SECURITIES AND EXCHANGE BOARD OF INDIA
BEFORE THE ADJUDICATING OFFICER
[ADJUDICATION ORDER NO. Order/DS/AY/2022-23/19417-19420]

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 AND UNDER SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

1. IL&FS Transportation Networks Limited (PAN: AABCC5460A) The IL&FS Financial Centre C-22, G-Block, Bandra – Kurla Complex, Bandra (East), Mumbai 400051	**2. Ramchand Karunakaran (PAN: AAAPR4142A) 31, Victoria Apartment, Sarojini Road, Santacruz (West) Mumbai - 400054**
3. Dilip Bhatia (PAN: ABEPB7695P) The IL&FS Financial Centre 9th Floor, C-22, G-Block, Bandra – Kurla Complex, Bandra (East), Mumbai 400051	**4. Krishna Ghag (DIN: 02491661) The IL&FS Financial Centre 9th Floor, C-22, G-Block, Bandra – Kurla Complex, Bandra (East), Mumbai 400051**

In the matter of
IL &FS Transportation Networks Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed certain related party transactions (hereinafter referred to as "**RPTs**") in the form of loans borrowed by IL&FS Transportation Networks Limited (hereinafter referred to as "**Noticee No. 1/ITNL**") from the following IL&FS group companies ("**the related**

parties”) in the financial years 2015-16, 2016-17 and 2017-18 (hereinafter referred to as “**examination period**”):

i. Gujarat Integrated Maritime Complex
ii. Unique Waste Processing Company limited
iii. Tierra Enviro Limited
iv. Livia India Limited
v. Kanak Resources Management Ltd.
vi. Mota Layja Gas Power Company Limited
vii. Rapid Metrorail Gurgaon South Limited
viii. Sabarmati Capital Two Limited

2. Ramchand Karunakaran (hereinafter referred to as “**Noticee No.2**”) was the Managing Director of Noticee No. 1, Dilip Bhatia (hereinafter referred to as “**Noticee No.2**”) was the Chief Financial Officer of Noticee No. 1 and Krishna Ghag (hereinafter referred to as “**Noticee No.3**”) was the Secretary of the Audit Committee of Noticee No. 1 during the examination period. (Noticee No. 1 to 4, hereinafter collectively referred to as “**Noticees**”)

3. SEBI observed certain RPTs in the form of loans borrowed by Noticee No. 1 from the related parties in the financial years 2015-16, 2016-17 and 2017-18, and allegedly violated the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as **“LODR Regulations**”), Uniform Listing Agreement dated November 24, 2015 entered between Noticee No. 1 and National Stock Exchange and Accounting Standard on ‘Related Party Disclosures’ (AS18 for FY 2015-16 and IndAS 24 for FYs 2016-17 and 2017-18).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer in the matter, vide order dated July 22, 2021, under section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”) read with sub-section (1) of

section 15-I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) and Section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "**SCRA**") read with rule 3 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCR Adjudication Rules'**) to inquire into and adjudge under section 15HB of the SEBI Act and section 23E of SCRA in respect of the alleged violation of following provisions of law :

i. Regulation 4(1)(b), 6(2)(a), 6(2)(c), 17(8), 23(1), 23(2), 23(4), and 34(3) of LODR Regulations;
ii. Para A(2) of Part B of Schedule II of LODR Regulations;
iii. Clause 1 of para A of Schedule V of LODR Regulations;
iv. Clause 2(i) of Uniform Listing Agreement dated November 24, 2015 entered between Noticee No. 1 and National Stock Exchange;
v. Clause 49(VII)(C), 49(VII)(D) and 49(VII)(E) of erstwhile Equity Listing Agreement up till November 30, 2015;
vi. Accounting Standard on 'Related Part Disclosures' (AS18 for FY 2015-16 and IndAS 24 for FYs 2016-17 and 2017-18).

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice dated October 20, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticees under Rule 4(1) of the Adjudication Rules and Rule 4(1) of SCR Adjudication Rules to show cause as to why an inquiry should not be held against the Noticees and penalty be not imposed on them under section 15HB of SEBI Act and section 23E of SCRA for the alleged violation of the provisions of law by the Noticees. The SCN, inter alia, mentioned the following:

   i. RPTs between Noticee No. 1 and the related party - **Rapid Metrorail Gurgaon South Limited (RMGSL)** taken together in FY 2015-16 are exceeding the materiality threshold of 10% of consolidated turnover of Notice No. 1 for the preceding financial year.

ii. Noticee No. 1 vide its letter dated February 28, 2020 stated that it had obtained specific approval of the shareholders at their meeting held on August 26, 2015 for the construction contract dated April 01, 2013 worth Rs. 1702 crores entered into with RMGSL and also for equity investment of Rs. 237 crores in RMGSL.

iii. It was observed that the shareholders' approval dated August 26, 2015 was for the construction contract between Noticee No. 1 and RMGSL worth Rs. 1,702 crores for which Noticee No. 1 received construction income (RPTs) from RMGSL for the period FY 2013-14 to FY 2018-19. Thus, it is alleged that the shareholders' approval for the contract cannot be treated as approval for the yearly RPTs in the form of construction income which varied across the years. It is also observed that the total amount of construction income received by Noticee No. 1 was more than Rs. 1,860 crores which exceeds the approved construction contract and for which no specific shareholders' approval for material RPTs was taken.

iv. Similarly, the approval for equity investment of Rs. 237 crores in RMGSL cannot be treated as approval for the yearly RPTs / investments which varied across the years from FY 2012-13 to FY 2016-17.

v. The total RPTs of Noticee No. 1 with RMGSL for FY 2015-16 aggregates to Rs. 1350.15 crores which is around 19.77% of consolidated turnover of FY 2014-15 of Noticee No. 1. Accordingly, it was alleged that Noticee No. 1 should have taken shareholders' approval for the material RPTs with RMGSL for FY 2015-16 rather than just taking the approval for the construction contract and equity investment.

vi. Therefore, it was alleged that Noticee No. 1 has violated Regulation 23(4) of LODR Regulations read with Regulation 23(1) of LODR Regulations read with Clause 2(i) of Uniform Listing Agreement dated November 24, 2015 entered into between Noticee No. 1 and NSE, Clause 49(VII)(E) read with Clause 49(VII)(C) of the erstwhile Equity Listing Agreement up till November

30, 2015 for not taking specific shareholders' approval for the material RPTs with RMGSL for FY 2015-16.

vii. It was also observed that some of the aforesaid loans/deposits borrowed by Noticee No. 1 from the related parties were in turn loans/deposits borrowed by the related parties from IL&FS Financial Services Ltd. (hereinafter referred to as "**IFIN"**) on the same day or within one day.

viii. It was further observed that loans were borrowed by the three related parties from IFIN and later lent to Noticee No. 1 before its repayment. It was also observed that there have been instances of fund transfer from IFIN to Noticee No. 1 through the external parties

ix. It was alleged that Noticee No. 1 should have taken specific shareholders' approval for the RPTs with IFIN for FY 2015-16 and FY 2017-18 (including the loans indirectly transferred from IFIN to Noticee No. 1 through group companies and external parties). Therefore, it was alleged that Noticee No. 1 has violated Regulation 23(4) of LODR Regulations read with Regulation 23(1) of LODR read with Clause 2(i) of Uniform Listing Agreement dated November 24, 2015 entered into between Noticee No. 1 and NSE and Clause 49(VII)(E) read with 49(VII)(C) of the erstwhile Equity Listing Agreement up till November 30, 2015.

x. The Board of Directors of Noticee No. 1 adopted the RPT Policy and RPT Framework on August 13, 2014 and revised it on May 29, 2017. It was noted that RPT Framework did not fulfil the conditions of an omnibus approval as stipulated under Regulation 23(3) of LODR Regulations since it did not specify the period of transaction and names of related parties. Further, it was noted that the RPTs undertaken under the RPT Framework prior to November 09, 2017 were not individually approved by the audit committee prior to entering into the transaction as required under Regulation 23(2) of LODR. Therefore, it was alleged that Noticee No. 1 has violated Regulation 23(2) of LODR Regulations read with Clause 2(i) of Uniform Listing Agreement dated November 24, 2015 entered between Noticee No. 1 and NSE and Clause 49(VII)(D) of the erstwhile Equity Listing

Agreement up till November 30, 2015 for not taking prior approval of the Audit Committee for the RPTs under taken under RPT Framework prior to November 09, 2017.

xi. It was also observed that Noticee No.1 avoided requisite disclosure of the borrowings in the annual reports for FYs 2015-18 by routing the loans through group companies and third parties. Hence, aggregating the borrowings under 'Others' in the annual reports appear to obscure the importance of the transactions. The same is also not in accordance with the spirit of the accounting standards and is not in the interest of the shareholders. Therefore, it was alleged that Noticee No. 1 violated Regulation 4(1)(b) of LODR Regulations and Regulation 34(3) of LODR Regulations read with clause 1 of para A of Schedule V of LODR Regulations and the Accounting Standard on "Related Party Disclosures" (AS18 for FY 2015-16 and IndAS 24 for FYs 2016-17 and 2017-18).

xii. It was noted that the compliance certificates provided by Noticee Nos. 2 and 3, are not accurate as far as compliance with accounting standards on "Related Party Disclosures" in annual financial statements of Noticee No. 1 for FYs 2015-18 is concerned. Therefore, it was alleged that Noticee Nos. 2 and 3 have violated Regulation 17(8) of LODR Regulations read with Para A(2) of Part B of Schedule II of LODR Regulations.

xiii. It was further alleged that Noticee No. 4 has failed to discharge his responsibilities as Secretary of the Audit Committee with respect to the approvals and disclosures of the RPTs and therefore, it was alleged that Noticee No. 4 has violated Regulations 6(2)(a) and 6(2)(c) of LODR Regulations.

Reply and Hearing of Noticee Nos. 1, 3 and 4

6. In response to the SCN, Noticee No. 1 on its behalf and on behalf of Noticee Nos. 3 and 4, vide letter dated November 19, 2021, inter alia, submitted the following:

i. The allegations in the SCN relate to period preceding October 01, 2018 whereupon significant changes have happened in management and personnel of the Noticee No. 1 under the aegis of New Board.

ii. The IL&FS Group (including ITNL) is undergoing a resolution process under the aegis of the Hon'ble National Company Law Appellate Tribunal ('**NCLAT**'). The Hon'ble NCLAT granted interim stay on institution or continuation of suits or any other proceedings by any party or person against IL&FS (including ITNL).

iii. Noticee No. 1 obtained approval of its shareholders at Annual General Meeting held on August 26, 2015 by way of special resolution approving the Development Agreement (Rs. 1702 crore) and the equity investment of Rs. 237 crore in RMGSL by Noticee No. 1.

iv. ITNL was regularly borrowing money from various entities/lenders in its normal course of business including various group entities (related parties) during the period between Financial Year 2015-2018. Such transactions with the group entities were classified as RPTs and as required under LODR Regulations they were reported to the Audit Committee in the prescribed manner. These transactions did not require prior approval of the shareholders as they did not exceed the 10% materiality threshold as prescribed under the LODR Regulations.

v. ITNL borrowed money from various entities/lenders (external as well as group entities). However, ITNL was not privy to the sources of such borrowed funds. These lenders may have arranged the funds lent to the Company from various sources, including but not limited to their internal sources and/or external borrowings (including from IL&FS group entities). It was neither feasible nor practical for ITNL to determine and investigate how funds were sourced by these Lenders.

vi. It may further be noted that as part of the IL&FS Group's resolution process ITNL has invited claims from its creditors in respect of pending dues as on October 15,

2018. All the entities mentioned in para 12, 13, and 14 of the SCN have filed their claims (in respect of loans advanced by them) against ITNL with the claims management consultant and the same have been duly admitted. These entities which have been recognized as creditors of ITNL, form part of the Committee of Creditors (CoC) and have been independently exercising their voting rights as members of CoC and will receive the monies from the distribution of final assets of ITNL in accordance with the Resolution Framework applicable to ITNL.

vii. Further, it is highlighted that as confirmed by several entities, the funds were raised by them for routine business operations/requirements and were lent to ITNL until they could be deployed for their intended purposes. Additionally, the obligation of these entities to their lenders (including IFIN) is independent of any recovery made from amounts lent by these entities to ITNL. This could be evidenced from the fact that IFIN has in tis normal course of loan recoveries initiated independent recovery actions against some of these parties including filing of CIRP applications.

viii. It is hence submitted that these were bone fide and independent transactions undertaken by ITNL with the respective Lenders and were disclosed properly in accordance with the RPTs disclosure requirements after seeking requisite approvals.

ix. ITNL in its AGM held on August 26, 2015 had taken approvals from its shareholders for entering into transactions with each of the related parties (including IFIN) for an amount upto Rs. 10,000 crore per annum (which translated to a value beyond the 10% materiality threshold) on account of the various categories of transactions/ contracts as specified in the notice of the AGM (including borrowing) and authorized the Audit Committee/Board of Directors to exercise the powers in accordance with the provisions of the extant applicable laws to approve, enter into, execute and implement transactions/ contracts/ arrangements within the aforesaid limit.

x. The RPT policy and framework covered all transactions to be carried out by ITNL with the related parties which were repetitive in nature and being carried out in ordinary course of business and contained relevant required details such as the name of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into. By way of Related Party Framework, prior approval was granted by the Audit Committee unlike omnibus approval, which needs to be renewed every year. The RPT Policy and Framework were further revised and approved by the Board on May 29, 2017.

xi. In terms of Regulation 23(3) of SEBI LODR, SEBI has authorized Audit Committee to grant omnibus approval for RPTs proposed to be entered into by the listed entity subject to certain conditions. The RPT Policy and Framework put in place by the Company also met all the parameters (commensurate with the business model of the Company) that were required to be considered by the Audit Committee to grant omnibus approval in terms of Regulation 23(3) of SEBI (LODR) Regulations.

xii. Recognizing the repetitive nature and large value of these RPTs entered into by the Company from time to time, the shareholders of the Company at their meeting held on August 26, 2015, approved entering into such transactions with each of the related parties upto Rs. 10,000 crore per annum (which translated to value beyond 10% materiality threshold) and authorized the Audit Committee. Board of Directors to exercise the powers in accordance with the provisions of the extant applicable laws to approve, enter into, execute and implement transactions/contracts/ arrangement within the aforesaid limit. A detailed explanatory statement providing a brief background of these transactions was circulated to the shareholders of the Company for their consideration and approval. The shareholders approved the resolution, considering all the aspects outlined in the explanatory statement with respect to related parties named therein, as well as for any other transactions that may come up in the course of business operations, failing within the ambit of a RPT. As per our understanding, this fully complies with the SEBI regulations even including seeking shareholders' approval for transactions that exceed the 10% threshold.

xiii. As part of the RPT Framework, the transactions entered into with related parties were placed before the Audit Committee on a quarterly basis for noting/approval and confirming that the same were consummated in terms of the Related Party Policy and Framework approved by the Committee. The RPTs and the required disclosures in that respect were also reviewed by the Internal Auditors as part of their quarterly intervals.

xiv. While the RPT policy and RPT Framework was approved by the Audit Committee and the Board at their respective meetings held on August 12, 2014, August 13, 2014, a yearly approval for RPT Framework giving required details such as nature of transactions, period of transactions and maximum amount of transactions proposed to be entered with the related parties during that year was obtained from the Audit Committee at the beginning of each year.

xv. It may be noted that borrowings from each individual related party specified in the paras 12, 13 and 14 of the SCN was below 10% of the total related party borrowings in the respective years. Keeping in mind the materiality threshold to be applied while disclosing RPTs in annual accounts, as prescribed by the Accounting Standards issued by the Institute of Chartered Accountants of India, transactions with an individual related party lower than 10% of the total RPTs in that category were aggregated and disclosed by ITNL as "Others" in annual accounts. Further, only transactions of similar nature i.e. "Borrowings" were clubbed and disclosed under "Others" category in compliance with the provisions of the Accounting Standard. It is submitted that ITNL had followed this approach for disclosures of RPTs in all its annual accounts since the FY 2010. The above is also a standard market practice and similar disclosures have also been made by many of the reputed companies.

xvi. The certification provided to the Board in terms of Regulation 17(8) of the LODR by Key Management Personals was provided after detailed checks and balances, review and certification by external agencies and with due care and attention.

7. Vide Hearing Notice dated May 25, 2022, Noticee Nos. 1, 3 and 4 were granted an opportunity of personal hearing on May 31, 2022. Subsequently, vide email dated May 26, 2022, Noticee Nos. 1, 3 and 4 sought adjournment of the personal hearing. In response to their request, vide email dated May 26, 2022, Noticee Nos. 1, 3 and 4 were informed that their request has been acceded to and the personal hearing was scheduled on June 13, 2022.

8. Vide email dated June 08, 2022, Noticee Nos. 1, 3 and 4 sought another adjournment of the personal hearing. Vide e-mail dated June 08, 2022, the said request of Noticees was acceded to and the hearing was scheduled on June 27, 2022.

9. Vide email dated June 24, 2022, Noticee Nos. 1, 3 and 4 sought another adjournment of the personal hearing. Vide e-mail dated June 08, 2022, the said request of Noticees was acceded to and the hearing was scheduled on July 19, 2022. The personal hearing was finally conducted on July 19, 2022 through Video Conference wherein the Authorised Representatives of Noticees appeared and made their submissions. Subsequently, in addition to the aforementioned reply dated November 19, 2021, Noticee No. 1 on its behalf and on behalf of Noticee Nos. 3 and 4, vide letter dated August 03, 2022 filed their written submissions *inter alia*, submitting the following:

i. Written Submissions are supplemental to the Reply and do not intend to replace the reply.

ii. Hon'ble NCLAT vide order dated October 15, 2018 passed an interim order under Sections 241 & 242 of the Companies Act, 2013 staying the institution or continuation of suits or any other proceedings by any party or person, etc. against

IL&FS and its group companies in any Court of Law/Tribunal/Arbitration Panel or Arbitration Authority. In view of the same, Noticee No. 1 has raised preliminary objections that Adjudicating Officer is a tribunal for the purposes of proceedings prohibited under Hon'ble NCLAT's Order dated October 15, 2018.

iii. Further, Noticee No. 1 has submitted that in terms of order of Hon'ble Securities Appellate Tribunal in the matter of Dewan Housing Finance Corporation Limited v. SEBI (2020 SCC Online SAT 162), SEBI has no jurisdiction to institute any proceedings during the operation/subsistence of moratorium.

iv. As approval for specific RPTs was taken from the shareholders during the AGM held on August 26, 2015, no separate approval for yearly construction income/equity infusions which were part of the said RPTs was required.

v. All transactions with related parties between 2014 to 2017 were carried in accordance with the RPT Policy and RPT Framework of Noticee No. 1 which met all the parameters required to be considered by the Audit Committee and the transaction in line with the same were accorded approval by Audit Committee in terms of Regulations 23(3) of LODR.

vi. Aggregating certain borrowings under 'Others' in the annual report is not in violation of the LODR and as per applicable Accounting Standards, the transactions with an individual related party lower than a particular threshold of total RPTs in that category could be clubbed and shown under a common category in the annual accounts. These transactions were identified as RPTs and were adequately disclosed in the annual accounts.

vii. In the matter of Suzlon Energy Limited and Anr. v. SEBI (judgment dated May 03, 2021 in Appeal No. 201/2018), the Hon'ble Securities Appellate Tribunal *inter alia* held that Section 23E of SCRA is not applicable in cases of violation of Listing

Agreement. Accordingly, there is no justifiable basis to impose a penalty on Noticees pursuant to Section 23E of the SCRA.

Reply and Hearing of Noticee No. 2

10. In response to SCN, the wife (Ms. Rita Ramchand) of Noticee No. 2 vide her letter dated October 28, 2021, informed that Noticee No. 2 is imprisoned in Central Jail, Tihar Jail and therefore SCN may be served upon Noticee No. 2 in Jail. Accordingly, the SCN was served on November 10, 2021. Subsequently, the Noticee No. 2 was represented through his wife in the instant proceedings and all correspondences were done with his wife. Vide letter dated November 22, 2021, Noticee No. 2 through his wife sought 8 weeks' time to reply to the SCN and same was granted to Noticee No. 2 vide letter dated November 25, 2021.

11. Subsequently, vide letters dated December 25, 2021 and January 19, 2022, Noticee No. 2 sought inspection of the documents. Vide letter dated February 14, 2022, the inspection was scheduled on March 03, 2022. Vide letter dated February 28, 2022, Noticee requested for rescheduling the inspection on account of non-availability of his advocates. The request of the Noticee was acceded to and vide letter dated March 03, 2022, the inspection was rescheduled to March 09, 2022. The Authorised Representatives of Noticee No. 2 conducted inspection of the documents on March 09, 2022 and the copy of documents was provided to them.

12. Subsequently, vide email dated March 11, 2022, Noticee No. 2 was advised to file reply to the SCN on or before March 21, 2022. Noticee No. 2 vide letter dated March 11, 2022 sought inspection of additional documents. Vide letter dated April 04, 2022, the inspection was scheduled on April 12, 2022. However, the Noticee failed to avail the opportunity of inspection and vide e-mail dated April 13, 2022, the Noticee was advised to file his reply to SCN on or before April 22, 2022.

13. The Noticee vide e-mail dated April 21, 2022 sought another opportunity for inspection of documents and accordingly, vide e-mail dated April 23, 2022, another inspection was scheduled on April 28, 2022. However, vide letter dated April 25, 2022,

the Noticee again sought rescheduling of the inspection. The said request of Noticee was acceded to and vide e-mail dated April 27, 2022, the inspection was rescheduled to May 04, 2022. The Authorised Representatives of Noticee No. 2 conducted inspection of the documents on May 04, 2022 and the copy of documents was provided to them.

14. Noticee No. 2 vide letter dated May 05, 2022 sought inspection of additional documents. Vide letter dated May 12, 2022, Noticee No. 2 was informed that inspection of all the documents relevant to Noticee No. 2 is already provided except the examination report. Vide the said letter, Noticee no. 2 was provided with certified copy of the examination report and was advised to file his reply on or before May 23, 2022.

15. Noticee No. 2 vide letter dated May 20, 2022 reiterated that inspection was not complete and sought inspection of additional documents including the investigation conducted by SEBI. In response to the same, vide letter dated May 24, 2022, the Noticee was again informed that there was no investigation report and the SCN was issued on the basis of findings of examination report, certified copy of said examination report was already provided to Noticee vide letter dated May 12, 2022. Further, it was reiterated that inspection of all the material relevant to the proceedings initiated against him were already provided and Noticee was advised to submit his reply on or before May 23, 2022 but no reply was received. Accordingly, in the interest of natural justice, an opportunity of personal hearing was granted to Noticee on May 31, 2022.

16. Vide letter dated May 30, 2022, Noticee No. 2 filed reply to the SCN and *inter alia* submitted the following:

i. ITNL, as a part of its business architecture, borrowed monies from External and Internal (IL&FS and Group) Entities as a part of day to day/ normal business activities. The very business model of ITNL required it to set up special purpose vehicles for each of the projects and therefore, investment of monies in such vehicles would be in the nature of related party transactions.

ii. To be fully compliant and act in accordance with all applicable laws and regulations, ITNL had taken the advice of specialist agencies in order to have a workable policy of Related Party Transactions.

iii. To be fully complaint and act in accordance with all applicable laws and regulations, ITNL set up a very extensive mechanism to ensure compliance with all applicable laws and Regulations including the LODR Regulations. The mechanism is set out below:

a. ITNL undertook a Secretarial Audit every year which is conducted by an Independent Auditor;
b. Internal Auditor of ITNL conducted Audits every Quarter including ensuring that every RPT fell in the ambit of the law and approval of the shareholders;
c. There (was/is) a full-fledged Company Secretarial Department headed by a very senior Company Secretary cum Compliance Officer with adequate staff;
d. An External Auditor conducted Audits every Quarter. In fact in 2016-17, we had Joint Auditors, Deloitte and SRBC (E&Y) do the needful.

iv. All the said procedures were duly undertaken and the Noticee took all the above into account when making decisions and issuing compliance certificates. The auditors had certified that ITNL had complied with the provisions governing the RPTs.

v. The Noticee diligently followed the internal processes set up to ensure compliance and only on receiving certification by independent auditors did he issue the compliance certificates. The Noticee relied completely on internal processes and professional judgment and advice of experts confirming due compliance of applicable laws and regulations. The Noticee's duty or diligence did not require him to presume mala fides and second guess the bona fides of independent experts, unless there was information brought to his attention, which would have led to any reasonable person in his position to suspect wrongdoing and ask searching questions.

vi. From the above it is evident that when assessing whether an entity acted with diligence, it does not require assessing whether that entity did everything but only that the entity did everything that was reasonably expected of it.

vii. In fact, even the applicable provision which the Noticee is charged to have violated, i.e. Clause A (2) of Part B of Schedule II of the LODR Regulations, requires the officers to certify the information, "…to the best of their knowledge and belief" and not beyond.

viii. ITNL had formulated a RPT Policy and shareholders of ITNL had in fact granted omnibus approval of RPTs up to Rs. 10,000 crores per annum. Said RPT Policy was put in place by the Audit Committee in consultation with Deloitte and all RPTs were in line with the RPT Policy. As some of the RPTs were repetitive in nature and were large in value, ITNL obtained the prior approval of the shareholders at the Annual General Meeting on August 26, 2015, to enter into transactions with any related party up to Rs. 10,000 crores per annum.

ix. Therefore, the actions of the Audit Committee and the Board of Directors were duly authorized and in accordance with the approval of the shareholders. Since the shareholders themselves have granted an omnibus approval of the RPTs and these RPTs have been specifically vetted and approved by the Audit Committee and thereafter certified by independent auditors, the Noticee cannot be charged with failure to exercise diligence in issuing the compliance certificate which were allegedly inaccurate.

x. It is a settled position of law that a person cannot be held liable for any act or omission of a company, merely because he/she was a director of the company and that when a company is an offender, vicarious liability of the directors cannot be imputed directly. The SCN fails to bring on record any document/information to show that there was infact any knowledge or wrong doing and a consequent violation on part of the Noticee. The only allegation against the Noticee is that of allegedly issuing inaccurate compliance certificates.

xi. SCN fails to bring on record any document/information to show that there was in facts any knowledge of wrong doing and a consequent violation on the part of the Noticee.

xii. It is also now codified in Section 149(12) of the Companies Act, 2013 and the LODR Regulations that the role of a director ought to be considered purely from the standpoint of involvement, connivance and knowledge that is discernible from participation in Board processes.

17. The Authorised Representatives of Noticee No. 2, Shri Somasekhar Sundaresan, Advocate, Ms. Yugandhara Khanwilkar, Advocate, Mr. Abhay Jadeja, Advocate, Mr. Varun Satiya, Advocate and Mr. Arun Unnikrishnan, Advocate, Ms. Rita Ramchand, wife of Noticee No. 2 and Shri Animesh Jha, son in law of Noticee No. 2 attended the hearing on May 31, 2022. The ARs of Noticee No. 2 reiterated the submissions made vide letter dated May 30, 2022. The Authorised Representatives of the Noticee further submitted that, another Adjudicating Officer, in the same matter has exonerated the members of the Audit Committee.

CONSIDERATION OF ISSUES AND EVIDENCE

18. I have carefully perused the allegations levelled against the Noticees in the SCN, the replies of the Noticees and the material/documents available on record. The issues that arise for consideration in the present case are:

Issue No. i. a) Whether there is a moratorium against action on Noticee No. 1 in terms of Hon'ble NCLAT's orders dated October 15, 2018 and March 12, 2020 read with decision of Hon'ble Securities Appellate Tribunal in the matter of Dewan Housing Finance Corporation Limited?

b) Whether Noticees have violated the provisions of law as mentioned in the SCN?

c) Does the violation, if any, attract monetary penalty under Section 23E of SCRA and Section 15HB of SEBI Act?

d) If the answer to the aforesaid issues is in affirmative, then what should be the quantum of penalty?

19. Before going ahead with the allegations against the Noticees, it is pertinent to address the preliminary objection raised by them stating that there is moratorium on action against Noticee No. 1 as per Hon'ble NCLAT's order dated October 15, 2018 and March 12, 2020. In this regard, it is relevant to mention that the said issue is squarely covered by order dated April 06, 2021 passed by Hon'ble Securities Appellate Tribunal in Appeal No. 76 of 2021 in the matter of IL&FS Securities Services Ltd. v. SEBI wherein it was held that the said moratorium is not applicable on SEBI and the decision of the Hon'ble Securities Appellate Tribunal in Dewan Housing Finance Corporation Limited is totally different and distinguishable. The relevant extracts of Hon'ble Securities Appellate Tribunal's order dated April 06, 2021 are reproduced below:

"19. A perusal of the aforesaid would indicate that the main function of SEBI is to regulate the business in the stock exchanges and other securities market and to regulate the working of the stock brokers, sub brokers, share transfer agents, intermediaries, depositories, custodian of securities etc. Merely because SEBI exercises quasi-judicial power in a limited form and in a limited way does not mean that it has the trappings of a court. In any case, trappings of a court is only one of the features of a Tribunal/Court and exercising limited judicial power does not make the authority a fullfledged Court or a Tribunal. One should keep in mind that a Tribunal is vested with judicial powers of the State which SEBI lacks. Further, the main function of a Tribunal is to adjudicate the disputes between the parties

and, on the other hand SEBI"s main function is not to adjudicate disputes between the parties.

20. Thus, the decisions cited by the learned senior counsel for the appellant are totally distinguishable and are not applicable to the facts and circumstances of the case.

21. Reliance was also placed on a decision of this Tribunal in the case of ***Deewan Housing Finance Corporation Ltd. vs. SEBI, 2020 SCC Online SAT 162****. That was a decision under section 14 of the IBC which is totally different and distinguishable from the provisions of sections 241 and 242 of the Companies Act.*

22. The interim order dated 15th October, 2018 passed by NCLAT was passed in order to avoid multiple proceedings initiated by the shareholders and creditors and to restrict such persons from taking any debt recovery action under sections 241 and 242 of the Companies Act and, therefore, the said interim order is only confined to the mismanagement of the Company vis-a-vis its shareholders and creditors. The interim order cannot be extended to cover the regulatory authorities. In view of the aforesaid, we do not find any error in the impugned order. The appeal fails and is dismissed with no order as to costs."

20. In view of the aforementioned decision of Hon'ble Securities Appellate Tribunal, I do not find any merit in the preliminary objection of Noticees and proceed further in the matter.

21. Noticee No. 1 has contended that there is delay in issuance of SCN. It is pertinent to mention that SEBI had conducted examination of the report from Serious Fraud Investigation Office and sought replies from Noticees on the allegations against them. After examining the replies from Noticees, it was alleged that Noticees violated the provisions of securities laws and accordingly, I was appointed as Adjudicating Officer in the matter to adjudicate upon the allegations in the matter. I am of the opinion that

there has been no delay in these proceedings and no prejudice has been caused to the Noticees.

22. Now, I proceed to deal with the submissions of the Noticees on merits. It was alleged in the SCN that Noticees have failed to disclose the RPTs to stock exchange and did not take necessary approval from the shareholders for the same.

23. Before moving forward, the relevant provisions of LODR Regulations allegedly violated by the Noticees are mentioned below:

Principles governing disclosures and obligations.

4.(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:

...

(b)The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

Compliance Officer and his Obligations.

6.(2) The compliance officer of the listed entity shall be responsible for-

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

...

(c)ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.

Board of Directors.

17. (8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

Related party transactions.

23.(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions.

Explanation. –A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(2) All related party transactions shall require prior approval of the audit committee.

…

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to particular transaction or not.

Annual Report.

34…

(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

Schedule II

PART B: COMPLIANCE CERTIFICATE

A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

…

(2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

SCHEDULE V: ANNUAL REPORT

The annual report shall contain the following additional disclosures:

A. Related Party Disclosure:

1.The listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures".

Issue No. ii: Whether Noticees have violated the provisions of law as mentioned in the SCN?

24. In the context of the current proceeding, following RPTs were observed between Noticee No. 1 and eight related parties during the examination period:

RPTs between Noticee No. 1 and the eight related parties for FYs 2015-18

FY	Related Party	Amount of RPTs taken together * (rounded off to next higher digit) (Rs. in Crores)	Consolidated Turnover of Noticee No. 1 during Previous FY (Rs. in Crores)	Materiality Threshold (10% of consolidated turnover) (Rs. in Crores)	Whether Material (Yes / No)
2015-16	Gujarat Integrated Maritime Complex Private Limited	315.27	6,828.22	682.82	No
2016-17		321.89	8,732.03	873.20	No
2017-18		70.85	8,401.62	840.16	No
2015-16	Unique Waste Processing Company Limited	207.30	6,828.22	682.82	No
2016-17		57.57	8,732.03	873.20	No
2017-18		184.87	8,401.62	840.16	No
2015-16	Tierra Enviro Limited	207.39	6,828.22	682.82	No
2016-17		15.10	8,732.03	873.20	No
2017-18		2.23	8,401.62	840.16	No
2015-16	Livia India Limited	284.00	6,828.22	682.82	No
2016-17		34.86	8,732.03	873.20	No

FY	Related Party	Amount of RPTs taken together * (rounded off to next higher digit) (Rs. in Crores)	Consolidated Turnover of Noticee No. 1 during Previous FY (Rs. in Crores)	Materiality Threshold (10% of consolidated turnover) (Rs. in Crores)	Whether Material (Yes / No)
2017-18		244.33	8,401.62	840.16	No
2015-16	Kanak Resources Management Limited	114.53	6,828.22	682.82	No
2016-17		6.11	8,732.03	873.20	No
2017-18		0.08	8,401.62	840.16	No
2015-16	Mota Layja Gas Power Company Limited	342.29	6,828.22	682.82	No
2016-17		143.12	8,732.03	873.20	No
2015-16	**Rapid Metrorail Gurgaon South Limited (RMGSL)**	**1350.15**	**6,828.22**	**682.82**	**Yes**
2016-17		630.60	8,732.03	873.20	No
2017-18		334.60	8,401.62	840.16	No
2017-18	Sabarmati Capital Two Limited	64.06	8,401.62	840.16	No

** Excludes loan repayments by Noticee No. 1 to the related parties and vice versa*

25. It is observed the table above that RPTs between Noticee No. 1 and RMGSL taken together in FY 2015-16 are exceeding the materiality threshold of 10% of consolidated turnover of Noticee No. 1 for the preceding financial year.

26. Noticee No. 1 in its reply has contended that it had obtained specific approval of the shareholders at their meeting held on August 26, 2015 for the construction contract dated April 01, 2013 worth Rs. 1702 crores entered into with RMGSL and also for equity investment of Rs. 237 crores in RMGSL. Noticee No. 1 had also provided the details / calculations in this regard as per which the rest of the transactions taken together with RMGSL (excluding the construction income and equity investment) in FY 2015-16 fall within the 10% threshold (9.5% of the consolidated turnover of FY 2014-15).

27. It is observed that the shareholders' approval dated August 26, 2015 was for the construction contract between Noticee No. 1 and RMGSL worth Rs. 1,702 crores for which Noticee No. 1 received construction income (RPTs) from RMGSL for the period FY 2013-14 to FY 2018-19. Thus, the shareholders' approval for the contract cannot be treated as approval for the yearly RPTs in the form of construction income which varied across the years and it cannot be treated as approval granted for RPTs unless substantiated that all specific RPTs containing details of names/parties/period/amount, etc. were covered therein. It is also observed that the total amount of construction income received by Noticee No. 1 was more than Rs. 1,860 crores which exceeds the approved construction contract and for which no specific shareholders' approval for material RPTs was taken.

28. Similarly, the approval for equity investment of Rs. 237 crores in RMGSL cannot be treated as approval for the yearly RPTs / investments which varied across the years from FY 2012-13 to FY 2016-17.

29. The total RPTs of Noticee No. 1 with RMGSL for FY 2015-16 aggregates to Rs. 1350.15 crores which is around 19.77% of consolidated turnover of FY 2014-15 of Noticee No. 1. Accordingly, Noticee No. 1 should have taken shareholders' approval for the material RPTs with RMGSL for FY 2015-16 rather than just taking the approval for the construction contract and equity investment.

30. It is also observed that some of the aforesaid loans/deposits borrowed by Noticee No. 1 from the related parties were in turn loans/deposits borrowed by the related parties from IFIN on the same day or within one day. The details of such transactions are mentioned below:

Loans/deposits transfer from IFIN to the related parties and from the related parties to Noticee No. 1 for FYs 2015-18

Related Party	Date of transfer of loan/deposit from IFIN to the related party	Amount of transaction (Rs. in crores)	Date of transfer of loan/deposit from the related party to Noticee No. 1	Financial Year	Rationale given by the related parties
Gujarat Integrated Maritime Complex Private Limited (GIMCO)	30/11/2015	300	30/11/2015	2015-16	As per the loan agreement between GIMCO - IFIN - INR 300 Cr. the facility would be utilized for any of the below specified purpose; namely: • Repayment of existing loans from Promotes, • For commencing pre-construction activities relating to the Project • General Corporate Purposes GIMCO – Noticee No.1 - INR 300 Cr: This was an unsecured Inter Corporate Deposit placed with Noticee No.1 for period of 1 month from date of disbursement, November 30, 2015.
	08/09/2016	40	08/09/2016	2016-17	
	09/09/2016	34	09/09/2016	2016-17	
	12/09/2016	26	12/09/2016	2016-17	
	14/09/2016	20	14/09/2016	2016-17	
	19/09/2016	10	19/09/2016	2016-17	
	22/09/2016	10	22/09/2016	2016-17	
	22/09/2016	2	22/09/2016	2016-17	
Unique Waste Processing Company Limited (UWPCL)	22/12/2015	95	22/12/2015	2015-16	The respective loans were not only taken for working capital, but also for other purposes viz. Loan and Advances to group/ associate companies and general corporate purposes. Therefore, the loans were given to Noticee No.1 in
	29/12/2015	67	29/12/2015	2015-16	
	27/05/2016	40	27/05/2016	2016-17	

Related Party	Date of transfer of loan/deposit from IFIN to the related party	Amount of transaction (Rs. in crores)	Date of transfer of loan/deposit from the related party to Noticee No. 1	Financial Year	Rationale given by the related parties
	10/10/2017	173	10/10/2017	2017-18	accordance with bridge funding of ongoing projects.
Tierra Enviro Limited (TEL)	18/12/2015	100	18/12/2015	2015-16	The Loan was taken by the company (from IFIN) not only for its construction activities and future projects but also for the working capital and General Corporate purposes. At the time of getting loan from IFIN Company was in process of setting up its E waste facility but it was held up on account of delay in regulatory clearances. As a resulted these funds were surplus. Hence for the time being it was on lent to our Group Company (Noticee No.1) for the short term only.
	21/12/2015	25	21/12/2015	2015-16	
	22/12/2015	55	22/12/2015	2015-16	
Livia India Limited (Livia)	21/01/2016	100	22/01/2016*	2015-16	The respective loans were not only taken for working capital, but also for other purposes viz. Loan and Advances to group/associate companies, general corporate purpose and bridge funding of ongoing projects. Therefore, the loans were given to Noticee No.1 in accordance with bridge funding of ongoing projects and loan & advances to group companies.
	01/02/2016	131	01/02/2016	2015-16	
	25/02/2016	45	25/02/2016	2015-16	
	25/05/2016	4	25/05/2016	2016-17	
	07/09/2017	101#	07/09/2017	2017-18	
	11/09/2017	80	11/09/2017	2017-18	
	28/09/2017	34	28/09/2017	2017-18	
Mota Layja Gas Power Company	14/03/2016	300	14/03/2016	2015-16	The purpose of infrastructure terms loan in

Related Party	Date of transfer of loan/deposit from IFIN to the related party	Amount of transaction (Rs. in crores)	Date of transfer of loan/deposit from the related party to Noticee No. 1	Financial Year	Rationale given by the related parties
Limited (MLGPCL)	28/03/2016	16	29/03/2016*	2015-16	Term Sheet executed with IFIN is as follows: Invest in gas based project to be set up by the Company and also to onward lending/deposits subsidiary/associate/group companies
	29/03/2016	24	29/03/2016	2015-16	
Rapid Metrorail Gurgaon South Limited (RMGSL)	14/03/2016	70	14/03/2016	2015-16	RMGSL had borrowed from IFIN for onward lending to its Group companies. Accordingly, it was on lent to Noticee No.1 /SPV as per the term sheet.
	16/03/2016	76	16/03/2016	2015-16	
	17/03/2016	229	17/03/2016	2015-16	
	30/03/2016	270	30/03/2016	2015-16	
	19/05/2016	5	19/05/2016	2016-17	
Sabarmati Capital Two Limited (Sabarmati)	18/10/2017	60	18/10/2017	2017-18	The purpose of loan in offer letter/ Term Sheet executed with IFIN is as follows: a) Extending Loans & Advance to group. Associate Company, b) Working capital c) General Corporate Purpose
Kanak Resources Management Limited (KRML)	22/12/2015 to 11/02/2016	183##	29/02/2016	2015-16	Company has taken the loan not only for Working Capital but also for Future projects and General Corporate purpose. At the time of taking of Loan, the Company was in processes of bidding of multiple Collection & Transportation mandates. Company did not win any bid so there were surplus funds. Hence it was on lent to Noticee No. 1 for the short term till the Company won a new bid.

** Loan borrowed from IFIN was lent to ITNL on the next day*

 # 161 crores were borrowed from IFIN out of which 101 crores were lent to ITNL

31. As noted from the abovementioned table that Kanak Resources Management Limited ("**KRML**") had borrowed working capital loans amounting Rs. 183 crores from IFIN from December 22, 2015 to February 11, 2016 and lent a working capital loan of Rs. 113 crores to ITNL on February 29, 2016. As per KRML's submissions, it had taken the loan not only for Working Capital but also for Future projects and General Corporate purpose. At the time of taking of Loan, it was in the process of bidding and it did not win any bid so there were surplus funds. Hence it was lent to ITNL for the short term till the Company won a new bid.

32. Similarly Gujarat Integrated Maritime Complex Private Limited, Unique Waste Processing Company Limited, and Tierra Enviro Limited, borrowed from IFIN and later lent to Noticee No. 1 before its repayment. The details of such transactions are given below:

Loans/deposits transfer from IFIN to the related parties and from the related parties to noticee no. 1 for FYs 2015-18 before repayment of the loans/deposit to IFIN

Related Party	Date of transfer of loan/deposit from IFIN to the related party	Amount of transaction (Rs. in crores)	Date of transfer of loan/deposit from the related party to ITNL	Amount of transaction (Rs. in crores)
Gujarat Integrated Maritime Complex Private Limited	30/05/2017	30.20		
	29/06/2017	12.50		
	25/07/2017	92.15	31/08/2017	55.00
	26/09/2017	31.30	29/09/2017	12.43
			30/09/2017	25.00
Unique Waste Processing Company Limited	23/12/2015	38	26/02/2016	24
			29/02/2016	14
Tierra Enviro Limited	18/12/2015	20	26/02/2016	20

33. The rationale given by the related parties above is mainly on the lines of loans borrowed from IFIN for the purpose of onward lending to other group entities and that

surplus funds were lying with them which was lent to Noticee No. 1. However, the same does not explain why IFIN could not have directly lent to Noticee No. 1?

34. It is further observed that there have been instances of fund transfer from IFIN to Noticee No. 1 through the external parties and the same have been summarized below:

Loans/deposits transfer from IFIN to third parties and from the third parties to Noticee No. 1 for FYs 2015-18

Name of the external parties to whom the loan was lent by IFIN	Date of disbursal of the loan from IFIN to the external parties	Amount Disbursed (Rs. in crores)	Date of transfer of the loan from the external parties to Noticee No. 1	Amount Transferred (Rs. in crores)
GHV Hotels (India) Private Ltd	30/05/2017	35	31/05/2017	100
	31/05/2017	65		
Wavell Investments Private Ltd	26/03/2018	100	26/03/2018	100
Beigh Construction Company Private Ltd	27/02/2018	125	27/02/2018	125
	05/03/2018	75	05/03/2018	75
New India Structures Private Ltd	15/03/2018	90	15/03/2018	90
	16/03/2018	90	16/03/2018	90
	21/03/2018	90	21/03/2018	90
Kalyan Sangam Infratech Ltd *	23/03/2018	100	23/03/2018	100
Sangam Business Credit Ltd *	22/03/2018	150	22/03/2018	150
Avance Technologies Ltd	31/03/2018	150	31/03/2018	150
Empower India Ltd	31/03/2018	170	31/03/2018	169
Attivo Economic Zone (Mumbai) Pvt Ltd	23/08/2017	110	23/08/2017	110
	31/03/2018	195	29/03/2018	200
Vistar Financier Private Ltd	26/03/2018	205	26/03/2018	200
Prakash Constrowell Ltd	26/03/2018	5	Payable dues of Noticee No.1 to Prakash Constrowell Ltd (vendor of Noticee No.1) were to be adjusted against the dues of IFIN	
	16/03/2018	2		
Giridhan Projects Private Ltd #	28/03/2018	110	28/03/2018	110

Name of the external parties to whom the loan was lent by IFIN	Date of disbursal of the loan from IFIN to the external parties	Amount Disbursed (Rs. in crores)	Date of transfer of the loan from the external parties to Noticee No. 1	Amount Transferred (Rs. in crores)
Sahaj e-Village Ltd	27/03/2018	90	27/03/2018	90

** Loans borrowed from IFIN were first transferred to Suchitra Finance and Trading which in turn transferred the amount to Noticee No.1. All these transactions were on the same day.*

 # Loan borrowed from IFIN was first transferred to SREI Infrastructure Finance Ltd which in turn transferred the amount to Noticee No.1. All these transactions were on the same day.

35. It is noted from the above-mentioned loans that if such loans were borrowed by Noticee No. 1 directly from IFIN, then the same would have crossed the materiality threshold under Regulation 23(1) of LODR Regulations for FYs 2015-16 and 2017-18. The details of the same are given below:

RPTs between Noticee No. 1 and IFIN taken together for FYs 2015-18

Financial Year	Amount of direct RPTs between Noticee No. 1 and IFIN (Rs. in Crores) *	Amount of RPTs routed as loans through other related parties (Rs. in Crores) #	Amount of RPTs routed as loans through external parties (Rs. in Crores) ^	Amount of RPTs taken together (Rs. in Crores)	Materiality Threshold (10% of consolidated turnover of previous FY) (Rs. in Crores)	Whether Material (Yes / No)
2015-16	**144.21**	**2074.00**	**-**	**2218.21**	**682.82**	**Yes**
2016-17	382.40	283.43	-	665.83	873.20	No
2017-18	**319.00**	**448.00**	**1946.00**	**2713.00**	**840.16**	**Yes**

36. It appears from the record that Noticee No. 1 did not take specific shareholders' approval for the RPTs with IFIN for FY 2015-16 and FY 2017-18 (including the loans indirectly transferred from IFIN to Noticee No. 1 through group companies and external parties). Noticee No. 1 has submitted that the funds were raised by related parties for routine business operations/requirements and were lent to ITNL until they could be deployed for their intended purposes. Further, Noticee No. 1 has contended that it was not privy to the source of such borrowed funds it was neither feasible nor

practical for it to determine the same so long as proper KYC and documentation were completed.

37. From the table above, it is seen that related parties have raised funds from IFIN and transferred these funds to Noticee No. 1 in 2015-16 and 2017-18 which is more than three times the materiality threshold and the same cannot be overlooked. Noticee No. 1 was repeatedly entering into transactions with group companies/external parties and it is surprising that none of the companies (including IFIN or Noticee No.1) were aware of such movement of funds. Hence, from the above facts it is inferred that Noticee No. 1 has violated Regulation 23(4) of LODR Regulations read with Regulation 23(1) of LODR read with Clause 2(i) of Uniform Listing Agreement dated November 24, 2015 entered into between Noticee No. 1 and NSE and Clause 49(VII)(E) read with 49(VII)(C) of the erstwhile Equity Listing Agreement up till November 30, 2015.

38. It was further observed from the letter of Noticee No. 1 dated August 1, 2019, as revised on February 19, 2020, Noticee No. 1 has framed a Related Party Policy in terms of the provisions of Regulation 23 of LODR and has devised a framework for undertaking transaction with related parties ("RPT Framework"). Noticee No. 1 also stated that all the RPTs are within the RPT framework and the details of the transactions entered into as per the RPT framework were placed before the subsequent Audit Committee Meeting on a quarterly basis.

39. The Board of Directors of Noticee No. 1 adopted the RPT Policy and RPT Framework on August 13, 2014 and revised it on May 29, 2017. It was alleged that RPT Framework does not fulfil the conditions of an approval as stipulated under Regulation 23(3) of LODR Regulations since it does not specify the period of transaction and names of related parties. Further, it was noted from the email dated November 09, 2020 that the RPTs undertaken under the RPT Framework prior to November 09, 2017 were not individually approved by the audit committee prior to entering into the transaction as required under Regulation 23(2) of LODR.

40. Therefore, it was alleged that Noticee No. 1 has violated Regulation 23(2) of LODR Regulations read with Clause 2(i) of Uniform Listing Agreement dated November 24, 2015 entered between Noticee No. 1 and NSE and Clause 49(VII)(D) of the erstwhile Equity Listing Agreement up till November 30, 2015 for not taking prior approval of the Audit Committee for the RPTs under taken under RPT Framework prior to November 09, 2017.

41. In reply to the aforesaid allegation, Noticee No. 1 submitted that considering its business model, RPTs entered into by the Company are repetitive in nature, sheer frequency and volume of such transactions, seeking prior approval of Audit Committee before each transaction was cumbersome and unfeasible. Therefore, the shareholders of the Company at their meeting held on August 26, 2015, approved entering into such transactions with each of the related parties upto Rs. 10,000 crore per annum (which translated to value beyond 10% materiality threshold) and authorized the Audit Committee, Board of Directors to exercise the powers in accordance with the provisions of the extant applicable laws to approve, enter into, execute and implement transactions/contracts/ arrangement within the aforesaid limit. The shareholders approved the resolution, considering all the aspects outlined in the explanatory statement with respect to related parties named therein, as well as for any other transactions that may come up in the course of business operations, falling within the ambit of a RPT.

42. It was further submitted by Noticee No. 1 that as part of the RPT Framework, the transactions entered into with related parties were placed before the Audit Committee on a quarterly basis for noting/approval and confirming that the same were consummated in terms of the Related Party Policy and Framework approved by the Committee. The RPTs and the required disclosures in that respect were also reviewed by the Internal Auditors as part of their quarterly intervals.

43. Noticee No. 1 further submitted that while the RPT policy and RPT Framework was approved by the Audit Committee and the Board at their respective meetings held on

August 12, 2014, August 13, 2014, a yearly approval for RPT Framework giving required details such as nature of transactions, period of transactions and maximum amount of transactions proposed to be entered with the related parties during that year was obtained from the Audit Committee at the beginning of each year.

44. As per Regulation 23(2) of LODR, all related party transactions shall require prior approval of the audit committee and it is the obligation of the Noticee No. 1 to put up the said transactions before Audit Committee. Regulations 23(2) and 23(3) of LODR should be read together and interpreted as providing only two ways of prior approval of Audit Committee: one, by obtaining approval for each RPT under 23(2), or second, by obtaining omnibus approval under 23(3). Approval for an indefinite period can neither be taken under Regulation 23(2) of LODR nor under Regulation 23(3) of LODR. The RPT Framework being an indefinite approval does not qualify as an approval by the Audit Committee. Therefore, from the aforesaid, I am of the opinion that by not taking prior approval, Noticee No. 1 has violated Regulation 23(2) of LODR Regulations read with Clause 2(i) of Uniform Listing Agreement dated November 24, 2015 entered between Noticee No. 1 and NSE and Clause 49(VII)(D) of the erstwhile Equity Listing Agreement up till November 30, 2015.

45. It was further observed that NSE vide its email dated December 11, 2020 indicated non-disclosure by Noticee No. 1 of the RPTs with the eight related parties in its annual reports for FYs 2015-18. Noticee No. 1 vide its email dated January 12, 2021 replied that the RPTs have been disclosed under the sub-heading 'Others' for each separate type of transaction (heading).

46. It is observed that the RPTs which have been aggregated under 'Others' are not more than 10% of the total RPTs of the same type. However, Noticee No. 1 received indirect loans/ deposits from IFIN through the group companies and third parties as detailed in preceding paragraphs. It is noted that the total borrowings by Noticee No. 1 from IFIN, including these indirect borrowings, exceed 10% of the total borrowings by

Noticee No. 1 from all related parties for FYs 2015-16 and 2017-18. The details of the same are given below:

Total borrowings by Noticee No. 1 from IFIN for FYs 2015-18

Financial Year	Amount of loans borrowed directly from IFIN (Rs. in Crores)	Amount of loans indirectly borrowed through other related parties (Rs. in Crores)	Amount of loans indirectly borrowed through external parties (Rs. in Crores)	Amount of total borrowing by Noticee No. 1 from IFIN (Rs. in Crores)	Amount of total borrowings from all related parties (Rs. in Crores)	Total borrowing from IFIN as a % of total borrowing from all related parties
2015-16	45.00	2074.00	-	2119.00	5886.75	**36.00%**
2016-17	50.00	283.43	-	333.43	3383.43	**9.85%**
2017-18	-	448.00	1946.00	2394.00	5524.28	**43.34%**

47. It is noted that for FY 2016-17, the total borrowings by Noticee No. 1 from IFIN is only slightly less than 10%. Further, the total amount of borrowings combined as ‘Others’ (Rs. 1266.50 crores) is more than 37% of the total borrowings from all related parties (Rs. 3383.43 crores) for FY 2016-17 which shows the significance of these transactions.

48. Noticee No. 1 submitted that as per accounting standards, transactions with an individual related party lower than a particular threshold of total RPTs in that category could be clubbed and disclosed under a common category in the annual accounts. It has further submitted that all the transactions referred under ‘Others’ were below 10% of the total related party borrowings in respective years and these transactions were identified as RPTs and were adequately disclosed in the annual accounts.

49. It appears that Noticee No.1 avoided requisite disclosure of the borrowings in the annual reports for FYs 2015-18 by routing the loans through group companies and third parties. Hence, aggregating the borrowings under ‘Others’ in the annual reports appear to obscure the importance of these transactions. The same is also not in

accordance with the spirit of the accounting standards and is not in the interest of the shareholders.

50. In this regard, it may be noted that clauses 26 and 27 of Accounting Standard 18 (AS18) (effective for FY 2015-16) provide the following:

> "*26. Items of a similar nature may be disclosed in aggregate by type of related party except when separate disclosure is necessary for an understanding of the effects of related party transactions on the financial statements of the reporting enterprise.*
>
> *27. "Disclosure of details of particular transactions with individual related parties would frequently be too voluminous to be easily understood. Accordingly, <u>items of a similar nature may be disclosed in aggregate by type of related party. However, this is not done in such a way as to obscure the importance of significant transactions</u>. Hence, purchases or sales of goods are not aggregated with purchases or sales of fixed assets. <u>Nor a material related party transaction with an individual party is clubbed in an aggregated disclosure</u>.*
>
> *Explanation:*
>
> *(a) Materiality primarily depends on the facts and circumstances of each case. In deciding whether an item or an aggregate of items is material, the nature and the size of the item(s) are evaluated together. Depending on the circumstances, either the nature or the size of the item could be the determining factor. As regards size, for the purpose of applying the test of materiality as per this paragraph, <u>ordinarily a related party transaction, the amount of which is in excess of 10% of the total related party transactions of the same type (such as purchase of goods), is considered material, unless on the basis of facts and circumstances of the case it can be concluded that even a transaction of less than 10% is material</u>. As regards nature, ordinarily the related party transactions which are not entered into in the normal course of the business of the reporting enterprise are considered material subject to the facts and circumstances of the case."*
>
> *Clauses 24 and 24A of Indian Accounting Standard 24 (IndAS 24) (effective for FYs 2016-17 and 2017-18) on "Related Party Disclosures" contain the provisions of Clauses 26 and 27 except for the Explanation.*

51. Thus, it can be seen clause 27 of AS 18 that items of a similar nature may be disclosed in aggregate by type of related party but the same should not be done in such a way

as to obscure the importance of significant transactions. In the present case, I am of the opinion that the borrowings from related parties were significant transactions and by mentioning them in 'others' category, Noticee No.1 has avoided the relevant disclosures which is in violation of Regulation 4(1)(b) of LODR Regulations and Regulation 34(3) of LODR Regulations read with clause 1 of para A of Schedule V of LODR Regulations and the Accounting Standard on "Related Party Disclosures" (AS18 for FY 2015-16 and IndAS 24 for FYs 2016-17 and 2017-18).

52. Regulation 4(1)(b) of LODR Regulations provides that the listed company shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders. Regulation 17(8) read with Para A(2) of Part B to Schedule II of LODR Regulations provides that Chief Executive Officer and Chief Financial Officer shall provide compliance certificate to Board of Directors stating that they have reviewed the financial statements and to the best of their knowledge and belief, they are in compliance with existing accounting standards, applicable laws and regulations.

53. As per Page 99 of Annual Reports for FY 2015-16 and 2016-17 and Page 88 of Annual Report for FY 2017-18 of Noticee No. 1, the Noticee Nos. 2 and 2 furnished the said compliance certificates to the Board of Directors. I have held in the preceding paragraphs that the Noticee No. 1 was not in compliance of accounting standards. Therefore, it is noted that the compliance certificates provided by Noticee Nos. 2 and 3 are not accurate as far as compliance with accounting standards in Related Party Disclosures in annual Financial Statements of Noticee No. 1 for FYs 2015-18 is concerned.

54. As per Regulation 6(2) of LODR Regulations, the compliance officer of a listed entity is responsible for ensuring conformity with regulatory provisions and ensuring that correct procedures have been followed that would result in correctness, authenticity and comprehensiveness of information. Noticee No. 4 was the compliance officer of Noticee No. 1 and it is alleged that he failed to discharge his responsibilities. failed to

discharge his responsibilities as Secretary of the Audit Committees with respect to the approvals and disclosure of the RPTs.

55. The primary contention of the Noticee Nos. 2-4 against the allegations is that the Noticee No. 1 had a robust mechanism for preparation of financial statements and ensure compliance with all applicable Regulations wherein internal auditors as well as secretarial and statutory auditors of Noticee No. 1 reviewed all transactions with related parties and their compliance with statutory requirements. Further, it is submitted that the compliance certificates as well as discharge of duties were based on elaborate checks and balances and confirmations including external certifications from internal, statutory and secretarial auditors. Noticee No. 2 also submittd that he relied completely on internal processes and professional judgment of experts confirming due compliance of applicable laws and regulations.

56. Upon considering the submissions of the Noticee Nos. 2-4 and the violations committed by Noticee No. 1, I am of the opinion that the Noticee Nos. 2-4 completely relied on the internal processes of the Noticee No. 1 and did not exercise their own judgment before signing the compliance certificates or ensuring confirmation with applicable laws. Even though auditors submitted reports to them, it was their responsibility to ensure that such reports were as per the applicable regulatory provisions and not blindly rely on the reports received by them. As admitted by Noticee No. 2, he completely relied on such reports for issuing compliance certificates and did not exercise his own judgment before issuing the certificates. An obligation was cast on Noticee Nos. 2-4 as per LODR Regulations and they were expected to discharge their duties with due diligence. However, they have failed in discharging those duties.

Issue No. iii- Does the violation, if any, attract monetary penalty under Section 23E of SCRA and Section 15HB of SEBI Act?

57. Noticee No. 1 has relied on the decision of Hon'ble SAT in the matter of Suzlon Energy Ltd. & Anr. V. SEBI (Judgment dated May 03, 2021 in Appeal No. 201/2018) wherein

it was held that Section 23E of SCRA was not applicable for violation of provisions of Listing Agreement. Accordingly, Noticee No. 1 contends that SCN suffers from infirmity as it refers to erroneous penalty provision of SCRA.

58. I note that the SAT order dated May 03, 2021 in Suzlon Energy Ltd. and Anr. V. SEBI has been challenged by SEBI before the Hon'ble Supreme Court in Civil Appeal No. 4741 of 2021 titled SEBI v. Suzlon Energy Ltd. & Anr. and the same is pending. I also note that Hon'ble SAT in its orders in the matter of NDTV v. SEBI (Appeal No. 358/2015-SAT Order dated August 07, 2019) and Oasis Securities Ltd. & Ors. v. SEBI (Appeal No. 316 of 2018-SAT Order dated March 17, 2020) had upheld the imposition of penalty under Section 23E of SCRA on the appellant companies therein for violation of clauses of listing agreement. The limited purpose of these proceedings is to determine if the Noticee No. 1 has violated provisions of securities laws and if so, impose the penalty. However, the enforcement of this order shall be subject to the outcome of the aforesaid appeal pending before the Hon'ble Supreme Court.

59. It has been established in the foregoing paragraphs that the Noticees have violated the provisions of LODR Regulations, Uniform Listing Agreement, Equity Listing Agreement and Accounting Standards and therefore, the aforesaid violations committed by the Noticees attract monetary penalty under Section 23E of SCRA and Section 15HB of the SEBI Act.

60. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had 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.......*"

61. Therefore, in view of the above, the aforesaid violations by the Noticees will attract monetary penalty under Section 23E of SCRA and Section 15HB of SEBI Act which reads as under:

SCRA

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

SEBI Act

Penalty for contravention where no separate penalty has been provided.-

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

Issue No. iv – What should be the quantum of monetary penalty?

62. While determining the quantum of penalty under Section 23E of SCRA and Section 15HB of SEBI Act, it is important to consider the factors as stipulated in Section 23J of the SCRA and Section 15J of the SEBI Act respectively which reads as under:-

Factors to be taken into account by the adjudicating officer.

23J. *While adjudging the quantum of penalty under section 23I, 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 to be taken into account by the adjudicating officer.

15J.*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.

63. I note that the material made available on record does not quantify the amount of disproportionate gain or unfair advantage obtained by the Noticees or loss caused to investors as a result of the default. With respect to Noticee No. 1's transaction with RMGSL, it is observed that the materiality threshold of 10% with respect to RPTs was crossed once i.e. FY 2015-16 where transactions were 19.77% of the turnover of the previous financial years and it failed to take approval of shareholders for the same. Further, Noticee No. 1 failed to take approval of shareholders in terms of LODR regulations for the RPTs with IFIN for FY 2015-16 and FY 2017-18 when the transactions were more than three times the materiality threshold. Also, Noticee No. 1 failed to comply with relevant Accounting Standards for the period of FY 2015-16, 2016-17 and 2017-18. Accordingly, Noticee Nos. 2-4 have also violated the provisions of law for the said Financial Years as mentioned in herein. Therefore, I note that default on the part of Noticees is repetitive in nature.

ORDER

64. Having considered all the facts and circumstances of the case, the material available on record, the submissions of the Noticees and also the factors mentioned in the preceding paragraphs and in exercise of the powers conferred upon me under Section 23-I of SCRA read with Rule 3 of SCR Adjudication Rules and Section 15-I of SEBI Act read with Rule 3 of Adjudication Rules, I hereby impose the following penalties on the Noticees under Section 23E of SCRA and Section 15HB of SEBI Act.

S. No.	Name of the Noticee	Penalty Section	Penalty Amount (Rs.)
1.	IL&FS Transportation Networks Limited	Section 23E of SCRA	1,00,00,000/- (Rs. One Crore only)
2.	Ramchand Karunakaran	Section 15HB of SEBI Act	25,00,000/- (Rs. Twenty-five lakh only)
3.	Dilip Bhatia	Section 15HB of SEBI Act	25,00,000/- (Rs. Twenty-five lakh only)
4.	Krishna Ghag	Section 15HB of SEBI Act	25,00,000/- (Rs. Twenty-five lakh only)

65. I am of the view that the said penalties are commensurate with the violations committed by Noticees. As mentioned earlier in the paragraphs 57 and 58 of the order, the enforcement of this order with respect to Noticee No. 1 shall be subject to the outcome of Civil Appeal No. 4741 of 2021 titled SEBI vs. Suzlon Energy Ltd & Anr.

66. The Noticees shall remit / pay the said amount of penalty within forty-five days of receipt of this order either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai. Payment can also be

made online on the SEBI website (www.sebi.gov.in) on the following path, by clicking on the payment link “ENFORCEMENT->Orders ->Orders of AO ->PAY NOW” or https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the “The Division Chief, Enforcement Department –Division of Regulatory Action –IV, SEBI” SEBI Bhavan, Plot No.C4-A,‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400051 along with the following details:

a) Name and Permanent Account Number of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment –Payment of penalty under Adjudication proceedings
d) Bank Name and Account Number
e) Transaction Number

67. In the event of failure to pay the said amount of penalty within forty-five days of the receipt of this order, the Securities and Exchange Board of India may initiate consequential actions including but not limited to recovery proceedings in accordance with law for the realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties of the Noticees.

68. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : September 15, 2022
Place : Mumbai

D S REDDY
CHIEF GENERAL MANAGER & ADJUDICATING OFFICER