions of the Noticee are out of context in so far as the alleged violation inter alia pertains to Noticee having failed to obtain shareholder approval with respect to material related party transaction through a resolution and not per se about approval of balance sheet in the Annual General

Meeting. Therefore, I am of the view that the contentions of the Noticee in this regards are devoid of merit and hence not acceptable.

20. In view thereof, I note that the Noticee had neither denied nor disputed that ETPL was a related party to the Noticee and that the transactions with ETPL during FY 2018-2019; 2019-2020 and April-May 2020 were related party transactions. As brought out in the foregoing, the Noticee had failed to demonstrate that prior approval of Audit Committee was obtained in terms of Regulation 23 (2) of LODR Regulations and that shareholders' approval was obtained for material related party transaction during FY 2018-19 in terms of Regulation 23(4) read with Regulation 23(1) of LODR Regulations.
21. In view thereof, I find that the allegation that the Noticee had failed to take prior approval of Audit Committee for transaction with related party and that the Noticee failed to take shareholder approval for material RPTs, stands established. Therefore, I hold that Noticee had violated Regulation 23(2) of LODR Regulations and Regulation 23(4) read with 23(1) of LODR Regulations.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?

22. It has been established in the foregoing paragraphs that Noticee had violated provisions of Regulation 23(2) of LODR Regulations and Regulation 23(4) read with 23(1) of LODR Regulations.
23. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia 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....."

24. Therefore, for the established violation, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under section 15HB of the SEBI Act, 1992 which reads as under:

“...

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 yes, what should be the monetary penalty that can be imposed upon the Noticee?

25. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, 1992 which inter alia reads as under: -

SEBI Act, 1992

“...

Factors to be taken into account while adjudging quantum of penalty.

15J. *While adjudging quantum of penalty under 1b- 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.*

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.

...”

26. In the instant case, I note that the material available on record does not quantify the amount of disproportionate gain or unfair advantage or the amount of loss caused to an investor or group of investors as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. In this regard, I also note that Noticee had inter alia contended that in the present case, the Noticee neither made disproportionate gain nor any loss was accrued to the investors. However, I cannot ignore that requirement of LODR Regulations, as in the instant matter were obligatory on the Noticee and which the Noticee failed to comply with, as dealt with and established in the foregoing and that SEBI is duty-bound to inter alia enforce compliance of these regulations. In view thereof, I am of the view that such violation on part of the Noticee needs to be dealt with imposition of suitable penalty.

E. ORDER

27. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose penalty of Rs. 7,00,000/- (Rupees Seven Lakhs Only) upon the Noticee under Section 15HB of SEBI Act, 1992, for the aforementioned violations as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:
28. 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

29. 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 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 07, 2024

Place: Mumbai

AMR
Amar Navlani
Adjudicating Officer

