BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/VC/2024-25/31223-31226)

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 respect of

Noticee No.	Name and PAN of the Noticee
1	KellyGamma Fund (PAN: AACTK7280Q)
2	KellyGamma Advisors LLP (PAN: AAOFK7796F)
3	Sharvil Parikh (PAN: AMNPP9971C)
4	Vistra ITCL (India) Limited (PAN: AAACI6832K)

In the matter of KellyGamma Fund

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted examination in the matter of KellyGamma Fund, which is set up in the nature of Trust and registered with SEBI as Category III Alternative Investment Fund (AIF) bearing registration no. IN/AIF3/15-16/0185 (hereinafter referred to as the **'Fund'** or **'AIF'** or **'Noticee-1'**), for the period of April 01, 2019 to March 30, 2023 (hereinafter referred to as **'Examination Period'**). The focus of the examination was to look into suspected violations of SEBI (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as the **'AIF Regulations'**) and circulars issued thereunder, arising out of Private Placement Memorandum of the scheme (hereinafter referred to as **'PPM'**) audit reports filed by Noticee-1 for FY 2019-20, FY 2020-21, FY 2021-22 and FY 2022-23.

2. Based on the findings of examination, SEBI initiated adjudication proceedings against KellyGamma Fund (**'Noticee-1'**), KellyGamma Advisors LLP (**'Noticee-2'**), Sharvil Parikh (**'Noticee-3'**) and Vistra ITCL (India) Limited (**'Noticee-4'**) {hereinafter together referred to as **'Noticees'**} for violating the provisions of the following Regulations and Circulars:

Table No. 1

Noticee No.	**Name of the Noticee**	**Alleged Violations**
1	KellyGamma Fund	(a) Regulation 15(1)(f) of AIF Regulations. (b) 15(1)(d) of the AIF Regulations. (c) Regulation 10(c) of the AIF Regulations and Clause 1(b) of Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations. (d) Regulation 10(a) of the AIF Regulations and Clause 1(c) of Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations. (e) Regulation 23(3) of the AIF Regulations. (f) Regulation 28 of AIF Regulations read with SEBI circular no. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549, dated April 07, 2021 read with Circular no. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/700, dated December 30, 2021 read with Clause 15.1 of SEBI master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 read with Clauses 1(e) of Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations. (g) Clause 4 of SEBI Circular no. CIR/IMD/DF/14/2014 dated June 19, 2014, read with Clause 15.2 of SEBI

Noticee No.	Name of the Noticee	Alleged Violations
		Master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 read with Regulations 20(1) of AIF Regulations, 2012 read with Clauses 1(e) of Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations.
2	KellyGamma Advisors LLP	Regulation 20 (5) of AIF Regulations and Regulation 20 (1), 20 (2) read with Clause 2 (a), (c) and (d) of Code of Conduct for Managers of AIFs and Key Management Personnel (KMP) of Managers and AIFs as specified in the Fourth Schedule of AIF Regulations.
3	Sharvil Parikh	Regulation 20 (1) of AIF Regulations read with Clause 2 (a), (c) and (d) of Code of Conduct for Managers of AIFs and KMP of Managers and AIFs as specified in the Fourth Schedule of AIF Regulations.
4	Vistra ITCL (India) Limited	Regulation 20(1), 20(2) of AIF Regulations read with Clause 3 (b) of Code of Conduct for Trustee of the AIF as specified in the Fourth Schedule of AIF Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI had appointed Shri Shashi Kumar Valsakumar as the Adjudicating Officer (**'AO'**), vide order dated May 03, 2024, under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules'**) read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 15EA of the SEBI Act, 1992, for the violations alleged to have been

committed by the Noticee. Subsequently, pursuant to transfer of erstwhile AO, undersigned was appointed as AO in the matter vide order dated July 22, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/19561/1-4/2024 dated June 13, 2024 (hereinafter referred to as **"SCN"**) was issued to the Noticees in terms of the provisions of Rule 4(1) of the SEBI Adjudication Rules read with Section 15-I of the SEBI Act, 1992, requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed upon the Noticees under Section 15EA of SEBI Act, 1992 for the alleged violations. I note that the SCN issued to the Noticees was duly served to the Noticees and it was acknowledged by them. Vide e-mail dated June 25, 2024, Noticees requested for extension of 10 days time for filing their reply to the SCN, which was granted to them. Thereafter, vide letter dated July 05, 2024, Noticees submitted their common reply to the SCN. Noticee-1 to 3 further made common additional submissions in the matter vide letter dated November 27, 2024. Noticee-4 also made additional submissions in the matter vide letter dated January 28, 2025.

5. In the interest of natural justice, vide notice of hearing dated August 01, 2024, an opportunity of being heard on August 20, 2024 was granted to the Noticees. Vide email dated August 14, 2024, Noticees sought adjournment of hearing for a period of 8 weeks on account of settlement application filed by them in the matter, which was granted to them vide email dated August 19, 2024. Noticee-1 to 3, vide email dated October 29, 2024, forwarded the letter dated October 25, 2024 for withdrawing the settlement application filed by them and requested to schedule hearing. Thus the adjudication proceedings were resumed against Noticee-1 to 3 and accordingly, hearing of Noticee-1 to 3 in the matter was re-scheduled on November 11, 2024. On November 11, 2024, Authorized Representatives (**"ARs"**) of the Noticee-1 to 3 attended the hearing through video-conferencing and reiterated the submissions made by them vide letter dated July 05, 2024. Further,

ARs stated to make the additional submissions in the matter, which were made by the Noticees vide letter dated November 27, 2024.

6. Further, settlement application of Noticee-4 was rejected by SEBI on January 14, 2025, and thus the adjudication proceedings were resumed against it. Accordingly, hearing of Noticee-4 was scheduled on January 28, 2025, however due to official exigencies, the hearing was re-scheduled to January 30, 2025. On January 30, 2025, ARs of the Noticee-4 attended the hearing through video-conferencing and reiterated the submissions made by it vide letter dated January 28, 2025.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticees in the SCN, submissions made by the Noticees and material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether Noticees have violated the provisions of the SEBI Regulations and Circulars as mentioned in para no. 2 hereinabove?

   II. Does the violation, if any, attract monetary penalty under Section 15EA of SEBI Act, 1992?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules?

8. Before proceeding further, it is pertinent to refer to the relevant provisions of SEBI Regulations and Circulars which are alleged to have been violated. The said provisions are reproduced hereunder for ease of reference:

   Relevant provisions of the AIF Regulations:

   Investment in Alternative Investment Fund.

   10. *Investment in all categories of Alternative Investment Funds shall be subject to the following conditions:-*

a) the Alternative Investment Fund may raise funds from any investor whether Indian, foreign or non-resident Indians by way of issue of units;

[Provided that a social impact fund or schemes of a social impact fund may also issue social units;]

……..

(c) the Alternative Investment Fund shall not accept from an investor, an investment of value less than one crore rupees:

Provided that in case of investors who are employees or directors of the Alternative Investment Fund or employees or directors of the Manager, the minimum value of investment shall be twenty five lakh rupees;

[Provided further that this clause shall not apply to an accredited investor]

[Provided further that in case of a social impact fund which invests only in securities of not for profit organizations registered or listed on a social stock exchange, the minimum value of investment by an individual investor shall be two lakh rupees;]

General Investment Conditions.

15. *(1) Investments by all categories of Alternative Investment Funds shall be subject to the following conditions:-*

……..

(d) Category III Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds and the large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds:

Provided that for investment in listed equity of an Investee Company, Category III Alternative Investment Funds may calculate the investment limit of ten per cent of either the investable funds or the net asset value of the scheme and large value funds for accredited investors of Category III Alternative Investment Funds may calculate the investment limit of twenty per cent of either the investable funds or the net asset value of the scheme, subject to the conditions specified by the Board from time to time;]

(f) Un-invested portion of the investable funds and divestment proceeds pending distribution to investors may be invested in liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, Triparty Repo Dealing and Settlement, Commercial Papers, Certificates of Deposits, etc. till the deployment of funds as per the investment objective or the distribution of the funds to investors as per the terms of the fund documents, as applicable;]

General Obligations.

20. *(1) Alternative Investment Fund, key management personnel of the Alternative Investment Fund, trustee, trustee company, directors of the trustee company, designated partners or directors of the Alternative Investment Fund, as the case maybe, managers and key management personnel of managers shall abide by the Code of Conduct as specified in the Fourth Schedule.*

Explanation. – For the purpose of this sub-regulation, 'key management personnel' shall have the meaning as specified by the Board from time to time.

(2) The Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the Alternative Investment Fund, as the case may be, shall ensure compliance by the Alternative Investment Fund with the Code of Conduct as specified in the Fourth Schedule.

……..

(5) The Manager shall be responsible for every decision of the Alternative Investment Fund, including ensuring that the decisions are in compliance with the provisions of these regulations, terms of the placement memorandum, agreements made with investors, other fund documents and applicable laws.

Valuation.

23. *(3) Category III Alternative Investment Funds shall ensure that calculation of the net asset value (NAV) is independent from the fund management function of the Alternative Investment Fund and such NAV shall be disclosed to the investors at intervals not longer than a quarter for close ended Funds and at intervals not longer than a month for open ended funds:*

[Provided that for the purpose of calculation of NAV, Category III Alternative Investment Funds shall undertake valuation of their investment in unlisted securities and listed debt securities by an independent valuer.

Submission of reports to the Board.

28. *The Board may at any time call upon the Alternative Investment Fund to file such reports, as the Board may desire, with respect to the activities carried on by the Alternative Investment Fund.*

[Fourth Schedule

SEBI (Alternative Investment Funds) Regulations, 2012

[Regulation 20(1) and 20(9)]

1. Code of Conduct for Alternative Investment Funds

An Alternative Investment Fund shall:

……

(c) ensure the dissemination of adequate, accurate, explicit and timely information in accordance with these Regulations to all investors.

……

(e) ensure that an effective risk management process and appropriate internal controls are in place.

2. Code of Conduct for the Managers of Alternative Investment Funds and key management personnel of Managers and Alternative Investment Funds

Every Manager of Alternative Investment Funds and key management personnel of the manager and Alternative Investment Funds shall:

(a) abide by the Act, Rules, Regulations, Guidelines and Circulars as applicable to Alternative Investment Funds at all times;

.....

(c) ensure proper care and exercise due diligence and independent professional judgment in all its decisions;

(d) act in a fiduciary capacity towards investors of the Alternative Investment Fund and ensure that decisions are taken in the interest of the investors;

3. Code of Conduct for members of the Investment Committee, trustee, trustee company, directors of the trustee company, directors or designated partners of the Alternative Investment Fund

Members of the Investment Committee, trustee, trustee company, directors of the trustee company, directors or designated partners of the Alternative Investment Fund shall:

…….

(b) ensure proper care and exercise due diligence and independent professional judgment in carrying out their roles;

Web link of SEBI circular no. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549, dated April 07, 2021:

https://www.sebi.gov.in/legal/circulars/apr-2021/circular-on-regulatory-reporting-by-aifs_49788.html

Web link of SEBI circular no. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/700, dated December 30, 2021:

https://www.sebi.gov.in/legal/circulars/dec-2021/extension-of-timeline-for-modified-reporting-requirements-for-aifs_55108.html

SEBI master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023:

15.1. Reporting of investment activities by AIFs

Under Regulation 28 of AIF Regulations, the Board may at any time call upon the Alternative Investment Fund to file such reports, as the Board may desire, with respect to the activities carried on by the Alternative Investment Fund. In this regard, the following reporting requirement is specified:

15.1.1. All AIFs shall submit report on their activity as an AIF to SEBI on quarterly basis within10 calendar days from the end of each quarter in the formats as specified in Annexure 12. Further, Category III AIFs shall also submit report on leverage undertaken, on quarterly basis in the formats as specified in Annexure 13.

15.1.2. AIFs shall submit these reports online through SEBI intermediary Portal.

15.2. Compliance Test Report (CTR)

15.2.1. At end of financial year, the manager of an AIF shall prepare a compliance test report on compliance with AIF Regulations and circulars issued thereunder in the format as specified in the Annexure14.

15.2.2. The CTR shall be submitted within 30 days from the end of the financial year, to (i) the trustee and sponsor, in case the AIF is a trust;(ii) the sponsor, in case of AIF set up in the form other than a trust.

15.2.3. In case of any observations/comments on the CTR, the trustee/sponsor shall intimate the same to the manager within 30 days from the receipt of the CTR. Within 15 days from the date of receipt of such observations/comments, the manager shall make necessary changes in the CTR, as may be required, and submit its reply to the trustee/sponsor.

15.2.4. In case any violation of AIF Regulations or circulars issued thereunder is observed by the trustee/sponsor, the same shall be intimated to SEBI as soon as possible.

SEBI Circular no. CIR/IMD/DF/14/2014 dated June 19, 2014:

4. Compliance Test Report (CTR)

a. At end of financial year, the manager of an AIF shall prepare a compliance test report on compliance with AIF Regulations and circulars issued thereunder in the format as specified in the Annexure to this circular.

b. In case the AIF is a trust, the CTR shall be submitted to the trustee and sponsor within 30 days from the end of the financial year. In case of other AIFs, the CTR shall be submitted to the sponsor within 30 days from the end of the financial year.

c. In case of any observations/comments on the CTR, the trustee/sponsor shall intimate the same to the manager within 30 days from the receipt of the CTR. Within 15 days from the date of receipt of such observations/comments, the manager shall make necessary changes in the CTR, as may be required, and submit its reply to the trustee/sponsor.

d. In case any violation of AIF Regulations or circulars issued thereunder is observed by the trustee/sponsor, the same shall be intimated to SEBI as soon as possible.

9. Based on perusal of the material available on record, submissions of the Noticees and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Issue I. Whether Noticees have violated the provisions of the SEBI Regulations and Circulars as mentioned in para no. 2 hereinabove?

10. Before I proceed to deal with the matter on merits, I would like to address certain preliminary issues raised by the Noticees. Noticees contended that the SCN has not been issued within a reasonable time and it suffers from delays, hence no penalty should to be imposed on them. In this regard, I note that the examination in the matter of KellyGamma Fund was conducted by SEBI for the period of April 01, 2019 to March 30, 2023. After conclusion of the examination, examination report dated February 27, 2024 was submitted in the matter and adjudication proceedings against the Noticees were approved on February 29, 2024. Thereafter, vide order dated May 03, 2024, the case was assigned to Shri Shashi Kumar Valsakumar, CGM as AO, and SCN was issued to the Noticees on June 13, 2024. Hence, there was no unreasonable delay in issuance of the SCN, as argued by the Noticees. Further with regard to the contention of delay, it is pertinent to mention the judgment of Hon'ble Supreme Court in the case of ***Adjudicating Officer, SEBI vs. Bhavesh Pabari*** (2019) SCC Online SC 294; wherein it was held that:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time will depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc."

11. In respect of the contention of the delay, I note that delay itself may not be a ground that would vitiate the instant proceedings. However, it is required to examine whether delay has caused any prejudice to the Noticees. In this regard, I note that Noticees has neither stated that whether any prejudice is caused to them nor

submitted anything to demonstrate that any prejudice is caused to them due to alleged delay in issuance of the SCN.

12. Further, I note that since all relevant and relied upon documents including the examination report, copy of the PPM audit reports, copies of the Fund's / trustee's replies, copy of PPM of the scheme, copies of the CTRs etc. were supplied to the Noticees as annexures to the SCN and hence, in my view the Noticees had sufficient material to defend their case. In fact, they were able to put forth their defense in detail, as is apparent from their replies and submissions. Therefore, I don't consider that the alleged delay has caused any prejudice to the Noticees. In this regard, I note that the Hon'ble SAT in the matter of ***Pooja Vinay Jain Vs. SEBI*** (SAT Appeal No. 152 of 2019, decided on March 17, 2020) held as follows:

"13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analysed by SEBI which took some time."

13. Further, in ***Ravi Mohan & Ors. v. SEBI*** decided on August 08, 2013, Hon'ble SAT, Mumbai while referring to its own decision in ***HB Stockholdings Ltd. v. SEBI*** (Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in ***Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)*** reported in 2003 (158) ELT 129 (S.C.), observed as under:

"...Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (supra) it was contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this

Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) (supra) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

14. This apart, it is to be noted that the SEBI Act and regulations framed thereunder have got a larger public purpose in the form of investor protection and the regulation and development of the securities market. These purposes would stand defeated if the manipulators are allowed to go scot-free just because of delay, if any, in initiating action against them. In view of the above facts, I find that no prejudice has been caused upon the Noticees nor they have been able to make out a case of prejudice due to the alleged delay in initiation of the proceedings. In view of this, it cannot be said that there is an unreasonable delay in issuance of the SCN and hence the said contention of the Noticees cannot be accepted.

15. In view of the above, the preliminary objection made by the Noticees that SCN has not been issued within a reasonable time hold no merit. Having dealt with the preliminary contention, I shall now proceed to address the key issues that arise for consideration, in light of the facts of the case and the submissions made by the Noticees.

16. I note that multiple allegations have been levelled against the Noticees, thus for the sake of convenience and clarity, I shall deal with each of the allegation independently in the following paragraphs. I find that the SCN has alleged following 7 violations by the Noticee-1 in the instant matter:

    A) Allegations w.r.t. investment in non-liquid instruments

    B) Allegations w.r.t. investment limit

    C) Allegations w.r.t. minimum contribution from an investor

D) Allegations w.r.t. non issuance of units to the investors

E) Allegations w.r.t. computation and communication of NAV to the investors

F) Allegations w.r.t. non-filing of quarterly reports

G) Allegations w.r.t. submission of incorrect information in CTR

A. <u>Allegations w.r.t. investment in non-liquid instruments:</u>

17. SCN alleges that as per PPM audit report for FY 2019-20, KellyGamma Fund One had invested the un-invested portion of the investible funds in BNP Paribas Arbitrage Fund - Direct Monthly Dividend and Aditya Birla Sunlife Low Duration Fund. These funds were not liquid mutual funds. Hence, Noticee-1 allegedly violated the provisions of Regulation 15(1)(f) of the AIF Regulations.

Reply of Noticees

18. In response to the allegations of investment in non-liquid instruments, Noticees *inter alia* submitted the following:

(a) In the year ended March 31, 2016, that is, the Scheme's first year of operation, the Scheme had invested in Birla Sun Life Cash Manager - Growth Regular Plan. Thereafter, during the year ended March 31, 2017, the Scheme switched from Birla Sun Life Cash Manager - Growth Regular Plan to Birla Sun Life Cash Manager - Growth Direct Plan. In the Investment Gain/(Loss) Statement issued by Birla Sun Life Mutual Fund to the Scheme for the period April 01, 2016 to March 28, 2017, both the aforesaid mutual funds were referred to as "ultra liquid'.

(a) Thereafter, vide Addendum No. 26/2017 dated June 24, 2017 issued by Birla Sun Life Mutual Fund, it was notified that the name of Birla Sun Life Mutual Fund will be modified to Aditya Birla Sun Life Mutual Fund.

(b) In the Investment Gain/(Loss) Statement issued to the Scheme by Aditya Birla Capital, for the period April 1, 2017 to March 12, 2018 for Aditya Birla Sun Life Cash Manager - Growth Direct Plan, the said mutual fund was once again referred to as "ultra liquid'.

(c) Thereafter, vide letter dated April 30, 2018 addressed by Aditya Birla Capital to unitholders of Aditya Birla Sun Life Cash Manager Fund, certain changes in fundamental attributes of the said mutual fund, including but not limited to, change in name (name changed to Aditya Birla Sun Life Low Duration Fund), investment objectives, asset allocation, investment strategy etc. were informed to the unitholders. Even in the said letter dated April 30, 2018, it was stated that this mutual fund "is suitable for investors who are seeking reasonable returns with convenience of liquidity of short term".

(d) In view of the above letter dated April 30, 2018, research was undertaken to understand the nature of the Aditya Birla Sun Life Low Duration Fund, in particular, its asset allocation. Consequently, it was learnt that the asset allocation of Aditya Birla Sun Life Low Duration Fund was primarily in 'Debt'. Considering the above and in order to be compliant with Regulation 15(1)(f) of AIF Regulations, the Scheme exited its investment in Aditya Birla Sun Life Low Duration Fund in or about December 2019.

(e) In the Investment Gain/(Loss) Statement issued for the period April 1, 2019 to December 12, 2019, Aditya Birla Sun Life Low Duration Fund was once again referred to as 'ultra liquid'.

(f) On account of the nomenclature/description of Aditya Birla Sun Life Cash Manager -Growth Direct Plan (subsequently, "Aditya Birla Sun Life Low Duration Fund"), the Fund was given to understand that the same is a liquid mutual fund. However, as soon as the nature of its asset allocation was realised, the Scheme completely exited from the said mutual fund.

(g) During the Fund's research on Aditya Birla Sun Life Low Duration Fund, it simultaneously conducted research on BNP Paribas Arbitrage Fund - Direct Monthly Dividend to understand the nature of its asset allocation. Consequently, it was learnt that asset allocation of BNP Paribas Arbitrage Fund- Direct Monthly Dividend was primarily in 'equity'. Considering the above and in order to be compliant with Regulation 15(1)(t) of AIF Regulations, the

Scheme exited its investment in BNP Paribas Arbitrage Fund - Direct Monthly Dividend in or about March 2020.

(h) Accordingly, as a matter of fact, the Fund had exited its investments in the aforesaid mutual funds before March 31, 2020 after which the Fund has always been in compliance with Regulation 15(1)(f) of the AIF Regulations. The aforesaid fact of the Fund's exit before March 31, 2020 has also been recorded by Mr. Achal Anil Shah, the Independent Auditor of the Scheme ("Auditor") in his Report dated December 29, 2021.

Findings

19. As per Regulation 15(1)(f) of the AIF Regulations the AIFs have to invest *Un-invested portion of the investable funds and divestment proceeds pending distribution to investors in liquid mutual funds or other liquid assets etc.*

20. With respect to allegations of investment in non-liquid instruments, Noticees have submitted that Aditya Birla Capital, vide letter dated April 30, 2018, informed to the unitholders about certain changes in fundamental attributes of the said mutual fund, including change in name of fund from Aditya Birla Sun Life Cash Manager Fund to Aditya Birla Sun Life Low Duration Fund. Noticees further submitted that Aditya Birla Capital has stated in its letter that this mutual fund ‘is suitable for investors who are seeking reasonable returns with convenience of liquidity of short term’. On account of the nomenclature/description of Aditya Birla Sun Life Low Duration Fund, the Fund was given to understand that the same is a liquid mutual fund and Investment Gain/(Loss) Statement issued for the period April 1, 2019 to December 12, 2019, Aditya Birla Sun Life Low Duration Fund was referred to as 'ultra liquid'.

21. I note that as per SEBI circular no. SEBI/HO/IMD/DF3/CIR/P/2017/114O dated October 6, 2017, liquid funds have investment in Debt and money market securities with maturity of upto 91 days only. However, I find from the Scheme Information Documents of Aditya Birla Sun Life Low Duration Fund, that the Macaulay duration of portfolio of fund was between 6 months and 12 months. I further note that the

AIF being a privately pooled investment vehicle which collects funds from investors and registered with SEBI should have taken informed decision as they are institutional investors. As per AIF Regulations, the key investment team of the Manager of AIF is required to has at least one key personnel with relevant certification as may be specified by the Board from time to time (i.e. NISM-Series – XIX-C: Alternative Investment Fund Managers Certification); and at least one key personnel with professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking from a university or an institution recognized by the Central Government or any State Government or a foreign university, or a CFA charter from the CFA institute or any other qualifications may be specified by the Board. As the key investment team of the Manager of AIF is required to has professionally qualified personnel, hence it is expected from an AIF that it invest its funds after undertaking proper research and in compliance to SEBI guidelines. AIF is required to take proper care and exercise due diligence and independent professional judgment in all its investment decisions.

22. I note that Noticee-1 exited its investment in Aditya Birla Sun Life Low Duration Fund in or about December 2019, this was after 20 months. During the intervening period, the fund had invested the un-invested portion of the investible funds in Aditya Birla Sun Life Low Duration Fund, which is in violation of Regulation 15(1)(t) of AIF Regulations.

23. With regard to allegations of investment in BNP Paribas Arbitrage Fund - Direct Monthly Dividend, Noticees submitted that research on said fund was conducted to understand the nature of its asset allocation, consequently, it was learnt that asset allocation of fund was primarily in 'equity'. Accordingly, the Scheme exited its investment in or about March 2020. I note from the submission of Noticees that they have admitted that KellyGamma Fund One had invested the un-invested portion of the investible funds in BNP Paribas Arbitrage Fund - Direct Monthly Dividend, which was not a liquid mutual fund.

24. Noticees contention that the investments in BNP Paribas Arbitrage Fund - Direct Monthly Dividend and Aditya Birla Sunlife Low Duration Fund were exited by the KellyGamma Fund One in March 2020 / December 2019 cannot be accepted as the violation persisted during the examination period.

25. In view of the above, I hold that the allegation that Noticee-1 has violated the provisions of Regulation 15(1)(f) of the AIF Regulations, stands established.

B. <u>Allegations w.r.t. investment limit</u>:

26. SCN alleges that as per PPM Audit report for FY 2019-20 submitted to Board on December 31, 2020, Kelly Gamma fund (Category III AIF) had breached 10% investment limit in single investee company for 03 investments i.e. “Kelton Tech Solutions Ltd”, “Kwality Ltd” and “Motherson Sumi Systems Ltd”.

27. It was also alleged that the investible funds were incorrectly computed by the AIF for the FYs 2016-17, 2017-18 and 2018-19, as it did not deduct the expenses from the commitment amount. The correct investible funds in these years after deduction of expenses were as follows:

Table No. 2: Revised calculation of Investible funds and allowed limit of 10%

(Amount in ₹)

As on	31-Mar-17	31-Mar-18	31-Mar-19	31-Mar-20	31-Mar-21	31-Mar-22	31-Mar-23
Corpus	22,00,00,000	22,00,00,000	22,00,00,000	22,00,00,000	22,00,00,000	22,00,00,000	22,00,00,000
Investible funds	20,89,02,002	20,89,02,002	20,89,02,002	20,89,02,002	20,89,02,002	20,89,02,002	20,89,02,002
10% of investible funds	2,08,90,200	2,08,90,200	2,08,90,200	2,08,90,200	2,08,90,200	2,08,90,200	2,08,90,200
Expense every year	42,44,204	44,32,760	11,74,737	1,48,047	2,17,928	3,96,923	4,83,399
Investments in Companies (₹)							

As on	31-Mar-17	31-Mar-18	31-Mar-19	31-Mar-20	31-Mar-21	31-Mar-22	31-Mar-23
Kellton Tech Solutions Ltd	2,19,42,659	2,19,42,659	2,19,42,659	2,19,42,659	2,19,42,659	1,98,29,362	-
Kwality Ltd	1,14,80,708	2,03,66,740	2,19,52,622	2,19,52,622	2,19,52,622	2,19,52,622	-
Motherson Sumi Systems Ltd	-	2,01,32,643	2,01,32,643	2,13,22,730	2,13,22,730	2,03,20,976	-

28. Thus, the fund had exceeded limit of 10% of investible fund in an investee company during:
    (a) FY 2016-17 to FY 2021-22 in case of Kellton Tech Solutions Ltd.
    (b) FY 2018-19 to FY 2021-22 in case of Kwality Ltd.
    (c) FY 2019-20 to FY 2021-22 in case of Motherson Sumi Systems Ltd.

29. Therefore, the 10% investment limit in single investee company was violated for three companies as detailed above. The violation continued for all the PPM audit reports for FY 2019-20 to FY 2022-23.

30. The fund has exceeded investment limit in 3 investee companies and the alleged non-compliance continued from 2016-17 onwards till FY 2022-23, thus, it was observed that the non-compliance was repetitive. Hence, Noticee-1 allegedly violated the provisions of Regulation 15(1)(d) of the AIF Regulations

Reply of Noticees

31. In response to allegations of exceeding the limit of 10% of investible fund in 3 investee companies, Noticees *inter alia* submitted the following:
    (a) For the year ended March 31, 2017, March 31, 2018 and March 31, 2019, on account of a bona-fide and inadvertent error, the Fund determined the investment limit of 10% basis the committed amount by the investors, that is, Rs. 22,00,00,000/- (Rupees Twenty-Two Crores only). However, during

certain interactions with industry participants, it was learnt that there may be a misinterpretation of the requirement of Regulation 15(l)(d) on the Fund's part. After assessing this further, with a view to avoid any noncompliance, the excess investment was exited.

(b) Accordingly, with a view to rectify the inadvertent noncompliance, the following steps were taken:

- In respect of Kellton Tech Solutions Ltd. and Motherson Sumi Systems Ltd, in or about August 2021, the Fund partially exited its investments in order to be compliant with the 10% investment limit.
- In respect of Kwality Ltd., vide an Order dated January 11, 2021, the National Company Law Tribunal directed commencement of liquidation process of Kwality Ltd. In view of this, the shares of the company were delisted and trading in the shares of Kwality Ltd. was suspended with effect from February 24, 2021. Accordingly, the Fund was unable to exit this investment.

(c) As can be seen from the above, prompt steps were taken to exit the excess investment and the same was even done for two investments. Further, the inability to exit from Kwality Ltd. was beyond the control of the Noticees as Kwality Ltd. was undergoing liquidation by then and by operation of law no exit could be made.

(d) In this regard, Noticee-1 to 3 additionally submitted that the law cannot compel a party to do something that is impossible. They relied upon the observations of Hon'ble Supreme Court of India in Mohammed Gazi v. State of MP and Others (2004) 4 SCC 342.

(e) In respect of the allegation of repetitive noncompliance, Noticees stated that the assertion is factually incorrect as the excess investment was exited in or around August 2021.

Findings

32. As per Regulation 15(1)(d) of AIF Regulations, the '*Category III Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds and the large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds.'*

33. Noticees have submitted that on account of a bona-fide and inadvertent error, the Fund determined the investment limit of 10% basis the committed amount by the investors, and the said error was rectified and subsequently excess investment was exited. Thus, I note that Noticees have accepted the allegation that the 10% investment limit in single investee company was violated for said 3 companies.

34. In view of the above, I hold that the allegation that Noticee-1 has violated the provisions of Regulation 15(1)(d) of the AIF Regulations, stands established.

35. I also note the submission of the Noticees that the investment in 2 companies was exited by the fund and it could not exit its investment in Kwality Ltd. as the shares of the company were delisted and trading in the shares of the company was suspended.

C. <u>Allegations w.r.t. minimum contribution from an investor</u>:

36. It was alleged in SCN that a contributor i.e. Navratna Developers & Organisers Private Limited had committed to contribute INR 1 crore to the corpus of the Fund. However, it had actually contributed only INR 75 lakhs. In this regard, all the PPM audit reports for FY 2019-20 to FY 2022-23 mentioned that the fund had failed to receive pending amount of INR 25 lakh from Navratna Developers & Organisers Private Limited. Thus, it was alleged that the fund had failed to receive INR 25 lakh from contributor 'Navratna Developers & Organisers Private Limited' till the time fund was wound up. Thus, the said contributor was defaulting contributor.

37. It was highlighted by the auditor that no action has been initiated, as stated in the PPM, by the KellyGamma Advisors LLP in consultation with Noticee-4. PPM of the scheme enabled the AIF to take various actions against the defaulting contributor including forfeiting the units, imposing interest, selling units to another investor etc. However, no action against the contributor for default was taken by the fund as per PPM provisions. The alleged non-compliance continued for FY 2019-20 to FY 2022-23, thus, the non-compliance was repetitive. Hence, it was alleged that Noticee-1 had violated the provisions of Regulation 10(c) of the AIF Regulations and Clause 1(b) of the Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations.

Reply of Noticees

38. With respect to above allegations, Noticees *inter alia* submitted the following:

(a) Vide Contribution Agreement dated December 18, 2015, Navratna Developers & Organisers ("Navratna") had committed to invest Rs. 1 crore in the Scheme. Out of the total committed amount of Rs. 1 crore, Navratna contributed Rs. 75,00,000/- in tranches of Rs. 25,00,000/- on January 19, 2016, July 14, 2016 and March 29, 2017.

(b) Thereafter, the Fund was given to understand that on April 2017, a search and seizure action was taken by the Income Tax Department against Navratna pursuant to which all the assets of Navratna were attached by the IT Department.

(c) In view of the above, Navratna had committed to invest Rs. 1 crore in the Scheme, it was unable to do so on account of financial difficulties and thus, in good faith, no action under the provisions of PPM was initiated. In fact, while making distributions of investments and profits in December 2022, the Fund distributed the corpus contributed by Navratna along with the profits thereon, in proportion to its contribution. Thus, interest of other investors was not prejudiced in any manner.

(d) In any event, the units issued to Navratna were part of the common class. Therefore, Clause 1 (b) of the Code of Conduct under the Regulations ("Code of Conduct") which pertains to operation and management of the Fund in the interest of the sponsor, manager, directors or partners of the sponsor and manager or a "select class of investors", is not attracted.

(e) Noticee-1 to 3 additionally submitted that the under Clause 9.2 of the Contribution Agreement, Noticee-1 and 2 were entitled to take various actions against Navratna. However, under Clause 9.3, Noticee-1 and 2 were entitled to exercise discretion and waive the above actions, subject to applicable law. Accordingly, Noticee-1 and 2 exercised discretion and waived the actions set out in Clause 9.2 as Navratna was already subjected to various proceedings.

Findings

39. As per Regulation 10(c) of the AIF Regulations '*the Alternative Investment Fund shall not accept from an investor, an investment of value less than one crore rupees'*. Clause 1(b) of the Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations, require the AIF to be operated and managed in the interest of all investors and not only in the interest of the sponsor, manager, directors or partners of the sponsor and manager or a select class of investors.

40. In consideration of the submissions of the Noticees that as per Clause 9.3 of the Contribution Agreement, Noticee-1 and 2 were entitled to exercise discretion and waive the aforementioned actions and assets of Navratna were attached by the Income Tax Department, hence it was unable to invest Rs. 1 crore on account of financial difficulties and thus, in good faith, no action under the provisions of PPM was initiated against Navratna etc., I am inclined to take a lenient view and accept the submission of the Noticees.

41. Therefore, I hold that the allegation that Noticee-1 violated the provisions of Regulation 10(c) of the AIF Regulations and Clause 1(b) of the Code of Conduct

for AIFs as specified in the Fourth Schedule of AIF Regulations, does not stand established.

D. <u>Allegations w.r.t. non issuance of units to the investors:</u>

42. It was alleged in the SCN that the PPM audit observation regarding issuance of units read as "*KellyGamma Fund One had neither issued a statement of accounts nor unit certificates to the contributors, evidencing beneficial interest/ number of units held by the contributors*." The same audit observation continued in all four PPM audit reports from FY 2019 to FY 2023.

43. During examination, Noticee-1 vide its reply dated November 29, 2023 submitted that it had issued a letter to the contributors that evidences the number of units held by them. The said copy of the letter to investors was obtained from the fund. Investors were informed of winding up, final distribution and number of units held by the investors. However, from the said copy of the letter, it was observed that the said letter dated January 04, 2023, was issued pursuant to winding up of the fund. No unit or unit statement was issued to the investors during the existence of the fund. The same is evident from the continuance of the observation in all the four PPM audit reports from FY 2019 to FY 2023. Hence, Noticee-1 allegedly violated the provisions of Regulation 10(a) of the AIF Regulations and Clause 1(c) of the Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations.

Reply of Noticees

44. With respect to allegations of non issuance of units to the investors, Noticees *inter alia* submitted as under:

(a) A letter dated January 4, 2023 was issued to all investors evidencing the number of units held by the investors. Furthermore, Regulation 10(a) does not prescribe any particular timeline for issuance for unit certificates or statement of accounts. On winding up of the Scheme, the Fund informed the unitholders of the final distribution amount as well as the number of units held by the investors. It is further pertinent to note that the Scheme was close ended, that

is to say, no investor was on boarded after the closing and no investor that was on boarded was permitted to exit after the closing. Accordingly, there was no change in the beneficial interest or the number of units that were held by the investors during the tenure of the Scheme.

(b) As regards Clause 1(c) of the Code of Conduct for AIFs, the Fund ensured dissemination of adequate, accurate, explicit and timely information to all the investors by way of its quarterly reports, which were duly shared with the investors and the trustee at the end of each quarter. The quarterly reports contained all relevant information about the Scheme, such as investments made in listed and unlisted securities, statement of assets and liabilities, profit and loss statement, and other updates and disclosures required to be made in the interest of the investors.

(c) In view of the above, the Fund has been in compliance with Regulation 10(a) of AIF Regulations by issuing timely quarterly reports and also the Letter dated January 04, 2023 to the investors which evidenced their beneficial interest in the Scheme. Further, the Fund has also been in compliance with Clause 1(c) of the Code of Conduct by dissemination of adequate and timely information to the investors in the Fund's quarterly reports.

(d) In this regard, it is also relevant to note that the reporting requirement under Section V of the PPM, has been duly complied with. Further, as can be seen, a request for issuance of unit certificate had to be made by the contributor and no such requests were received. Lastly, during the life of the Scheme, none of the investors raised a grievance to the effect that they were unaware of their beneficial interest in the Scheme.

(e) Further, Noticee-1 to 3 relied on the observations of the Hon'ble Supreme Court of India in the matter of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors. (2011) 1 SCC 236, wherein it is held that:
"The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent

aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation".

Findings

45. As per Regulation 10(a) of the AIF Regulations '*the Alternative Investment Fund may raise funds from any investor whether Indian, foreign or non-resident Indians by way of issue of units'* and Clause 1(c) of the Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations '*an AIF shall ensure the dissemination of adequate, accurate, explicit and timely information in accordance with these Regulations to all investors'*.

46. I note that Regulation 10(a) and Clause 1(c) of the AIF Regulations does not prescribe any particular timeline for issuance for unit certificates or statement of accounts. In view of the same and submissions made by Noticee, I hold that the allegation that Noticee-1 violated the provisions of Regulation 10(a) of the AIF Regulations and Clause 1(c) of the Code of Conduct for AIFs as specified in the Fourth Schedule of AIF Regulations, does not stand established.

E. <u>Allegations w.r.t. computation and communication of NAV to the investors:</u>

47. It was observed that as per PPM audit reports, *KellyGamma Fund One had not computed the NAV and consequently, had not reported the NAV in the quarterly reports shared with the contributors.*

48. In this regard, it was alleged in SCN that Noticee-1 had not computed the NAV and consequently, had not reported the NAV in the quarterly reports and not shared NAV with the contributors. Therefore, it was alleged that the fund was in violation

of Regulation 23 (3) of the AIF Regulations which requires the category III AIF to calculate NAV independently of the fund management and disclose the same at quarterly intervals for a closed ended fund. The alleged non-compliance continued for FY 2019-20 to FY 2022-23, thus, the non-compliance was repetitive.

Reply of Noticees

49. With respect to above allegations, Noticees *inter alia* submitted the following:

(a) While the NAV was not disclosed in the quarterly reports submitted to the investors, the total net value of the assets of the Scheme was duly reported to the investors. Further, as stated above, since the Scheme was close-ended and there was no change in the beneficial interest of the investors during the tenure of the Scheme, no prejudice was caused to the investors by non-disclosure of NAV. Moreover, none of the investors raised any grievances/inquiries with respect to the NAV, throughout the tenure of the Scheme.

(b) Additionally, Noticee-1 to 3 stated that the judgement in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors. (2011) 1 SCC 236 (supra) is also applicable to the alleged violation as regards the communication of NAV. This is an issue squarely covered by the doctrine of substantial compliance where the non-compliance, if any, is not of essence or substance to any regulatory requirement.

Findings

50. As per Regulation 23(3) of the AIF Regulations, the '*Category III Alternative Investment Funds shall ensure that calculation of the net asset value (NAV) is independent from the fund management function of the Alternative Investment Fund and such NAV shall be disclosed to the investors at intervals not longer than a quarter for close ended Funds'.* Thus, I note that Noticee-1 was required to disclose the NAV to the investors at quarterly intervals.

51. With regard to above allegations, Noticees submitted that while the NAV was not disclosed in the quarterly reports submitted to the investors, the total net value of the assets of the Scheme was duly reported to the investors. I note that Noticee-1 was required to compute the NAV of the scheme and consequently, report the NAV to the investors in the quarterly reports shared with them to ensure compliance with the AIF Regulations.

52. Noticees further submissions that the Scheme was close-ended and there was no change in the beneficial interest of the investors during the tenure of the Scheme, no prejudice was caused to the investors by non-disclosure of NAV and none of the investors raised any grievances/inquiries with respect to the NAV, throughout the tenure of the Scheme etc. are not acceptable as the said justifications cannot be the admissible reason for non-compliance to the AIF Regulations, which was not done.

53. Noticee-1 to 3 placed reliance on the judgement in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors. and submitted that this is an issue squarely covered by the doctrine of substantial compliance where the non-compliance, if any, is not of essence or substance to any regulatory requirement. I note that the substantial compliance as equitable in nature and reasonably expected of Noticee-1 in the instant case has not been done by it. Therefore, the observation made in aforesaid case is not squarely applicable in the present matter.

54. Therefore, I hold that the allegation that Noticee-1 has violated the provisions of Regulation 23(3) of the AIF Regulations, stands established.

F. <u>Allegations w.r.t. non-filing of quarterly reports:</u>

55. It was alleged in the SCN that Noticee-1 had failed to file the quarterly reports for quarters ending March 2023 and June 2023. The fund had not surrendered its registration till examination was going on in the matter. The fund, therefore, was

required to file returns (NIL returns) even after distribution of corpus in December 2022.

Reply of Noticees

56. With respect to above allegations, Noticees *inter alia* submitted the following:

(a) While initially the quarterly reports for the quarters ending March 2023 and June 2023 were not filed, due to a bona-fide misconception that the same was not required as the Scheme had been liquidated; on receiving SEBI's email dated November 28, 2023, wherein it was advised to file quarterly reports until the Fund surrenders its registration, several attempts were made for filing the pending quarterly reports. However, due to various technical glitches on SEBI intermediary portal, the Fund was unable to file its quarterly reports. The various technical glitches were duly informed to SEBI vide emails dated November 29, 2023, December 10, 2023, January 18, 2024, May 13, 2024, May 14, 2024 and May 30, 2024. Moreover, several calls were also made to the SEBI helpline numbers to inform SEBI of the technical glitches; however, the issue was not resolved. It is therefore submitted that quarterly reports were duly prepared and were ready to be filed. However, due to various technical glitches, the Fund was unable to file the quarterly reports for the quarters ending March 2023 and June 2023. Further, on the SEBI intermediary report, if a quarterly report has not been filed for a particular quarter, the reports for the subsequent quarters also cannot be filed. Accordingly, since the technical glitch could not be resolved and for the quarter ending March 2023, the quarterly report for the quarter ending on June 2023 also could not be filed.

(b) In any event, since the Scheme was wound up and contributions and profits distributed to investors as far back as in December 2022, no prejudice has been caused to the investors.

(c) Additionally, Noticee-1 to 3 submitted that as on the date of the present submissions, the Fund has filed all its quarterly reports.

(d) For the quarters ending on March 2023 and June 2023, corrective steps were taken for filing of the quarterly reports; however, the same could not be completed solely on account of technical glitches on the SEBI intermediary portal and completely beyond the control of Noticee-1 to 3. Further, during the subsistence of the present proceedings, the said technical glitches were resolved and the Fund has filed its Quarterly Report for the latest quarter ending September 2024.

(e) Once again, the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors. (2011) 1 SCC 236 (supra), where the Supreme Court has explained the doctrine of substantial compliance, is applicable to the allegation as regards quarterly reports also. Further, as can be seen from the emails produced at Annexure I, Noticee No. 1 was facing technical glitches in uploading the quarterly reports on the SEBI Portal. In such a situation, as a matter of natural justice and the principle of impossibility (as explained in the judgment mentioned above, in the case of Mohammed Gazi v. State of M.P and Others (2004) 4 SCC 342), Noticee-1 to 3 ought not to be penalised for this alleged violation.

Findings

57. As per SEBI master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023, '*All AIFs shall submit report on their activity as an AIF to SEBI on quarterly basis within 10 calendar days from the end of each quarter'.*

58. In response to above allegations, Noticees submitted that initially the quarterly reports for the quarters ending March 2023 and June 2023 were not filed, due to a bona-fide misconception that the same was not required as the Scheme had been liquidated. Hence, I note that the Noticees have admitted the allegations of non-filing of quarterly reports.

59. In view of the above, I hold that the allegation that Noticee-1 has violated the provisions of Regulation 28 of AIF Regulations read with SEBI Circular no.

SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/549, dated April 07, 2021 read with Circular no. SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/700, dated December 30, 2021 and read with Clause 15.1 of SEBI master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023, stands established.

60. However, I note the submissions of the Noticees that they have taken the corrective steps and the Fund filed its Quarterly Reports on the SEBI intermediary portal.

G. <u>Allegations w.r.t. submission of incorrect information in CTR:</u>

61. The PPM audit report observations appeared first in PPM audit report of FY 2019-20 submitted on December 29, 2020. Therefore, the fund ought to have reported non-compliance observed in PPM audit report of FY 2019-20 in CTR for FY 2020-21 and also in subsequent CTRs. However, the CTRs of FY 2020-21 to FY 2022-23 did not contain any non-compliance indicated by the auditor in the PPM audit reports. Therefore, it was alleged in the SCN that the Noticee-1 had submitted incorrect information to the trustee through CTRs. Hence, Noticee-1 was alleged to have violated the provisions of Clause 4 of SEBI Circular no. CIR/IMD/DF/14/2014 dated June 19, 2014, read with clause 15.2 of SEBI Master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 read with Regulations 20(1) of AIF Regulations read with Clauses 1(e) of Code of Conduct.

Reply of Noticees

62. With respect to above allegations, Noticees *inter alia* submitted the following:

(a) As described in the foregoing paragraphs, any alleged violation was either due to (i) circumstances beyond the control of the Fund or; (ii) inadvertent and bona-fide error or; (iii) due to actions taken in utmost good faith. Further, wherever necessary and possible, the Fund took corrective steps for complying with the AIF Regulations in respect of the aforesaid alleged violations. In the circumstances, the Fund did not report the above alleged non-compliances in the CTRs submitted to the Trustee. In fact, in respect of alleged violation of Regulations 15(1)(f), corrective actions were taken by

March 2020 and thus, there was no occasion to report noncompliance in the CTRs of FY 2020-2021 to FY 2022-2023. Similarly, in respect of violation of Regulations 15(1)(d), corrective steps were taken by August 2021, and thus there was no occasion to report noncompliance in the CTRs of FY 2021-2022 to FY 2022-2023.

(b) Additionally, Noticee-1 to 3 stated that in line with position of law in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors. (20I1) 1 SCC 236 (supra), the doctrine of substantial compliance is applicable to this alleged violation.

Findings

63. As per Circular no. CIR/IMD/DF/14/2014 dated June 19, 2014 (Clause 4) and master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 (Clause 15.2), at end of financial year, the manager of an AIF shall prepare a compliance test report on compliance with AIF Regulations and circulars issued thereunder in the format as specified in the Annexure. In case the AIF is a trust, the CTR shall be submitted to the trustee and sponsor within 30 days from the end of the financial year. In case of other AIFs, the CTR shall be submitted to the sponsor within 30 days from the end of the financial year.

64. With respect to allegations of submission of incorrect information in CTR, Noticees submitted that in respect of alleged violation of Regulations 15(1)(f), corrective actions were taken by March 2020 and thus, there was no occasion to report non-compliance in the CTRs of FY 2020-2021 to FY 2022-2023. In view of the submissions of the Noticees, I am inclined to accept the said submissions of the Noticees.

65. Further, in respect of violation of Regulations 15(1)(d), Noticees submitted that corrective steps were taken by August 2021, and thus there was no occasion to report non-compliance in the CTRs of FY 2021-2022 to FY 2022-2023. I note that the Fund partially exited its investments in Kellton Tech Solutions Ltd. and

Motherson Sumi Systems Ltd, in or about August 2021 in order to be compliant with 10% investment limit. However, investment in Kwality Ltd., continued to remain beyond the 10% investment limit during FY 2019-20 to FY 2021-22. The said non-compliance should have also been reported in the CTRs. Hence, the contention of the Noticees are not tenable.

66. Further, Noticees submitted that alleged violations was either due to (i) circumstances beyond the control of the Fund or; (ii) inadvertent and bona-fide error or; (iii) due to actions taken in utmost good faith. Further, wherever necessary and possible, the Fund took corrective steps for complying with the AIF Regulations in respect of the aforesaid alleged violations. Thus, I note that Noticees have accepted the violations with respect to the allegations of submission of incorrect information in CTR. With respect to submission of Noticees that circumstances were beyond the control of the Fund, I note that Noticees have neither stated any circumstance which was beyond the control of the Fund nor any such circumstance appears which led them to filing of incorrect information to the trustee through CTRs.

67. In view of the above, I hold that the allegation that Noticee-1 has violated the provisions of Clause 4 of SEBI Circular no. CIR/IMD/DF/14/2014 dated June 19, 2014, read with Clause 15.2 of SEBI Master Circular no. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 read with Regulations 20(1) of AIF Regulations read with Clause 1(e) of Code of Conduct, stands established.

Role of Noticee-2 (KellyGamma Advisors LLP) and Noticee-3 (Sharvil Parikh):

68. It is mentioned in the SCN that the fund is an artificial entity. Hence, the investment manager is responsible for every decision of the fund. Further, the AIF or the Investment Manager incorporated as a corporate entity cannot function on their own. Hence, the KMPs of AIF and the investment manager are the persons responsible for day to day functioning of the AIF. Therefore, KMP is also

responsible for aforesaid violations by the AIF. It was alleged in SCN that KellyGamma Advisors LLP (Manager of the AIF) and Sharvil Parikh (designated KMP of Manager of the AIF) were responsible for day-to-day management and administration of the fund including issuing units, ensuring equal drawdown from all investors, identifying investment opportunities and making investment decisions, submitting reports and CTRs and also making disclosures to the investors. Thus, the KMP and the Investment Manager are also alleged to be responsible for aforesaid violations by the AIF.

Reply of Noticee-2 and 3:

69. Common response of Noticee-2 and 3 made along with Noticee-1 for the allegations have been taken into account in the above paragraphs.

70. Further, Noticee-2 and 3 submitted that the alleged violations were either due to circumstances beyond the control of the parties or were due to inadvertent and bona-fide errors. In all cases, the alleged violation if any were not of substance and merely procedural in nature and were in fact even rectified much before the issuance of the SCN. All decisions taken by Noticee-2 and 3 were in taken with proper care and due diligence, as required under the Code of Conduct. Accordingly, the Noticee-2 and 3 have abided by the Code of Conduct.

Findings

71. As per Regulation 20 (5) of AIF Regulations '*the Manager shall be responsible for every decision of the Alternative Investment Fund, including ensuring that the decisions are in compliance with the provisions of these regulations, terms of the placement memorandum, agreements made with investors, other fund documents and applicable laws.'* Further, as per Regulation 20, '*Alternative Investment Fund, key management personnel of the Alternative Investment Fund, trustee, trustee company, directors of the trustee company, designated partners or directors of the Alternative Investment Fund, as the case may be, managers and key management personnel of managers shall abide by the Code of Conduct as specified in the*

Fourth Schedule. The Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the Alternative Investment Fund, as the case may be, shall ensure compliance by the Alternative Investment Fund with the Code of Conduct as specified in the Fourth Schedule.'

72. Further, Clause 2(a) of Code of Conduct *inter-alia* requires KMP of AIF and Manager of an AIF to abide by the Act, Rules, Regulations, Guidelines and Circulars as applicable to Alternative Investment Funds at all times. Clause 2(c) of code of conduct requires investment manager and KMPs to ensure proper care and exercise due diligence and independent professional judgment in all decisions and Clause 2(d) requires them to act in a fiduciary capacity towards investors of the AIF and ensure that decisions are taken in the interest of the investors.

73. The preliminary objections raised by Noticee-2 and 3 and allegation wise submissions made by them have already been considered and dealt hereinabove from para 10 to 67 of the order.

74. Further, Noticee-2 and 3 submitted that the alleged violations were either due to circumstances beyond the control of the parties or were due to inadvertent and bona-fide errors. Thus, I note from the submissions of the Noticee-2 and 3 that they have accepted the allegations levelled against them.

75. With respect to Noticee-2 and 3's submission that the alleged violation if any were not of substance and merely procedural in nature and were in fact even rectified much before the issuance of the SCN, I note that the violations such as investment in non-liquid instruments, breach of 10% investment limit for investment made in 3 companies, not computing and communicating NAV to the investors, non-filing of quarterly reports within prescribed timelines and submission of incorrect information in CTR, in non-compliance to the provisions of AIF Regulations and SEBI Circulars as held above are significant and material violations. These violations cannot be said not of substance and merely procedural in nature.

Further, Noticees contention that the violations were rectified much before the issuance of the SCN cannot be accepted as the violation persisted during the examination period and rectification of non-compliances post examination period does not absolve Noticees.

76. In view of the above, I hold that the allegation that KellyGamma Advisors LLP (Noticee-2) has violated the provisions of Regulation 20(5) of AIF Regulations and Regulation 20(1), 20(2) read with Clause 2 (a), (c) and (d) of Code of Conduct for Managers of AIFs and KMP of Managers and AIFs as specified in the Fourth Schedule of AIF Regulations, stands established. I also hold that the allegation that Sharvil Parikh (Noticee-3) has violated the provisions of Regulation 20(1) read with Clause 2(a), (c) and (d) of Code of Conduct for Managers of AIFs and KMP of Managers and AIFs as specified in the Fourth Schedule of AIF Regulations, stands established.

Role of Noticee-4 (Vistra ITCL (India) Limited- Trustee):

77. Regulation 20(1) and 20(2) of AIF Regulations cast responsibility on Trustee to ensure compliance by the fund and also abide by code of conduct.

78. The trustee was recipient of the PPM audit reports. Though, the fund submitted incorrect information through CTRs to the trustee, the information regarding non-compliance by KellyGamma Fund was provided to the trustee through the PPM audit reports. It was alleged in SCN that Trustee had failed to notice that the fund was computing investible funds incorrectly, violating 10% limit in three companies, not recovering minimum contribution from investors, not issuing units, not computing and communicating NAV to the investors. These observations of non-compliances continued for 4 consecutive years in PPM audit reports which were also received by the trustee and there was no corrective action initiated or influenced by the trustee. Therefore, the trustee (Noticee-4) was alleged to has failed to ensure that acts of the Fund were in line with AIF Regulations, Code of

Conduct as specified in the Fourth Schedule of AIF Regulations and PPM of the fund.

Reply of Noticee-4:

79. In response to above allegations, Noticee-4 furnished the allegation wise common submissions as mentioned hereinabove.

80. Further, the additional submissions made by Noticee-4 are summarised as under:

(a) Given that there was no deliberate noncompliance on the part of Noticee-1 to 3 and rectifications were made, Noticee-4 is not in violation of Regulations 20(1) and 20(2). Noticee-4 has acted in terms of the AIF Regulations and adhered to the Code of Conduct in spirit and in fact, as stated above, interests of the investors have not in manner been jeopardised in this case.

(b) The SCN fails to demonstrate any non-compliance of the AIF Regulations by Vistra: The SCN has neither established any failure by Vistra in fulfilling these obligations nor does it specify instances where Vistra did not exercise independent due diligence. On the contrary, Vistra has diligently performed its duties and acted in compliance with applicable SEBI Regulations, and has at all times, acted with care and exercised independent professional judgment in carrying out its role.

(c) SEBI's observations are vague, unsubstantiated and fail to disclose any non-compliance by Vistra, in its role as a trustee. In this regard, Noticee-4 relied on the judgment of Hon'ble Supreme Court in the case of Canara Bank v. Debasis Das and the Hon'ble Securities Appellate Tribunal (SAT) in the case of Dhanalakshmi Bank vs. SEBI and stated that the allegations should be clear, specific, and unambiguous and should be on reasonable basis.

(d) Vistra took all necessary and expedient steps to ensure continuous compliance with the AIF Regulations and SEBI's circulars.

(e) Investment Manager was responsible for day-to-day management of the Scheme. As a trustee, Vistra acted in accordance with its fiduciary

responsibilities, relying on the representations and actions of the Investment Manager. In this regard, it is submitted that the error was unintentional and arose from an interpretative oversight by the Investment Manager during the computation process. Crucially, the non-compliance in question was of a minuscule nature, with no material impact on the overall performance of the Scheme or the interests of the investors. The Fund has since undertaken corrective measures to ensure compliance with the regulatory framework and has strengthened its internal processes to prevent any recurrence of such issues.

(f) Investment Manager was primarily responsible for the alleged violations.

(g) SCN fails to establish Vistra's failure in exercising proper care and independent professional judgment in fulfilling its roles and responsibilities. Vistra has consistently acted in good faith and in the best interests of the investors, prioritizing their returns and the overall stability of the Scheme.

Findings

81. As per Regulation 20(1) of AIF Regulations *'Alternative Investment Fund, key management personnel of the Alternative Investment Fund, trustee, trustee company, directors of the trustee company, designated partners or directors of the Alternative Investment Fund, as the case maybe, managers and key management personnel of managers shall abide by the Code of Conduct as specified in the Fourth Schedule'*. Further, as per Regulation 20(2) of AIF Regulations *'the Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the Alternative Investment Fund, as the case may be, shall ensure compliance by the Alternative Investment Fund with the Code of Conduct as specified in the Fourth Schedule'.*

82. The preliminary objections raised by Noticee-4 and other allegation wise common submissions made by it have already been considered and dealt hereinabove from para 10 to 67 of the order.

83. With respect to Noticee-4's submission that the error was unintentional and there was no deliberate non-compliance on the part of Noticee-1 to 3, I note that Noticee-4 has accepted the violations on the part of Noticee-1 to 3. Further, Noticee-4's contention that the rectifications were made cannot be accepted as the violation persisted during the examination period and rectification of non-compliances post examination period does not absolve the Noticees.

84. Noticee-4 further submitted that the SEBI's observations are vague, unsubstantiated and fail to disclose any non-compliance by Vistra, in its role as a trustee, SCN fails to demonstrate any non-compliance of the AIF Regulations by Vistra and SCN fails to establish its failure in exercising proper care and independent professional judgment in fulfilling its roles and responsibilities. In this regard, I note that a clear case of Noticee-4's failure to observe that the fund was computing investible funds incorrectly, violating 10% limit in three companies, not recovering minimum contribution from investors, not issuing units, not computing and communicating NAV to the investors etc. was made in the SCN as Regulation 20(1), 20(2) cast responsibility on Trustee to ensure compliance by the fund and also abide by code of conduct. Further, SCN clearly alleged the Noticee-4 failed to ensure that acts of the Fund were in line with AIF Regulations, Code of Conduct as specified in the Fourth Schedule of AIF Regulations and PPM of the fund. Hence, the said contentions of Noticee-4 are not tenable.

85. Further, Noticee-4's contentions that Investment Manager was responsible for day-to-day management of the Scheme and it was primarily responsible for the alleged violations are not acceptable as Regulation 20(2) of AIF Regulations provides that the Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the Alternative Investment Fund, as the case may be, shall ensure compliance by the Alternative Investment Fund with the Code of Conduct as specified in the Fourth Schedule. The trustee was recipient of the PPM audit reports, hence, it was aware of all the aforementioned violations. Thus, Noticee-4 should have taken the action for ensuring the compliance by the Fund,

however, it failed to do so. Therefore, I hold that Noticee-4 has failed to ensure that acts of the Fund were in line with AIF Regulations, Code of Conduct as specified in the Fourth Schedule of AIF Regulations and PPM of the fund.

86. I note from the findings made hereinabove that Noticee-1 has violated the provisions of AIF Regulations and SEBI Circulars on account of investment in non-liquid instruments, breach of 10% investment limit for investment made in 3 companies, not computing and communicating NAV to the investors, submission of incorrect information in CTR etc. These observations of non-compliances continued for 4 consecutive years and were mentioned in PPM audit reports which were also received by Noticee-4, however, there was no corrective action initiated or influenced by the Noticee-4. For the said non-complacence's of the Fund, Noticee-4 (trustee) was required to ensure compliance by the fund and also required to ensure that the fund abide by Code of Conduct. Therefore, I hold that the Noticee-4 has failed to ensure that acts of the Fund were in compliance with AIF Regulations, Code of Conduct as specified in the Fourth Schedule of AIF Regulations and PPM of the fund. Accordingly, Noticee-4 has failed in exercising proper care and independent professional judgment in fulfilling its roles and responsibilities.

87. In view of the above, I hold that the allegation that the Noticee-4 viz. Vistra ITCL (India) Limited has violated the provisions of Regulation 20(1), 20(2) of AIF Regulations read with Clause 3(b) of Code of Conduct for Trustee of the AIF as specified in the Fourth Schedule of AIF Regulations.

Issue II. Does the violation, if any, attract monetary penalty under Section 15EA of SEBI Act, 1992?

88. In the light of the findings and observations made against the Noticees brought out in the foregoing paragraphs, it is evident that Noticees have violated the regulatory provisions of AIF Regulations and SEBI Circulars as mentioned hereinabove.

89. With regard to levying of monetary penalty, Noticees submitted that they have not gained or derived any unfair advantage on account of any of the alleged violations, no loss or prejudice was caused to any of the investors and None of the defaults were repetitive in nature. In this regard, Noticee-1 to 3 have relied upon the observations of Hon'ble Supreme Court of India in the matter of M/s Hindustan Steel Ltd. v. State of Orissa 1969 (2) SCC 627 and observations of Hon'ble Supreme Court of India in the matter of Maharashtra State Board of Secondary Education and Higher Secondary Education vs. K.S. Gandhi & Ors. (1991) 2 SCC 716. Noticee-4 has relied upon the observations of Hon'ble Supreme Court of India in the matter of Adjudicating Officer, SEBI vs Bhavesh Pabari and stated that the factors laid down in section 15J of the SEBI Act are not exhaustive. Further, additional factors can also be considered in mitigating the quantum of penalty sought to be imposed in a given matter and the aforesaid guiding factors may be considered while adjudging the matter.

90. In this regard, I find that the allegation of violations that were established in the cases relied upon by Noticees are different from the violations that have been established in the present case of Noticees. Hence, I note that the said cases do not stand on the same footing as the given case of Noticees. I find from the findings made hereinabove and other material available on record that Noticees have failed in performing their duties as an AIF, Manager of the AIF, KMP of Manager of the AIF and Trustee of the AIF and also failed to comply with the provisions of AIF Regulations and SEBI Circulars. Accordingly, such submissions of Noticees are untenable. The aforesaid violations are serious in nature and hence needs to be dealt with suitable penalty under the provisions of section 15EA of the SEBI Act, 1992.

91. In this regard, reliance is also placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shriram Mutual Fund** [2006] 68 SCL 216(SC) wherein it was *inter-alia* observed 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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''

92. In view of the above, the aforesaid violations make Noticees liable for penalty under Section 15EA of SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

SEBI Act, 1992:

Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts.

15EA. *Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to 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 or three times the amount of gains made out of such failure, whichever is higher.*

Issue III. If so, what would be the monetary penalty that can be imposed upon Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules?

93. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992, 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.

[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.]

94. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to Noticees or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the AIF Regulations and SEBI Circulars is not available. With respect to the repetitive nature of the default, I do not find anything on record against Noticee-1, 2, 3 and 4. However, I note that the examination findings bring out a number of instances where Noticees have not been complying with the requirements of the AIF Regulations and SEBI Circulars as mentioned hereinabove. Noticees were under a statutory obligation to abide by the provisions of the AIF Regulations and SEBI Circulars, which they failed to do. The conduct of Noticees in not complying with the provisions of AIF Regulations and SEBI Circulars cannot be taken lightly. The violations by Noticees are serious, therefore, should be dealt with by imposing suitable monetary penalty. However, while deciding the amount of penalty, I have also taken into account the mitigating factors such as less number of instances and value involved in violations and further corrective and remedial action taken by the Noticees during/post examination.

ORDER

95. Considering all the facts and circumstances of the case including the submissions of the Noticees and findings elaborated hereinabove, the factors mentioned in 15J of the SEBI Act, 1992 and also taking into account judgment of the Hon'ble Supreme Court of India in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following monetary penalty on the Noticees:

Noticee No.	**Name of Noticee**	**Penalty Provisions**	**Amount of penalty (in ₹)**
1	KellyGamma Fund	Section 15EA of the SEBI Act, 1992	₹5,00,000/- (Rupees Five Lakh Only)
2	KellyGamma Advisors LLP		₹1,00,000/- (Rupees One Lakh Only)
3	Sharvil Parikh		₹1,00,000/- (Rupees One Lakh Only)
4	Vistra ITCL (India) Limited		₹1,00,000/- (Rupees One Lakh Only)

In my view, the said penalty is commensurate with the violations committed by Noticees in this case.

96. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

97. 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.

98. In terms of Rule 6 of the SEBI Adjudication Rules, copy of this order is sent to the Noticees and also to the SEBI.

ASHA SHETTY

Digitally signed by ASHA SHETTY
Date: 2025.02.28 14:23:44 +05'30'

Place: Mumbai **ASHA SHETTY**

Date: February 28, 2025 **ADJUDICATING OFFICER**