BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NH/YK/2024-25/30560]

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

In respect of:

Noticee	PAN
TIL Limited	AABCT0704G

In the matter of TIL Limited

FACTS OF THE CASE

1. TIL Limited (hereinafter referred to as "**Noticee/TIL/Company**") is a company listed in National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**") and BSE Ltd. (hereinafter referred to as **"BSE"**). Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received an alert from NSE, *inter alia*, raising concerns regarding the regularization of appointment of independent directors in TIL after the expiry of three months. Thereafter, SEBI conducted an examination in the matter. During the course of examination, it was, *inter alia,* observed that the Noticee has failed to disclose "the defaults on loans obtained by the Noticee" to the Stock Exchanges in a timely manner. Therefore, it was alleged that the Noticee has violated the provisions of Regulations 30(2) and 30(6) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **"LODR Regulations"**) read with Clause 6 of Para A of Part A of Schedule III of the LODR Regulations and SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019 (hereinafter referred to as **"SEBI Circular dated November 21, 2019"**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed the undersigned as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated May , 2024 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**), to inquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act for the aforementioned violations of the provisions of law alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice ref no. SEBI/EAD-2/NH/YK/17246/2024 dated May 17, 2024 (hereinafter referred to as **'SCN/Notice'**) was served upon the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, not be imposed on it in terms of the provisions of the Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee.

4. The SCN dated May 17, 2024, *inter alia*, alleged the following:

   *"**Delayed disclosure of default on loans in multiple instances to the Stock Exchanges***

- *During the course of examination, it was observed that there have been multiple defaults on loans obtained by the Noticee. However, such defaults were not disclosed to the Stock Exchanges in a timely manner.*

- *In this regard, comments were sought from the Company by the BSE Ltd. (hereinafter referred to as "BSE"). Vide e-mail dated September 11, 2023 (enclosed as Annexure 3), Company, inter alia, stated as under:*

"Company had disclosed to the Stock Exchanges the events of default on 7th February 2022 & 11th January 2023 as per the attached intimations in accordance with the SEBI Circular dated 21st November 2019."

- *In this regard, it is observed that further details on the disclosure of the loan defaults were sought from the Company and the BSE by SEBI. Company vide e-mails dated December 08, 2023 and January 06, 2024 (enclosed as Annexure 4) and BSE vide e-mail dated January 23, 2024 (enclosed as Annexure 5) provided list of instances wherein there were delay in disclosure of defaults on loans. List of such instances has been tabulated below:*

Table 1

Sr. No.	***Name of Lender***	***Due date of payment***	***Date by which disclosure was required to be made***	***Amount Due (Rs. in Crs)***	***Date of Filing Disclosure***	***Number of days of delay in the disclosure***
1	*HDFC Bank Ltd.*	*06.01.22*	*06.02.22*	*53.4*	*07.02.22*	*1*
2	*Bank of India*	*01.03.22*	*01.04.22*	*44.46*	*11.01.23*	*285*
3	*Union Bank*	*09.05.22*	*09.06.22*	*11.39*	*11.01.23*	*216*
4	*Aditya Birla Finance Ltd*	*17.05.22*	*17.06.22*	*6.39*	*11.01.23*	*208*
5	*Indian Bank*	*29.05.22*	*29.06.22*	*20.9*	*11.01.23*	*196*
6	*Axis Bank*	*15.06.22*	*16.07.22*	*2.34*	*11.01.23*	*179*

7	*Punjab National Bank*	*29.06.22*	*30.07.22*	*29.97*	*11.01.23*	*165*
8	*State Bank of India*	*30.06.22*	*31.07.22*	*32.27*	*11.01.23*	*164*
9	*South Indian Bank*	*15.07.22*	*15.08.22*	*22.71*	*11.01.23*	*149*
10	*Tata Capital Financial Services Ltd.*	*08.09.22*	*09.10.22*	*21.96*	*11.01.23*	*94*
11	*IDBI Bank*	*23.11.22*	*24.12.22*	*4.89*	*11.01.23*	*18*

- *In view of the above, it is alleged that there have been multiple instances in which Noticee has delayed the disclosure of defaults on the loans availed by it to the Stock Exchanges. Therefore, it is alleged that Noticee has violated the provisions of Regulation 30(2) and 30(6) read with Clause 6 of Para A of Part A of Schedule III of LODR Regulations and SEBI Circular dated November 21, 2019."*

5. The SCN along with annexures was served upon the Noticee in the following manner as mentioned below:

Table 2

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[1]	Remarks
1.	Digitally signed SCN delivered through E-mail	sek...........@tilindia.com**;** sec.............@tilindia.com	Digitally Signed SCN duly delivered on May 17, 2024. The Noticee vide e-mail dated May 30, 2024 acknowledged the receipt of the SCN through e-mail.
2.	Delivered through Speed Post with Acknowledgment Due	*1………Kolkata – 700 024*	Delivered on May 24, 2024 as per the consignment tracking on India Post.

6. The Noticee vide email dated May 30, 2024 requested for additional time till June 10, 2024 to submit its reply to SCN. In the interest of natural justice, request of the Noticee to grant additional time to submit its reply to the SCN was considered and vide e-mail dated May 30, 2024, the Noticee was advised to submit its reply to SCN, if any, latest by June 10, 2024 which was submitted by the Noticee vide email and letter dated June 10, 2024.

[1] *E-mail ID and address excised for the sake of confidentiality.*

REPLY OF THE NOTICEE

6. Vide letter dated June 10, 2024, the Noticee has made its submissions in response to SCN which are discussed in the subsequent paragraphs under different headings for the ease of discussion.

HEARING

7. In consonance with the Adjudication Rules, an opportunity of hearing was granted to the Noticee on June 20, 2024 vide hearing notice dated June 10, 2024. On the scheduled date of personal hearing, the Noticee appeared through its Authorized Representatives (ARs) who reiterated the submissions made by the Noticee vide letter dated June 10, 2024. During the hearing, ARs requested for additional time to make further submissions in the matter which was acceded to and the Noticee was advised to file its additional submissions, if any, latest by June 25, 2024 which was submitted by the Noticee vide email dated June 25, 2024. Vide email dated June 25, 2024, the Noticee has made its additional submissions in response to SCN which are discussed in the subsequent paragraphs under different headings for the ease of discussion.

8. It is noted that the SCN along with the annexures and the Hearing Notice were duly served on the Noticee. The Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearing.

CONSIDERATION OF ISSUES

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

I. Whether the Noticee has made delayed disclosure of default on loans in multiple instances to the Stock Exchanges and therefore, violated provisions of Regulations 30(2) and 30(6) of the LODR Regulations read with Clause 6

of Para A of Part A of Schedule III of the LODR Regulations and SEBI Circular dated November 21, 2019?

II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of SEBI Act?

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

10. Before proceeding further, it is pertinent to refer the relevant provisions of law, allegedly violated by the Noticee. The same are reproduced hereunder:

"LODR Regulations

Disclosure of events or information.

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.

………………..

(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:

Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein.

SCHEDULE III

PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):

………………..

6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.

SEBI Circular dated November 21, 2019[2]"

[2] The text of SEBI Circular dated November 21, 2019 is available at the below mentioned link: *https://www.sebi.gov.in/legal/circulars/nov-2019/disclosures-by-listed-entities-of-defaults-on-payment-of-interest-repayment-of-principal-amount-on-loans-from-banks-financial-institutions-and-unlisted-debt-securities_45036.html*

Issue I. Whether the Noticee has made delayed disclosure of default on loans in multiple instances to the Stock Exchanges and therefore, violated provisions of Regulations 30(2) and 30(6) read with Clause 6 of Para A of Part A of Schedule III of LODR Regulations and SEBI Circular dated November 21, 2019?

11. It was alleged in the SCN that the Noticee has made delayed disclosure of "defaults on the loans availed by it" to the Stock Exchanges in multiple instances as tabulated below:

Table 3

Sr. No.	Name of Lender	Due date of payment	Date by which disclosure was required to be made	Amt. Due (Rs. in Crs.)	Date of Filing Disclosure	Number of days delay in the disclosure
1	HDFC Bank Ltd.	06.01.22	06.02.22	53.4	07.02.22	1
2	Bank of India	01.03.22	01.04.22	44.46	11.01.23	285
3	Union Bank	09.05.22	09.06.22	11.39	11.01.23	216
4	Aditya Birla Finance Ltd	17.05.22	17.06.22	6.39	11.01.23	208
5	Indian Bank	29.05.22	29.06.22	20.9	11.01.23	196
6	Axis Bank	15.06.22	16.07.22	2.34	11.01.23	179
7	Punjab National Bank	29.06.22	30.07.22	29.97	11.01.23	165
8	State Bank of India	30.06.22	31.07.22	32.27	11.01.23	164
9	South Indian Bank	15.07.22	15.08.22	22.71	11.01.23	149
10	Tata Capital Financial Services Ltd.	08.09.22	09.10.22	21.96	11.01.23	94
11	IDBI Bank	23.11.22	24.12.22	4.89	11.01.23	18

12. In response to the above allegations, the Noticee has, *inter alia*, submitted various grounds as their defense which are discussed in the following paragraphs under different headings for the ease of discussion:

12.1. **Disclosure of default on loan made upon receipt of notice of default from the lenders**

12.1.1. The Noticee in its replies dated June 10, 2024 and June 25, 2024 has, *inter alia*, stated:

"the Company had informed that it had been operating its cash credit/ overdraft accounts with 9 Lenders under a consortium arrangement and had taken Term Loan with 2 institutions namely, Tata Capital Financial Services Ltd and Aditya Birla Finance Ltd. The first default notice was received from HDFC Bank vide its letter dated 3 February 2022 wherein it was informed that our loan from the said bank has been classified as default with effect from 6 January 2022. Immediately on receipt of the said letter dated 3 February 2022, undersigned notified the default with the Stock Exchanges within 4 days of HDFC Bank's letter, on 7 February 2022. Significantly, no notice of default was received by the Company from the other consortium lenders who in the meantime had extended "holding on operations" through a Trust & Retention Account opened with the lead bank namely, Bank of India from July 2022. The Company thereafter upon advice of the Management Auditor, V Singhi & Co, Chartered Accountants, requested each of the consortium lenders and the two Term Lenders to issue their respective default notice and the last default notice was received by the Company from IDBI Bank vide its letter dated 9 December 2022, and thereafter the Company vide its one single letter dated 11 January 2023 disclosed the default in payment of interest on loan vis-a-vis each of the remaining consortium lenders and the two Term Loan lenders to the Stock Exchanges vide its letter dated 11January 2023. The default in such disclosure, assuming the same to be applicable from the date of default and not from the date of receipt of intimation of default from the lender, however, ceased on and from the date of the said disclosure admittedly made on 11 January 2023.

It is submitted that pursuant to the default of TIL Limited towards the account maintained by HDFC Bank, the consortium of lenders placed embargo on the banking *account of TIL Limited and by June 2022 the was being controlled and operated by the consortium lenders under Trust and Retention Account. Admittedly, TIL Limited did not have any control in operating the Trust and Retention Account and loan account were being serviced by the lenders themselves out of the said Trust and Retention Account and the Company was not made privy to any information pertaining to default committed vis a vis the individual lenders. It was only in the month of December 2022 when the auditor of TIL Limited advised the Company to seek information on defaults from various lenders that TIL Limited called upon each of the remaining lenders to intimate the default in the loan obligation and upon receipt of the individual letters of default from the remaining lenders, TIL Limited issued a letter dated 11 January 2023 to the Stock Exchanges informing date of default vis a vis each of the remaining lenders.*

It is submitted that TIL Limited has all along acted bona fide and took prompt measures to rectify the alleged contravention under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the SEBI Circular dated 21 November 2019."

12.1.2. In regard to submission of the Noticee that it had made disclosure on receipt of default notice from the lender, I note that the SEBI Circular dated November 21, 2019, *inter alia*, states as under:
"To begin with, listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks / financial institutions which continues beyond 30 days. ***Such disclosure shall be made promptly, but not later than 24 hours from the 30th day of such default.****"* ***(Emphasis supplied)***

12.1.3. In view of the above, it is noted that law requires disclosure of default to be made immediately but not later than 24 hours from the 30th day of such default. Therefore, the trigger point for disclosure is when a default is committed by the Noticee and not the receipt of default notice from the lenders. Moreover, the term "default" has also been clearly defined in SEBI Circular dated November 21, 2019. Any Company would be aware of the loans availed by it and also about the schedule of servicing of financial obligations on that loans. So, if any, default happens, then the Company would also be aware of that. Therefore, the Noticee would have been aware about the actual date of default. As a listed Company, the Noticee would also be aware of the disclosure obligations related to defaults. The Noticee being a listed entity is duty-bound and responsible to comply with the applicable securities law. Therefore, it is surprising to note from its submissions that the Noticee had taken efforts to get default notice from its lenders only after being advised by its auditors in December'2022 while the actual defaults occurred much prior to December'2022 (Lender wise actual date of defaults mentioned in Table 1). I further note that even after obtaining the default notice, the Noticee has not acted promptly since the disclosure for the default of loans was made collectively on January 11, 2023 while as submitted by the Noticee, it has received the last default notice vide letter dated December 09, 2022.

12.1.4. In view of the above, the submission of the Noticee in this regard cannot be accepted.

12.2. **No delay in disclosure of default of loan facility availing from HDFC Bank**

12.2.1. The Noticee in its reply dated June 25, 2024 has, *inter alia*, stated:

"The Company has all along acted bona fide and diligently in disclosing default on its loan obligations, as may also be seen from the Table set out at Page No 3 of the show cause notice. The reporting of default on meeting its loan obligations was made upon receipt of the notice of default from the lenders. The notice of default vis-a-vis the first entry being loan facility from HDFC Bank was reported on 7th February 2022 forthwith upon receipt of notice of default dated 3rd February 2022 from HDFC Bank. Even otherwise, the default which took place on 6th January 2022 having been disclosed on 7th February 2022 there has been no delay taking into account the additional 24 hours' time available for disclosure upon expiry of 30 days from the date of default."

12.2.2. In this regard, it is noted that the actual date of default on the loan facility availed from HDFC Bank as submitted by the Noticee was January 06, 2022. Therefore, the 30th day of default was February 05, 2022 and the disclosure was to be made within 24 hours from 30th day of default i.e. February 06, 2024. However, the Noticee had disclosed the same on February 07, 2022. Hence, there was a delay of one day in disclosing the default of loan facility availed from HDFC Bank and the same was alleged in the SCN. Hence, the above submission of the Noticee in this regard that there was no delay in disclosure related to loan facility availed from HDFC Bank cannot be accepted.

12.3. **Loan accounts have been settled and repaid as on date**

12.3.1. The Noticee in its replies dated June 10, 2024 and June 25, 2024 has, *inter alia*, stated:

"Significantly, each such default has since been cured and the Company, pursuant to restructuring of its debt with each of the aforesaid lenders, has made one-time settlement with each of the lenders and has now paid in full the entire settlement amount to each of its said eleven lenders (9 consortium lenders and 2 Term Lenders) between December 2023 to January, 2024.

The Company since the onset of Covid has been facing cash crunch and was unable to meet its payment obligations including payment of regular wages and salaries to its workmen and employees. The Company started looking for infusion of funds for its revival for which the then promoters were ready and willing to hand over control of the Company to the investor. The Company's management has since changed hands, and the Company is now in control of Gainwell Group led by Mr Sunil Chaturvedi who has since joined the Board of Directors of the Company with effect from 24 January, 2024. We are happy to inform you that the Company has since regularized its said default and has settled and paid off the loan of each of the said nine consortium lenders and the two Term Loan lenders. No due certificate from each such lender is attached hereto and marked "Annexure-A collectively".

The period during which the default is alleged to have occurred has been the most turbulent times vitally affected by covid19 when the Company could not even meet payment obligations on its salaries and wages, and the entire focus and energy was diverted to infusing of funds into the Company and to cut down its losses. The Company has since been able to rope in a new investor who has since taken control of the Company from its earlier management and the loan account too have since been settled and repaid and as on date, there is no default on loans."

12.3.2. In this regard, I note from the submission of the Noticee that the loans have been serviced by the Noticee after the loans were defaulted. However, subsequent servicing of loan in future does not exempt the Noticee from the requirement of disclosure within the stipulated time when the loans were defaulted. Hence, the submission of the Noticee in this regard cannot be accepted.

12.4. **Delay in initiation of present proceedings**

12.4.1. The Noticee in its reply dated June 10, 2024 has, *inter alia*, stated:

"Inasmuch as the alleged default is admittedly disclosed on 11 January 2023 and having not continued thereafter, the instant proceeding upon expiry of six months from the date of the alleged default is barred by limitation under the provisions of Section 468 of the Code of Criminal Procedure, 1973 as the period of limitation is six months where the offence is punishable with fine only.

It is the admitted position that due disclosure of the default, albeit with delay, was made on 11 January 2023. Therefore, proceedings for the default where the penalty prescribed is fine only cannot be initiated after expiry of six months from the date when the default had ceased, that is to say on or after 11 July 2023.

Accordingly, the communique dated 16 May 2024 appointing you as the Adjudicating Officer after the period of said limitation cannot be acted upon on the ground of limitation."

12.4.2. In this regard, I would like to refer to the order of the Hon'ble Bombay High Court in the matter of *SEBI Vs Cabot International Capital Corporation (Appeal No. 7 of 2001 in SEBI Appeal No. 24 of 2000)* wherein Hon'ble Bombay High Court, *inter alia* held that:

"31. The adjudication for imposing penalty by Adjudicating Officer, after due inquiry, is neither a criminal nor a quasi-criminal proceeding. The penalty leviable under this Chapter or under these Sections is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the Regulations, there is no element of any criminal offence or punishment as contemplated under criminal proceedings."

12.4.3. From the aforesaid, it can be noted that the present adjudication proceedings are neither a criminal nor a quasi-criminal proceeding. Hence, the reliance of the Noticee on Code of Criminal Procedure, 1973 in the present proceedings is misplaced.

12.4.4. I further note that the Noticee in its reply dated June 25, 2024 has, *inter alia*, stated:

"There is also no explanation for the delay inasmuch as the disclosure had been made fully on 11th January 2023 but the show cause notice for the alleged delay was issued after over one year on 17th May, 2024. Such delay of over one year vitally affects the entire proceeding which has been initiated for alleged delay of only certain days in disclosing default on loan obligations by the Company, as any proceeding for delay ought to be taken out within a reasonable period."

12.4.5. In this regard, it is pertinent to refer to observations of the Hon'ble SAT in the matter of *Metex Marketing Pvt. Ltd. Vs SEBI (Appeal No. 95 of 2016)*, wherein Hon'ble SAT, *inter alia*, held that:

"23. It is no doubt true that no period of limitation is prescribed in the SEBI's Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine

Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695.

24. This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."

12.4.6. I further find that the examination on "delayed disclosure of multiple defaults on loans" pertain to the period February 2022 to January 2023. Examination was carried out in the instant case wherein correspondences were exchanged between the Noticee, SEBI and the Stock Exchanges during 2023-24. The Examination was completed in February'2024. Thereafter, SEBI recommended adjudication proceedings in the matter. The undersigned was appointed AO in the matter vide communique dated May 16, 2024 and SCN was issued on May 17, 2024. Therefore, in light of the above chronology, the submission of the Noticee in this regard cannot be accepted.

12.5. **Applicability of provisions alleged to be violated**

12.5.1. The Noticee in its reply dated June 25, 2024 has, *inter alia*, further stated:

"The instant proceeding instituted against TIL Limited for purported violation of Regulation 30(2) and Regulation 30(6) read with Clause 6 of Part A Para A of Schedule Ill of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 is to adjudge the alleged contravention committed by TIL Limited under Section 15A(b) of the SEBI Act, 1992. The said Clause 6 as on the date of the disclosure by TIL Limited on 11 January 2023 read as follows:-

"Frauds/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter."

The aforesaid reference under the said Clause 6 of Part A Para A did not make reference to default on loans, and through a circular bearing Ref No SEBI/HO/CFD/CMD1/CIR/P/2019-140 dated 21 November 2019 that the term "default" was sought to be defined and explained to bridge the critical gap pertaining to the definition of "default" in the said Regulation. Even the show cause notice relies upon the aforesaid circular to substantiate allegation of default as against TIL Limited.

Most significantly, the aforesaid Clause 6 has since been amended on and from 15th July 2023 to include the definition of "default" in line with the said SEBI Circular dated 21 November 2019 which has since been made part of the said Clause 6 and is now part of the SEBI regulation itself which as on the date of disclosure albeit with delay, it was not.

It is accordingly submitted that inasmuch as Section 15A of the SEBI Act, 1992 is applicable only if a person or an entity violates any provision of the Act or any rules *or regulations made therein and since as on the date of disclosure made on 11th January 2023, Clause 6 of Part A Para A of Schedule Ill of the SEBI LODR Regulation did not include the reference to default on loans to banks and financial institutions which as on date was only a part of the SEBI circular and was included in the said Clause 6 only subsequently on and from 15th July 2023, the said Section l5A ought not to be invoked in the instant case for alleged violation of the SEBI circular. The circular issued by SEBI even though binding is neither a rule nor a regulation made under the SEBI Act, 1992.*

This fine distinction between violation of SEBI regulation and SEBI circular becomes important especially when it comes to determination of penalty and its quantum.

6. It is a matter of record that the contravention, if any, as alleged in the show cause notice dated 17 May 2024 were cured by TIL Limited vide its letter dated 11 January 2023. As of 11 January 2023, the amendments carried out in the aforesaid schedule were not applicable. In view whereof, any purported default committed TIL Limited on account of non-payment of interest and/or loans and/or dues does not and cannot be construed as an event of default under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 prior to 15 July 2023"

12.5.2. In regard to submission of the Noticee that the term "default" has not been defined in the LODR Regulations during the period of default, I note that the SCN alleged the violation of Regulations 30(2) and 30(6) of the LODR Regulations read with Clause 6 of Para A of Part A of Schedule III of LODR Regulations and SEBI Circular dated November 21, 2019. I further note that the term "default" has been explained in SEBI Circular dated November 21, 2019 which, *inter alia*, states as under:

'Default' for the purpose of this circular shall mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable ('pre-agreed payment date').

Provided that for revolving facilities like cash credit, an entity would be considered to be in 'default' if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.

12.5.3. I further note that the SEBI Circular dated November 21, 2019 was issued under Section 11(1) of the SEBI Act and Regulation 101 of LODR Regulations which states as under:

"Power to remove difficulties.

101. *(1) In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications through guidance notes or circulars after recording reasons in writing."*

12.5.4. From the perusal of the aforesaid provisions, I find that the SEBI Circular dated November 21, 2019 expound the requisite of the LODR Regulations. The mandate of SEBI Circular dated November 21, 2019 is inter related with the provisions of the LODR Regulations alleged to be violated. Even the said circular has reference to the provisions of the LODR Regulations. Clause 1 of the SEBI Circular dated November 21, 2019, *inter alia*, states that, *"SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations") currently require disclosure of material events/information by listed entities to stock exchanges."* Hence, violation of this Circular amounts to the violation of provisions of the LODR Regulations also.

12.5.5. As discussed in aforesaid paragraphs, the term "default" was defined in SEBI Circular dated November 21, 2019 which was in force during the period of default and the alleged violation of the provisions of LODR Regulations has to be read with SEBI Circular dated November 21, 2019.

12.5.6. In regard to submissions of the Noticee regarding applicability of Section 15A(b) of the SEBI Act for the violation of SEBI Circular dated November 21, 2019, I note that the violations alleged in the present proceedings are Regulations 30(2) and 30(6) of the LODR Regulations read with Clause 6 of Para A of Part A of Schedule III of LODR Regulations and SEBI Circular dated November 21, 2019. Hence, the adjudication proceedings have been initiated against the Noticee for the violation of provisions of LODR Regulations read with SEBI Circular dated November 21, 2019. Further, as discussed above, the provisions of SEBI Circular dated November 21, 2019 is inter related with the provisions of the LODR Regulations alleged to be violated and violation of the Circular amounts to violation of provisions of LODR Regulations. The alleged violations pertain to the period January'2022 to November'2022 which is much after the date of the Circular i.e. November 21, 2019 and therefore, the Noticee was very much aware of the Circular, its contents and the obligations it casts on the Noticee.

12.6. **Copy of order mentioned in the communique**

12.6.1. The Noticee in its reply dated June 10, 2024 has, *inter alia*, stated:

"It appears from the Show Cause Notice that you have been appointed as the Adjudicating Officer vide a communique dated 16 May 2024 which is Annexure-1 to the Show Cause Notice, and from the reading of the said communique, it is noted that you have been appointed as the Adjudicating Officer vide an order dated 2 April 2024 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 for the alleged violations by our Company. No copy of the said order dated 2 April 2024 has been provided with the Show Cause Notice and we forthwith request your good self for a copy of the said order dated 2 April 2024.

We have, however, been provided with a copy of the Examination Report dated 29 February 2024 as also copy each of certain emails exchanged by and between our Company and the Stock Exchange."

12.6.2. In this regard, I note that all the documents relevant and relied upon in the present proceedings were provided along with SCN including a copy of communique dated May 16, 2024 appointing AO. The "order dated April 02, 2024" mentioned in the communique which the Noticee referred in its submission is internal communication.

The communique dated May 16, 2024 appointing undersigned as AO in the present proceedings was provided to the Noticee along with the SCN. All the relevant and relied upon documents were provided to the Noticee.

12.6.3. In this context, I would also like to refer to the order of Hon'ble SAT in the matter of *Madhyam Agrivet Industries Ltd. vs SEBI (Appeal No. 258 of 2024)*, in which Hon'ble SAT stated that:

"It is held herein that it is sufficient to disclose materials relied upon for issuance of show cause notice."

12.6.4. Therefore, I find no merit in this contention of the Noticee.

<u>Findings on Issue I</u>

12.7. In view of the discussions in the preceding paragraphs, I note that no justifiable reason has been brought on record by the Noticee with regard to the violations alleged in the SCN. As noted from previous paragraphs, it is rather an undisputed fact that the Noticee has made delayed disclosure of default on loans in 11 instances to the Stock Exchanges. Disclosures requirements envisaged under securities law are sacrosanct. Disclosures enable the investors to take an informed decision regarding their investments. Noticee being a listed entity should have taken disclosure requirements very seriously and should have ensured that the required disclosures were made within the specified timelines. I further note that the Noticee in its replies dated June 10, 2024 and June 25, 2024 has, *inter alia*, stated as under:

"*We most respectfully state and submit that there has been no gain or unfair advantage, disproportionate or otherwise, as a result of the alleged default.*

No loss has been shown to have been caused to any investors or group of investors as a result of the alleged default; and the alleged default is one time only and is not repetitive.

We have all along acted bona fide and in good faith, and there is no allegation whatsoever of any undue gain or advantage having been made or derived either by the Company or any of its officers.

TIL Limited further submits that while adjudging penalty under the SEBI Act, 1992, it is mandatory to take into consideration factors enumerated under Section 15 J of the SEBI Act, 1992. It is submitted that none of the factors are applicable to this instant case and there is no evidence to demonstrate the applicability of any of such factors. In view whereof, it is submitted that no penalty ought to be imposed upon TIL Limited. The allegation of non-disclosure on loan default is made for the first time and there is no instance of non-compliance prior to the instant show cause notice."

12.8. In this regard, I would like to refer to the order of Hon'ble SAT in the matter of *Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014)*, in which Hon'ble SAT stated that:

"………. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."

12.9. In this context, I would also like to refer to the order of Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014)*, in which Hon'ble SAT stated that:

"Similarly, the contention of the appellants that the lapses / delay in compliance with the disclosures norms were due to inadvertence or they were unintentional, therefore, cannot be accepted. Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can

take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."

12.10. In view of the above, it is established that the Noticee has violated the provisions of Regulations 30(2) and 30(6) of LODR Regulations read with Clause 6 of Para A of Part A of Schedule III of LODR Regulations and SEBI Circular dated November 21, 2019.

Issue II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act?

13. As it has been established that the Noticee has violated the provisions of law as alleged in the SCN, the Noticee is liable for payment of a monetary penalty in terms of Section 15A(b) of the SEBI Act.

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

15. The text of the above said Section 15A(b) of the SEBI Act is reproduced below:
"Penalty for failure to furnish information, return, etc.
15A. *If any person, who is required under this Act or any rules or regulations made thereunder, —*

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

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

16. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.”

Factors Considered While Imposing Penalty

17. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticee. I take note of the fact that SEBI had previously imposed monetary penalty on the Noticee for the violation of the provisions of LODR Regulations and SEBI (Prohibition of Fraudulent

and Unfair Trade Practices relating to Securities Market) Regulations, 2003 vide Order dated May 30, 2024.

18. I note that disclosures in respect of material information in a timely manner has been made mandatory for the protection of the investors so as to empower them to take informed investment decisions. The objective behind such requirement is that the investors shall not be deprived of any vital information pertaining to the Company in which they have invested. Defaults on loans by a listed entity is a deemed material event by virtue of Clause 6 of Para A of Part A of Schedule III of the LODR Regulations. In the instant case, it is an undisputed fact that the Noticee had defaulted in servicing of 11 loans. It is also an undisputed fact that the Noticee had made a delay of over 200 days in three instances, between 100 to 200 days in five instances and a delay of 94 days and 18 days in two instances while disclosing the defaults on loans to the Stock Exchanges. In case of one instance, the delay was of one day. Hence, it is noted that the Noticee has repetitively failed to make disclosures of "defaults on loans" within the stipulated time and have violated the relevant provisions of LODR Regulations and SEBI Circular. When the law prescribes a timelines then the same have to be followed scrupulously.

19. The Noticee being a listed entity is expected to take statutory compliances very seriously and to carry out its obligations with skill, care and diligence. However, in the instant case, there are 11 instances in which the disclosures were not made within the stipulated time period. These lapses on part of the Noticee cannot be viewed as an inadvertent omission. Such lapses therefore need to be viewed seriously.

20. The aforementioned factors have been taken into consideration while adjudging the penalty.

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty on the Noticee as given in the table below**:**

Table 3

Penal Provision	**Penalty Amount**
Section 15A(b) of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakhs Only)

22. I am of the view that the said penalty is commensurate with the lapses/omissions on part of the Noticee.

23. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

24. 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 SEBI.

Date: June 28, 2024 **N HARIHARAN**

Place: Mumbai **CHIEF GENERAL MANAGER**

AND ADJUDICATING OFFICER