BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/PM/RR/2020-21/8669)

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

In respect of:

Bank of Baroda (PAN: AAACB1534F)

In the matter of Non-compliance of Regulation 7B of SEBI (Mutual Fund Regulations), 1996 by Bank of Baroda

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FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination in the matter of Non-compliance of Regulation 7B of SEBI (Mutual Fund Regulations), 1996 by Bank of Baroda and had observed possible violation of Regulation 7B of SEBI (Mutual Fund Regulations), 1996 (hereinafter referred to as "MF Regulations") by Bank of Baroda (hereinafter referred to as "Noticee/BOB").

APPOINTMENT OF ADJUDICATING OFFICER

2. I have been appointed as the Adjudicating Officer, vide Order dated January 28, 2020 and communicated vide Communique dated January 29, 2020 under Section 15-I of SEBI Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Sections 15HB of the SEBI Act for the alleged violation of Regulation 7B of MF Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice (hereinafter referred to as 'SCN') dated March 12, 2020 was served on the Noticee by the undersigned at its latest address available on record. The SCN was issued to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15HB of the SEBI Act, for the aforesaid alleged violation.

4. Following are the observations and allegations made in the SCN:
   a) Noticee, vide letter dated March 7, 2019, intimated SEBI that it holds around 18.24% of equity shares of UTI Asset Management Company Ltd (hereinafter may be referred to as UTI AMC) and sought extension of time for compliance with the relevant provisions of MF Regulations.

   b) SEBI further observed that, as on date of notification of Regulation 7B of MF Regulations, BOB was a sponsor of Baroda Mutual Fund (hereinafter may be referred to as Baroda MF) and was also a sponsor / shareholder of UTI Mutual Fund (hereinafter may be referred to as UTI MF) holding more than 10% shares in UTI AMC which was not in conformity with the requirements of Regulation 7B of MF Regulations. The Noticee was required to comply with the said Regulations by March 12, 2019 i.e. within a period of one year from the date of coming into force of Regulation 7B of MF Regulations i.e., from March 13, 2018.

   c) It was further observed that BOB had holdings in more than one mutual fund. The shareholding pattern of UTI AMC and BOB AMC as on March 13, 2019 was examined which is as detailed below:

      A. **UTI Asset Management Company Ltd and Trustee Company**

         i. UTI Asset Management Company Ltd was incorporated under Companies Act, 1956 on November 14, 2002. UTI AMC was approved by SEBI to act as the Asset Management Company for UTI Mutual Fund vide SEBI letter no MF/BC/PKN/03 dated January 14, 2003. UTI MF has been constituted as a Trust on December 9, 2002 in accordance with the provision of the Indian Trust Act, 1882 (2 of 1882) with Life Insurance of India, State Bank of India and Bank of Baroda as the sponsors.

ii. Vide e-mail dated March 22, 2019**,** UTI AMC had forwarded shareholding pattern of UTI AMC and UTI Trustee Company as on March 13, 2019. The shareholding pattern of UTI AMC is as follows:

Shareholder's name	**Number of Equity Shares held**	**% of Equity Shares held**
Life Insurance of India	2,31,25,000	18.24
State Bank of India	2,31,25,000	18.24
Bank of Baroda	2,31,25,000	18.24
Punjab National Bank	2,31,25,000	18.24
T Rowe Price	3,29,64,686	26.00
ESOP	13,22,568	1.04
Total	**12,67,87,254**	**100.00**

iii. Further, the shareholding pattern of UTI Trustee company is as follows:

Shareholder's name	**Number of Equity Shares held**	**% of Equity Shares held**
Life Insurance of India	18,500	18.50
State Bank of India	18,500	18.50
Bank of Baroda	18,500	18.50
Punjab National Bank	18,500	18.50
T Rowe Price	26,000	26.00
Total	**1,00,000**	**100.00**

iv. From the shareholding pattern of UTI AMC and Trustee Company it was observed that 3 of the sponsors/shareholders of UTI AMC and Trustee, namely LIC, SBI and BOB are also sponsors of their LIC MF, State Bank of India MF and Bank of Baroda MF respectively.

B. BOB Asset Management Company Ltd and Trustee Company

i. Baroda Asset Management Company (herein after may be referred to as Baroda AMC) has been appointed as the Asset Management Company of the Baroda Mutual Fund by the Trustee vide Investment Management Agreement (IMA) dated November 24, 1992 (last amended on November 19, 2018) and executed between Baroda Trustee India Private Ltd. and Baroda AMC.

ii. BOB is the sponsor of Baroda Mutual Fund. Baroda Asset Management Company Ltd. (herein after may be referred to as Baroda AMC) is a public limited company where 100% (9,49,44,064) shares are being held by Bank of Baroda. Bank of Baroda also holds 100% (50,000) shares in Baroda Trustee India Private Ltd.

d) The status of compliance of Regulation 7B of MF Regulations was sought from BOB vide letter dated March 13, 2019. BOB vide letter dated March 20, 2019 inter-alia informed the following:

i. The concurrence of Government of India is a pre-requisite for selling stake by any sponsor of UTI.

ii. It was proposed that the stake sale would take place through IPO. Further, the IPO would be done in two step process.

iii. On receipt of approval from Government of India for this divestment plan, UTI AMC would be advised to initiate the process of IPO

e) From the above facts and information provided by Noticee, it was observed that the Norms of shareholding and Governance in Mutual Funds as mandated under Regulation 7B of MF Regulations, has not been complied by Noticee by virtue of being a sponsor of BOB Mutual Fund (holding 100%) and also having 18.24% and 18.50% in UTI AMC and UTI Trustee Private Ltd. respectively.

f) In view of the above findings, it has been alleged that the Noticee has violated Regulation 7B of MF Regulations and thereby liable to be penalized under Section 15HB of the SEBI Act, 1992.

5. In response to the SCN, the Noticee filed its replies dated July 1, 2020 and July 15, 2020 which, inter-alia, stated as under:

   a) *At the time of initial investment in UTI, SEBI had issued guidelines for avoiding conflict of interest between the UTI Mutual Fund and the Sponsors who had floated Mutual Funds of their own.*
   b) *Department of Economic Affairs, Government of India, vide letter dated September 30, 2005 had advised that all sponsors in UTIAMC are required to obtain prior concurrence of the Government of India before transferring their shares amongst themselves or to any outsider.*
   c) *BOB has been making continuous efforts to ensure compliance with the Regulation 7B. We have been pursuing with all stakeholders of the UTI AMC on on-going basis.*
   d) *BOB on April 27, 2018 had advised the MD of UTIAMC, giving in-principle approval to UTIAMC for initiating process of IPO at the earliest.*
   e) *Various meetings of all sponsors of UTIAMC were held.*
   f) *Considering the process involved in getting approval from various stakeholders, representation was made to SEBI for seeking extension of timelines for divestment in UTIAMC as a special case. However, the same was not granted.*
   g) *Matter has been pursued vigorously with DIPAM for seeking approval for divestment of our 8.25% stake in UTIAMC in one go by way of an IPO and 8.51% in UTI Trustee Company so that BOB becomes compliant with Regulation 7B.*
   h) *Based on submissions to SCN issued by SEBI and personal hearing before WTM, SEBI followed by written submission, WTM had directed, interalia, that the Bank to bring down the shareholding and voting rights in UTI AMC and UTI Trustee below 10% on or before December 31, 2020 and shall*

submit compliance report to SEBI, within a period of one month from such compliance.

i) *UTIAMC has initiated the IPO process of our 8.25% stake in UTIAMC in one go through IPO. The Company received approval from SEBI vide letter dated June 16, 2020 for launching IPO within a period of 12 months from the date of their letter. UTI is expecting to complete the IPO process by September 30, 2020.*

j) *In respect of Trustee Company, Legal Counsel has been appointed and the share purchase agreement is in discussion stage. Buyer T. Rowe Price (TRP) has given consent and exercise their option of ROFR to buy 8.51% of shares of Trustee Company from sellers.*

k) *In view of the above, it is submitted that proceedings initiated against Bank of Baroda by the SCN may be dropped.*

6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide hearing Notice dated June 26, 2020, the Noticee was granted an opportunity of personal hearing on July 10, 2020. The said hearing was granted through videoconferencing on the Webex platform in view of the difficulties faced due to Covid 19-pandemic. The Authorised Representative of the Noticee attended the said hearing and requested to submit additional reply in the instant matter.

7. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and material available on record including the submissions made by the Noticee. I observe that the allegation

levelled against the Noticee is that the Noticee has violated Regulation 7B of MF Regulations, 1996.

After perusal of the material available on record, I have the following issues for consideration, viz.,

I. *Whether the Noticee has violated the provisions of Regulation 7B of SEBI (Mutual Fund) Regulations, 1996?*
II. *Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act.?*
III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

9. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (Mutual Fund) Regulations, 1996, which reads as under:

<u>Relevant provisions of SEBI (Mutual Fund) Regulations, 1996:</u>

"***Norms for Shareholding and Governance in Mutual Funds***

7B. (1) No sponsor of a mutual fund, its associate or group company including the asset management company of the fund, through the schemes of the mutual fund or otherwise, individually or collectively, directly or indirectly, have –

(a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or

(b) representation on the board of the asset management company or the trustee company of any other mutual fund."

(2) Any shareholder holding 10% or more of the share-holding or voting rights in the asset management company or the trustee company of a mutual fund, shall not have, directly or indirectly, -

(a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or

(b) representation on the board of the asset management company or the trustee company of any other mutual fund.

(3) Any person not in conformity with the sub-regulations (1) and (2) of this regulation, as on the date of the coming into force of this regulation shall comply with sub-regulations (1) and (2) within a period of one year from the date of the coming into force of this regulation.

Issue I: Whether the Noticee has violated the provisions of Regulation 7B of SEBI (Mutual Fund) Regulations, 1996?

10. The first issue for consideration is whether the Noticee has violated Regulation 7B of SEBI (Mutual Fund) Regulations, 1996.

11. Taking into account the requirements of Regulation 7B of SEBI (Mutual Fund) Regulations, 1996, replies of the Noticee and facts of the case, my findings in the instant matter are as under:

    a) From the fact of the case, I observe that SEBI, vide notification dated March 13, 2018, inserted Regulation 7B in the SEBI (Mutual Fund) Regulations, 1996. As per the said Regulation, a sponsor of a mutual fund, its associate or group company including the asset management company of the fund, cannot have 10% or more shareholding or voting rights in the asset management company or the trustee company of any other mutual fund. Further, those who are not in conformity with the provisions of the said Regulation, shall comply with the same within a period of one year from the effective date of said Regulation i.e., by March 12, 2019.

    b) It was observed by SEBI that, as on date of notification of the said Regulation, BOB is a sponsor of Baroda Mutual Fund and is also a sponsor / shareholder of UTI Mutual Fund holding 18.24% in UTI AMC and 18.50% in UTI Trustee Company which is not in conformity with the requirements of

Regulation 7B of MF Regulations. As per the provisions of the said Regulations, the Noticee was required to comply with the said Regulations by March 12, 2019 i.e. within a period of one year from March 13, 2018. From the submissions made by the Noticee before me, I find that till date the Noticee has not complied with the provisions of the Regulation 7B.

c) Noticee in its reply has stated that it has taken continuous efforts to comply with Regulation 7B including taking approval from DIPAM regarding divestment of its holding, meetings with sponsors and meeting with stakeholders etc. However, due to procedural delays, it was unable to comply within specified time.

   With regard to the procedural difficulties cited by the Noticee, I understand that the Noticeee is required to comply with the relevant Regulations/directions issued by SEBI from time to time. In the instant matter, the provision of said Regulation does not give any relaxation from complying with the same for any procedural challenges. In view of the above, the contention of the Noticee that due to procedural delays, it was unable to comply stated Regulations within specified time, cannot be accepted.

d) Noticee, in its submissions, has specified that vide the Order dated December 6, 2019 passed against it, Whole Time Member, SEBI has been provided time till December 31, 2020 to the Noticee for complying with Regulation 7B.

   With regard to above submission of the Noticee, it is worthwhile to mention here that the proceedings initiated against the Noticee wherein Order has been passed by Whole Time Member, SEBI and the present Adjudication proceedings are two separate proceedings and does not have bearing on one another. I also note that, in the Order dated December 6, 2019, WTM, SEBI has mentioned the following;

"*This order shall be without prejudice to any other action including adjudication proceedings that SEBI may initiate against the Bank for the non-compliance with the provisions of Regulation 7B of the MF Regulations*"

Therefore, in my opinion, the timeline provided by WTM, SEBI to the Noticee has no bearing on the present Adjudication proceedings initiated against the Noticee.

e) From the submissions of the Noticee, I observe that the Noticee has not denied the fact that it has not complied with the provisions of Regulation 7B of MF Regulations although it has stated that the IPO of UTIAMC for divestment of its shareholding in UTIAMC is to complete by September 30, 2020 and with respect to its holding in UTI Trustee Co. Pvt. Ltd., share purchase agreement is in discussion stage and the buyer has given its consent to buy stake from sellers.

   In this context, I would like to rely on observation of Hon'ble Supreme Court of India, in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein it was held that *"In our view, <u>the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established</u> and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

f) Based on the aforesaid findings, I conclude that the Noticee has violated the provisions of Regulation 7B of SEBI (Mutual Fund) Regulations, 1996.

Issue II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act?

The provisions of Section 15HB of the SEBI Act, 1992 read as under:

<u>Penalty for contravention where no separate penalty has been provided.</u>

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 may extend to one crore rupees.*

12. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15HB of SEBI Act for violation of Regulation 7B of SEBI (Mutual Fund) Regulations, 1996.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

13. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, 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.

14. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. However, from the fact of the case and aforesaid findings, I note that the Noticee has violated Regulation 7B of SEBI (Mutual Fund) Regulations, 1996.

ORDER

15. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose a penalty of Rs 10,00,000/- (Rupees Ten Lakh) on Bank of Baroda in terms of the provisions of Sections 15HB of the Securities and Exchange Board of India Act, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

16. The Noticee shall remit / pay the said amount of penalty within 45 days from date of receipt of the Order either

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

OR

Through e-payment facility into Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

OR

By way of demand draft in favour of "SEBI-Penalties Remittable to Government of India", payable at Mumbai.

17. The Noticee shall forward the following details / confirmation of penalty so paid to the General Manager, Enforcement Department, SEBI, Mumbai.

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for:	Penalty

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

Date: August 14, 2020 **PRASANTA MAHAPATRA**

Place: Mumbai **ADJUDICATING OFFICER**