BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BM/JR/2023-24/ 28287

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Sudhir Gupta
AADPG0924C

In the matter of Asian Hotels (West) Limited

Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received complaints against Asian Hotels (West) Limited (hereinafter referred to as "Company"). The complaints were received from Sudhir Gupta (hereinafter referred to as "**Noticee**"), an Executive Director of the Company and also from Asian Hotels (East) Ltd. (a minority shareholder of the company) regarding mismanagement of the Company and violation of Companies Act and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR**' or '**LODR Regulations'**). SEBI examined the matter and initiated adjudication against the Noticee among others for violation of regulations 4(1)(c) , 4(1)(d), 4(1)(i) and 30(10) of SEBI (LODR) Regulations; regulation 30(7) and 4(1)(d) of SEBI (LODR) Regulations read with SEBI Circular dated November 21, 2019, regulation 30(2) read with Schedule III of SEBI (LODR) Regulations and SEBI Circular dated October 18, 2019 and regulation 4(2)(f) of SEBI (LODR) Regulations.

Appointment of Adjudicating Officer:

2. SEBI appointed the undersigned as Adjudicating Officer (**AO**) vide communique dated June 28, 2022 under section 19 read with section 15-I of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge under the provisions of sections 15A(a) and 15HB of the SEBI Act the aforesaid alleged violations committed by the Noticees.

<u>Show Cause Notice, Reply and Personal Hearing</u>:

3. Show Cause Notice dated June 30, 2022 (hereinafter referred to as 'SCN') was issued in terms of rule 4(1) of the Rules read with section 15-I of the SEBI Act to the Noticee alleging, inter alia, the following:

   a) **<u>Misrepresentation of disclosures made to stock exchange regarding delay in submission of financial results by the company</u>**

   - It was observed that the company delayed submission of financial results for the period ended March 31, 2021. The company vide letter dated June 25, 2021 stated it was not in a position to submit annual audited financial results for the period ended March 31, 2021 within the prescribed timeline to the stock exchanges, as the results were to be finalized by the statutory auditors of the Company. From the announcement dated September 15, 2021, it was observed that the statutory auditor in the resignation letter has stated that the disclosure made by the company was incorrect and contrary to the factual situation. It has been highlighted that they did not receive any support or response from the Company w.r.t. relevant information required to conduct audit for the year ended March 31, 2021. It has also been highlighted that the delay in conducting audit has not been from the auditors' side but due to company's failure to provide necessary support and the relevant requested information. It was thus alleged that the company had misrepresented the reason of delay in submission of financial results to stock exchanges.
   - The LODR Regulations, *inter-alia*, requires listed entities to refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

- However, it was evident from the resignation letter of the statutory auditor of the Company that the Company allegedly made incorrect disclosure regarding reason for delay in financial results.
- Further, in terms of Regulation 30(10), the listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information. It is noted that the Company has not responded to the queries sought in relation to the resignation of statutory auditor and completion of audit, financial condition of the Company, etc. despite repeated reminders.
- It was therefore alleged that the company misrepresented the reason for delay in submission of financial results to stock exchanges.
- In view of the above, it has been alleged that by making incorrect disclosure regarding reason for delayed submission of financial results, the company alongwith its directors including the Noticee have violated the provisions of regulations 4(1)(c),4(1)(d), 4(1)(i) and 30(10) of LODR.

b) <u>Non-disclosure of information w.r.t. default of payment</u>

- LODR mandates disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks/ financial institutions and unlisted debt securities. SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 has prescribed formats for each instance of default and thereafter, if there is outstanding debt under default.
- It was observed that Company Secretary had confirmed that no payment was made to Yes Bank Limited ('YBL' or 'the bank') and information was placed before the management regarding notices received from the bank under regulation 13(2) of SARFAESI Act due to persistent default committed by the Company. However, the same was not disclosed by the company to the stock exchange.
- Further, the company had not made relevant disclosures as prescribed in para C2 of the aforesaid SEBI circular dated November 21, 2019 for the quarter ended June 30, 2021 and September 30, 2021.

- Clause no. 6 of para A of part A of schedule III of LODR read with regulation 30 mandates disclosure of fraud/defaults by promoter or key managerial personnel or by listed entity as soon as reasonably possible and within 24 hours of occurrence of event. Further, regulation 30(7) of LODR requires a listed entity to make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.
- As per the Indian Express article dated November 3, 2021, YBL had taken possession of Hotel Hyatt Regency building and a plot of land situated closed to Chhatrapati Shivaji International Airport after hotel's parent Company had defaulted on loan repayment of Rs. 267 Crore.
- While the company had made initial disclosure on default of payment to YBL on May 28, 2021, it has been alleged that they had failed to update material developments on a regular basis to stock exchanges.
- LODR also requires that the listed entity shall provide adequate, accurate and timely information to recognised stock exchange(s). It is noted that the company has not provided the information on default on payment in the format prescribed vide SEBI circular dated November 21, 2019.
- It is therefore alleged that by not making disclosure regarding default in the prescribed format and failing to update material developments on a regular basis regarding default to YBL, the company along with its directors including the Noticee is alleged to have violated Regulations 30(7) and 4(1)(d) of LODR read with SEBI circular dated November 21, 2019.

c) **<u>Incomplete disclosure regarding resignation of statutory auditor</u>**

- Sub-clause (7A) inserted under clause A in Part A of Schedule III under regulation 30(2) of LODR requires detailed reasons to be disclosed by the listed entities to the stock exchanges in case of resignation of the auditor of a listed entity as soon as possible but not later than twenty-four hours of receipt of such reasons from the auditor.
- Further, SEBI vide circular no. CIR/CFD/CMD1/114/2019 dated October 18, 2019, has prescribed conditions to be complied with upon resignation of the statutory auditor of a listed entity. The circular also stipulates that upon

resignation of the auditor, the audit committee shall deliberate upon concerns raised by the auditor and in case an entity is not mandated to have audit committee, the board of directors shall ensure compliance with the circular.

- It was observed that the information disclosed by the company regarding resignation of statutory auditor was incomplete. Accordingly, the exchange sought information from the company. However, it was submitted that the Company Secretary is not receiving any response from the existing directors to provide suitable response to the exchange queries.
- In view of the above, by failing to provide adequate information and failing to respond to the exchange's queries, the company along with the directors including the Noticee is alleged to have violated Regulation 30(2) read with schedule III of LODR and SEBI circular dated October 18, 2019.

d) **Failure to discharge duties by the Board of Directors of the Company**

- It has been alleged that the Board of Directors have failed to convene a board meeting despite financial problems of the Company and provide adequate responses to the queries raised by stock exchanges and auditors.
- Regulation 4(2)(f) of LODR stipulates responsibilities of the Board of Directors which *inter alia* include that the board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders, review and guidance for corporate strategy, major plan of action, risk policy, etc.
- It has been alleged that despite several requests from the statutory auditor, the Noticee along with other directors did not respond to discussion on the financial problem of the Company.
- Further, there have been counter claims by other directors against Noticee that he created obstacles in the day to day functioning of the Company. It has also been submitted that meetings were called on several occasions but Noticee avoided these meetings.
- The auditors had also sent several communications to the board of directors; however, they did not receive any support or response from the Company/board of directors for conducting the audit.

- In view of the above, it is alleged that the Noticee among other directors had failed to discharge his obligations when the company was in financial distress despite the issue being highlighted by the independent directors of the board of directors of the company.
- Thus in view of the above, it is alleged that the Noticee by failing in his duties have violated regulation 4(2)(f) of the LODR, 2011.

4. The Noticee replied to the SCN vide letter dated July 29, 2022 stating, inter alia, the following:

- *It is clarified at the outset that the management and finance of the company had been in control of Mr. Sandeep Gupta and Ms. Vinita Gupta (hereinafter referred to as "Sandeep Gupta & Group"). It is submitted that Mr. Sandeep Gupta and Group had been conducting the affairs of the Company as though it is their personal Company and committing numerous counts of oppression and mismanagement. It is submitted that, concerned for the Company and its minority and public shareholders, I had filed a Complaint against Mr. Sandeep Gupta to SEBI on 20.12.2020 listing out the various malfeasance indulged into by Mr. Sandeep Gupta.*

- *In the said Complaint, I brought to the notice of SEBI the following facts:*

  i. *Making baseless allegations against the independent directors to coerce them to resign, appointment of new independent directors, who are not independent and in fact would be acting as per the whims and fancies of Sandeep Gupta group.*

  ii. *Resignation of independent directors pursuant to actions of Sandeep Gupta group*

  iii. *Appointment of independent directors contrary to provisions of law including Companies Act, SEBI (LODR) regulations, listing agreement etc.*

  iv. *Constitution of audit committee in violation of companies Act, 2013 and LODR Regulations*

  v. *The chairman and managing director of AHWL Mr. Sushil Gupta due to his prolonged illness is totally immobile for the last many months and now not even in a position to speak, however, Sandeep Gupta taking advantage of his said position is acting like a defacto chairman and managing director and exercising all the powers of the chairman.*

  vi. *Sandeep Gupta is now running AHWL as a sole proprietorship firm "mom and pop store" with its own chosen set of directors totally side-lining Mr. Sudhir Gupta*

vii. *Intimidating and disrespectful mails sent to Mr. Sudhir Gupta by Mr. Sandeep Gupta*

- *It is submitted that even after the said Complaint; Mr. Sandeep Gupta refused to change his behaviour and in fact continued to run the Company into the ground with the aid and assistance of Ms. Vinita Gupta. It is submitted that constrained by the acts of Mr. Sandeep Gupta and Group, I had filed a second complaint with SEBI dated 06.07.2021*

- *It is submitted that vide the said second complaint dated 06.07.2021, I sought to bring to the notice of SEBI that:*

    i. *Ms. Vinita Gupta had not called for the meeting of the Board of Directors of the Company.*

    ii. *Continued malpractices and highhanded attitude of the Sandeep Gupta and his group led to the resignation of four more independent directors*

    iii. *Sandeep Gupta reduced and ignored the request for refund of the refundable security deposit given to Aria Hotels And Consultancy Pvt. Ltd. by the Company*

    iv. *Mr. Sandeep Gupta is in violation of Section 203 of the Companies Act, 2013*

    v. *Violations under LODR Regulations*

    vi. *Unusual loan terms*

    vii. *Ignoring and neglecting to respond to the regulators*

It is reiterated herein that I had brought to the notice of SEBI, the various malfeasance and mismanagement deeds done by Mr. Sandeep Gupta and Ms. Vinita Gupta in the Company.

- *It is further submitted that the conduct of Ms. Vinita Gupta, Chairperson and Mr. Sandeep Gupta, Executive Director are dishonest and fraudulent and they are in collusion and connivance with each other. They are conducting the affairs of the Company and its subsidiary, Aria Hotels and Consultancy Pvt.· Ltd. in a manner which resulted in various acts of oppression against me and other Shareholders as well as the mismanagement of the Company. That constrained by such actions of Mr. Sandeep Gupta and Group. I was constrained to file a Petition under Sections 241, 242 and 245 of the Companies Act, 2013.*

- *It is clarified at the outset that I have complied with every request of the SEBI and kept them duly informed. It is submitted that the management and finances are controlled entirely by Mr. Sandeep Gupta and Group. It is further submitted that vide email dated 17.03.2022 was duly responded to by me and all the clarifications sought were* *furnished in their entirety to SEBI. It is submitted that it is a matter of the record that the auditors of the Company resigned on 15.09.2021. It is further submitted that the consolidated email detailing all the documents required by the Auditors was sent solely to Mr. Sandeep Gupta vide email dated 12.07.2021 and forwarded again vide email dated 03.08.2021. However, the details were not furnished to the Auditors in spite of my emails dated 09.08.2021 and 14.08.2021. The said fact was reiterated again by me vide email dated 02.09.2021.*

- *The consolidated email detailing all the documents required by the Auditors was sent to Mr. Sandeep Gupta vide email dated 12.07.2021 and forwarded again vide email dated 03.08.2021. These emails were not marked to Mr. Sudhir Gupta or Ms. Vinita Gupta.*
- *I vide my email dated 03.08.2021 asked the Auditors the reason behind the delay in auditing the accounts of the Company and asked for the list of pending documents required by them. The Auditor, vide email dated 05.08.2021, stated that his team has been in touch with Mr. Sandeep Gupta however, many documents and information still remain pending. He also attached an email dated 03.08.2021 wherein the email dated 12.07.2021 with the list of pending documents/ information was attached. I vide my email dated 09.08.2021 forwarded the above mentioned email with its trailing mails of the auditor to the BOD of the Company and specifically requested Mr. Sandeep Gupta to furnish all relevant documents/information to the auditors. However, there was no reply/response to the said email. I vide my email dated 14.08.2021 again requested Mr. Sandeep Gupta to comply with the auditors requirements and also attached my opinions/comments on how the said requirements could be complied with. However, no action was taken despite by multiple requests.*

- *It is further submitted that Ms. Vinita Gupta vide email dated 30.08.2021 proposed to hold the meeting of the Board of Directors of the Company with the agenda item as follows :*

  > *"To call Auditors to review the status of the Audit of Accounts of the Company and to explain remaining issues, if any."*

- *I vide my email dated 02.09.2021 stated that it was pertinent that Mr. Sandeep Gupta and Mrs. Vinita Gupta go through the list of information/documents that were pending as shared by the auditors and thereafter shared again by me and give their comments on how to complete these documents so as to enable the Company to comply with the requirements of the Auditors before this meeting.*
- *It is important to highlight herein that The Chairperson proposed a meeting on 06.09.2021, and however the final agenda was not circulated within the prescribed period and even my suggestions contained in my email dated 02.09.2021, which included important issues like appointment of Legal Counsel to defend SARFAESI action of the Bank against the Company's asset as well as for defending labour proceedings. It is pertinent to highlight herein that vide email dated 14.08.2021, I had, once again raised the said concern with Mr. Sandeep Gupta, Ms. Vinita Gupta and the rest of the Board of Directors. I explicitly pointed out that failure to provide the auditors with the requisite information would result in non - compliance by the Company. It is further pointed out that after getting to know the requirements of the Auditors, I submitted my response and comments on the same and circulated the same vide the said email dated 14.08.2021.*
- *An incomplete agenda was circulated by the Company Secretary one day before the proposed meeting, contrary to Secretarial Standard/ Clause 1.3.7.· as such there was no validly convened meeting for 06.09.2021 as such there was no occasion for attending*

the said meeting. In fact: no Board Meeting as such could have been held on 06.09.2021. Admittedly, no adjourned meeting was held after 7 days i.e. 13.09.2021.

- *That from the above facts it is apparent that it was due to the inaction of Mr. Sandeep Gupta which led to the resignation of the Auditors. It is further submitted that the failure to call a Board Meeting is solely attributable to Ms. Vinita Gupta as she, being the Chairperson of the Board, had the sole authority to call a Board Meeting and failed to do so despite various requests made by me. It is apparent from the above submissions that no fault can be attributable to me. It is apparent that the management is in the iron- clad control of Mr. Sandeep Gupta and Group who seem insistent to drive the Company into the ground at the cost of the minority and public shareholders.*
- *It is submitted that the Company had availed various loan facilities from Yes Bank Limited (hereinafter referred to as the "Bank") amounting to approx. INR 262 crores. It is submitted that the Company is engaged in the tourism and Hospitality Business and as such its business was severely impacted due to the Covid – 19 Pandemic. Needless to mention that the Hotel was no exception. Due to the lockdown that continued for more than a year, there was no means to generate revenues as the Hotel was not operational during this period. This, coupled with the fact that the Company has regular outgoings such as statutory dues (GST, VAT, TDS, PF, ESIC, etc.), vendors' payments, employees' salaries did not help the Company's cause and soon the revenues dried up.*
- *It is stated for the record that even though the Company was eligible to avail the benefit of the ECLGS being an eligible borrower, there were many factors at play which were instrumental in the Company not being disbursed the credit line after the same was approved and sanctioned by the Bank. To put facts into perspective, the Company had applied for the additional facility of Rs. 40 Crore under ECLGS on November 24, 2020 since the credit line did not require any additional collateral or security. Though there was a requirement to create an encumbrance on security offered under the existing credit facilities, given that such encumbrance would have been in the form a subservient second charge, the Company felt in its commercial wisdom to avail of this credit line to meet its immediate funding requirements. It is submitted that had the credit line been disbursed to the Company promptly, the Hotel and the Company would have weathered and sailed through this crisis period 'Smoothly.*
- *In terms of the requirement for availing of the facility under the ECLGS, upon inquiry it was communicated by the Bank, vide its email dated December 24, 2020, that the sole and only requirement for availing the credit line under the ECLGS was that of creation of a second charge on existing securities. That it was the sole and only requirement for availing the credit line is a matter on record which was put by the Bank. Since there was no other requirement communicated to the Company by the Bank, the Company was confident that it would receive its funding. However, much to my dismay the Bank started coming up with new requirements which was totally not in line with its e-mail confirmation dated December 24, 2020. Since, the Company was the one in need of funds, I attempted my best to accede to the requests of the Bank hoping that the same would fulfill their requirements.*
- *To my utter dismay and shock, new pre-requirements were being manufactured as a pre-condition to the disbursal of the additional facility. For example, one of the requirements raised by the Bank was that the promoter provide a non-disposal undertaking in terms of the shares that they held in the Company which until then was never communicated to the Company. Further, the requirement of creation of a pledge on the shares held by the promoters of the Company was never a requirement mandated under the ECGLS and was wrongly insisted upon by the Bank.*
- *It is submitted that not only these requirements of additional documentation delayed the entire process it was also coupled with the fact that one of the directors of the Company*

was unilaterally acting in a manner without any Board authority. It is a matter of fact, that decisions were taken by Mr. Sandeep Gupta, which were rash unilateral and bereft of commercial rationale. The fact that the Company suffered due to the actions of Mr. Sandeep Gupta of the majority promoter faction has been put on record in a complaint to the SEBI as well as by some of the independent directors who resigned from the Company in their respective resignation letters. For the said reasons, oppression and mismanagement proceedings was agitated against Mr. Sandeep Gupta by me. It is submitted that another non-promoter shareholder also filed an oppression and mismanagement application against Mr. Sandeep Gupta which clearly impresses the fact that stakeholders were not pleased with Mr. Sandeep Gupta and his way of managing the operations of the Company.

- *It is submitted that I had planned and scheduled the end of February as the tentative timelines for the closure of the documentation for the purposes of disbursal of the credit line, the same could not be concluded as Mr. Sandeep Gupta wanted certain other terms to be included within the documentation. Such act of Mr. Sandeep Gupta was unilateral and without the approval of the Board of the Company and the Bank ought not have taken the same into account when the documents were already finalized. Owing to such back and forth at the insistence of the Bank in collusion with Mr. Sandeep Gupta further prolonged the said disbursal as the sanction letter and documentation for the credit line was finally executed on June 8, 2021.*
- *It is submitted that such inordinate delay on part of the Bank in disbursal of the credit line, which ought to have been disbursed under the ECGLS demonstrates that the Bank was acting in collusion with Sandeep Gupta, whose intentions are best left unsaid. To illustrate on the delay on part of the Bank to process the application, the actual application was made by the Company on November 24, 2020 and the same was finally approved and sanctioned on May 10, 2021. This roughly translates to a period of five months which was extremely difficult period for the Company and the Hotel. It is further submitted that the account of the Company was wrongly classified as NPA owing to the deliberate delays which were at the Banks end. Accordingly, any proceedings initiated under SARFAESI are also in itself, void ab initio.*
- *It is submitted that vide letter dated 28.05.2021, the Company Secretary of the Company had duly informed the Stock Exchange that the Company had defaulted on its repayment on the principal/interest amount to Yes Bank.*
- *It is pertinent to mention herein that the clarifications sought by SEBI vide email dated 17.03.2022 pertaining to said alleged default were duly provided by me vide my email dated 22.03.2022 I had promptly responded and apprised the SEBI about the status of the SARFAESI and Insolvency and Bankruptcy proceedings against the Company. It is reiterated herein that I have complied with every request of the SEBI and kept them duly informed. It is highlighted that the management and finances are controlled entirely by Mr. Sandeep Gupta and Group. It is highlighted herein that vide my email dated 02.09.202l,I had duly informed Ms. Vinita Gupta, the Chairperson and Mr. Sandeep Gupta that it was imperative for the Company to pass a Board Resolution to authorise the appointment of a legal counsel to defend the Company in the SARFAESI proceedings. However, no action whatsoever was taken on my email.*

INCOMPLETE DISCLOSURE REGARDING RESIGNATION OF STATUTORY AUDITOR

- *At the outset, it is submitted that I, being one of the Executive Directors of the Company, had on repeated occasions, stressed the need to provide all the information sought by the auditors to the Chairperson, i.e. Ms. Vinita Gupta and the other Executive director,* *i.e. Mr. Sandeep Gupta. It is reiterated herein that I had on multiple occasions stressed the need and the grave importance of providing the necessary documents and information as sought by the Auditors to no avail.*

- *It is reiterated herein that the consolidated email detailing all the documents required by the Auditors was sent solely to Mr. Sandeep Gupta vide email dated 12.07.2021 and forwarded again vide email dated 03.08.2021. It is highlighted that these emails were not marked to Mr. Sudhir Gupta or Ms. Vinita Gupta.*
- *It is submitted that I am the sole dissenting voice on the Board of Directors of the Company. It is reiterated herein that the Auditors, vide email dated 05.08.2021, stated that his team has been in touch only with Mr. Sandeep Gupta however, many documents and information still remain pending. It is further reiterated herein that, I vide my email dated 09.08.2021, forwarded the above mentioned email with its trailing mails of the auditor to the BOD of the Company and specifically requested Mr. Sandeep Gupta to furnish all relevant documents/information to the auditors. I had again, vide my email dated 14.08.2021, requested Mr. Sandeep Gupta to comply with the auditors requirements and also attached my opinions/comments on how the said requirements could be complied with. However, no action was taken despite by multiple requests. It is reiterated herein that Ms. Vinita Gupta vide email dated 30.08.2021 proposed to hold the meeting of the Board of Directors of the Company with the agenda item to review the status of the Audit of Accounts.*
- *I reiterated vide my email dated 02.09.2021, that it was pertinent that Mr. Sandeep Gupta and Mrs. Vinita Gupta go through the list of information/documents that are pending as shared by the auditors and thereafter shared again by me and give their comments on how to complete these documents so as to enable the Company to comply with the requirements of the Auditors before this meeting.*
- *It is pertinent to mention herein that reason for non-communication of the necessary information is solely attributable to Mr. Sandeep Gupta and Ms. Vinita Gupta, and the same had already been intimated to Mr. Vivek Jain, the then CS of the Company vide the abovementioned email dated 23.09.2021.*
- *It is reiterated that an incomplete agenda was circulated by the Company Secretary one day before the proposed meeting, as such there was no validly convened meeting for 06.09.2021 and there was no occasion for attending the said meeting. Admittedly, no adjourned meeting was held after 7 days i.e. 13.09.2021. The contents of the preceding paras and the preliminary submissions be read as part and parcel of this para.*
- *That from the above facts it is apparent .that it was due to the inaction of Mr. Sandeep Gupta which led to the resignation of the Auditors. It is further submitted that the failure to call a Board Meeting is solely attributable to Ms. Vinita Gupta as she, being the Chairperson of the Board, had the sole authority to call a Board Meeting and failed to do so despite various requests made by me. It is apparent from the above submissions that no fault can be attributable to me. It is apparent that the management is in the iron- clad control of Mr. Sandeep Gupta and Group who seem insistent to drive the Company into the ground at the cost of the minority and public shareholders.*

FAILURE TO DISCHARGE DUTIES BY THE BOARD OF DIRECTORS OF THE COMPANY

- *At the outset, it is clarified that the power to call for a Board Meeting is wielded entirely and exclusively by Ms. Vinita Gupta, erstwhile Chairperson of the Company. It is restated herein that, I had on multiple occasions requested the Chairperson to convene a Meeting of the Board of Directors, but the Chairpersonacting apparently on the instruction of and in ollusion with Mr. Sandeep Gupta failed. to do. It is reiterated herein that most* *non - compliances plaguing the Company at the present date could have easily been cured had the Chairperson and Mr. Sandeep Gupta acted in good faith and in the best interest of the Company.*

- *It is further submitted that, recognizing the urgent issues faced by the Company, even the Independent Directors had requested the Chairperson, i.e. Ms. Vinita Gupta on multiple occasions to convene a Board meeting, but to no avail.*
- *It is submitted that despite repeated requests by me, one of the Executive Directors and multiple requests by the Independent Directors, Ms. Vinita Gupta, Chairperson, failed to call a meeting of the Board. It is apparent that the failure to call a Board meeting led to various non-compliances by the Company and the eventual default in the repayment of the loan facility to Yes Bank Limited. It is highlighted herein that the complete inaction and mala fide conduct of Mr. Sandeep Gupta and Group led to the resignation of all the Independent Directors ("ID") of the Company and currently there isn't a single ID on the Board of Directors of the Company. It is submitted that Mr. Lalit Bhasin, one of the then ID of the company highlighted the failure of Ms. Vinita Gupta to hold a Board meeting.*
- *The resignation of four independent directors in such a short span of time, all citing the mismanagement of the Company affairs by Ms. Vinita Gupta and Mr. Sandeep Gupta is a prima Facie evidence of the fact that Mr. Sandeep Gupta & Group are only interested in securing the downfall of the Company.*
- *That it is pertinent to mention herein that the Company, due to various non-compliances and fines imposed will be prone to be delisted from the Stock Exchanges on 08.06.2022 vide SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12. Even though the due date of delisting was upon the Company, no steps had been taken to rectify the said non-compliances or to take any correctional step for the prevention of the said delisting. It is further pertinent to mention herein that due to the inaction of the Sandeep Gupta Group, a notice of delisting has been received from NSE dated 13.07.2022.*

5. In the interest of natural justice, the Noticee was given an opportunity of personal hearing on September 6, 2022 vide notice dated August 19, 2022. The Noticee vide email dated August 30, 2022 sought for an adjournment. Acceding to his request another opportunity of personal hearing was given to the Noticee on September 13, 2022 vide email dated September 1, 2022. The Authorised Representative (hereinafter referred to as "**AR**") of the Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated July 29, 2022. The AR made further submissions dated September 13, 2022 stating, inter alia, the following:

- *It is submitted that Noticee should not be held liable for the violations alleged under the Notice on the following grounds:*

  (a) That Noticee and Mrs. Vinita Gupta and Mr. Sandeep Gupta, even though related, cannot be considered to be part of the same promoter group on account of the irreparable damage caused to their relationship on account of the hostile behaviour exhibited by Sandeep Gupta towards Noticee, after the relinquishment of control by Mr. Sushil Gupta (father of Sandeep Gupta and brother of Noticee) due to his illness.

(b) That Sandeep Gupta (in collusion with Vinita Gupta) controlled the Company at the time of the commission of the alleged offences. He exercised unilateral control over the financial and operational affairs of the Company, to the exclusion of Noticee.

(c) That even though Noticee has the designation of an executive director, it is reduced merely to a titular role, and he doesn't have control over the affairs of the Company. Sandeep Gupta ensured that Noticee is not involved in affairs of the Company by taking unilateral decisions pertaining to the financial or operational details concerning the Company. By failing to hold board meetings, Vinita Gupta and Sandeep Gupta effectively removed any board oversight over their actions. All pleas to hold board meetings by the independent directors and Noticee fell on deaf ears.

(d) That as the Noticee was not in control of the affairs of the Company, he cannot be considered to be in charge or responsible for the affairs of the Company, and as a corollary, cannot be held liable for the violations committed by the Company.

(e) That Sandeep Gupta ensured that Noticee was not aware of the affairs of the Company, including the delay in audit of financial statements, by being the only point of contact with the auditors. At the time of making the disclosure to the stock exchanges on the delay in submission of financial statements, the Noticee was not aware that the delay was on part of Sandeep Gupta and not the statutory auditors. It was only in August 2021 that the auditors first communicated to Noticee that the delay was on part of the Company.

(f) That the disclosure pertaining to resignation of statutory auditors was complete and any allegation to the contrary is denied.

(g) That Noticee cannot be held responsible for not holding a board meeting in accordance with SEBI circular dated October 18, 2019, as the Vinita Gupta (being the chairperson) alone had the power to call for a board meeting, which she has persistently refused to do so even after numerous emails from Noticee No. 3.

(h) That Noticee had provided adequate response to the queries raised by the National Stock Exchange ("NSE") on September 20, 2021, vide email to the company secretary of AHWL on September 23, 2021.

(i) That the responsibility for the failure to disclose information and provide material updates pertaining to the default of the loan taken by the Company solely rests on Sandeep Gupta, as he ensured that only he retained the sole control over the financial and operational aspects of the Company, to the exclusion of Noticee.

j) That Noticee sent various emails to Vinita Gupta and Sandeep Gupta highlighting the pressing need to address the default in loan repayment, but they refused to acknowledge and act upon the same.

(k) That the Noticee exercised adequate due diligence in an attempt to prevent commission of alleged violations, even though Noticee No. 3 was constantly undermined by Sandeep Gupta.

(l) That the Noticee wrote various emails to Sandeep Gupta requesting him to provide all the documents requested by the statutory auditors in order to ensure regulatory compliance.

(m) That the counter claims made by Sandeep Gupta in relation to Noticee's intentional avoidance of meetings proposed by Noticee No. 4 are wholly false and baseless. Sandeep Gupta has attempted to call meetings of the management committee to discuss the addition of signatories in relation to the loan availed from Yes Bank Limited ("YBL"). In response, Noticee has stressed on the need to prioritize the discussion on the financial situation of the Company through a board meeting, over the issue proposed to be discussed in the management committee meeting. Moreover, Sandeep Gupta has also suggested the inclusion of the issue of additional signatories on the agenda for the board meeting.

(n) That the Notice contains bald allegations against Noticee without considering the material submitted by Noticee to demonstrate his non-involvement in the commission of the alleged violations, and exercise of due diligence with a view to prevent the commission of the alleged violations.

(o) That the Notice seeks to impose liability on Noticee merely based on his presence on the board of directors, and his designation as an 'executive director' in the Company, without attempting to ascertain the participation of Noticee in the alleged violations.

(p) That the allegations made against Noticee in the Notice are vague and unsubstantiated, and the Notice does not contain specific findings or averments with regard the role played by Noticee, or his involvement in the commission of the alleged violations.

Noticee was not in control of the affairs of the Company

- *The Noticee is a promoter and executive director of the Company. Noticee is also a director in DSO Limited, which is a promoter company holding approximately 46.21% shareholding in the AHWL. Noticee and his wife together hold 50% in DSO Limited. In his individual capacity, Noticee also holds 1 .84% shareholding in AHWL.*
- *At the outset, it is submitted that in and around November 2019, control over the management of the Company was unilaterally assumed by Sandeep Gupta and Vinita Gupta, to the exclusion of other members of the board of directors. Sandeep Gupta began exercising sole control over the financial and operational affairs of the Company, without any regard to board processes or oversight. The manner in which Sandeep Gupta exercised unilateral control over the affairs of the Company, in the absence of any semblance of board oversight.*
- *It is submitted that the said control by Sandeep Gupta over the financial affairs of the Company can also be evidenced by his unilateral rejection of a proposal put forth by Noticee to request for a refund of security deposit from Aria Hotels and Consultancy Pvt. Ltd ("Aria Hotels"), a subsidiary of the Company in which Sandeep Gupta is a managing director. Effectively abusing his position in Aria Hotels and his control over the financial affairs of the Company, Sandeep Gupta rejected this proposal. Noticee did not have any control over the Company to even ask for a refund of security deposit from a subsidiary company. Further, it is submitted that the decision to appoint an external consultant to evaluate debt reduction plans for the Company was also unilaterally taken by Sandeep Gupta, without prior consultation with other members of the board, as indicated in the email sent by an independent director, Mr. Raj Bhargava, to Vinita Gupta on May 28, 2021.*

- *It is submitted that Sandeep Gupta's control over the Company, to the exclusion of Noticee, was not limited to the financial affairs, but also extended to operational aspects of the Company. Further, it is submitted that Sandeep Gupta has also appointed key managerial personnel, such as the general manager (legal and corporate affairs), without consulting the board, who acted under the sole instructions of Sandeep Gupta and Vinita Gupta. Further, Noticee had proposed to ca11 for a board meeting to discuss the option of availing an inter corporate loan from Aria Hotels to mitigate the financial stress faced by the Company. It is submitted that the refusal to call a board meeting was also a deliberate attempt to block any interference of Noticee in Sandeep Gupta's sole control over affairs of the Company. Further, it is submitted that during the appointment of a consultant to advise the Company on fund raising options, Sandeep Gupta also abused his authority by altering the scope of work sent to the consultant, in contradiction to the decision taken by the board. By the said alteration, Sandeep Gupta narrowed the scope of work by excluding the dilution of the Company's stake in Aria Hotels, thereby demonstrating his self·serving approach and blatant disregard of the board's collective decision-making process. Moreover, the said alteration effectively limited the consultant's evaluation of the recourses available to the Company, further crippling its ability to respond to financial distress in a comprehensive manner. These decisions were not taken together with Noticee and in some cases Noticee's objections were also unceremoniously disregarded, which points to a complete lack of any control by Noticee over the Company in his role as an executive director.*

Misrepresentation in the disclosure of reasons for delayed submission of annual financial results

- *Upon becoming concerned of the extended delay and upon receiving no information from Sandeep Gupta, Noticee sent an email dated August 03, 2021 to the statutory auditors asking them for a status update and requesting them to complete the audit process swiftly. It is submitted that it was only upon receiving a response from the statutory auditors on August 05, 2021 that Noticee became aware of the fact of lack of cooperation by the Company, especially Sandeep Gupta, in supplying information requested by the statutory auditors. On becoming aware of the lack of cooperation towards the statutory auditors and related risks of non- compliance, Noticee took steps towards remedying the issue by forwarding the list of pending information to Sandeep Gupta and Vinita Gupta, with a* *request to provide the required information at the earliest opportunity vide email dated August 09, 2021, and follow-up emails dated August 14, 2021 and September 02, 2021. It is pertinent to note that Sandeep Gupta did not respond to any of the emails sent in this regard or provide the requisite information to the statutory auditors. It is further submitted that the information requested by the statutory auditors was solely in the possession of Sandeep Gupta on account of his unilateral assumption of control over the Company's financial affairs, and was withheld from the statutory auditors for reasons best known to them.*

Incomplete disclosure of information pertaining to the resignation of statutory auditors

- *Firstly, it is denied that the disclosure to the stock exchanges made upon the resignation of the statutory auditor was incomplete. As per the SEBI circular dated October 18, 2019, the said disclosure has to be in a certain prescribed format. It is submitted that the information obtained from the statutory auditor and disclosed to the stock exchanges was in the format specified. It is pertinent to note that SEBI has merely stated that the disclosure was incomplete, without clearly stating the missing elements from the disclosure.*
- *It is grossly inaccurate to allege that the company secretary of AHWL did not receive any response from Noticee to queries raised by the NSE. Subsequent to the resignation of the statutory auditors, NSE sent an email on September 20, 2021, containing certain queries pertaining to the resignation. Upon these queries being brought to the notice of Noticee by the company secretary, Noticee provided a detailed response to the company secretary, sufficiently responding to the queries raised, vide email dated September 23, 2021. Thus, the allegation that Noticee provided no response to the stock exchange queries is inaccurate and has no basis in fact, and the same is completely denied.*

Failure to disclose of information and material updates pertaining to default on payments

- *It is submitted that the financial distress faced by the Company and the pressing need to address the default on loan instalment and interest payments payable to YBL by the board of directors was highlighted by Noticee to Vinita Gupta and Sandeep Gupta on several occasions, including vide mails dated March 02,2021, April 01, 2021, April 07, 2021, April 18, 2021, April19, 2021, April20, 2021, April25, 2021, May 05, 2021, May 07, 2021,* *May 08, 2021, May 10, 2021, May 11, 2021 and May 21, 2021. However, Sandeep Gupta and Vinita Gupta maintained an indifferent disposition to the urgency of the same, and consistently refused to acknowledge or take any action in terms of the default. It is submitted that the said indifference extended to the failure to make accurate and timely disclosures of the default to the stock exchanges, a function which fell under the sole supervision of Sandeep Gupta, without any regard to concerns raised by Noticee. It is pertinent to reiterate herein that the management of the Company was taken over by Sandeep Gupta, to the exclusion of Noticee.*

Failure to convene a board meeting

- *Under the Notice, liability is sought to be imposed on Noticee for the alleged violation of Regulation 4(2)(t) of the LODR Regulations, on the ground of failure to convene a board meeting to address the financial problems faced by the Company. With regard to the same, it is submitted that Noticee was not authorised to convene a board meeting, as the authority was exclusively vested in the chairperson, i.e., Vinita Gupta, by the articles of association of the Company. Despite this, Noticee endeavoured to facilitate collective decision making by the board of directors through multiple emails addressed to Vinita Gupta and Sandeep Gupta, including emails dated March 02, 2021, March 31,2021, April 01,2021, April 07,2021, April18, .2021, April19, 2021, April 20, 2021, April25, 2021, May 05, 2021, May 07, 2021, May 08, 2021, May 10, 2021, May 11,2021 and May 21, 2021, with repeated requests to convene a board meeting to discuss the financial distress faced by the Company and the resolution of payments due to YBL.*

That the counter claims made against Noticee are unsubstantiated and baseless

- *From a bare reading of the Notice, it is observed that the allegation pertaining to the failure to conduct a board meeting to discuss the financial situation of the Company has been levelled in an omnibus manner, on the basis of claims made by Noticee, and counter- claims made by Sandeep Gupta in relation to Noticee's alleged creation of obstacles in the day-to-day functioning of the Company, and avoidance of meetings called by Noticee No.4 on several occasions.*
- *With regard to the same, it is submitted that firstly, Noticee has always strived to act with the best interests of the Company in mind and has endeavoured to facilitate timely*

mitigation of the financial stress faced by the Company and consequences of non-compliance. Secondly, it is submitted that the meetings referred to by Sandeep Gupta were in fact meetings of the management committee ('MCM') constituted within the board, to look into existing credit facilities extended to the Company by YBL. It is submitted that Sandeep Gupta made attempts to convene the said MCM on March 31, 2021 and April 08, 2021, to finalize the addition of new signatories for the purpose of existing loans with YBL. It is worthwhile to highlight that the scope of the MCM which was attempted to be convened by Sandeep Gupta was limited to the abovementioned purpose, and only involved the participation of three promoter directors, i.e., Mr. Sushil Gupta, Noticee, Sandeep Gupta and one independent director, i.e., Mr. Raj Bhargava. It is submitted that on receiving the proposals for the said MCM, Noticee stressed on the need to prioritize the resolution of financial issues, specifically the finalisation of a debt reduction plan as suggested by YBL, through a board meeting, by employing the wisdom of all members of the board of directors, as a collective whole, as reflected in the emails dated April 18, 2021, Aprill9, 2021, April 20, 2021, May 07, 2021, May 08, 2021. However, it is submitted that Sandeep Gupta adopted an unrelenting stance by insisting on holding the MCM to discuss the approval of additional signatories without any acknowledgement of the multiple requests to hold a board meeting, despite Noticee's suggestion to include the said issue within the agenda for the board meeting.

6. Vide email dated March 13, 2023, the Noticee was asked whether he wants to make any further submission in the matter. The AR, vide email dated March 14, 2023 stated that replies dated July 29, 2022 and additional submission dated September 13, 2022 may be considered as final submission in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the instant matter are:
    (a) Whether Noticee has violated regulations 4(1)(c) , 4(1)(d), 4(1)(i) and 30(10) of LODR Regulations; regulation 30(7) and 4(1)(d) of LODR Regulations read with SEBI Circular dated November 21, 2019, regulation 30(2) read with Schedule III of LODR Regulations and SEBI Circular dated October 18, 2019 and regulation 4(2)(f) of LODR Regulations.

(b) Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15A(a) 15HB of SEBI Act?; and,

(c) 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?

8. The relevant provisions are mentioned hereunder:

LODR Regulations

Principles governing disclosures and obligations.

(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e)…….

(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information

Disclosure of events or information.

30. (10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information:

Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.

30 (7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

30.(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

Schedule III, Part A, clause A
(7A) In case of resignation of the auditor of the listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty four hours of receipt of such reasons from the auditor.

4(2) (f) Responsibilities of the board of directors:
The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:
(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.
(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.
(ii) Key functions of the board of directors-
(1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital xpenditures, acquisitions and divestments.
(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.
(3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.
(4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.
(5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.
(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
(8) Overseeing the process of disclosure and communications.
(9) Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities:
(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.
(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.
(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.
(4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

(5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.
(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.
(7) The board of directors shall exercise objective independent judgement on corporate affairs.
(8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
(9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.
(10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.
(11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.
(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.
(13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.
(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

9. I observe that adjudication proceedings was initiated in respect of the company, Chairperson and Non-Executive Director Ms. Vinita Gupta, Executive Directors Mr. Sandeep Gupta and the Noticee. The company is currently under Corporate Insolvency Resolution Process. Ms. Vinita Gupta and Mr. Sandeep Gupta has settled all the charges against them vide settlement order dated July 5, 2023.
10. I find that SEBI was in receipt of complaints from the Noticee against the company, Ms. Vinita Gupta and Mr. Sandeep Gupta alleging, *inter alia*, the following:
    a) Making baseless allegations against independent directors coercing them to resign;
    b) Misuse of position by Mr. Sandeep Gupta and taking all decisions on behalf of Mr. Sushil Gupta (Chairman and managing Director)
    c) Failure of the Chairperson – Ms. Vinita Gupta to convene a Board meeting to discuss financial status of the company
    d) Failure of the company to make appropriate disclosure under LODR Regulations about deteriorating health of the erstwhile Chairman;
    e) Appointment of new IDs who are not independent;

f) Constitution of audit committee in violation of Companies Act, 2013 and LODR Regulations;

g) Violation of section 203 of the Companies Act, 2013 by Sandeep Gupta

11. SEBI examined the complaint and observed certain non-compliances which I shall discuss here analyzing the role of the Noticee:

A) <u>Misrepresentation of disclosures made to stock exchange regarding delay in submission of financial results by the company</u>

12. It was alleged that the company made delayed disclosure for the year ended March 31, 2021 and misrepresented the reason for the delay in submission of financial results to stock exchanges.

13. It was observed that the company delayed submission of financial results for the period ended March 31, 2021. The company vide letter dated June 25, 2021 stated it was not in a position to submit annual audited financial results for the period ended March 31, 2021 within the prescribed timeline to the stock exchanges, as the results were to be finalized by the statutory auditors of the Company. However, from the announcement dated September 15, 2021, it was observed that the statutory auditor in the resignation letter had stated that the company made incorrect disclosures and did not provide with relevant information for conducting audit for the year ending March 31, 2021.

14. I observe from the material available on record that the auditors were corresponding solely with Mr. Sandeep Gupta and addressed all emails seeking information about the company from him. The Noticee vide email dated August 3, 2021 sought from the auditors the status of compliance. The auditors vide email dated August 5, 2021 had replied that there were still documents pending to be given to them. The Noticee vide email dated August 9, 2021 informed the Board of Directors of the company of the said situation and requested Mr. Sandeep Gupta to provide the relevant documents as he was solely in possession of the same. I find that the Noticee had taken effort to ensure that proper information is provided to the auditors in timely manner.

15. Further from the information available on record, I do not find any evidence to show that the Noticee was involved in misrepresenting the reason for delay in

submission of annual audited financial results vide letter dated June 25, 2021. In view of the lack of evidence, I find that the charges against the Noticee for violation of regulations 4(1)(c), 4(1)(d), 4(1)(i) of LODR Regulations does not stand established.

16. Further, it was alleged that the company did not respond to queries sought in relation to the resignation of statutory auditor and completion of audit, financial condition of the Company, etc. despite repeated reminders.

17. I observe that the following comments from the Company were sought by the stock exchange:

    i) Comments on the resignation letter of the statutory auditor in reference to Company's disclosure dated June 25,2021;

    ii) Reasons(s) for not convening board meeting to discuss the financial situation of the Company in pursuance to schedule II of LODR; and

    iii) Details of the statutory auditor who will be conducting audit for FY 2020-21 and the quarter ended June 30,2021 and September 30, 2021.

18. From the material available on record, on being intimated by the company secretary regarding the queries raised by the stock exchange, I find that the Noticee vide email dated September 23, 2021 replied to the company secretary providing sufficient response to the queries raised from his side. In view of the same, I give benefit of doubt to the Noticee and find that the allegation against the Noticee for violation of regulation 30(10) of LODR Regulations does not stand established.

B) **<u>Non-disclosure of information w.r.t. default of payment</u>**

19. It is alleged that though the management of the company was aware of the receipt of the letter under regulation 13(2) of the SARFAESI Act from Yes Bank Limited (hereinafter referred to as "YBL"/ "bank"), the same was not disclosed by the company to the stock exchange under regulation 4(1)(d) and 30(7) of LODR Regulations. Further, the company had not made relevant disclosures as prescribed in para C2 of the SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 for the quarter ended June 30, 2021 and September 30, 2021.

20. From the material available on record, I find that the company had defaulted on

payment of loan repayment of Rs. 267 Crore and YBL had taken possession of Hotel Hyatt Regency building and a plot of land situated closed to Chhatrapati Shivaji International Airport. I note that being engaged in tourism and hospitality business, the company was severely impacted by Covid 19 pandemic. This resulted in failure of payment of the loan to YBL.

21. Though the company made the initial disclosure of default on May 28, 2021, the disclosures were not made for quarter ended June 30, 2021 and September 30, 2021. I find that the LODR Regulation mandates that all listed companies shall make disclosures updating material developments on a regular basis. Further, SEBI circular dated November 21, 2019 mandates that listed companies to make disclosures in respect to default of repayment of loans from banks or financial institutions.

22. It is observed that the disclosures were not made for the quarter ended June 30, 2021 and September 30, 2021. I find that the Noticee had written several emails dated March 2, 2021, April 1, 2021, April 7, 2021, April 18, 2021, April 19, 2021, April 20, 2021, April 25, 2021, May 5, 2021, May 7, 2021, May 8, 2021, May 10, 2021, May 11, 2021 and May 21, 2021 urging for conducting board meetings so that the issue of non-repayment of loans and disclosures thereof can be properly addressed. By not conducting board meeting, directors including the Noticee were kept in dark regarding the status of loan repayment and its related disclosures. I find that the Noticee had taken efforts to address the issue of proper disclosure. In view of the same and in the absence of any cogent evidence I am inclined to give benefit of doubt to the Noticee.

23. In light of the above, I find that the allegation against the Noticee for violation of regulations 30(7) and 4(1)(d) of LODR Regulations and SEBI circular dated November 21, 2019 does not stand established.

C) **<u>Incomplete disclosure regarding resignation of statutory auditor</u>**

24. It was alleged that the information disclosed by the company regarding resignation of statutory auditor was incomplete. On seeking clarification, it was submitted that the company secretary did not receive response from the existing directors and hence could respond to the queries of the exchange. It was further alleged that the

Noticee has violated Sub-clause (7A) inserted under clause A in Part A of Schedule III under regulation 30(2) of LODR Regulations.

25. I observe that Sub-clause (7A) inserted under clause A in Part A of Schedule III under regulation 30(2) of LODR requires detailed reasons to be disclosed by the listed entities to the stock exchanges in case of resignation of the auditor of a listed entity as soon as possible but not later than twenty-four hours of receipt of such reasons from the auditor. Further, SEBI circular no. CIR/CFD/CMD1/114/2019 dated October 18, 2019 provides a format through which the said information should be shared with the stock exchange.

26. It is observe that the auditors resigned vide letter dated September 13, 2021 and the same was intimated to the stock exchange vide letter dated September 15, 2021. Further, vide letter dated September 16, 2021 company attached the form as required under SEBI circular no. CIR/CFD/CMD1/114/2019 dated October 18, 2019. On perusal of the form, I find that the company did not fill up the following columns:

"5. In case of any concerns, efforts made by the auditor prior to resignation (including approaching the Audit Committee/Board of Directors along with the date of communication made to the Audit Committee/Board of Directors)

6. In case the information requested by the auditor was not provided, then following shall be disclosed:
a. Whether the inability to obtain sufficient appropriate audit evidence was due to a management-imposed limitation or circumstances beyond the control of the management.
b. Whether the lack of information would have significant impact on the financial statements/results.
c. Whether the auditor has performed alternative procedures to obtain appropriate evidence for the purposes of audit/limited review as laid down in SA 705 (Revised)
d. Whether the lack of information was prevalent in the previous reported financial statements/results. If yes, on what basis the previous audit/limited review reports were issued.
7. Any other facts relevant to the resignation:"

27. I find from clause 6(C) of the circular that it is the responsibility of the listed company to ensure that the disclosure regarding resignation of the statutory auditor is made to the stock exchange. It is noted that the intimation of the resignation of the statutory auditor was submitted by the company after more than twenty four hours of resignation of the auditors through Company Secretary and

Compliance Officer of the company. Therefore, it was his responsibility to ensure that the disclosure is made in the proper format. Further, with respect to the allegation that the company secretary did not receive response from existing directors, I observe that vide email dated September 23, 2021, the Noticee replied to the queries that were raised to him by the Company Secretary of the company. Therefore, I find that the Noticee has given his response in the capacity of a director of the board. Hence, in the absence of any further cogent evidence, I find that the allegation against the Noticee for violation of regulation 30(2) read with schedule III of LODR Regulations and SEBI circular dated October 18, 2019 does not stand established.

D) <u>Failure to discharge duties by the Board of Directors of the Company</u>

28. It was alleged that the Board of Directors have failed to convene a board meeting despite financial problems of the Company and provide adequate responses to the queries raised by stock exchanges and auditors despite several requests from the statutory auditor, Noticee -Executive Director and the audit committee. Further, there were counter claims by Sandeep Gupta and Vinita Gupta against Noticee that he created obstacles in the day to day functioning of the company. It has also been submitted that meetings were called on several occasions but Noticee avoided these meetings.

29. I find that it is on record that the Noticee had written emails to the Chairperson several times to convene Board meeting to discuss the financial distress faced by the company. Further, the Noticee also submitted that even the Independent Directors had written to the Chairperson to convene board meeting to discuss the financial condition of the company. I also observe that Independent Directors, Mr. Lalit Bhasin, Dr. Tamali Sen Gupta and Mr. Arun Bhasin had resigned sighting mismanagement of the company's affairs and failure of the Chairperson to convene Board meetings. In view of the above, I find that the failure to convene Board meetings and provide adequate responses to queries raised by stock exchange and auditors cannot be attributable to the Noticee as he had taken steps to highlight and address the issues.

30. Further, as already discussed in para 27, the stock exchange raised certain queries to the company which was forwarded to the Noticee by the Company

Secretary. The Noticee vide email dated September 23, 2021 replied to the said queries.

31. In regard to the counter claims by Sandeep Gupta and Vinita Gupta that the Notiee did not attend board meetings on several occasion and created obstacles in day-to-day functioning of the company, I find that there is no evidence to substantiate the claim. From the material available on record, I find that the Noticee vide email dated March 30, 2021 had informed that he was not available to attend a meeting on March 31, 2021. There is no other evidence to show that he was creating obstacle in day-to-day functioning of the company.

32. In view of the above, I find that the allegation against the Noticee for violation of regulation 4(2)(f) of LODR Regulations does not stand established.

33. It may also be noted that the Noticee had filed 2 complaints dated December 20, 2020 and July 6, 2021 against Sandeep Gupta and Vinita Gupta to SEBI highlighting the oppression and mismanagement. The Noticee further filed a petition under sections 241, 242 and 245 of the Companies Act, 2013 to the National Company Law Tribunal. Therefore, I find that the Noticee had taken several steps to point out that his role as a director in the company has been curtailed and he was not in control of the affairs of the company.

34. Hon'ble Supreme Court in the matter of Securities and Exchange Board of India and Ors. vs. Gaurav Varshney and Ors. (15.07.2016 - SC) : MANU/SC/0778/2016 stated that "*It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business*."

35. In view of the above and in absence of any evidence denoting the role of the Noticee regarding the non-compliances of the company, I find that the charges levelled against him vide SCN dated June 30, 2022 does not stand established. I am therefore, inclined to give benefit of doubt and dispose of the proceedings initiated against the Noticee.

36. Further, considering that the alleged violation against the Noticee does not stand

established, I note that Issues II and III do not require any consideration.

ORDER

37. Accordingly, taking into account the aforesaid findings, the adjudication proceedings initiated against the Noticee i.e., Sudhir Gupta vide SCN dated June 30, 2022 stands disposed of without any penalty.

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

Date: July 24, 2023 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**