BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SV/GD/2023-24/30168]

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

In respect of:

SARTHI CAPITAL ADVISORS PRIVATE LIMITED

(PAN: AARCS6417P)

Registration No.: INM000012011

Merchant Banker

401, 4th Floor, Manek Plaza,

Kalina CST Road, Santacruz East,

Mumbai 400050

In the matter of inspection of Sarthi Capital Advisors Private Limited

---

FACTS OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) had conducted inspection of Sarthi Capital Advisors Private Limited (hereinafter referred to as "**the Noticee**"), a registered Merchant Banker (Registration no. **INM000012011)**. The inspection of the Noticee with respect to its Merchant Banking activities was conducted by SEBI on July 21, 2022, July 22, 2022 and August 10, 2022 for the period April 1, 2021 to March 31, 2022 (hereinafter referred to as **'Inspection Period'**). The scope of the inspection was to *inter alia* ascertain the level of due diligence exercised by the Noticee and post issue activities and procedures followed by it in respect of various issues handled by it during the Inspection period. The findings / observations made during the course of inspection

were recorded as inspection report and findings were communicated to the Noticee vide SEBI letter dated September 14, 2022 and February 08, 2023. The Noticee submitted its comments / explanations on the aforesaid findings / observations of the inspection vide its letter/email dated September 19, 2022 and February 10, 2023.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed undersigned as the Adjudicating Officer (hereinafter referred to as '**AO**') in the matter vide communique dated May 15, 2023 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, for the following violations alleged to have been committed by the Noticee:
    a. SEBI Circular No.CIR/MIRSD/1/2012 dated January 10, 2012;
    b. Regulation 13 read with Clause 4 of Schedule III of SEBI (Merchant Bankers) Regulations, 1992;
    c. SEBI Circular No.1 dated June 5, 1998;
    d. SEBI notification dated August 02, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007;
    e. SEBI notification dated March 11, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated June 28, 2023 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15HB of SEBI Act for the alleged

violation of the provisions mentioned at para 2. The SCN, inter alia, alleged the following:

A. Track Record disclosure by Noticee on its Website

3.1 During the inspection, it was observed from Noticee's website at https://www.sarthi.in/insights/track-records/ was cross-verified with the list of issues handled by the Noticee. It was observed therefrom that the website has not been updated with the issues handled. The track record was viewed on July 27, 2022 and found to be not updated. Besides, the same was also informed by the inspection team to Noticee during the inspection, wherein Noticee had agreed that the track record had not been updated. Based on the above it is alleged that, the Noticee was non compliant with SEBI circular no. CIR/MIRSD/1/2012 dated January 10, 2012.

SME Issue of Vivo Collaboration Solutions Limited

3.2 It was further observed that, the Noticee has handled 4 numbers of SME IPOs during the period of inspection; of which Vivo Collaboration Solutions Limited was selected for inspection. The inspection was carried out on the basis of records and documents maintained and furnished by the Noticee.

3.3 It was observed from the Inspection Report that, the fund utilization of the company (as submitted by Noticee vide email dated August 4, 2022) is as under:

		WORKING CAPITAL	GENERAL CORPORATE PURPOSE	ISSUE EXPENSE
FUND ALLOCATE		**26766000**	**10988000**	**61,98,000.00**
FUND UTLISED UPTO 31.03.2022		**0**	**0**	**48,87,509.00**

BALANCE AS ON 01.04.2022		**26766000**	**10988000**	**1310491**
FUND UTLISED UPTO 30.06.2022		**10140182**	**1259969**	**96482**
BALANCE AS ON 01.07.2022		**16625818**	**9728031**	**1214009**
FUND UTLISED IN JULY-22		**2459192**	**86974**	**0.00**
BALANCE AS ON 01.08.2022		**14166626**	**9641057**	**1214009**

3.4 It was observed that, the company has not utilized the funds raised. The NSE vide email dated July 25, 2022 had confirmed that the company has submitted statement of deviation of funds raised on the NEAPS Portal. However, Noticee did not give reason for deviation and did not update the same in the track record on the website of the Noticee. Noticee vide its reply stated that, there is no deviation in utilization of Funds by Vivo Collaboration Solutions Limited and Company had provided the certificate to that effect. Further, the Noticee stated that as per Regulation 262, the requirement of Monitoring Agency is not applicable for issue size below Rs.100.00 crores hence, there was no monitoring agency for monitoring the utilization of funds.

3.5 However, it was observed that, as per the disclosure in the offer document of Vivo Collaboration Solutions Ltd, the working capital amount of Rs.2.67 crores and GCP amount of Rs.1.09 crores should have been utilized by March 2022. However as per the deviation certificate furnished by NSE vide email dated July 25, 2022, the funds were not utilized as per the disclosure made in the offer document. Even Noticee vide email dated August 04, 2022 submitted about such deviation.

3.6 It was observed that, Noticee in normal course of business could get the information about such deviation, but still did not disclose the information in the track record.

3.7 Circular No. CIR/MIRSD/1/2012 dated January 10, 2012 stipulates that the Noticee shall disclose the track record of the performance of the public issues managed by it. The format for disclosure of the track record, also indicates that Noticee is to disclose the status of utilization of issue proceeds, hence it is alleged that Noticee failed to do so.

3.8 Accordingly, based on the above instances, it was alleged that Noticee violated Circular No.CIR/MIRSD/1/2012 dated January 10, 2012.

B. Rights Issue Natural Capsules Limited - company listed on BSE

3.9 The Noticee had handled 3 Rights Issue during the period of inspection; of which Natural Capsules Limited was selected for inspection, for examination of due diligence conducted by Noticee. The Object of the Rights issue was:

a. Meeting Capital expenditure for modernization/expansion of capsules unit situated at Bengaluru – Rs.12.81 crores

b. Investment in WOS viz Natural Biogenex Pvt Ltd – Rs.18 crores

3.10 It was observed from the Inspection Report that, Noticee has failed to exercise due diligence at the time of handling the instant Right issue and Noticee was alleged to have violated Regulation 13 read with Clause 4 of Schedule III of SEBI (Merchant Bankers) Regulations, 1992, as the validity of quotations received from the vendors for which the funds raised were to be utilized had expired. The letter of offer was dated October 30, 2021, whereas the quotations **(Annexure G)** provided by the Noticee during inspection were as stated below:

Sr.No.	Date of Quotation	Name of the Vendor	Product	Amount	Validity
1	October 03, 2020	KOMFORT HVAC	Air Handling Units	2 ,19,50,000	30 days
2	August 03, 2020	DBDS Robotics Private Limited	Capsule Making Machine	16,00,00,000	30 days
3	August 26, 2020	Kirloskar Chillers Private Limited	Water Cooled Centrifugal Chiller	1 ,75,23,000	30 days

4	December 18, 2020	Hallmark Advanced Technology Private Limited	Hardened Pin Bars	4 ,70,40,000	15 days
5	January 05, 2021	Shilpa Roofing	Civil Works	5 ,59,67,350	N.A.

3.11 It was alleged that production of expired quotations for the objects for which funds were being raised is lack of due diligence by the Noticee. Further, considering that the said rights issue was a fast track rights issue, not filed with SEBI, the Noticee should have carried out more stringent due diligence, it is therefore alleged that the Noticee failed in carrying out more stringent due diligence. In view of the above it was alleged that, Noticee is in violation of Regulation 13 read with Clause 4 of Schedule III of SEBI (Merchant Bankers) Regulations, 1992.

C. Compliance with SEBI Circular No.1 dated June 5, 1998

3.12 SEBI Circular No.1 dated June 5, 1998 stipulates the activities that the Merchant Banker can undertake. One of the activities that the Merchant Banker can undertake is, "Syndication of rupee term loans." Further, the aforesaid Circular also indicates that, *"a merchant banker shall undertake only those activities which are relating to securities market…."*

3.13 During the course of Inspection, it was observed that, Noticee vide email dated July 4, 2022 read with email dated July 18, 2022 indicated that it had facilitated Oil Field Warehouse & Services Limited (unlisted company) for raising Rs. 14,56,25,877 from HDFC Bank Limited vide sanction letter dated March 17, 2021.

(Rupees in lakhs)

Credit Facility	Amounts	Limits	Interest Rate	Tenure
Cash Credit	INR	500.00	7.4% p.a.	-
Term Loan	INR	306.26	7.4% p.a.	48 Months
Term Loan	INR	650.00	7.4% p.a.	60 Months

Total	**INR**	**1,456.26**		

3.14 The Noticee in its reply to the Inspection report stated that, it had provided loan syndication facility to Oil Field Warehouse and Services Limited from HDFC Bank. It is noted that as per Hon'ble High Court order dated November 12, 2009 in matter of H.C. Arora Versus State of Punjab and others, Review application No. 422 of 2009 in Civil Writ Petition No. 6566 of 2008, the Hon'ble Punjab- Haryana High Court, while analysing the activities which can be undertaken by a merchant banker examined the term syndication of term loans and observed as under:

"…..what is the meaning of syndication of rupee term loans. In the financial system, syndication of loan means as under: "Syndication is an arrangement where a group of banks, which may not have any other business relationship with the borrower, participate for a single loan."

"A syndicated facility is a lending facility, defined by a single loan arrangement, in which several or many banks participate." In a leading financial article, to understand the syndication of loans in common parlance, it has been stated that: "The standard theory for why banks join forces in a syndicate is risk diversification. The banks in the syndicate share the risk of large, indivisible investment projects.

Syndicates may also arise because additional syndicate members provide informative opinions of investment projects or additional expertise after the funding has been extended."

In the present case, term loan was raised from single Bank, i.e. HDFC Bank. It was an ordinary business transaction, therefore, it was alleged that it will not fall under the syndication of rupee term loan, an activity which a Merchant Banker can undertake.

3.15 Noticee submitted engagement letter with Oil Field Warehouse and Services Limited wherein scope of services *inter alia* included some securities market activity like guiding company for IPO/merger/takeover, etc. However, the activity actually undertaken was arranging loan from HDFC, which is not a securities market activity. Thus, it was alleged that the activity of Noticee w.r.t Oil Field Warehouse and Services Limited is neither securities market related nor loan syndication as per SEBI Circular No.1 dated June 5, 1998. Therefore, it was alleged that the Noticee violated SEBI Circular No.1 dated June 5, 1998.

D. Merchant Banker Certification Requirements

NISM Series IX: Merchant Banking Certification Examination certificate for KMPs

3.16 Noticee was inspected to ascertain, if the Merchant Banker is fulfilling its requirements of necessary certification of its KMPs as mandated under Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007. Following are the details of KMP in MB during inspection period:

Sr. No	Name of the Person	Designation	Date of Resignation	Date of Issue of Certificate	Certificate Validity
1	Mr. Anand Lakhotia	Director / KMP	March 30, 2022	June 22, 2018	June 17, 2021
2	Ms. Renu Rawat*	Executive/KMP	-	August 27, 2022	August 23, 2025

3.17 Thus, while there is requirement of at least 2 KMP certificates, Noticee had only 1 KMP with the required NISM certification, i.e. Anand Lakotia and even this certification was valid only till June 17, 2021. Renu Rawat who subsequently joined as KMP had the certificate valid from August 27, 2022. Therefore, it is alleged that, during the period June 17, 2021 to August 27, 2022, there was no KMP who had valid NISM certification.

3.18 Accordingly, in view of the foregoing it was alleged that Noticee was in non-compliance during the period of inspection, of the SEBI notification dated August 02, 2013, which stipulates that Merchant banker shall ensure at least two KMPs obtain certification from NISM.

<u>NISM Series IIIA: Securities Intermediaries Compliance (Non – Fund) for Compliance Officer</u>

3.19 The Series IIIA Securities Intermediaries Compliance (Non – Fund) continuing professional Education was also inspected for the Compliance Officer. Following are the details of Compliance officer in MB during inspection period:

Sr. No	Name of the Person	Designation	Date of Resignation	Date of Issue of Certificate	Certificate Validity
1	Ms. Ramnika Raman	Compliance Officer	June 09, 2021	May 21, 2019	May 15, 2022
2	Mr. Taher Engineer	Compliance Officer	-	July 17, 2022	July 13, 2025

3.20 The present Compliance Officer Mr. Taher Engineer possessed the Series IIIA certification with effect from July 17, 2022. The previous Compliance Officer Ms. Ramnika Raman was holding Series IIIA certification during her tenure as a Compliance Officer with the Noticee. It was observed that, in the intermittent period of June 09, 2021 to July 16, 2022, Compliance officer did not hold any certification.

3.21 As per the requirement given in the SEBI notification dated March 11, 2013, an intermediary, who engages or employs any such associated persons functioning as compliance officer shall ensure that such person obtains certification within one year from the date of his employment.

3.22 Thus, Mr. Taher Engineer was required to hold the certificate by latest June 09, 2022, but due to his personal issues, he was not able to appear for the exam. Therefore, it was alleged that, in the intermittent period of June 09, 2022 to July 16, 2022, Compliance officer did not hold any certification.

3.23 Accordingly, in view of the above, it was alleged that Noticee is in violation of SEBI notifications dated March 11, 2013 and August 02, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

3.24 Accordingly, in view of the foregoing, Noticee was alleged to be in violation of SEBI Circular No.1 dated June 5, 1998.

4. Vide letter dated July 14, 2023, Noticee informed that it is filing for settlement of the adjudication proceedings. Vide letter dated September 25, 2023, the Noticee filed a brief introduction to the allegations levelled vide the aforesaid in SCN while proposing the settlement amount. Subsequently, vide email dated December 20, 2023, it was informed by the Settlement Division that the settlement application filed by the Noticee has been rejected by the Panel of Whole Time Members and the same was intimated to the Noticee vide letter dated December 20, 2023.

5. Subsequently, vide Notice dated December 21, 2023, the Noticee was granted an opportunity of personal hearing on January 03, 2024 and was advised to file reply to the SCN on or before December 28, 2023.

6. Vide letter dated December 29, 2023, Noticee sought extension to file reply and also sought adjournment of the personal hearing granted to it.

7. Vide email dated January 03, 2024, Noticee was advised to file reply to the SCN on or before January 18, 2024 and appear for the hearing on January 22, 2024.

8. However, vide letter dated January 03, 2024, Noticee sought adjournment of the personal hearing to a later date. Further, vide letter dated January 04, 2024, Noticee appointed Juris Matrix Partners LLP advocates and Solicitors as the its Authorised Representative (AR). Vide email dated January 05, 2024, Noticee was advised to appear for the hearing on January 24, 2024.

9. Vide letter dated January 16, 2024, the Noticee filed reply to the SCN and *inter alia* submitted the following:

   a. *We deny having violated the circular dated January 10, 2012 as alleged and state and submit that during the inspection period (01.04.2021 to 31.03.2022) we had revamped our website and therefore visuals of certain documents remained to be captured during inspection. However, the website as on date is updated, displaying inter alia details of the track record.*

      The Noticee also submitted the bill raised to the vendor to certify that the company's website is being revamped.

   b. *We deny deviation of funds of Vivo Collaboration Solutions Limited and violation of any circular as alleged. We deny that there was any deviation in utilization of funds, as wrongly alleged. The end use of funds was correctly updated on our website. It is submitted that the funds remained to be utilized by March 2022. It is thus submitted that the funds were utilized for the very object that the issue was raised for and therefore, there can never be case of deviation of funds since the SCN itself observes and concludes that we were never under any statutory obligation to disclose the late utilization since under Regulation 262, there is no mandate for the Monitory Agency to monitor for issue size of less than Rs. 100 crores. Further still, the lapse, if any, was not venial but only technical and unintentional and was never in defiance of law.*

   c. *We deny having violated Regulation of Schedule III of SEBI (Merchant Bankers) Regulations, 1992 as wrongly alleged and further submit that in case of Natural Capsules Limited, the Draft Letter of Offer was filed on August 24, 2021. We had duly carried out our extensive due diligence for the Rights Issue. It may be appreciated that the quotations which were placed on record by the Company were from esteemed vendors, viz, "Kirloskar, "DBDS Robotics" etc. Further, the object for the said Rights Issue was towards Capital Expenditure. It is humbly submitted that the process of approval of capital expenditure is again a time consuming decision making process. We have to make arrangements from several sources to meet the fund requirement, so accordingly quotations were obtained* *from the stated parties. The Company explored the sources for meeting the fund requirement and proposed a Rights Issue to fund the capital expenditure, and accordingly undertook due diligence, made site visits and thereafter selected the appropriate vendors. We believe that mere expiry of the validity of quotation could never be construed that due diligence was not conducted in fair and prudent manner. We submit that Regulation 60 of SEBI (ICDR) Regulations, states that "Unless otherwise provided in this Chapter, an issuer offering specified securities of aggregate value of [fifty crores] rupees or more, through a rights issue shall satisfy the conditions of this Chapter at the time of filing the draft letter of offer with the Board and also at the time of filing the final letter of offer with the stock exchanges, as the case may be. We submit that the issue size was below Rs. 50.00 crores and thereby provisions of ICDR could never be made applicable in the case of the Rights issue of Natural Capsules Limited. We reiterate that as a merchant banker we have at all times exercised due diligence, ensure proper care and exercise independent professional judgment and were in compliance of Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992.*

d. *We deny the allegations and state and submit that we have provided advisory services to the client and never acted as a loan arranger, as wrongly alleged. Moreover, it may be appreciated that in our reply dated 19.09.2022 also, we have asserted that we have provided loan syndication facility to Oil Field Warehouse and Services Ltd (client) from HDFC Bank. We reiterate that we merely provided advisory services to the client and the mandate/engagement letter also corroborates the same.(Anncxure 4) We wish to place on record the factual matrix in the matter and state that the client had approached us for advisory work for the purpose of raising funds vide IPO or other incidental routes and accordingly, we made a financial model suitable to their financial needs. However, subsequently, the clients did not go ahead with the IPO or other suggested means of raising working capital and approached HDFC Bank on their own. It is submitted that we were never instrumental in securing any loan for the clients from HDFC Bank. However, we humbly submit that no loan syndication or any liaison was undertaken to secure the loan from HDFC. Inadvertently, the* *term loan syndication' was used in the emails dated 04.07.2022 and 18.07.2022 sent to SEBI when in fact merely an advisory mandate was undertaken by us.*

e. *We, thereby, request that no violations be alleged on us for impromptu use of a wrong terminology. We state that the intent and purpose was never in defiance of the Regulations.*

f. *We state and submit that during the inspection period i.e. 01.04.2021 to 31.03.2022, Mr. Taher Engincer was also a part of KMP of the company in position as a Compliance Officer. Furthermore, no intentional noncompliance was ever intended by us. It is submitted that at present the company has in place NISM certified KMPs. We ensure that no lapse on this account shall occur in future and we undertake to abide by the SEBI notification dated August 02, 2013 in the matter.*

g. *We deny that we have violated notifications as alleged and humbly submit that our compliance officer Mr. Taher Engineer had enrolled for NISM examination scheduled in May, 2022. Screenshot depicting enrolment for the exam in the May annexed hereto as ANNEXURE 7. However, due to personal reasons he could not appear and take the examinations. Subsequently, he had appeared and was issued Certificate dated 17.07.2022. We humbly state that the NISM Certification for period 09.06.2022 t0 16.07.2022 for approximately one month may kindly be considered as an inadvertent technical lapse and be condoned in the light of the fact that we are compliant as on date. Under the circumstances, since the lapse was not venial but only technical and unintentional and was never in defiance of law, a lenient view be taken in the matter.*

10. The AR of the Noticee appeared for the hearing on January 24, 2024 reitrerated the submissions made vide reply dated January 16, 2024. The ARs of the Noticee also undertook to file additional submissions/documentary evidences on or before February 02, 2024.

11. Vide letter dated January 31, 2024, Noticee filed additional reply to the SCN and forwarded the following:

    i. With respect to quotations in the letter of Offer of right issue of Natural Capsules being expired, the Noticee submitted the invoices of the companies from whom the actual work was undertaken. The payment details comparative chart was also annexed. The Noticee also submitted that though quotation was received from Shilpa Roofing for Civil Works the actual mandate was assigned by the Company (Rights Capsules) to one Shiva Enterprise, the invoice of which was also annexed. The rest of the quotations were approved from the same companies whose quotations were listed out in Letter of Offer.
    ii. Forwarded the financial model for Oil Field Warehouse & Services Limited to corroborate that they never facilitated in any kind of loan syndication.

CONSIDERATION OF ISSUES AND EVIDENCE

12. I have carefully perused the allegations levelled against the Noticee in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. **Whether *Noticee has violated following provisions :***

- ***a. SEBI Circular No.CIR/MIRSD/1/2012 dated January 10, 2012;***
- ***b. Regulation 13 read with Clause 4 of Schedule III of SEBI (Merchant Bankers) Regulations, 1992;***
- ***c. SEBI Circular No.1 dated June 5, 1998;***
- ***d. SEBI notification dated August 02, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007;***
- ***e. SEBI notification dated March 11, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.***

II. ***Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act, 1992?***

III. ***If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?***

13. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

"

a. Regulation 13 read with Clause 4 of Schedule III of SEBI (Merchant Bankers) Regulations, 1992

SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS)REGULATIONS, 1992

CHAPTER III: GENERAL OBLIGATIONS AND RESPONSIBILITIES

Code of conduct.

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]

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

b. Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

CHAPTER II

CERTIFICATION OF ASSOCIATED PERSONS

Obligation to obtain certificate

3. (1) The Board may by notification in the Official Gazette require such categories of associated persons to obtain requisite certificate for engagement or employment with such classes of intermediaries and from such date as may be specified in the notification:Provided that an associated person employed or engaged by an intermediary prior to the date specified by the Board may continue to be employed or engaged by the intermediary if he obtains the certificate within two years from the said date.

(2) An associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged bythe intermediary.

(3) An associated person who, as on the date specified by the Board, holds a certificate for a category as recognized by the Board shall not be required to obtain a fresh certificate for the same category during the validity of such certificate.

(4)The Board for the purpose of issuing notification under sub regulations (1) and (2) shall take into consideration:

(a) whether the associated person as part of his work or operation deals or interacts with the investors, issuers or clients of intermediaries;

(b) whether the associated person deals with assets or funds of investor or clients;

(c) whether the associated person handles redressal of investor grievances;

d) whether the associated person is responsible for internal controlor risk management;

(e) whether the associated person is responsible for compliance of any rules or regulations;"

14. Now I deal with the allegations levelled against the Noticee.

Issue No. 1: Whether Noticee has violated following provisions :

a. SEBI Circular No. CIR/MIRSD/1/2012 dated January 10, 2012;
b. Regulation 13 read with Clause 4 of Schedule III of SEBI (Merchant Bankers) Regulations, 1992;
c. SEBI Circular No.1 dated June 5, 1998;
d. SEBI notification dated August 02, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007;
e. SEBI notification dated March 11, 2013 read with Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

Allegation 1: Track Record disclosure by Noticee on its Website

15. It was alleged that the Noticee did not update the track record of the public issues handled by it. In this regard, the Notiee submitted that its website was revamped and certain details were remained to be captured during inspection. The Noticee also forwarded invoice dated April 18, 2022 raised by the vendor for redesigning the website of the Noticee. Additionally, the Noticee has forwarded the email communication between the Noticee and the vendor with respect to the concerns raised by it regarding the website.

16. The documents forwarded by the Noticee have been perused and it is noted that the website of the Noticee was indeed redesigned. However, whenever an entity

revamps its website, it generally makes sure that the content of the previous website are readily available on the new one. The Noticee being the SEBI registered intermediary had to ensure that all the compliance are made even while its website was being revamped. The documents/email exchange between the Noticee and the vendor merely show that the Noticee was unable to log into the website backend. Noticee did not submit anything to show that it raised the concern of the track record of the IPOs being not available on the website with the vendor. The Noticee submitted that as on date the website is updated and displays inter alia the track record. In this regard, it is noted that the subsequent rectification does not absolve Noticee from the past violation at the most the submissions of the Noticee can be considered as mitigating factor for levy of penalty. Therefore, I am of the opinion that the Noticee has violated SEBI circular no. CIR/MIRSD/1/2012 dated January 10, 2012.

17. It was further alleged that the Noticee did not disclose the deviation in utilization of funds by the Vivo Collaboration Solutions Limited. In this regard, Noticee has submitted that the funds were remained to be utilized by March 2022. However, the funds were utilized for the very same objectives that the issue was raised for. The end use of the funds was correctly updated on the website. There was no deviation. It was merely late utilization of the funds. The Noticee further submitted that as per Regulation 262 of ICDR Regulations, there is no mandate for the Monitoring Agency to monitor the issue size of less than Rs. 100 Crores.

18. In this regard, I observed that as per Circular No. CIR/MIRSD/1/2012 dated January 10, 2012, the Noticee was required to the disclose the track record of the performance of the public issues managed by it for three years in the format provided in the annexure of the said circular. Clause 10 of the said annexure clearly requires the Status of utilization of issue proceeds (as submitted to stock exchanges under Clauses 41, 43 and 43A of the listing agreement) to be provided in the track record uploaded by a Merchant Banker. Therefore, the merchant banker should have disclosed the actual deviation of funds utilizations and reasons of such deviation. To

effectively monitor the performance of an IPO, it is important that the late utilization which is not as per the timelines are also disclosed to the investors. Therefore, I am of the opinion that the Noticee has violated Circular No. CIR/MIRSD/1/2012 dated January 10, 2012 by not disclosing the late utilization of the funds. At the same time it is also noted that the SCN had not alleged any diversion or mis-utilisation of funds.

Allegation II: Rights Issue Natural Capsules Limited - company listed on BSE

19. It was alleged that the Noticee failed to exercise due diligence at the time of handling the Right issue of Natural Capsules Limited. It was alleged that the validity of quotations received from the vendors for which the funds raised were to be utilized had expired. The letter of offer was dated October 30, 2021, whereas the quotations provided by the Noticee during inspection were as stated below:

Sr.No.	Date of Quotation	Name of the Vendor	Product	Amount	Validity
1	October 03, 2020	KOMFORT HVAC	Air Handling Units	2 ,19,50,000	30 days
2	August 03, 2020	DBDS Robotics Private Limited	Capsule Making Machine	16,00,00,000	30 days
3	August 26, 2020	Kirloskar Chillers Private Limited	Water Cooled Centrifugal Chiller	1 ,75,23,000	30 days
4	December 18, 2020	Hallmark Advanced Technology Private Limited	Hardened Pin Bars	4 ,70,40,000	15 days
5	January 05, 2021	Shilpa Roofing	Civil Works	5 ,59,67,350	N.A.

20. In this regard, the Noticee has submitted that the quotations were received from the esteemed vendors. Further, object of the said Right Issue was towards Capital Expenditure. The process of approval of capital expenditure is a time consuming decision making process. The company made the site visits, and undertook the due

diligence and thereafter selected the appropriate vendors. Further, the issue size was below Rs. 50 Crore and therefore, the provisions of ICDR Regulations do not apply in the matter.

21. In this regard, I consider it necessary to understand what does due diligence mean. The expression "Due Diligence" has been interpreted by Hon'ble Supreme Court of India, in the matter of Chander Kanta Bansal Vs. Rajinder Singh Anand (2008) 5 SCC 117 which laid down that

   "…*According to Oxford Dictionary (Edn. 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. As per Black's law Dictionary (18th Edn), "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. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "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..*."

22. Further, Hon'ble SAT in its order dated February 29, 2016 in the matter of Almondz Global Securities Ltd Vs. SEBI (Appeal No. 275 of 2014) while relying on the aforesaid judgment of Hon'ble SC, mentioned that "*It is settled law that due diligence means reasonable diligence expected from a Merchant Banker*."

23. In view of the aforesaid judgments, I of the opinion that what is expected from a merchant banker is reasonable diligence. In the extant matter, from the invoices submitted by the Noticee, I note that the same quotations were approved by the company and approximately the same payment was made to the vendors what was provided in the quotations that had expired. I note that the quotations procured by the Noticee did not cause any prejudice to the company or the investors merely because they were expired. Therefore, I note that Noticee has not violated

Regulation 13 read with Clause 4 of Schedule III of SEBI (Merchant Bankers) Regulations, 1992.

Allegation III : Compliance with SEBI Circular No.1 dated June 5, 1998

24. It was alleged in the SCN that the Noticee had arranged loan for Oil Field Warehouse and Services Limited from HDFC which was not a securities market activity. In this regard, it is noted that the Noticee has changed its earlier response given to the inspection team that it had facilitated raising of Rs. 14,56,25,877 from HDFC and had in its reply to SCN submitted that Noticee was engaged by Oil Field Warehouse and Services Limited (client) for the advisory for the purpose of raising funds through IPO or other incidental routes. The Noticee further submitted that the client did not go ahead with the suggested means of raising capital and approached HDFC Bank on their own. From the funding proposal filed by the Noticee, it is observed that the Noticee had presented that the client required cash credit (Rs. 6 Crore), takeover of the term loan (Rs. 3.5 Crore) and construction term loan (Rs. 6.5 Crore). In the funding proposal, there is no suggestion of IPO or mergers. Further, the amount mentioned in the funding proposal were approved by the HDFC bank vide sanction letter dated March 17, 2021 wherein HDFC had sanctioned cash credit and term loans aggregating Rs. 1456.26 Lakh. Hence, I am of the opinion that the Noticee has violated SEBI Circular No.1 dated June 5, 1998.

Allegation IV: Merchant Banker Certification Requirements

25. It was alleged that, during the period June 17, 2021 to August 27, 2022, there was no KMP who had valid NISM certification. Following were the details of KMPs in MB during inspection period:

Sr. No	Name of the Person	Designation	Date of Resignation	Date of Issue of Certificate	Certificate Validity

1	Mr. Anand Lakhotia	Director / KMP	March 30, 2022	June 22, 2018	June 17, 2021
2	Ms. Renu Rawat*	Executive/KMP	-	August 27, 2022	August 23, 2025

26. It was further observed that in the intermittent period of June 09, 2021 to July 16, 2022, Compliance officer did not hold any certification. Following are the details of Compliance officer in MB during inspection period:

Sr. No	Name of the Person	Designation	Date of Resignation	Date of Issue of Certificate	Certificate Validity
1	Ms. Ramnika Raman	Compliance Officer	June 09, 2021	May 21, 2019	May 15, 2022
2	Mr. Taher Engineer	Compliance Officer	-	July 17, 2022	July 13, 2025

27. In this regard, the Noticee has submitted that Mr. Taher Engineer was also a part of the KMP during the relvant period. Further, Mr. Tahe Engineer had enrolled for NISM examination in May 2022. However, he could not appear. Subsequently, he appeared for the exam and was issued a certificate dated July 17, 2022. The period of June 09, 2022 to July 16, 2022 may be treated as inadvertent error and may be condoned.

28. Admittedly, there was no KMP holding the NISM certificate during June 09, 2022 to July 16, 2022. Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 clearly requires that an associated person on being employed by the registered intermediary has to mandatorily hold a NISM certificate. During the period June 09, 2022 to July 16, 2022 , none of the associated persons of the Notiee were holding NISM certificate. Therefore, the Noticee has violated SEBI notifications dated March 11, 2013 and August 02, 2013 read with

Regulation 3 of SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007.

Issue No. 2: Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act, 1992?

29. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that

"*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......".*

30. I am of the view that the violations committed by the Noticee warrant imposition of monetary penalty under Section 15HB of the SEBI Act on the Noticee, text of which is reproduced as under:

"***Penalty for contravention where no separate penalty has been provided.***

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

Issue No. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

31. While determining the quantum of penalty under Section 15HB of the Act, it is important to consider the factors stipulated in Section 15J of SEBI Act, which read as under:-

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

32. From the material available on record, I observe that any quantifiable gain or unfair advantage accrued to the Noticee is not available on record. It is also noted that no investor complaints is on record with respect to the established violations.

33. However, it is pertinent to note that the role of a Merchant Banker (MB) is crucial to the development of the securities market, especially for the company’s involved/interested in raising capital from market for whom the Merchant Banker is responsible for due diligence and proper disclosures, in the offer document as well as in the track record of MB, which are relied upon by the investors. In this regard, the role of a MB is crucial as a facilitator to such companies in the securities market. So, it is of utmost importance that every MB abides by the relevant regulations, provisions of SEBI circulars and various guidelines issued by SEBI. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs shows that provisions alleged in SCN except one has been established. Therefore, I feel it appropriate to levy a penalty which is commensurate with the nature of violation and which act as a deterrent factor for the Noticee and others in protecting the interest of investors in the securities market. I am also keeping in mind submission of the Noticee that the infractions are not venial and at present they have rectified the breach and considering the same as mitigating factor while deciding quantum of penalty.

ORDER

34. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in section 15J of SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose a penalty of Rs. 15,00,000/- (Rupees Fifteen Lakh) under section 15HB on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

35. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website 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, Noticee may contact the support at portalhelp@sebi.gov.in.

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

37. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee, viz., Sarthi Capital Advisors Private Limited and also to the Securities and Exchange Board of India.

Date : March 22, 2024 **Shashikumar Valsakumar**
Place : Mumbai **Adjudicating Officer**