BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/VV/PSS/2023-24/29281

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

In respect of
Selene Estate Limited
(AAKCS1106N)

In the matter of
Selene Estate Limited

A. BACKGROUND

1. Selene Estate Limited (**"Noticee"/"SEL"/"Company"**) was incorporated on July 19, 2006 and it is registered with RoC-Chennai. The registered office of the Company is at New No.63, GN Chetty Road, T Nagar Chennai TN 600017. The equity shares of the company are not listed. The debt securities of the company are listed at debt segment of Bombay Stock Exchange ("**BSE**").

2. Securities and Exchange Board of India ("**SEBI**") had received emails and letters dated November 01, 2022, December 01, 2022 and January 03, 2023 from Catalyst Trusteeship Limited ("**CTL**") i.e., the Debenture Trustee ("**DT**") for non-payment of interest and principal by SEL. The debt securities issued by SEL are listed at the debt segment of BSE. In order to examine the compliance status of SEL with LODR Regulations, 2015 and circular w.r.t maintenance of Recovery Expense Fund, matter was examined by seeking compliance related information from the Stock Exchange, Debenture Trustee and the Company. The period of examination has been considered from January 2022 to December 2022.

3. SEBI observed that SEL has 3 ISINs, out of which only one ISIN i.e., INE416P07023 is listed at BSE. Catalyst Trusteeship Limited i.e., the Debenture Trustee (DT), informed that the company has defaulted in its aforesaid listed ISIN. Details of ISIN under examination are provided below :

Table - 1

ISIN	**Issue Size**	**Allotment Date**	**Date of Listing**	**Maturity Date**	**Issue Type**
INE416P07023	INR. 100 Cr.	17-06-2020	03-07-2020	31-03-2027	Private Placement

4. Based on the information received from BSE and CTL, comments were also sought from SEL vide email dated March 09, 2023 (enclosed as Annexure E) to which, SEL, vide its emails dated March 17, 2023 and April 24, 2023 (Collectively marked as Annexure F) submitted its response. Considering the response from Exchange, CTL and the Issuer, SEBI observed the following instances of non-compliance with SEBI Circular and LODR Regulations :

Table - 2

Sl. No.	**Regulation/ Circular**	**Comments from CTL DT/ BSE/ SEL**	**Compliance Status based on information received**
1.	**Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III of SEBI (LODR) Regulations, 2015** Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.	CTL, vide its emails and letters dated November 01, 2022 and December 01, 2022 submitted that SEL defaulted in payment of interest due on October 31, 2022 and November 30, 2022 respectively. Vide its email and letter dated January 03, 2023 CTL has submitted that SEL has also defaulted in repayment of principal which was payable on December 31, 2022. BSE, vide its email dated February 03, 2023 has submitted that no intimation of default was submitted to stock exchange under Regulation 51(1)/ 51(2) of SEBI (LODR) Regulations.	Based on the information provided by CTL and BSE, company has not complied with Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III of SEBI (LODR) Regulations, 2015 **Status – Not Complied**

2.	**Regulation 51 (3) of SEBI (LODR) Regulations, 2015** Disclosure of events/ information on the website of the listed entity	CTL , vide email dated January 27, 2023 informed that no website is maintained by the issuer. It has also informed that as per the last Quarterly compliance report received from Issuer for September 2021, issuer stated that "Website awaiting functionality shortly". Thus, the issuer has not complied with Regulation 51(3) of SEBI (LODR) Regulations, 2015 BSE, vide email dated February 03, 2023 also informed about the non-compliance status of the issuer. Further, SEL vide its email dated March 17, 2023 has not responded to the specific query regarding compliance status with Regulation 51(3) of SEBI (LODR) Regulations, 2015.	Based on the information provided by the CTL and Exchange, the issuer has not disclosed the requisite information at its website. **Status – Not Complied**
3.	**Second Proviso to Regulation 52(1) of SEBI (LODR) Regulations, 2015** Submission of copy of the financial results to CTL within the period prescribed under this regulation	CTL, vide email dated January 27, 2023 informed that the issuer has not submitted the financial results, thus it has not complied with second proviso to Regulation 52(1) of SEBI (LODR) Regulations. SEL, vide its email dated March 17, 2023 has submitted that "Walker Chandiok & Co LLP" the Statutory Auditors of the Company has resigned on 29/03/2022 without completing the half year audit for the Financial Year 2020-21 and the Company	Based on the communication from the CTL and response received from SEL, it (SEL) has not complied with second proviso to Regulation 52(1) of SEBI (LODR) Regulations **Status – Not Complied**

		yet to appoint Statutory Auditor, the delay is since the Debentures Holders (Fund) is involve and they have to approve the appointment of Statutory Auditors of the Company. Hence, could not comply with the relevant regulation.	
4.	**Regulation 54(1) of SEBI (LODR) Regulations, 2015** Maintenance of 100% security cover for secured listed non-convertible securities	CTL, vide its email dated January 27, 2023 has submitted that the issuer has not complied with Regulation 54(1) of the LODR Regulations. SEL, vide its email dated March 17, 2023 has submitted that according to SEBI circular SEBI/HO/MIRSD/MIRSD_CRADT/CIR/P/2022/67 dated May 19, 2022, the security cover certificate required to be certified by the statutory auditors of the company but the company do not have any statutory auditors to provide such certificate. Hence, could not comply with the relevant regulation.	Based on the information provided by CTL and on the basis of response from SEL, issuer has not complied with Regulation 54(1). **Status – Not Complied**
5.	**Regulation 55 of SEBI (LODR) Regulations, 2015** Mandatory review of Credit Rating by the issuer	CTL, vide its email dated January 27, 2023 has submitted that no information is received from Issuer for the same. As per the information available on the website of Credit rating Agency i.e. Infomerics Ratings, CRA has reaffirmed the ratings vide press release dated May 26, 2022 to “IVR B+/Stable (INC) (IVR Single B Plus with Stable Outlook; Issuer Not Cooperating)”.	Based on the submission of CTL, SEL has not complied with Regulation 55. **Status – Not Complied**

		However, ISIN details are not mentioned by the CRA and rating is provided for Proposed NCD Issuance.	
6.	**Regulation 56 of SEBI (LODR) Regulations, 2015** Submission of requisite information/ documents by the issuer to CTL within the timelines prescribed under this regulation	CTL, vide its email dated December 05, 2022 and January 27, 2023 (corr./ page no. 37 & 22-24) has submitted that SEL has not complied with Regulations 56(1)(a), 56(1)(b), 56(1)(c)(i), 56(1)(c)(ii), 56(1)(c)(iv), 56(1)(d), 56(1A) and 56(2) of SEBI (LODR) Regulations. SEL, vide its email dated March 17, 2023 has submitted that We are sending the Interest payment intimation to Trustee as we are intimating to the concern stock exchange (PFA the mails for your reference), Other intimations we could not send as the Company do not have Statutory Auditors.	Based on the submission of CTL and company, SEL has not complied with following sub-regulations Regulation 56 of SEBI (LODR) Regulations: **Regulation 56(1)(a), 56(1)(b), 56(1)(c)(i), 56(1)(c)(ii), 56(1)(c)(iv), 56(1)(d), 56(1A) and 56(2)** **Status – Not complied**
7.	**SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020** Creation and maintenance of Recovery Expense Fund (REF)	DT, vide its email dated January 27, 2023 has informed that no confirmation received from Issuer with respect to creation of Recovery expense fund in spite of several follow ups. SEL, vide its email dated March 17, 2023 has not confirmed the creation and maintenance of REF and submitted that the company will soon update SEBI regarding REF. However, subsequently, no	Based on the information received CTL, Exchange and the company, SEL has not complied with the SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020 **Status- Not Complied**

		confirmation has been received from SEL. BSE, vide its email dated April 21, 2023 (contained in Annexure C) has submitted that the company has not paid Recovery Expense Fund till date.	

5. In view of the above, it was alleged that Selene Estate Limited i.e. the Noticee has violated the following provisions : Table - 3

S. No.	Nature of violations	Violations	Penalisable u/s
1	Failure to disseminate events/ information on the website of the listed entity	Regulation 51(3) of SEBI (LODR) Regulations, 2015	15HB of SEBI Act, 1992
2	Not creation and maintenance of Recovery Expense Fund	SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020	15A(b) of SEBI Act, 1992
3	Non-disclosure of default to Stock Exchange	Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III of SEBI (LODR) Regulations, 2015	
4	Failure to maintain 100% security cover for secured listed non-convertible securities	Regulation 54(1) of SEBI (LODR) Regulations, 2015	
5	Failure to submit the copy of the financial results to DT within the period prescribed under this regulation	Second proviso to Regulation 52(1) of SEBI (LODR) Regulations, 2015	
6	Failure w.r.t mandatory review of Credit Rating by the issuer	Regulation 55 of SEBI (LODR) Regulations, 2015	
7	Failure to submit the information/ documents to the Debenture Trustee	Regulation 56(1)(a), 56(1)(b), 56(1)(c)(i), 56(1)(c)(ii), 56(1)(c)(iv), 56(1)(d), 56(1A) and 56(2) of SEBI (LODR) Regulations, 2015	

B. APPOINTMENT OF ADJUDICATING OFFICER

6. The Undersigned was appointed as Adjudicating Officer **(AO)** vide order dated May 26, 2023, to inquire into and adjudge under Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('**Adjudication Rules**') r/w Section 19 of the SEBI Act to inquire into and adjudge under section 15A(b) and 15HB of the SEBI Act for the alleged violation of provisions as mentioned in table 3 above.

C. SHOW CAUSE NOTICE AND HEARING

7. Show Cause Notice dated June 23, 2023 ("**SCN**") was duly served upon the Noticee under Rule 4(1) of the SEBI Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under the provisions of section 15A(b) and 15HB of SEBI Act for the violation of provisions as mentioned in table 3. SCN was successfully served upon the Noticee by SPAD and email.

8. Vide letter dated July 20, 2023, Noticees filed a reply to the SCN. Opportunity of hearing was provided to the Noticee on July 27, 2023. The Authorized Representative appeared before the Undersigned via video-conferencing and made submissions on behalf of the Noticee. Noticee submitted written submissions vide letter dated August 03, 2023. Vide letter dated August 16, 2023, additional submissions were filed by the Noticee. Further, vide email dated August 19, 2023, a copy of Annual Report was also submitted by the Noticee.

D. REPLY/SUBMISSIONS OF THE NOTICEE

9. The submissions made by the Noticee vide its reply, written submissions and additional submissions are summarized as under:-

<u>Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information</u>

a) It is submitted that there was a minor delay in making the payment of interest, which was due on October 31, 2022, and November 30, 2022. With respect to the late payment of interest due in October 2022, it is submitted that the same was delayed due to a transactional delay in receipt of funds from a client against sale of land in the escrow account. Further, with respect to the default in payment of interest for November 2022, there was a slight delay in the payment. However, the same was promptly intimated to BSE in accordance with Regulation 51(1) and 51(2) of the LODR Regulations. Therefore, for the month of November 2022, there was no violation of the LODR Regulations. It is further submitted that the interest amounts due and payable in October 2022 and November 2022, were collectively paid in December 2022. No amounts are outstanding as on date, and the Company has duly complied with the requirements.

b) It is hereby submitted that the principal amount payable was Rs. 5,70,00,000/- (Rupees Five Crores Seventy Lakhs Only). A perusal of the bank statements for the period from April 1, 2022, to March 31, 2023, clearly demonstrates that the principal amount was paid on December 31. Since there was no default/ delay in payment of the principal amount, the question of disclosure under Regulation 51(1) and 51(2) of the LODR Regulations does not arise at all.

Disclosure of events/ information on the website of the listed entity

c) The Show Cause Notice has alleged that the Company has failed to maintain its website, consequently leading to the absence of crucial information pertaining to the Company on the website. In this regard, it is fairly submitted that this incident was due to a procedural delay. Prompt steps were taken to rectify the issue, and the Company has a fully functional website, with all the relevant information being disclosed on the website. The website, which was not functioning due to certain technical glitches and issues, has been restored to full functionality. It is imperative to point out that the Company website comprehensively incorporates all the requisite information as prescribed by the LODR Regulations. In this regard it is submitted that there is no violation of Regulation 51(3) of the LODR Regulations, and the same was rectified by the Company even prior to the issuance of the Show Cause Notice. Presently, the website is fully functional. The URL is provided here for ready reference: http://www.seleneestate.com/.

Submission of copy of the financial results to CTL within the period prescribed under regulation 52(1)

d) The SCN further alleges that the Company has violated Regulation 52(1) of the LODR Regulations, on account of non-submission of financial results for the Financial Year ended March 31, 2021. It is submitted that the Company had encountered certain difficulties in submitting its financial results for the financial year ended March 31, 2021, as the appointed Statutory Auditors, namely 'Walker Chandiok & Co LLP' resigned on March 29, 2022, before completing the audit for the Financial Year 2020 – 21. Despite attempting to appoint a statutory auditor in a prompt manner, there was a delay due to the non-cooperation of Debenture Holders, as they were required to approve/ ratify the appointment of the Statutory Auditors of the Company. Presently, the Noticee has appointed new statutory auditors, and the financial results for the year ended March 31, 2021, have been filed with the BSE, in compliance with Regulation 52(1) of the LODR Regulations. The same is uploaded on the exchange website as well.

Maintenance of 100% security cover for secured listed non-convertible securities

e) As per the SEBI Circular dated May 19, 2022, a security cover certificate was mandated to be provided by the statutory auditors. It is submitted that the Company always maintained 100% security cover in accordance with the provisions of law. However, due to the absence of a statutory auditor of the Company at that time, the certificate could not be furnished, as the same is required to be verified and signed by the statutory auditor. It is submitted that the security cover certificate shall be duly submitted along with the financial results for the financial year ending March 31, 2021.

Mandatory review of Credit Rating by the issuer

f) In this regard, it is humbly submitted that all the requisite information has already been submitted to the credit rating agency. The observation that the Company has not been co-operating with the credit rating agency is misplaced and unfounded. The Company has cooperated fully with the credit rating agency and has submitted all the necessary information from time to time. However, the audited financials for the financial year ended March 31, 2021, was also requested by the credit rating agency, in order to review the yearly credit rating. Unfortunately, as submitted hereinabove, the Company was unable to file its audit financials on time due to the hurdles in appointing a new statutory auditor. Since the financial results have now been filed with the Company, the CRA shall shortly complete the review of the credit rating and shall accordingly submit the same. The Noticee has submitted the financial results to the CRA for completion of review.

Submission of requisite information/ documents by the issuer to CTL within the timelines prescribed under regulation 56

g) Regulation 56(1)(a): The annual report is being prepared and shall be issued shortly. The Noticee is actively working towards the same. Copy of auditor's certificate from the Noticee's auditors in respect of utilization of funds is not applicable since as on date the fund has been utilized fully.

   Regulation 56(1)(b): The provision is not applicable to the Noticee as no such instance has occurred. It is humbly submitted that the allegation of violation is misplaced.

   Regulation 56(1)(c)(i): This provision relates to intimation regarding any revision in the rating of the Noticee. The Noticee humbly submits that there has been no revision in the rating and therefore the provision is not applicable, and the allegation of violation is misplaced.

   Regulation 56(1)(c)(ii): This provision relates to intimation to debenture trustee with respect to default in timely payment of interest or redemption in respect of non-convertible debt securities. Admittedly, there was a slight delay in the payment of interest due on October 31, 2022, and November 30, 2022. While the debenture trustee was not intimated due to a procedural lapse, the interest amounts due have been duly paid in December 2022, and further, the principal amounts due on December 31, 2022 have also been paid on a timely basis. It is humbly submitted that there are no dues of interest or principal as on date.

Regulation 56(1)(c)(iv): This provision relates to intimation of all covenants of the issue. In this regard, the submissions made hereinabove are reiterated.

Regulation 56(1)(d): This provision relates to intimation of the security cover certificate. The Noticee humbly submits that the same is in the process of being prepared, and the Noticee shall share the same shortly. The delay in the submission of the security cover certificate has occurred as the previous statutory auditor had resigned. The same shall now be prepared and issued. The Noticee is actively working towards resolving this issue. It is reiterated that 100% security cover has been maintained at all times.

Regulation 56(1A): All material information is being sent to the debenture trustee (except in the instances for delay in interest payment due on October 31, 2022 and November 30, 2022). It is submitted that all the interest payments, after November 2022, have been made timely, and there has been no delay in the same. Further, the financial results for the year ended March 31, 2021, have also been shared with the debenture trustee.

Regulation 56(2): This provision states that the Noticee shall provide all such information to the debenture trustee, as sought by the trustee from time to time, and provide access to the books of accounts, as required by the trustee. In this regard, it is humbly submitted that no such request for information or access to books of accounts has been made by the debenture trustee. Therefore, it is humbly submitted that the provision is not application, and the allegation of violation is misplaced.

<u>Non-creation and maintenance of Recovery Expense Fund (REF)</u>

h) It is submitted that the Company has not created and maintained the Recovery Expense Fund (“REF”). Further, it is submitted that on June 6, 2023, Deloitte, the Project Monitoring Agency, on behalf of the Company, addressed an email to the Debenture Holder, requesting disbursement from the Debt Service Reserve Account (“DSRA”) towards annual listing fees and creation of Recovery Expense Fund. However, the request for disbursement was not acceded to, on account of this, the REF could not be created.

<u>Other submissions</u>

i) It is submitted that the violations alleged in the Show Cause Notice are instances of technical / procedural lapses on the part of the Noticee. It is humbly submitted that there was no intention of violation, nor has any benefit accrued to the Noticee on account of such lapses. Further, it is submitted that there has been no harm or loss caused to any debenture holder/ any person or entity on account of the procedural lapses alleged in the Show Cause Notice. Further, the Noticee has actively worked towards curing every breach, and to ensure compliance with the LODR Regulations. In this regard, Noticee relies on the judgment of the Hon'ble Supreme Court ("**SC**") in the matter of *Hindustan Steel Ltd. vs. State of Orissa (AIR 1970 SC 253),* order of the Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Samrat Holdings Limited vs. Securities and Exchange Board of India (Appeal No. 23 of 2000), Bharjatiya Steel Industries vs. Commissioner, Sales Tax, U.P [(2008) 11 SCC 617].*

j) It is submitted that due to the resignation of the previous statutory auditor on March 29, 2022, the financial results for the year ended March 31, 2021 could not be completed and submitted on time. Thereafter, the Noticee was actively engaged in appointing a new statutory auditor. The new statutory auditors were appointed on April 25, 2023, and the appointment was ratified by the board and debenture holders. Due to the non-availability of statutory auditors, there was a delay in submitting the financial results and a consequentially several violations under the LODR Regulations were triggered. It is humbly submitted that all such violations arose from the same cause of action and were triggered due to one violation. In this regard, Noticee relies on the judgment of the Hon'ble SAT in the matter of *Vitro Commodities Private Limited vs. SEBI (Appeal No. 118 of 2013)* to aver that if there is one violation, and that violation has the effect of triggering another violation, there is no requirement for imposing penalty on the second/ subsequent violations. In view of the above it is respectfully submitted, that if the Ld. AO is not inclined to dispose of the present Show Cause Notice without a monetary penalty, then the violation of Regulations 52(1), 54(1), 55 and 56, be treated as one violation, as the same were triggered due to one particular instance of delay in filing the financial results.

E. ISSUES

10. I have carefully perused the allegations levelled against the Noticee in the SCN, The following issues arise in the matter: -

    i) Whether the Noticee has violated the provisions as alleged in table 2 of this order.

    ii) If the answer to Issue No.(i) is in affirmative, do the violations, if any on the part of the Noticee would attract monetary penalty?

    iii) If the answer to Issue No.(ii) is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticees?

F. CONSIDERATION AND FINDINGS

<u>Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information</u>

11. It is alleged in the SCN that Noticee defaulted in payment of interest due on 31-10-2022 and 30-11-2022. Further, it is alleged that Noticee defaulted in repayment of principal which was payable on 31-12-2022. In view of the same, it is alleged that Noticee failed in making disclosure of the aforesaid defaults to the Exchange under Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III of LODR Regulations**.**

12. In this regard, Noticee has admitted the non-disclosure of default so far as it relates to default in payment of interest due on 31-10-2022. Further, with respect to non-payment of interest due on 30-11-2022, Noticee has submitted that though there was default in making payment of interest due on 30-11-2022, the same was promptly intimated to BSE by the Noticee. In this relation, notice has also submitted copies of the certificate dated December 1, 2022 and the acknowledgement received from BSE. I have perused the certificate and acknowledgement received from the Noticee. In this regard, I have also verified the said certificate from the website of the BSE ("**Exchange**"). I note that the fact of non-payment of interest due on 30-11-2022 has been intimated to the

Exchange on 01-12-2022 under regulation 57(1) LODR Regulations as applicable then, which read as under :-

> ***"57. (1)*** *The listed entity shall submit a certificate to the stock exchange within one working day of the interest or dividend or principal becoming due regarding status of payment in case of non-convertible securities.****"***

13. Although, the dislosure in question has been made under Regulation 57(1), the same covers the disclosure as required under Regulation 51(1) an 51(2) of LODR Regulations. In view of the above, I note that there is no violation of Regulation 51(1) and 51(2) read with clause A (1) of Part B of Schedule-III of LODR Regulations so far as it relates to disclosure of non-payment of interest due on 30-11-2022.

14. With regard to payment of principal due on 31-12-2022, Noticee has submitted that the principal amount payable on 31-12-2022 was paid on December 31, 2022 and that, since there was no default/delay in payment of the principal amount, the question of disclosure under Regulation 51(1) and 51(2) of the LODR Regulations does not arise. In support of its contention, Noticee has submitted its bank statements for the period from April 1, 2022, to March 31, 2023. Noticee has also submitted that interest amount for the month of October 2022 and November 2022 have also been paid on December 31, 2022.

15. I have perused the bank statement submitted by the Noticee and I note that debit entry of Rs.59,35,69,457/- is available. Vide email dated September 9, 2023, Noticee provided breakup of the said debit entry. Vide email dated September 11, 2023, clarification was sought from the Debenture Trustee Catalyst Trusteeship Limited ("**CTL**") with regard to the submission of the Noticee that principal amount was paid on 31-12-2022. A copy of the bank statement as provided by the Noticee and breakup of the debit entry of Rs.59,35,69,457/- was also provided to CTL. Vide email dated September 12, 2023, CTL confirmed that SEL has made payment of principal amount which was due on 31-12-2022. Since, the Noticee had made payment of principal due on 31-12-2022 without delay, there was no need to make any disclosure under Regulation 51 of LODR Regulations. In view of the above, I note that there is no violation of Regulation

51(1) and 51(2) read with clause A (1) of Part B of Schedule-III of LODR Regulations so far as it relates to payment of principal due on 31-12-2022.

16. Since, there was default in payment of interest due on 31-10-2022 and Noticee has admitted non-disclosure of non-payment of interest due on 31-10-2022, I hold that Noticee has violated provisions of Regulation 51(1) and 51(2) read with clause A (1) of Part B of Schedule-III of LODR Regulations.

Disclosure of events/ information on the website of the listed entity

17. It is alleged in the SCN that vide email dated January 27, 2023 CTL has infomed that Noticee has not maintained a website and that as a result of which Noticee has not disclosed the requisite information at its website thereby violating Regulation 51(3) of LODR Regulations.

18. In its reply, Noticee has admitted that its website was not functional due to some procedural delay and technical glitches. Noticee further submits that it has a fully functional website now and that the website had become functional before issuance of SCN.

19. In this regard, I find it appropriate to reproduce Regulation 51(3) of LODR Regulations as under :

> "*51(3) The listed entity shall disclose on its website, all such events or information which have been disclosed to the stock exchange(s) under this regulation and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.*"

20. As per the said regulation, Noticee was required to disclose on its website parallely, all such events or information which it has disclosed to the Exchange. I also note from the SCN that the Noticee had not submitted any specific reply to the query of SEBI with regard to the website. Further, Noticee has admitted that its website was not functional for a certain period. I note even if Noticee discloses the events/information on its website, the non-functioning of its website defeats the whole purpose of the said disclosures as the same do not remain accessible to the public. In view of the same, I hold that Noticee has violated Regulation 51(3) of LODR Regulations.

<u>Submission of copy of the financial results to CTL within the period prescribed under regulation 52(1)</u>

21. It is alleged in the SCN that the Noticee has violated second proviso to Regulation 52(1) of the LODR Regulations, on account of non-submission of financial results to CTL. I note that in accordance with Regulation 52(1), Noticee was required to submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis within 45 days from the end of the quarter to the recognised stock exchange and within 60 days from the end of the last quarter. As per second proviso to Regulation 52(1), Noticee was also required to submit the same financials to the Debenture Trustee on the same day.

22. In this connection, Noticee has submitted that it could not submit the financials due to resignation of the statutory auditor on March 29, 2022. Noticee further states that that the new statutory auditors were appointed on April 25, 2023 and the financial results for the year ended March 31, 2021, have been filed with the BSE, in compliance with Regulation 52(1) of the LODR Regulations.

23. I note that Noticee has admitted the non-submission of financials. Noticee has failed to submit the financials within the prescribed timeline as mentioned in Regulation 52(1). Noticee has also submitted that there was delay in appointing auditors due to non-cooperation of Debenture Holders. I note that Noticee has not mentioned specifically about the nature of non-cooperation by Debenture Holders as to the hardship caused to it by any so called non-cooperation. Further, I note that Noticee has appointed statutory auditors more than an year after resignation of previous auditors. Further, I note that from the website of the Exchange that for the year ending March 31, 2021, Noticee has submitted financials on August 2, 2023 i.e 2 years after the due date i.e. 60 days from the March 31, 2021. Such delay on the part of the Noticee cannot be condoned. In view of the above, I hold that Noticee has violated second proviso to Regulation 52(1) of the LODR Regulations.

<u>Maintenance of 100% security cover for secured listed non-convertible securities</u>

24. It is alleged in the SCN that the Noticee has not complied with Regulation 54(1) of the LODR Regulations which requires that the listed entity shall maintain

hundred per cent security cover or higher security cover as per the terms of offer document/Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount and the interest thereon at all times for the non-convertible debt securities issued. It is also alleged in the SCN that Noticee has not complied with Regulation 56(1)(d) of LODR Regulations which requires the Noticee to submit security cover certificate to the debenture trustee.

25. In its reply, notice has submitted that Company always maintained 100% security cover in accordance with the provisions of law, however, due to the absence of a statutory auditor of the Company at that time, the certificate could not be furnished, as the same is required to be verified and signed by the statutory auditor. The Noticee further states that security cover certificate shall be duly submitted along with the financial results for the financial year ending March 31, 2021.

26. I note that the contention of the Noticee relating to the absence of statutory auditor cannot be accepted for the reason that Noticee has taken more than one year to appoint new statutory auditors. Further, I note from the financial results of the Noticee for the financial year ending March 31, 2021 that the Noticee has not provided security cover certificate along with the financial results. Further, I note that in its written submissions dated August 3, 2023, Noticee has submitted that the same is in the process of being prepared, and the Noticee shall share the same shortly. Further, I note that the additional submissions dated August 16, 2023 of the Noticee are silent with respect to the security cover.

27. Noticee has repeatedly stated in his submissions that it has always maintained 100 percent security cover, however, Noticee has not submitted the security cover certificate till date of this order, despite appointment of new statutory auditors on April 25, 2023. In view of the same, I am inclined to hold that Noticee has not maintained the security cover as required by Regulation 54(1) of LODR

Regulations. In view of the above, I conclude that Noticee has violated Regulation 54(1) and 56(1)(d) of LODR Regulations.

Mandatory review of Credit Rating by the issuer

28. It is alleged in the SCN that CTL has submitted that no information is received from SEL with respect to review of credit rating and that SEL has not complied with Regulation 55.

29. I note from the available record that the credit rating agency Infomerics Ratings ("**CRA**") has reaffirmed the ratings vide press release dated May 26, 2022 to "IVR B+/Stable (INC) (IVR Single B Plus with Stable Outlook; Issuer Not Cooperating). Noticee has submitted in its reply that it could not provide financials for the financial year ended March 31, 2021 to the CRA due to unavailability of statutory auditor. Noticee further states that since the financial results have now been filed with the Company, the CRA shall shortly complete the review of the credit rating and shall accordingly submit the same.

30. I note that the CRA has reaffirmed the rating of the Noticee company citing non-cooperation by the Noticee. Regulation 55 provides, "*Each rating obtained by the listed entity with respect to non-convertible securities shall be reviewed at least once a year by a credit rating agency registered by the Board*." I note that the process of review of credit rating has not been completed due to non-furnishing of financials by the Noticee. In view of the same, I hold that Noticee has violated Regulation 55 of the LODR Regulations.

Submission of requisite information/ documents by the issuer to CTL within the timelines prescribed under regulation 56

31. 56(1)(a) :- Under this regulation, Noticee was required to submit copy of annual report to the debenture trustee. The Noticee has submitted the said annual report for the financial year ending March 2021 to debenture trustee vide email dated August 14, 2023 i.e. after issuance of the SCN. I note that the same cannot be taken as compliance of Regulation 56(1)(a) as the Noticee was supposed to submit the annual report within a reasonable period of time. In view of the above, I conclude that Noticee has violated Regulation 56(1)(a) of LODR Regulations.

32. 56(1)(b) :- With respect to this regulation, Noticee has submitted that the provision is not applicable to the Noticee as no such instance has occurred. In view of the same, I hold that Noticee has not violated 56(1)(b) of LODR Regulations.

33. 56(1)(c)(i) :- This provision relates to intimation regarding any revision in the rating of the Noticee. The Noticee has submitted that there has been no revision in the rating and therefore the provision is not applicable. In view of the same, I hold that Noticee has not violated 56(1)(c)(i) of LODR Regulations.

34. 56(1)(c)(ii) :- This provision relates to intimation to debenture trustee with respect to default in timely payment of interest or redemption in respect of non-convertible debt securities. The Noticee has admitted non-disclosure of non-payment of interest due on 31-10-2022. In view of the same, I hold that Noticee has violated 56(1)(c)(ii) of LODR Regulations.

35. 56(1)(c)(iv) :- This provision relates to intimation of all covenants of the issue. In this regard, Noticee has reiterated his previous submissions. I note from Annexure D of the SCN that CTL has informed that Noticee has been non-compliant with respect to regulation 56(1)(c)(iv). Noticee has not specifically replied to the allegations. In view of the same, I am inclined to hold that Noticee has violated regulation 56(1)(c)(iv) of LODR Regulations.

36. Regulation 56(1A):- This regulation requires that the Noticee shall also disclose to the Debenture Trustee at the same time as it has intimated to the stock exchange, all material events and/or information as disclosed under regulation 51of these regulations. Owing to non-disclosure of default in payment of interest due on 31-10-2022, I hold that Noticee has violated 56(1A) of LODR Regulations.

37. Regulation 56(2) :- This provision requires that the Noticee shall provide all such information to the debenture trustee, as sought by the trustee from time to time, and provide access to the books of accounts, as required by the trustee. In this regard, Noticee submits that no such request for information or access to books of accounts has been made by the debenture trustee, therefore, provision is not applicable. I note that the SCN has not brought out any such instance where the debenture trustee has specifically sought information from the Noticee. In view

of the above, I hold that Noticee has not violated Regulation 56(2) of LODR Regulations.

Non-creation and maintenance of Recovery Expense Fund (REF)

38. It is alleged in the SCN that Noticee has not created Recovery Expense Fund (“**REF**”) and therefore has not complied with SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020 (“**the Circular**”).

39. In this regard, Noticee has submitted that, it had addressed an email to the Debenture Holder, requesting disbursement from the Debt Service Reserve Account (“**DSRA**”) towards annual listing fees and creation of Recovery Expense Fund, however, the request for disbursement was not acceded to, on account of this, the REF could not be created.

40. I note from the perusal the Circular that nowhere the Circular requires that the amount of REF, has to be taken from DSRA. The contention of the Noticee is devoid of any merit. The Noticee has failed to provide any reasonable explanation for not creating the REF. In view of the above, I hold that the Noticee has violated SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020.

Issue no. II

41. Noticee has averred in his reply that the violations alleged in the Show Cause Notice are instances of technical / procedural lapses on the part of the Noticee. Noticee has also relied on various judgments of SC and SAT to contend that no penalty should be imposed in cases of technical breach of provisions. I note that the instant matter is distinguishable from the cases referred to by the Noticee. In the instant matter, the violations committed by the Noticee are not of technical nature. The delay of more than 1 year in appointment of statutory auditors cannot be accepted as a technical breach or procedural lapse. The entire securities market stands on disclosure-based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the Noticee to make disclosures is detrimental to the interest of the investors in the securities market.

42. Further, I note that the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* 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*.'' In view of the above, I hold that the violations committed by the Noticee do attract monetary penalty.

43. In the instant case, the following violations have been established against the Noticee: -

Table - 3

Noticee no.	Violations established	Penalty Section of SEBI Act, 1992
1	Regulation 51(3) of SEBI (LODR) Regulations, 2015	15HB
2	SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020	15A(b)
3	Regulation 51 (1) and Regulation 51(2) read with clause A (1) of Part B of Schedule-III of SEBI (LODR) Regulations, 2015	
4	Regulation 54(1) of SEBI (LODR) Regulations, 2015	
5	Second proviso to Regulation 52(1) of SEBI (LODR) Regulations, 2015	
6	Regulation 55 of SEBI (LODR) Regulations, 2015	
7	Regulation 56(1)(a), 56(1)(c)(ii), 56(1)(c)(iv), 56(1)(d) and 56(1A) of SEBI (LODR) Regulations, 2015	

Issue no. III

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

> **"15J - Factors to be taken into account by the adjudicating officer**
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default.*
> ***Explanation:***
> *For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

45. Regarding the factors to be considered under Section 15J of SEBI Act, 1992, I note that the SCN does not indicate the amount of disproportionate gain or unfair advantage made by the Noticee, as a result of the aforesaid violations. In fact no such assessment is possible in facts of the present case. Further, the SCN also does not specify the amount of loss caused to investor or group of investors. It is practically impossible to quantify the loss caused to investors in the event of non-disclosures or delayed discloures. With regard to repetitive nature of default, I note that there are no previous violations by the Noticee available on record.

46. Noticee has submitted in his reply that due to the non-availability of statutory auditors, there was a delay in submitting the financial results and consequentially several violations under the LODR Regulations were triggered and that all such violations arose from the same cause of action and were triggered due to one violation. In this regard, Noticee relies on the judgment of the Hon'ble SAT in the matter of *Vitro Commodities Private Limited vs. SEBI (Appeal No. 118 of 2013)* to aver that if there is one violation, and that violation has the effect of triggering another violation, there is no requirement for imposing penalty on the second/ subsequent violations. I have taken note of the judgment of the Hon'ble SAT which has been referred by the Noticee. The submissions of the Noticee can be

taken as mitigating factor in calculation of penalty to be imposed upon the Noticee.

G. ORDER

47. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose following penalty on Noticee for the aforementioned violations, as discussed in this order :

Name of the Noticee	Penalty (Rs.)	u/s of SEBI Act
Selene Estate Limited	**Rs.1,00,000/- (One Lac)**	15HB
	Rs.5,00,000/- (Five Lacs)	15A(b)

In my view, the aforementioned penalty is commensurate with the violations committed by the Noticees in this case.

48. 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 SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

49. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Date: September 18, 2023 **VIJAYANT KUMAR VERMA**
Place: Mumbai **ADJUDICATING OFFICER**