BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/RK/2024-25/ 31013-31014]

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

In respect of

Name of the Entities	Registration Number	PAN
BEACON TRUSTEESHIP LIMITED	IND000000569	AAGCB5444C
SKI CAPITAL SERVICES LIMITED	INM000012768	AAACS4864K

In the matter of

Shares Bazaar AIF

Background

1. Securities and Exchange Board of India **("SEBI")** conducted an examination in the matter of Shares Bazaar Alternative Investment Fund (hereinafter referred to as the **"SBAIF"**), registered with SEBI as an AIF, bearing registration no. IN/AIF3/23-24/1263**.** The examination was to ascertain due-diligence carried out by Beacon Trusteeship Limited (hereinafter referred to as the "**BTL/ Noticee 1**") and SKI Capital Services Limited (**"SKI / Noticee 2"**) in the matter of Registration of Shares Bazaar AIF and ascertain whether there was any violation of the provisions of SEBI (Alternative Investment Funds) Regulations, 2012 **(**hereinafter referred to as the **"AIF Regulations"),** SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as the "**MB Regulations"**) and provisions of various SEBI Circulars

issued thereunder. Noticee 1 and 2 are registered with SEBI in the capacity of Debenture Trustee and Merchant Banker bearing registration Nos IND000000569 and INM000012768 respectively. (hereinafter both the Noticee 1 and 2 are together referred to as the **“Noticees”**).

2. During the examination, it was observed that the Noticee 1 allegedly failed to render at all times high standards of service, exercise due diligence and exercise independent professional judgement and made incorrect submission to SEBI without verifying the facts pertaining to disciplinary history of the fund manager/sponsor of the SBAIF i.e. Shares Bazaar Private Limited (hereinafter referred to as the “**SBPL**”) and Noticee 2 also allegedly failed to independently exercise due diligence of all the disclosures in the Private Placement Memorandum (PPM), satisfy itself w.r.t veracity and adequacy of the disclosures and made incorrect submission to SEBI without verifying the facts pertaining to disciplinary history of the fund manager.

3. SEBI had therefore initiated adjudication proceedings against the Noticees to inquire into and adjudge the alleged violations of the provisions of AIF Regulations, MB Regulations and SEBI Circulars as tabulated in table 1 below and to impose penalties under Sections 15EA and 15HB of the SEBI Act for the alleged violation by Noticee 1 and Section 15HB of the SEBI Act for the alleged violation by Noticee 2:

Table 1:

Sr. No.	Alleged Violations by (Noticees)	Regulatory provisions
1.	Noticee 1	Clause 3 (b) of Schedule IV of the AIF Regulations regarding the Code of Conduct for the trustee of the Regulations and Clause 13.2.2 (ii) of Master Circular dated July 31, 2023 read with Regulation 20(1) and Regulation 20(2) of AIF Regulations;
2.	Noticee 2	Clause 2.2.1 of SEBI Master Circular dated July, 31, 2023 r/w Clause 2,3,4,6 and 7 of Code of Conduct for Merchant Bankers given in Schedule III read with Regulation 13 of MB Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed the undersigned as the Adjudicating Officer **("AO")** vide order dated May 07, 2024, communicated vide communique dated May 8, 2024 under Section 15-I of the SEBI, 1992 (hereinafter referred to as **"SEBI Act"**) read with Rule 3 of the SEBI (Procedure for Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"SEBI Adjudication Rules**") to inquire into and adjudge under Sections 15EA and 15HB of the SEBI Act, as applicable for the aforesaid alleged violations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice dated June 21, 2024 (hereinafter referred to as ***SCN***) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held against them and penalty, if any, be not imposed upon them under the following Sections of the SEBI Act:

a) Sections 15EA and 15HB of the SEBI Act upon Noticee 1 for aforementioned alleged violations of provisions of AIF Regulations and SEBI Circulars respectively.

b) Section 15HB of the SEBI Act upon Noticee 2 for the alleged violation of the provisions of MB Regulations and SEBI Circulars.

6. SCN dated June 21, 2024 was served upon the Noticees via SPAD and through digitally signed email dated June 21, 2024, which was duly delivered to both the Noticees. The proof of service is on record. In response to the SCN, Noticee 1 vide email dated July 12, 2024 sought extension of time to file reply in the matter. Accordingly, vide email dated July 12, 2024, Noticee 1 was advised to submit its reply to the SCN by July 26, 2024. In the absence of any reply from the Noticee 2, vide email dated July 12, 2024, it was advised to submit reply in the matter latest by EOD of July 12, 2024. Vide email dated July 12, 2024, Noticee 2 sought an extension of time to file reply in the matter, which was acceded to and vide email dated July 12, 2024, Noticee 2 was advised to submit its reply in the matter by August 02, 2024. It is observed from the material available on record that vide email dated July 26, 2024, Noticee 1 sought another extension of time to file reply in the matter and accordingly, vide email dated July 27, 2024, it was advised to submit its reply in the matter by July 29, 2024. Noticee 1 submitted its reply in the matter vide email dated July 29, 2024 and Noticee 2 submitted its preliminary reply in the matter vide letter received through email dated August 02, 2024 and requested to be granted an opportunity of hearing in the matter. The submissions made by the Noticee 1 vide its letter dated July 29, 2024 & November 11, 2024 and Noticee 2

vide its email dated August 02, 2024 and October 24, 2024 are summarized as under:

Reply of Noticee 1

6.1 Noticee 1 submitted that pursuant to the confirmation of the engagement, a draft trust deed was shared by the legal counsel of SBAIF, Atlex Legal. It had then reviewed the trust deed and updated the details pertaining to itself and had sought self-attested copies of the Aadhar & PAN of the settlor. Subsequently, the trust deed was registered on August 10, 2022.

6.2 It submitted that after registration of the trust deed, it had proceeded with the due diligence check of the Investment Manager – SBPL, who was acting as an Investment Manager/Sponsor and that the Due Diligence process is done prior to the execution of Investment Management Agreement (IMA), which was executed on October 05, 2022

6.3 It further submitted that SBPL had obtained the trading membership with BSE in January 2022, but had not commenced its operations and had also obtained certificate of Registration as a Research Analyst in July 2022 and was yet to commence its operations. It added that it had checked the financial statements and audit report of SBPL to verify the status of operations in the statement of P&L for March 31, 2022 and the revenues were NIL.

6.4 It further submitted that since SBPL was not running operations, the due diligence was majorly focussed on KYC Verification and PMLA.

6.5 It had obtained the following documents viz, Charter/constitutional documents, MOA, status of the SBPL on MCA website, shareholding pattern, signatory details, GST certificate, PAN and declarations from the fund managers and sponsors from SBPL for due diligence.

6.6 That after the execution of IMA, it had circulated the draft copy of the Annexure-A i.e. Undertaking by the Trustee of the applicant with the Noticee 2 along with the comments and after obtaining clarifications and discussion with the Noticee 2, SBPL *and their legal counsel, it had issued the final copy dated November 01, 2022 of the undertaking dated November 14, 2022.*

6.7 That at the time when the undertaking was issued by it, there was no order passed against SBPL.

6.8 That email by SEBI dated December 22, 2022 seeking clarifications with respect to the disciplinary proceedings, was sent to the SBAIF and Noticee 2 and that it was not marked in the said email.

6.9 That Noticee 2 vide email dated March 14, 2023 requested for updated Annexure A (Undertaking) limited to three points pertaining to the PAN Card details, net worth details and Names of the member of the Key Investment Team to be changed and accordingly, in response it had provided the revised undertaking and submitted the details as requested.

6.10 It submitted that it had also taken note of the due diligence certificate of the Noticee 2 dated March 14, 2024. However, the same certificate was filed with SEBI on March 27, 2023.

6.11 It further confirmed that between December 22, 2022 and March 15, 2023 there was no communication made to it, neither by Noticee 2 nor by SEBI that the undertaking needed to be updated particularly the disciplinary history rather it was asked to update only 3 aspects for the Annexure viz, PAN, Networth and key investment team, which was duly updated by it.

6.12 It also submitted that it is not the case that it was aware of the proceedings / order passed qua SBPL and intentionally did not reveal the information rather SBPL not only concealed these facts from it but also provided a false undertaking to it that there were no regulatory proceedings / order passed.

6.13 It lastly submitted that there were no regulatory orders passed against SBAIF or SBPL when the Undertaking Dated November 01, 2022 was made and thereafter when the Undertaking dated March 15, 2023 was updated, the updations were limited to the information sought by Noticee 2. It had carried out its independent Due Diligence before issuing the Undertaking.

Reply of Noticee 2

6.14 Noticee 2 submitted that SBAIF approached it to conduct due diligence on draft PPM and accordingly, before issuing due diligence certificate (DDC), it had carried out series of independent checks including thorough scrutiny of "Watchout Investors" data base.

6.15 It submitted that it had also reviewed key documents such as Articles of Association, net worth certificate, shareholding pattern and other supporting documents and ensured that the draft PPM was in compliance with SEBI (Alternate Investment Funds) Regulations, 2012.

6.16 It submitted that pursuant to complete satisfaction of the aforesaid, it had issued due diligence certificate dated November 11, 2022. Further, the due diligence certificate was also issued by referring to various declarations filed by the Company and undertaking from Noticee 1.

6.17 Noticee 2 submitted that on March 03, 2023, it had received an email from SEBI for issuance of revised due diligence certificate. In this regard, after going through the revisions made by SBAIF in the PPM, it had issued revised due diligence certificate dated 27.03.2023 wherein it had only verified the changes made by SBAIF based on feedback received by SEBI in the revised draft PPM and had followed the same due diligence process which was followed by it while issuing the previous due diligence certificate dated November 11, 2022.

6.18 Noticee 2 further submitted that even at that point in time no reference or information was provided by SBAIF w.r.t. expulsion of trading membership of SBPL by BSE. Further, the disclosures and undertaking filed by SBPL also did not contain any information w.r.t. any orders passed against SBPL.

6.19 Noticee 2 submitted that Noticee 1 in its undertaking dated March 15, 2023, did not mention the order passed by BSE against SBPL.

6.20 It further submitted that SBPL, the sponsor and investment manager of SBAIF, failed to update it about the expulsion order issued by BSE against them and the same was also not disclosed in the various declarations dated January 10, 2023 filed by

SBPL which was relied upon by it in good faith while issuing due diligence certificate dated March 27, 2023.

6.21 Noticee 2 further submitted that SEBI's Order against SBAIF and SBPL was only passed on February 01, 2024 and prior to that, information w.r.t. expulsion of SBPL was not readily available.

6.22 Noticee 2 submitted that in view of the aforesaid, due diligence certificate dated March 27, 2023 issued by it was based on information and declarations provided by SBAIF, the undertaking dated March 15, 2023 issued by Noticee 1 and the information available at that point in time.

6.23 That the concealment by SBPL is a clear breach of their obligation to provide accurate and truthful information, and it directly impacted the Noticee's ability to conduct a fully informed due diligence

6.24 Noticee 2 submitted that as a merchant banker, it had independently exercised due diligence of all the disclosures in the PPM and satisfied itself with respect to veracity and adequacy of the disclosures and provided due diligence certificate.

6.25 Noticee 2 relied upon a SAT judgment in the matter of ***BSE Brokers' Forum, Bombay & Ors. vs Securities and Exchange Board of India*** *& Ors., 2001 (34) SCL 7 SAT, 2001 (37) CLA 424 SAT and submitted that SAT held that stock exchanges are not autonomous regulators but are subject to the regulatory authority of SEBI. It further submitted that tribunal emphasized that SEBI has been constituted under the SEBI Act, 1992, with the explicit purpose of protecting the interests of investors and regulating the securities market and the tribunal upheld SEBI's directives and regulations, clarifying that stock exchanges function as self-regulatory organizations under the supervision and control of SEBI.*

6.26 It further placed reliance upon Hon'ble apex court judgement in the matter of ***Securities and Exchange Board of India v. Dushyant N. Dalal & Anr****. (2001 AIR 2358, 2001 SCC (3) 378.), and submitted that the Supreme Court of India highlighted the distinct roles of SEBI as a regulatory authority and stock exchanges as intermediaries facilitating the trading of securities. The court emphasized that SEBI has* *overarching regulatory powers, whereas exchanges primarily enforce rules to ensure market integrity within their trading platform.*

6.27 It further submitted that the nature of the sanctions imposed by the BSE falls under their own bylaws and regulations and are distinct from the disciplinary actions that are mandated for disclosure under the SEBI (Alternative Investment Funds) Regulations, 2012 and BSE, while a crucial entity in the Indian market ecosystem, operates as a market intermediary and not as a securities market regulator. The specifics of the BSE's order pertain to its internal rules and do not directly align with the "Disciplinary History" disclosure requirements as outlined under SEBI's guidelines.

6.28 Noticee 2 lastly submitted that the word "due diligence" has not been defined in the Code of Conduct of Merchant Banking Regulations and according to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort and as per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation.

6.29 In addition to the above, it added that "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation and according to Words and Phrases by Drain- Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.

7. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the SEBI Adjudication Rules, an opportunity of personal hearing was granted to the Noticees on September 17, 2024, vide hearing Notice dated August 26, 2024. The said hearing was postponed to September 18, 2024 vide email dated September 04, 2024. In response, the Authorized Representative (AR) of Noticee 1

vide email dated September 10, 2024 sought adjournment of the hearing scheduled on September 18, 2024 and Noticee 2 vide email dated September 14, 2024, sought inspection of documents relied upon in the matter. Accordingly, vide email dated, September 26, 2024, Noticee 2 was provided an opportunity to inspect the relevant and relied upon documents in the matter on September 27, 2024. Vide email dated September 26, 2024, Noticee 2 requested to reschedule the said inspection of documents on September 30, 2024. The said request was acceded to and accordingly, Noticee 2 was granted an opportunity for inspection of documents sought by it on September 30, 2024, which was duly availed by it.

8. It is observed that vide the inspection minutes, Noticee 2 was advised to submit its reply in the matter by October 07, 2024. However, it didn't submit the reply by the said date and accordingly, vide email dated October 11, 2024, Noticee 2 was sent a reminder email to submit reply in the matter by EOD of October 11, 2024. In response, Noticee 2 vide its email dated October 11, 2024 sought extension of time to file reply in the matter and accordingly, vide email dated October 15, 2024, it was advised to submit its reply by October 24, 2024. Noticee 2 submitted its final reply in the matter vide its email dated October 24, 2024. Vide email dated October 24, 2024, both the Noticees were granted an opportunity of hearing on November 07, 2024. The said hearing was attended to by the ARs of the Noticee 1 and 2 wherein they reiterated the submissions made by the them vide their reply dated July 29, 2024 and August 02, 2024 and October 24, 2024 respectively. During the course of hearing, the AR of Noticee 1 was advised to provide the copy of email submissions relied upon by him during the course of hearing. Vide email dated November 11,

2024, AR of the Noticee 1 provided the copy of email submissions sought during the course of hearing.

9. Vide email dated November 11, 2024, Noticee 2 apprised of having filed a Settlement application in terms of (Settlement Proceedings), Regulations, 2018 and requested to keep the instant proceedings in abeyance. However, as informed by the Settlement division, the said Settlement application filed by it was rejected by SEBI vide letter dated November 26, 2024 and accordingly, the instant proceedings qua the Noticee 2 was resumed.

CONSIDERATION OF ISSUES AND FINDINGS

10. The charges against the Noticees, their reply and the documents/material available on record have been carefully perused. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticees are in violation of the provisions of AIF Regulations, MB Regulations and SEBI Circulars as mentioned in table 1 above?

Issue No. II: If yes, does the violation, on the part of the Noticees would attract monetary penalty under Sections 15EA and 15HB of the SEBI Act, as applicable?

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

11. Before proceeding further with the matter, it is pertinent to mention the relevant provisions of the AIF Regulations, MB Regulations and SEBI Circulars alleged to have been violated by the Noticees. The same are reproduced below:

<u>SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992</u>

<u>GENERAL OBLIGATIONS AND RESPONSIBILITIES</u>

<u>Code of conduct</u>

13. *Every merchant banker shall abide by the Code of Conduct as specified in Schedule III*

[SCHEDULE III

Securities and Exchange Board of India

(Merchant Bankers) Regulations, 1992

[Regulation 13]

<u>CODE OF CONDUCT FOR MERCHANT BANKERS</u>

2. *A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.*

3. *A merchant banker shall fulfil its obligations in a prompt, ethical, and professional manner.*

4. *A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.*

__6__. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

***7.** A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.*

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

<u>(ALTERNATIVE INVESTMENT FUNDS) REGULATIONS, 2012</u>

<u>General Obligations.</u>

***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 may be, 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*

[Fourth Schedule

SEBI (Alternative Investment Funds) Regulations, 2012

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

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;*

Relevant Provision of SEBI Master Circular SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023

2.2.Modalities for filing of PPM through a Merchant Banker

2.2.1.*The Merchant Banker shall independently exercise due diligence of all the disclosures in the PPM, satisfy itself with respect to veracity and adequacy of the disclosures and provide a due diligence certificate*

13.2.Code of conduct

13.2.2*.The AIF, manager, trustee and sponsor shall :*

(ii) *maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment*

Issue No. I: Whether Noticees are in violation of the provisions of AIF Regulations, MB Regulations and SEBI Circulars as mentioned in table 1 above?

<u>Alleged Violation: Failure to render high standards of service at all times, exercise due diligence and independent professional judgement and making incorrect submission to SEBI</u>

12. SBPL is a SEBI registered Research Analyst (RA) & Trading Member(TM) with BSE. With effect from December 30, 2022, BSE expelled SBPL from membership. SBAIF filed an application for registration as an AIF on October 12, 2022.

13. During the course of processing the AIF registration application by SEBI, vide email dated December 22, 2022 the fund was asked to disclose the updated disciplinary history in the Private Placement Memorandum(PPM) and also asked that in case of any change in the disciplinary history disclosed in the PPM, the applicant is required to intimate the same to SEBI.

14. SBAIF vide its email dated January 23, 2023, submitted to SEBI that the disciplinary history in the PPM is up to date, However, expulsion of the SBPL by BSE on December 30, 2022 was not informed by the SBAIF and the same was also not disclosed in the disciplinary history section given in the final version of PPM filed to SEBI on March 29, 2023.

15. Moreover, Noticee 1 through an undertaking dated March 15, 2023 and Noticee 2, through a Due Diligence Certificate (DDC) dated March 27, 2023, also confirmed that the AIF, its sponsor and manager are fit and proper persons based on the

criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008 and none of these entities have been debarred from functioning by any regulatory authority.

16. Both the said Noticees allegedly did not disclose to SEBI, the information of expulsion of SBPL by BSE vide its order dated December 30, 2022 and accordingly, based on the declarations submitted by the Noticee 1 and 2, the AIF registration was granted to the applicant viz, SBAIF on April 27, 2023, as per the laid down procedures.

17. In this regard, SEBI vide email dated February 28, 2024 sought query from Noticee 1 with respect to the actions taken by it to prevent these non-compliances/violations of the fund. Noticee 1, vide email dated March 04, 2024, provided the sequence of events leading to the registration of the fund with SEBI wherein it had inter-alia mentioned that:

> *"After the trust was registered, we proceeded with the due-diligence check of the investment manager. Usually, the investment manager entity is a limited liability partnership (LLP) and is formed to act as an investment manager to the AIF. As such entity is newly formed, there is very limited or no details available to check on the third party website or the stock exchange websites. Hence, our due diligence is limited to partner's KYC verification. In case of Shares Bazaar Pvt. Ltd. who is acting as an Investment Manager/Sponsor, we collected the following documents towards the due diligence of the Investment Manager:*
>
> 1. *Constitution Documents i.e. AOA MOA, COI*
> 2. *Audit reports*
> 3. *Shareholding patterns*
> 4. *Details of Directors*
> 5. *GST Certificate copy*
> 6. *PAN copy*

This is done prior to the execution of the Investment Management Agreement (IMA), and we went ahead with the execution. The said IMA was executed on October 05, 2022. The trustee executes Investment Management Agreement with the Investment Manager to delegate the operational rights to manage the trust activities."

18. With respect to application for registration as an AIF, Noticee 1 further submitted as mentioned below:

> *At the time of AIF Application, we have additionally taken the following documents for issuing our undertaking:*
>
> 1. *Due Diligence certificate dated March 27, 2023, issued by the Merchant Banker in line with clause 2.2 of master circular for AIF dated July 31, 2023*
> 2. *Declaration of the Fund Manager*
> 3. *Declaration of the Sponsor*

19. From the above, it is observed that the Noticee 1 has submitted that it had taken the due diligence certificate dated March 27, 2023 from the Noticee 2 into consideration before submitting its undertaking dated March 15, 2023 declaring SBAIF, its manager and sponsor as fit and proper. However, it is observed that the said undertaking dated March 15, 2023 predated the Noticee 2's due diligence certificate dated March 27, 2023.

20. Accordingly, it is alleged that the Noticee 1 did not independently verify the fit and proper criteria fulfilment by SBAIF, sponsor and manager based on its own judgement and submitted to SEBI its undertaking in this regard. Thus, the Noticee 1 allegedly failed to provide any substantive evidence that it had made attempts to mitigate the violation of the fund.

21. In view of the above, it is alleged that the Noticee 1 has violated Clause 3 (b) of Schedule IV of the AIF Regulations regarding the Code of Conduct for the trustee of the AIF Regulations and Clause 13.2.2 (ii) of Master Circular dated July 31, 2023 read with Regulation 20(1) and Regulation 20(2) of AIF Regulations by failing to render at all times high standards of service, exercise due diligence and exercise independent professional judgment and making incorrect submission to SEBI without verifying the facts pertaining to disciplinary history of the fund manager.

22. Noticee 1 submitted that SBPL had obtained the trading membership with BSE in January 2022, and had also obtained certificate of Registration as a Research Analyst in July 2022 and was yet to commence its operations. It added that it had checked the financial statements and audit report of SBPL to verify the status of operations in the statement of P&L for March 31, 2022 and the revenues were NIL.

23. It further submitted that since SBPL was not running operations, the due diligence was majorly focused on KYC Verification and PMLA and at that time when the undertaking was issued by it in November 2023, there was no order passed against SBPL.

24. That email by SEBI dated December 22, 2022 seeking clarifications with respect to the disciplinary proceedings, was sent to the SBAIF and Noticee 2 and that it was not marked in the said email and Noticee 2 vide email dated March 14, 2023 requested for updated Annexure A (Undertaking) limited to three points pertaining to the PAN Card details, net worth details and Names of the member of the Key

Investment Team and accordingly, in response it had provided the revised undertaking and submitted the details as requested.

25. It further submitted that there were no regulatory orders passed against SBAIF or SBPL when the Undertaking Dated November 01, 2022 was made and thereafter, when the Undertaking dated March 15, 2023 was updated, the updations were limited to the information sought by Noticee 2 and it had carried out its independent Due Diligence before issuing the Undertaking.

26. It lastly submitted that it had also taken note of the due diligence certificate of the Noticee 2 dated March 14, 2024 which was filed with SEBI on March 27, 2023. In support of this Noticee 1 submitted a copy of the email dated March 14, 2023 vide which Noticee 2 had shared a document dated March 14, 2023 wherein para 2 of the said document mentioned that the AIF, its sponsor and manager were fit and proper persons in terms of Schedule II of the SEBI (Intermediaries Regulations), 2008.

27. It is observed from the documents on record that on November 1, 2022, Noticee 1 gave an undertaking wherein inter alia it stated "*The AIF, its Sponsor and Manager are fit and proper persons based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and none of these entities have been debarred from functioning by any regulatory authority".* Subsequently, Noticee 1 gave a revised undertaking on March 15, 2023 updating the information sought by Noticee 2 regarding PAN card details, net worth details and Names of the member of Key Investment Team wherein too Noticee 1

stated that the Sponsor Manager was fit and proper and not debarred by any regulatory authority. It is observed that SBPL, the sponsor of the trust AIF was expelled as broker by BSE on December 30, 2022. Noticee 1 submitted that the updated disciplinary proceedings history was sought by SEBI from Noticee 2 only and it was not made part of the said correspondence. Further, Noticee 2 sought revised undertaking from Noticee 1 after updating the above three points. Further, it also relied on the Due diligence certificate given by Noticee 2 which stated that AIF, Sponsor and Manager are fit and proper and have not been debarred from functioning by any regulatory authority. Since, Noticee 1 was asked to update only on the above three criteria, it is observed that while giving the revised undertaking on March 15, 2023, it did not exercise its own due diligence and its independent professional judgement rather relied solely on the due diligence certificate of Noticee 2. While updating and revising the undertaking, Noticee1 should not have limited itself to the three matters as mentioned above rather it was its responsibility to verify independently all items given in the undertaking and exercise its judgement while submitting the undertaking. The lack of due-diligence by Noticee 1 also gets strengthened by the fact that despite being the availability of the BSE order dated December 30, 2022 and exchange Notice dated January 02, 2023 in public domain regarding expulsion of SBPL from BSE, Noticee 1 remained ignorant of the said order against the AIF, sponsor and manager, and accordingly, failed to reckon the same in its undertaking dated March 15, 2023. Thus, the submissions of the Noticee 1 are bereft of merits. It is observed that the incorrect undertaking of Noticee 1 was relied upon for granting AIF Registration.

28. In view of the above, it stands established that the Noticee 1 has violated Clause 3 (b) of Schedule IV of the AIF Regulations regarding the Code of Conduct for the trustee of the AIF Regulations and Clause 13.2.2 (ii) of Master Circular dated July 31, 2023 read with Regulation 20(1) and Regulation 20(2) of AIF Regulations by failing to render at all times high standards of service, exercise due diligence and exercise independent professional judgment and making incorrect submission to SEBI without verifying the facts pertaining to disciplinary history of the fund manager.

29. Similarly, vide email dated March 20, 2024, comments were sought from Noticee 2 w.r.t the due diligence certificate. In response, Noticee 2 vide email dated March 21, 2024 submitted the following:

> *"In response to your email concerning the due diligence certificate provided during the registration process of Share Bazaar AIF ("the Fund"), wherein Share Bazaar Private Limited ("the Company") acted as the Sponsor/Investment Manager. In light of the same, we humbly submit that:*
>
> *1. In October 2022, Share Bazaar AIF initiated their application process for registration as an AIF (Application No. 1006036). Subsequently, we issued a due diligence certificate on November 11, 2022 based on the information provided in Form A and the draft Placement Memorandum ("PPM"). The due diligence process involved an array of independent checks, including a scrutiny of the "Watchout Investors" database. At this juncture, there were no existing adverse orders against Share Bazaar AIF that warranted disclosure in the PPM's disciplinary section.*
>
> *Post issuance of the initial due diligence certificate, SEBI provided certain feedback necessitating revisions to the PPM. In response to the feedback, changes were made to the PPM by the Fund. Further, in response to SEBI's email dated March 3, 2023, we issued a revised due diligence certificate on March 27, 2023, which incorporated only the amendments made to the PPM by the Fund.*
>
> *It is pertinent to note that the BSE order dated December 30, 2022, was issued in the interim and coincided with this period of revision and modifications to the PPM.*

2. The expulsion order issued by the BSE on December 30, 2022, came after we issued our due diligence certificate on November 11, 2022. The Company failed to update this information to us and concealed the same in their various declarations and representations to us.

3. We acknowledge the gravity of the BSE order. However, it is important to clarify that the nature of the sanctions imposed by BSE falls under its own bylaws and regulations, which are distinct from the disciplinary actions mandated for disclosure under the AIF Regulation. BSE, while a crucial entity in the market ecosystem, operates as a market intermediary and not a securities market regulator. The specifics of the BSE's order pertain to its internal rules and do not directly align with the "Disciplinary History" disclosure requirements as outlined under SEBI's guidelines.

Without prejudice to any of the above-mentioned comments, we assert that the disciplinary section of the PPM mandates disclosure of, inter alia, (a) any disciplinary action taken by SEBI or any other regulatory authority against the Sponsor/Investment Manager, as well as its Directors, Partners, Promoters, and Associates, and (b) any adverse findings regarding compliance with securities laws pertaining to the aforementioned parties. It is essential to distinguish that the sanctions levied by the BSE are governed by its bylaws and regulations, which operate independently of the SEBI-mandated disclosures for AIF Regulation. BSE serves as a market intermediary; however, it does not function as a securities market regulator.

In consideration of the aforementioned circumstances and the sequence of events that transpired, it is respectfully submitted and prayed that there appears to be no justifiable cause for proceeding against us. We recognize the importance of maintaining rigorous diligence and remain committed to continually enhancing our due diligence processes.

We are available at your disposal for any further discussions regarding this matter. We also respectfully request an opportunity to present our case in person to provide a clearer understanding of our practices and commitment."

30. From the above response it was observed that Noticee 2 relied upon the fund manager to update about the expulsion from BSE. Thus Noticee 2 allegedly did not verify independently the facts before providing due diligence certificate to SEBI.

31. Accordingly, in view of the above, it is alleged that the Noticee 2 has violated Clause 2.2.1 of SEBI AIF Master Circular dated July, 31, 2023 r/w Clause 2,3,4,6 and 7 of Code of Conduct for Merchant Bankers given in Schedule III read with Regulation 13 of the MB Regulations by having failed to independently exercise due diligence of all the disclosures in the PPM, satisfy itself with respect to veracity and adequacy of the disclosures and making incorrect submission to SEBI without verifying the facts pertaining to disciplinary history of the fund manager.

32. Noticee 2 submitted that it had carried out series of independent checks including thorough scrutiny of "Watchout Investors" data base and had also reviewed key documents such as Articles of Association, net worth certificate, shareholding pattern and other supporting documents and ensured that the draft PPM was in compliance with AIF Regulations.

33. It further submitted that on March 03, 2023, it had received an email from SEBI for issuance of revised due diligence certificate and after going through the revisions made by SBAIF in the PPM, it had issued revised due diligence certificate dated 27.03.2023 wherein it had only verified the changes made by SBAIF based on feedback received by SEBI in the revised draft PPM and had followed the same due diligence process which was followed by it while issuing the previous due diligence certificate dated November 11, 2022.

34. It further submitted that the nature of the sanctions imposed by the BSE falls under their own bylaws and regulations and are distinct from the disciplinary actions that are mandated for disclosure under the AIF Regulations and BSE being a crucial

entity in the Indian market ecosystem, operates as a market intermediary and not as a securities market regulator. The specifics of the BSE's order pertain to its internal rules and do not directly align with the "Disciplinary History" disclosure requirements as outlined under SEBI's guidelines.

35. From the documents available on record, it is observed that SEBI vide email dated December 22, 2022 while seeking information on number of items also advised Noticee 2 to update on the disciplinary history as disclosed in the PPM and in case of any change to inform SEBI immediately (point no 35 of email dated December 22, 2022). As observed, BSE had expelled SBPL, the Sponsor to the AIF on December 30, 2022. However, Noticee 2 while submitting its due diligence certificate to SEBI on March 27, 2023 mentioned clearly that no disciplinary action by any regulatory authority has been taken against the AIF, Sponsor and Manager. On the basis of the said incorrect declaration, registration was granted to the AIF. When enquired, Noticee 2 merely stated that the fund did not inform it about the said action against the Sponsor. The Regulation puts the onus on the intermediary to exercise its own independent judgment and exercise due diligence independently and not rely on any third party for exercising its due diligence. Noticee 2 has also not demonstrated what effort it had taken to verify the disciplinary history and provided to SEBI incorrect certificate without doing due diligence. Thus, submission of the Noticee 2 does not stand.

36. Further, as regard its submission that nature of the sanctions imposed by the BSE falls under their own bylaws and regulations and are distinct from the disciplinary actions that are mandated for disclosure under the AIF Regulations, it is noted that

the Noticee 2 has misconstrued the ambit of order of BSE against SBPL as the said order was an adverse order/action against SBPL and the proceedings which culminated into the said order was a disciplinary proceeding/action, subsequent to which SBPL was expelled from the membership of exchange by BSE. Thus, submission of the Noticee 2 is devoid of merits.

37. With regard to submission of the Noticee 2 that due-diligence has not been defined in the Code of Conduct of Merchant Banking Regulations and its further submission that as per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation and according to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible, it is noted that Noticee 2 has been alleged that it failed to independently exercise due diligence of all the disclosures in the PPM, which as a merchant banker was its prime duty and the exercise of independent due-diligence is not beyond the scope of its work and thus, is a duty of a prudent and professional merchant banker. The BSE order was already in public domain, and before making submission to SEBI, Noticee 2 should have satisfied itself with respect to veracity and adequacy of the disclosure being made by SBPL. Thus, submission of the Noticee 2 is bereft of merits.

38. In view of the above, it stands established that the Noticee 2 has violated Clause 2.2.1 of SEBI AIF Master Circular dated July, 31, 2023 r/w Clause 2,3,4,6 and 7 of Code of Conduct for Merchant Bankers given in Schedule III read with Regulation 13 of the MB Regulations by having failed to independently exercise due diligence

of all the disclosures in the PPM, satisfy itself with respect to veracity and adequacy of the disclosures and making incorrect submission to SEBI without verifying the facts pertaining to disciplinary history of the fund manager.

<u>Issue No. II: If yes, does the violation, on part of the Noticees would attract monetary penalty under Sections 15EA & 15HB of the SEBI Act, as applicable</u>?

39. As it has been established in the paragraphs above that the Noticees have violated the following provisions of AIF Regulations, MB Regulations and SEBI Circulars:

   a) Clause 3 (b) of Schedule IV of the AIF Regulations regarding the Code of Conduct for the trustee of the AIF Regulations and Clause 13.2.2 (ii) of Master Circular dated July 31, 2023 read with Regulation 20(1) and Regulation 20(2) of AIF Regulations;

   b) Clause 2.2.1 of SEBI AIF Master Circular dated July, 31, 2023 r/w Clause 2,3,4,6 and 7 of Code of Conduct for Merchant Bankers given in Schedule III read with Regulation 13 of the MB Regulations

40. In context of the above, it is relevant to refer to the observations of Hon'ble Supreme Court in the matter of ***Chairman, SEBI vs. Shriram Mutual Fund*** {[2006] 5 SCC 361} wherein the Hon'ble Court had observed *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."*

41. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court, Noticee 1 is liable for penalty under Sections 15EA and 15HB of the SEBI Act and Noticee 2 is liable for monetary penalty under Section 15HB of the SEBI Act, the relevant sections are reproduced hereunder:

> ***[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.*
>
> ***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 104[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

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

42. While determining the quantum of penalty under Sections 15EA and 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:

SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

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

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

(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

43. It is observed, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the losses, if any suffered by the investors due to such violations on the part of the Noticees. From the document available on record, it is noted that the Noticee 1 had been penalized by SEBI in the past vide SEBI Order dated March 27, 2024 for violation of the provisions of SEBI (Debenture Trustees) Regulations, 1993 and SEBI circulars. However, from the documents available on record, it is observed that Noticee 2 has not been penalized by SEBI in the past. It is pertinent to note that the

role of a Debenture trustee is crucial as it was primarily responsible to ensure that the undertaking issued by it w.r.t registration of a new entity in the securities market is correct in all aspects and nothing has been concealed from the Regulator. Noticee1 was under a statutory obligation to abide by the provisions of the AIF Regulations and Circulars issued by the Regulator, which it failed to do. Similarly, a Merchant Banker (MB) is crucial to the development of the securities market, especially when it issues Due diligence certificate, which is relied upon by the Regulator. In this regard, it is of utmost importance that every MB abides by the relevant Regulations, provisions of SEBI/Exchange circulars and various guidelines issued by SEBI/Exchanges. The non-compliances on the part of the Noticees as brought out in the preceding paragraphs clearly show that they had failed in their duties and need to be adequately penalized.

ORDER

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

Name of the Noticees	Penal provisions	Penalty(Rs)
Beacon Trusteeship Limited	Section 15EA of the SEBI Act Section 15HB of the SEBI Act	Rs 2,00,000/- (Rupees Two Lakhs Only) Rs 3,00,000/- (Rupees Three Lakhs Only)
SKI Capital Services Limited	Section 15HB of the SEBI Act	Rs 3,00,000./- (Rupees Three Lakhs Only)

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

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

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

BARNALI MUKHERJEE Digitally signed by BARNALI MUKHERJEE Date: 2024.11.28 17:23:27 +05'30'

Date: November 28, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**