

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/2021-22/15366/4]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Jaypee Infratech Ltd.

Address:

Sector — 128, Noida, Uttar Pradesh, 201304

BACKGROUND

1. A department (in short OD) of Securities and Exchange Board of India (in short SEBI) examined the status of compliance with the provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (in short LODR Regulations) by Jaypee Infratech Ltd., whose equity and debt securities are listed on Bombay Stock Exchange (BSE) and only equity is listed on National Stock Exchange (NSE). During the examination, OD observed that the Noticee did not make requisite disclosures under the provisions of regulations 51(1), 51(2) read with (r/w) Part B of schedule III (clause A1, A4, A9), 52(4), 54(2), 57(1) and 60(2) – under Chapter V; 13(3) of LODR Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. As regards alleged non-compliances by Jaypee Infratech Ltd. (hereinafter referred to as Noticee / Jaypee), OD initiated adjudication proceedings against the Noticee. The competent authority prima facie being of the view that there are grounds to adjudicate upon the alleged violations, appointed Shri V.S. Sundaresan as Adjudicating Officer (in short **AO**), under section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act**) r/w rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry

Adjudication order in respect of Jaypee Infratech Ltd. in the matter of Jaypee Infratech Ltd.

and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **Adjudication Rules**) to inquire into and adjudge, under section 15A(b) of the SEBI Act, the alleged violations of provisions of regulations 51(1), 51(2) r/w Part B of schedule III (clauses A1, A4, A9), 52(4), 54(2), 57(1), and 13(3) of LODR Regulations. The said matter was transferred and undersigned was appointed AO, which was conveyed vide communique dated December 26, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice ref no. SEB1/EAD-3/VSS/CM/27602/2019 dated October 18, 2019 (**SCN**) was issued by the previous AO, to the Noticee under rule 4 of the Adjudication Rules, 1995 advising Noticee to show cause as to why an inquiry should not be held against it and why penalty under section 15A(b) of the SEBI Act be not imposed on it for the violations alleged and specified in the said SCN. The SCN was sent through speed post acknowledgment due (**SPAD**). The said SCN was delivered to the Noticee and the proof of delivery is on record.

4. The allegations in the SCN are given below:

- It was observed that the Noticee had issued and listed series of Non-Convertible Debt securities (hereinafter referred to as "**NCDs**") during the period 2014 to 2015, the details of which are as follows:

ISIN	Listing Date
INE099J07160	12/11/2014
INE099J07178	12/11/2014
IN E099J07186	21/01/2015
IN E099J07194	21/01/2015

- With respect to above, SEBI vide emails dated July 18, 2017, July 20, 2017, July 25, 2017, July 26, 2017, August 22, 2017, August 28, 2017, September 29, 2017, January 16, 2018, January 31, 2018, February 22, 2019, advised BSE to provide details as to whether the Noticee has complied with the LODR Regulations and specific period of non-compliances, if any. BSE vide emails dated July 18, 2017, July 19, 2017, July 25, 2017, July 27, 2017, September 01, 2017, October 04, 2017, January 29, 2018, February 07, 2018, February 26, 2019 replied in this regard. The Correspondence between SEBI and BSE is enclosed as Annexure-I.
- On the basis of details received from BSE, SEBI vide email dated November 02, 2018 sought clarification from the Noticee with respect to various non-compliances with LODR Regulations, as indicated by BSE. The Correspondence between SEBI and the Noticee is enclosed as Annexure-II to the SCN.

- From the above, it was observed that the Noticee had not made disclosures as required under LODR Regulations in regard to abovesaid series of NCDs issued and listed by Noticee. Based on the observations, following are alleged:
 - a. The Noticee has failed to promptly inform BSE of the default in payment of interest/principal in respect of various series of NCDs referred to at para 3. Thus, the Noticee has alleged to have violated Regulation 51(1) of the LODR Regulations.
 - b. The Noticee has failed to disclose the expected default and/or the action that shall affect adversely in timely payment of interests/principal in respect of NCDs. The Noticee has also failed to disclose the delay/default in payment of interest/principal amount for a period of more than three months from the due date. Thus, the Noticee has alleged to have violated Regulation 51(2) read with Part B of Schedule III (Clause A1, A4, A9) of the LODR Regulations.
 - c. The Noticee while submitting the financial results for period ended June 30, 2016, September 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017, June 30, 2018 and December 31, 2018 has failed to disclose the line items as required u/ r 52(4) of the LODR Regulations in respect of the NCDs.. Thus, the Noticee has alleged to have violated Regulation 52(4) of the LODR Regulations.
 - d. The Noticee has failed to disclose to BSE in its quarterly financial statements for the period ending June 30, 2016, September 30, 2016, December 31, 2016, June 30 2017, December 31, 2017, June 30 2018, and December 31, 2018, the extent and nature of security created and maintained with respect to its listed NCDs. Thus, the Noticee has alleged to have violated Regulation 54(2) of the LODR Regulations.
 - e. The Noticee has failed to submit a certificate to BSE within two days of the interest/principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the NCDs. Thus, the Noticee has alleged to have violated Regulation 57(1) of the LODR Regulations.
 - f. The Noticee failed to intimate the record date to BSE in advance of at least seven working days (excluding the date of intimation and the record date) or of as many days as agreed by BSE or require specifying the purpose of the record date. Thus, the Noticee has alleged to have violated Regulation 60(2) of the Regulations
- Upon perusal of the replies of the Stock exchanges, the Statement with respect to Investor Complaints as per Regulation 13(3) of the LODR Regulations for the quarter ended September 2017. Thus, the Noticee has alleged to have violated Regulation 13(3) of LODR Regulations.
- In view of the above, it is alleged as under:

Paragraph No.	Alleged Violation
4.1	Regulation 51(1) of the LODR Regulations
4.2	Regulation 51(2) read with Part B of Schedule III (Clause A1, A4, A9) of the LODR Regulations
4.3	Regulation 52(4) of the LODR Regulations
4.4	Regulation 54(2) of the LODR Regulations
4.5	Regulation 57(1) of the LODR Regulations
4.6	Regulation 60(2) of the LODR Regulations
6	Regulation 13(3) of the LODR Regulations

- The relevant provisions of LODR Regulations are reproduced hereunder:

LODR Regulations

13.(3) The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty-one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.

51. (1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares.

Explanation. -The expression 'promptly inform', shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.

(2) Without prejudice to the generality of sub-regulation (1), the listed entity who has issued or is issuing non-convertible debt securities and/or non-convertible redeemable preference shares shall make disclosures as specified in Part B of Schedule III.

Schedule III

Part B: Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information: non-convertible debt securities & non-convertible redeemable preference shares

[See Regulation 51(2)]

A. The listed entity shall promptly inform to the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares including:

(1) expected default in timely payment of interests/preference dividend or redemption or repayment amount or both in respect of the non-convertible debt securities and non-convertible redeemable preference shares and also default in creation of security for debentures as soon as the same becomes apparent;

.....
(4) any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares including default by issuer to pay interest on non-convertible debt securities or redemption amount and failure to create a charge on the assets;

.....
(9) delay/default in payment of interest or dividend / principal amount / redemption for a period of more than three months from the due date;]

52. (4) The listed entity, while submitting half yearly /annual financial results, shall disclose the following line items along with the financial results:

(a) credit rating and change in credit rating (if any);

- (b) asset cover available, in case of non-convertible debt securities;
- (c) debt-equity ratio;
- (d) previous due date for the payment of interest/dividend for non-convertible redeemable preference shares/repayment of principal of non-convertible preference shares/non-convertible debt securities and whether the same has been paid or not; and,
- (e) next due date for the payment of interest/dividend of non-convertible preference shares/principal along with the amount of interest/dividend of non-convertible preference shares payable and the redemption amount;
- (f) debt service coverage ratio;
- (g) interest service coverage ratio;
- (h) outstanding redeemable preference shares (quantity and value);
- (i) capital redemption reserve/debenture redemption reserve;
- (j) net worth;
- (k) net profit after tax;
- (l) earnings per share;

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

54. (2) The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.

57. (1) The listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non convertible debt securities.

60 (2) The listed entity shall give notice in advance of atleast seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

Applicability of Chapters IV and V.

63.(1) Entity which has listed its 'specified securities' and 'non-convertible debt securities' or 'non-convertible redeemable preference shares' or both on any recognised stock exchange, shall be bound by the provisions in Chapter IV of these regulations.

- (2) The listed entity described in sub-regulation (1) shall additionally comply with the following regulations in Chapter V:
 - (a) regulation 50(2), (3);

- (b) regulation 51;
- (c) regulation 52(3), (4), (5) and (6);
- (d) regulation 53
- (e) regulation 54
- (f) regulation 55
- (g) regulation 56
- (h) regulation 57
- (i) regulation 58
- (j) regulation 59
- (k) regulation 60
- (l) regulation 61:

Provided that the listed entity which has submitted any information to the stock exchange in compliance with the disclosure requirements under Chapter IV of these regulations, need not re-submit any such information under the provisions of this regulations without prejudice to any power conferred on the Board or the stock exchange or any other authority under any law to seek any such information from the listed entity: Provided further that the listed entity, which has satisfied certain obligations in compliance with other chapters, shall not separately satisfy the same conditions under this chapter.

- *The aforesaid alleged violations, if established against the Noticee, will make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, which reads as follows:*

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

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

(a)

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees*

5. Noticee has acknowledged receipt of the SCN Dated October 18, 2019 having received by Noticee on October 31, 2019 and replied vide letter dated November 06, 2019 that that the Noticee is undergoing Corporate Insolvency Resolution Process (in short **CIRP**), the matter is sub-judice, Noticee is subject to various litigations, at the Hon'ble Supreme Court, Hon'ble NCL, Hon'ble NCLAT, various consumer forums, compliance officer of the Noticee has changed and lastly that Noticee may be given additional time to reply to SCN upto November 30, 2019. Vide letter dated November 27, 2019, an Authorised Representative (in short **AR**) sought three weeks more for filing reply. Noticee has replied to the SCN vide letter

dated December 16, 2019 to the previous AO. Noticee also replied vide letters dated May 30, 2020 and email dated August 22, 2020. Noticee vide letter dated May 30, 2020 has submitted copy of disclosures made to the BSE and NSE vide letter dated November 18, 2019 that the Noticee is undergoing **CIRP**.

6. Vide letter dated March 02, 2020 a hearing notice was sent to the Noticee giving an opportunity of personal hearing on March 17, 2020, which was acknowledged by Authorised Representative (**AR**) of Noticee vide email dated March 16, 2020 and request for postponement of the hearing due to Covid 19 situation. Another hearing was scheduled on May 12, 2020 at the office of SEB, Mumbai with a choice to avail of hearing on phone on any other nearby office of SEBI as well. AR of Noticee requested for postponement. All emails have been delivered and proof of delivery is on record, printouts of the said emails are on record. Office of AO rescheduled hearing on June 05, 2020 vide email dated May 20, 2020 and reminder sent on June 02, 2020 as no reply received. AR of the Noticee requested postponement vide email dated June 03, 2020. Hearing was rescheduled for August 18, 2020 with an option of Webex and telephone. Hearing was conducted as scheduled on Webex platform and hearing minutes are on record. The hearing proceedings are as follows: 1) AR of the Noticee/Noticee reiterated the submissions made vide letters dated December 16, 2019 and May 30, 2020. 2) Noticee informed that Resolution Plan has been approved and 3) Noticee sought additional time to give additional submissions and acceding to its request, time was given till August 24, 2020.
7. Vide email dated August 22, 2020 AR of Noticee has replied as follows:
 - *We submit that the Noticee Company was incorporated on 5 April 2007 and the main object of the Company was to develop infrastructure facility, the 165 KM 8 lane access controlled (Yamuna Expressway) between Noida and Agra in the state of Uttar Pradesh, development of residential complexes and development of land parcels along with the Expressway. The Yamuna Expressway Project achieved Commercial Operation on 07.08.2012, was opened to public on 09.08.2012 and commenced Toll w.e.f. 16.08.2012. The project has made a significant contribution in the ongoing development in the region. It is a world class expressway.*

- We further submit that all the proceedings pending before Hon'ble National Company Law Appellate Tribunal (NCLAT) relating to Insolvency and Bankruptcy Code cases of the Noticee Company have been transferred by Hon'ble Supreme Court to itself under its order dated 6 August 2020. A copy of the order and disclosure made to both the stock exchanges is attached herewith as **"Supreme Court Disclosure"**
- We submit that all the Non-Convertible Securities – NCDs were issued to and held by Axis Bank Limited. As would be seen from the Information Memorandum submitted with Noticee Company reply dated 16.12.2019, these NCDs are in essence loans granted by Axis Bank Limited but structured as NCDs for practical purposes. Axis Bank is an accredited and institutional investor and was anyway aware of the happenings of the Noticee Company and impact of initiation of Corporate Insolvency and Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016.
- Even if assumed though not admitted, that the Noticee Company has violated any provision of LODR Regulation, it was inadvertent and inconsequential as NCDs were held by Axis Bank alone and they have put their claim of NCDs in the resolution process itself.

8. Noticee vide letter dated December 16, 2019 replied as under:

• **Non-Convertible Debt Securities - current status:**

The current status of each of four ISIN Nos mentioned in Paragraph 3 of your notice, is as under:—

ISIN Number	Issuance Date	Maturity Date	Name of NCD holder/ Debenture Trustee (SINCE ALLOTMENT)	Remarks
INE099J07160	01-Sep-14	31-Dec-17	Axis Bank Limited / Axis Trustee Services Limited	Repaid Rs.83.10 Cr on 25.04.2016 and Rs. 4.95 Cr on 28.06.2016 - Partly Outstanding – Rs.11.95 Cr
INE099J07178	01-Sep-14	30-Jun-18	Axis Bank Limited / Axis Trustee Services Limited	Repaid on 25.04.2016 and ISIN extinguished
INE099J07186	26-Dec-14	31-Dec-18	Axis Bank Limited / Axis Trustee Services Limited	Outstanding
INE099J07194	26-Dec-14	30-Jun-19	Axis Bank Limited / Axis Trustee Services Limited	Outstanding

All the three outstanding ISIN Nos. relate to Non-Convertible Debt (NCDs) which were privately placed and were/are solely held by Axis Bank Limited.

- **Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016**

*We wish to inform that vide order dated August 9, 2017 of Hon'ble NCLT, Allahabad Bench (the NCLT), Jaypee Infratech Limited (JIL) is undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of Insolvency and Bankruptcy Code, 2016 (Insolvency Code). Copy of the order of the NCLT is enclosed herewith as **Annexure-1**. Subsequently, Hon'ble Supreme Court of India, in disposal of Writ Petition (Civil) No. 744/2017 filed by some of the home-buyers, had revived the period prescribed under Insolvency Code by another 180 days w.e.f. the date of the order, i.e. 9th August, 2018 subject to further extension of 90 days by NCLT. Copy of the order of the Hon'ble Supreme Court is enclosed herewith as **Annexure-2**. The period was extended by 90 days by Hon'ble NCLT. Further, Hon'ble Supreme Court vide its order dated November 6, 2019 has directed the Interim Resolution Professional to complete the CIRP within a period of 90 days from the date of said order, a copy of which is enclosed herewith as **Annexure-3**. It may please be noted from the order of Hon'ble NCLT dated 9-8-2017 (**Annexure-1**) that in accordance with the provisions of Section 14 of Insolvency Code, moratorium has been announced by NCLT during CIR Process and the same is continuing. Section 14 regarding Moratorium of Insolvency Code is reproduced hereunder for ease of reference:*

14. Moratorium. –

- (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*
- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to –
 - (a) such transaction as may be notified by the Central Government in consultation with any financial regulator.”
 - (b) A surety in a contract of guarantee to a corporate debtor
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ***Claim of NCD holder under CIRP vis-a-vis preferential payment to a class of creditor***

*As per the provisions of the Insolvency Code, Interim Resolution Professional (IRP) had invited claims from financial creditors and **Axis Bank Limited has submitted its claim in respect of above NCDs and as such, it is one of the financial creditors under Insolvency Code.** It is submitted that preferential payment to a particular class of creditors is impermissible during CIRP, a view subsequently also held by Hon'ble Supreme Court in respect of another class of financial creditors, i.e. Home-buyers (Please refer Para 40 on page 41 of **Annexure-2**). Consequently, since these NCDs are subject matter of resolution plan, no separate settlement or payment of interest is permitted during ongoing CIRP. Since requisite*

disclosure of commencement of CIRP was made to stock exchanges and subsequent thereto, no payment of interest or principal is to be made, no disclosure is required for fixing record date, for payment or for default in payment of interest/principal during ongoing CIRP. Further, we observe that the moratorium has also been recognised at Para 7 of SEBI Circular No. SEBI/HO/CFD/CMD/CIR/P/2018/77 dated May 3, 2018, a copy of which is enclosed as Annexure-4 related to Standard Operating Procedures for suspension or revocation of trading of specified securities, which reads as under :

7. The recognized stock exchanges may keep in abeyance the action or withdraw the action in specific cases where specific exemption from compliance with the requirements under the Listing Regulations/moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal Orders etc.

- We submit that the equity shares of the Company are also listed at BSE and NSE and therefore, the Company has been regularly disclosing the information pursuant to Regulation 30 and other applicable regulations of LODR Regulations. The necessary disclosures in respect of Corporate Insolvency Resolution Process made by the Company are summarised hereunder. A copy of these disclosures is attached herewith at **Annexure-5**.
- **Our submissions for alleged non-compliances:**

...

a.) Paragraph 4.1 - Regulation 51(1) - Inform BSE of the default in payment of interest/principal in respect of NCDs

The debt securities are listed on BSE and beside equity shares of the Company are listed at BSE and NSE and therefore, the Company has regularly disclosed and continue to disclose the information pursuant to Regulation 30 and other applicable regulations (**Annexure-5**). The Company had promptly intimated the Stock Exchanges about initiation of CIRP. Further, as explained above preferential payment to a class of creditors is impermissible under CIRP, no payment of interest/principal in respect of the NCD was made during the CIRP. It is submitted that the Company had been making payment of Interest/Principal, as the case may be, in respect of various series of NCDs and there were largely no instances of default prior to the commencement of CIRP vide order dated 09.08.2017

of Hon'ble National Company Law Tribunal. We wish to submit that, as explained in Para 3 above Axis Bank Limited having submitted their claim under CIRP and on admission of the same has become a part of the Committee of Creditors. Further, as the preferential payment to a class of creditors is impermissible under CIRP, no payment of interest/principal in respect of the NCD was made. Therefore, we humbly submit that the Company has complied with the requirement of Regulation 51(1).

b.) Paragraph 4.2 - Regulation 51(2) read with Part B of Schedule III (Clause A1, A4 and A9) – Expected default and/or action that shall affect adversely in timely payment of interests/principal in respect of NCDs

The equity shares of the Company are also listed at BSE and NSE and therefore, the Company has regularly disclosed and continue to disclose the information pursuant to Regulation 30 and other applicable Regulations of SEBI (LODR) Regulations (**Annexure-5**). The Company had timely intimated the Stock Exchanges about initiation of CIRP. Further, as explained above preferential payment to a class of creditors is impermissible under CIRP, no payment of interest/principal in respect of the NCD was made during the CIRP. As stated in Paragraph 4.1 above, the Company had been making payment of Interest/Principal, as the case may be, in respect of various series of NCDs. Further, there were no instances of delay of more than three months prior to the commencement of CIRP vide order dated 09.08.2017 of Hon'ble National Company Law Tribunal. Therefore, we humbly submit that the Company has complied with the requirement of Regulation 51(2) read with the requirements of Clause A1, A4 and A9 of Part B of Schedule III

c.) Paragraph 4.3 - Regulation 52(4) – Line items in financial results

The Paragraph 4.3 states that the Company has not disclosed the line items required under regulation 52(4) in the financial results for the following periods:-June 30, 2016, September 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017, June 30, 2018 and December 31, 2018. In this connection, it is humbly submitted that Regulation 52(4) is applicable to half yearly/annual financial results. Out of the periods mentioned above, results related to June 30, 2016, December 31, 2016, June 30, 2017, December

31, 2017, June 30, 2018 and December 31, 2018 related to either first quarter or third quarter of the respective financial years and as such regulation 52(4) was not applicable. We humbly submit that the applicable line items as mentioned in Regulation 52(4) have been furnished alongwith results related to quarter/half year ended on September 30, 2016. A copy of the results is submitted for your kind perusal at **Annexure-6**.

d.) Paragraph 4.4 - Regulation 54(2) – Extent and nature of security created and maintained with respect to NCDs

The privately placed listed Non Convertible Debentures are secured by way of exclusive charge /mortgage on 124.73 acres of land situated at Land parcel 4 i.e. Tappal, Dist. Aligarh, Uttar Pradesh. We wish to inform that the Company had created the security on 30th September, 2014, i.e. within permitted period and prior to LODR came into effect. The information has been provided in the notes alongwith the results for the period ending June 30, 2016, September 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017. A copy each of the results for these periods is attached for your kind reference as **Annexure-7(a) to 7(e)**. The Company had created the security after issue of Debt securities and information in this regard was also disclosed in notes along with the results for the period ended on June 30, 2016, September 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017 and has complied with the requirement of Regulation 52(4). The information about security having created was inadvertently missed out in notes along with the results in respect of Quarter ended June 30, 2018 and December 31, 2018. However, in view of Security having created long back and disclosed regularly in the past disclosure of results, we humbly request that these two inadvertent instances may please be condoned.

e.) Paragraph 4.5 - Regulation 57 – Certificate to BSE within two days of the interest/principal becoming due that it has made timely payment of interests or principal obligations or both in respect of NCDs.

As mentioned at reply for the Para 4.1 and 4.2 above the Company had been making payment of Interest/Principal, as the case may be, in respect of various series of NCDs and there were no instances of default prior to the commencement of CIRP vide order dated 09.08.2017 of Hon'ble National

Company Law Tribunal. Further, as explained earlier Axis Bank Limited having submitted their claim under CIRP and on admission of the same become a part of the Committee of Creditors. Also, since the preferential payment to a class of creditors is impermissible under CIRP, no payment of interest/principal in respect of the NCD was made. Information in respect of admission of Company under CIRP was duly made to the Stock Exchanges. The Company had largely made the payment of interest prior to CIRP period and duly intimated the Stock Exchange about commencement of CIRP. Further, the payment of interest during CIRP was not permissible as explained above, we humbly submit that the Company has complied with the requirements of the regulation 57 in spirit.

f.) Paragraph 4.6 - Regulation 60(2) – Record date to BSE in advance of at least seven working days excluding the date of intimation and the record date

*The Information Memorandum (IM) dated 28.08.2014 and dated 26.12.2014 filed with BSE and subject to which, Axis Bank Limited had subscribed the NCDs, contains the specific dates of payment of Interest and Principal. Besides, it also defines the record date being three days before the date of payment of interest / principal. Further, the issue was privately placed and Axis Bank Limited being the sole subscriber of NCDs and had accepted the terms & conditions of IM and therefore, fixing record date for interest payment was not necessitated. Further, the due dates of principal payments fall subsequent to commencement of CIRP on 9-8-2017, i.e. 31-12-2017 for ISIN No. INE099J07160, 31-12-2018 for ISIN No. INE099J07186 and 30-06-2019 for ISIN No. INE099J07194. Since no preferential payment could be made to a class of creditors, no principal payment could be made and fixing of record date for Principal payment was not necessitated. The debt securities being privately placed and held solely by Axis Bank Limited and dates of payment were already fixed and intimated as per Information Memorandum documents, fixing of record date was not necessitated as per requirement of Regulation 60(2). In the Listing Application submitted to BSE in respect of ISIN **INE099J07160 and INE099J07178**, the Information Memorandum contained terms and conditions inter-alia Date of Payment of*

*Interest/Redemption and fixation of record date etc. subject to which these NCDs were issued. We invite your attention to Page 277 and Pages 280-285 of Information Memorandum dated 28.08.2014, a copy of which is enclosed as **Annexure- 8**. Similarly, in the Listing Application submitted to BSE for ISIN **INE099J07186 and INE099J07194**, the Information Memorandum contained terms and conditions inter-alia Date of Payment of Interest/Redemption and fixation of record date etc. subject to which these NCDs were issued. We invite your attention to Page 316 and Pages 318-324 of Information Memorandum dated 26.12.2014, a copy of which is enclosed as **Annexure- 9**.*

g.) Paragraph 6 - Regulation 13(3) – Statement with respect of Investor Complaints

*The information in respect of quarter ended 30.09.2017 under Regulation 13(3) has been provided to the National Stock Exchange of India Limited (NSE) and the Bombay Stock Exchange Limited (BSE) on 11th October, 2017. A copy of the information submitted and acknowledgements of NSE and BSE are enclosed herewith as **Annexure-10** for your kind reference.*

- *The requirements of disclosure under regulation 51, read with Clause A(1), A(4) and A(9) of Part B to Schedule III, 52(4), 54(2), 57(1), 60(2) and 13(3) of the LODR Regulations ought to be viewed within the purpose underlying the LODR Regulations, i.e., to ensure that the important information is disclosed to the public in adequate time to serve the interests of investors and to ensure that there is no information asymmetry in the securities market.*
- *In our case, there is only one holder of NCDs – Axis Bank Limited, a reputed private sector Bank, an Institutional Investor and a Lender. Such accredited investors are anyway aware of the happenings of the corporate world and the impact of initiation of CIRP, disclosures made with Stock Exchanges etc. including that of our Company.*
- *We further submit that as would be seen from Information Memorandum dated 28.08.2014 and 26.12.2014, these NCDs are in essence Loans granted by Axis Bank Limited but structured as NCDs for practical purposes. To substantiate, we enclose the following terms of Article-II from the Subscription Agreement dated*

28.08.2014 entered into between the Company and Axis Bank Limited (relevant extracts of Subscription Agreement attached as Annexure-11)

- 2.1 - Company's request for financial assistance
- 2.2 - Debentures shall rank pari passu

- The purpose of disclosures under the LODR Regulations is to avoid false market of such securities and to clarify the position of these securities to their respective holders. The relevant information was present and available in public domain. It is understood that the requirement under the regulations in relation to disclosures is to enable disclosure of matters not necessarily publically available. Equally, for matters that are publically available, all disclosure requirements automatically stand complied with and consequently, technical filings (in the present case, separate intimation to the BSE) must be viewed bearing this in mind.
- The proviso to Regulation 63 (Chapter VI) of LODR Regulations lays down that if the disclosures under Chapter IV (Regulation 15 to Regulation 48) of LODR Regulations are made, there is no need to make separate disclosures under Regulation 51. As submitted earlier, Company's equity shares are listed on BSE and NSE and regular disclosures were made by the Company with these stock exchanges under Regulation 15 to Regulation 48 of LODR Regulations which are attached herewith at **Annexure-5**. The proviso to Regulation 63 (Chapter VI) of LODR Regulations is reproduced here for your ready reference:

Provided that the listed entity which has submitted to the stock exchange in compliance with the disclosure requirements under Chapter IV of these regulations need not re-submit any such information under the provisions of this regulation without prejudice to any power conferred on the Board or the stock exchanges or any other authority under any law to seek any such information from the listed entity;

Provided further that the listed entity which has satisfied certain obligations in compliance with other chapters, shall not satisfy the same conditions under this chapter.

- The purpose of seeking compliance with timely disclosure requirements is for the benefit of the investors at large. The Company has not prevented dissemination of valuable information to investors at the relevant point of time. It is submitted that the Company has discharged the duty of disclosure under the LODR Regulations

by virtue of disseminating information in the public domain through disclosure on its website as well as BSE/NSE disclosures.

- The compliance of LODR Regulations in terms of separate disclosure to the BSE is a mere technicality, and should not be considered a material breach in the case of the Company as the information sought to be disclosed was already made available in public domain and only a separate intimation to the BSE for disclosure under the LODR Regulations was erroneously overlooked, which was a mere formality, in absence of which no irreparable harm or injury has occurred either to the investors or to the public at large dealing in securities.
- The Company also relies on Hon'ble Bombay High Court order in the matter of SEBI v. Cabot International Capital, wherein Hon'ble Bombay High Court, considered that in relation to the preferential issue, the company had duly notified the stock exchanges and made disclosures to the Reserve Bank of India under foreign exchange laws, and that only a filing was not made under Regulation 3(4) of the SEBI Takeover Regulations, 1997, and accordingly, refrained from interfering with the Hon'ble Securities Appellate Tribunal ("SAT") decision to not impose any penalty for this technical violation. The relevant extract of the judgment of the High Court is set out below:

"... after considering the material on record, including the events, referred in the pleadings, found that the respondents-company had no intention to suppress any material information from the appellants or the shareholders. The Company had informed the Stock Exchange, Registrar of Companies and complied with all other provisions of other laws, well in time. It cannot be overlooked that information about the preferential allotment was well within the knowledge of the appellants, as reflected from the letter dated 2nd January, 1997. The appellants were aware of the preferential allotment in question and in fact prevented the respondent- company from monitoring and pursuing further course of action. It is also clear from the record that S.R. Batliboi & Associates, Chartered Accountants, being statutory Auditors of the Company, had written on 14th January, 1997, to the respondents, the Reserve Bank of India and reported the Company's decision to make preferential allotment. It appears that there was no intention of the

respondents to avoid filing of such a Report with the appellants, as the respondents had in fact complied with and notified the relevant details to all other concerned Authorities, like Registrar of Companies, Reserve Bank of India and Stock Exchange in respect of the preferential allotment and the relevant details. Therefore, SAT cannot be said to have erred in the factual background of the case that the respondents never intended or consciously or deliberately avoided to comply with the obligations under the SEBI Act and the Regulations and the non-filing of the Report in question was a technical and a minor defect or breach... "

Therefore, it is submitted that the object of the LODR Regulations having been met by disclosure of information, albeit not in the prescribed manner under LODR Regulations, however Noticee's oversight leading to a technical non-compliance should not amount to breach of the LODR Regulations.

- *Further, there was no mala fide on the part of the Company. There was no attempt to conceal the information as the said information was already made available in the public domain by the Company. Therefore, it did not result in any loss to the investor or securities markets and there was no information asymmetry amongst investors or market manipulation.*
- *The Company also relies on the Hon'ble SAT judgment in the matter of Samrat Holdings Limited v. SEBI (Appeal No. 23/2000 decided in January 2001), wherein it was held that imposition of penalty in terms of Section 15-1 of the SEBI Act – "...is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in Section 15J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment".*
- *It may be noted that it is settled law that any exercise of discretion by a quasi-judicial adjudicating authority that results in imposition of materially different penalties on similar facts is unconstitutional and consequently, inconsonant with principles set out in Section 15-J of the SEBI Act and the guiding principles laid down by the Hon'ble Supreme Court in the matter of SEBI v/s Bhavesh Pabari*

(Civil Appeal Nos. 11311 of 2013 decided on 28 February 2019), and exercising the powers conferred upon you Section 15I of the SEBI Act and Rule 5 of the Adjudication Rules.

We submit that the provisions of section 15J of the Act bestows responsibility on the Adjudicating Officer to determine the quantum of penalty based on the parameters mentioned in clauses (a) to (c) or any other determining factor based on the circumstance. Hence, the Adjudicating Officer plays a significant role in determination of penalty, which is expected to be befitting the scale and nature of the offence, and the principles underlying adjudication as laid in Section 15A to 15HA.

- *Even if assumed, though not admitted, that the Company has violated the LODR Regulations, the same has not - (a) adversely impacted any third party; or (b) resulted in any advantage for Company. We respectfully submit that such violations, if any, did not provide Company with any disproportionate gain or unfair advantage, and further, that the conduct of Company was in good faith. Further, the alleged violation by the Company was a “one off” isolated incident and it was not engaged in any repetitive or systematic violation of the LODR Regulations. It has always acted in good faith towards ensuring compliance with applicable laws and regulations. It may be noted that SEBI has held that, if no quantifiable loss is caused to investors, the penalty that ought to be imposed must be minimal. This is in consonance with the criteria set out in Section 15-J of the SEBI Act.*
- *Hon'ble SAT in M/s Porecha Global Securities Pvt. Ltd, in the context of imposition of penalty under Chapter VI of the SEBI Act has observed “...consistency is the hallmark of a good Regulator” and concluded that where the error was technical in nature, it would be appropriate to convert the penalty into warning in the spirit that the penalty must be consistent and in minima. Hon'ble SAT in Porecha case (supra) took cognizance of the fact that the company had a clean record subsequently and that further inspections did not find defects in functioning and concluded that it would be appropriate to convert the penalty into a warning.*
- *Since, none of the factors specified in Section 15-J of the SEBI Act for determining the quantum of penalty have been met in the present case. The Company craves*

the indulgence of the Hon'ble Adjudicating Officer for not imposing any penalty on it under the provisions of the SEBI Act in relation to the respective allegations.

- *We further submit that the Hon'ble SAT and the courts have held in various cases that for a violation that is technical in nature, and which is caused by a bona fide error, the proceeding must be in the nature of a censure and not penal.*
- *In the present case, assuming without admitting, that there has been a violation of Relevant Regulations, as the case may be, it was a technical inadvertence and/or a minor error diametrically distinct from a substantial breach of the LODR Regulations, and as such can be dealt with administrative/cautionary advice and does not require imposition of any penalty under the SEBI Act or the SCRA. The Hon'ble SAT in the case of DSE Financial Services Ltd v SEBI, while dealing with the allegations of certain deficiencies with regard to manipulation of records maintained by stock-broker, observed:*

“As per the observations made by the adjudicating officer himself, the violations committed by the appellant are mostly technical in nature; some of them are solitary instances and for others the appellant has mostly taken/initiated corrective measures. In view of this, we are of the view that the adjudicating officer was not justified in taking punitive action.”

- *It is also relevant to mention that the same information as alleged fall under disclosure obligation under the charging provisions of Clause A(1) , Clause A(4) and Clause A(9) of Part B of Schedule III read with regulation 51 of the LODR Regulations, in this case. Thus, there are overlapping obligations for the aforesaid information under these provisions of LODR Regulations as they all provide same requirements with regard to the scope of information, the entity to whom the disclosures are to be made and the timeline for making the disclosures. It is relevant to mention that with regard to such similar obligations under different provisions of two different regulations arising out of same transactions. As per ratio decided in the order dated September 04, 2013 passed by the Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs. SEBI, it can be safely concluded that the violation of the provisions of Clause A(1) , Clause A(4) and Clause A(9) of Part B of Schedule III read with regulation 51 of the LODR Regulations, are not substantially different and can be considered as a single violation by the Noticee*

for the purpose of adjudication of quantum of penalty under Section 15A of the SEBI Act for each of these defaults.

After taking into account, the allegations levelled in the SCN, reply to SCN and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

9. The issues arising for consideration in the instant proceedings before me are:-

- (a) **Whether the Noticee has violated the provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 54(2), 57(1), 60(2) and 13(3) of LODR Regulations?**
- (b) **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act for the alleged violations by the Noticee?**
- (c) **If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act r/w rule 5(2) of the Adjudication Rules?**

On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as follows.

10. Issue (a): Whether the Noticee has violated the provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 52(4), 54(2), 57(1), 60(2) and 13(3) of LODR Regulations?

- (a) To highlight the timelines of the various events such as alleged violations, starting of bankruptcy proceedings, issue of SCN etc, upon perusal of the material, following is noted
- Alleged disclosure violations have been noted for quarterly and half yearly filings for period starting from December 2015 to June 2017
 - Hon'ble NCLT passed an order dated August 9, 2017, CIRP initiated and moratorium began
 - Alleged disclosure violations have been noted for quarterly and half yearly filings for period from September 2017 to March 18

- Adjudication Proceedings initiated vide AO Communique August 26, 2019,
- SCN dated October 18, 2019 sent by previous AO.
- Resolution Plan approved March 03, 2020.

(b) It is alleged in the SCN that Noticee did not make disclosures as required under LODR Regulations with regard to aforesaid series of NCDs issued and listed by Noticee. Noticee failed to inform BSE of the default in payment of interest/principal in respect of various series of NCDs referred in SCN and hence alleged to have violated regulation 51(1) of the LODR Regulations. Further, Noticee failed to disclose the expected default and/or the action that shall affect adversely in timely payment of interests/principal in respect of NCDs. Noticee also failed to disclose the delay/default in payment of interest/principal amount for a period of more than three months from the due date. Thus, Noticee has alleged to have violated regulation 51(2) read with Part B of Schedule III (Clause A1, A4, A9) of the LODR Regulations. It is also alleged that Noticee while submitting the half yearly/annual financial results to BSE, Noticee failed to disclose the line items as required under regulation 52(4) of the LODR Regulations in respect of the NCDs. Thus, the Noticee has alleged to have violated regulation 52(4) of the LODR Regulations. Noticee also failed to disclose to BSE in its quarterly, half-yearly, year-to-date and annual financial statements as applicable, the extent and nature of security created and maintained with respect to its listed NCDs. Thus, the Noticee is alleged to have violated regulation 54(2) of the LODR Regulations. Also it is alleged that Noticee failed to submit a certificate to BSE within two days of the interest/principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the NCDs. Thus, the Noticee has alleged to have violated Regulation 57(1) of the LODR Regulations. Noticee has allegedly failed to give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date. Thus, the Noticee has alleged to have violated Regulation 60(2) of the LODR Regulations. Also, it is alleged that Noticee has not submitted the statement with respect to investor

complaints as per regulation 13(3) of the LODR Regulations for the quarters ended December 2015, March 2016, June 2016, September 2016, December 2016, March 2017, June 2017, September 2017, December 2017, March 2018, and June 2018; and hence Noticee is alleged to have violated regulation 13(3) of LODR Regulations.

(c) Before moving forward, it will be appropriate to refer to various contentions of the Noticee regarding initiation of instant proceedings, given that bankruptcy proceedings were initiated against Noticee vide Hon'ble NCLT order dated August 09, 2017 under Indian Bankruptcy Code, 2016 (in short **IBC**). In this regard, Noticee's various contentions regarding applicability of section 14 of the IBC and the moratorium period have been noted. As regards the said contentions, I note that the present proceedings are against the Noticee, which is a going concern and required to fulfil its regulatory obligations/filings/disclosures etc. I also note that the Hon'ble Securities appellate Tribunal (SAT) Order in the matter of Dewan Housing Finance Corporation Ltd. (appeal No. 206 of 2020) has been challenged by SEBI before the Hon'ble Supreme Court and the same is pending, also that, the limited purpose of these proceedings is to determine if the Noticee has violated any of the provisions of securities laws and if so, to assess and determine the penalty in order to enable SEBI to crystallise its claim. However, I also note that the enforcement of this order shall be subject to the outcome of the aforesaid appeals before the Hon'ble Supreme Court. Having clarified regarding said contentions of the Noticee regarding instant proceedings, I shall now deal with the allegations levelled against Noticee, on merits of the case for the violations alleged by OD and submissions made by the Noticee, in following paragraphs.

(d) As per regulation 51(1) of LODR Regulations, the listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares. The expression 'promptly inform', shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the

information shall be given first to the stock exchange(s) before providing the same to any third party. It is alleged in SCN that Noticee did not make prompt disclosure for its said NCDs. In this regard, the Noticee has contended that it has promptly intimated the Stock Exchanges about initiation of CIRP and that there were largely no instances of default prior to the commencement of CIRP, also that Axis Bank Limited having submitted their claim under CIRP, and was part of Committee of Creditors, thus Noticee submits that it has complied with the requirement of Regulation 51(1). It is noted from the reply from BSE, Noticee did not submitted the required disclosures under the regulations 51(1) of LODR Regulations for the said NCDs. As regards, the said contentions of the Noticee, mere fact that CIRP proceedings have been initiated, which ensues after default on behalf of the Noticee of its payment obligations and this apriori indicates that the financial/liquidity situation of the Noticee was building towards the bankruptcy proceedings, and therefore Noticee's contention that there are largely no instances of default seem factually incorrect and also that Noticee promptly informed Exchanges about the bankruptcy is immaterial, as its post facto. Therefore, by not making the required submission within the prescribed time as specified in the regulation, Noticee violated the provision of regulation 51(1) of LODR Regulations.

- (e) Further, it is alleged that Noticee failed to disclose the expected default and/or the action that shall affect adversely in timely payment of interests/principal in respect of NCDs. Noticee also failed to disclose the delay/default in payment of interest/principal amount for a period of more than three months from the due date as prescribed under regulation 51(2) read with Part B of Schedule III (Clauses A1, A4, A9) of the LODR Regulations. Relevant parts of said Clause A reads as, *The listed entity shall promptly inform to the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend of non-convertible preference shares or redemption of non-convertible debt securities or redeemable preference shares including: (1) expected default in timely payment of interests/preference dividend or redemption or repayment amount or both in*

respect of the non-convertible debt securities and non-convertible redeemable preference shares and also default in creation of security for debentures as soon as the same becomes apparent;..... (4) any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares including default by issuer to pay interest on non-convertible debt securities or redemption amount and failure to create a charge on the assets;.....(9) delay/default in payment of interest or dividend / principal amount /redemption for a period of more than three months from the due date. In this regard as seen from the reply from BSE, Noticee did not submit the required disclosures under the regulations 51(2) of LODR Regulations. As regards, the said allegations of violation of regulation 51(2) of said Regulations the Noticee has interalia contended that, Noticee had timely intimated the Stock Exchanges about initiation of CIRP and that Noticee had been making payment of Interest/Principal, as the case may be, in respect of various series of NCDs and that there were no instances of delay of more than three months prior to commencement of CIRP. As regards, the said contentions of the Noticee, mere fact that CIRP proceedings have been initiated, which ensues after default on behalf of the Noticee of its payment obligations, and therefore Noticee's contention that it had been making payment of Interest/Principal as the case may be prior to commencement of CIRP is misleading and not acceptable. Therefore, by not making the required submissions within the prescribed time as specified in the regulation, Noticee violated the provision of regulation 51(2) of LODR Regulations.

- (f) Further, as per regulation 52(4) of LODR Regulations, the listed entity, while submitting half yearly /annual financial results, shall disclose the line items along with the financial results, these line items being, (a) credit rating and change in credit rating (if any); (b) asset cover available, in case of non-convertible debt securities; (c) debt-equity ratio; (d) previous due date for the payment of interest/dividend for non-convertible redeemable preference shares/repayment of principal of non-convertible preference shares/non-convertible debt securities and whether the same has been paid or not; and, (e) next due date for the payment of interest/dividend of non-convertible preference shares/principal along with the

amount of interest/dividend of non-convertible preference shares payable and the redemption amount; (f) debt service coverage ratio; (g) interest service coverage ratio; (h) outstanding redeemable preference shares (quantity and value); (i) capital redemption reserve/debenture redemption reserve; (j) net worth; (k) net profit after tax; (l) earnings per share, regulation proviso states that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators. In the SCN, it is alleged that the Noticee failed to disclose the line items in respect of NCDs. Further, as seen from the reply from BSE, Noticee did not submitted the required disclosures under the regulation 52(4) of LODR Regulations. In this regard, the Noticee has contended that, *Regulation 52(4) is applicable to half yearly/annual financial results.....results related to June 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017, June 30, 2018 and December 31, 2018 related to either first quarter or third quarter of the respective financial years and as such regulation 52(4) was not applicable.....applicable line items as mentioned in Regulation 52(4) have been furnished alongwith results related to quarter/half year ended on September 30, 2016(at Annexure-6)*. Perusal of the said disclosure of quarter ended September 30, 2016 has said information as for the contention regarding first or third quarter mentioned by Noticee, the same is acceptable as the said regulation requires half yearly/annual disclosure. Therefore, the violations of regulation 52(4) of the LODR Regulations as alleged in the SCN, do not stand established.

- (g) Further, as per regulation 54(2) of LODR Regulations, the listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed NCDs. It is alleged in SCN that Noticee did not make disclosure to BSE in its quarterly financial statements for the

listed NCDs. Further, as seen from the reply from BSE, Noticee did not submitted the required disclosures under the regulations 54(2) of the LODR Regulations. As regards, the said allegations of violation of regulation 54(2) of said Regulations the Noticee has contended that it had created the charge on 124.73 acres of said Land parcel 4 at Tappal, Dist. Aligarh, Uttar Pradesh on 30th September, 2014, i.e. within permitted period and prior to LODR came into effect, further that the said information has been provided in the notes alongwith the results for the period ending June 30, 2016, September 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017 and Noticee requested condoning for two instances inadvertently missed out in notes along with the results in respect of Quarter ended June 30, 2018 and December 31, 2018. Upon perusal I observe that the notes in the financial results submitted as evidentiary proof by the Noticee read as, *the listed NCDs...are secured by way of exclusive charge/mortgage on the Company's assets and the assets cover thereof is two times of the principal amount of the said debentures*, however, the details as required by the regulations of the 'the extent and nature' of security is not mentioned in these notes also its an admitted position that for other quarters the disclosures has been missed out. Thus, Noticee's contention that it had made such relevant disclosures is not acceptable to me and I observe that, by not making the required disclosure as specified in the regulation, Noticee violated the provision of regulation 54(2) of LODR Regulations.

- (h) Further, the Noticee has failed to submit a certificate to BSE within two days of the interest/principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the NCDs and alleged to have violated Regulation 57(1) of the LODR Regulations. It is an admitted position by the Noticee, that the said disclosures have not been made by the Noticee and Noticee has contended that the said disclosures are made in spirit as information in respect of admission of Noticee under CIRP was made to the Stock Exchanges. Said contention of the Noticee is not and by not making the required submission within the prescribed time as specified in the regulation, Noticee violated the provision of regulation 57(1) of LODR Regulations.

- (i) As per regulation 60(2) of LODR Regulations, listed entity shall intimate the record date to BSE in advance of at least seven working days (excluding the date of intimation and the record date) or of as many days as agreed by BSE or require specifying the purpose of the record date. It is alleged in the SCN that, the Noticee has alleged to have violated Regulation 60(2) of the LODR Regulations. In this regard, the Noticee has contended that the Information Memoranda (in short IM) filed with BSE and in terms of which the Axis Bank had subscribed to the NCDs has specific dates of payment of interest and principal, Noticee has also submitted copies of the relevant pages of the same. Noticee has further contended that the debt securities being privately placed and held solely by Axis Bank Limited and dates of payment were already fixed and fixing of record date was not necessitated as per requirement of Regulation 60(2). Noticee's contention indicates that the initial disclosure in IM warrants no continuous disclosure as there was just one investors, but this is not acceptable, as purpose of continuous disclosure is signaling for the market as a whole and not just investors already holding securities in the listed entity. Upon perusal of the copies of the pages of the Information Memoranda it is noted from pages 277 and 316 that the disclosure in the IM was 'record date will be 3 days before the due date for payment', and pages 280 and 318 shows 'redemption dates are December 31, 2017, June 30, 2018, December 31, 2018 and June 30, 2018'. I note that through initial disclosure the said dates are in public domain by virtue of the IM being issued, however the requirement of the continuous disclosure requirements as prescribed in regulation 60(2) of the LODR Regulations are admittedly not complied by the Noticee. Thus, the violations as alleged in the SCN against Noticee for its failure of submission of filings as required under the provisions of regulation 60(2) stand established.
- (j) Further, as per regulation 13(3) of LODR Regulations, the listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty-one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter. It is alleged in SCN that Noticee has not submitted the statement

with respect to Investor Complaints as per regulation 13(3) of the LODR Regulations for the quarters starting from quarter ended December 2015 to quarter ended December 2018. In this regard, Noticee has provided one letter filed with BSE/NSE without an inward stamp of BSE/NSE, as evidentiary proof of compliance for the said disclosures for the said quarterly filings mentioned in the SCN for the quarter ended September 2017 and not for any other quarter. The said letter appear to have been downloaded from the BSE website as screen shots of BSE acknowledgement of date and time of download have also been submitted alongwith this Noticee has submitted a screenshot of NEAP (NSE) which shows filing status having filed disclosures required under regulation 13(3) of the LODR Regulations by the Noticee to NSE for all the said quarters. Thus, the violations as alleged in the SCN against Noticee for its failure of submission of filings as required under the provisions of regulation 13(3) for the quarters as alleged in the SCN do not stand established.

- (k) In addition to the above contentions already addressed in previous paragraphs, the Noticee has also made some contentions briefly mentioned as follows 1) the holder of the said NCDs being a single entity and who was in know of things, as it had granted loans to the Noticee, further that the information regarding bankruptcy proceedings was available in public domain hence disclosures were merely technical filings, 2) disclosures were made in various filings evidentiary proof of which was submitted in the reply to SCN as annexure-5 and no separate disclosures were needed to be made, and 3) reference drawn to case law of judgment of Hon'ble Bombay High Court order in the matter of SEBI v. Cabot International Capital, regarding technical violation. In my considered opinion the said contentions of Noticee are not acceptable as the timely and specific disclosure regarding financial/liquidity position which were needed to be made adhoc as the need arose, were not made by Noticee and matters leading upto the bankruptcy proceedings were thus not known to the investors at large. Further, all the disclosures mentioned at said annexure 5 are after the event of the bankruptcy proceedings were already in public domain, and I can allow Noticee's contention that since the first intimation to BSE regarding bankruptcy proceedings the same

was known to the investing public. Lastly as regards the case law on technical violation, it clearly refers to the “... *obligations under the SEBI Act and the Regulations and the non-filing of the Report in question was a technical and a minor defect or breach...*”, and the reports in question being shareholding/allotment disclosures, thus the case facts and circumstances being completely different, hence having no bearing on the instant matter of non-compliance as elucidated above.

- (l) In view of the above, I am of the considered view that Noticee has violated the provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 54(2), 57(1), and 60(2) of LODR Regulations by not making the required disclosures in the said provisions of LODR Regulations. Therefore, the allegations of violation provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 54(2), 57(1), and 60(2) of LODR Regulations in SCN stand established as observed from para 10 (c) to (k) above.

11. Issue (b): *Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?*

Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

- (a) After taking into account the aforesaid entire facts / circumstance of the case, and material available on record, I am of the view that as the said failure on the part of the Noticee to make required disclosures under the relevant provisions mentioned above has been established, hence Noticee is liable for penalty. Further for the said violation of provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 54(2), 57(1), and 60(2) of LODR Regulations. Noticee attracts imposition of monetary penalty under section 15A(b) of SEBI Act, 1992 which is reproduced below:

The SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(b) While determining the quantum of penalty under section 15J of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 , which reads as under:-

The SEBI Act, 1992

15J: *“Factors to be taken into account by the adjudicating officer-*

While adjudging quantum of penalty under section 23 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.”*

(c) I observe, that the material available on record, does not mention disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee has violated the provisions of 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 54(2), 57(1), and 60(2) of LODR Regulations. In this regard, I note the various contentions of the Noticee regarding factors which are mitigating in the opinion of the Noticee. I have noted all the said contentions and I also note since Noticee was undergoing CIRP, financial and other information about the Noticee was in public domain since start of CIRP, I also note that the NCDs were all privately placed to one investor. I take into account all these factors while deciding upon the quantum of monetary penalty for the violations established in the instant matter.

(d) Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 7,00,000/- (Rupees Seven Lakh only) under section 15A(b) of the SEBI Act, 1992 will be commensurate with the violation of the

provisions of regulations 51(1), 51(2) r/w Part B of schedule III (Clauses A1, A4, A9), 54(2), 57(1), and 60(2) of LODR Regulations committed by the Noticee.

ORDER

12. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby dispose off the adjudication proceedings started against the Noticee, Jaypee Infratech Ltd. by imposing monetary penalty of Rs. Seven Lakh only.

- Payment of penalty can be through one of following two modes:
 - a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai
- Details of Demand Draft sent/payment made is to be given in below format and shall be sent to "The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in
 - a) Case Name
 - b) Name and PAN of the 'Payer/Noticee'
 - c) Date of Payment
 - d) Amount Paid
 - e) Transaction No.
 - f) Bank Details in which payment is made
 - g) Payment is made for (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details)

A certified copy of this order is being sent to the Noticee and a copy is being to SEBI in terms of rule 6 of the Adjudication Rules, 1995.

Date: March 14, 2022

Place: Mumbai

SANGEETA RATHOD
ADJUDICATING OFFICER